



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

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## **CONSOLIDATED EXPLANATORY REPORT**

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Report by the OTIF Secretariat on the revisions of COTIF since OTIF's 5th General Assembly, Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1999 Protocol)

## Foreword

The Explanatory Report adopted in Vilnius (Lithuania) by OTIF's 5<sup>th</sup> General Assembly on 3 June 1999 described the genesis of COTIF 1999. Even though there is no legal basis in COTIF 1999, it forms a valuable aid to interpreting the Convention in the sense of Article 31 § 2 of the Vienna Convention on the Law of Treaties of 23 May 1969. Since then however, COTIF and its Appendices have been amended on several occasions.

By means of this consolidated Explanatory Report, the Secretariat of OTIF wishes to provide an authentic tool for interpreting the text of the Convention that will help aid understanding of the provisions it contains. In this sense, it will give rail transport users, experts and legal bodies easier access to understanding the provisions of COTIF and its Appendices.

The 8<sup>th</sup> Revision Conference (Berne, 30.4 – 9.5.1980) set up a new legal regime for the CIV and CIM conventions with the signing of the Convention concerning International Carriage by Rail on 9 May 1980.

Between May 1980 and the closing of OTIF's 5<sup>th</sup> General Assembly in early June 1999, the railway world underwent profound changes. Even in 1995, the political, economic, legal and technical conditions governing international rail traffic were no longer the same as in 1980. These changes have raised the question of whether international railway law, as codified in COTIF 1980, was still adequate for these new situations and if it was able to offer satisfactory solutions in terms of answering new questions and resolving new problems, particularly those of a legal nature.

The Central Office<sup>1</sup>, which considered itself to be a kind of engine for development and legal harmonisation at international level in railway matters, responded in the negative to this question and has demonstrated that there was a great need to adapt and devise regulations in those legal areas which are of importance for international rail transport. The Central Office was pleased to have succeeded in presenting, with its draft amendments, presented between 1995 and 1997, of COTIF 1980, of the existing CIV, CIM and RID regulations, and with its draft new Appendices to COTIF (CUV, CUI, APTU and ATMF), a complete legal system which is acceptable to all the parties concerned, at least in its fundamental elements, if not in every detail.

To achieve this, a great deal of work was necessary in terms of persuasion, eliminating numerous misunderstandings and overcoming problems of comprehension. It required the preparation of 25 sessions, with either government representatives or experts, for a total period of 100 days, and recording the results (compilation of documents, translations, editing work, reports). The mass of documents, and the examination and processing of those documents, involved a work-load for the Organisation's secretariat that was greater than that of previous years.

The fact that the revision work, which took approximately four years, was successfully completed with the signing of the Vilnius Protocol upon the closing of the 5<sup>th</sup> General Assembly on 3 June 1999, is due not only to the Organisation's secretariat and its staff members, who

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<sup>1</sup> Up to the entry into force of the Vilnius Protocol on 1 July 2006, the Central Office for International Carriage by Rail assumed the role of the Organisation's secretariat.

are very few in number, but also to the constructive attitude of the representatives of the Member States and of the international organisations and associations that were involved.

The OTIF Secretariat hoped that the work done to set up the Vilnius Protocol would yield long-lasting results and that:

- the new legal system as a whole would contribute substantially to reinforcing the competitiveness of the railways in the highly competitive international transport markets;
- the parties specifically affected by this new legal system, i.e. transport companies, goods carriers, passengers and administrations, would consider these new regulations to be fair and practicable;
- there would be no fundamental need for substantial amendment within the next ten to fifteen years.

In this respect, it is now possible to see that the Central Office was right, because not only was the entry into force of the Vilnius Protocol an obvious success, it also gave the Member States of OTIF, rail transport undertakings and all rail transport users in general a modern and reliable set of regulations, which has even exceeded expectations in terms of performing and developing international rail transport and which has not required fundamental amendment in the last fifteen years.

However, after the 24<sup>th</sup> session of the Revision Committee, several dozen more pages of explanations were added to the document on Articles 9 and 27 of COTIF and the amended Appendices E, F and G. They were presented in the form of a complementary Explanatory Report.

New pages of explanations were also added after the 25<sup>th</sup> session of the Revision Committee.

At the 25<sup>th</sup> session of the Revision Committee held in Berne on 25 and 26 June 2014, the Member States of OTIF supported the Secretary General's intention to improve the readability and consistency of the Explanatory Report by preparing a consolidated version of the Report on the basis of established law, and more specifically:

- to update it and check it from an editorial point of view and adapt the existing text to COTIF and its Appendices;
- to prepare an Explanatory Report including the explanatory documents already approved by the Revision Committee so that a consolidated text could be prepared;
- to submit the revised Explanatory Report to the Revision Committee using the written procedure so that it could be discussed at the 12<sup>th</sup> General Assembly.

Similarly, this Explanatory Report also had to be updated and editorially revised to take account of developments in the legal context, including those parts of the Convention that were not revised in the 2014/2015 round of amendments. The terminology used in the Explanatory Report also had to be adapted, as was the case in the text of the Convention and its Appendices.

## Foreword

### 4

Since the last major revision of COTIF in 1999, there has been no consolidation of the Explanatory Report. That is why it now has to be done.

This document brings together the explanations concerning the amendments adopted by the 24<sup>th</sup> session of the Revision Committee (Berne, 23-25 June 2009; partial revision) and by the 25<sup>th</sup> session of the Revision Committee (Berne, 25-26 June 2014; partial revision).

Lastly, the secretariat would like to use the occasion of this consolidated report to express personally its sincere thanks to the members of staff of the secretariat, the Chairmen of the various sessions of the Revision Committee and the General Assemblies, the delegates of the Member States and of the international organisations and associations and to the experts who advised OTIF, for their commitment, their understanding, their constructive contributions and their perseverance.

The secretariat of OTIF hopes that all those who participated in the revision work will be able to say that it was worth the effort.

Berne, September 2015

Report by the OTIF Secretariat on the revisions of COTIF  
since OTIF's 5<sup>th</sup> General Assembly

**A. Introduction**

1. The authors of the first international convention concerning the carriage of goods by rail had already realised the need for regular adaptation to economic, legal and technical changes. By means of eight ordinary revision conferences and several extraordinary revision conferences, the Member States have been able not only to adapt the rail transport law to the continuous changes on a regular basis but also to preserve the unity of that law.
2. On the basis of the procedure for amendment of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 which was drawn up by the 8<sup>th</sup> Revision Conference in 1980 and came into force on 1 May 1985, a partial revision of COTIF was undertaken in the years 1989/1990 (see 1990 Bulletin, p. 30 ff. and p. 67 ff.). Nevertheless, an in-depth revision of the Convention, or indeed of the whole of international rail law, proved to be necessary just a short time afterwards.
3. Traditionally, following each revision, the Central Office (hereinafter referred to as "the Secretariat"), in its capacity as secretariat of the former Administrative Union and of the Intergovernmental Organisation for International Carriage by Rail (OTIF), in existence since 1985, has not only compiled a report on the revision work but has also published all the documents, in the form of a bound volume, including the reports on the sessions of the Revision Committee and on the Revision Conferences. This practice was abandoned for the first time on the occasion of the above-mentioned partial revision of 1989/1990, probably because the work had been sufficiently documented by the reports on the two sessions of the Revision Committee and the report on the 2<sup>nd</sup> General Assembly of 1990.
4. For economic reasons, the Secretariat has also ceased documentation of the in-depth revision of COTIF, completed with the signing of the Vilnius Protocol on 3 June 1999, in the form of a bound volume of all the revision documents and reports. From an economic viewpoint, the use which would probably have been made of such a volume and the relatively small number of users does not justify the work-load and the costs associated with such a publication, taking into consideration the large volume of documents and reports. Consequently, the Central Office has decided to present a more detailed report on the revision work, completed with the adoption of the Vilnius Protocol. In addition to a general but succinct presentation of the legal bases, the development of the revision work and the essence of the main amendments, the report contains, in an updated form, explanatory reports on the texts submitted to the 5<sup>th</sup> General Assembly. In addition, this report was intended to facilitate and accelerate the ratification, acceptance or approval, and thus the enforcement, of the Vilnius Protocol together with its Annex, COTIF, in its amended terms.

## **B. Scope of application of COTIF in 2015**

5. At the present time the Organisation has 48 Member States in Europe, North Africa and Asia applying the uniform law of COTIF: Albania, Algeria, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iran, Iraq, Ireland, Italy, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Monaco, Montenegro, Morocco, Netherlands, Norway, Pakistan, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Tunisia, Turkey, Ukraine and United Kingdom. With effect from 1 July 2011, the European Union acceded to the uniform legal system of COTIF. Jordan is an Associate Member State of OTIF.

For the time being, the membership of Iraq and Lebanon is suspended because international railway traffic with these States is interrupted.

## **I. 1999 REVISION**

### **Legal bases and objective of the revision**

6. The revision procedure created by the 8<sup>th</sup> Revision Conference of 1980 provides for three different bodies which are competent to examine and decide upon amendment proposals, namely, the General Assembly, the Revision Committee and the Committee of Experts on the Carriage of Dangerous Goods. The revision procedure varies according to the body to which an amendment proposal must be submitted for binding decision. In particular, the decisions of the General Assembly must be ratified, accepted or approved, whereas that does not apply to the decisions of the other two bodies.
7. If an amendment proposal submitted to the General Assembly is closely connected to provisions whose amendment lies within the scope of competence of another body, the General Assembly may nevertheless assert its own competence in the matter (right of higher authority of the General Assembly). In view of the wide scope of the revision, it has proved inappropriate for certain amendment decisions to be taken by the Revision Committee and others by the General Assembly and for only the wording of provisions amended thus to be adopted. The General Assembly has made use of its right of higher authority and, at its 5<sup>th</sup> session, at Vilnius on 3 June 1999, has adopted not only the 1999 Protocol amending COTIF of 9 May 1980, but also the entire Convention in its new terms, including the Appendices. The amendment thus has the effect of preserving the legal continuity of COTIF in accordance with its Article 20 as well as the legal continuity of OTIF as an intergovernmental organisation.
8. *In accordance with the mandate granted by the 3<sup>rd</sup> General Assembly (Bern, 14-16.11.1995), the objective of the in-depth revision was to be:*
  - 8.1 to find a solution “which seeks to provide a more solid institutional basis, within the framework [...] of COTIF for the elimination of obstacles to the crossing of frontiers in international rail traffic” (Final Document, No. 7.7)

- 8.2 to find a solution to the problem of the composition of the Administrative Committee (Final Document, No. 7.8)
- 8.3 to devise, in consideration of a proposal by Belgium (General Assembly document AG 3/11 of 29.8.1995), Uniform Rules extending beyond the scope of transport law, for (Final Document, No. 7.9)
  - “transport vehicle traffic”, including technical standards concerning registration and technical admission of Railway Material on the basis of mutual recognition
  - relations between the owners of wagons and transport undertakings (registration contract)
  - relations between the owners of wagons and infrastructure managers
  - RID contracts of carriage.
9. Having first noted the status of the preparatory work concerning the in-depth revision of the Convention, the 3<sup>rd</sup> General Assembly had instructed the Secretariat to complete the preparatory work, if possible, by the end of the first quarter of 1997 and to convene the 4<sup>th</sup> General Assembly during the 2<sup>nd</sup> quarter of 1997.
10. It was not possible to adhere to this very demanding schedule. After the Revision Committee had held a total of 11 sessions between the 3<sup>rd</sup> and the 4<sup>th</sup> General Assemblies, the majority of these lasting one week, without being able to find solutions to numerous questions, some political, particularly in respect of the Convention itself, the 4<sup>th</sup> General Assembly was convened (Athens, 8-11.9.1997) with the objective of discussing the substance of certain problems and taking decisions in principle. On the one hand, the 4<sup>th</sup> General Assembly merely noted the status of the work undertaken to that point, particularly in respect of the CIV, CIM, CUV and CUI Uniform Rules and the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID). On the other hand, on the basis of the prepared documents, the General Assembly decided the guidelines in respect of the conduct of deliberations on the Convention itself within the Revision Committee. In addition, it gave the “green light” for the preparation of uniform rules for the technical admission of rail vehicles to international traffic, including its technical bases. However, the General Assembly did not permit OTIF to deal in future with customs matters relating to rail transport (Secretariat draft of a supplementary Appendix on an international customs transit system).

### **Preparatory work**

11. The following explanations are no more than a very brief outline of the total work done. Moreover, the preparatory work by the Secretariat, the work by the various groups of experts, the compilation of the draft texts and the deliberations within the Revision Committee are described in detail in the explanatory reports on the adopted texts (Amendment Protocol, Convention, etc.), which form part of this report.

12. In its circular letter of 22 January 1993, i.e. just a few days within a century after the first international Convention concerning the carriage of goods by rail came into force, the Secretariat analysed in detail the consequences of separating infrastructure management from the provision of transport services, thereby launching the later work with a view to an in-depth revision of COTIF (see Nos. 11-18 of General Points relating to the CIM Uniform Rules).
13. The Secretariat has compiled all of the draft texts of a “new” COTIF, including the Amendment Protocol and the Protocol on the privileges and immunities of the Organisation, as well as the eight Appendices planned initially (for more details, see No. 2 of General Points relating to the Protocol 1999).
14. The Revision Committee discussed these drafts in the course of a total of 21 sessions (the 1<sup>st</sup> and 2<sup>nd</sup> sessions of the Revision Committee had already taken place in 1989/1990). The draft texts submitted to the 5<sup>th</sup> General Assembly are the result of 90 days of negotiations within the Revision Committee. 32 Member States participated in the Revision Committee sessions, although only eight States (Belgium, Czech Republic, France, Germany, Italy, Netherlands, United Kingdom and Switzerland) were represented at all the Revision Committee sessions. Slovakia participated in 20 sessions, Hungary, Liechtenstein and Poland in 19 sessions, Romania in 18 sessions, Greece and Portugal in 16 sessions, Bulgaria in 14 sessions, Finland and Lithuania in 13 sessions, Austria and Croatia in 11 sessions, Spain, Monaco and Sweden in 10 sessions, Norway and Turkey in 8 sessions, Luxembourg in 6 sessions, Denmark in 5 sessions, Bosnia-Herzegovina in 3 sessions, Algeria and Lebanon in 2 sessions and Albania and Tunisia in one session. The following States did not participate at all in the Revision Committee’s deliberations: Iran, Iraq, Ireland, the former Yugoslav Republic of Macedonia, Morocco, Slovenia and Syria. A quorum was not achieved in 4 of the 21 sessions, and only temporarily achieved in 2 of the other sessions. In the sessions in which a quorum was not achieved, the Revision Committee discussed the texts without being able to adopt them definitively.
15. Although, initially, the Member States and the international organisations and associations participating in the capacity of observers defended widely diverging positions, due to the co-operation within the Revision Committee and the constructive attitude of the participants, it was possible, in almost all cases, to arrive at solutions supported by the vast majority of the Member States.

### **Progress of the 5<sup>th</sup> General Assembly**

16. The results of the work of the Revision Committee were submitted to the 5<sup>th</sup> General Assembly of the Organisation (General Assembly Final Document AG 5/3.1-10 of 15.2.1999) which, by application of Article 6 of COTIF, sat in Vilnius from 26 May to 3 June 1999 at the invitation of the Lithuanian Government.
17. Of the 39 Member States of OTIF, 29 participated in the General Assembly: Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Syria, Tunisia, United Kingdom.



18. Also participating: 3 States in the capacity of observer (Egypt, Estonia, Latvia), the European Commission, one international organisation (OSJD - Organisation for Railways Co-operation) and 7 international associations (CIT - International Rail Transport Committee, CEN - European Committee for Standardisation, IRU - International Road Transport Union, IVT - International Association of Tariff Specialists, UIC - International Union of Railways, UIP - International Union of Private Wagons, and UIRR - International Union of Combined Rail and Road Transport Companies).
19. In accordance with Article 6 of the Rules of Procedure of the General Assembly, the function of secretariat was provided by the Central Office.
20. The General Assembly elected His Excellency Vytautas Naudužas (Lithuania) as Chairman, Mr. Anders Iacobæus (Sweden) as 1<sup>st</sup> Vice-Chairman and Mr. László Polgár (Hungary) as 2<sup>nd</sup> Vice-Chairman.
21. *The General Assembly appointed the following commissions, which were constituted as follows:*
  - 21.1 Committee for verification of powers: Chairman Mr. Rudolf Metzler (Switzerland), vice-Chairman Mr. Jan J. Hilt (the Netherlands); members: Lithuania, Romania, Syria, the Czech Republic.
  - 21.2 Drafting commission: Chairman Mrs Marie-Noëlle Poirier (France), Co-Chairman Mr. Thomas Edler von Gäßler (Germany) and Mr. Robin Bellis (United Kingdom); members - French text drafting: Belgium, France, Switzerland, Tunisia; members - German text drafting: Germany, Switzerland; members - English text drafting: Finland, United Kingdom.
22. The General Assembly conducted deliberations on the basis of the Rules of Procedure which it had adopted on 2 October 1985, but with the amendments which were decided upon at the start of this session and which came into force immediately following their adoption (see No. 7.2 of the Final Document and associated Annex I).
23. The General Assembly noted the report of the Director General of the Central Office on the result of the preparatory deliberations within the Revision Committee in respect of the amendments to the Convention.
24. Despite the prolonged and intensive preparatory work by the Secretariat and the Revision Committee, the 5<sup>th</sup> General Assembly still had to discuss approximately 150 amendment proposals or suggestions, 30 of which were identical. This task was successfully completed within a relatively short period of time, thanks not only to the Chairman of the General Assembly, but also to the constructive attitude of the delegates.
25. The “1999 Protocol”, known as the Vilnius Protocol, for the modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, was adopted by the 5<sup>th</sup> General Assembly in three language versions, without any votes against. The Protocol was opened for signature in Vilnius on 3 June 1999. It was signed on that date by 22 Member States: Austria, Belgium, Bosnia and Herze-

govina, Bulgaria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, Syria and the United Kingdom.

### **Principal points of the revision of COTIF**

26. Summarised below are the essential elements of the COTIF revision. For more details, reference should again be made to the explanatory reports on the adopted texts which constitute part of this report.
27. *Institutional matters (Amendment Protocol and Convention in its new version)*
  - 27.1 In addition to the Foreword which sets out the considerations which led to the in-depth revision of COTIF, the *Amendment Protocol 1999* contains provisions of international public law which are necessary to achieve the transition from COTIF 1980 to Convention in its amended version OTIF will assume the role of depositary of the Convention in place of the Swiss Government.
  - 27.2 The following amendments are mentioned in respect of the Convention in the new version:
    - 27.2.1 The purpose of the Organisation has been expanded considerably. OTIF is to contribute to the elimination of the obstacles to the crossing of frontiers in international rail traffic insofar as the causes of such obstacles come within the jurisdiction of the States. In addition, it is to contribute to interoperability and technical harmonisation within the rail sector through the validation of technical standards and the adoption of uniform technical prescriptions.
    - 27.2.2 The Member States undertake, in principle, to concentrate their international co-operation efforts in rail matters within OTIF.
    - 27.2.3 The Organisation constitutes a framework within which the Member States can devise other international conventions which will promote, improve and facilitate international rail traffic.
    - 27.2.4 In addition to French and German, English is accepted as a third working language. The General Assembly may introduce other working languages.
    - 27.2.5 A Committee of Technical Experts and a Rail Facilitation Committee have been created.
    - 27.2.6 The Administrative Committee is composed of one third of the Member States (instead of the fixed number of 12) and is appointed for three years (5 years previous to the amendment) in order to permit more frequent changes and more intensive participation by as many Member States as possible. The General Assembly also has to meet regularly every three years (instead of every 5 years previous to the amendment).
    - 27.2.7 A biennial basis is to be used for the work programme, the budget and the accounts.

- 27.2.8 The tasks of the Central Office, as the secretariat of the Organisation, are in future to be fulfilled by the Secretary General, as an organ of OTIF, nominated by the General Assembly.
- 27.2.9 A list of lines as a basis for the application of the CIV/CIM Uniform Rules is kept, in principle, only in respect of maritime and trans-frontier inland waterway services.
- 27.2.10 The financing system takes account of both the length of the railway infrastructure of the Member States and their economic rating according to the allocation key for contributions to the United Nations.
- 27.2.11 The revision procedure has been accelerated further. Nevertheless, the objective of subjecting all the Appendices, in their entirety, to the simplified revision procedure has not yet been achieved.
- 27.2.12 Accession to the Convention is open to regional economic integration organisations which are themselves competent to adopt their legislation which is mandatory for their members (e.g. the European Economic Community, which has become the European Union).
- 27.2.13 The status of “Associate Member” has been introduced.
- 28. *International law on the carriage of passengers (CIV UR)*
- 28.1 In principle, the application of the Uniform Rules is independent of a system of registered lines.
- 28.2 The international contract of carriage by rail is to be conceived as a consensual contract (before the amendment: formal contract), as is the case with maritime transport, in accordance with the Athens convention and with air transport, in accordance with the Warsaw Convention.
- 28.3 The CIV Uniform Rules no longer provide for any obligation to carry or any tariff obligation and they grant the contracting parties a large amount of contractual freedom.
- 28.4 The majority of the maximum liability amounts have been increased (exception: loss of and damage to transported motor vehicles).
- 28.5 The legal status of the substitute carrier is regulated following the example of the Athens Convention.
- 28.6 The carrier is liable in respect of the client, even in the case of damages whose cause lies within the scope of responsibility of the manager of the rail infrastructure.
- 28.7 Provision is made for strict, objective liability on the part of the carrier in cases of the cancellation of trains, delay or missed connections; there are only a few recognised grounds for exemption from this liability, but on the other hand consequential damage is limited (accommodation costs and costs occasioned by the notification of persons awaiting the traveller).

29. *International law on the carriage of goods (CIM UR)*

- 29.1 Harmonisation with the law as applicable to other modes of transport, particularly with the Convention on the Contract for the International Carriage of Goods by Road (CMR), has been achieved to a large extent.
- 29.2 In principle, the application of the Uniform Rules is independent of a system of registered lines.
- 29.3 A contractual extension of the area of application is possible when only the place of departure *or* the place of destination is located within a Member State. This also permits the concluding of direct contracts of carriage, in accordance with the CIM Uniform Rules, in East-West traffic with States in which the Convention concerning International Goods Traffic by Railway (SMGS) is applied.
- 29.4 The contract of carriage is conceived as a consensual contract (before the amendment: actual, formal contract); the railway consignment note is only a documentary proof. In this, the international law on the carriage of goods by rail follows the solution that is applicable to other modes of transport (CMR, Hamburg Rules, Warsaw Convention).
- 29.5 The CIM Uniform Rules no longer provide for an obligation to carry or any tariff obligation. The contracting parties are accorded a large amount of contractual freedom, e.g. in respect of determination of the itinerary, delivery timeframes and conditions of payment.
- 29.6 The maximum liability amount of 17 Special Drawing Rights is maintained. The carrier may, however, extend his liability.
- 29.7 The legal status of the substitute carrier is regulated following the example of the Hamburg Rules.
- 29.8 In place of the provisions included in the Regulations concerning the International Haulage of Private Owners' Wagons by Rail (RIP), special provisions have been devised within the framework of the CIM Uniform Rules in respect of the transportation of vehicles as goods, as well as in respect of the basis of liability (liability for presumed fault) and compensation (use value). These special provisions also apply to the transportation of intermodal transport units.
- 29.9 The grounds for exemption from liability are reduced in respect of rail-sea traffic, in particular, nautical error is not a ground for exemption.

30. *International Carriage of Dangerous Goods by Rail (RID)*

- 30.1 The Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) becomes an Appendix to COTIF. The application of RID therefore no longer depends on the existence of a CIM contract of carriage.

- 30.2 Creating definitions of those participating in a transport operation involving dangerous goods and laying down their obligations (in the Annex to RID) results in greater legal clarity.
- 30.3 In the Annex to RID, legal bases are contained for special provisions concerning complementary transportation on maritime routes.
- 30.4 Provisions are also provided in the Annex to RID in respect of administrative co-operation, safety advisors and a uniform system of reports on accidents or incidents.
- 30.5 The carriage of dangerous goods as hand luggage, registered luggage or on board motor vehicles on motorail trains is dealt with in detail in the Annex to RID.
- 31. *Use of Vehicles in International Rail Traffic (CUV UR)*
  - 31.1 A clear distinction is made between technical admission and the contract of use of vehicles.
  - 31.2 All categories of wagons (before the amendment: wagons called network wagons, private wagons and other wagons, which are not registered with a railway for the purpose, for example, of fulfilling a peak period requirement) and all forms of contract of use are treated in the same manner, as optional law. The distinction made between the different types of contract (“registration contract”) has been removed.
  - 31.3 The contracting parties have been accorded a very large amount of contractual freedom. It will still be possible to conclude multilateral contracts in accordance with the Regulations on the Reciprocal Use of Wagons (RIV), which, after 1 July 2006 became the General Contract of Use of Wagons (GCU) and Carriages and Vans (RIC) in International Transport.
  - 31.4 The CUV Uniform Rules are limited to regulating the liability and subsidiary place of jurisdiction. Only the provisions concerning prescription are binding.
- 32. *Use of the Railway Infrastructure in International Traffic (CUI Uniform Rules)*
  - 32.1 The CUI Uniform Rules are limited to regulating the contractual relations, particularly the responsibility, between the manager of the railway infrastructure and the carrier, as well as the actions of the auxiliaries of the infrastructure manager or of the carrier against the other party to the contract of use. They do not affect provisions of public law, such as e.g. the European Union (EU) directives concerning rights of access and the conditions of the latter.
  - 32.2 Binding provisions concerning liability prevent the uniform regulations from being bypassed by competing proceedings (tort or quasi-tort).
  - 32.3 In other respects the CUI Uniform Rules accord a large amount of contractual freedom to the parties in the devising of their rights and obligations, e.g. with regard to the scope of use, payment, duration of the contract, etc.

- 32.4 The courts of the Member State in which the registered office of the infrastructure manager is located are designated as the subsidiary place of jurisdiction.
- 32.5 The period of limitation for actions (3 years) is made compulsory.
- 32.6 Litigation agreements are permitted: the parties to the contract may agree conditions in which they will assert their rights to compensatory damages in respect of the other party to the contract or in which they will renounce the assertion of such rights.
- 33. *Law on the Technical Admission of Railway Material*
  - 33.1 *Validation of Technical Standards and Adoption of Uniform Technical Prescriptions (APTU Uniform Rules)*
    - 33.1.1 The APTU Uniform Rules stipulate the procedure for *validation* of technical standards and for the adoption of uniform technical prescriptions applicable to railway material intended to be used in international traffic.
    - 33.1.2 The purpose of the APTU Uniform Rules is to ensure interoperability of the technical systems and components which are necessary in international rail traffic.
    - 33.1.3 The validated technical standards and the adopted uniform technical prescriptions must contribute to the ensuring of safety, compatibility, reliability and availability in international traffic and must take account of the protection of the environment and public health.
    - 33.1.4 The devising of technical standards remains within the competence of the national or international standardisation bodies which have been responsible for these matters hitherto (e.g. CEN, CENELEC, ETSI, etc.) or the international organisations concerned with railway matters, such as the UIC and OSJD.
    - 33.1.5 The APTU Uniform Rules establish, in rail matters, a legal basis which is similar to that provided in the Geneva Agreement of 1958 on homologation with regard to road traffic.
    - 33.1.6 The validated technical standards both take over from the International Convention on the Technical Unity of Railways dating from 1882/1938 and replace the various provisions for the admission of vehicles of the RIV and RIC, as well as the UIC technical leaflets.
  - 33.2 *Technical Admission of Railway Material Used in International Traffic (ATMF Uniform Rules)*
    - 33.2.1 The ATMF Uniform Rules establish the procedure according to which railway vehicles and other railway material are admitted for use in international traffic.
    - 33.2.2 The technical admission comes within the scope of competence of the national authorities (or international authorities if applicable) having competence in such matters in accordance with the laws and provisions in force in each Contracting State.

- 33.2.3 The authorities may transfer to recognised qualified bodies, including companies, the competence to grant technical admission, provided that this is monitored by the authorities. However, the creation of monopolies for the benefit of companies which are in a competitive situation is prohibited.
- 33.2.4 Technical admission is to be effected either by the granting of admission to operation to a given individual railway vehicle or, in two stages, by granting admission of a type of construction to a given type, then operating approval to individual vehicles which conform to this construction type, using a simplified procedure.
- 33.2.5 Technical admission is to be effected on the basis of the technical standards validated and the technical prescriptions adopted in accordance with the APTU Uniform Rules.
- 33.2.6 Technical admission by the competent authority of a Contracting State must be recognised by the authorities, rail transport undertakings and infrastructure managers without any need for re-inspection or technical re-approval.
- 33.2.7 Technical admission is to be proved by means of certificates drawn up in accordance with uniform models.

#### **Concluding remarks on the 1999 revision**

- 34. In conclusion, it can be said that the Vilnius Protocol has extended the powers and area of activity of OTIF in such a way that this organisation will be able to become an intergovernmental organisation following the example of the International Maritime Organisation (IMO) and the International Civil Aviation Authority (ICAO), with responsibility for dealing, at state level, with all questions relating to rail transport.
- 35. With the signing of the Amendment Protocol, known as the Vilnius Protocol, on 3 June 1999, an important step was taken in the development of international rail transport. The 1999 Protocol remained open for signature until 31 December 1999.
- 36. After being ratified, accepted or approved by more than two thirds of the Member States, the 1999 Protocol and, consequently the revised COTIF, entered into force on 1 July 2006.

## **II. REVISION OF COTIF IN 2009**

- 37. The 24<sup>th</sup> session of the Revision Committee was held in Berne from 23 to 25 June 2009. Its main objective was to adapt COTIF Appendices E (CUI), F (APTU) and G (ATMF) to developments that have taken place in EC (now the EU) law. The consequence of the entry into force on 1 July 2006 of the COTIF of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, was that all the Member States of the European Union and Norway, which is also a member of OTIF, submitted declarations that, in accordance with Article 42 § 1, 1<sup>st</sup> paragraph of COTIF, they would not apply these Appendices.
- 38. With regard to the Basic Convention, this session of the Revision Committee took the opportunity to remove the "gold franc" from the Convention by amending Arti-

cle 9 (Unit of account), for which it was competent, and also, by deleting certain parts of Article 27 (Auditing of accounts), to free itself of the obligation to have to organise a session for even the slightest amendment to these provisions.

39. With regard to the amendments to the CUI, the Committee used the results of a "CUI group" made up of representatives of the European Commission, the Secretariat of OTIF and legal experts from the European Union (EU) Member States and Switzerland. During the course of several sessions, this group had identified some incompatible aspects which could have given rise to disputes between the law of the EC (now the EU) and the CUI and drafted appropriate proposals to resolve them. The amendments to Appendix E (CUI) took into account developments in EC legislation (particularly Directives 2001/14/EC, 2004/49/EC et 2004/51/EC and Regulation EC/1371/2007).

In addition, the Revision Committee approved the idea of using a supplementary explanatory report, which is integrated into this one, to draw attention to the fact that in addition to all existing obligations in accordance with COTIF, international rail transport originating from non EU Member States with a destination in the EU is subject to EU legislation. This Report has been drafted in such a way that it can be considered as "supplementary means of interpretation" within the meaning of Article 32 of the 1969 Vienna Convention on the Law of Treaties. It also aims to highlight those areas where there is ambiguity or legal uncertainty as a result of the existence of two separate legal regimes which have been acknowledged to overlap in certain respects, and therefore draws the attention of operators to the existence of provisions of EU law.

Where the Explanatory Report refers to the EU Member States, this also includes, *mutatis mutandis*, those States in which EU law applies as a result of international agreements concluded with the EU.

40. With regard to the technical Appendices, the "Schweinsberg group"<sup>2</sup> set up in 2004, in which all the OTIF Member States, the European Commission and the sector organisations were able to participate, had undertaken to adapt the APTU and ATMF Appendices to the Community's legal instruments, which have been considerably broadened since these two Appendices were adopted, particularly in the areas of rail safety and interoperability. With regard to the application of the technical provisions relating to railway material used in international rail traffic, the objective of the working group was to define when Community law, now European Union law, took precedence (or not) over the law of COTIF, and to agree on the types of approvals and technical certificates that should be mutually recognised.

The solution found is to align the Uniform Technical Prescriptions (UTP) of the COTIF system with the Technical Specifications for Interoperability (TSI) adopted in the law of the EC, now EU law.

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<sup>2</sup> The Schweinsberg group was set up in 2004 and owes its name to Mr Ralf Schweinsberg, the vice-chairman of the German Federal Office for Railways, which is in charge of ensuring rail safety on the German railway network. Mr Schweinsberg chaired this working group until it finished its work in 2006.



41. To a large extent, the Revision Committee followed the proposals of the two working groups and agreed not only some amending texts, but also the associated explanatory reports.

As technical interoperability was more advanced in the EU than in the OTIF zone, the amendments to the two technical Appendices, APTU and ATMF, adopted by the Revision Committee were more extensive.

With the revision of Appendices E, F and G in 2009, the law of COTIF became entirely compatible with EU law and the new version of these Appendices was able to enter into force on 1 December 2010.

42. In accordance with the outcome of the 24<sup>th</sup> session of the Revision Committee, OTIF's 9<sup>th</sup> General Assembly held in Berne on 9 and 10 September 2009 also approved:
- the editorial adaptation of the references to "Article 27 § 2 to 5" in Article 14 § 6 and to Article 33 § 3 a) of the Convention,
  - the Explanatory Report concerning Articles 1, 4, 8 and 9 of CUI,
  - the editorial adaptations and the Explanatory Report concerning Articles 1, 3, 9, 10 and 11 of APTU and
  - the editorial adaptations and the Explanatory Report concerning Articles 1, 3 and 9 of ATMF.

### **III. ACCESSION OF THE EUROPEAN UNION TO COTIF**

43. On 23 June 2011 the European Union (EU) acceded to COTIF and the accession agreement entered into force on 1 July 2011.

OTIF's 10<sup>th</sup> General Assembly, which met for an extraordinary session in Berne on 22 and 23 June 2011, decided by 27 votes in favour, with no votes against and 6 abstentions, to approve the agreement on the EU's accession to COTIF (Art. 14 § 2 n) of COTIF). Article 38 of COTIF provided the corresponding legal basis.

It was not easy to arrive at a consensus on the agreement for the EU's accession to COTIF. The discussions went on for several years before a conclusion was reached. Switzerland's mediation to help remove the last remaining obstacles was very valuable. During the EU's discussions with OTIF, the European Commission was acting on a mandate from the Council of the EU and the accession agreement was finally approved by the European Parliament and the EU Council.

According to the accession agreement, Article 2, which refers to the so-called "disconnection clause", prescribes that "in their mutual relations, Parties to the Convention which are Member States of the EU shall apply EU rules and shall therefore not apply the rules arising from that Convention except in so far as there is no EU rule governing the particular subject concerned".

In addition, the EU does not contribute to the budget of OTIF and does not take part in decisions concerning the budget. It does not take part in the work of the Administrative Committee either.

For decisions in matters where the EU has exclusive competence, the European Commission exercises the voting rights of its Member States. For decisions in matters where the EU shares competence with its Member States, either the EU or its Member States vote. In other cases, the EU Member States vote individually.

In addition, the accession of the European Union to COTIF has led most of the EU Member States to lift their reservations on the non-application of Appendices E, F and G to COTIF.

#### **IV. REVISION OF COTIF IN 2014**

44. The 25<sup>th</sup> session of the Revision Committee was held in Berne on 25 and 26 June 2014.

44.1 Revision of the Basic Convention

Since 2012, the auditor had been recommending that OTIF should "do what is necessary to initiate the process of reform of this provision of COTIF so that Art. 27 of COTIF only contains the general elements of the audit of the accounts and to deal with the details of the auditors' tasks in the Organisation's Finance and Accounts Rules".

It was as a result of this recommendation that the Secretariat proposed to amend Article 27 of COTIF: this amendment was adopted. These provisions now enable the auditors' monitoring powers to be guaranteed in their integrity in accordance with the international standards in force.

44.2 Revision of the CUV Uniform Rules

The Revision Committee adopted the amendment to Article 2 of the Uniform Rules concerning the Contract of Use of Vehicles in International Rail Traffic (CUV), Appendix D to the Convention, the aim of which was to include in the legal text a new definition of "keeper" in order to align it as much as possible with the definition in Directive 2008/110/EC, which has been taken over in the ATMF UR, bearing in mind the particular features of the CUV UR.

44.3 Revision of the CUI Uniform Rules

With regard to the proposal to amend the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI), Appendix E to the Convention, the Committee approved some editorial amendments to Article 5 *bis* and the term "European Communities" was replaced by "European Union" to take account of the entry into force of the Treaty of Lisbon.

#### 44.4 Revision of the ATMF and APTU Uniform Rules

The Revision Committee adopted all the proposals to amend the Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF), Appendix G to COTIF, in accordance with the texts proposed by OTIF's Committee of Technical Experts.

The conclusions of the ad-hoc safety subgroup approved by the Committee of Technical Experts in June 2014 were the motivating factor in the revision of ATMF. Among other things, they ended in a draft new Article 15a on the composition and operation of trains and in an amendment to Article 17 § 1 on the immobilisation and refusal of vehicles.

In addition, ATMF was brought into line with recent developments in European Union legislation. Compared with the 2011 version, the revised version of ATMF aims to outline more clearly the functions and mutual relations of the:

- States parties,
- competent authorities,
- assessment bodies.

The 2011 version of ATMF used different terms for the same concept, such as “bodies recognised as suitable”, “the bodies”, “authority carrying out technical admission”, “the bodies responsible for carrying out assessments”, “approving authority”. Where possible, these expressions were replaced by “competent authority” or “assessment body”, depending on the case.

In order to harmonise with the terminology used by the European Union and in other OTIF texts, the term “entité en charge de la maintenance”/“ECM” was replaced by “entité chargée de l’entretien”/“ECE” in the French version. “Fichier technique” was replaced by “dossier technique” and “fichier de maintenance” was replaced by “dossier de maintenance”.

The Revision Committee has also approved the partial revision of Appendix F concerning the validation of technical standards and the adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU UR) to take account of the latest amendments to the ATMF UR and thus to maintain consistency following the complete revision of Appendix G.

**Protocol**  
**of 3 June 1999**  
**for the Modification of the Convention concerning International Carriage by Rail**  
**(COTIF) of 9 May 1980 (1999 Protocol)**

**Explanatory Report<sup>3</sup>**

**Background**

1. The decisions taken by the 5<sup>th</sup> General Assembly (Vilnius, 26.5 - 3.6.1999) concerning the 1999 Protocol for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, in the terms of the Amendment Protocol of 20 December 1990, and the opening of the 1999 Amendment Protocol for signature at the end of the 5<sup>th</sup> General Assembly mark the final point of the in-depth revision of COTIF. Entry into force of the Protocol is subject to its ratification, acceptance or approval by more than two thirds of Member States (Art. 20, § 1 COTIF 1980).
2. The preparatory work within the Secretariat was started in 1993, initiated essentially by Council Directive 91/440/EEC of 29 July 1991 on the development of Community's railways. In its circular letter of 22 January 1993, the Secretariat presented the Member States of the Intergovernmental Organisation for International Carriage by Rail (OTIF) with an analysis of the consequences of the Directive 91/440/EEC of 29 July 1991 for international rail transport law. In 1994, the Secretariat had sent a questionnaire to the Member States of OTIF and to the international organisations and associations involved. This questionnaire asked the opinions of the Member States and of the international organisations and associations concerning the need to amend COTIF and its Appendices, or the usefulness of such amendment. On the basis of the responses, which were not very numerous, the mandate of the 3<sup>rd</sup> General Assembly (14 - 16.11.1995, see No. 7.9 of the Final Document, published in the 1995 Bulletin, p. 193), as well as its knowledge and own convictions, the Secretariat submitted the following drafts during the years 1995, 1996 and 1997:
  - Uniform Rules concerning the Contracts of International Carriage of Goods by Rail (CIM Uniform Rules) of 5 May 1995 (published in the 1995 Bulletin, pp. 88 and 118)
  - Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV Uniform Rules) of 25 January 1996 (published in the 1996 Bulletin, pp. 17 and 62)
  - International Customs Transit System for Goods Carried by Railway (RTD) of 15 March 1996 (published in the 1998 Bulletin, p. 378)

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<sup>3</sup> The articles, paragraphs, etc. which are not specifically designated are those of the 1999 Protocol; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

- Uniform Rules concerning Contracts of Reciprocal Use and the Registration of Vehicles (UIV Uniform Rules) of 4 April 1996 (published in the 1996 Bulletin, pp. 106, 110 and 114)
  - Uniform Rules concerning the Contract of Use of Railway infrastructure (RUI) of 1 July 1996 (published in the 1996 Bulletin, pp 181 and 187)
  - 1997 Protocol of 30 August 1996 for the modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (published in the 1996 Bulletin, pp. 217 and 221)
  - Convention concerning International Carriage by Rail (COTIF), Annex to the 1997 Protocol, of 30 August 1996 (published in the 1996 Bulletin, pp. 228 and 258)
  - Uniform Rules concerning the Technical admission of Railway Vehicles (ATV Uniform Rules) of 1 July 1997
  - Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) without its Annex of 1 July 1997 (published in the 1997 Bulletin, pp. 255 and 268)
  - Uniform Rules concerning the Recognition and Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions for Railway Material Intended to be used in International Traffic (APTU Uniform Rules) without the Annexes of 19 December 1997 (published in the 1998 Bulletin, pp. 2 and 7)
  - Uniform Rules concerning the Technical admission of Railway Material Intended to be used in International Traffic (ATMF Uniform Rules) of 19 December 1997 (published in the 1998 Bulletin, pp. 16 and 26)
3. In accordance with Article 6, § 7 of COTIF 1980, these drafts were examined by the Revision Committee with a view to preparation of the decisions to be taken by the General Assembly. In total, there were 21 Revision Committee sessions. In addition, the Secretariat organised three sessions with experts for the purpose of preparing its drafts. The meetings in detail:
- Secretariat meeting with experts in connection with the CIV Uniform Rules (16 - 18.10.1995)
  - 3rd session of the Revision Committee: 1st reading of the draft CIM Uniform Rules (11 - 15.12.1995)
  - Secretariat meeting with experts in wagon law (9 - 11.1.1996)
  - 4th session of the Revision Committee: continuation of the 1st reading of the draft CIM Uniform Rules (25 - 29.3.1996)
  - 5th session of the Revision Committee: 1st reading of the draft CIV Uniform Rules (17 - 21.6.1996)

- 6th session of the Revision Committee: continuation of the 1st reading of the draft CIM Uniform Rules (26 - 29.8.1996)
- 7th session of the Revision Committee: continuation of the 1st reading of the draft CIV Uniform Rules (14 - 18.10.1996)
- 8th session the Revision Committee: 1st reading of the draft UIV Uniform Rules (11 - 15.11.1996)
- 9th session of the Revision Committee: 1st reading of the draft RUI (Uniform Rules concerning the Contract of Use of the Railway Infrastructure) (9 - 13.12.1996)
- 10th session of the Revision Committee: 1st reading of the draft COTIF (25 - 28.2.1997)
- 11th session of the Revision Committee: continuation of the 1st reading of the draft COTIF (18 - 20.3.1997)
- 12th session of the Revision Committee: continuation of the 1st reading of the draft UIV Uniform rules (5 - 7.5.1997)
- 4th General Assembly (8 - 11.9.1997): decisions on the guidelines with regard to the continuation of deliberations within the Revision Committee concerning the draft of a new COTIF. The General Assembly also noted the status of the work done.
- 13th session of the Revision Committee: 2nd reading of the draft COTIF (27 - 30.10.1997)
- Secretariat meeting with experts : discussions of the draft ATV Uniform Rules with a view to preparing the draft APTU Uniform Rules and ATMF Uniform Rules (2 - 4.12.1997)
- 14th session of the Revision Committee: continuation of the 2nd reading of the draft COTIF (19 - 23.1.1998)
- 15th session of the Revision Committee: 1st reading of the draft APTU Uniform Rules and ATMF Uniform Rules (2 - 6.3.1998)
- 16th session of the Revision Committee: 2nd reading of the draft CIM Uniform Rules (23 - 27.3.1998)
- Seventeenth session of the Revision Committee: first reading of the draft RID, second reading of the draft RUI Uniform Rules concerning Contract of Use of Railway infrastructure (subsequently : CUI Uniform Rules) and CIV Uniform Rules (4 - 7.5.1998)
- 18th session of the Revision Committee: continuation of the 1st reading of the draft APTU Uniform Rules and ATMF Uniform Rules (25 - 28.5.1998)

- 19th session of the Revision Committee: continuation of the 2nd reading of the draft COTIF (9 - 12.6.1998)
  - 20th session of the Revision Committee: 2nd reading of the draft RID and continuation of the 2nd reading of the draft UIV Uniform Rules (subsequently : CUV Uniform Rules) and CIM Uniform Rules (1/2.9.1998)
  - 21st session of the Revision Committee: third reading of the draft COTIF, 1st reading of the draft Amendment Protocol 1997 (subsequently: 1999) and first reading of the Protocol on Privileges and Immunities, in the version in force (23 - 28.10.1998)
  - 22nd session of the Revision Committee: 2nd reading of the draft Amendment Protocol 1999, 4th reading of the draft COTIF and partial discussion of other proposals relating to the CIV/CIM/CUV/CUI and APTU Uniform Rules (1 - 4.2.1999)
  - 23rd session of the Revision Committee: continuation of the discussion of the other proposals relating to the CIM/CUI/APTU and ATMF Uniform Rules (23.3.1999)
4. From 1993, the draft of the new RID, as a separate Appendix to COTIF, was discussed in 15 sessions (as at June 1999) of a Commission working group of experts on RID. It was submitted to the Revision Committee for the first time in the 17<sup>th</sup> session. See also the Explanatory Report on RID.
  5. Following the meeting of experts in December 1997, the draft ATV Uniform Rules were incorporated in the draft APTU Uniform Rules and ATMF Uniform Rules. The draft RTD was not discussed within the Revision Committee, since the 4<sup>th</sup> General Assembly had decided that COTIF should not include such an Appendix (see also 1998 Bulletin, p. 370).
  6. The results of the deliberations (with the exception of the results of the 23<sup>rd</sup> session of the Revision Committee of 23.3.1999) and the explanatory reports were set out in General Assembly documents AG 5/3.1 to AG 5/3.10 of 15 February 1999. It was on the basis of these texts that the 5<sup>th</sup> General Assembly took its decisions.
  7. At the final vote, the 5<sup>th</sup> General Assembly unanimously adopted the 1999 Protocol in its entirety, with the previously decided amendments.

### **General Points**

1. In substance, the Amendment Protocol and the appropriate provisions of the Convention itself (see General Assembly document AG 5/3.2 of 15.2.1999 and the explanatory report relating to it) far exceed the framework concerning the purpose and functions of the Organisation set out in Article 2 of COTIF 1980. The Protocol and COTIF in its new terms seek to create an international organisation at State level which deals with *all the major questions* relating to *international rail traffic* which come within the *remit of the States* (see Articles 2 to 4, COTIF).

2. Following the example of the International Civil Aviation Organisation (ICAO) and the International Maritime Organisation (IMO), OTIF constitutes the *only* inter-governmental organisation within which the Member States resolve the questions and problems which arise in matters relating to international rail traffic and which come within the *responsibility of the States* (Article 3 of COTIF). In addition to the legal bases for international rail transport, i.e., transport law (CIV Uniform Rules and CIM Uniform Rules), these matters include:
  - The safety aspects of railway operation, particularly in the transport of dangerous goods (current and future RID)
  - The use of private wagons and railway wagons
  - Liability in the use of the infrastructure, particularly that of third parties
  - The elimination of obstacles in the crossing of borders (“facilitation”)
  - Technical questions (harmonisation and standardisation of vehicles and the infrastructure). The elimination of obstacles in the crossing of borders does not preclude customs matters from being dealt with under OTIF. This also applies to environmental protection aspects, particularly with regard to the reduction of noise nuisance caused by rail traffic, which may be discussed within the context of technical questions
  - Furthermore, OTIF constitutes a framework within which the Member States are able to devise other international conventions such as, for example, of financial guarantees for investments in railway vehicles and new regulations concerning the distraint of railway stock.
3. In global-scale international traffic, as far as civil aviation and maritime navigation are concerned, all of these questions are dealt with by single intergovernmental organisations, namely, the ICAO and the IMO respectively. By contrast, on the basis of the geographical area of the Member States of OTIF, the rail sector is regulated by a multitude of supra-national, intergovernmental and semi-state organisations. This results in a conflict of powers, duplication of posts, a flood of documents, reduced efficiency and the need for a large degree of co-ordination and information exchange. See also the explanations regarding Article 3 of COTIF. In addition to OTIF, the following organisations also deal with railway questions:
  - As a single, supra-national organisation, the European Community (EC), which has become the European Union (EU), has been granted, on the basis of the Treaties of Rome, Maastricht, Amsterdam, Nice and Lisbon, some exclusive powers which have replaced the powers and sovereignty rights of its Member States
  - The United Nations Economic Commission for Europe (UNECE)
  - The European Conference of Ministers of Transport (ECMT), which has now become the International Transport Forum



- The Organisation for Railways Co-operation (OSJD)
  - The International Union of Railways (UIC), with numerous sub-organisations such as the Central Compensation Bureau (BCC), the European Rail Research Institute (ERRI), Forum Train Europe (the former European Timetable Conferences) etc.
  - The International Rail Transport Committee (CIT)
  - The Community of European Railways, which has become the Community of European Railways and Infrastructure Companies (CER)
  - The Arab Union of Railways (UACF)
  - The European Infrastructure Managers' Organisation (EIM)
  - RailNetEurope (RNE).
4. The system before the 1999 Protocol, and the fact that a large proportion of the Member States of OTIF had entrusted and ceded state powers, particularly with regard to the establishment of standards in widely differing areas, to the national railways and their international associations, primarily the UIC, were both acceptable and understandable as long as international rail traffic was linked to a network and transport monopoly of precisely those railways which, in the majority of cases, were part of the public administration. This was also the consequence of the Governmental Conferences of Portorož (1921) and Genoa (1922).
5. The structural, economic and legal changes brought about by the Directive 91/440/EEC, at least for the EC Member States, no longer allow the maintenance of the former system whereby the States, called upon to act, transfer their powers to the railways. It is also for competitive reasons that the States have to resume the tasks which ensue from state sovereignty and which therefore come within the scope of their remit.
6. The legal and organisational separation of infrastructure and transport already undertaken in certain Member States, the creation of rail transport undertakings with the legal status of private companies (private company, private limited company), the beginning privatisation of those companies (sale of shares held by the State) and the progressive liberalisation in the use of the infrastructure have had the effect that international rail traffic is progressively adapting, on an international scale, to the situation that prevails in civil aviation and maritime navigation.
7. In aviation, from time immemorial international traffic has operated as follows: an air transport company, generally with the legal status of a private company, transports passengers and goods from one airport (use of a foreign infrastructure under private or public management) and lands in an airport (again, use of a foreign infrastructure) in another State. To do this, when flying over the national territories of other States (air spaces), the company makes use of the state air safety systems. This procedure is regulated by the Chicago Convention of 7 December 1944 and the bilateral agreements between the States relating to air traffic. The market, organised in

this way, is highly competitive.

8. The situation is similar for international rail traffic. A rail transport company undertakes the international transportation of passengers and goods from a station, which may not be managed by that company but by a state authority or by a private company, to a station located in another State, by using its own infrastructure or a foreign infrastructure which the company will use in every case beyond the border, this being without any involvement on the part of a second or third rail transport company. One can imagine certain passenger or goods traffic services being operated by several competing rail transport companies. In this regard, there are some initial approaches that stand out, but they are still hesitant. All aspects which are not of a purely commercial nature, resulting from such a competitive situation, should be regulated and handled at state level in an impartial and non-discriminatory manner and, if possible, in accordance with uniform rules, provided, of course, that there is a need to regulate the matter at state level. This applies, firstly, to the establishment of standards in the legal and technical fields and also, in a subsequent phase, to the application of uniform international law in railway matters.
9. With regard to application of the law, likewise, the development of civil aviation serves as an example and shows the route to follow. With the creation of the Joint Aviation Authorities (JAA), a first step was taken towards co-operation and standardisation of state activities in the area of (state) aeronautical inspection. A similar structure would be one that could be recommended for the areas of technical admission and the inspection of railway stock (rail inspection). A first step, in the same direction was taken with the establishment, in 1997, of the International Liaison Group for Governmental Rail Inspectors (ILGGRI). However, OTIF could also constitute the nucleus of such an international rail inspection authority.
10. If there was unrestricted application of the possibilities provided by COTIF, in the terms of the Annex to the 1999 Vilnius Protocol, which have as their objective a concentration and greatly enhanced efficiency of international co-operation in rail matters, the States, and also the rail companies, would be able to achieve significant cost reductions (reduction of contributions to be paid to the organisations due to reduced personnel and equipment requirements). The planned broadening of the tasks to be performed by OTIF does not necessarily involve a proportional increase in manpower. It could, however, allow a substantial reduction in personnel and equipment requirements in other organisations. The 1999 Protocol, together with its Annex, offers the opportunity of a fundamental reorientation, promising State co-operation in the rail sector.

### **In particular**

With regard to the formalities necessary for amendment of COTIF and its Appendices as currently in force, the 1999 Vilnius Protocol takes account of Article 20, § 1 of COTIF 1980.

### **Preamble**

The Whereas clauses in the Preamble set out the grounds for certain provisions in the articles of the actual Protocol or in COTIF. Consequently, detailed explanations are given in dealing with the relevant articles of the Protocol and the Convention.

## **Article 1**

### **New version of the Convention**

In the interest of greater clarity, the full text of COTIF and its Appendices, and not just the text of the amendments made, has been appended to the Amendment Protocol. Article 1 states that the amendments made to COTIF 1980 and its Appendices are included as an Annex to the Protocol. Contrary to the Secretariat's initial idea, a new Convention to replace COTIF 1980 has not been created, but the amendments have been made in such a way that the legal continuity of both COTIF and OTIF has been safeguarded, in accordance with Article 20 of COTIF 1980.

## **Article 2**

### **Provisional Depositary**

1. Anticipating the final content of Article 36 of the draft COTIF, § 1 provides for a provisional rule. For the Secretariat, the Revision Committee and the 5<sup>th</sup> General Assembly, there were no grounds which justified leaving the role of depositary under the responsibility of the government of one of the Member States of OTIF. Following the example of other intergovernmental organisations which, like OTIF, constitute a legal entity in international public law (e.g. the United Nations Organisation – UN, the International Atomic Energy Agency – IAEA), the Organisation itself performs the role of depositary, its functions being performed by the Secretary General. See Article 4, § 2 regarding the anticipated application of the rule concerning the depositary.
2. § 2 specifies the tasks of the Provisional Depositary, i.e. of the existing OTIF, acting through the intermediary of the Director General of the Central Office.

## **Article 3**

### **Signature. Ratification. Acceptance. Approval. Accession**

1. § 1 states the period during which the 1999 Protocol remains open for signature by the Member States and the place at which the Protocol can be signed.
2. § 2 indicates the need for ratification and the obligation to lodge with the Provisional Depositary, as soon as possible, the instruments relating to this.
3. § 3 states that, prior to the Protocol coming into force, the Member States which have not signed this Protocol within the periods provided for in § 1, and also States whose application for accession to COTIF 1980 has been admitted by right in accordance with Article 23, § 2 of the latter, may accede to this Protocol by lodging an accession instrument with the Provisional Depositary.
4. Since accession to COTIF during the period prior to the Amendment Protocol coming into force could relate only to COTIF 1980, § 4 states that such an accession, which still had to be dealt with in accordance with the provisions of Article 23 of COTIF 1980, referred both to COTIF 1980 and COTIF as amended by the 1999 Amendment Protocol. This provision is intended to prevent accessions prior to the entry into force of the 1999 Protocol from relating only to COTIF 1980; furthermore, this provision means that there will be no need for a subsequent procedure for

accession to COTIF in its 1999 Protocol version. With regard to the internal ratification procedure, this means that it is necessary to take into account both the version of COTIF 1980 and COTIF 1999.

#### **Article 4**

##### **Entry into force**

1. § 1 regulates the entry into force with reference to Article 20, § 2 of COTIF 1980. In June 1999, OTIF had 39 Member States, which meant that 27 ratifications, acceptances or approvals of the 1999 Protocol would be required. In order to avoid the difficulties which arose in the past in reaching the quorum, the second sentence specifies what is to be understood by “Member State” within the meaning of Article 20, § 2 of COTIF 1980.
2. § 2 emphasises that the rules provided for by Article 3 relating to the Provisional Depositary are applicable from the time at which the Amendment Protocol is opened for signature. This provision has not been opposed by the Swiss government, which was then the depositary. In accordance with the generally recognised rules of international public law (see also Article 24, § 4 of the Vienna Convention of 23 May 1969 on treaty law), the provisions of a treaty which regulate the authentication of the text, the date of entry into force, the functions of the depositary, etc. are applicable from the time at which the text of an agreement is adopted.

#### **Article 5**

##### **Declarations and reservations**

1. Declarations and reservations, in accordance with Article 42, § 1 of COTIF, could not in principle be made or issued until the 1999 Protocol has come into force, since this provision would be in force only from that time. Nevertheless, there was a practical requirement to be able to make or issue such declarations and reservations from the time of signing of the 1999 Protocol, at the time of an accession or at any other time, prior to the entry into force of the 1999 Protocol.
2. Since the reservations, in accordance with COTIF 1980, can relate only to this version of COTIF, Article 5 states that declarations and reservations concerning provisions of COTIF in its new version can be made or issued even prior to the entry into force of the 1999 Protocol. However, they do not take effect until the 1999 Protocol has come into force.

#### **Article 6**

##### **Transitional provisions**

1. Since the end of the mandate of the Administrative Committee, the end of the five-year period for the maximum amounts of expenditure which may be incurred by the Organisation and the end of the mandate of the Director General of the Central Office did not coincide with the time of entry into force of the 1999 Amendment Protocol, transitional provisions proved necessary (§ 1).
2. The Technical Annexes of the APTU Uniform Rules did not exist at the time when the 1999 Protocol was adopted by the 5<sup>th</sup> General Assembly. They were drafted dur-

ing the period up to the entry into force of the 1999 Protocol. Consequently, § 2 obliges the Secretary General of OTIF to convene the Committee of Technical Experts within a relatively short period following the entry into force of the 1999 Protocol. In this 1<sup>st</sup> session, the Committee had to adopt formally the Annexes of the AP-TU Uniform Rules. This decision had to come into force in accordance with Article 35 of COTIF, in the version of the 1999 Protocol.

3. § 3 provides for a regulation which guarantees a trouble-free transition from the mandate of the Administrative Committee appointed in accordance with COTIF 1980 to the mandate of the Administrative Committee nominated by the General Assembly, which was convened, in accordance with § 1, on the basis of COTIF in the terms of the 1999 Protocol.
4. § 4 regulates the expiry of the mandate of the Director General in post at the time of entry into force of the 1999 Protocol.
5. § 5 guarantees the trouble-free transition from COTIF 1980 to COTIF 1999 with regard to the auditing of the accounts and the approval of annual accounts, the determination of the definitive contributions of the Member States, the payment of the contributions and the maximum amount of expenditure which may be incurred by the Organisation in the course of a five-year period.
6. § 6 specifies the bases of calculation for the contributions of the Member States which are due for the year in which the 1999 Protocol comes into force.
7. The 5<sup>th</sup> General Assembly has decided upon transitional measures for those Member States whose contributions which are due on the basis of the new financing system would be significantly greater than the contributions due in accordance with Article 11 of COTIF 1980. Provision is made whereby the sum due according to the former system is adjusted in three stages until the amount according to Article 26 of COTIF in the version of the 1999 Protocol is reached. The minimum amount of 0.25 %, according to Article 26, § 3, must be paid in any case. Furthermore, the Member State concerned must formulate a corresponding application, to be decided by the General Assembly.
8. § 8 determines the law that applies to contract of carriages concluded on the basis of the CIV Uniform Rules or the CIM Uniform Rules of 1980 prior to the entry into force of the 1999 Protocol.
9. The express regulations of the law applying to contracts of carriage concluded prior to the entry into force of the 1999 Protocol raises the question of the law applying to contracts of use of vehicles and to contracts of use of infrastructure which were concluded prior to the entry into force of the 1999 Protocol. The Revision Committee had discussed this problem at the 21<sup>st</sup> session and had sided with the viewpoint of the Secretariat, namely, that the question did not arise in the same way for contract of carriages based on the CIV Uniform Rules and CIM Uniform Rules and for contracts based on the CUV Uniform Rules or the CUI Uniform Rules. Whereas, for contracts of carriage, there already existed a mandatory uniform international law, some points of which would be amended, such a uniform international law did not exist for contracts of use of vehicles or for contracts of use of infrastructure. This was why the

mandatory provisions of the CUV Uniform Rules and CUI Uniform Rules had to be applicable to such contracts from the time at which the 1999 Protocol came into force (Report on the 21<sup>st</sup> session, p. 81).

10. The United Kingdom was of the opinion that it would be unacceptable for amended provisions to be applied to existing contracts and proposed that the 5<sup>th</sup> General Assembly state that contracts of use of vehicles and use of infrastructure should remain subject to the law which was in force at the time at which the contract was concluded, even after the new version of COTIF comes into force. This, however, would have the consequence that the parties to the contract would be able to evade on a long-term basis the application of the mandatory provisions of the CUV Uniform Rules and CUI Uniform Rules, particularly in respect of liability for physical injury. As a compromise solution, the 5<sup>th</sup> General Assembly decided to provide for a transitional period of one year before the mandatory provisions of the new law become applicable to such contracts.

### **Article 7** **Texts of the Protocol**

This provision corresponds to Article 45, § 1 of COTIF and provides that the 1999 Protocol be concluded on an equal basis in the three languages stated. Nevertheless, the French text will continue to prevail in the event of divergences. With regard to the official translation in other languages, the solution also provided for the 1999 Protocol corresponds to Article 45, § 2 of COTIF in its new version.

### **Final clauses**

1. Following the 5<sup>th</sup> General Assembly, the 1999 Protocol and its Annex were opened for signature by the representatives of the Member States in the English, French and German languages. On 3 June 1999, they were signed by 22 Member States.
2. In accordance with its Article 3, the 1999 Protocol remained open for signature until 31 December 1999 at Bern with the Provisional Depositary, OTIF. Following expiry of the signing period, the Member States of OTIF may accede to the Protocol (Article 3, § 3).