

**OTIF**



**ORGANISATION INTERGOUVERNEMENTALE POUR  
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN  
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-  
NATIONAL CARRIAGE BY RAIL**

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**Work on the unification of Euro-Asian rail freight transport law**

Point of information

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Following the signature on 26 February 2013 by 37 UNECE countries of the joint declaration on the promotion of rail transport between Europe and Asia and of the activities carried out to this end,<sup>1</sup> which has breathed new life into the UNECE project on "Unified Euro-Asian Railway Law", the Group of Experts set up for this purpose by the UNECE has started its work to give substance to this unified law.

In order to facilitate the work in relation to the unification of Euro-Asian rail freight transport law, for the discussion of the Group of Experts which held its sixth session in Geneva on 2 and 3 December 2013, OTIF proposed its analysis on the general framework to be put in place to develop unified Euro-Asian law for the transport of goods by rail.

Rather than creating law overarching the two legal regimes of the CIM UR and SMGS, or creating autonomous law, OTIF advocates and will defend the establishment of an **interface regime** between the CIM UR and SMGS, with a common consignment note and a common liability regime. With this in mind, the validity of COTIF/CIM and SMGS for transport that is governed strictly by their respective rules would not be called into question.

It is relatively simple to establish such a legal framework in practice. In fact, thanks to the constant efforts of OSJD, CIT and OTIF, a lot of progress has been achieved in bringing together the legal provisions of the CIM UR and SMGS, such as:

- the rapprochement of the provisions concerning the presumption of damage in case of reconsignment;
- the creation of the CIM/SMGS consignment note;
- the model wagon and container list form and the uniform CIM/SMGS report model.

The question of the legal form of the institution intended to support this new instrument is very complex. OTIF believes this should be discussed at the end of the process, as it depends to a great extent on what the law contains. OTIF uses the model of COTIF to propose high-level provisions, giving the sector the responsibility of deciding the precise conditions for applying them.

These provisions assume that contractual relations between the parties will be given an important place. This is the point that will have to be particularly discussed with our partners in OSJD, who are still attached to the principle of an actual contract and to very detailed provisions on the precise conditions of application in the corpus of the future regime.

In addition, it is essential that the provisions of the new instrument are simple and practical and enable rail transport undertakings to develop. If this is not the case, as at present, the parties to the contract of carriage will choose to apply the agreed national law, with all the legal risks this entails. The aim of the developments taking place under the aegis of the UNECE is to avoid this risk.

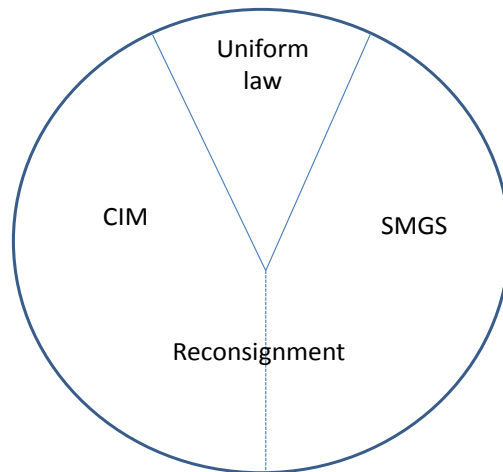
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<sup>1</sup> [http://www.unece.org/trans/main/sc2/sc2\\_geurl\\_itc\\_declaration.html](http://www.unece.org/trans/main/sc2/sc2_geurl_itc_declaration.html)

During the discussions in Geneva at the beginning of December 2013, OTIF's concept was opposed by that of OSJD, particularly the Russian Federation, which called for the creation of a new convention to replace the CIM UR and SMGS.

However, OTIF remains convinced that only interface law could be put in place quickly in the area of application of the CIM UR and SMGS, which reaches from the Atlantic to the Pacific.

#### Uniform law: field of application

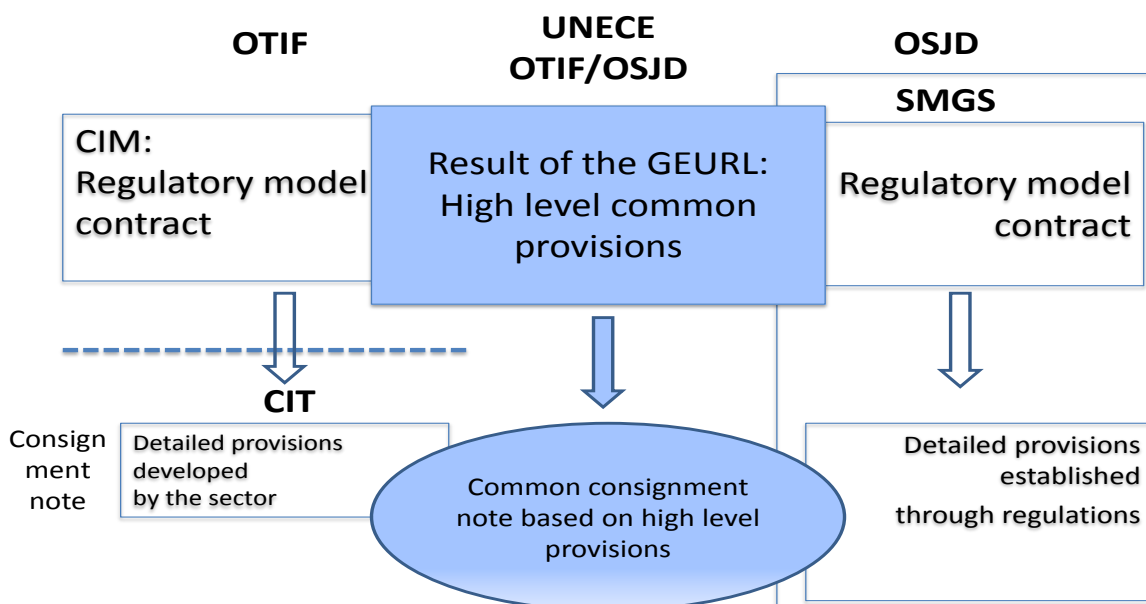


OTIF therefore submitted a proposal to the 7<sup>th</sup> session of the Group of Experts, which took place in Geneva on 3 and 4 April 2014, which was limited to high-level provisions which will be used as the basis for a common contract, evidenced by a common consignment note.

The proposed interface law would only apply if goods consignments crossed the border between the areas where the CIM UR and SMGS are applied. In addition, it would be applied on a voluntary basis if the parties to the contract of carriage so decided. This new regime could also apply to certain high-performance corridors to be defined. Lastly, if they consider it necessary, the parties to the contract of carriage could also continue to apply the CIM UR and SMGS and thus to arrange reconsignment at the border of the two legal regimes.

This proposal takes over the main elements of a study commissioned by OTIF in 2011. In view of the need to make definite progress with this issue, the draft is based not only on the CIM UR and SMGS, but also on the CMR, which was developed 55 years ago on the basis of the CIM in force at that time and which is now applicable and recognised in both Europe and Asia.

## Nature of the work to be done



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

This is why the Secretary General took the initiative to arrange a meeting with OSJD so that the two organisations can coordinate their respective drafts before the 7th session of the Group of Experts towards Unified Railway Law. This meeting took place in Warsaw on 24 March 2014.

At the meeting, OTIF and OSJD agreed to set up a technical working group (joint OTIF-OSJD working group in which CIT will also take part) which could start preparing the application documents for the new Euro-Asian legal regime. However, this technical working group could only be set up on the basis of a clear mandate from the Member States of OTIF and OSJD.

Therefore, based on a decision of the 11<sup>th</sup> General Assembly (September 2012) concerning the "Unified Railway Law" project, **the Secretary General will ask the Administrative Committee to give him a precise mandate to commit the resources necessary to set up this joint working group with OSJD, the aim of which will be to draft a joint proposal for the unification of railway law and consequently to speed up the work undertaken by the UNECE on the unification of Euro-Asian rail freight transport law.**