Central Office Report on the Revision of COTIF
by the
Amendment Protocol 1999 (Vilnius Protocol)

Adopted by the Fifth General Assembly of OTIF
(Vilnius, 26 May to 3 June 1999)

< Introduction
< Legal bases and objective of the revision
< Preparatory work
< Progress of the Fifth General Assembly
< Principal points of the revision of COTIF
< Concluding remarks
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 Eighth 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 this 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, 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 of the fact that the work had been sufficiently documented by the reports on the two sessions of the Revision Committee and the report on the Second General Assembly of 1990.

4. For economic reasons, the Central Office 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 would 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 its report on the revision work, completed with the adoption of the Vilnius Protocol, in greater detail than usual. 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 will contain, in an updated form, fairly detailed explanatory reports on the texts submitted to the Fifth General Assembly.
5. Firstly, this report is 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. In addition, this report is intended to facilitate the practical application of the Convention, based on a scientific approach.

**Legal bases and objective of the revision**

6. The revision procedure created by the Eighth 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 fifth 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 Third 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, namely (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
-and
- contracts relating to the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)

9. Having first noted the status of the preparatory work (of the Central Office) concerning the in-depth revision, the Third General Assembly had instructed the Central Office to complete the preparatory work, if possible, by the end of the first quarter of 1997 and to convene the Fourth General Assembly during the second quarter of 1997.

10. Neither the Revision Committee, with authority to examine all the amendment proposals submitted to the General Assembly for binding decision, nor the Central Office, was able to adhere to this very demanding schedule. After the Revision Committee had held a total of 11 sessions between the Third and the Fourth General Assembly, the majority of these lasting one week, without being able to find solutions to numerous questions, some political, particularly in respect of the Basic Convention itself, the Fourth 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 Fourth 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 within the Revision Committee concerning the Basic Convention. 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 (Central Office plan for 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 Central Office, 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, Basic Convention, etc.), which form part of this report.

12. In its circular letter of 22 January 1993, just a few days within a century after the first international Convention concerning the carriage of goods by rail came into force, the Central Office 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 Central Office 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 related 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 first and second sessions of the Revision Committee had already taken place in 1989/1990). The draft texts submitted to the Fifth General Assembly are the result of 90 days of negotiations within the Revision Committee. Thirty-two Member States participated in the Revision Committee sessions, although only eight States (Germany, Belgium, France, Italy, Netherlands, Czech Republic, United Kingdom and Switzerland) were represented at all the Revision Committee sessions. The Slovak Republic 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 the 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: Iraq, Iran, 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 Fifth General Assembly**

16. The results of the work of the Revision Committee were submitted to the Fifth 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, Slovak Republic, Spain, Sweden, Switzerland, Syria, Tunisia, United Kingdom.


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 Vytautas Naudušas (Lithuania) as Chairman, M. Anders Iacobæus (Sweden) as First Vice-Chairman and M. László Polgár (Hungary) as Second Vice-Chairman.

21. The General Assembly appointed the following commissions, which are constituted as follows:
21.1 Committee for verification of powers: Chairman M. Rudolf Metzler (Switzerland), vice-Chairman M. Jan J. Hilt (the Netherlands); members: Lithuania, Romania, Syria, the Czech Republic.

21.2 Drafting commission: Chairman Mme Marie-Noëlle Poirier (France), Co-Chairman M. Thomas Edler von Gäßler (Germany ) and M. 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 Central Office and the Revision Committee, the Fifth 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 Fifth General Assembly in three language versions, without any votes against but with three abstentions (for more details, see No. 3 of General Points relating to COTIF, No. 15 of General Points relating to the CUI Uniform Rules, No. 7 of General Points Relating to the APTU Uniform Rules and No. 15 of General Points relating to the ATMF Uniform Rules, as well as the Report of the Fifth General Assembly, pp 23-26 and p.169). 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 Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Poland, Romania, Slovak Republic, 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 Basic 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. In future, OTIF will assume the role of depositary in place of the current depositary, the Swiss Government.

27.2 The following amendments are mentioned in respect of the Basic Convention in the new version:

27.2.1 The purpose of the organisation has been expanded considerably. In future, 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 will constitute 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 newly created.
27.2.6 The Administrative Committee, to be composed in future of one third of the Member States (instead of the fixed number of 12 as at present), is appointed for three years (5 years hitherto) in order to permit more frequent changes and also more intensive participation by as many Member States as possible. The General Assembly is also in future to meet regularly every three years (instead of every 5 years as at present).

27.2.7 From now on, 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 a Secretary General, as a representative of OTIF, nominated by the General Assembly.

27.2.9 A list of lines constituting 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 new 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).

27.2.13 The status of “Associate Member” has been introduced.

28. International law on the carriage of passengers (CIV Uniform Rules)

28.1 In principle, the application of the Uniform Rules is independent of a system of registered lines.
28.2 In future, the international contract of carriage by rail is to be conceived as a consensual contract (hitherto: formal contract), as is the case with maritime transport, in accordance with the Athens convention of 1974 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 of 1974.

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 Uniform Rules)

29.1 Harmonisation with the transport 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 (hitherto: 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 in the future.

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 currently 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 A greatly enhanced legal clarity has been achieved through the formulation of definitions and determination of the obligations of the participants in the transportation of dangerous goods (provided in the Annex to RID).
In the Annex to RID, legal bases have been created for special provisions concerning complementary transportation on maritime routes.

In future, provisions will also be contained in the Annex to RID in respect of administrative co-operation, safety advisors and a uniform system of reports on accidents or incidents.

The Annex to RID will contain new, detailed regulations concerning the carriage of dangerous goods such as hand-held packages, luggage or on board motor vehicles in car-couchette trains.

The “technical” Annex of RID will be structured in a user-friendly manner (for easier application); this work, however, has not yet been completed.

A clear distinction is made between technical admission and the contract of use of vehicles.

All categories of wagons (until now, 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 concessionary law. The distinction made at present between the different types of contract (“registration contract”) is removed.

The contracting parties have been accorded a very large amount of contractual freedom. It will still be possible to conclude multilateral contracts, as at present, in accordance with the Regulations on the Reciprocal Use of Wagons (RIV) and Carriages and Vans (RIC) in International Transport.

The CUV Uniform Rules are limited to regulating the liability and subsidiary place of jurisdiction. Only the provisions concerning prescription are binding.

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 Community (EC) 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 (criminal or quasi-criminal).

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 (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 validated technical standards and the adopted technical prescriptions will be incorporated in the Annexes of the APTU Uniform Rules.
33.1.3 The purpose of the APTU Uniform rules is to ensure interoperability of the technical systems and components which are necessary in international rail traffic to facilitate the free use of railway material in international traffic.

33.1.4 The validated technical standards and the adopted uniform technical prescriptions must contribute to the ensuring of safety, reliability and availability in international traffic and must take account of the protection of the environment and public health.

33.1.5 The devising of technical standards and uniform technical prescriptions 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.

33.1.6 A request for validation may be lodged by any Member State, by any regional economic integration organisation with authority to legislate in matters of technical standards and technical prescriptions relating to rail stock (e.g. the EC) and by any representative international association (e.g. the UIC, OSJD). In addition, national or international standardisation bodies may lodge requests for validation of a technical standard.

33.1.7 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.

33.1.8 The validated technical standards will both take over from the International Convention on the Technical Unity of Railways dating from 1882/1938 and replace the various provisions 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 by the granting (in two stages) of admission of a type of construction to a given type, followed by the granting of 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 specifications adopted in accordance with the APTU Uniform Rules.

33.2.6 Technical admission by the competent authority of a Member 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.

33.2.8 Vehicles may not be immobilised or refused by an authority, rail transport undertaking or infrastructure manager of another State unless the ATMF Uniform Rules, APTU Uniform Rules or the provisions relating to construction and equipment contained in the Annex of RID have not been adhered to.

33.2.9 A databank of railway vehicles approved for international rail traffic is to be compiled under the authority of OTIF.

Concluding remarks

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, in the medium term, 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 this mode of transport.
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 remains open for signature at Bern, with the Provisional depositary, OTIF, until 31 December 1999. After that date, the Member States of OTIF will still be able to accede to the Protocol (Art. 3, § 3).

Nevertheless, the 1999 Protocol and, consequently the revised COTIF, will not come into force until they have been ratified, accepted or approved by more than two thirds of the Member States, i.e., by at least 27 States. Experience with the Amendment Protocol of 20 December 1990, which was not able to come into force until 1 November 1996, gives grounds to fear that the Vilnius Protocol will not come into force for about 4 or 5 years.