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**CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL  
CARRIAGE OF PASSENGERS AND LUGGAGE BY ROAD (CVR)**

**Draft amendments**

Submitted by the International Road Transport Union (IRU)

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## Introduction

1. The Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR), signed on 1 March 1973, came into effect on 12 April 1994. It has six Contracting Parties, namely, Bosnia and Herzegovina (succession), Croatia (succession), Latvia, Czech Republic (succession), Slovakia (succession) and Yugoslavia.
2. For reasons of their own, most European States have not acceded to CVR.

However, following its entry into force, CVR applies not only to transport between the territories of Contracting Parties but, in accordance with its article 1, also to transport between the territory of Contracting Parties and that of non-contracting States, regardless of the domicile and nationality of passengers or carrier.

3. As the Convention already applies to part of the traffic to and from non-contracting States, the question arises of amending it to enable all European countries to accede to it. <sup>1</sup> The Contracting Parties to CVR may also have reasons for wishing to adapt the Convention to present needs in the carriage of passengers by road.
4. At its eighty-eighth session, the Principal Working Party on Road Transport accepted the offer of IRU to submit a working document designed to facilitate consideration of the provisions of CVR to be amended. In IRU's view, the provisions of CVR mentioned below could be considered first.

### Article 1, paragraphs 1 and 2 <sup>2</sup>

5. Under this paragraph of article 1, application of the Convention is not restricted to a regular bus line or service whose places of departure and destination are in two different countries, at least one of which is a Contracting State, but, in the course of carriage crossing the territory of at least two States, of which at least one is a Contracting Party, extends to any bus line or service, and even to a portion of such line or service.

If, as part of a contract of carriage, a passenger purchases a ticket comprising several vouchers authorizing him to travel on the lines of his choice (e.g. Paris-Brussels, Brussels-Frankfurt, Frankfurt-Prague), where the choice of lines and travel dates must be made when the contract is concluded, the whole of such carriage between Paris and Prague is thereby subject to CVR. The carrier operating the Brussels-Frankfurt line and his insurer may not know where the carriage begins or ends and may thus be unaware that CVR will apply to the contractual relationship with the passenger in question. The same is true for the carrier operating the Paris-Brussels line when the ticket is sold by a travel agency.

Nor can it be assumed that the courts of a non-contracting country (in this case the French and German courts) will accept such an inordinate extension and apply the provisions of CVR, to which their countries have refused to accede.

6. The drawbacks of the situation described in paragraph 5 above are obvious. The situation could be remedied by redrafting article 1, paragraph 1, as follows:

"This Convention shall apply to every contract for the carriage of passengers and, where appropriate, of their luggage by road when the contract provides that:

(a) The carriage **is to be effected by a single vehicle,**

(b) **The carriage** shall take place in the territory of at least two States, and

(c) The place of departure or the place of destination, or both these places, shall be situated on the territory of a Contracting State, irrespective of the place of residence and the nationality of the Parties."

7. The term "carrier" in the present version of CVR refers only to the contracting carrier and not the actual carrier. Where the carriage is not performed by the contracting carrier himself, article 4 of the Convention contains provisions to ensure that the contracting carrier is fully responsible for the acts of the actual carrier (subcontractor). However, CVR does not make the actual carrier subject to the legal regime of the Convention, which does not facilitate cooperation among carriers and does not allow the passenger directly to bring an action against the actual carrier, if necessary.

The Convention should also provide for liability on the part of the actual carrier, in the interest of the consumer, as is the case in air transport (Warsaw Convention, Guadalajara version). Paragraph 2 (a) could be amended and expanded as follows:

"2. For the purposes of this Convention:

(a) Carrier **means both the contracting carrier and the actual carrier.**

Contracting carrier means any person who, in the course of trade or business, but acting other than as an operator of a taxi service or of a service hiring out vehicles with drivers, undertakes under an individual or collective contract of carriage to carry one or more persons and, where appropriate, their luggage, whether or not he performs the carriage himself;

Actual carrier **means a person, other than the contracting carrier, who performs the whole or part of the carriage contemplated in paragraph 2 (a) of this article.**

**If an actual carrier performs the whole or part of carriage which, according to the contract referred to in paragraph 2 (a) of this article, is governed by the present Convention, both the contracting carrier and the actual carrier shall be subject to the rules of the present Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which he performs."**

### Article 2<sup>3</sup>

8. This article extends the application of CVR to any carriage by road (even within national borders) performed by more than one mode of transport (e.g. Lyon-Paris by bus, Paris-Brussels by train, Brussels-Frankfurt by air and Frankfurt-Prague by bus).

The very fact that the Frankfurt-Prague stage is subject to CVR, means that the Lyon-Paris stage will also be subject to it.

This again is an enormous extension which may come as a surprise to carriers, their insurers and the courts of countries which are not signatories of CVR.

9. In the view of IRU, the present text of article 2 could be replaced by the following:

**"In the case of combined transport performed partly by road and partly by any other mode of transport, the present Convention shall apply only to the carriage by road, if such carriage meets the conditions of article 1. The same shall hold true where the carrier is compelled to interrupt carriage by bus and carries passengers, or has them carried, by another mode of transport."**

#### Article 7<sup>4</sup>

10. Under this article, the carrier may prohibit any transfer of any tickets issued by him that are not made out in the passenger's name. He may also make the transfer of tickets not made out in the passenger's name subject to conditions set by himself.

In practice, the transfer of tickets gives rise to a number of problems when the transferee has not been informed by the first holder of the ticket of the requirements regarding identity papers, visas, vaccination, etc.

11. While the present text is adequate from the legal point of view, it would be advisable, for practical reasons, to expand it as follows:

**"Unless the ticket contains a provision to the contrary it shall, if it is not made out in the passenger's name, be transferable at any time before the journey begins. The passenger shall have sole liability for any difficulties that may result and shall bear any related costs."**

#### Article 8

12. It is not enough to relieve the carrier of his liability if loss or damage results from the "dangerous" nature of the luggage, as provided in article 14, paragraph 2. The transport of luggage the contents of which are dangerous is normally prohibited, regardless of the mode of transport. This prohibition is particularly justified in view of the recent attempts to transport radioactive substances in luggage.

Provisions should be included to prohibit the carriage of luggage whose contents are dangerous and stipulate the liability of any passenger violating this provision.

13. In IRU's view, a fourth paragraph should be added to article 8, to read:

**"The following shall not be accepted as luggage:**

- **Articles whose carriage is prohibited in any of the countries through which the luggage is to pass;**
- **Dangerous substances and articles, including weapons, explosive or flammable substances and articles, oxidizing, toxic, radioactive or corrosive substances and repugnant or infectious substances.**

**The passenger shall be liable for any consequences resulting from failure to comply with this paragraph, including all costs or damage resulting from handing over for carriage articles and substances whose carriage is prohibited.**

**The carrier may require articles and substances whose carriage is prohibited to be unloaded, destroyed or rendered harmless at any time or place, without any compensation."**

Article 10, paragraph 2 <sup>5</sup>

14. This provision is contrary to the interests of the passenger. How can he "prove his right"? Must he, on leaving the bus, prove that he is the owner of the luggage?

15. IRU proposes amending the paragraph in question as follows:

"If the luggage registration voucher is not produced, the carrier shall not be obliged to deliver the luggage covered by it unless the person claiming the luggage can prove **that the luggage is intended for him or that he himself handed it over to the carrier**; should the evidence appear insufficient, the carrier may require adequate security for the luggage and such security shall be returned within a period of one year from the date on which it was paid over."

Article 12 <sup>6</sup>

16. The Convention does not cover all problems relating to the contract of carriage. Consequently, national law applicable to the contract of carriage must be applied in cases not governed by the Convention.

Article 12 provides for a third legal regime, that of the State whose courts have been seized of the case. As article 21 refers to six courts or tribunals before which an action may be brought by the parties to the contract, one of the six legal regimes, none of which is known when the carriage contract is concluded or while it is being performed, will supplement the provisions of the CVR Convention and replace those of the law applicable to the contract of carriage.

This uncertainty about the third applicable regime is not in the interest of any of the parties to the contract.

Moreover, it is not clear why the regime of the State whose courts are seized of the case is applied in order to determine the extent of the injury in cases of bodily injury, while the legal regime applicable to the contract is applied to determine the extent of the injury in cases of

damage caused to the luggage. The regime of the State whose courts are seized of the case may not necessarily be more favourable to the victims than the legal regime applicable to the contract of carriage. The possibility that the law of the court seized of the case may be applied represents improper interference in the law applicable to the contract and makes it difficult for the parties to the contract and insurers to plan ahead.

17. In order to render the text of the Convention more harmonious and eliminate the resulting shortcomings, the following should, in the view of IRU, be made clear:

"Subject to article 13, paragraph 1, **and to article 16, paragraph 1**, the court or tribunal seized of the case, **in accordance with article 21, paragraph 1**, shall determine in accordance with **the law applicable to the contract of carriage**, the extent of the injury giving rise to compensation:

(a) As a result of the death or wounding of or any other bodily or mental injury caused to a passenger, as well as what persons are entitled to compensation for such injury,

(b) **For the damage referred to in articles 14, 15 and 16."**

As the text in question concerns both passengers and their luggage, it should be inserted in article 17 of the "General provisions" section.

Article 13, paragraph 1 <sup>7</sup>

18. In adopting this paragraph of article 13, its authors completely lost sight of any attempt at harmonization.

This paragraph of CVR sets several limits instead of just one.

Adopting limits which cannot be set before the event and which, after the event, may prove limitless, makes carriage under the Convention uninsurable.

This also creates a twofold disadvantage for victims.

Firstly, because the payment of damages is delayed by efforts to determine the applicable limit, and secondly because the carrier may be underinsured, as is the case, for example, of carriers from low-income countries.

19. In IRU's view, the 250,000 franc (83,000 SDR) limit for each victim should be the only limit referred to in the Convention.

Article 13, paragraph 1, might therefore read as follows:

**"The total damages payable by the carrier in respect of the same occurrence shall not exceed 250,000 francs for each victim (83,333 SDR according to the Protocol of 5 July 1978 to CVR)."**

20. The 83,000 SDR limit places the liability of the carrier for each bus at a reasonable level, higher than that set by any other currently applicable convention on passenger transport.

It should be remembered that:

The Warsaw Convention (according to the Hague version) adopts the limit of 16,600 SDRs for each victim for passenger air transport. This limit is applied by all European countries;

The Athens Convention sets a limit of 46,666 SDRs for each victim for the carriage of passengers by sea;

The COTIF Convention (CIV Rules) adopts a limit of 70,000 SDRs for passenger rail transport.

Article 14, paragraphs 1 and 2<sup>8</sup>

21. The present wording is clumsy. The following wording would be clearer:

“1. ... The carrier shall be responsible for other luggage, including the hand luggage and personal effects of passengers:

When he has caused loss of or damage to them.

He shall bear the burden of proving that he has not caused the loss of or damage to other baggage:

When it has been placed in his safekeeping;

In the event of theft or loss arising out of an accident.”

22. As it stands, paragraph 2 is actually an indirect authorization to carry luggage of a “dangerous” nature. The carrier is simply relieved of his liability, but cannot refuse to carry such luggage.

23. In the view of IRU, the paragraph in question should be amended by deleting all reference to the “dangerous” nature of luggage. The paragraph might read:

“The carrier shall be relieved of this liability if the loss or damage results from an inherent defect in the luggage, or from circumstances which a carrier using the diligence which the particular facts of the case called for could not have avoided and the consequences of which he was unable to prevent.”

Article 17, paragraphs 2 and 3<sup>9</sup>

24. Even though the idea behind this paragraph seems sound, the wording could be interpreted as meaning that exclusive fault of a third party does not relieve the carrier of liability. Such an extension of carrier liability would run counter to the provisions of article 11, paragraph 2, according to which the carrier is relieved of liability in the event of circumstances which he could not have avoided, despite using the diligence which the particular facts of the case called for and the consequences of which he was unable to prevent. Clearly, such circumstances can result from the acts or omissions of third parties.

25. In order to reconcile the provisions of article 11, paragraph 2, with those of article 17, paragraph 2, the latter paragraph should read as follows:

**“The carrier shall be relieved of his liability if the damage is due exclusively to the behaviour of a third party which the carrier, using the diligence which the particular facts of the case called for, could not have avoided and the consequences of which he was unable to prevent.** Where the carrier is liable for the loss or damage but a third party has contributed thereto by his acts or omissions, the carrier shall be liable for the whole of such loss or damage, **within the limits stipulated in this Convention**, without prejudice to any right of recourse he may have against such third party.”<sup>10</sup>

Article 18, paragraphs 2 and 3<sup>11</sup>

26. The present text of this article treats wilful misconduct in the same way as gross negligence, which represents interference in national law.

27. It is proposed that article 18 should be redrafted along the lines of article 29 of CMR (Convention on the Contract for the International Carriage of Goods by Road, of 19 May 1956). It might then read:

“The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude his liability wholly or in part or which limit the compensation payable if the loss or damage results from his wilful misconduct or from a serious default which is attributable to the carrier or to persons for whom he is responsible under article 4 **and which, under the law applicable to the contract of carriage is considered as equivalent to wilful misconduct.**”

28. The second sentence of paragraph 2 becomes redundant since the same idea is already contained in paragraph 1. Consequently, IRU proposes deleting this sentence.

29. By the same token, as the idea expressed in paragraph 3 is already contained in paragraph 1 of this article, it is proposed that the paragraph should be deleted.

Article 20, paragraphs 1 and 2<sup>12</sup>

30. The complaint made “orally” does not enable the passenger to have the evidence that the complaint was actually made.



31. It is proposed that, in the interest of passengers, the term “orally” should be deleted. The second sentence of this paragraph might then read as follows:

“The complaint must be made to the carrier in writing within the seven days next following actual receipt of the luggage by the complainant.”

32. The term “contradictoirement” in the French version of paragraph 12 is a strictly legal term, unfamiliar to carriers or passengers. Nor does it have the same meaning in legal and everyday usage which, in the context of article 30, paragraph 1, of the CMR Convention where the same term also appears in the French version, is a source of confusion.

In some instances, particularly as a result of official translations which hesitate between the legal and everyday meaning, case-law on article 30, paragraph 1, of the CMR Convention gives different interpretations.

33. As, in the English and Russian versions, the same part of this sentence of paragraph 2 reads respectively “the loss or condition of the luggage has been duly checked by the passenger and the carrier” and “the loss or condition of the luggage has been noted in the presence of the parties”, the three versions, including the French, might be harmonized as follows:

“2. The passenger shall be relieved of the obligations imposed on him by paragraph 1 of this article if the loss or condition of the luggage **has been noted in the presence of the passenger and the carrier.**”

Article 22, paragraph 3, first sentence<sup>13</sup>

34. Paragraphs 1 and 2 of this article introduce the period of limitation valid for actions by the two parties to the contract of carriage.

It is inequitable for paragraph 3 to provide for a suspension for the passenger only. This suspension should apply to any party to the contract of carriage.

35. It is proposed therefore that, in the first sentence of paragraph 3 of article 22, the word “carrier” should be replaced by “the other party to the contract of carriage”. Finally, it would be as well to stipulate that the return of the original documents only, and not copies of them, ends the suspension. The sentence might then read:

“3. A written claim shall suspend the period of limitation until the date on which **the other party to the contract of carriage** rejects the claim by notification in writing and returns **the original** documents handed to him in support of the claim.”

Article 32, paragraph 1<sup>14</sup>

36. Nothing comparable appears in any of the provisions on the liability of passenger carriers in the Warsaw Convention on carriage by air, the CIV Rules of the COTIF Convention on carriage by rail or the Athens Convention on carriage by sea.

37. In order to bring CRV into line with the other international conventions mentioned, taking them as a basis (article 3 of the CIV Rules, article 22 of the Athens Convention) the provisions of article 32, paragraph 2, of CVR could be replaced by the following:

“Each State may, at the time when it signs the Convention or deposits its instrument of ratification, acceptance, approval or accession, reserve the right not to apply to passengers involved in accidents occurring in its territory the whole of the provisions concerning the liability of the carrier in the case of death or wounding of, or any bodily or mental injury caused to passengers, when such passengers are nationals of or have their usual place of residence in that State.”

#### Notes

1/ The note by Professor Jacques Putzeys attached to this document explains the importance of accession to CVR by European Union member States and countries participating in the work of ECE.

2/ “1. This Convention shall apply to every contract for the carriage of passengers and, where appropriate, of their luggage in vehicles by road when the contract provides that the carriage shall take place in the territory of more than one State and that the place of departure or the place of destination, or both these places, shall be situated on the territory of a Contracting State, irrespective of the place of residence and the nationality of the parties.

2. For the purposes of this Convention:

(a) Carrier means any person who in the course of trade or business, but acting other than as an operator of a taxi service or of a service hiring out vehicles with drivers, undertakes under an individual or collective contract of carriage to carry one or more persons and, where appropriate, their luggage, whether or not he performs the carriage himself.”

3/ “Where carriage by road is interrupted and another mode of transport is used, this Convention shall nevertheless apply to the portions of carriage which are performed by road, even if they are not international within the meaning of article 1, provided that they are not ancillary to the other mode of transport.”

4/ “Unless the ticket contains a provision to the contrary, it shall, if it is not made out in the passenger's name, be transferable at any time before the journey begins.”

5/ “If the luggage registration voucher is not produced, the carrier shall not be obliged to deliver the luggage covered by it unless the person claiming the luggage can prove his right thereto; should the evidence appear insufficient, the carrier may require adequate security for the luggage and such security shall be returned within a period of one year from the date on which it was paid over.”

6/ “Subject to article 13, paragraph 1, the court or tribunal seized of the case shall determine in accordance with the national law of the place where the said court or tribunal is situated,

including the rules relating to conflict of laws, the extent of the injury giving rise to compensation as a result of the death or wounding of or any other bodily or mental injury caused to a passenger, as well as what persons are entitled to compensation for such injury.”

7/ “The total damages payable by the carrier in respect of the same occurrence shall not exceed 250,000 francs (83,333 SDRs according to the Protocol to CVR of 5 July 1978) for each victim. Any Contracting State may, however, set a higher limit or set no limit at all. When the carrier has his principal establishment in such a State, or in a non-contracting State whose legislation provides for a higher limit or does not provide for a limit at all, the law of that State, not including the rules relating to conflict of laws, shall apply for the determination of the total amount.”

8/ “1. ...

The carrier shall be responsible for other luggage while it is in the vehicle but if, in circumstances other than of an accident, the luggage is stolen or cannot be found, the carrier shall be responsible only if it had been placed in his care. Such other luggage shall be deemed to include personal effects carried or worn by the passenger.

2. The carrier shall be relieved of this liability if the loss or damage results from an inherent defect in the luggage, from a special risk inherent in its perishable or dangerous nature or from circumstances which a carrier using the diligence which the particular facts of the case called for could not have avoided and the consequences of which he was unable to prevent.”

9/ “2. Where the carrier is liable for the loss or damage, but a third party has contributed thereto by his acts or omissions, the carrier shall be liable for the whole of such loss or damage without prejudice to any right of recourse he may have against such third party.”

10/ This wording is drawn largely from that adopted for the CIV Rules of COTIF.

11/ “If the loss or damage results from wilful misconduct or gross negligence by the carrier or a person for whom he is responsible under article 4, the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude his liability wholly or in part or which limit the compensation payable. The same rule shall apply to a person for whom the carrier is responsible under article 4 if that person's liability is involved and the loss or damage results from wilful misconduct or gross negligence by that person.

3. Subject to the provisions of the preceding paragraph, the total amount of compensation payable by the carrier and by the persons for whom the carrier is responsible under article 4 shall not exceed the amounts prescribed in the preceding sections of this chapter.”

12/ “1. The receipt of luggage by a passenger without complaint on his part shall be prima facie evidence that the luggage was delivered complete and in good condition. The complaint must be made to the carrier either orally or in writing within the seven days next following actual receipt of the luggage by the complainant.

...

2. The passenger shall be relieved of the obligations imposed on him by paragraph 1 of this article if the loss or condition of the luggage has been duly checked by the passenger and the carrier.”

13/ “A written claim shall suspend the period of limitation until the date on which the carrier rejects the claim by notification in writing and returns any document handed to him in support of the claim.”

14/ “Any Contracting Party may, at the time of signing, ratifying or acceding to this Convention or at any time thereafter declare, by notification addressed to the Secretary-General of the United Nations, that it reserves the right to apply in place of articles 11 and 14 of this Convention, such relevant provisions of any international convention concerning civil liability for damage caused by motor vehicles to which it is or may become party, and which would be more favourable to the passengers.

Annex

Jacques Putzeys  
Professor emeritus  
Catholic University of Louvain (Belgium)

## NOTE ON THE IMPLEMENTATION OF CVR AND ITS PRIOR AMENDMENT

1. Need for a CVR.
  - 1.1. While other transport modes (rail, air and sea) have long been governed by international conventions, passenger road transport (like inland waterway transport, which is of minor international importance) has since 1973 been awaiting the entry into force of the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR) of 1 March 1973, as amended by the Protocol of 5 July 1978.
  - 1.2. The need for an international convention has become self-evident, with the boom in passenger road transport (particularly for tourism), in the form either of package tours (buses) or of scheduled services (Eurolines). It is not advisable for such transport to be governed by disparate national legislation, or by general contractual conditions of which passengers know little or nothing, so important are the issues involved - passenger protection and the maintenance of fair competition among carriers.
  - 1.3. This need has been brought into focus by European Union Directive EEC/93/13 on unfair clauses in consumer contracts (O.J. No. L 95, 21 April 1993) which called on States to legislate on the question.

It should first be remembered that, while the European Union is an internal market, it is also a union of States who have preserved their sovereignty and consequently maintained their political borders. Although access to the market by non-scheduled passenger road transport has been liberalized, it is still, in terms of private law, international transport. Some treaty legislation is therefore needed to cover intra-Union transport.

The Directive, to be implemented by States by 31 December 1994, considers "unfair" a "contractual term which has not been individually negotiated ... if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer" (art. 3.1).

This is true, according to the Directive in the case of "general terms" drafted "in advance and the consumer has therefore not been able to influence the substance" (art. 3.2) and which "have the object or effect of ... excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier" (annex, 1, 4).

Excluded from the scope of Directive 93/13/EEC, however, are "contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party,

particularly in the transport area" (art. 1, 2), because such provisions are a priori "presumed not to contain unfair terms" (thirteenth preambular paragraph).

1.4. In conclusion, an international convention applicable even to transport in the "internal market" of the European Union is essential, firstly to standardize the regulations applicable to a given activity and secondly to enable carriers to set limitative liability conditions similar to those in effect in other modes of transport.

## 2. The CVR

2.1. The CVR was signed in Geneva on 1 March 1973 by two States. It did not enter into force until 12 January 1994<sup>a</sup> when the five instruments of ratification or accession required under article 25.2 were deposited following the break-up of the former Yugoslavia and the former Czechoslovakia.

2.2. Under article 34, 1, three years after the entry into force of the Convention (i.e. from 13 April 1997), any Contracting Party may request its revision or amendment.

2.3. CVR has peremptory force "Any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void" (art. 23, 1).

2.4. The only condition for the Convention to be applicable is that "the place of departure or the place of destination, or both of these places, shall be situated on the territory of a Contracting State, irrespective of the place of residence and the nationality of the parties".

As only one condition needs to be met (as in the case of CMR), CVR is thus mandatorily applicable under the principles of private international law upon conclusion of the contract for carriage of passengers to or from a Contracting State.

On the Eurolines network, for example, a passenger travelling from Frankfurt to Prague will, in the event of an accident on German territory, be treated differently from a passenger travelling from Brussels to Munich, since only the Czech Republic is a Contracting State.

On the other hand, all tourist passengers travelling from London to Prague, regardless of their nationality, will be treated in the same way under CVR which, although not part of their internal law, is nevertheless applicable by their courts.

Only a passing reference is made to the difficulties and strains raised by combined transport, as in the case of trans-channel travel, by rail or boat, (art. 3).

2.5. The principle of liability is consistent with what is generally accepted, namely, liability is presumed (art. 11, 1) unless "the accident was caused by circumstances which a carrier, using the diligence which the particular facts of the case called for, could not have avoided and the consequences of which he was unable to prevent" (art. 11, 2), that is to

say “force majeure” in the broad sense, the wrongful act, neglect or abnormal conduct of the passenger (art. 17, 1).

2.6. Compensation for injury to persons is regulated in a rather complex manner (arts. 12 and 13).

(a) “the court or tribunal seized of the case shall determine in accordance with the national law of the place where the said court or tribunal is situated, including the rules relating to conflict of laws, the extent of the injury giving rise to compensation as a result of the death or wounding of or any other bodily or mental injury caused to a passenger as well as what persons are entitled to compensation for such injury.”

Local law thus applies not only with regard to competence and procedure, but also with regard to substance, subject to the rules relating to conflict of laws (IPL) under which the case may be subject to the law of the contract (CVR).

(b) Nevertheless, “the total damages payable by the carrier in respect of the same occurrence” may not exceed 250,000 francs or 83,333 SDRs under the 1978 Protocol.

(c) Any Contracting State may set a higher limit or set no limit at all. The contract of carriage may set a higher limit.

(d) “When the carrier has his principal establishment in such a State (a contract State which has set a limit higher than 83,333 SDRs or has not set any limit at all), the law of that State” (contracting or non-contracting), “not including the rules relating to conflict of laws, shall apply for the determination of the total amount” (art. 13.1).

A few examples may help to clear up the confusion:

The Belgian Act of 1891 (non-contracting State) recognizes no limit; e.g. a Belgian carrier carries passengers from Brussels to Prague, an accident occurs in Germany: no compensation limit;

Dutch law (non-contracting State) sets a limit of f300,000, or 123,448 SDRs (at 3 July 1995); it is this limit which is applied;

German law sets the limit at DM40,000 or 18,434 SDRs; the limit is thus raised to 83,333 SDRs even for a German carrier, but only for passengers from Frankfurt to Prague, not for those getting off at Munich;

Austrian law set a limit of S2 million, or 131,031 SDRs, which is the limit that will be applied.

These few examples illustrate clearly the extreme complexity of situations and the complete uncertainty of the passenger as to the compensation he would receive, solely from the point of view of the actual application of CVR (and subject to agreements - see below).

- 2.7. CVR also governs the treatment of luggage, accompanied or otherwise (arts. 8-10), as well as personal effects "carried or worn by the passenger" (art. 14,1). The carrier may put in a plea to be relieved of liability.

A liability limit of 500 francs (167 SDRs) is set for each piece of luggage and 2,000 francs (667 SDRs) for each passenger (334 SDRs for personal effects).

- 2.8. The carrier may not invoke these limits "if the damage results from a wrongful act or negligence" (the conjunction "or" being cumulative and not alternative; contra: CMR).

- 2.9. Complaints must be submitted within seven days and the period of limitation is three years, in cases of injury to persons, and one year for other actions.

### 3. Distortions of competition

- 3.1. While European Union policy is designed to maintain a balance among competitors, including modes of transport, it is noticeable that the conditions imposed on passenger carriers by international conventions and national regulations differ to such an extent that they necessarily influence competition.

It is quite clear, for example, that the compensation limit has a direct influence on the amount of insurance which the carrier must take out, and thus on his pricing (and if the cost of insurance cannot be recovered in the price of carriage, passenger safety is jeopardized).

The attached tables are revealing: depending on the mode of transport used, the compensation payable to a passenger's heirs will be limited to anything from 8,300 to 175,000 SDRs, or not be limited at all (although the 1961 and 1970 CIVs are no longer applied).

He must therefore rely on the possibility of more favourable national legislation (rail), unless he takes the precaution of agreeing on a "special interest" with the carrier (this is unusual; prudent passengers take out additional accident insurance).

- 3.2. The situation as regards international law is further complicated by the existence of regional agreements.

- 3.2.1. On 5 December 1970, an agreement on general conditions for the performance of international carriage of passengers by bus was signed in Berlin. In ratifying CVR, Czechoslovakia entered the reservation provided for in article 31 of that agreement.

- 3.2.2. Directive 90/314/EEC of 13 June 1990 (O.J. No. L 158, 23 June 1990) concerns package travel, package holidays and package tours. It applies to bus operators organizing transport with accommodation.



This Directive relies on national legislation to ensure that the organizer is liable. However, "in the matter of damages arising from the non-performance or improper performance of the services involved in the package, the Member States may allow compensation to be limited in accordance with the international conventions governing such services".

The 19th preambular paragraph of the Directive refers to the international conventions of Warsaw of 1929, CIV 1961 (SIC), PAL 1974 and Paris 1962 (hotelkeepers).

Reference could also have been made to the CCV of 1970, concerning carriage contracts (23 April 1970), which limits compensation for bodily injury payable by the travel organizer to 50,000 francs, or 16,666 SDRs.<sup>b</sup>

- 3.3. In several countries, general conditions of carriage for non-scheduled public services (concessions for scheduled services are awarded and the conditions governing them are determined statutorily by the authorities) are applicable.

These conditions may limit the obligation to pay compensation for all bodily injuries caused to passengers, material damage (hold luggage) and injury caused by delay.

Indeed, in States subject to the rule of the autonomy of conventions, it is not contrary to public order to limit by convention the obligation to compensate for injury caused by the unintentional or wilful error of the organizer. Moreover, the convention must have been freely negotiated and agreed and proper insurance coverage obtained.

#### 4. Possible solutions

- 4.1. The first solution which comes to mind is the general ratification of CVR principally, but not exclusively, through accession by the European Union and ratification by its Member States.

Whatever its imperfections, the general application of CVR would have the considerable advantage of unifying private law (it would still be necessary to settle the question of the 1970 Berlin Agreement, whose coexistence with CVR would give rise to conflicts of laws).

- 4.2. As CVR leaves it to States to "set a higher limit or set no limit at all", the European Union could introduce regulations to have the CVR limit applied, since it is already higher than the limits set by railways in 1980 (70,000 SDRs).

A further possibility is for EEC Regulations to set other binding standard general conditions.

- 4.3. In conjunction with other countries participating in the work of the United Nations Economic Commission for Europe, particularly the countries having already acceded to CVR, European Union Member States could participate in the revision procedure to ensure that standard answers were found to other problems.

Notes

a/ CVR was signed by the Federal Republic of Germany (1 March 1974; 1 November 1978 for the Protocol) and Luxembourg (4 July 1973), but neither State had ratified it. Czechoslovakia ratified CVR on 26 January 1976 and Yugoslavia on 1 April 1976. These States were succeeded by: Slovakia on 28 May 1993 and the Czech Republic on 2 June 1993; Bosnia and Herzegovina on 12 January 1994 and Croatia on 3 August 1992. Latvia ratified CVR and the Protocol on 14 January 1994.

b/ Belgium was one of the few countries to have ratified CCV; it denounced it and replaced it with an act of 16 February 1994 bringing its legislation into line with Directive 90/314. The travel organizer may not exclude or limit his liability for damage caused by the death or wounding of the passenger (art. 19, applicable to the travel agent, art. 28).

**SUMMARY TABLE** (in SDRs\*)

<i>Road</i>	CVR 1973	83 333	(1)(2)
<i>Rail</i>	CIV 1961	no limit	(no longer applicable)
	CA/CIV 1966	66 666	(1)(3)
	CIV 1970	no limit	(no longer applicable)
	COTIF/CIV 1980	70 000	(1)(3)
<i>Air</i>	Warsaw 1929	8 300	(2)
	The Hague 1955	16 600	(2)
	Guatemala 1971	100 000	(2) (not entered into force)
<i>Sea</i>	Brussels 1961	16 666	(1)(2)
	PAL 1974	46 666	(1)
	PAL Prot 1990	175 000	(Not entered into force)
<i>Inland Waterway</i>	CVN 1976	66 666	(1)(3)
<i>Intermodal</i>	CCV 1970	16 666	(1)

\* This sometimes involves a conversion from gold francs into SDRs by protocols; the conversion is sometimes performed on the basis of 3 or 15 francs = 1 SDR.

- (1) Possibility of a national law more favourable to the passenger.
- (2) Possibility of a higher Convention limit.
- (3) Limit, even where national law sets a lower limit.

**COMPARATIVE TABLE**

Air: Warsaw	8 300	
Air: The Hague 1955	16 600	
Sea: Brussels 1961	16 666	
Intermodal CCV 1970	16 666	no longer applicable
Sea: PAL 1974	46 666	
Rail: CACIV 1966	66 666	
Inland Waterway: CVN 1976	66 666	
Rail: COTIF 1980	70 000	
Road: CVR 1973	83 333	
Air: Guatemala 1971	100 000	not entered into force
Sea: Pal-Prot 1990	175 000	not entered into force
Rail: CIV 1961	no limit	no longer applicable
CIV 1970	no limit	no longer applicable

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