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Intergovernmental Organisation for International Carriage by Rail (OTIF)

History of origins

1. The **first International Convention concerning the Carriage of Goods by Rail** dates from the year **1890**. This Convention created an Administrative Union according to the rules of international law of that time, with a permanent secretariat, the Central Office for international carriage by rail, with its headquarters in Berne, the capital of Switzerland. The administrative unions of the 19th century, such as the Postal Union, the Telecommunications Union etc. were institutionalized continuations of international diplomatic conferences. The management of the Central Office for international carriage by rail was therefore supervised by the Swiss Government in accordance with the rules at that time.
2. In 1956, the supervisory function exercised by the Swiss Federal Council was transferred to an Administrative Committee, made up of representatives from some of the Member States.
3. At the 8th revision conference in 1980, the institutional provisions of the original CIV and CIM Conventions were subject to a fundamental reform which led to the creation of an international intergovernmental Organisation (International Governmental Organisation - IGO) of a modern nature and structure.
4. With the entry into force on 1 May 1985 of the Convention concerning International Carriage by Rail of 9 May 1980 (COTIF), the **Intergovernmental Organisation for International Carriage by Rail (OTIF)** was born.
5. Further significant modification of COTIF was brought about by the **Vilnius Protocol** of 3 June 1999 (1999 Protocol), which entered into force on 1 July 2006.
6. OTIF has legal personality both in international law and in the national laws of its Member States.

Aim of the Organisation

7. The aim of the Organisation is to promote, improve and facilitate, in all respects, international traffic by rail.
8. In order to achieve the above, a **uniform system of law** is established and support is given to implementing and developing it. These uniform rules cover the following fields of law:
 - The contract of **carriage** of passengers and goods **in international through traffic by rail** between Member States; this system of law is also applicable to international carriage subject to a single contract and which, complementary to international carriage by rail, includes carriage by road or inland waterways in a Member State's domestic transport or – only on routes that have to be registered with the Organisation – carriage by sea or international carriage by inland waterways;
 - The contract of **use of wagons** as means of transport in international rail traffic;
 - The contract of **use of infrastructure** in international rail traffic;
 - The carriage of **dangerous goods**.
9. Other activities carried out by the Organisation to meet the aim set out above concern provisions on interoperability and **technical harmonisation** in the railway field, the **technical approval** of railway material intended for use in international traffic and contributing to the **facilitation** of **border crossing** in international carriage by rail.

Uniform law

10. The uniform rules currently applicable to international carriage by rail are contained in the **Appendices**¹ to COTIF:

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| Appendix A | Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV); |
| Appendix B | Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM); |
| Appendix C | Regulation concerning the International Carriage of Dangerous Goods by Rail (RID); |
| Appendix D | Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV); |
| Appendix E | Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI); |
| Appendix F | Uniform Rules 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); |
| Appendix G | Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF). |

¹

The abbreviations of the Appendices shown in brackets are derived from the French version of the titles

Member States

11. At the present time the Organisation has **45 Member States in Europe, North Africa and the Near East**: Albania, Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iran, Iraq, Ireland, Italy, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Monaco, Montenegro, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Syria, Tunisia, Turkey, Ukraine and United Kingdom. Jordan is an Associate Member.
12. For the time being, the membership of Iraq and Lebanon is suspended because international railway traffic with these States is interrupted.
13. At present, the Uniform Rules created by OTIF are applicable to international rail transport on railway infrastructure of about **250,000 km** and to complementary carriage on 17,000 km of shipping lines and inland waterways, as well as prior or subsequent domestic carriage by road.
14. The Organisation's **headquarters** are in Berne. In 1988, the Organisation concluded a Headquarters Agreement with Switzerland.

Structure of the Organisation

15. The following bodies carry out the Organisation's tasks:
 - The **General Assembly** is the highest decision-making body of OTIF; it is made up of representatives from all the Member States. In accordance with COTIF 1999, it is convened regularly every three years or at the request of one third of the Member States. The latest one, the 8th General Assembly, met on 6 and 7 September 2006.
 - In accordance with COTIF 1999, the **Administrative Committee** is made up of representatives from one third of the Member States, i.e. 14 States at present. The General Assembly decides which Member States are represented in the Administrative Committee and which of them is to chair it (currently the Czech Republic). In particular, the Administrative Committee must keep a check on the conduct of administrative and financial business by the Secretary General. It approves the work programme, budget, management report and book-keeping of the Organisation.
 - The **Revision Committee** is made up of representatives of the Member States. It takes decisions on proposals to amend the provisions of the Convention and its Appendices, which are subject to a simplified and accelerated revision procedure and which are not for decision by the General Assembly or the specialist committees (see below). It also gives initial consideration to proposals to amend provisions where the final decision is up to the General Assembly.

- The **RID Expert Committee** is made up of representatives of the Member States and takes decisions on proposals to amend the provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (**RID**).
- The **Committee of Technical Experts** takes decisions on amendments to the Annexes to the Uniform Rules 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**).
- The **Rail Facilitation Committee** deals with all questions relating to the facilitation of frontier crossing and recommends standards, methods, procedures and practices relating to rail facilitation.
- The **Secretary General** assumes the functions of Secretariat of the Organisation. He is elected by the General Assembly for a period of three years, renewable twice at most.

16. The **Secretary General** must, in particular:

- assume the functions of Depositary;
- represent the Organisation externally;
- prepare proposals to amend the Convention for discussion in the Committees and the General Assembly;
- convene the General Assembly and the Committees;
- draw up the work programme, draft budget and management report and submit them to the Administrative Committee for approval;
- receive communications from the Member States, States that may participate in the meetings of certain Committees in an advisory capacity, international organisations and associations and from undertakings participating in international rail traffic, and notify them;
- manage the financial affairs of the Organisation within the limits of the approved budget;
- facilitate application of the Convention by using his good offices;
- give opinions on the interpretation or application of the Convention;
- assist in the settlement of disputes by arbitration;
- carry out the decisions and mandates of the General Assembly, Administrative Committee and the other Committees.

Main tasks of the Organisation

Further development of rail transport law

17. Probably the greatest challenge for international rail transport law came from the European process of integration on the one hand and, on the other, the general move towards liberalization in the transport policy of numerous Member States, and within the railway companies themselves. The separation of railways from the State administration which has already come about, or which is already planned in some Member States, and their legal independence as companies under private or public law, as well as the separation of infrastructure management from the transport of passengers and goods, requires corresponding adaptation of international rail transport law, which is reflected in COTIF 1999 and concerns the following areas in particular:
1. institutional provisions, especially with regard to the Organisation's tasks, its competences, its financing, the simplified revision procedure, easier opportunities for accession;
 2. liberalization and modernization of the laws concerning the international carriage of goods and passengers by rail, alignment with laws applicable to other modes (e.g. CMR²), widening the scope for agreements between railway companies and customers on the one hand and between railway companies on the other;
 3. uniform rules for wagons applicable to all rail wagons, making a clear legal distinction between the technical approval of vehicles for use in transport and the use of wagons as a means of transport in international transport on a contractual basis;
 4. regulation of contractual relations (especially liability) in the context of the use of "foreign" infrastructure by different rail carriers, although regulations under public law, e.g. EC directives concerning access rights and their conditions, are not affected;
 5. widening the legal scope of application of the dangerous goods regulations.

Facilitation of border crossing in international rail transport

18. COTIF 1999 states one of the Organisation's aims as being to contribute to the removal, in the shortest time possible, of obstacles to the crossing of frontiers in international rail traffic, while taking into account special public interests, to the extent that the causes of these obstacles are within the responsibility of States. Together with the Organization for the Cooperation of Railways (OSJD), OTIF was involved in the work on a new Annex to the 1982 International Convention on the Harmonization of Frontier Controls of Goods concerning rail traffic. This new Annex, which was recently adopted by the UNECE, will probably enter into force in 2011.

² Convention on the Contract for the International Carriage of Goods by Road

Technical uniformity in the rail sector, technical approval and supervision

19. With regard to the importance of technology to rail transport, another of the Organisation's tasks is to increase efforts at State level aimed at harmonization in this area, and specifically within the framework for which it was designed, i.e. not just for regional application. This is true both for the validation of uniform technical standards for railway equipment, for the harmonization of the procedure for their technical approval to be used in international transport, and for uniform construction and operating provisions.

20. The APTU Uniform Rules lay down the procedure according to which technical standards and uniform technical provisions for railway equipment to be used in international transport are *validated* or adopted. The technical standards validated and uniform technical provisions adopted are incorporated in Annexes to APTU. The Convention of 1882 concerning the Technical Unity of Railways (TU), which is still valid under international law, but which is due to be revoked, and which has been signed by no less than 26 of the 45 Member States of OTIF, and other technical regulations concerning rail transport and the technical UIC³ leaflets will be included in these technical Annexes. The aim of APTU is to ensure the interoperability of the technical systems and components necessary in international rail transport. The validated technical standards and uniform technical provisions should contribute to achieving safety, reliability and operational readiness for international transport and to taking account of environmental and public health issues. The *elaboration* of technical standards and uniform technical provisions remains in the competence of the national or international standards organisations (e.g. CEN, CENELEC, ETSI etc.) or of the international associations working in the railway sector, especially the UIC. APTU creates for the railway sector a legal basis similar to the Geneva Homologation Convention of 1958 concerning road transport.

21. The ATMF Uniform Rules lay down the procedure under which railway vehicles (and other analogous railway equipment) are approved for use in international transport. "Technical admission" (technical approval) is the task of the competent national or international authorities according to the laws and regulations of the respective State. Technical approval is carried out either directly by issuing an "*admission to operation*" (operating approval) for an individual railway vehicle or – in a simplified procedure – in two stages by issuing an "*admission of a type of construction*" (design type approval for a specific design type), followed by issuing an "admission to operation" (operating approval) for individual vehicles which correspond to an approved design type. Technical approval must be based on the validated standards and uniform technical provisions adopted in accordance with APTU. Technical approval by the competent authority of a State must be recognised, without further examination and technical approval, by the authorities, rail transport undertakings and infrastructure managers of other States.

22. It is up to the Committee of Technical Experts to ensure that APTU and ATMF, which in essence constitute "COTIF rules for approval", can be managed effectively so as to achieve their aim. The new Committee of Experts must be sustained by the national approval authorities. European Community law, particularly its directives

³ International Union of Railways

concerning interoperability and rail safety (TSIs), will set the standard, and will also form the basis for the actual form of the Annexes to APTU. In the course of implementation, the concept of the rules for approval is being adapted in order to take account of developments that have occurred in the EC.

OTIF's future

23. COTIF 1999 means that the institutional bases of OTIF have, on the one hand, been adapted and modernized (introduction of English as a new working language beside French and German; new financing system; obligation of Member States to concentrate their co-operation in the rail sector within OTIF; establishment of a Committee of Technical Experts and of a Rail Facilitation Committee; simplified revision procedure; possibility of accession for regional economic integration organisations which have the competence to adopt their own legislation; possibility of becoming an associate Member, etc.). On the other hand, the tasks which have so far mainly been limited to transport law and the regulations concerning the carriage of dangerous goods, have been widened to all spheres for which States are responsible, which concern international rail transport and whose harmonization or improvement can be achieved by States co-operating closely within the framework of OTIF.
24. The scope of activity of OTIF has thus been widened so that it will be able, in the medium-term, following the example of IMO⁴ and ICAO⁵ – although not at a completely global level – to become an International Organisation for the rail mode, responsible, as far as possible, for **all** questions concerning this transport mode, i.e. rail transport.
25. Under COTIF 1999, it is not only individual States that may accede to COTIF, but also regional economic integration organisations. At the beginning of 2002, the European Community (EC) declared accession to COTIF as one of its aims. The Council authorized the European Commission to negotiate an agreement with OTIF on the conditions of accession. A joint draft text for this agreement was established during negotiations in 2003. Within the EC, the Council has to agree conclusion of the agreement. Within OTIF, the General Assembly would have to approve the agreement. However, the accession process has subsequently stalled, as the Commission has moved away from the content of its proposal referred to above. This is because the Commission's internal assessment at that time turned out to be unfounded. According to this assessment, Article 3 § 2 of COTIF 1999 could be interpreted as a disconnection clause and moreover, with regard to the scope of application of COTIF 1999, all Member States of the EU/EEA could be considered as a single Member State of OTIF. A new round of negotiations was held in 2009. The new version of the accession agreement that was negotiated not only contains a transparency clause for the EU Member States (according to which EC law applies instead of COTIF law in the areas covered by EC law), but also a solution for those Member States of OTIF in which Community law is applied on the basis of interna-

⁴ International Maritime Organisation

⁵ International Civil Aviation Organisation

tional agreements with the EC. However, it has not yet been possible to conclude the internal decision-making processes in the EC, so it was not possible for OTIF's General Assembly to approve the accession agreement. The Revision Committee also met in 2009 and adopted amendments to Appendices E, F and G, with the aim of ensuring that they continue to be fully compatible with those provisions of EC law which fall within their scope and which have continued to develop since COTIF was revised.

26. Extending the scope of COTIF in order to **make through rail transport possible from the Atlantic to the Pacific** remains a great challenge for OTIF following the decline of the State controlled economic systems in Central and Eastern Europe. As a result of the upheavals in the transport sector, which are being advanced not just in the European Community, but also in various States outside the EC – at different paces – the longer term possibility arises of overcoming the decade long coexistence of two legal systems in rail transport – CIM/CIV on the one hand and the SMGS/SMPS Agreements based on the State planned economy on the other. But for the time being only some of the States in question have the political and economic conditions which would in principle also allow and promote liberalization of the laws governing the carriage of goods by rail, which was the aim of COTIF 1999. As long as harmonization of rail transport law at the legislative level is not possible in Eurasia, the new COTIF provides a contractual solution which allows rail freight transport between the Member States of COTIF and non-Member States to be carried out under a single legal regime. Under the 1999 version of the CIM Uniform Rules, the parties to the contract of carriage may specifically agree that the contract is subject to CIM, even if the place the goods are handed over for carriage and place of delivery are in two different States of which only one is a Member State of OTIF or a Contracting Party to COTIF and the CIM UR. In addition, since September 2006, the CIM/SMGS consignment note has been available to customers (joint CIT⁶ and OSJD project).
27. Another area of activity for OTIF ensues from the adoption of the Luxembourg Protocol on 23 February 2007, which will lead to the creation of a **Registry for International Interests** in railway rolling stock. According to Article XII of this Convention, a Supervisory Authority comprised of State representatives will be created for the Registry, for which OTIF will act as the secretariat. The Protocol will enter into force when the following conditions have been met:
- deposition of the fourth instrument of ratification, acceptance, approval or accession with the Depositary, UNIDROIT⁷ and
 - deposition with the Depositary of a certificate from OTIF confirming that the International Registry is fully operational.

⁶ International Rail Transport Committee

⁷ International Institute for the Unification of Private Law