



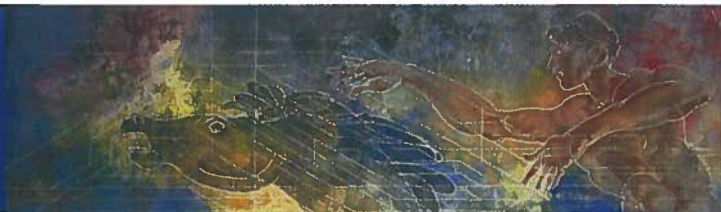
# OTIF



**Bulletin  
of International  
Carriage  
by Rail**

**Intergovernmental Organisation  
for international Carriage  
by Rail**

# OTIF



## @ Bulletin of International Carriage by Rail

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## Official part

### Lists of lines 1999

#### CIM List of railway lines

(published on 1 July 2006)

Chapter:  
"Ukraine"

Following the inclusion of the new railway line " Uzhgorod – Chop ", the chapter Ukraine has been re-issued. (See COTIF 1999, Art. 24 §§ 2-5.)

Secretary General's circular No. 7 dated 15 December 2011 can be down-loaded from the following website:

[www.otif.org/fileadmin/user\\_upload/otif\\_verlinkte\\_files/07\\_veroeff/07\\_liste\\_CIM/A\\_70-03\\_501\\_2011\\_15\\_12\\_2011\\_fde.pdf](http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/07_liste_CIM/A_70-03_501_2011_15_12_2011_fde.pdf)

Samuel Flückiger ■

### Official Communications concerning COTIF

#### Panel of Arbitrators

In accordance with Article 30 of COTIF, the Secretary General must establish a panel of arbitrators and keep it up to date. Each Member State may nominate two of its nationals to the panel of arbitrators. In the context of the European Union's accession to COTIF, which took effect on 1 July 2011, to keep the panel of arbitrators up to date the Secretariat invited the Member States to check the current list and to let it have any requests for amendments.

The up to date panel is published on the OTIF website ([see www.otif.org/en/organs/arbitration/panel-of-arbitrators.html](http://www.otif.org/en/organs/arbitration/panel-of-arbitrators.html)).

The *arbitration rules* developed by the Secretariat are also on the OTIF website ([see www.otif.org/en/organs/arbitration/arbitration-rules.html](http://www.otif.org/en/organs/arbitration/arbitration-rules.html)).

Disputes under international public law or civil law arising from the interpretation or application of COTIF, including the Protocol on Privileges and Immunities of OTIF, and disputes arising from the application of the Appendices to COTIF may be referred to the Arbitration Tribunal in accordance with Title V of COTIF 1999.

In addition, recourse to the Arbitration Tribunal is possible with regard to any dispute arising between the Contracting Parties in respect of the interpretation, application or implementation of the Accession Agreement concluded between OTIF and the EU, including its existence, validity and termination (Art. 8 of the Agreement).

Albania, the Czech Republic, Georgia, Portugal, Romania, Russia, Slovakia and the Ukraine have entered reservations in respect of the Arbitration Tribunal. The list of reservations and declarations is published on the OTIF website under:

[www.otif.org/en/publications.html](http://www.otif.org/en/publications.html)

Samuel Flückiger ■



## Non official part

### Ahead to a transit State



ECO train test from Islamabad to Istanbul



... next steps ...



Capacity Building in Islamabad, 8.12.2011

### Other Communications

#### Pakistan – on the cusp of OTIF membership

Capacity Building in Islamabad on 7/8.12.2012

As early as 2009, the Secretariat of OTIF had already received some initial indications that Pakistan might be interested in acceding to COTIF. Pakistan was represented at the workshop on *“Rail Transport between Europe and Asia”* held in Istanbul on 9/10 June 2009, which OTIF had organised jointly with the *Economic Cooperation Organization (ECO)* (see Bulletin 2/2009, p. 24).

At an ECO meeting held in the same year attended by a representative of the OTIF Secretariat, it became clear that Pakistan’s interest was vigorously supported by ECO (see Bulletin 4/2009, p. 59). Pakistan’s interest has become more tangible against the background of the container train test runs that have taken place on the new Islamabad-Tehran-Istanbul railway line, referred to as the “ITI” Corridor. The Secretary General informed the Member States of OTIF of this development at the 9th General Assembly (Berne, 9/10.9.2009).

At the 10th General Assembly, a high-ranking representative of Pakistan gave a presentation to the OTIF Member States on Pakistan Railways’ network, the operational situation, current restructuring and rationalisation projects, and the ECO container train on the above-mentioned route. In talks with the Secretary General after this General Assembly, the political background and next steps, in the form of a *“capacity building workshop”*, were discussed (see OTIF Press Release dated 08.07.2011).

The workshop held in Islamabad on 7 and 8 December 2011 was opened by Pakistan’s Minister for Railways, Mr Haji Ghulam Ahmed Bilour. In his speech, the Minister highlighted some facts characterising Pakistan’s particular situation in the region, which revealed that Pakistan could become an important transit State contributing to the facilitation of trade and transport between Central Asia, the Middle East and the Far East. He considered the preliminary results of the “ITI” ECO container train test runs to be highly promising and made



## Non official part



... ECO container train ...

clear that he saw the introduction of the uniform law of COTIF as part of this emerging scene (see OTIF Press Release dated 15.12.2011).

The head of Pakistan Railways, Mr Arif Azim, summed up Pakistan's aims externally with the words

***"We want it and we will do it".***

In the first part of the workshop, participants were given a detailed insight into Pakistan's railway policy and rail sector, including specific information on railway lines on Pakistan's territory that already exist, are being built or are at the planning stage. Among various projects, the "open access policy" was mentioned. Under this, major rail transport customers will be offered the opportunity of carrying goods on **PR's (Pakistan Railways)** rail network under their own responsibility.

These presentations alone gave rise to some lively discussion. The Secretary General and the head of PR shared the view that resolving the problems linked to border crossing depended firstly on the reliability and equality of treatment in border clearance (e.g. the same fees for the same thing, irrespective of the time at which clearance takes place), and only then on speed.

OTIF gave presentations on how the Organisation functions and the tasks it carries out in general, and on the COTIF Convention and its seven Appendices. Three presentations looked in more detail at those Appendices whose application should be of particular interest to Pakistan (CIM, CIV and RID and its Annex). The consequences of membership and the accession procedure were also dealt with (see [www.otif.org/news/ausbildungskurs.html](http://www.otif.org/news/ausbildungskurs.html)).

Throughout the workshop, there was a very open discussion on the various aspects and effects that Pakistan's accession to COTIF would entail for Pakistan Railways and its customers. The various contributions to the discussion revealed very clearly the different views of representatives of various governmental authorities, leading figures from PR and the commercial, legal and operational sectors and forwarders.

The representatives of OTIF learned from the discussion that various matters regulated in COTIF are currently regulated in



## Non official part



Khojak Tunnel

tariff law inherited from Great Britain and adapted to current circumstances. This is applied not just in Pakistan, but also in India, Bangladesh and other States in the South Asian Association for Regional Cooperation (SAARC). The question of the relationship to the law of COTIF was raised and, in terms of the hierarchy of legal provisions, was in principle answered, although it cannot be ruled out that specific points might have to be returned to later on the basis of specific texts.

The question of the possibility of a reservation on the scope of application of the CIV/CIM UR (Article 1 § 6 of CIV/CIM) was also discussed. Pakistan's intention is to restrict the application of the law of COTIF to the Pakistani section of the "IT1" Corridor, perhaps also including some important approach lines. This would mean that a total of around 1,990 km would be subject to the CIV/CIM UR, or 4,995 km if the approach lines are included. There were different views on this and of course the question of the amount of the membership contributions came into play in this discussion, as this would correspond to one or other of these lengths.

The Secretary General said he understood Pakistan's economic situation and that if the entire rail network (7,791 km) were subject to the rules, a cost/benefit analysis would weaken the arguments in favour of acceding to COTIF. He also indicated that he would be prepared to propose a solution to the next General Assembly with regard to the problem that would arise if Article 1 § 6 of CIV/CIM were to be interpreted too restrictively.



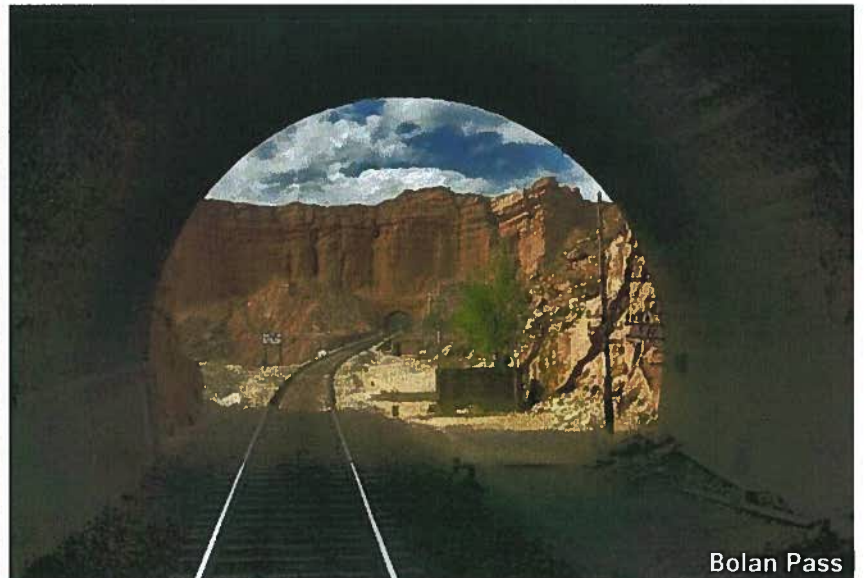
## Non official part

Both parties were aware that after Pakistan accedes to COTIF, OTIF would have more than just another Member State; it would also hold the key to an entire region which will be able to benefit from the law of COTIF in future.

Surprisingly, there were some interesting reactions to comments the Secretary General made, in reply to the Minister's observations on Pakistan's possible role as a transit State, on the possible consequences of Pakistan's accession in terms of increasing interest from India and Bangladesh.

At the end, it was clear that Pakistan's internal discussions would continue, while OTIF must try to find a solution to take account of Pakistan's special situation with the railway infrastructure currently being used very little for international traffic.

*Eva Hammerschmiedová* ■





## Non official part

### Hinweise

**Ferrari / Kieninger / Mankowski /  
Otte / Saenger / Schulze / Stau-  
dinger: *The International Law of  
Treaties (Internationales Vertragsrecht) (Rom  
I-VO, CISG, CMR, FactÜ (Commentary, 2<sup>nd</sup> edition  
2012)***

This work contains commentaries on international conventions covering important areas of relationships under international private law. These include international contractual obligations, as governed by the EU's Rome I Regulation, contracts on the international sale of goods, which are the subject of the relevant United Nations Convention (CISG), international assignments of claims, as dealt with in the UNIDROIT Convention on International Factoring, and international road freight transport, as governed by the UNECE's international Convention (CMR).

The particular value of this commentary is that almost all contractually regulated transport operations can be linked to one or more of the private law contracts referred to. For example, it is obvious that the relationship between the consignor and the consignee in accordance with the contract of carriage can be seen in connection with their reciprocal relationship as contractual vendor and purchaser and with their relationship to third parties.

This commentary provides a great deal of new information and references to legal doctrine and case law, specifically that of the ECJ, particularly with a view to the Rome I Regulation, which entered into force on 11 January 2009.

In terms of the CISG, which has been applicable since 1 January 1988, the commentary enables readers to maintain an overview with its plethora of references to legal doctrine and domestic and foreign case law, particularly in view of the broad spectrum of implementation, interpretation and further development. The CISG should be considered as one of the most successful international legal instruments in the private law sector, if only with regard to the still increasing number of contracting parties, not to mention its actual application.

In international commerce, the practice of assigning claims in the context of so-called "international factoring" is becoming increasingly significant. Thus the commentary

### Case Law

#### Appeal Court Paris

Ruling of 14.12.2011

(No. RG 98/20212)

(Source: Bulletin des Transports et de la Logistique, No. 3395, S.35/36)

Periods of limitation if claims are not dismissed

#### Headnote

Written claims from the consignor and his agent, which have the effect of suspending the period of limitation in accordance with Article 32, para.2 of the CMR, having been received but not rejected, mean that the action that was brought is admissible, even 9 years later.

#### Annotation

Article 48 § 3 of CIM contains a similar provision. International rail transport law also suspends the period of limitation until the carrier rejects the claim by notification in writing and returns the documents submitted with it.

#### The facts

On 4 and 5 September 1997, a carrier was entrusted with the transport of packages of textiles from Belgium to Italy. At around 4 a.m. on 7 September, he stopped in the parking area of a service station on the Rome/Naples motorway. It was then that two individuals threatened him with a weapon and gagged and bound him before driving the vehicle away. The loss, which amounted to €96,336.20, was covered by the insurance to the amount of €95,440.50

On 3 March 2006 (almost 10 years after the event), the subrogated insurers and the consignor, for the excess it had to pay, summonsed the carrier and the company that covered its liability.

#### Grounds for the ruling

The first question is obviously that of the limitation of actions. It should be recalled that in the CMR, in the case of total loss, the one year period of limitation begins to run from the 30th day after the expiry of the agreed time limit or where there is no agreed time limit, from the 60th day from the date on which the goods were taken over by the carrier. This time had long since elapsed.

However, the Convention lays down a special reason for suspending the period of limitation: a claim notified in writing, sent to the carrier, which freezes the period until the carrier has rejected it (also in writing) and returns the documents submitted with it. This is a sine qua non condition which the French Appeal Court (Cour de cassation) is particularly keen on.





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on the Convention on International Factoring is perhaps of general use in expanding awareness of this legal instrument, which entered into force on 1 May 1995, albeit only for Germany, France, Hungary, Italy, Latvia, Nigeria and the Ukraine so far.

The commentary on the CMR, which rounds out the above-mentioned coverage of legal relationships that are frequently linked, cannot of course replace the specialised commentaries that are already available and which are sufficiently referenced. But it is useful as a quick introduction, particularly as the CMR that has been in force since 2 July 1961 was used, as is well known, as the model for the CMNI, which entered into force on 1.4.2005, and for the 1999 CIM, which entered into force on 1 July 2006.

On the basis of the usual high quality of the commentaries published by Beck and the wealth of information and references, this work is not only a valuable guide to international commerce, it also meets the demands of those who deal with these issues in research and teaching, and in the context of international and national legislation and enforcement.

(ISBN 978-3-406-60078-4,

in German only, ed. C.H.BECK 1364 pages, 2012)

Gustav Kafka ■

**Kunz, Wolfgang: *Railway Law***  
(*Eisenbahnrecht*) (Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements)

It is no exaggeration to say that all branches of the law applicable to the rail sector are covered by this four volume collection. In addition to the requirements of national German law (three volumes), it also contains the requirements of European Union law. Under the heading "International Law" can be found COTIF 1999, among others, as published in the German promulgating organ, the Bundesgesetzblatt, in 2002. This section also contains an older version of SMGS and some bilateral agreements that Germany has concluded.

There are now commentaries by more than 30 authors on a substantial number of the provisions reproduced in the collection. The 30th supplement contains extensive new explanations on specific provisions of the German Order on non-discriminatory access to

If the document has to contain a real claim in writing (or any other equivalent process) attributing the damage to the carrier and specifying the approximate amount, this may come from the consignor's agent (e.g. the broker or the duly authorised insurer). Proof of reception which, in French law, is incumbent upon the person entitled or his representative (French Civil Code, Art. 1315, para. 1) is not formalistic and may be demonstrated by any commercial instrument (French Commercial Code, Art. 110-3). In this case, three salvos were fired:

- on 11 September 1997, i.e. the day after he was informed of the theft, the consignor sent the carrier a claim by registered letter with acknowledgement of receipt, together with supporting invoices;
- on 23 December 1997, his agent did the same and attached the CMR consignment notes and packing lists;
- lastly, on 1 September 1998, the latter did the same by fax (which also counts as written notification), but without specifying whether there were any attachments.
- It was highly unlikely that the carrier did not receive the various documents and moreover, on 3 September 1998 (at the limit of the "usual" period of limitation), his broker told the agent that he should contact the liability insurer.

As he had not rejected the various claims in any way by returning the attachments, the carrier had let the period of limitation freeze, so that 9 years later, he was still exposed!

### Decision

While the claim for compensation is admissible, it is nevertheless ill-founded. Bearing in mind the fact that with a revolver pointing at his forehead, the driver could only do as he was told, the court notes the inevitable and unavoidable circumstances which relieve the international road carrier of liability (CMR, Art. 17, para. 2. A similar provision is set out in COTIF in Article 23 § 2 of CIM).

Eva Hammerschmiedová ■



## Non official part

the railway infrastructure and the principles for levying charges for the use of railway infrastructure, written by eleven different authors (more than 300 pages). This Order implements Directive 2001/14/EC. Some of the things it deals with are the services infrastructure managers must provide, involving all rail transport undertakings in informing passengers, dealing with the commercial confidentiality of those with access authorisation, the train path allocation procedure, a special right to cancel in the event of failure to exercise rights of use caused by fault and the content and conclusion of framework agreements to ensure infrastructure capacity.

The rest of the 30th supplement contains pages updating Werner Filthaut's more than 200 page commentary on the Liability Act.

Most of the 31st supplement takes into account amendments to the legislation of the German Federal Lander. A new inclusion is the Treaty on the Functioning of the European Union, where the reader will also find accompanying explanations by Bernd H. Uhlenhut.

The systematic "Railway Law" collection is a practical aid to the work of railway specialists. A quick alphabetical overview for each volume and a well thought-out separation into different headings help the user find the information he requires quickly and reliably.

(ISBN 3-7890-3536-X, in German only, ed. Nomos Verlagsgesellschaft, Baden-Baden, 30. suppl. (Nov. 2011) & 31. suppl. (Dez. 2011))

*Eva Hammerschmiedová* ■

## Book Reviews

### Review by R. Freise

Reuschle, Fabian: „Montreal Convention”

Six years after the first edition, the second edition of this comprehensive commentary on the Montreal Convention (MC) on the unification of certain rules of international air transport is now available.

The commentary by Reuschle is characterised by a proper, clear arrangement of the explanations, clear language and in-depth analysis of case law and the literature. On over 500 pages, the MC is commented on and another 300 pages contain supplementary air transport provisions in 5 annexes, in particular three Community regulations on the liability of aviation companies and their obligation to provide compensation and assistance, an extract from the Universal Postal Convention and the Convention relating to postal parcels with their liability provisions (annex I), also European and German insurance requirements (annex II), the IATA and Lufthansa general terms and conditions (annex III), the 1944 Chicago Convention on International Civil Aviation (annex IV), as well as an extensive case law register (annex V).

The combination of the MC commentary and supplementary provisions of aviation law facilitates access to different, but objectively related legal sources and makes the book an essential guide in various air transport law issues.

Why is this work of interest to railway companies and railway lawyers? The answer is quickly found: European transport law policy in passenger traffic has for years been characterised by efforts not only to strengthen consumer rights in all modes of transport, but also to harmonise them. Equal treatment of the modes of transport should prevent distortions of competition between the different transport companies. The extent to which this has been successful can be identified through a comparison of the law (see, for example: Freise, *ZIntEisenb* (International Rail Transport Journal) 4/2004, p. 91). For freight transport in Europe, the EU Commission white paper of 28.03.2011 for a single European transport area stressed the importance of multimodal solutions and called for the "most efficient combination of modes of transport" (recital 19).



## Non official part

### Publications & interesting links

*Bulletin des transports et de la logistique*. Paris, n° 3393/2011, p. 743-745 – Commissionnaires étrangères. La Belgique (F. Farhana)

*Idem*, n° 3398/2012, p. 73/74 – Prescription. Point de départ (M. Tilche)

*Idem*, n° 3400/2012, p. 104/105 – CMR. Frais d'entreposage (M. Tilche)

*CIT-Info* (Comité international des transports ferroviaires / Internationales Eisenbahnttransportkomitee / International Rail Transport Committee. CIT) [www.cit-rail.org](http://www.cit-rail.org). édition/Ausgabe/edition 1/2012

*Deine Bahn*. Berlin, Nr. 1/2012, S. 49-53 – Eurasischer Güterverkehr. Vom Einheitsfrachtbrief zum Einheitsrecht auf der Schiene

*European Transport Law / Droit européen des transports / Europäisches Transportrecht*, Antwerpen, No. 5/2011, p. 503-511 – The Land Carrier's liability. Strict with exemptions or presumed? (P. Bäckdén)

*Railway PRO*, the railway business magazine, 18.01.2012 – China adopts CIM/SMGS provisions [www.railwaypro.com/wp/?p=7844](http://www.railwaypro.com/wp/?p=7844)

*Transportrecht*, Hamburg, Nr. 1/2012, S. 1-13 – Unimodale transportrechtliche Übereinkommen und multimodale Beförderungen (R. Freise); S. 14-22 – Multimodalverkehr und Luftrecht (W. Müller-Rostin)

*Idem*, Nr. 2/2012, S. 45-56 – Aktuelle höchstrichterliche Rechtsprechung zum Gütertransportrecht (G. Pokrant). Internationales Gütertransportrecht s. S. 50-56; S. 56-61 –

*Die Sphärentheorie im Seehandelsrecht* (D. Rabe); S. 63/64 – Versandverfahren: Gleichstellung privater Bahnunternehmen mit der Deutschen Bahn (C. Weerth)

Eva Hammerschmiedová

In addition to developing their own law, the modes would therefore do well to keep sight of legal developments in other modes of transport in passenger and goods traffic. For the railways, it would be particularly worthwhile to keep an eye on air transport, which paved the way for the rail sector in terms of the liberalisation and expansion of passenger rights.

EC Regulations 2027/97 and 889/2002 on the liability of air carriers in accidents and Regulation 261/2004 on compensation and assistance to passengers for denied boarding and cancellation or long delay of flights are models for the EU's passenger rights Regulation 1371/2007 in the rail sector.

The EU acceded to the MC with effect from 28.06.2004 and acceded to COTIF seven years later on 1 July 2011. Thus, the ECJ is the last instance in the EU for the interpretation of the MC and COTIF and its Appendices. Against this background it is firstly of interest as to how the three EC Regulations referred to stand in relation to the MC and secondly, how the ECJ views this relationship when it applies the EC Regulations and the MC.

These and other questions are dealt with in Reuschle's commentary by commenting not only on the provisions of the MC, but also by looking at the rights of passengers in terms of lump sum compensation, fare reimbursement or transport by other means as well as assistance in cases of denied boarding and of cancellation or long delay of flights in accordance with Regulation 261/2004 and evaluating the latest case-law of the ECJ and the courts of various Contracting States (see, in particular, section IV on Article 19 of the MC, pp. 284-293).

In view of the growing need for cooperation between the modes of transport in cases where a single mode cannot handle a certain transport task alone, the position the international transport law conventions on multimodal transport take is also of interest.

A comparison of the MC with COTIF shows major differences: while CIV and CIM only cover certain multimodal combinations in their respective Article 1 (supplementary carriage by road or inland waterway in internal traffic or on registered lines by sea or transfrontier carriage by inland waterway), Article 38 of the MC covers all "mixed" transport, but only subjects the air



## Non official part

transport section of the journey to its validity (apart from the exceptions in Article 18, para. 4 of the MC for freight transport). The commentary by Reuschle also contains useful and detailed notes on this. In contrast, CIV and CIM subject the multimodal transport operations they cover to international rail transport law from start to finish.

Reading an MC commentary again reminds transport lawyers that the air transport law of the MC is the only transport law which stipulates a non-negotiable liability limit of 19 SDR/kg for international air freight transport operations, which also applies in the case of the most severe fault on the part of the air freight carrier and its people (Art. 22 § 3 in conjunction with paragraph 5 of the MC).

Overall, Reuschle's work offers railway lawyers a wealth of information on the legal situation of a competing transport mode, which in many ways is also a cooperative partner of the railways, and there are suggestions for the recurring revision work on international rail transport law. The book can therefore also be highly recommended to railway lawyers who want to expand their horizon beyond "their" mode of transport and gain insights into adjacent areas of the law.

(ISBN 978-3-11-025913-1, in German only, editor De Gruyter, Commentayr, 2<sup>nd</sup> edition 2011, XXII + 823 pages)

*Rainer Freise* ■