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OTIF

Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

Unified railway law to connect Europe, Asia and Africa



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Picture by
Valerio Compagnone-OTIF

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Throughout the 19th and 20th centuries, the railways anticipated the major problems of the network industries. There was some progress in terms of structuring and uniform contract law, etc. Historically speaking, the Convention on the Contract for the International Carriage of Goods by Road (CMR) for road transport is the “daughter” of the International Convention of Berne concerning the Carriage of Goods by Rail (now the CIM) which inspired it. The trends now seems to be the reverse.

Nowadays, the “big data”, led by Google, are investing in the transport sector by means of autonomous vehicles. Convoys of automatically driven lorries are already being tested. Beyond the impressive technical performance of vehicles capable of driving themselves, there is another important aspect: their integration into the network. In the very near future, these interconnected vehicles will potentially be able to compete with guided transport systems with their efficiency and ability to react to changes in demand

and to congestion problems.

The transferral of technology between the world of the internet (remember that the protocol enables networks and users to be interconnected) and the world of transport is underway. It will revolutionise our view of the relationship between the modes and have a potentially decisive impact on the energy efficiency of road transport.

For international rail transport, it is more essential than ever to be able to function as a network so that the natural competitive advantages of rail transport can be manifested. This is OTIF's task.

I believe the various articles in this edition demonstrate that OTIF's teams have not just identified the magnitude of this challenge, but are also working actively to find the solutions. The contributions therefore place emphasis on our partnerships and the vision the Organisation wishes to reflect in its recently adopted work programme for 2016-2017.

François Davenne

A CONCRETE EXAMPLE OF AN INSTITUTIONAL PARTNERSHIP CONCERNING RAIL SAFETY

The first session of the “RID-ATMF” working group was jointly organised by the Secretariat of OTIF and the European Commission’s Directorate-General Mobility and Transport in Berne on 3 and 4 February 2016. Future sessions will be held in Lille, Brussels and Berne.

It was proposed to set up this working group following a joint document published in 2014 which was submitted to OTIF’s Committee of Technical Experts and RID Committee of Experts and to the EU’s RISC and TDG Committees. The document was entitled “Interaction between RID and ATMF: improving consistency between COTIF Appendices C and G.”

This joint document highlighted areas that could be improved in terms of the consistency between the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) and

the Uniform Rules concerning Technical Admission of Railway Material used in International Traffic (ATMF).

It should be noted that the ATMF (Appendix G to COTIF) carry over and adapt the EU regulations, whereas RID (Appendix C to COTIF) has been carried over into the European regulations by Directive 2008/68/EC of 24 September 2008, which also makes its application mandatory for national rail transport as well.

The working group on improving consistency between the legislation on the transport of dangerous goods by rail and the legislation on railway safety and interoperability is made up of experts from OTIF Member States, national safety authorities and railway associations. The European Commission and the Secretariat of OTIF together proposed two co-chairmen, one of whom is an expert in the dan-

gerous goods legislation and the other an expert in the safety and interoperability legislation.

The working group’s conclusions will be summarised in a report to be submitted to the Secretariat of OTIF and the European Commission, which will then decide together how to follow them up.

The working group works on a consensus-based approach and any differences of opinion will be recorded in the report.

The fact that this working group has been set up illustrates the relevance of an interdisciplinary approach to international rail transport legislation and the common desire of international institutions, such as OTIF and DG Mobility and Transport, to agree on a common interest from the angle of railway safety.



2016 2017: THE OBJECTIVES FOR THE SECRETARIAT OF OTIF

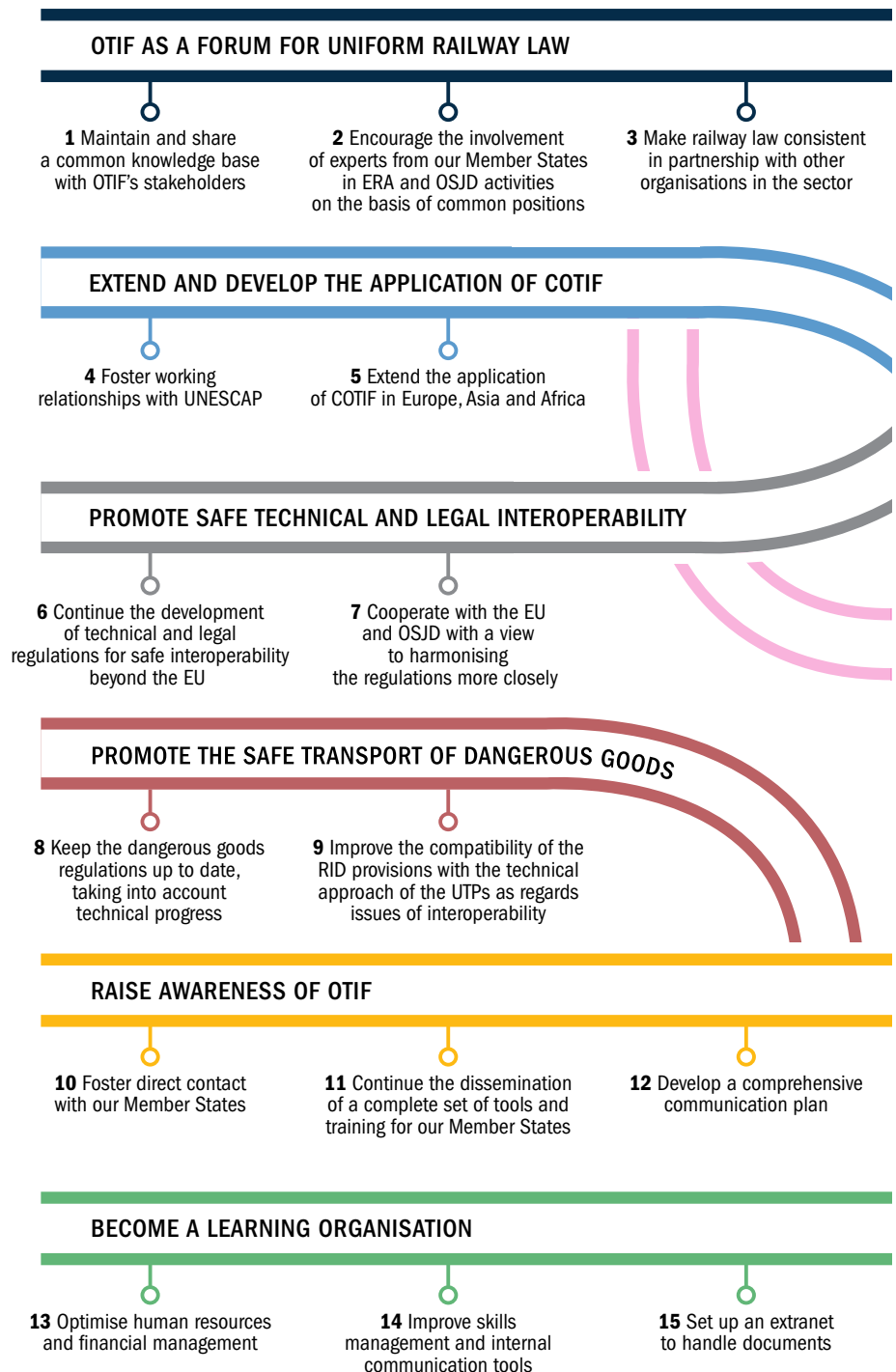
The first meeting of OTIF's Administrative Committee with its new composition was held in Berne on 19 and 20 January 2016.

The Committee gave its views on the Secretariat's proposal for a new [work programme for 2016-2017](#). The work programme sets out the Secretariat's strategic and operational objectives and was well received. It was explained and clarified by the heads of department before being approved with a few amendments. It is an important internal tool for the Secretariat and digital and paper versions are disseminated to its various partners so that they can anticipate potential legal developments and have a clear idea of OTIF's role.

Following on from the 2014-2015 work programme, the Secretariat of OTIF will continue to extend and develop application of the Convention concerning International Carriage by Rail (COTIF) and promote the Uniform Rules (CIV, CIM, CUV, CUI, APTU, ATMF) and the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID).

In 2016-2017, interoperability beyond the European Union and its element of railway safety will be a project that will unify the Secretariat's various departments.

OTIF will finally assert its role. Continuing to establish uniform railway law assumes that OTIF will become a forum, a place of exchange, a place that will see the emergence of a new international system of connected and interoperable rail transport networks.



THE CORRIDOR STUDY WILL SOON BE ON-LINE

The young expert, Dariia Galushko, will complete her internship within OTIF at the end of April 2016. In addition to the essential work she has carried out on the Russian version of the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID), Mrs Galushko has also completed a study on two Eurasian corridors, focussing on rail freight transport measured in terms of the application of COTIF.

The main aims of the study were to identify the legal and physical obstacles to seamless international rail

transport, to analyse OTIF's area of expertise and to propose appropriate legal solutions. The study also had to determine whether OTIF's Rail Facilitation Committee should be reinstated.

The two routes considered in the study are:

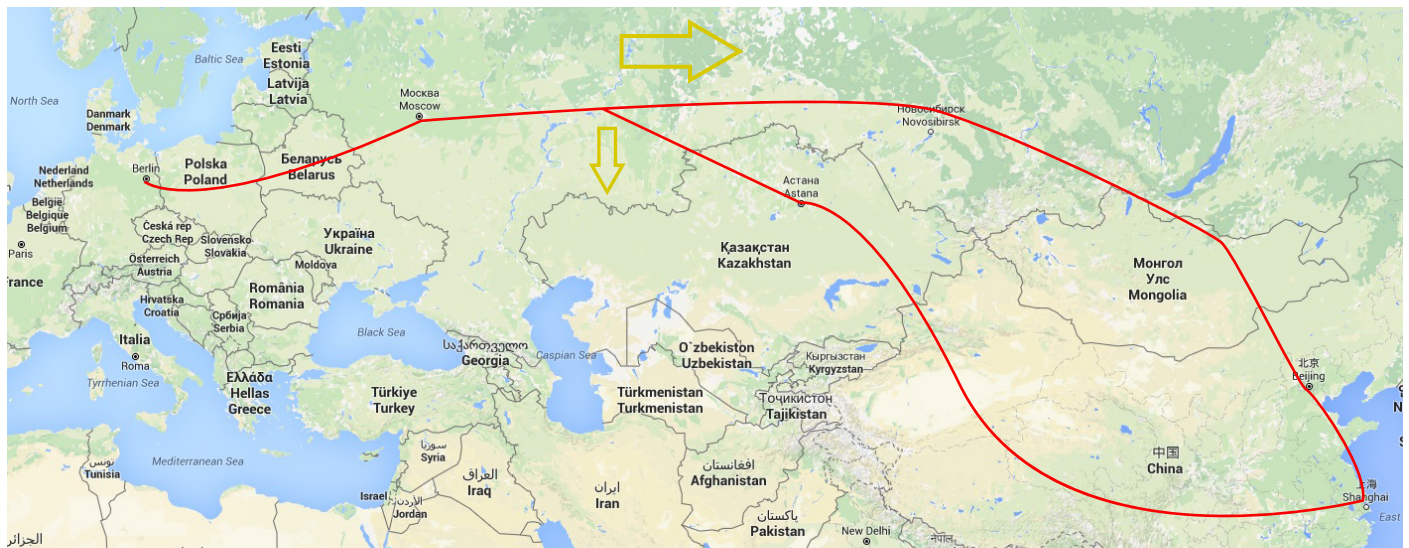
- the land bridge between China and the European Union via the territory of Russia,
- the Pakistan-Iran-Turkey corridor, with a possible extension to the countries of western Europe.

The volume of trade between Asia

and Europe continues to grow and maritime transport still dominates. The Corridor Study takes stock of the various physical and non-physical barriers that place obstacles in the way of increasing the modal share of rail freight in international transport.

Lastly, together with the Secretary General of OTIF, Mrs Galushko makes some strategic and operational recommendations for unified Eurasian law and facilitated international railway traffic.

The Study will be on-line in April under "Publications".



THE PRINCIPALITY OF MONACO AND APPENDIX G TO COTIF

In accordance with Article 35 § 4 of the Convention concerning International Carriage by Rail (COTIF), in April 2010 the Principality of Monaco lodged an objection against a decision of the Revision Committee, which resulted in the suspension of the application of the Uniform Rules concerning Technical Admission of Railway Material used in International Traffic (ATMF UR).

In a letter dated 24 November 2015

signed by the Minister of Public Works, the Environment and Urban Development, Monaco withdrew its objection. The ATMF UR now apply in Monaco.

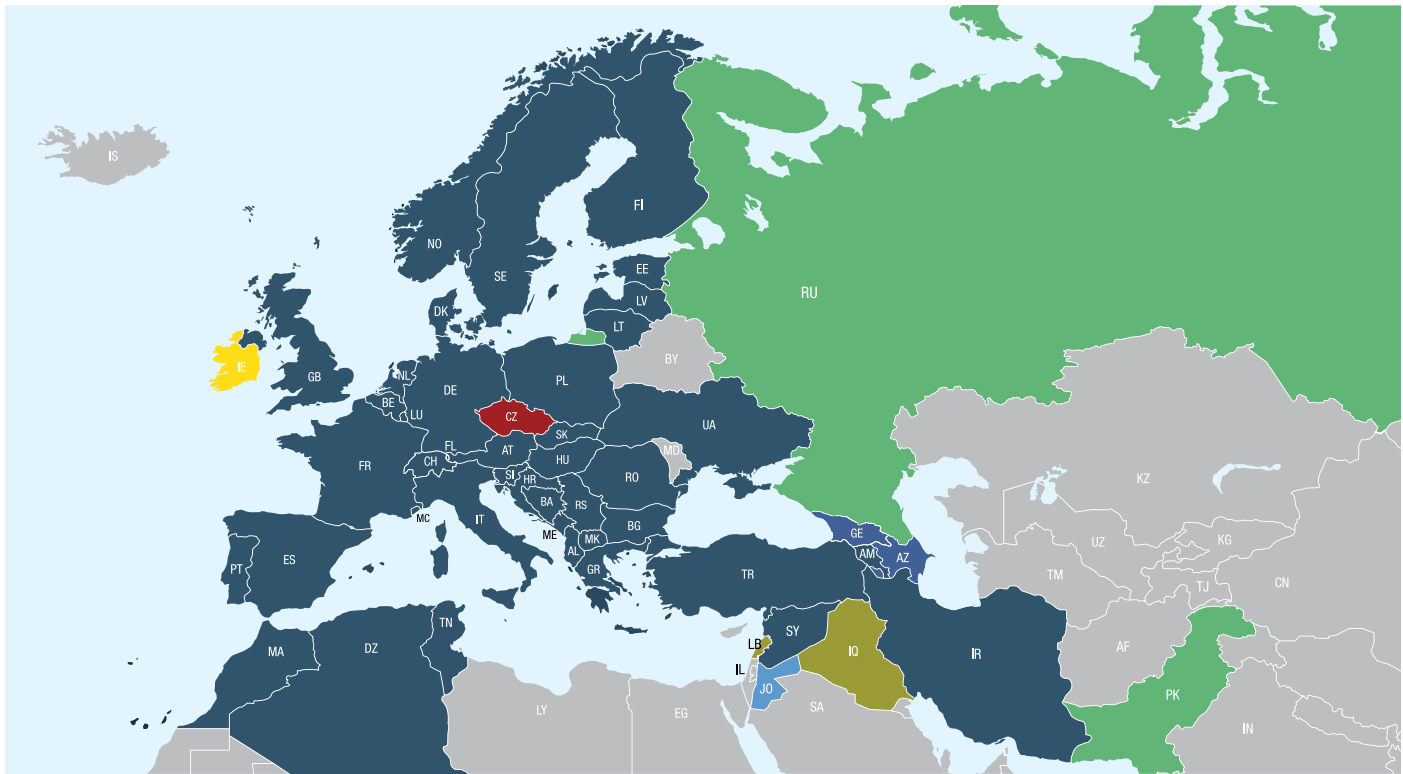
A twin-track 1.7 km line linking Nice and Ventimiglia crosses the Principality. This line was opened in 1868. It is used by a regional train (TER), the Nice-Paris TGV and the Nice-Moscow Riviera Express.

Since 15 January 2016, i.e. one month

after the Member States of OTIF were notified by means of a circular letter, Appendix G (ATMF UR) of COTIF has been into force on the line in the Principality of Monaco. In Europe, there is now only one State, which does not yet apply the ATMF UR of COTIF.

Monaco therefore joins the majority of the Member States of OTIF who have chosen to apply all the Appendices to COTIF.

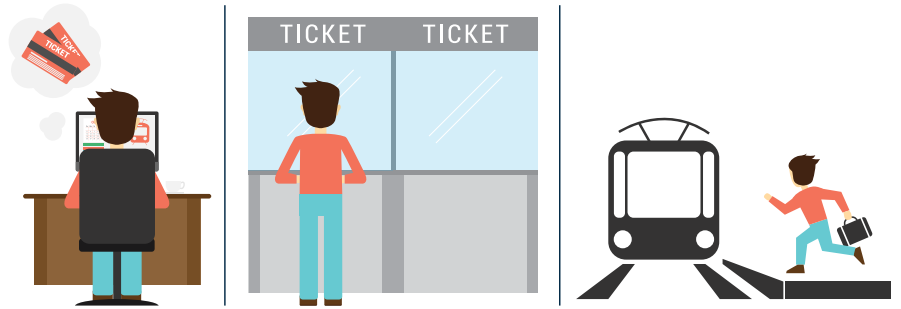
Geographical scope of COTIF and its Appendices
Situation on 16 January 2016



- All COTIF Appendices (41)*
- Without CUV/CUI/APTU/ATMF (2)
- Without CIV/RID/CUV/CUI/APTU/ATMF (2)
- Membership suspended (2)
- Without CUI/APTU/ATMF (1)
- Associate Members (1)
- COTIF 1999 not yet ratified (1)
- *GB: Without CUI (1)

INTERNATIONAL EAST-WEST PASSENGER RAIL TRANSPORT SERVICES: A CIT SEMINAR

OTIF's legal section, represented by Mrs Hammerschmiedová, and the Secretary General, Mr Davenne, took part in the seminar on international east-west passenger rail transport services organised by the International Rail Transport Committee (CIT) in Monte Carlo on 29 October 2015.



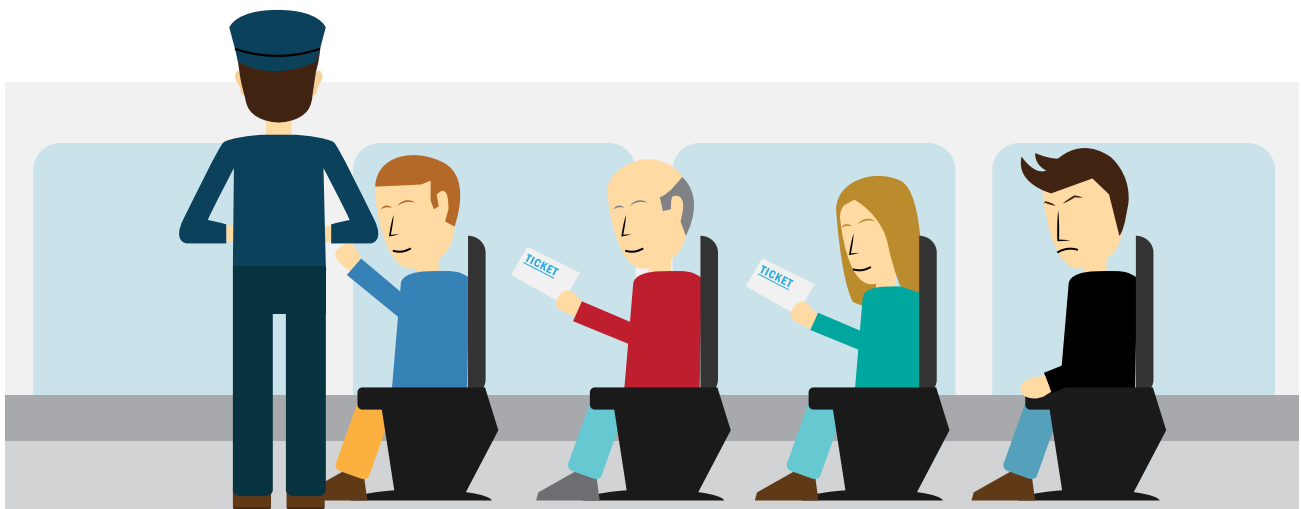
The seminar brought together the Director-General of the Principality of Monaco's Ministry of Foreign Affairs and Cooperation, the Secretary General of OTIF, the Deputy Director of the European Commission's DG Mobility and Transport (passenger law division), representatives from the Community of European Railway and Infrastructure Companies (CER) and the International Union of Railways (UIC) and a number of railway undertakings.

CIT presented the results of the first phase of the project to make the CIV

and SMPS legally interoperable and opened a discussion on the issues the CIV working group will have to deal with in the second phase of the project (CIV – Uniform Rules concerning the Contract of International Carriage of Passengers by Rail, Appendix A to COTIF/SMPS – Agreement concerning International Passenger Traffic by Rail (OSJD)).

The seminar also provided Mrs Hammerschmiedová with an excellent opportunity to draw attention to the

relationship between the CIV Uniform Rules and European Regulation 1371/2007/EC on rail passengers' rights and obligations (PRR), which carries over the former and strengthens passengers' rights and obligations. In particular, Mrs Hammerschmiedová also gave a presentation on the main points of Appendix A to COTIF and developments in these rules, and outlined the nature and essential conditions of an international contract of carriage of passengers under COTIF.



CIT, OTIF AND THE EUROMED PROGRAMME: MEDITERRANEAN COOPERATION

The Euromed programme being managed by the European Commission's Directorate-General for Neighbourhood and Enlargement Negotiations comprises several transport projects, particularly the Road, Rail, Urban Transport Project (RRU).

Some Mediterranean States which have joined the Euromed cooperation programme are also Member States of OTIF: Algeria, Morocco, Tunisia, Jordan (associate member). These States were already signatories to COTIF 1980 and have also ratified COTIF 1999 and its Appendices.

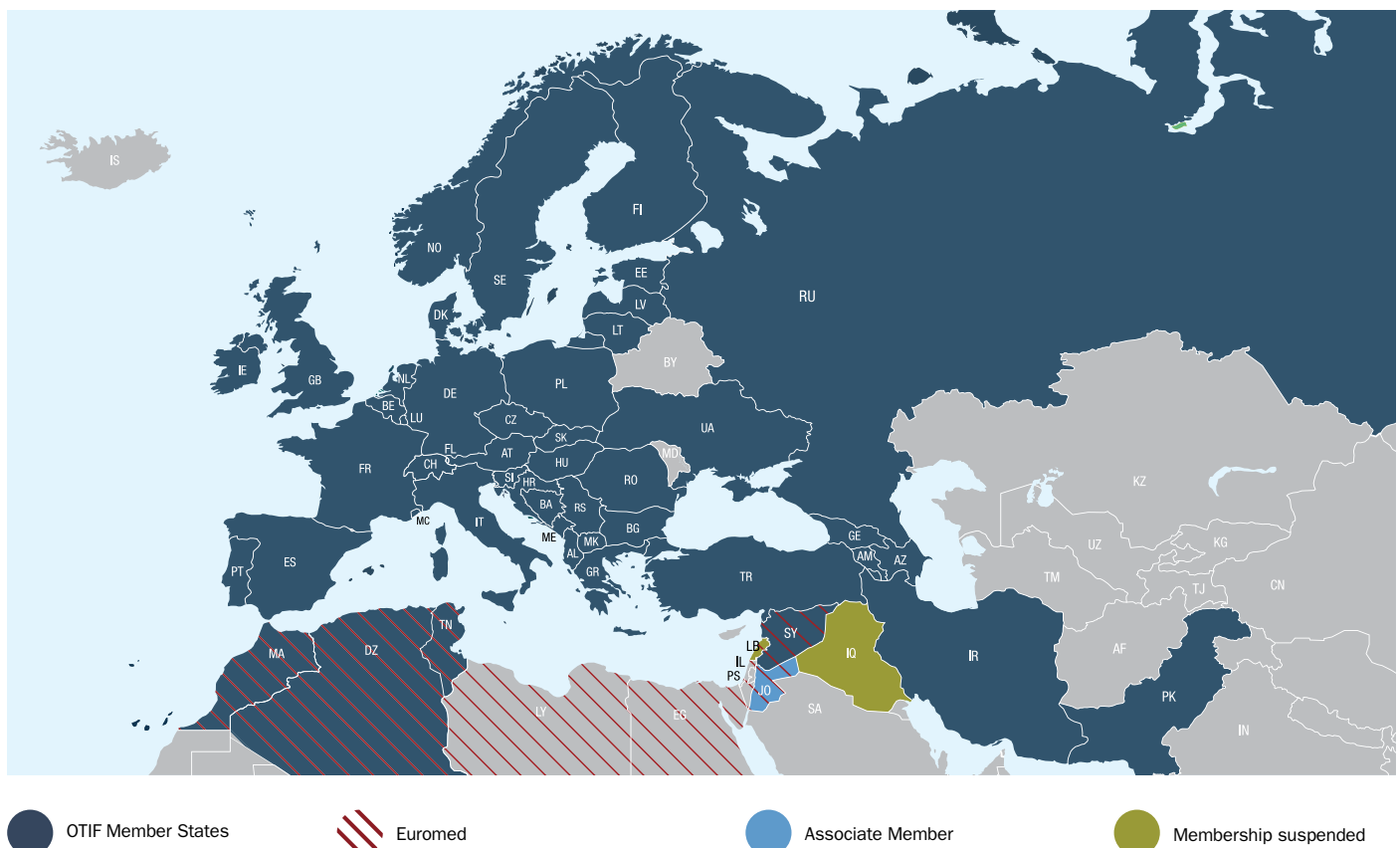
One of OTIF's main tasks is to provide its Member States with tools for harmonisation. Together with CIT, OTIF provides a legal framework for international contracts of carriage of passengers or freight by rail and by rail and sea. OTIF also provides rules for the carriage of dangerous goods, defines valuable principles for technical interoperability for those working in the industry and principles concerning the use of vehicles. Based on the principle that the majority of the Appendices to COTIF have recognised equivalents in EU regulations, it is true to say that these harmonisation tools con-

tained in COTIF are "Euro-compatible".

It is therefore quite normal that in the context of the RRU, OTIF, CIT and the European Commission's DG for Neighbourhood and Enlargement Negotiations will implement joint dissemination activities. Initial activities were planned at a joint meeting held in Brussels on 8 January 2016.

OTIF's role will be to project COTIF where it is not yet very well known as a legal instrument and to consolidate its application in areas where it is already part of the legal corpus.

OTIF Member States – Euromed States
Situation on 16 January 2016



INTERNATIONAL RAIL FREIGHT: NETWORKS IN SEARCH OF AN OPERATING SYSTEM

There are many large railway projects. One of the most important is the new Silk Route project. This interest is explained by the desire to include rail freight in the geography of Euro-Asian trade. The problem is that where the other modes have common technical and legal regulations – a shared “operating system” – developed by global bodies (ICAO, IMO, etc.), the railways remain fragmented and dependant on a number of different organisations.

Historically, since 1893 OTIF was the first organisation to work on unified railway law. It therefore provides an area of expertise that is sufficiently broad to integrate the essential components that are required to network effectively. The advantages of a coherent transport network (reliability of journeys, resilience, standardisation of processes, etc.) assume a high level of organisation and legal and technical constraints.

Rail freight thus combines the constraints of a network, but has difficulty in presenting the advantages of a network, which is one of the main reasons for the failure to achieve real modal shift. Developing a shared operating system should become a real priority.

International rail freight: the constraints of a network without its advantages

Unlike other major network industries, such as the transmission of electricity or telecommunications, for rail transport the role of international interconnections has always been relatively marginal compared with activities at national level. For the production of electricity for example, it was immediately necessary to set up a system to transfer electricity in a standardised manner, both legally and technically, as it is impossible to store electrical energy conveniently.

Management of the railway infrastructure has always remained at national level, with different justifications: economic, technical or even military. As an example, after more than 10 years work by the European Railway Agency, there are still several thousand national safety rules, many of which are incompatible, and this is just in the European Union.

The result is a juxtaposition of national networks, each with its own complex rules, which prevent international rail freight from exploiting the three main advantages that characterise an international network, i.e.:

1. interconnectivity: the necessary infrastructures exist and are able to communicate with each other to manage flows;
2. legal uniformity: contract regulation, particularly the liability regime, is founded solidly on an international basis;
3. interoperability: technical solutions ensure that vehicles dedicated to international traffic can easily be operated on different networks.

Listing these elements makes it clear immediately that international road transport already has these advantages, but for rail transport, they still have to be put in place, even though rail transport has some obvious competitive advantages over long distances.

This situation limits the development of modal shift to rail. It is no surprise therefore, that the current greenhouse gas emissions forecasts do not really take account of a modal shift to rail.

The absence of a uniform framework is one of the reasons why modal shift to rail transport has failed

COP 21 did not adopt a specific target for reducing greenhouse gas emissions from aircraft and merchant marine shipping. Air transport nevertheless contributes 2.5% of global CO₂ emissions and maritime transport 2.2%. Moreover, since 1980, emissions from these sources have been increasing twice as fast as the global average. The OECD therefore held its 2016 international transport forum under the banner of “green and inclusive transport”. **Against this background, it is important for an Organisation such as OTIF to make its contribution. The modal shift to rail can make an effective contribution to the fight against global warming:**

- it is the mode which emits the least amount of greenhouse gases;

- because of its structured nature and the fact that it is a network, it can be developed to be inclusive.

But the railways can only bring out these advantages if a shared “operating system” is put in place.

The infrastructures that could enable rail transport to take a more significant share of Euro-Asian traffic already exist. Where they do not yet exist, major projects are being developed. The different track gauges, which are often cited as the main obstacle, are a historical legacy which can be overcome, thanks to:

- sufficient containerisation of traffic;
- uniformity of IT systems;
- unified law for managing wagon fleets.

Nevertheless, from the point of view of international logistics operators,

the internal complexity of the rail system is discouraging and means the main actors might avoid it. In particular, its real advantages in terms of speed and cost are outweighed by the lack of reliability and transparency in the conditions of carriage, which are caused by the multiplicity of regulations that exist (see the map). Like OSJD, which brings together Russia, China and most central Asian States, OTIF provides a uniform framework, but the two systems are not harmonised.

Technical progress is often cited as the only solution to break this deadlock.

But it must not be forgotten that the absence of uniform standards for international freight is entirely the result of history. A physical network exists, but it carries with it various constraints that prevent it from being used intensively. As a result, technical progress that would lead to creating further pockets of incompatibility would be rather counter-productive.

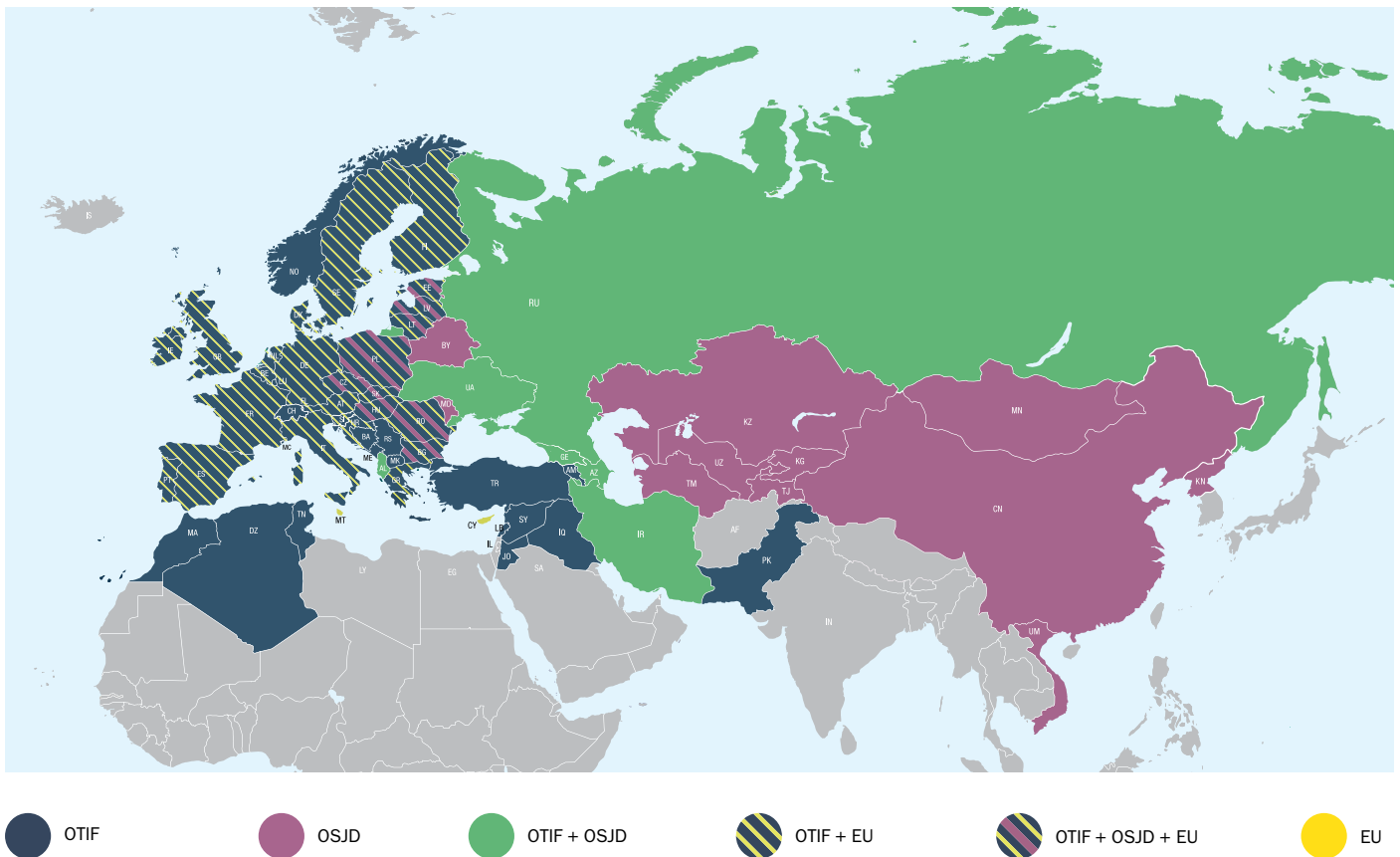
A uniform framework for contracts and technical interoperability is therefore a prerequisite for innovation. It is therefore quite logical that the “shift2rail” project supporting innovation in rail transport, which has been initiated by the railway industry and the European

Commission, is beginning just as the regulatory work on interoperability is coming to an end with the technical component of the 4th railway package.

Lastly, the lack of homogeneity referred to by international logistics operators makes the interfaces with the other modes (road and maritime transport) unclear, even though the latter are essential in order to carry out door to door transport. COTIF certainly includes an intermodal component, but this is only possible within its own scope of application.

OTIF/OSJD/European Union - respective scopes of application

Situation on 16 January 2016



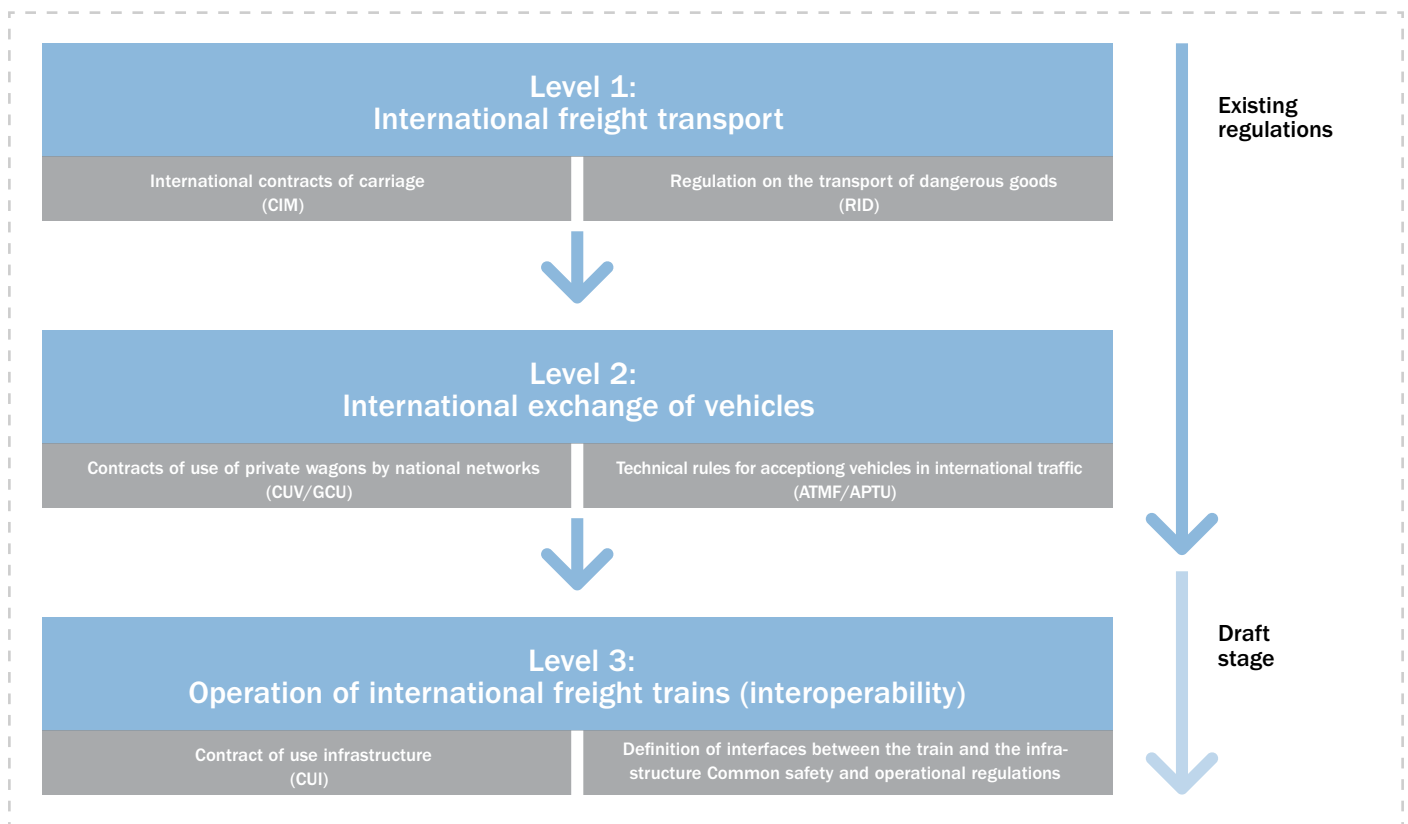
The right time to develop a harmonised “operating system” for international freight

Significant modal shift will only be possible if interconnectivity between the different networks is progressively guaranteed, both in terms of contracts of carriage and technical harmonisation. Since the accession of the European Union to OTIF in 2011, this concept of a bridge and a connection between different networks has been affirmed within OTIF, but above all, it is

shared with its various partners, with UIC and OSJD at the forefront.

The remarkable work on technical interoperability carried out by the European Railway Agency is coming to an end, thus providing consistency in this difficult area. It now seems possible again to work on a shared operating system which will include contractual aspects as well. In addition, OSJD is working on a new convention, which should make the harmonisation work easier from 2018 onwards.

In conceptual terms, all the rules necessary to put in place a consistent operating system for international rail freight can be outlined in three successive levels. Each of them requires the existence of specific contractual and technical tools. It is beyond the scope of this brief note to go into the details, but the following diagram provides an overview of the current situation from the COTIF perspective.



Both OSJD and OTIF have put in place a consistent system for the first two layers. This enables vehicles (wagons and locomotives) to be exchanged between the Member States in a well-defined framework of liability. At present, only the European Union provides an example of the seamless movement of international freight trains (technical interoperability), while relying on OTIF for the first level and contracts of use of wagons.

Taking advantage of the comparative benefits of an integrated, low energy

transport network with exceptional payload capacities is one of the major preoccupations that should guide innovation in international rail transport. It is by relying on a shared and efficient operating system that the railways could take the lead as a future solution for green and inclusive transport at Euro-Asian level.

The return on investment from setting up an “operating system” for international freight has the potential to be extremely high. In a concerted approach with OSJD, the EU and UIC, OTIF can

play a key role in this respect:

- because of its intergovernmental nature, OTIF’s regulations focus on high level rules that are essential and formative for the Member States’ laws;
- owing to the flexibility of its various instruments (contract law, technical law, etc.), COTIF helps build bridges with the detailed provisions that already exist, whether they are from railway undertakings or standardisation bodies.

François Davenne

CREATION OF A JOINT OTIF-ERA CSM ASSESSMENT BODY REGISTER

The following article gives an overview on establishing a joint register for OTIF's EU and non-EU Contracting States. The first part deals with general aspects, such as the legal basis, criteria and registration of the CSM Assessment Bodies. The last part of the article provides an overview of the next steps on implementing the joint register.

Legal Basis

The Contracting States of OTIF have adopted the risk assessment requirements defined in UTP GEN-G of 1.1.2014. These requirements are equivalent to EU Regulation No 402/2013.

The application of UTP GEN-G requires CSM Assessment Bodies, which should be registered publicly by the Secretary General in accordance with Article 14 of UTP GEN-G.

Criteria to act as a CSM Assessment Body

The following organisations or entities can be given the competence to act as a CSM Assessment Body¹:

- an OTIF national authority competent for technical admission,

- an OTIF assessing entity,
- an EU national safety authority (NSA),
- an EU notified body (NoBo),
- an EU designated body (DeBo),
- a competent external or internal (i.e. in-house) individual, organisation or entity which is at least independent from the "design, risk assessment, risk management, manufacture, supply, installation, operation/use, servicing and maintenance" of the change under assessment.

Irrespective of which of these organisations or entities acts as a CSM Assessment Body, it must meet the criteria listed in Annex II of UTP GEN-E and must be accredited or recognised.

EU wide and/or in all OTIF Contracting States

A CSM Assessment Body accredi-

ed or recognised in accordance with the requirements of UTP GEN-G of 1.1.2014 can carry out independent safety assessments in all OTIF Contracting States, including those which are also Member States of the EU.

By analogy, a CSM Assessment Body accredited or recognised in an EU Member State in accordance with the requirements of Regulation (EU) No 402/2013 can carry out independent safety assessment in the whole EU and in all OTIF Contracting States.

It is therefore justifiable for all accredited or recognised CSM Assessment Bodies to be registered in a single registry.

Registering the Assessment Body

For the EU Member States, the European Railway Agency is responsible



¹ http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/06_tech_zulass/05_Explanatory_docs/ERA-GUI-01-2014-SAF_EN_V1.0.pdf

² European Railway Agency database of interoperability and safety : https://eradis.era.europa.eu/safety_docs/assessments/default.aspx

for registering the following information for the EU in the ERADIS data base:

- the Member State's choice concerning the use of accreditation and/or recognition, or neither of these two options;
- where applicable, the CSM Assessment Bodies directly recognised by the Member State;
- where applicable, the national accreditation body and/or recognition body(ies) in the Member State;
- the accredited and recognised CSM Assessment Bodies with their area(s) of competence and the Member State where they are accredited/recognised;
- any changes in the situation of a CSM Assessment Body following notification from the national accreditation body or recognition body.

For the non-EU Contracting States, the Secretary General of OTIF should make this information publicly available. In order to create synergies and avoid two registers containing the same information, ERA and the OTIF Secretariat are working together to create a single joint register for CSM Assessment Bodies.

Basis for establishing a joint OTIF-ERA Register

The following provisions are the basis for establishing a joint register:

- Administrative Arrangement (AdAr) between OTIF, DG MOVE³ and ERA, in particular point 8.3 of the AdAr
- ATMF Article 13, in particular § 3 - § 5
- UTP GEN-G, Article 13

In order to minimise the cost for OTIF and obtain coherent registry systems, it was decided to establish the joint register.

This project was also presented to participants at the 27th session of WG TECH, which took place in Bern on 17 and 18 November 2015, where it was welcomed as a good step forward.

Implementation

No date has yet been fixed for entering the CSM Assessment Bodies in the joint OTIF-ERA register. The ERADIS database requires some modification before it can include the non-EU Contracting States' CSM Assessment Bodies.

ERA and OTIF are working on updating the database for this purpose.

The Secretariat will inform the COTIF Contracting States in writing about the changes and the steps they are required to take for correct implementation.

Margarethe Koschmider

CSM and the CSM Assessment Body

The Common Safety Methods (CSM) for risk evaluation and assessment are set out in UTP GEN-G.

The CSM is applied:

- in case of changes to the railway system that have an impact on international traffic
- for the admission of vehicles to international traffic in case this is required by the relevant UTP
- to manage risks related to the admission of new subsystems (e.g. vehicles) and their safe integration into the railway system.

A CSM Assessment Body is a body which has to assess risks by applying the harmonised common safety methods set out in UTP GEN-G.

CSM Assessment Bodies must either be accredited by the national accreditation body or recognised by the State, or they can be the Competent Authority in accordance with ATMF Article 5.

³ The Directorate-General for Mobility and Transport (DG MOVE) is a Directorate-General of the European Commission responsible for transport within the European Union

RID COMMITTEE OF EXPERTS' STANDING WORKING GROUP, 5TH SESSION (ZAGREB, 23 – 27 NOVEMBER 2015)

This session of the standing working group focused on the harmonisation of RID with the 19th edition of the UN Recommendations on the Transport of Dangerous Goods.

Harmonisation with the 19th edition of the UN Recommendations on the Transport of Dangerous Goods

The working group approved a document prepared by the Secretariat, which contained all the texts adopted by the Joint Meeting in 2014 and 2015 and by the standing working group in November 2014. It also carried over all the other amendments that had been adopted for ADR two weeks previously by the UNECE Working Party on the Transport of Dangerous Goods (WP.15), insofar as they were relevant to rail transport.

Interpretation of RID

The Netherlands had prescribed in national regulations that chlorine may only be carried in tank-wagons or tank-containers in trains not containing any other tank-wagons or tank-con-

tainers. The Netherlands cited RID 1.9.5 as the legal basis for this exceptional case. In accordance with 1.9.4, the Netherlands had duly informed the OTIF Secretariat of these additional provisions.

In a document, Belgium raised the question of whether measures concerning the composition of trains also applicable to international trains can be taken at national level on the basis of RID 1.9.5.

In Belgium's view, the composition of trains came under the scope of RID, because 7.5.3 contained requirements for the protective distance. Because of increased shunting activities, rules on the composition of trains could lead to increased risks in other States and could even entail a prohibition on carriage if two States issued conflicting rules.

However, the representative of the

The fifth session of the RID Committee of Experts' standing working group was held in Zagreb (Croatia) from 23 to 27 November 2015 under the chairmanship of Mr Helmut Rein (Germany). 24 States, the European Commission, the European Railway Agency (ERA) and four non-governmental international organisations were represented at this meeting. Turkey attended for the first time and said that it would also take an active part in the work of the RID Committee of Experts and the RID/ADR/ADN Joint Meeting in future.

Netherlands expressed the view that according to RID 1.1.2.1 (b), the composition of trains did not come under the scope of RID and that the provision



concerning the protective distance in 7.5.3 did not constitute evidence that RID contained provisions on the composition of trains. He emphasised that the aim of these provisions was to protect the public and that they had been enacted on the basis of generally recognised risk analyses.

Several delegations thought Chapter 1.9 should be revised, firstly to remove any contradictions between the restrictions on national measures in 1.9.1 and the national provisions permitted under 1.9.5 and secondly to take account of the European railway legislation.

In reply to the chairman's question as to whether the RID Contracting States were of the view that according to Chapter 1.9, a State may also require that trains arriving from another country must have a specific composition, two States said yes and ten States said no. Seven States abstained.

The chairman urged the States to submit proposals to resolve this problem.

Proposals to amend RID

Entity in Charge of Maintenance (ECM)
Based on the discussion at the last session of the working group (see Bulletin of International Carriage by Rail, No. 1/2015, p. 19), the representative of the International Union of Wagon Keepers (UIP) submitted a proposal, in which he proposed to divide obligations between the tank-wagon operator and the entity in charge of maintenance (ECM).

The representative of ERA was of the view that the division of responsibilities proposed by UIP was not in accordance with the European ECM Regulation and submitted a counter-proposal in which various obligations assigned to the ECM were again transferred to the tank-wagon operator. The standing working group supported this division of obligations, which requires in particular that tank-wagon operators still have to ensure that the tank tests prescribed in Chapter 6.8 are carried out and that an exceptional check

is arranged if the safety of the shell might be impaired.

It was also decided to include a footnote allowing tank-wagon operators to transfer the organisation of the tests to an ECM.

Position of dangerous goods in the train

According to Commission Regulation 2015/995 concerning the technical specification for interoperability relating to the 'operation and traffic man-

Railway accident in Lac-Mégantic

On 6 July 2013, a serious railway accident occurred in the small town of Lac-Mégantic in Quebec (Canada). A driverless train derailed and crude oil leaked from several of the 72 tank-wagons and caught fire in an explosion. At least 47 people were killed in the accident and more than 30 buildings were destroyed.

Before the accident the train had been stabled at a station with one of the five locomotives left running in order to supply the brakes with compressed air. The handbrakes had also been applied on ten of the tank-wagons. A resident who had the impression that a fire had broken out on the locomotive that was running alerted the fire brigade. The fire brigade disconnected the flow of diesel to the locomotive and then established that there was no fire, just the normal exhaust fumes from the diesel locomotive. After the fire brigade left, the diesel locomotive was not started up again. This meant that the brakes were no longer being supplied with compressed air and the handbrakes on the ten tank-wagons were not sufficient to brake the more than 9000 ton train for long on the gradient. The train started moving and after 11 kilometres it reached a speed of 100 km/h, when it came to a curve designed for a top speed of only 16 km/h.



agement' subsystem of the rail system in the European Union, the carrier has to inform the locomotive driver of the position of dangerous goods in the train.

Based on the discussion at the last session of the working group (see Bulletin of International Carriage by Rail, No. 1/2015, p. 19), the working group adopted a proposal in this regard submitted by the representative of UIC, which proposed a new responsibility in the carrier's obligations, which is deemed to be met if Annexes A and B of UIC leaflet 472 ("Braking sheet, consist list for locomotive drivers and requirements for the exchange of data necessary to the operation of freight rail services") are applied.

New requirements for tank-wagons for the carriage of flammable liquids in the USA and Canada

Some railway accidents that have occurred in North America in recent years have led the United States of America and Canada to introduce new provisions for the construction and retrofitting of tank-wagons for the carriage of flammable liquids. Among other things, the new requirements provide for a greater wall thickness, head shields over the entire tank ends, thermal protection and new requirements for the top valves (protective collar) and devices to protect against the unintended opening of bottom valves.

The working group agreed that the RID Committee of Experts' working group on tank and vehicle technology should



investigate the whole package of measures applicable to North American tank-wagons to see if they are relevant for European rail transport.

Harmonisation of RID and SMGS Annex 2

The Secretariat of OTIF informed the working group of the ongoing discussions in the OSJD bodies in connection with the harmonisation of RID and SMGS Annex 2.

To make the harmonisation work easier, a Russian version of the 2015 edition of RID was currently being produced, which would provisionally be available in April 2016. As this is being prepared on the basis of the Russian ADR text which, according to the representative of the Russian Federation, contains some linguistic errors, it was

suggested that together with the UNECE Secretariat, the Russian texts of the UN Model Regulations, ADR and RID should be compared with SMGS Annex 2 and aligned.

Latvia submitted to the working group an English version of a synoptic table of the main differences between SMGS Annex 2 and RID, updated on the basis of the 2015 provisions, which will be used as the basis for further harmonisation work.

Next session

The 6th session of the RID Committee of Experts' standing working group will be held in Berne on 23 and 24 May 2016. Following that, the 54th session of the RID Committee of Experts will be held on 25 May 2016, at which the amendments for the 2017 edition of RID will receive final approval.

Jochen Conrad

48TH SESSION OF THE UN SUB-COMMITTEE OF EXPERTS ON THE TRANSPORT OF DANGEROUS GOODS, (GENEVA, 30 NOVEMBER TO 9 DECEMBER 2015)

The 48th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods was held from 30 November to 9 December 2015 under the chairmanship of Mr Duane Pfund (United States of America). 24 States entitled to vote, three observer States, seven governmental organisations and 29 non-governmental organisations were represented at the session. As all the decisions of the UN Sub-Committee of Experts have repercussions for the dangerous goods provisions of the various modes, the Intergovernmental Organisation for International Carriage by Rail (OTIF) was represented as a modal organisation, along with the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO).

Classification issues

Classification of sodium-ion batteries

Sodium-ion batteries are a low cost alternative to lithium-ion batteries and offer comparable energy density and performance. The big advantage is that sodium is available in large quantities, as it is relatively easy to obtain from sodium chloride, which is extracted from seawater. Another major difference is that unlike lithium-ion batteries, sodium-ion batteries can be discharged to 0 volts, without affecting the performance of the cell. This offers the advantage that these batteries can be stored and transported in a completely discharged state, as they pose no risk from stored electro-chemical energy. In addition, sodium-ion batteries are less flammable and have higher thermal stability than lithium-ion batteries.

The existing entry UN 3292 Batteries, containing sodium or cells, containing sodium, would not appear to be suitable for this new type of battery, as the special provision that applies to these batteries assumes metallic sodium and sodium compounds and does not take account of the lesser risk of sodium-ion technology. This situation is the same as for lithium batteries, where a distinction is made between lithium metal batteries (UN 3090) and lithium-ion batteries (UN 3480).

The UN Sub-Committee of Experts will come back to this issue and experts from the industry will then take part in the discussion.

Hybrid batteries consisting of lithium ion cells and lithium metal cells

In future, the UN Model Regulations will also cover hybrid batteries consisting of primary lithium metal cells and rechargeable lithium ion cells. Like the pure forms of lithium batteries, these will be assigned to UN number 3090 or 3091. Various texts have so far only been adopted provisionally and will be discussed again at the next session. The discussions will deal particularly with the condition that hybrid batteries may not be designed for external discharging.

Classification of crude oil

As a result of various railway accidents that have occurred in North America in recent years with the carriage of crude oil, experts from the United States of America and Canada are investigating how transport safety can be improved. One issue in this respect is correct classification on the basis of the existing hazards.

“Light” crude oils in particular can contain dissolved methane, ethane, propane and butane as well as other inorganic gases whose concentration can vary depending on where the crude oil was extracted. This has re-

The UN Sub-Committee of Experts on the Transport of Dangerous Goods develops the so-called UN Model Regulations, which constitute the joint basis for all the mode-specific dangerous goods provisions. The aim of this is to simplify the multimodal carriage of dangerous goods.

percussions for the classification, and the particular question that arises is whether the classification criteria applicable to flammable liquids and gases can be applied to complex mixtures, such as crude oil.

The UN Sub-Committee of Experts said it was interested in this work, although any changes to the current definitions and criteria would have to be carefully checked. However, some delegates were of the view that different classification criteria would not have prevented these accidents.

Toxic metal powders

France had submitted a safety data sheet for cobalt powder to the last session of the UN Sub-Committee of Experts. Cobalt powder was previously carried under UN number 3089 (Metal powder, flammable, n.o.s.). However, tests carried out on rats had shown that, because of its small particle size, ultra fine cobalt powder was

acutely toxic upon inhalation. As this phenomenon can also occur with other metal powders, the UN Sub-Committee of Experts decided at this session to include a new UN number (UN 3535) for toxic, inorganic solids with a flammable subsidiary risk.

Incident involving catecholborane

The representative of ICAO informed the UN Sub-Committee of Experts of an incident that had occurred in the carriage of catecholborane, which is used for organic synthesis. This substance is carried by several experienced and conscientious manufacturers under UN number 2924 (Flammable liquid, corrosive, n.o.s.), although it is now apparent that the properties of this product are not fully reflected by this entry. At room temperature, the product decomposes to borane gas at a rate of 2% per week. The gas can ignite in contact with air. Catecholborane can also react dangerously with water.

In the incident reported, the transport of the substance from Asia to Europe was delayed by nine days because of a typhoon. During this period the substance was exposed to a temperature of more than 33 °C. Once it arrived at its destination, the substance was stored for about two weeks at 8 °C. When the bottles were being prepared for onward transport, some of them exploded or caught fire. It was concluded that this was caused by moist air entering the bottles during the long transit time under high temperatures, causing a chemical reaction and pressure build up. Following this incident, the industry recommended that catecholborane be forbidden for transport by air unless transported in pressure receptacles and under cooled conditions.

The representative of ICAO announced an official proposal which would look in more detail at the classification of this substance. As the substance presumably has the hazards of Class 4.1 (self-reactive) and Class 4.3 (water-reactive), special

conditions of carriage would have to be applied, such as, for example, temperature control during transport and the use of pressure-proof receptacles.

Packing

Insertion of references to new or revised ISO standards

The UN Sub-Committee of Experts approved the inclusion of references to revised standards ISO 11118:2015 and ISO 11120:2015 for gas cylinders. It also approved the reference to an ISO standard for pressure drums (ISO 21172-1:2015). Although pressure drums are one of the types of packaging permitted for the carriage of gases, there has not so far been a global standard for the design and construction of such pressure drums.

Canada supported including this standard in principle, but rejected the restriction in the standard whereby the use of pressure drums with convex dished ends is prohibited for corrosive substances. This type of pressure drum design had been used in North America since 1936, particularly for the carriage of chlorine and sulphur dioxide, without leading to any incidents. In North America, the convex dished ends of these pressure drums were considered to be a positive characteristic from the safety point of view, as they push out when over-pressurised, providing an immediate visual indication of over-pressurisation.



Example of a pressure drum with convex dished ends

The representative of the International Organization for Standardization (ISO) explained that the experts of the relevant ISO committee had ruled out the use of this design type for the carriage of corrosive substances after careful consideration. For safety reasons, the use of newer design types with concave ends was the preferred option. It was more difficult to inspect cylinders with convex ends, because it was not possible completely to check the ends for signs of corrosion from the opposite side of the pressure drum.

In a vote the majority of the UN Sub-Committee of Experts supported including the reference to ISO standard 21172-1:2015.

Marking

Reduced dimensions of labels

RID/ADR 5.2.2.2.1.1.3 allows the dimensions of danger labels to be reduced if this is necessary because of the size of the package. If the dimensions are reduced, the symbols and other elements of the danger label must remain clearly visible. On the other hand, the line inside the danger label still has to be 5 mm from the edge of the danger label. The width of the line inside the edge must also remain 2 mm. These two constraints mean that the symbols on the danger label have to be made even smaller than would be necessary if the danger label only had to be reduced in size proportionately. This unnecessarily impairs the visibility of the important elements of the danger label.

The UN Sub-Committee of Experts adopted a proposal from Germany only to require that the proportions be maintained for smaller danger labels.

Lithium batteries in cargo transport units

In order to store electrical energy generated by wind farms, for example, large containers containing large quantities of lithium-ion batteries are now used. The batteries are electrically connected and are provided with a battery management system. These are secured to racks inside the large container. The large container is in effect the casing for these large lithium batteries. Such battery systems are often fitted with fixed

fire suppression systems and cooling systems which, as they contain gases, are themselves dangerous goods.

As it is unclear how such systems are to be dealt with in terms of placarding, marking and the information in the transport document, the Rechargeable Battery Association submitted a preliminary proposal. The proposal contained provisions for a new packing instruction and a special provision including additional information in the transport document

for the fire extinguishing and cooling systems and the gases they use, as well as placarding requirements. The discussion on this will be continued at the next session.

GHS labelling during transport

A provision was included in the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) to make clear that in accordance with the UN Model Regulations the GHS pictograms are not prescribed for transport. Therefore, they should not be affixed to means of transport as single pictograms either, but only as part of a complete GHS marking.

In memory of Lance Grainger

Lance Grainger, the former head of the dangerous goods division in the United Kingdom's Department for Transport, passed away at the beginning of October 2015. He was 77. He was head of the UK delegation at many international meetings dealing with the carriage of dangerous goods. From 1988 to 1996, he was Chairman of the UN Sub-Committee of Experts and the UN Committee of Experts.



Examples of portable tanks displaying GHS markings in addition to placards of Class 6.1 and Class 3



Next session

The 49th session will be held from 27 June to 6 July 2016 in Geneva and will continue the work on the 20th revised edition of the UN Model Regulations.

Jochen Conrad

TRANSPORT OF GOODS BY RAIL BETWEEN EUROPE AND ASIA: REVIEW OF THE SITUATION

The draft “appropriate legal provisions for the unification of the law on the transport of goods by rail between Europe and Asia” were finalised in Geneva in October 2015. It would therefore seem an appropriate moment to review the progress of the work carried out at the UNECE, which will still have to be continued in 2016.

A brief historical reminder

The signature on 26 February 2013 by 37 UNECE countries of the joint declaration on the promotion of rail transport between Europe and Asia⁴ breathed new life into the UNECE project on “Unified Euro-Asian Railway Law”.

This declaration is the culmination of three years work that was started in 2010 within the UNECE. It constitutes the political expression of the signatory States to implement the five point strategy described in the declaration, in order to establish legal conditions for railway transport equivalent to those that exist for competing modes, such as road, air, inland waterways and maritime transport.

The terms of reference of the Group of Experts set up by the UNECE in 2011 to draft the joint declaration has twice been extended, once in 2013 for two years and again in 2015 for one year.

In the 8 sessions⁵ that followed the joint declaration, the Group of Experts took a pragmatic approach and focused its work on developing uniform law for contracts of carriage of goods between Europe and Asia, in other words the issues governed by CIM for OTIF, and by SMGS for OSJD.

It goes without saying that the Secretariat of OTIF took part in this work and contributed all its expertise with a view to strengthening cooperation in the field of rail transport between Europe and Asia and to securing a single legal regime for rail transport from the Atlantic to the Pacific.

The international law that applies at present

In law, the current situation is characterised by the co-existence of two international legal regimes, CIM for OTIF and SMGS for OSJD. This co-existence causes problems in the carriage of goods between Europe and Asia.

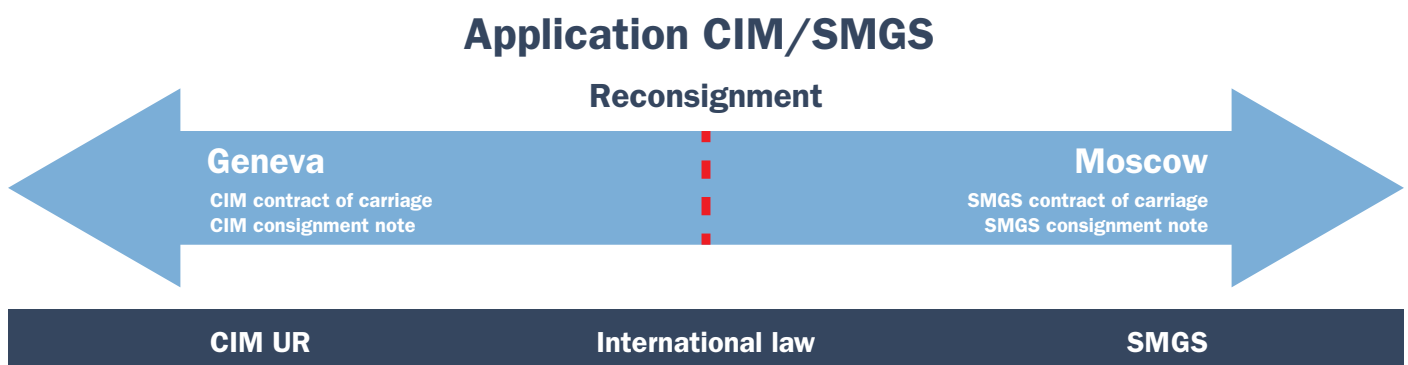
In practice, efforts are made to con-

clude two successive contracts of carriage, one subject to CIM and the other to SMGS.

In other words, when their conditions of application are met, two international conventions currently apply to the carriage of goods by rail between Europe and Asia.

From the legal point of view, the soundest solution is thus CIM transport up to the border between the two legal regimes (first contract of carriage subject to CIM) and re-consignment between the border and the final destination station in accordance with SMGS (second contract of carriage subject to SMGS). These two contracts are attested by two consignment notes, the CIM consignment note on the one hand and the SMGS consignment note on the other, as shown in figure 1. Lastly, the carriage of goods will be subject to two different liability regimes.

Applicable international law CIM/SMGS



⁴ http://www.unece.org/trans/main/sc2/sc2_geurl_itc_declaration.html

⁵ 5th session, 4 and 5 July 2013; 6th session, 2 and 3 December 2013; 7th session, 3 and 4 April 2014; 8th session, 10 and 11 July 2014; 9th session, 30 and 31 October 2014; 10th session, 11 to 13 February 2015; 11th session, 10 to 12 June 2015 and 12th session, 14 to 16 October 2015.

Thanks to the constant efforts of OSJD, CIT and OTIF, a lot of progress has been achieved in bringing together the legal provisions for the carriage of goods by rail in Eurasia, particularly with the creation of the common CIM/SMGS consignment

note, the model wagon and container list form and the uniform CIM/SMGS report model.

However, the fact remains that the two existing legal regimes continue to apply to this type of transport, which will be covered by two contracts of

carriage and subject to two different liability regimes, even though it is accompanied by one consignment note, the CIM/SMGS consignment note, as shown in figure 2.

Beginnings of harmonisation

Application CIM/SMGS



The legal regime to be put in place

Rather than creating law overarching the two legal regimes of CIM and SMGS, or creating autonomous law, the OTIF Secretariat advocated and defended the establishment of an interface regime between CIM and SMGS, limited to high-level provisions that could be put in place rapidly in the areas in which CIM and SMGS are applied, which would meet stakeholders' expectations.

The Secretariat of OTIF is in fact convinced that the broad promulgation of uniform legal rules for the carriage of goods by rail in Eurasia will only be possible if the tried and tested provisions of SMGS and CIM are taken over. In this framework, a common legal base, developed under the auspices of the UNECE and compatible with the two sets of legislation, would be such as to give a solid legal basis to a single contract.

In the OTIF Secretariat's view, the draft "appropriate legal provisions"⁶ to unify railway law between Europe and Asia, which the Group of Experts finalised in October 2015 and submitted to the Working Party on Rail Transport (SC.2) in November 2015, constitute just such an interface law or law agreed between CIM and SMGS.

This law is limited to high-level provisions which will serve as a basis for a **single contract of carriage**, evidenced by a **single consignment note** and particularly by a **single liability regime**.

In this respect, for the definition of the **scope of application**, in which the Secretariat of OTIF has invested a lot of effort, the draft appropriate provisions envisage that the legal regime will apply when the place the goods are taken over and the planned destination are in two Member States that

are contracting parties to the regime, on the dual condition that:

- the contracting parties agree to make the contract they conclude subject to this regime,
- the provisions of CIM or SMGS or of bilateral or multilateral agreements between the contracting states do not apply to the contract covering the entire journey.

In other words,

- the **application** of this new regime must be **agreed between the parties to the contract** of carriage (contractual carrier and consignor) for the continental carriage of goods when they consider it appropriate to apply it, depending, for example, on the nature of the goods and the route;
- the **direct transport of goods** must cross the border between the area in which CIM applies and that in which SMGS applies. Applying CIM to pure-

⁶ <http://www.unece.org/fileadmin/DAM/trans/doc/2015/sc2/ECE-TRANS-SC2-2015-04f.pdf>
<http://www.unece.org/fileadmin/DAM/trans/doc/2015/sc2/ECE-TRANS-SC2-2015-04e.pdf>
<http://www.unece.org/fileadmin/DAM/trans/doc/2015/sc2/ECE-TRANS-SC2-2015-04r.pdf>

ly CIM traffic and applying SMGS to purely SMGS traffic is not being called into question. This is also the case when the parties to the contract of carriage are planning both CIM/SMGS transport operations with re-consignment at the border between the two systems.

In addition, the new regime will also apply to transport performed by other means of transport as a supplement to rail transport. It includes provisions on **multimodal transport**, although these must not affect the application of international conventions or treaties that govern this type of supplementary transport.

In substance, the new regime is limited to **high level provisions** which carry over the tried and tested provisions of CIM and SMGS. They govern issues usually covered by international conventions applicable to international freight transport, such as the conclusion and performance of the contract of carriage, liability, the settlement of claims and the relationship between carriers.

What will the legal nature of the UNECE project be?

The question of implementing such

a regime remains to be resolved. SC.2 therefore decided to submit a draft resolution to the UNECE Inland Transport Committee, which will meet from 23 to 25 February 2016, which, among other things:

“Invites Governments to disseminate these legal provisions to all key stakeholders in their countries,

Encourages Railways Undertakings and International Organizations for railways to test these legal provisions, whenever possible, in practice,

Invites the Group of Experts towards the Unified Railway Law to work in order to prepare the necessary documents for rail transport following the legal provisions in the Annex – to be defined in the Terms of Reference of the Group of Experts – as well as to monitor results of pilot tests and prepare recommendations accordingly.”

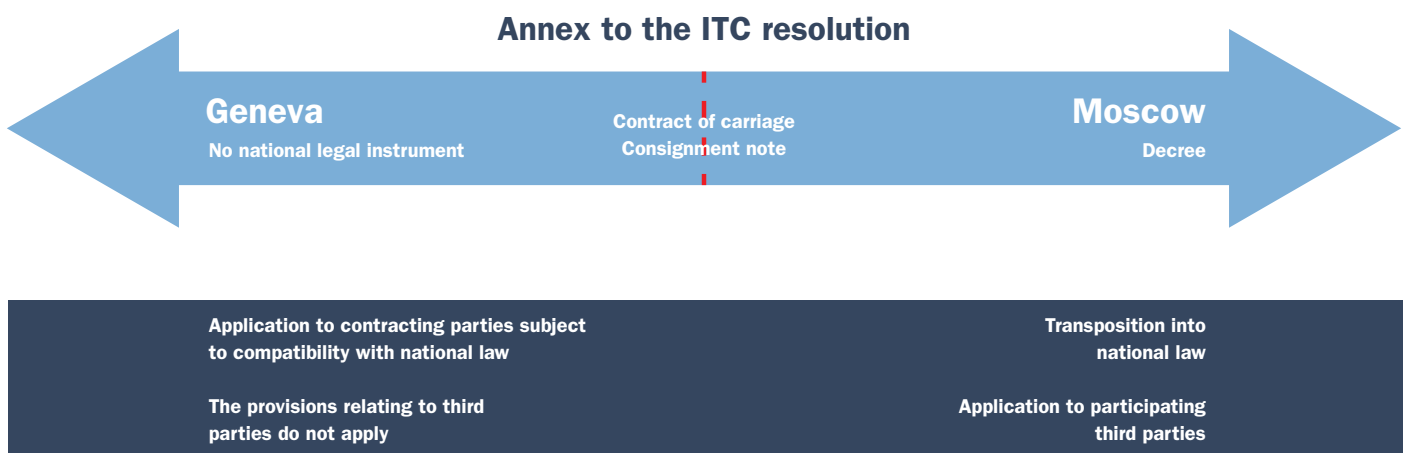
In the sphere of application of CIM, and since the revision of COTIF 1999, the contract of carriage has been a consensual contract, which means that the contract is formed by the agreement of the parties. The contract is governed by the principle of the autonomy of the parties, so the parties to the contract (carrier and

consignor) could certainly conclude a contract of carriage of goods between Europe and Asia whose clauses would incorporate the appropriate legal provisions formulated in the context of the UNECE’s work.

In the sphere of application of SMGS however, the contract of carriage is still a real contract, as it is formed by handing something over, and it is formal, which means that the law requires an act to be drafted for the contract to be valid. In addition, in some States parties to SMGS, the contract of carriage is regulated at national level.

However, until a legal instrument provides the “interface law” with a legal basis, the thorny issue arises as to the law applicable to the contract, which would be based on the “appropriate provisions”. A judge who might have to deal with a case concerning this contract would rely on the principles applicable to international private law in his national law to decide which law applies to the contract, which leads to greater legal uncertainty, as shown in figure 3.

Possible applications of the appropriate legal provisions



7 <http://www.unece.org/fileadmin/DAM/trans/doc/2016/itc/ECE-TRANS-2016-18f.pdf>
<http://www.unece.org/fileadmin/DAM/trans/doc/2016/itc/ECE-TRANS-2016-18e.pdf>
<http://www.unece.org/fileadmin/DAM/trans/doc/2016/itc/ECE-TRANS-2016-18r.pdf>

In the case in point, as it is national law that will apply, two questions are bound to arise: which public policy provisions of national law apply to the contract and the question of the effectiveness of the provisions of the contract against third parties (in this regard, see Article 41 of CIM and Article 27 of the UNECE draft), as these questions will also be examined by a judge dealing with a case concerning this contract in accordance with his national law, including conflict-of-law rules.

Pending the outcome of the discussions on the legal nature of the UNECE's draft "appropriate provisions", the UNECE proposes⁸ to extend the

Group of Experts' terms of reference for one year so that in particular, it can coordinate preparation of the documents necessary for transport by rail and/or review the documents that have already been prepared by the international bodies working in the field of transport, i.e. OSJD, OTIF and CIT. According to the Group of Experts' draft terms of reference, the following particular documents are concerned:

"Standard Model for the Consignment Note, Formal Report, Wagon List, Container Note, Charges Note, Subsequent Orders, Circumstances Preventing, Notification of Payment, Authorization to Escort, Missing Goods Report, Notification Correction, Provisional Analysis to

Transit and Wagon Labels."

It is now the task of the Inland Transport Committee to come to a decision on these at its next session in February 2016.

Although in the sphere of application of CIM, it is not the States, but the international associations of carriers which have the competence to prepare these documents (see in particular Article 6 § 8 of CIM concerning uniform model consignment notes), the Secretariat of OTIF will continue to contribute all its expertise to this work.

Iris Gries

REVISION OF THE CUI UR: THE TERMS "INTERNATIONAL TRAIN PATHS" AND "INTERNATIONAL TRAFFIC" - DECISION OF 19 MARCH 2015 BY THE MÜNSTER HIGHER ADMINISTRATIVE COURT (GERMANY)

Preliminary remark by the Secretariat

Against the background of the revision of the CUI UR initiated by the Secretary General, the decision by the Münster Higher Administrative Court is of great interest. It relates to an appeal against a decision of the regulatory authority concerning the conclusion of framework contracts and the reasons for the decision contain some helpful information clarifying various terms that are also being discussed in the CUI UR working group.

Following the decision of principle to disconnect the scope of application of the CUI UR from CIV and CIM contracts of carriage, the working group examined new criteria for the scope of application: "international transport service" or "train for international railway traffic". In so doing, this raises the question of whether new terms,

such as "international train path" for example, should be introduced and defined, whether currently used terms, such as "international traffic", must be redefined and how these terms relate to each other. In the following article, Dr Freise, who advises the Secretary General and the CUI UR working group as a consultant, summarises the most important findings (quotations from the court's decision) and uses these to draw his conclusions for the revision of the CUI UR.

Summary by Dr Rainer Freise

The Higher Administrative Court (Oberverwaltungsgericht, OVG) had to clarify the question of whether, if there is a conflict with another notification, a long distance passenger service notified to DB Netz AG by SNCF can claim the priority criterion of "international train path" on the German part of the route between Aachen South and

Dortmund (and back) if the notification by SNCF also says that the "train is coming from/going to Paris".

With reference to German legislation (implementing Directive 2001/14) and Directive 2001/14 itself, Directive 2012/34/EU (Recast) and Regulation (EU) No 913/2010 concerning a European rail network for competitive freight, the OVG decided as follows:

- International train paths constitute infrastructure capacity which crosses at least one border of an EU Member State **and which has been established by the respective infrastructure managers by way of agreement.** For the priority criterion to apply, it is not sufficient that train paths for international, cross-border train traffic are wanted.

- International rail traffic and international train paths cannot be equated (at least not in the context of allocating infrastructure capacity).

⁸ <http://www.unece.org/fileadmin/DAM/trans/doc/2016/itc/ECE-TRANS-2016-18f.pdf>
<http://www.unece.org/fileadmin/DAM/trans/doc/2016/itc/ECE-TRANS-2016-18e.pdf>
<http://www.unece.org/fileadmin/DAM/trans/doc/2016/itc/ECE-TRANS-2016-18r.pdf>

- The purpose of the priority criterion of “international freight service” is not generally to strengthen international traffic, but to ensure that the international train paths agreed with considerable effort (by the infrastructure managers involved) are actually used.

- The terms “train paths” and “services” (“*Verkehre*”) are not synonymous.

- Access to the route section from Dortmund to Aachen South requested by SNCF may very well be part of an international journey (“*grenzüberschreitender Verkehr*”), but it is not part of an international train path established by the infrastructure managers (from/to Paris).

- Up to now, the infrastructure capacity for the international Thalys service, which is the subject of this judicial procedure, has been created by linking together separate national train paths. According to the approach of the participating railway undertakings and infrastructure managers, a national train

path is allocated in each Member State concerned. There is no ready-made international train path established by agreement of the infrastructure managers beforehand and then allocated (to railway undertakings) as an entire international train path, with the involvement, incidentally, of the European Commission (as an observer, see Art. 15, para. 1 (in fine) of Directive 2001/14, Art. 40, para. 2 of the recast Directive).

- According to the participants’ approach, the purpose of the framework contract requested by SNCF is not to safeguard – at least part of – an international train path. SNCF is instead requesting infrastructure capacity for purely national train paths.

This leads to the following conclusions in terms of **considering the revision of CUI**:

1. If application of the CUI were to be made dependent upon the use of an “international train path” in the sense of the current Article 40, para. 5 of the

recast Directive, its scope of application would be very narrow.

2. As the terms “train path” (as an element of the use of infrastructure) and “railway traffic” (“*Eisenbahnverkehr*”) cannot be understood as being synonymous, it is also not sufficient for determining the scope of application of the CUI, as an international partial legal area of COTIF, simply to gear the scope towards the performance of “international railway traffic”. An element of “international use of infrastructure” is also needed in order to affirm the scope of the CUI. “**International train**” is then available as such an element and including it in the definitions in CUI should be discussed.

3. If the “Paris – Dortmund” (and back) Thalys notified by SNCF had not failed due to capacity problems, it would have performed international transport as an **international train on successive national train paths** and would certainly come under the new CUI.

*Eva Hammerschmiedová &
Dr Rainer Freise*

CALENDAR OF OTIF'S MEETINGS IN 2016

DATE	EVENT	LOCATION
14 - 18 March	RID/ADR/ADN Joint Meeting	Berne - Switzerland
12 - 13 April	14 th session of the RID Committee of Experts' working group on tank and vehicle technology	Hamburg - Germany
19 - 20 April	5 th session of the RID Committee of Experts' working group on derailment detection	Berne - Switzerland
27 April	TAF workshop (jointly organised with ERA)	Vienna – Austria
23 - 25 May	6 th Session of the RID Committee of Experts' standing working group	Berne - Switzerland
25 May	54 th Session of the Committee of Experts on the Transport of Dangerous Goods	Berne - Switzerland
31 May	4 th session of the working group "CUI UR"	Berne - Switzerland
7 - 8 June	Committee of Technical Experts 9 th session	Berne - Switzerland
9 - 10 June	2 nd session of the RID/ATMF working group	Berne - Switzerland
29 - 30 June	OTIF's Administrative Committee -125 th session	Berne - Switzerland

EVENTS WITH OTIF PARTICIPATION IN 2016

DATE	EVENT	ORG	LOCATION
11 March	4 th Research Seminar on Railway Policy	TransportNET- Laboratoire d'économie des transport-Karlsruher Institut für Technologie	Karlsruhe - Germany
15 March	Working party on the rationalisation of vehicle related registers	ERA	Lille - France
17 March	CIM Committee	CIT	Berne - Switzerland
17 March	Workshop "Carriage of Postal Items by Rail"	CIT	Berne - Switzerland
18 March	Multimodality Working group	CIT	Berne - Switzerland
22 - 24 March	ADN Translation Conference	Central Commission for Navigation on the Rhine (CCNR)	Strasbourg - France
20 April	UNIDROIT 90 th Anniversary	UNIDROIT	Rome -Italy
27 - 28 April	European Rail Summit	Railway Gazette	Brussels - Belgium
3 - 4 May	Workshop: Application of COTIF	CJSC "Azerbaijan Railways"	Baku - Azerbaijan

EVENTS WITH OTIF PARTICIPATION IN 2016

DATE	EVENT	ORG	LOCATION
9 - 12 May	WP. 15 (ADR)	UNECE	Geneva - Switzerland
12 May	CIV/SMPS Working group	CIT	Berne - Switzerland
15 - 16 May	1 st International Oil Rail & Ports Conference	UIC/ ITE-EUF	Teheran - Iran
18 - 20 May	International Transport Forum	OECD	Leipzig - Germany
24 May	CUI Committee	CIT	Berne - Switzerland
31 May - 3 June	Meeting on Annex 2 to SMGS "Rules for the Transportation of Dangerous Goods"	OSJD	Tallinn – Estonia
7 - 10 June	MC XLIV session of OSJD Ministerial Conference	OSJD	Baku - Azerbaijan
14 - 15 June	CIM Working Group	CIT	Berne - Switzerland
29 - 30 June	Railway interoperability and safety committee (RISC)	European Commission -DG MOVE	Brussels - Belgium

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Thank you for your continued interest.

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