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CREATING A CMR INTERPRETATIVE COMMITTEE: THE CMR ADVISORY COUNCIL

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ABSTRACT

Uniform conventions are numerous in the field of transport law. Their main purpose is to promote the harmonization of transport law worldwide. But such an objective comes up against the divergent applications of uniform law conventions by domestic Courts. As such, the several discrepancies in the application of the CMR (International Convention on Carriage of Goods by Road of 1956) are revealing of the limits of uniformization.

To try to improve the uniform application of this Convention, widely applied in Europe, a group of academics and lawyers are currently setting up an interpretative committee, based upon the model of the CISG Advisory Council created for the Vienna Convention on International Sales of Goods. The purpose of this paper is to present the setting up of the CMR Advisory Council and its objectives.

Keywords: International transport, International convention, Uniform application, CMR

I. KEYWORDS: INTERNATIONAL TRANSPORT, INTERNATIONAL CONVENTION, UNIFORM APPLICATION, CMR INTRODUCTION

To meet the challenges of globalization, lawmakers have long been drafting international instruments, such as uniform law conventions, to provide a set of common rules to govern international situations and thereby eliminate the different results that might be obtained from applying different countries' domestic law. With its numerous international conventions, transport law is an excellent example of such efforts¹.

International trade law, which includes transport law, is characterised by a multiplicity of sources, including both hard law sources (domestic law and international conventions) and "spontaneous law" (soft law). Among the latter sources, some are truly innovative. They include substantive rules, general principles, the *lex mercatoria*, rules developed by private and professional institutions, and judicial decisions, in particular arbitration decisions.

The benefits of uniform law are well known², but the process is not ideal. First, it takes a long time. Several years of negotiations are needed to arrive at a final text, and sometimes the

¹ There are no less than seven international uniform conventions governing carriage contracts alone, and the number of conventions concerning transport in general is much higher.

² See above paragraph II.

convention does not enter into force. For instance, it took almost ten years for the Rotterdam Rules on maritime transport to be adopted (in 2008³), yet this major convention is still not in force and probably never will be. Second, the provisions of international conventions are often drafted by States' representatives and are not always of high legal quality. Rather than seek elegant solutions to global legal problems, each State naturally defends its own economic and strategic interests and those of its domestic industry. More seriously, State representatives do not always aim for balanced rules that are acceptable to the targeted legal entities. According to Pr. Kozuka "When opposition against a provision in the draft was raised, the choice of opting out was given rather than creating an acceptable provision by employing ambiguous wording"⁴. And third, the aim of a uniform instrument may be jeopardized by the differing interpretations given by national courts when no international court has jurisdiction⁵.

Among the many conventions dedicated to international carriage, the International Convention on Carriage of Goods by Road (CMR, Geneva 1956)⁶ is a key convention in Europe. It is a uniform convention governing carriage contracts and has been widely ratified and frequently applied by transport stakeholders and domestic courts. It covers the entire Eurasian continent, comprising 58 States parties.

As a uniform instrument, the CMR's provisions should be applied identically by the States Parties so that operators involved in international situations are not treated differently. That purpose is compromised, however, by the different interpretations given the convention by domestic courts⁷. There are enough discrepancies to raise concerns about whether the convention is in fact being applied uniformly⁸.

I will first discuss (I) the need for uniform interpretation and application of international transport conventions and (II) how the project to create a CMR Advisory Council came about. I will then (III) provide more details about the project and how the CMR Advisory Council will be organized. Lastly, I will discuss (IV) where we are today in the process of setting up the CMR Advisory Council.

³ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 11 Dec. 2008, available at https://uncitral.un.org/en/texts/transportgoods/conventions/rotterdam_rules.

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>

⁴ KOZUKA S., «The economic implications of uniformity in law», *Uniform Law Review*, vol. 4, 2007, pp. 683-695, p. 689.

⁵ BERLINGERI F., «Uniform interpretation of international conventions», *Lloyd's Maritime and Commercial Law Quarterly*, vol. 1, 2004, pp. 153-157, p. 154; BOKAREVA O., *Uniformity of Transport Law through International Regimes*, Edward Elgar Publishing, London, 2019, p. 8; KRINGS E., «L'opportunité de juridictions supranationales pour l'interprétation des lois uniformes», *Uniform Law Review*, vol. 4, 1998, pp. 525-534, p.525.

⁶ https://treaties.un.org/doc/Treaties/1961/07/19610702%2001-56%20AM/Ch_XI_B_11.pdf

⁷ SCHWENZER I., «Divergent Interpretations: Reasons and Solution», in *International sales law: A Global Challenge*, Cambridge University Press, 2014, Ed. Larry A. DiMatteo, pp. 102-119, p. 112.

⁸ See IDIT CMR-UNIDROIT data base – freely accessible:

<https://www.idit.fr/private/moteurcmr/jurisprudence/index.php>

See also, *inter alia*: CLARKE M.A., «The Transport of Goods in Europe: Patterns and Problems of Uniform Law», *Lloyd's Maritime and Commercial Law Quarterly*, 1999, pp. 36-70; CZAPSKI, W., «Application et interprétation de la convention CMR à la lumière du droit international», *Bulletin des transports et de la logistique*, 2006, pp. 457-459; KRINGS E., «La Cour de cassation et l'interprétation de la convention internationale CMR» in *Liber amicorum Putzeys* Bruylant, Bruxelles, 1996, pp. 133 ss.

II. THE NEED FOR UNIFORM INTERPRETATION AND APPLICATION OF INTERNATIONAL TRANSPORT CONVENTIONS

Most uniform law is the result of a search for a single rule that can apply to any international situation that involves the same legal problem. Several well-known considerations justify this approach.

Firstly, it is believed (not always correctly) that having a variety of local laws that apply to an international situation will prevent the development of international trade. In theory, applying the same rule to businesses operating in the same field all over the world will prevent unfair competition by eliminating economic advantages that may be gained through the application of different domestic rules. In practice, uniform law has reduced compliance and regulatory burdens for businesses operating nationally and transnationally⁹.

Secondly, from a strictly legal point of view, uniform law provides legal certainty, which contributes to the economic appeal of international trade because operators know what the law is. The globalization of trade means greater competition, so industries need more stability and predictability. “‘Know and predict’ have become major imperatives and risk evaluation – particularly of disputes – is a factor in any economic decision”¹⁰.

In the absence of uniform law, the applicable law is frequently determined via international private law mechanisms. But conflict-of-law rules are very sophisticated and hard to grasp for economic stakeholders. The mechanisms are subtle, and sometimes not easily understood even by international trade lawyers. In the end, the international situation will be governed by domestic laws that were drafted for domestic purposes and are not suited to international trade, whereas drafters of uniform international law endeavor to develop rules appropriate to international situations.

When the uniform instrument is an international convention, success can be measured by the number of contracting state parties when the convention is in force. But in practice, one must also determine not only whether the instrument is applied, but also whether it is applied uniformly. Non-uniform application and diverging interpretations by domestic or arbitral courts constitute important limits on uniform law.

The best way to solve this problem would be to revise the conventions to delete problematic provisions¹¹, but the extremely long, uncertain process leading up to adoption of a convention limits the likelihood that a convention can be revised. Another remedy would be to create an international court with jurisdiction over certain categories of international conventions¹². But we all know that while the idea is quite exciting, this will never happen. Even the International Court of Justice, which has extensive jurisdiction, is not an appropriate forum for international trade litigation. Article 47 CMR provides that the contracting parties may refer disputes relating to the interpretation or application of the convention to the ICJ, but transport operators are not

⁹ KOZUKA S., «The economic implications of uniformity in law», *Uniform Law Review*, 2007, pp. 683-695.

¹⁰ Index of Legal Certainty: Report for the Civil Law Initiative (Fondation pour le droit continental), May 2015 <https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2015/04/ILC-Report-june-2015EN.pdf>

¹¹ HAAK K.F., «*Revision der CMR?* », *Transportrecht*, vol. 29, 2006, pp. 325-336, p. 327.

¹² Other solutions are possible: see LEGROS C., «Modalités de l’interprétation uniforme de la CMR : Quelles difficultés? Quels remèdes ? », *Uniform Law Review*, vol. 21, issue 4, 2016, pp. 427-431.

contracting parties. In any case, this type of referral mechanism has never been used even though interpretation issues do arise.

Work is being done to find other solutions, however. In particular, the use of soft law instruments has been suggested: developing a model law that covers all modes of transport could be a way to promote harmonization¹³. Other important work focuses on the Vienna Convention on International Sales of Goods (CISG) with the aim of developing a worldwide network that will collect domestic case law applying the convention¹⁴. In addition, an advisory council designed to promote a uniform interpretation of the CISG¹⁵ has been set up. This is an innovative and challenging initiative¹⁶. As regards the CMR, in 2006 Otmar Tuma suggested launching a comparative law study with a view to “drafting a recommendation for uniform interpretation of Article 29 CMR . . . under the auspices of . . . UNIDROIT or IDIT . . .”¹⁷.

Following this recommendation, the CISG council’s work constituted a model for building an institution that could solve the problems posed by the differing application of the CMR by the contracting states.

III. THE GENESIS OF THE CMR ADVISORY COUNCIL PROJECT

On the 60th Anniversary of the CMR in 2016, two international conferences addressed the issue of divergent application of the convention¹⁸. Various remedies were suggested¹⁹, including creating an interpretative body similar to the CISG Advisory Council.

Why focus on the CMR?

Every academic or lawyer dealing with transport law specializes in one mode of transport or another. Maritime lawyers make up the largest community, followed by those specialized in air transport. Fewer academics specialize in carriage by road, probably because it is more mundane. However, the CMR convention is very important in practice and should not be neglected. In addition, it is one of the few conventions that has a dedicated website that can be accessed for free. It contains case law from about thirty State contracting parties²⁰.

¹³ SMEELE F.G.M., «Harmonising the Fragmented Law of Transport Through Soft Law? », *EJCCL*, vol. 1., 2015, pp. 62-66.

¹⁴ Case Law on UNCITRAL Texts (CLOUT): <https://www.uncitral.org/clout/>

¹⁵ <https://www.cisgac.com/home/>

¹⁶ On the CISG Advisory Council: KARTON J. D., DE GERMINY L., «Has the CISG Advisory Council Come of Age?», 27 *Berkeley J. Int'l Law*. 448 (2009); SCHWENZER I., «The CISG Advisory Council», *Tijdschrift voor Handelsrecht*, vol. 2, 2012, pp. 46-51.

¹⁷ TUMA O.J., «The Degree of Default under Article 29 CMR», in *Les 50 ans de la Convention CMR: Avenir et perspectives du transport international par route*, *Uniform Law Review*, vol. 11, issue 3., 2006, pp. 585-606, p. 604.

¹⁸ *CMR, Application par les États-parties: quelles divergences ? Perspectives de droit comparé*, Rouen-France, 19&20 May 2016; proceedings published in the *Uniform Law Review*, no. 4/2016.

International Conference 60 years CMR: Future proof or time for a reform?, Rotterdam-Netherlands, 6 October 2016; proceedings published in *European Journal of Commercial Contract Law* 2017.

¹⁹ LEGROS C., «Modalités de l’interprétation uniforme de la CMR: Quelles difficultés? Quels remèdes? », *op. cit.* p. 3.

²⁰ <https://www.idit.fr/private/moteurcmr/jurisprudence/index.php>

The CMR - UNIDROIT – IDIT²¹ database was created in 2012 after the Unidroit Institute transferred the CMR database it had created to the Institute for International Transport Law (IDIT) because it no longer wanted to maintain it²². IDIT, a French institution, was chosen because it specializes in international carriage by road (a rare specialization) and because of the close ties both IDIT and Unidroit enjoy with Professor Jacques Putzeys, a former member of the Unidroit Governing Council for Belgium.

Since 2012, the network of foreign correspondents has grown and the database has been enriched with numerous decisions from all over Europe and beyond. The database currently comprises about 4,000 decisions, with abstracts in French and English. About twenty foreign correspondents send case law on a regular basis. After the IDIT team began systematically comparing the case law from different CMR State parties, it noticed important differences. Researchers in several countries have also conducted comparative studies²³.

The idea of a CMR advisory council took hold once academics had the opportunity to meet and discuss these issues. The proposal for setting up a council was met with widespread approval at the 2016 Rotterdam conference and the idea kept growing.

A few years later, the idea is becoming a reality. A group of roughly thirty academics and lawyers from sixteen CMR State parties who are specialized in international transport law have recently laid the foundations for a body dedicated to improving the application and interpretation of the CMR: the CMR Advisory Council (or CMR AC)²⁴.

The Council's mission is to issue interpretative opinions that would be considered authoritative and could therefore influence how domestic courts interpret and apply the CMR, thereby increasing uniformity. In short, the goal is to use a soft law solution to remedy a pre-soft law issue²⁵. But the CMR AC team is well aware that they may be overambitious, so they have agreed that the Council's opinions will not be binding and will at best serve as guides.

The opinions will be intended for a wide audience. They may give advice to new contracting parties or provide inspiration if States decide to revise the convention. They could be an unprecedented basis for consensus building, and might also be of interest to lawyers, courts, transport stakeholders, and industry. It is also hoped these opinions will generate academic debate.

²¹ IDIT – Institut du droit international des transports (France): <https://www.idit.fr/>

²² HERBER R., «CMR: Unidroit should not let this child go!», *Uniform Law Review*, issue 2/3, 1998, pp. 475-481.

²³ CLARKE M.A., *International Carriage of Goods by Road: CMR*, 6th ed., Informa Law, Routledge, 2014; *National judges facing gaps in the CMR: British case-law*, *Uniform Law Review*, issue 3, 2006, pp. 633-638 ; GLASS D. (With A. MESSENT), 4th ed of Hill and Messent's *CMR: Contracts for the International Carriage of Goods by Road*, Informa Law, 2017, 438 pp. ; THUME K. H., «Kommentar zur CMR – 2«», neu bearb. Aufl., Frankfurt am Main: Recht u. Wirtschaft, 2006, 1190 pp.

See also, among others: CMR Country Reports: <https://www.idit.fr/rapports-pays/index.php?lang=en>

²⁴ The idea was launched in Spring 2021 and the first meeting was held in September.

²⁵ LEGROS C., «Improving International Uniform Transport Law by Creating Interpretative Committees», in *Maritime Research Handbook on Maritime Law and Regulation*, J. Chuah (ed.), Edward Elgar Publishing, London, 2019, pp. 2-25, p. 12.

Setting up a council like this raises several issues, including deciding which topics need uniform interpretation and what interpretation method will be used, as well as practical matters such as who will sit on the council, how it will find case law from countries not represented in the IDIT database, and whether there should be working groups on each issue.

The first step toward setting up the council was to try resolve these issues.

IV. THE CMR ADVISORY COUNCIL PROJECT TODAY

1. The team

Invitations to join a working team were first sent to academics from State parties well known for their work on international transport law and the CMR. It became clear relatively quickly, however, as we were looking for funds to finance meetings, that the team would have to include members from other countries and could not be limited to academics. If we wanted transport stakeholders to consider the council legitimate, we had to include practitioners.

Today the team has 33 members:

- 20 academics (10 seniors; 10 juniors)
- 8 lawyers
- 1 insurer
- 3 researchers
- 3 research assistants

They come from 18 countries: Belgium (1), Croatia (4), Estonia (1), France (8), Germany (2), Hungary (1), Italy (4), Latvia (1), Lithuania (1), Netherlands (2), Poland (2), Portugal (1), Serbia (1), Slovenia (1), Spain (1), Sweden (1), Turkey (1) and United Kingdom (1).

The team is divided into two groups. The “core group” includes academics and IDIT researchers, some of whom will eventually be Council members. The “observer’s group” includes everyone else.

Since the project was launched only recently, only six meetings have been held so far. The first few were devoted to identifying relevant topics.

2. The identification of the first relevant topics

Conscious that drafting opinions on the uniform interpretation of the CMR would take a certain amount of time, the team decided to identify the most problematic issues, rank them in order of priority, and set a schedule.

We had discussed whether the Council should interpret the convention article by article or according to subject matter, but agreed that our mission was not to write a commentary on the entire convention, which has already been done²⁶.

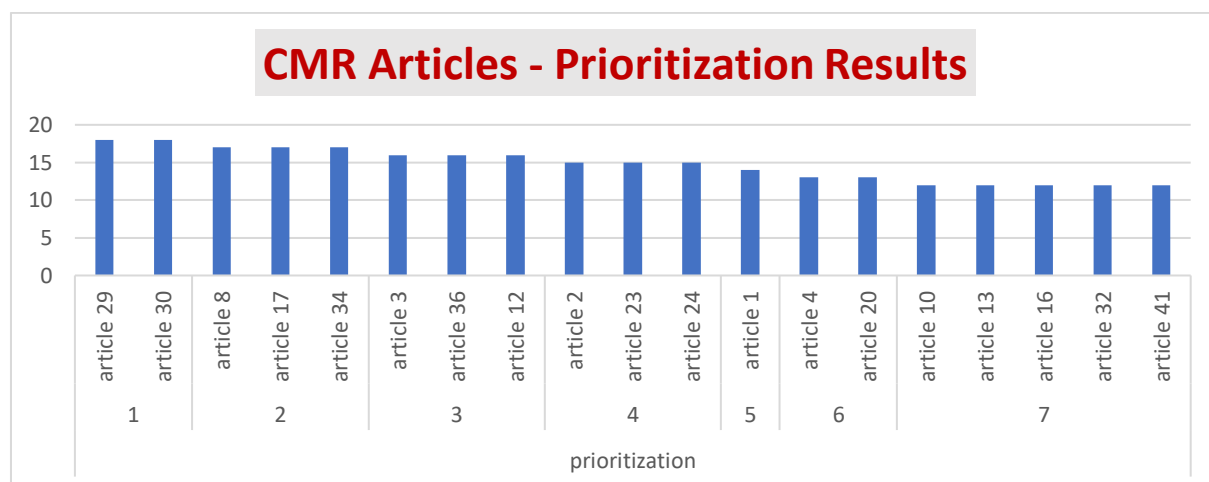
²⁶ SCHWENZER I., «Divergent Interpretations: Reasons and Solution», op. cit. p. 7.

For example, the term “carrier” appears principally in Article 1 (scope of application) but no definition is given²⁷. Obviously, this poses a problem, as one must be able to identify the carrier(s) to interpret articles such as those in Chapter VI related to successive carriers and Chapter V related to claim and actions.

Starting by interpreting Article 1 would therefore mean taking a subject-matter approach, as the opinions would affect all the articles for which “carrier” must be defined.

To make our opinions as clear as possible, we eventually decided to work article by article, indicating whenever relevant that the opinion would affect another provision of the convention.

To guide the selection of the most problematic issues, a survey was carried out. It was organized article by article and made it possible to identify specific issues raised by each article. Several problematic articles and issues were identified this way.



Not surprisingly, the well-known Article 29, which is undoubtedly the most problematic²⁸, was ranked number 1. But we did not want to begin with such a complex article, preferring to start with a more classic provision instead.

We eventually decided to work on three articles simultaneously — 1 (scope of application), 2 (combined transport), and 29 (wilful misconduct) — even though a different amount of time would be required for each given the differing complexity of the issues involved.

For example, we identified several issues raised by Article 2²⁹:

ARTICLE 2 – COMBINED TRANSPORT

Core issue: scope of application of Article 2

²⁷ The CMR convention does not contain a preliminary article with definitions.

²⁸ DAMAR D., *Wilful Misconduct in International Transport Law*, *Hamburg Studies on Maritime Affairs*, Vol. 22, Springer-Verlag, 2011; ECKART T., «Article 29 CMR», *Tijdschrift Vervoer & Recht*, 2017, pp. 72-78; KOLACZ M.K., «Article 29 CMR overview countries – Poland», *Tijdschrift Vervoer & Recht*, 2017, pp. 6-10; SMEELE F.G.M., «Dutch case law on Art. 29 CMR revisited», *European Transport Law*, vol. 36, 2001, pp. 37-40.

²⁹ Abstract of the presentation presented at the fourth meeting.

NB: status of multimodal transport outside the scope of Article 2 > best considered under Article 1

ARTICLE 2.1 - CONDITIONS OF APPLICATION OF CMR TO COMBINED TRANSPORT

1. Beginning/ending of the different legs of transport

⇔ issue of the link between articles 1 and 2

2. Notion of Cargo under article 2

3. Unity of the contract; seamless transport (absence of unloading)

4. Link with other modal conditions

5. Meaning of “conditions prescribed by law”

> Framework of the hybrid regime: combination of two sets of rules governing different transport modes

6. Consent on the use of different modes

We then decided to set up working groups to do the work.

3. The setting up of the working groups

For each article selected, a working group will be formed to collect case law and legal commentary from all project participants and others as well, if possible, and to establish a country-by-country list of relevant materials. Standardized forms have been created and a digital file-sharing platform has been set up to facilitate this task.

So far, three working groups have been set up. For each one, a leader has been appointed and the process of completing the groups (each will have three to six members) is under way.

However, several steps are yet to be taken to launch the CMR Advisory Council.

4. The next steps

At this stage two major issues of a very different nature must be addressed.

Funding. First there is the practical issue of funding. The project requires team meetings, which will eventually have to include transport stakeholders. So far, all the meetings have been videoconferences, but as useful as this technology is, it has its limits. Genuine scientific discussion will require in-person meetings, which means funding is needed to pay participants’ travel and accommodation costs.

In addition, a dedicated website would make it much easier to disseminate our work, and translations would expand our reach to as many countries as possible.

When recommending the creation of an international study group on Article 29 CMR³⁰, Tuma suggested looking for funding from “national and international associations related to transport [and] transport insurance”. He added that support from such organizations would promote

³⁰ TUMA O.J., «The Degree of Default under Article 29 CMR», p. 606, *op. cit.*, p. 3.

acceptance of the proposed solutions. He was of course referring to transport stakeholders, that is, entities representing different interests in the transport industry. However, we strongly believe that independence is a *sine qua non* for this type of project and that funding should come from independent organizations. That does not mean, of course, that the CMR Advisory Council's opinions should be merely abstract, theoretical academic exercises disconnected from actual practice. That is why our "observers' group"³¹ includes lawyers and insurers. They represent every type of transport stakeholder and will make sure there is a strong connection between theory and practice so the industry accepts the Council's proposals.

As the project is currently in the research phase, we have looked for funding by responding to calls for research projects. Support should also be sought from international organizations such as the United Nations Economic Commission for Europe (UNECE) and UNIDROIT, which were at the origin of the CMR convention.

Method of interpretation. The second important issue to be dealt with before the Council begins work is a scientific one, namely, which method of interpretation should be used? There are several approaches to interpreting international conventions.

First, the convention itself may contain provisions to guide interpretation. That is the case, for instance, for the CISG, Article 7 of which concerns interpretation³²:

§1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

This first paragraph aims to secure autonomous interpretation of the provisions of the convention and its general principles, and above all promotes interpretation free from the preconceptions of domestic law³³.

§2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

According to J. Felemegas, the second paragraph concerns only *praeter legem* gaps, *i.e.* matters beyond the scope of the convention, as opposed to gaps *intra legem*.

Many papers have been written about Article 7, which may not solve every interpretation issue that arises but at least it exists.

There is no comparable provision in the CMR, though the preamble refers at least vaguely to interpretation: "Having recognized the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability . . .". This provision clearly promotes the idea of having uniform rules to govern the international contract of carriage by road but does not offer any guidance on interpretation. Furthermore, Article 1§5 states that the "contracting parties agree not to vary any of the provisions of the Convention by special

³¹ See above page 5.

³² FELEMEGAS F., «The United Nations Convention on Contracts for the International Sale of Goods: Article 7 and Uniform Interpretation», in *Review of Convention on Contracts for International Sale of Goods, Pace Int'l Law Review* 2000-2001, vol. 115, available at <http://cisgw3.law.pace.edu/cisg/biblio/felemegas.html/>

³³ SCHWENZER I., «Divergent Interpretations: Reasons and Solution», p. 102, *op. cit.*, p. 3.

agreement”, and Article 49 provides that a review conference may be held only if at least one-fourth of the contracting parties agree.

These provisions have limited scope and do not constitute a framework for interpreting the convention. The only provision that refers to interpretation is Article 47³⁴, which is limited to attributing jurisdiction and which we therefore consider inadequate as a guide to interpretation.

Guidance must therefore be found elsewhere, possibly in Article 31 of the Vienna Convention on the Law of Treaties: “the text of a convention shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

Because the work is not yet finished, I cannot present a finalized guide on how to interpret the CMR today. Completing that guide is obviously an important step toward beginning the Council’s work. The future members will have to agree on a method that is consistent with the convention’s history and wording before issuing any opinions. At present, one of the most experienced members of the group has been assigned to do *travaux préparatoires* on this topic, which will be discussed in the autumn.

In the past several months, our meetings have been devoted to organizing the team and setting up the Council, which should begin work in the autumn.

To set up the Council, we must know:

- Draft the by-laws
- Appoint the Council members
- Decide on an operating method.

V. SETTING UP THE CMR ADVISORY COUNCIL

The CMR Council can only come into being after we have decided on the operating rules, which must be included in the by-laws. Two main issues must be dealt with: the Council’s composition, and its operating method.

1. Drafting the Council’s by-laws

To give weight to the Council’s, by-laws will be drafted and will include, for example, the rules governing constitution of the Council, voting rules, the method to be used to interpret the CMR, and privacy and ethics rules.

At this stage only a few such rules have been discussed.

³⁴ See above, page 3.

Regarding the Council's authority, it is clear that its opinions will have only advisory value and will be intended to serve as a guide to anyone interested in having the CMR applied more uniformly. The advisory value will be stressed in the preamble.

As for membership of the Council, the team has stressed the importance of having members who are independent of States, industry, and other transport stakeholders.

An AC mission statement has also been discussed. In it, we would explain what we are doing and why so recipients of opinions can interpret them in context.

As regards Council membership, the principles are fairly well developed.

2. Appointing the Council members

The Council will be innovative in that to resolve legal issues raised by an international multilateral instrument, it will rely on a research group made up of experts from different State contracting parties and different legal cultures who, above all, are completely independent of any stakeholder. As independence is crucial to avoid conflicts of interest, it was decided that only academics may be Council members. The degree of experience in international transport law will also be an important criterion.

The quality of the Council's opinions and the legitimacy of its members, though chosen from amongst the more experienced and well-known academics in Europe, may however be challenged. Special attention will therefore be paid to the dissemination process, presenting the opinions only as advice to improve application of the CMR.

The Council will have the classic composition of a Chair, a Secretary, and members.

As regards its size, it was suggested we limit the number of represented countries to ten, provided different geographical areas and legal cultures are represented.

3. Finalizing the operating method

The challenge will be approached in 6 steps:

1. **Identification of relevant issues:** the first step is to compare the CMR application problems arising in each participating country and identify those that are [the most] frequent and/or comprise uniform application [the most].
2. **Report:** for each issue, a rapporteur will be appointed to summarize the relevant legal commentary and case law and propose one or more solutions (draft opinions).
The rapporteur will be able to rely on everyone in the network for local material and explanations if needed on domestic law or case law.
3. **Discussion by the Council:** the draft report will be discussed amongst the Council members to reach a common version.
4. **Discussion with the observers:** the network includes a group of observers (lawyers, transport stakeholders, insurers, academics) whose role is to compare the initial versions of the opinions and give practice's point of view so the Council can measure how acceptable its proposed solution is.
5. **Final opinion:** the final opinion will be adopted by the Council and may (or may not) include the previous observations. The opinions will be divided into three parts:

- Possible solutions
 - The solution adopted (or advised) by the Council
 - The reasons for its choice
6. **Dissemination:** opinions will be disseminated through the channels indicated, such as a website, workshops, meetings, and conferences.

VI. CONCLUSION

Our team is now ready to delve into the project's substantive issues. The first relevant topics have been selected and international materials are being collected. *Travaux préparatoires* on the method of interpretation are about to be sent to the participants. And the by-laws are currently being drafted. So, let's go!

I hope that we will soon be able to present our first opinion.

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