The rail sector’s vocation for international carriage meant that it felt the need for an international agreement before other forms of transport.

The first International Convention concerning the Carriage of Goods by Rail (IC), the so-called Berne Convention, was signed in Berne on 14 October 1890 by the following ten European states: Germany, Austria, Belgium, France, Hungary, Italy, Luxembourg, the Netherlands, Russia and Switzerland. At that time, the IC provided uniform rules concerning the contract for international carriage of goods by train. The text of this Convention was supplemented by implementing regulations that were gradually integrated into the Convention itself.

The railways of the IC member States considered it useful to cooperate in order to facilitate the practical implementation of the Convention. The International Railway Transport Committee (CIT) was thus set up in 1902. The CIT celebrated its 100th anniversary last year.

For the past century, the CIT’s main objectives have been the uniform application and practical implementation of international rail transport law, as governed by successive international Conventions.

The Berne Conference of 1923 took the decision to replace the IC with the CIM (Convention concerning the International Carriage of Goods by Rail). Annex 1 to the CIM (Regulations concerning Objects Admitted for Carriage under Certain Conditions) was also established at that time. This Annex was later to become the Regulations concerning the
International Carriage of Dangerous Goods or RID. The same Conference also decided to establish a parallel Convention concerning the International Carriage of Passengers and Luggage by Rail (CIV).

The last general revision of the CIV and CIM Conventions and the creation of the COTIF (the Convention concerning International Carriage by Rail) date back to 1980. The 1980 (and thus current) COTIF, comprising the two UR CIV and UR CIM Appendices (the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail and the Uniform Rules concerning the Contract for International Carriage of Goods by Rail), entered into force in 1985. Today, 41 countries from Europe, the Middle East and North Africa are parties to the COTIF.

Since the entry into force of the COTIF, the rail transport sector has undergone considerable transformations on both a national and international level. A century following the entry into force of the first IC, we have embarked upon a fundamental review of the COTIF in terms of the liberalisation and restructuring of the rail transport sector. The new COTIF was signed in Vilnius on 3 June 1999. A ratification process is underway in the member States. Its entry into force is expected by the end of 2004, or early 2005 at the latest.

The CIM (Appendix B to the 1980 COTIF) forms the main legal basis of international rail transport law. It establishes the legal relationships between the parties to a contract of carriage, that is, the client and the railway.

In order to ensure a uniform interpretation and to plug a certain number of gaps, the CIM’s provisions are complemented by Supplementary Provisions made by the Railways (DCU). These DCU are created by the railways via the CIT and may not derogate from the CIM.

The political, economic and social changes of the last ten years have led to a very dynamic development of the transport market. Competition with other forms of transport has highlighted the need for in-depth reforms of the rail transport sector and this has led to the establishment of EU Directives. A revision of the COTIF was therefore initiated. However, in order to be able to apply the current CIM in the new environment of the European directives, it was complemented by Supplementary Provisions made by the States (DCE). These DCE,
created by the States in the wake of Directive 91/440/EU, took the separation of infrastructure management and transport services into account.

**The structure** of the 1980 CIM (current) comprises:
- The UR CIM properly speaking;
- Annex I – Regulations concerning the International Carriage of Dangerous Goods by rail (RID); (in accordance with art. 5 of the CIM)
- Annex II – Regulations concerning the International Haulage of Private Owners’ Wagons by Rail (RIP); (in accordance with art.8, §1 of the CIM)
- Annex III – Regulations concerning the International Carriage of Containers by Rail (RICo); (in accordance with art.8, § 2 of the CIM)
- Annex IV – Regulations concerning the International Carriage of Express Parcels by Rail (RIEx); (in accordance with art.8, §3 of the CIM)
- the DCE (in accordance with art.9 of the CIM)
- the DCU (in accordance with art.9 of the CIM)

The 1999 CIM (new) no longer contains the above mentioned Annexes. In place of the provisions that currently appear in the Regulations concerning the International Haulage of Private Owners’ Wagons by Rail (RIP), special provisions were drawn up in the context of the 1999 UR CIM on the subject of the carriage of vehicles as freight, also with regard to the basis of responsibility in terms of compensation. These special provisions also apply to the carriage of intermodal traffic. The RID becomes an Appendix to the COTIF. The application of the RID no longer depends on the existence of a CIM contract of carriage.

**Field of application**

In general terms, the current CIM applies to all consignments of goods presented for carriage with a direct consignment note drawn up for a route involving the territories of at least two States and comprising exclusively the lines noted on the list established to this effect (see arts. 3 and 10 of the 1980 COTIF). Two conditions are thus essential:
- an international route
- the listing of lines
In order to guarantee greater freedom for the parties to a contract of carriage, application of the new UR CIM, as a rule, takes place regardless of a system of listed lines. It is sufficient that the anticipated place where the goods are to be presented and the designated place for delivery are located in two different countries, at least one of which must be a member State. As you can see, a contractual extension of the field of application is possible when only the point of departure or the point of destination is located in a member State. This means that, in accordance with the UR CIM, direct contracts of carriage can also be signed for east-west traffic with States in which the Agreement on International Goods Transport by Rail (SMGS) applies.

**Obligation to carry**

The current CIM provides that the railway shall be bound to undertake all carriage of any goods in complete wagonloads (art. 3 of the CIM), provided that the consignor complies with the Uniform Rules and Supplementary Provisions and tariffs, that carriage can be undertaken by normal staff and transport resources and that carriage is not prevented by circumstances which the railway cannot avoid and which it is not in a position to remedy.

The obligation to carry does not, of course, apply to articles not acceptable for carriage, as defined in the CIM. A procedure is provided for cases when it is noted during carriage that the articles are not acceptable for carriage.

The obligation to carry is closely linked to the **tariff obligation**. The current CIM (art. 6) provides that carriage charges and supplementary charges shall be calculated in accordance with the tariffs which are legally enforced and duly published in each State, and which are applicable at the time when the contract of carriage is made, even if the cost of carriage is calculated separately for different sections of the route. The tariffs must be applied to all users on the same conditions. Railways may, however, enter into private agreements. The CIM, however, defines neither what is understood by tariffs nor the detailed requirements for the publication of tariffs. It leaves legally enforced and duly published national tariffs their legal and economic role. The applicable tariffs may be either a succession of national tariffs or, on the contrary, international tariffs. The tariffs must contain all the special conditions applicable to carriage, in particular the elements necessary to calculating the cost of carriage.
International Union of Railways Leaflet 211 contains recommendations concerning the structure and form of an international tariff.

The 1999 UR CIM provides neither for the obligation to carry nor the tariff obligation. A greater contractual freedom is granted to the parties to a contract of carriage in terms of determining the itinerary, delivery times, payment conditions etc.

**Contract of carriage and consignment note**

In the current CIM, the contract of carriage is real. The condition for signing the contract is that the goods are accepted for carriage, accompanied by a CIM consignment note. There are two parties to a contract of carriage: the rail consignor and the client consignor. One particular point in rail transport law is that other railways carrying the international consignment, in turn, form a party to the contract of carriage once they agree to carry the consignment over their territory. The consignee, too, is in a way party to the contract because the CIM provides for obligations and rights on the part of the consignee.

The consignment note legally fulfils three functions:
- it is a receipt for the goods on the part of the railway (the railway must put its date stamp on it);
- it is a receipt for costs paid on departure by the consignor;
- it is a deed giving the consignor the right to amend the contract of carriage and to give instructions to the railway en route or on delivery.
- The contract of carriage comes to an end, in the current CIM, with the delivery of goods to the consignee and the acceptance of the goods by this latter.

The big change in the new CIM relates to the legal classification of the contract of carriage. It is signed as a consensual contract. The condition is the mutual consent between the parties. The consignment note is only documentary evidence. This is also applicable to other forms of transport (CMR, the Hamburg Rules, Warsaw Convention).

**Payment of charges**

In accordance with the current CIM, these are paid either by the consignor or by the consignee. The consignor has the choice of which carriage charges to pay itself (all the
charges or a given sum). As for the consignee, it has no choice: it must pay all the charges that the consignor does not cover.

The new CIM has been brought into line with the law governing other forms of transport (CMR). Carriage costs are paid by the consignor unless otherwise agreed between the parties to the contract.

**Liability**

The broad principle in the current CIM is that of collective responsibility. It results from the obligation to carry. The railways act as a community for the undertaking of any given carriage.

There are three types of causal responsibility: - loss, damaged goods and delay.

There is also liability for fault: bad choice of route, loss of customs documents etc.

The UR CIM obviously provides for a limitation of responsibility and cases of exemption.

The new CIM establishes, as a general rule, that the infrastructure manager is an auxiliary to the carrier. This principle has significant consequences for responsibility: vis-à-vis the client, the carrier is the sole representative and will be solely responsible. Of course, it has the right of appeal against the infrastructure manager.

It should be noted that the maximum liability of 17 Special Drawing Rights (SDR) is maintained.

In the new CIM, there are 3 categories of carrier:
- *the principle carrier*, with whom the consignor has signed the contract of carriage by virtue of the UR CIM. It may be just one carrier, that is, it may undertake the carriage from one end to the other;
- *the subsequent carrier*. When carriage forming the object of a single contract of carriage is undertaken by several subsequent carriers, each carrier carrying the
goods with the consignment note participates in the contract of carriage in accordance with the stipulations of the consignment note, taking on the resulting obligations. In this case, each carrier is liable for the implementation of carriage over the whole route up to delivery;

- the substitute carrier, this is a carrier who has not signed a contract of carriage with the consignor but to whom the contractual carrier has entrusted, in whole or in part, implementation of the rail carriage. It is responsible for that part of the transportation that falls to it. When and insofar as the carrier and the substitute carrier are responsible, their responsibility is joint.

As has already been noted, the CIT’s main objective is the uniform application of international rail transport law. The CIT’s activity is currently, as a priority, focused on practical implementation of the new UR CIV and UR CIM. In 2000, a CIM Committee was created, grouping together 27 European networks. It is sub-divided into 5 working groups, each with a clearly defined mandate. The CIM Committee is chaired by Mr. Christian Heidersdorf (DB Cargo).

**The CIM WG I**, also chaired by Mr. Heidersdorf, addresses the legal client – carrier relationship. Two documents have been produced:

1. *General conditions for the international carriage of goods by rail (CGT-CIM).*
2. *Model customer agreement.*

Both documents bear the inscription « written and recommended by the CIT ».

A distinction must be made between an individual contract of carriage (with CIM consignment note) and a customer agreement. The latter governs a multitude of individual contracts of carriage over a certain length of time, for example, with regard to price, quantities, delivery times and supplementary services. The CGT-CIM forms an integral part of each individual contract of carriage. The diagram shows the contractual structure:

**The CIM WG II**, chaired by Mr. José Compère (SNCB/NMBS), addresses the legal carrier – carrier relationship. It has drafted the following texts, with a view to the new forms of cooperation between rail companies:

1. *General conditions concerning engine hire contracts (CG hire);*
2. *General conditions concerning traction contracts (CG traction);*
3) **General conditions concerning sub-contracting contracts signed between the carrier and substitute carrier (CG sub-contracting);**

4) **General conditions concerning co-contracting contracts, signed between several carriers (CG co-contracting);**

5) **General conditions concerning service contracts in effect on acceptance, en route or on delivery (CG services);**

The general conditions governing these types of contracts are compatible both with the 1980 UR CIM and with the future 1999 UR CIM.

The **CIM WG IV**, chaired by Mr. Henri Trolliet, Assistant Secretary to the CIT, has the task of carrying out an in-depth revision of the current implementing provisions relating to a contract of carriage for freight.

The group is preparing the following new products:

1) **A new model CIM consignment note**, which will replace the current consignment note. Its design is based on the United Nations Lay-out Key for Trade Documents. The model is simplified and brought largely into line with documents used in other forms of transport.

2) **A Catalogue of data on the new CIM consignment note** has been established. This constitutes a basis for both hard copy and electronic consignment notes and contains functional definitions for each element of data contained in the CIM consignment note. Once approved, it will be sent to the International Union of Railways with a view to being included in the future “Freight Data Dictionary”.

Two documents, presented in the form of guides, are planned:

3) **CIM consignment note guide** (contains provisions on the processing of consignment notes; aimed at the staff of carriers and at customers);

4) **CIM traffic guide** (describes the procedure to follow when fulfilling a contract of carriage; aimed only at carriers).

The mandate of the **CIM WG V** is to review the current AIM agreement on breakdown of compensation in case of loss, damage to goods or delay in delivery time. AIM also governs a large number of issues that arise in inter-network reports, in particular, the
collection of charges for the goods, the allocation of surcharges, the charging of costs in case of transhipment or repair of load, the procedure for rebates. The Agreement is based on the principle of relinquishing the search for liability and instead distributing the compensation due to the client between the networks in proportion to the distances of application of the tariffs (there is reciprocity and joint and several liability). The work being undertaken in the two sub-groups chaired by Mr. José Compère (SNCB/NMBS) and Mr. Rainer Freise (DB) has the task of adapting the AIM to the liberalisation of the rail sector, the separation of infrastructure management and transport services, free access to the network, the new models of cooperation and the elimination of the obligation to carry. The new publications are based on the market economy and intramodal competition. It is no longer appropriate to share injury when this is clearly attributable to one of the subsequent carriers.

The CIM WG III, the chair of which has been entrusted to myself, has the task of standardising two types of legal relationship: 1) client-carrier and 2) carrier-carrier, in east-west traffic.

Let us recall that the new UR CIM enables carriage to be undertaken according to the UR CIM even outside of those States applying the COTIF. Several tariffs are currently applied in east-west traffic. Some are based on agreements between States (for example, Finland – Russia); others on the SMGS: SUT Tariff № 5622.00 (Slovakia-Ukraine), SAT № 8250.00 (Soviet Union – Austria, not yet terminated) or there are even ad hoc agreements providing for the legal application of the CIM: GBRT № 8213.00 (DB AG, PKP, BC, RZD), SUR № 8859.00 (ZSSK, UZ, CFR + later membership on the part of PKP and BDZ).

The group began its work in May this year. An in-depth analysis has been undertaken of the current situation. Apart from important distinctions on a technical level, there are also differences of a legal nature. The most important characteristics of east-west rail traffic are the following:

- Transhipment of goods at the border or change of axles at some borders in stations especially equipped for this purpose (the gauge of the railway track is different);

- Changes in transport law (from the CIM to the SMGS);

- Compulsory redirecting;
- The payment of carriage costs is undertaken by means of agents. In SMGS traffic, there is no accounting procedure comparable to that of the International Union of Railways Leaflet 304. Accounting is undertaken from border to border. **It must be noted that International Union of Railways Leaflet 304 may be applied by contractual means regardless of membership of the Union.**

- CIM and SMGS consignment notes have a different legal weight. The CIM consignment note enables the application of the simplified common customs transit procedure. In general, the SMGS consignment note does not permit the application of a simplified procedure. However, the Baltic States, for example, apply both the SMGS and the CIM in north-south traffic. The EU and UN are also pursuing efforts in the area of simplification. Simplifications are also possible on the basis of national customs law when two States apply the same procedures ("twinning procedure").

A market study has shown that trade is very active along Corridor II (Germany, Poland, Belarus, Russia), as well as between the countries of Central Asia and Iran and Turkey, but that the rail sector’s share of this is minimal.

During discussions, Group members came to the following hypotheses and conclusions:

1. Traffic needs to be gained for the rail sector.
2. The customer expects and demands unhindered and inexpensive transport.
3. EU law and COTIF 1999 have been liberalised whilst the SMGS remains a restrictive law.
4. There is a great diversity of special features in east-west traffic along the different corridors and, to achieve our mandate, we have to concentrate initially on a concrete route. Corridor I (Helsinki – Tallinn/St. Petersburg/ - Riga – Kaunas – Warsaw) and Corridor II (Berlin – Warsaw – Minsk – Moscow / Nizhni Novgorod/) have considerable potential, and this has attracted the attention of this Working Group as an initial step.
5. The legal problems can be resolved more rapidly than the technical ones. Without under-estimating the technical difficulties, a solution is possible provided there is
the political will. Russia prior to 1956 was an example of this, as I have already
said, and Spain today, etc.) Another example of a political solution – on Corridor I
for example – is that of Estonia, which is now joining COTIF (given that it will
soon be a member of the EU), and there will consequently be a uniform system of
transport law.

6. The use of a single consignment note would considerably simplify the situation
and would contribute to a more competitive position for rail in relation to other
modes of transport where, to our knowledge, a uniform system is applied.

7. The relationship between carriers is key. Concrete solutions can be found by
contractual means.

Two fundamental conclusions can consequently be drawn:

- **In an environment of economic globalisation and very dynamic market
development, standardisation of international rail transport law is essential.
There is thus a need to consider revising the SMGS.**

- A **solution to today’s problems can be found by contractual means, provided
there is the corresponding political and economic will.**

This is thus the request we make of you today:

- to all Managing Directors, be modern managers and make the most of
liberalisation and the possibilities offered by contractual law and,

- to our Right Honourable Ministers, ensure they are monitored and that demands
are made of them.