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

Explanatory Report [2]

General Points

1. To avoid repetition, reference is made to the General Points of the Explanatory Report on the 1999 Protocol proper.

2. In addition to the amendments and additions made to the content of the currently applicable COTIF, which are explained below, the latter has been systematically re-edited.

3. The Fifth General Assembly (26.5 – 3.6.1999) unanimously adopted the new version of COTIF, with the exception of Title IV, Finances (2 votes against: France and Tunisia, and 1 abstention: Algeria) and Title VII, Final Provisions (3 abstentions: Germany, Hungary, Slovak Republic) (Report, p. 179).

In particular

Title I
General Provisions

Article 1
Intergovernmental Organisation

1. Article 1, §§ 1 to 6 corresponds to Article 1, §§ 1 to 3 of COTIF 1980. Together with Article 1 of the 1999 Protocol, it secures the legal and organisational continuity of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as an independent intergovernmental organisation.

2. § 2, second sentence, based on Article 54, letter c) of the Geneva Convention of 6 March 1948 concerning the creation of the International Maritime Organisation (IMO), is intended to allow much greater flexibility with regard to the headquarters of the Organisation in the event of it proving judicious to transfer the headquarters to a different location for economic, political or other reasons. A (partial) amalgamation with the Organisation for Railways Co-operation (OSJD) in Warsaw or the development of OTIF towards an intergovernmental organisation operating on a global scale, following the example of the International Maritime Organisation (IMO) and the International Civil Aviation Organisation (ICAO), could motivate the General Assembly to take a decision to this end. In accordance with Article 14, § 6, a decision by the General Assembly to transfer the OTIF headquarters would, nevertheless, require a two-thirds majority.

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[2] The articles, paragraphs, etc. which are not specifically designated are those of COTIF; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

3. With regard to § 4, it must be emphasised that the representatives of the Member States enjoy the privileges and immunities provided for by the relevant Protocol only when participating in a session of a body of the Organisation in the capacity of official delegates. These privileges and immunities are accorded to them in all the Member States, and not only in the State in which the headquarters of the Organisation is located.

4. The question of whether the Headquarters Agreement of 10 February 1988 between the Swiss Confederation and OTIF (creation of OTIF on 1 May 1985), mentioned in § 5, is to be submitted for revision, is a question to be examined at a later date.

5. In view of the primordial importance generally accorded to English at international level, an importance which is also increasing in field of rail traffic (for the States, the companies and the users), English has been introduced as the third working language of the Organisation (§ 6). Such a measure has been imperative for a long time, and is a pre-condition for the development of OTIF into an intergovernmental organisation operating on a global scale. The fixed costs associated with the introduction of a third working language should be less than 300,000.- CHF per annum (Swiss salaries and prices index: 1998). Additional personnel required would be a translator and a secretary. Due to number of meetings held per year, there would also be additional costs for simultaneous interpretation, as well as the one-off costs for the installation of interpretation booths.

6. Due to their special and historical importance in railway matters, German and French have been retained as working languages. The possible introduction of other working languages (in addition to English, French and German) would have to be decided by the General Assembly, particularly in consideration of the accession of other States and the extent of rail traffic on their territories. Firstly, it would concern the introduction of Russian. The Revision Committee, however, has rejected a provision whereby Russian would automatically become a working language in the event of two Russian-language States acceding to COTIF (Report on the Tenth Session, p. 6).

Article 2
Aim of the Organisation

1. Article 2 corresponds, essentially, to Article 2 of COTIF 1980, but with the aim of the Organisation being universal in the future. OTIF will have to be capable of dealing with all aspects of international rail traffic, with a view to promoting, improving and facilitating it. This does not apply to those matters which come within the remit of the rail companies (transport companies and infrastructure managers) such as, for example, marketing, tariffs, timetables, operation, etc., but to those matters which come within the remit of the States and which were, in fact, previously entrusted to the railways (see No. 8). With regard to the demarcation between state and company powers, the Central Office, in its drafts of 1995/1996 for a new COTIF and its Appendices, was guided by the policy and legislation of the European Community (EC), particularly the Directive 91/440/EEC.

2. The development of international rail transport law will remain one of the essential tasks of OTIF (§ 1, letter a), No. 1). This task corresponds

   - in the field of aviation, to the administration of the Warsaw Convention by the ICAO
   - in the field of maritime navigation, to the administration of the Athens Convention, the Visby Rules and the Hamburg Rules by the IMO
   - in the field of inland waterway navigation, to the establishment of an international transport law for inland waterway navigation (CMNI project) by the Central Commission for Rhine Navigation (CCNR) in co-operation with the Danube Commission and the United Nations Economic Commission for Europe (UNECE).

3. The Regulations concerning the International Haulage of Private Owner‘s Wagons by Rail (RIP), Annex II to the CIM Uniform Rules (CIM UR) 1980, is replaced by Uniform Rules which regulate, in a general manner, the different types of contracts of use of vehicles as means of transport in international rail traffic. In this context, a distinction will no longer be made between network wagons and private wagons ; the new CUV Uniform Rules (CUV UR – Appendix D of the Convention) will also partially replace provisions of the Regulation on the Reciprocal Use of Wagons in International Traffic (RIV - § 1, letter a), No. 2, see also the Explanatory Report on the CUV Uniform Rules).

4. The function provided for by § 1, letter a), No. 3 is the result of the legal and organisational separation of transport from infrastructure management which has been undertaken or is planned in certain Member States. On an international scale, it is judicious to regulate in a uniform manner the legal, contractual relations between the rail transport companies and the infrastructure managers, particularly the questions relating to liability. The CUI Uniform Rules (CUI UR – Appendix E of the Convention), however, do not deal with the question of knowing the commercial or public law criteria according to which the infrastructure resources are made available to rail carriers. For the Member States of the EC and the States which are party to the Agreement on the European Economic Area (EEA), this question is already the subject-matter of the Directive 95/19/EC.

5. § 1, letter a), No. 4 provides for the development of the legal system for dangerous goods (RID), but in the form of a public law system, i.e., independently of the provisions of the transport law, a private law system, namely, of the CIM Uniform Rules (Appendix B of the Convention).

6. The active participation in the removal of obstacles to the crossing of frontiers (§ 1, letter b) should constitute another important function of OTIF – as for the ICAO, in the case of civil aviation. This corresponds to the decisions of the Second General Assembly of 20 December 1990 (No. 7, letter l) of the Final Document) and of the Third General Assembly of 16 November 1995 (No. 7.7 of the Final Document).

7. The words “taking into account special public interests” were introduced into § 1, letter b) upon proposal by Germany, since the acceleration of the crossing of frontiers cannot constitute an absolute objective, but that other important aspects must also be taken into account, such as the prevention of clandestine immigration or drug trafficking, which represent “special public interests”. This also corresponds to the Conventions cited under No. 2, concerning civil aviation and maritime navigation (Report on the Nineteenth Session, p. 5).

8. Numerous international rail traffic problems are attributable to technical differences between railways (different track gauges, differences in electrical power supply systems, signalling, braking systems, etc.). Consequently, efforts which seek to achieve technical harmonisation for the purpose of compatibility or interoperability are becoming increasingly important in order to ensure and enhance the competitiveness of rail in international traffic (§ 1, letter c). To this end, the promising approach constituting the basis of the International Convention on the Technical Unity of Railways (UT) of 1882/1938, which was concluded at state level, is taken up again. If one considers the influence that, to a very large extent, technical standards can exert on the competition between the rail companies and on the access to the market and foreign infrastructures, the validation of technical standards and specifications which are applicable to rail stock (specifications concerning its construction and operation) cannot be entrusted exclusively to the rail transport companies, as is actually the case at present in the majority of Member States. As far as rail traffic is concerned, the States should again take on their responsibilities in this matter, as they have always done in connection with standards and supervision in such areas as, for example, road transport and civil aviation. This concept is fundamental to the European Commission initiative concerning the Directive 96/48/EC on interoperability.

9. Just as technical standards and specifications can influence competition in rail traffic, so too can the technical admission of railway material intended for use in international traffic. In future, the technical admission procedure will be conducted uniformly on the basis of mandatory technical standards and uniform technical prescriptions for construction and operation, established at international level (§ 1, letter d). It would even be conceivable, in the medium term, to entrust their execution, i.e., the actual technical admission, to the Organisation. Article 4, § 3 creates a legal basis for this (see Nos. 3 and 4 of the remarks on Article 4 ; see also Articles 5 and 6 ATMF). Concentrating and internationalising technical rail supervision, of which technical admission is a part, would allow the undertaking of significant rationalisation measures within the state administrations and, consequently, a reduction of costs.

10. Only a central authority can effectively ensure compliance with the legal systems adopted and put into effect at international level; OTIF will constitute this authority, since it is OTIF which is preparing these legal systems (§ 1, letter e). This does not mean that OTIF is an international inspection body or an international supervisory authority with power to issue instructions (Report on the Fifth General Assembly, p. 28/29).

11. The development, including that within the Organisation, of provisions, rules and procedures in accordance with legal, economic and technical changes (§ 1, letter f) constitutes a clear objective.

12. § 2 opens up the possibility of devising other instruments or international conventions within the framework of OTIF. This avoids the need to amend the Convention in the event of it proving appropriate for other legal areas relating to international rail traffic to be regulated in a uniform manner at international level.

13. § 2, letter a) provides for the possibility of creating other systems of uniform law in the form of appendices. It seems advisable that such appendices should become an integral part of the Convention (Article 6, § 1, letter h).

14. It is not merely a matter of adding new appendices to the Convention, as the case may be, but also of creating a working platform for the devising of new, separate conventions with a substantive association with COTIF. One could imagine, for example, a convention concerning liability for damage sustained by third parties in connection with international rail traffic, following the example of that which exists for civil aviation, namely, the Rome Convention of 1952 (Report on the Tenth Session, p. 23 ; Report on the Thirteenth Session, p. 18). As with other areas of activity, one could envisage the devising of an international convention on the distraint of rail vehicles, following the example of the Brussels Convention of 1952 for the unification of certain rules relating to the arrest of sea-going ships, and a convention relating to international securities and guarantees in respect of railway stock financed by third parties.

Article 3
International cooperation

1. In the medium or long term, OTIF must become the only intergovernmental organisation within which the Member States deal with the questions and problems which arise at state level in connection with international rail traffic, following the example of the ICAO and IMO. Within the geographical area of the member States of OTIF there is currently a multitude of intergovernmental and non-governmental international organisations whose powers and activities overlap to some extent. In order to increase the effectiveness of international cooperation, the Member States undertake, in principle, to concentrate their international cooperation within OTIF, insofar as this is consistent with the tasks assigned to OTIF in accordance with Article 2. With regard to other matters, to avoid repetition, reference is made to the Explanatory Report on the 1999 Protocol. § 1 does not indicate either an obligation or powers to deal with questions of commercial cooperation between the railways within the framework of OTIF.

2. The existing international conventions, of both the States and the railways, concerning international rail traffic and cooperation in this domain, must be examined and adapted to the new situation and to the objectives of OTIF (including concentration of cooperation within OTIF, taking into consideration the separation of state tasks from those of the actual rail companies).

3. The tasks and powers of the EC are not affected (§ 2). In any case, the obligations of the Member States of OTIF which ensue from their capacity as a member of the EC or as a state which is party to the EEA Agreement prevail over the obligations arising from § 1.

4. In its twenty-second session (1 – 4.2.1999), the Revision Committee decided to transfer the article concerning international cooperation from the draft Amendment Protocol to the actual Convention, in order to include also those states which will become Member States of OTIF after the Amendment Protocol has come into force (Report, p. 10/11).

Article 4
Taking on and transfer of attributions

1. § 1 must be viewed in the light of the fundamental objective of the 1999 Protocol and the revised COTIF (Articles 2 and 3): to increase the effectiveness and to concentrate the international co-operation of the States in railway matters. The assumption of powers by OTIF and transfer of powers to OTIF are subject to a decision of the General Assembly, i.e., of the Member States, a majority of two-thirds being required in accordance with Article 14, § 6.

2. With regard to the assumption of competencies (and, if necessary, of the associated resources and obligations), it is a matter only of the assumption of competencies which, according to Article 2, are consistent with the objectives of OTIF and are based on international agreements or arrangements, i.e., tasks which have hitherto been entrusted to other intergovernmental organisations. A transfer of competencies cannot be "forced", but necessitates appropriate agreements between the Member States of these organisations (Report on the Tenth Session, p. 25/26 ; Report on the Thirteenth Session, pp. 19-22 ; Report on the Nineteenth Session, p. 8).

3. The Fifth General Assembly has decided to regulate not only the dissolution of the Organisation and the transfer of its remaining competencies to other intergovernmental organisations (Article 43), but also the possibility of transferring special competencies in order to achieve flexibility in the execution in internal rail matters without the necessity of dissolving the entire Organisation in order to achieve this (§ 2).

4. § 3 is intended to permit the assumption of responsibility for the administrative tasks of certain Member States in international rail traffic matters. This could be of particular relevance to certain Member States, particularly with regard to technical rail supervision, if the conversion of the state railways concerned into private-law companies necessitated the creation of a state rail supervisory authority which would perform the state functions previously entrusted to the state railways included in the state administration. Such was the situation, for example, in the case of the Federal Republic of Germany, on the creation of the Deutsche Bahn AG and the Federal Railways Office ("Eisenbahn-Bundesamt") as a rail supervisory authority (1.1.1994). Switzerland has also adopted this concept, as from 1 January 1999. See also No. 9 of the remarks concerning Article 2.

5. § 3 also opens the way for the creation of an internationalised rail administration in certain areas which lend themselves to such an administration, for example the administration of a register of rail stock financed by third parties or technical rail supervision. It will not be a question of creating a supra-national organisation such as the EC, but of revocably transferring certain powers of Member States to OTIF. The associated administrative costs would have to be borne by the Member States concerned.

Article 5
Special obligations of the Member States

1. §§ 1 and 2 are modelled on Articles 22, 23 and 37 of the Chicago Convention of 1944 on the creation of the ICAO. They provide for particular obligations on the part of the Member States under international public law, namely, to adopt all appropriate measures for the purpose of facilitating and accelerating international rail traffic. The introductory sentence in § 1 sets out this obligation in general terms. Letters a) to c) give substance to this general obligation in certain matters. § 2 includes the obligation of actively contributing to regularisation and standardisation in all major matters relating to international rail traffic.

2. § 4 as provided in the Central Office draft of 30 August 1996 was intended not only to oblige certain Member States to comply with the technical standards and prescriptions of Appendix F and its Annexes in the Technical Admission of Railway Material intended for use in international traffic, but also to develop technical standards and prescriptions which are applicable to railway material exclusively within the framework of OTIF. This proposal was rejected by the Revision Committee (Report on the Thirteenth Session, p. 26). Nevertheless, for those States which are party to Appendices F and G to the Convention (Contracting States), the obligation to base the approval of railway vehicles and other railway material on certain technical standards and uniform technical prescriptions now ensues, in part, directly from those Appendices.

3. § 3 was introduced upon proposal by France (Report on the Tenth Session, p. 32/33). This is not a mandatory provision. Rather, it is intended to support efforts seeking to facilitate access to the infrastructure.

Article 6
Uniform rules

1. Article 6 is modelled on Article 3 of COTIF 1980. It contains a list of the uniform legal systems which, in future, are to be binding in matters of international rail traffic (§ 1), unless there are reservations against certain legal systems in their entirety (see Article 42, § 1, first sentence). The content of the different legal systems in indicated in the respective Appendices.

2. §§ 2 and 3 of Article 3 of COTIF 1980 cannot be retained as they are, since the current system of registered lines and resulting obligations for the States and the companies is not retained (see also No. 1 of the remarks relating to Article 24).

3. § 2, like Article 3, § 4 of COTIF 1980, states that the Appendices constitute an integral part of the Convention.

Article 7
Definition of the expression of "Convention"

Article 7 corresponds to Article 4 of COTIF 1980.

Title II
Common Provisions

Preliminary remarks

In its Sixteenth Session (23 – 27.3.1998), the Revision Committee decided, in principle, to introduce into the actual Convention, in the form of common provisions, the identical provisions of the Appendices to the Convention (Report, pp 7, 12 and 15). Consequently, the provisions relating to the applicable national law, the unit of account the supplementary provisions, the security for costs, the execution of judgements and the attachment are included in Articles 8 to 12 of COTIF (Report on the Nineteenth Session, pp 13-17).

Article 8
National law

1. § 1 was constituted following the example of Article 3 of the Hamburg Rules. It sets out a principle of interpretation which is generally recognised in jurisprudence and doctrine. This provision states that the interpretation and uniform application of the Convention, i.e., and also of the Uniform Rules attached to the Convention in the form of Appendices, take precedence over the national legal concepts.

2. The term "national law" includes the laws, regulations, ministerial orders and, if applicable, also the tariffs.

3. The law of the State in which a legal action is taken is deemed to be the national law (lex fori). Article 8, however, does not refer directly to the substantive law of the State in which the legal action is taken, but includes the rules which are applicable in that State concerning conflict of laws (global reference).

4. The Community law applicable to the Member States of the EC constitutes part of the respective national law and is thus also covered by Article 8.

Article 9
Unit of account

1. Apart from minor wording amendments, this provision has been taken as it stands from Article 6 of the CIV Uniform Rules 1980 and Article 7 of the CIM Uniform Rules 1980. § 5 concerning the obligation on the part of the railways to publish the rates has not been reincluded. Instead, a new § 6 has been introduced concerning the conversion of the unit of account into national currency (Report on the Sixteenth Session, pp 13-15).

2. There are good reasons for making provision for the same unit of account as that provided for by the comparable conventions (CMR, Warsaw Convention, etc.).

Article 10
Supplementary provisions

1. With regard to the supplementary provisions, the Central Office draft of the CIM Uniform Rules of 5 May 1995 had been limited to making provision for the *state* supplementary provisions. In its Fifth Session (17 – 21.6.1996), the Revision Committee nevertheless decided, by a large majority, to mention also the supplementary provisions agreed between two or more carriers (Report, p. 12). What is important is that these supplementary provisions must not differ from the CIV Uniform Rules and CIM Uniform Rules. Consequently, the provisions can only be provisions relating to execution, which would have to be as uniform as possible in all Member States and for all carriers; otherwise, the legal unity created by the CIV Uniform Rules and CIM Uniform Rules could be jeopardised.

2. With regard to the legal nature of the supplementary railway provisions, see the 1979 Bulletin, pp 114, 119 ff.

Article 11
Security for costs

This provision corresponds to Article 18, § 4 of COTIF 1980; however, it has been extended to lawsuits within the scope of the CUV Uniform Rules and CUI Uniform Rules (Report on the Nineteenth Session, p. 17).

Article 12
Execution of judgements. Attachment

1. §§ 1 and 2 correspond to Article 18, § 1 of COTIF 1980. § 1 prohibits substantive review of the lawsuit, but not the assertion of ground for nullity within the framework of the formalities necessary for implementation. § 2 excludes facilities granted solely by § 1, judgements which are only provisionally enforceable and judgements relating to fines for abusive practice (exemplary compensatory damages).

2. § 3 repeats Article 18, § 2 of COTIF 1980 and deals with claims arising from international contract of carriages. This provision maintains the protection of such claims against attachment although the situation has changed in respect of the removal of the obligation to carry (see No. 5 of the General Points remarks concerning the CIM Uniform Rules and the remarks concerning Article 10 CIM). The Revision Committee rejected a solution facilitating attachment in the State upon whose territory the rolling stock is located (Report on the Eleventh Session, p. 33/34; Report on the Fourteenth Session, pp 54-58; Report on the Nineteenth Session, p. 74; Report on the Twenty-First Session, pp 46-49). The Fifth General Assembly has also rejected a proposal to remove this proposal (Report, p. 34/35).

3. § 4 extends the regulation, hitherto applicable only to claims arising from international contract of carriages, to claims arising from contracts of use of vehicles in accordance with the CUV Uniform Rules and contracts of use of infrastructure in accordance with the CUI Uniform Rules (Report on the Fourteenth Session, pp. 52-57).

Title III
Structure and Functioning

Article 13
Organs

1. Article 13, § 1 corresponds to Article 5 of COTIF 1980. Due to the broadening of OTIF's functions (see, in particular, No. 8 of remarks relating to Article 2), two additional bodies have been created, the Rail Facilitation Committee (§ 1, letter e) and the Committee of Technical Experts (§ 1, letter f) ; the powers of these Committees are determined in Articles 19 and 20.

2. Following the example of international public law practice (cf. the specialist organisations of the United Nations system – UNO – organisations specialising in transport matters, such as the ICAO and the IMO, as well as, e.g., the IAEA - the International Atomic Energy Agency, the CCNR, the Danube Commission and others), provision is made in future for a "Secretary General" as the executive body of OTIF (letter g). The functions of the Secretary General correspond, to a large extent, to those of the current Central Office (for more details, see the remarks relating to Article 21).

3. The Central Office, which currently still administers the Secretariat of OTIF under the leadership of the Director General, is not maintained as a permanent body of OTIF, in parallel to the executive body, the "Secretary General" (Report on the Fourteenth Session, p. 11/12). The Central Office draft of 30 August 1996 had still made provision for a "Secretary General" as a management executive body *and* for the "Central Office" having responsibility for administrative tasks. Neither had Guideline No. 6 of the Fourth General Assembly (8 – 11.9.1997) excluded such a "parallelism". The Revision Committee, however, did not support this guideline (Report on the Fourteenth Session, p. 11/12).

4. In order to avoid the need to amend the Convention in the event of it proving judicious to establish other commissions as bodies of OTIF, § 2 assigns general powers in this matter to the General Assembly. The Revision Committee, however, has decided to limit the powers of the General Assembly to the establishment of temporary commissions (Report on the Nineteenth Session, p. 20).

5. The Member States which have expressed a reservation or have made a declaration in accordance with Article 42, § 1, first sentence, are not members of the Committee having competence in this matter. On the other hand, such States remain members of the General Assembly, but (in the cases mentioned) do not have the right to vote (Article 14, § 5) and are not included for the purpose of determining a quorum (§ 3). In the case of the Committees, they are already excluded for the purpose of determination of a quorum due to the fact that they are not members of the corresponding Committee.

6. § 4 takes account of an equitable geographical distribution of the main functions within the Organisation (Report on the Twenty-First Session, p. 18/19).

Article 14
General Assembly

1. Article 14 follows the model of Article 6 of COTIF 1980. The list of powers of the General Assembly has been widened to matters newly included in COTIF which could necessitate a decision (§ 1, letters f) to k) and n) to p).

2. The current five-year interval for the holding of a General Assembly needlessly restricts OTIF's freedom of action, since the alternative (upon the proposal of one third of the member States) currently requires a co-ordinated initiative on the part of at least 13 Member States. A three-year interval (§ 3) is also the result of reducing to three years the mandate of the Administrative Committee, as provided for in Article 15, § 2, the composition of which is decided by the General Assembly (§ 1, letter b). The Revision Committee has made new provision for the possibility of convening the General Assembly upon the proposal of the Administrative Committee (Report on the Tenth Session, p. 43; Report on the Thirteenth Session, p. 43).

3. In view of the importance of the decisions that have to be taken by the General Assembly, the Revision Committee has retained the rule currently in force in respect of quorum required at the General Assembly (§ 4): the presence of the majority of the Member States is required (Article 6, § 4 COTIF 1980).

4. The Member States which have declared that they do not apply in their entirety certain Appendices to the Convention (Article 42, § 1) remain members of the General Assembly even if the latter adopts amendments to Appendices to the Convention to which such Member States are not party. In these cases (Article 13, § 3), they are not included for the purpose of determination of a quorum (§ 4) and, consequently, they do not have the right to vote (see No. 5 of the remarks relating to Article 13).

5. The regulation of representation by another Member State is problematic. The Rules of Procedure of the General Assembly indicate clearly that the requirements in respect of the negotiating capabilities of the different delegations are very stringent. The Fifth General Assembly has indeed retained the possibility of representation by another State, but it has limited this possibility to the extent that, in future, one State will no longer be able to represent another State, as is already provided for in respect of the Administrative Committee (Article 15, § 6, second sentence), (Report, pp 35-37).

6. Where necessary, with regard to the taking of decisions by the General Assembly, the two-thirds majority has been extended to other important matters (§ 6, letters f), g), h) and p).

Article 15
Administrative Committee

1. Article 15 corresponds to Article 7 of COTIF 1980. In view of the possible increase in the number of Member States (e.g. the accession of states from the former Soviet Union), the number of members of the Administrative Committee has not been fixed; it is altered according to the total number of Member States (§ 1). Consequently, and on the basis of the 39 current Member States, thirteen members would be appointed to the Committee (currently composed of 12 members).

2. The criterion for a geographically equitable distribution in determination of members for each period has been retained on the basis of the principle according to which a Member State cannot be part of the Committee for more than two consecutive complete periods (§ 4). The case of § 3 constitutes an exception to this rule.

3. When a seat on the Committee becomes vacant, it is no longer the Administrative Committee itself which appoints another Member State as a member of the Committee of the remainder of the period. In future, the General Assembly will appoint the members and the deputy members of the Committee. A specific deputy member will be appointed for each member. When a deputy member becomes a member of the Committee during a period, that member must in all cases be appointed by the General Assembly as a member of the Committee for the following period. This provision (§ 2) accords a much greater importance to the function of deputy member and could increase the interest of the Member States in being appointed as Deputy States (Report on the Twenty-First Session, pp 19-21). § 3 is also intended to reinforce the position of the Deputy States and to guarantee a permanent quorum within the Administrative Committee.

4. The list of powers of the Administrative Committee (§ 5) has also been adapted and broadened to include new matters to be handled by the Administrative Committee (letters e), g), k), q) and r).

5. Due to its importance, the provision concerning the quorum and the majority by which the Administrative Committee takes its decisions (§§ 6 and 7) has been transferred from its current Rules of Procedure to the actual body of the Convention. The simple majority provided for by § 7 guarantees that legally valid decisions can be taken in all cases.

6. § 8 repeats Article 7, § 3, indents 1 and 3 of COTIF 1980.

7. The hitherto mandatory provision, according to which the Administrative Committee holds two sessions per year, has been abandoned; it is required only that the Committee be convened once per year. A provision has been added according to which the Chairman convenes the Administrative Committee upon request by four of its members, but also upon a proposal by the Secretary General (§ 9, letter a).

8. The Revision Committee has decided against a proposal by Belgium seeking to institutionalise the Chairman of the Administrative Committee as an independent body. The Committee restricted itself to stating that the Chairman can deal only with urgent matters raised during the interval between sessions, as is the case at present (§ 9, letter c), (Report on the Thirteenth Session, pp 54-57; Report on the Fourteenth Session, p. 6; Report on the Nineteenth Session, pp 18/9 and 42-44).

Article 16
Other Committees

1. Article 16 corresponds to Article 8 of COTIF 1980. It combines all the provisions which are jointly applicable to the Committees as provided for in Article 13, § 1, letters c) to f). Since the participation of the Secretary General in the Committees' sessions is assumed, and that at the very most it would be a matter of regulating it in the Rules of Procedure of the Committees, Article 8, § 1, indent 2 of COTIF 1980 has not been reincluded.

2. § 4 of Article 8 of COTIF 1980 concerning the quorum has been included in Articles 17 to 20 concerning the different Committees.

3. Contrary to the General Assembly (see No. 5 of the remarks relating to Article 13), the Member States which have declared, in accordance with Article 42, § 1, first sentence, that they will not apply certain Appendices in their entirety are not members of the Revision Committee, the RID Expert Committee or the Committee of Technical Experts when these Committees deal with amendments to the Appendices concerned (Report on the Nineteenth Session, p. 45/46). In accordance with § 5, letter b), these States may nonetheless be invited to participate in the discussions as observers without voting rights.

4. The Fifth General Assembly has not reincluded in respect of Article 16 the rule, applicable to the General Assembly and the Administrative Committee, according to which a member State can be represented by another Member State, but according to which a State cannot represent more than *one* other State (see No. 5 of the remarks relating to Article 14), (Report, pp 35- 37).

5. The Fifth General Assembly has refused to grant a right of participation to bodies which make an application for validation of a technical standard or a request for adoption of a uniform technical prescription (see Articles 5 and 6, APTU). The regulation contained in § 5 is sufficient. In the interest of efficient operation, the bodies concerned will obviously be invited to the sessions of the Committee of Technical Experts by the Secretary General. This was the practice followed in the past (see the participation of international professional organisations and associations in the work of the Revision Committee and the RID Expert Committee). Moreover, the details of participation by third-party bodies could be regulated within the Rules of Procedure of the Committee (Report, p. 37/38).

6. The wording of § 6 decided by the Revision Committee is based on practice as observed in past years in the Revision Committee. It could be interpreted as establishing the obligation to elect a chairman and deputy chairmen at the start of each session. For this reason the Fifth General Assembly has decided, upon the proposal of Switzerland, to make provision whereby the chairmanship in one of the Committees can be entrusted to a Member State or to a particular deputy either for a period to be fixed at the time of election (for several years or sessions) or for an unlimited period. This is of particular importance to the Committee of Technical Experts, in order to guarantee efficient and continuous working. Moreover, the amended text takes account of the practice followed by the RID Expert Committee and by other international organisations (Report, p. 38/39).

Article 17
Revision Committee

A separate article, Article 17, is devoted to the Revision Committee, as is also the case with the other Committees. This article corresponds, in essence, to §§ 2 and 4 of Article 8 of COTIF 1980. The decision-making power is broadened to the new CUV Uniform Rules, CUI Uniform Rules, APTU Uniform Rules (without Annexes) and ATMF Uniform Rules, with the exception of the provisions mentioned in Article 33, § 4, letters d) and g).

Article 18
RID Expert Committee

A separate article is also provided for the RID Expert Committee. This article corresponds, in essence, to Article 8, §§ 2 and 4 of COTIF 1980. Notwithstanding the fact that the Annex to the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) will in future include major provisions of considerable significance (e.g., administrative inspections of dangerous goods, mutual administrative aid in the application of RID, safety adviser, transport restrictions on lines with special local risks, reports on accidents or incidents, cf. the initial draft of a new Appendix C, General Assembly document AG 4/3.3 of 1.7.1997), the Revision Committee opted for exclusive powers on the part of the RID Expert Committee with regard to the amendments to Appendix C (Report on the Nineteenth Session, p. 77). The Fifth General Assembly supported this decision.

Article 19
Rail Facilitation Committee

1. The establishment of a Rail Facilitation Committee, particularly in respect of the crossing of frontiers, takes account of the decision adopted in the debate on the Facilrail project in the Third General Assembly of 16 November 1995: "... has recommended a solution which seeks to give a more solid institutional basis, within the framework of the in-depth revision of COTIF, to the removal of obstacles to the crossing of frontiers in international rail traffic" (No. 7.7 of the Final Document).

2. This decision was confirmed by the guidelines adopted by the Fourth General Assembly (8 – 11.9.1997): "It is an objective of the Organisation ... to promote, improve and facilitate international rail traffic, particularly by contributing, as soon as possible, to removal of obstacles to the crossing of frontiers in international rail traffic ("rail facilitation") insofar as the causes of these obstacles come within the competence of the States (Guideline 1.2).

3. Despite the impetus given by the Facilrail project (1991-1994), a broad range of tasks remains to be undertaken in this area which is of importance for the competitiveness of rail as a mode of transport.

4. The creation, purpose, functions and powers of this new OTIF body (§ 1) are based on Articles 22, 23 and 37 of the Chicago Convention of 1944, the practical work of the ICAO and the experience acquired in that work. The Committee which exists within the framework of the ICAO was also established for an unlimited period and was assigned extensive powers. According to Article 2, § 1, letter b), OTIF may only contribute to the removal of obstacles whose cause comes within the competence of the *state* (Report on the Fourth General Assembly, pp 17-20).

5. Despite the fact that the Fourth General Assembly had decided not to provide for an Appendix to COTIF concerning a simplified customs procedure applicable to international rail goods traffic (Report, p. 20/21), Article 18 does not exclude the Committee from also examining customs questions. The Central Office draft of 30 August 1996 for a new COTIF had made provision for such an Appendix (see draft for an Appendix F of 15.3.1996 and General Assembly document AG 4/3.6 of 1.7.1997) and for a new Sub-Committee for customs matters, as a new OTIF body. With regard to the status of this matter at the time of the Fifth General Assembly, see the 1998 Bulletin, p. 370).

6. With regard to the consideration of "special public interests", see No. 7 of the remarks relating to Article 2.

7. The quorum (§ 2) has been set at a lesser level, in order to guarantee the Committee's capacity to act. This is justified, since, unlike those of other Committees, the decisions of the Customs Facilitation Committee have no direct legal consequences.

Article 20
Committee of Technical Experts

1. The establishment of a Committee of Technical Experts, and the powers which have been assigned to it (§ 1), constitute an important opening for the future of OTIF. There is no sector other than the technical sector which has such a major need for harmonisation. Due to the considerable costs that would be involved in, for example, a uniform rail gauge or a uniform electric power supply for rail networks in all the Member States of OTIF, harmonisation is to be understood in the sense of the attainment of maximum compatibility and interoperability.

2. The Fourth General Assembly of OTIF:

   - had noted that "technical harmonisation, in as wide a geographical scope as possible, is a fundamental task in enabling the rail sector to be capable of undertaking international transport without obstacles"
   - had considered that "for the devising of technical standards, it is essential to have recourse to the expertise and experience of the relevant organisations"
   - had instructed "the Central Office and Revision Committee to examine, in particular, and in collaboration with the other organisations involved, the problems of the validation of technical standards in the rail sector and of the technical admission of railway material used in international traffic, in order to present for the information of the General Assembly the solutions which are possible at international level".

3. Contrary to the solution adopted by the Revision Committee, the Fifth General Assembly has decided that, with regard to the uniform technical prescriptions, the Committee of Technical Experts also may either adopt them or reject them, but that may not in any circumstance amend them at the time of their adoption. The role of the Committee of Technical Experts is thus limited to analysing the content of the proposed standard or prescription (Report, pp 41-44).

4. As decided by the Revision Committee (Fifteenth and Eighteenth Sessions), the grounds for the provision were as follows: the technical standards, within the meaning of the definition in Article 2, letter b) of the APTU Uniform Rules, are the result of a specific and very detailed standardisation procedure within the framework of, for example, the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standardisation Institute (ETSI). The representatives of the Member States can participate in these procedures. It was not wished to give the Committee of Technical Experts the power to call into question, through amendment at the time of its validation, a technical

standard ensuing from this procedure. The situation is not the same for the uniform technical prescriptions devised, without the participation of the Member States, by the rail company associations and the rail stock production industry. The supreme legislator, i.e., the Member States, should have the possibility of amending a technical prescription which has been devised by the said association and whose adoption as a uniform technical prescription is requested.

5. Nevertheless, the Fifth General Assembly supported the viewpoint of France and Belgium, as well as of the European Commission and the UIC (Report, pp 41-44). The Commission, however, is able to provide the petitioner with a negative opinion, as the case may be, so that the latter may devise a possible amendment to the proposal in accordance with the petitioner's own procedure.

6. In order to avoid repetition, reference is made to the Explanatory Report on the ATPU Uniform Rules (Appendix F to the Convention), particularly to Nos. 7 to 23 of the General Points.

7. At "one half of the Member States, within the meaning of Article 16, § 1", the quorum requirement for the Committee of Technical Experts is greater than that for the RID Expert Committee and the Rail Facilitation Committee, but less than that for the General Assembly and the Revision Committee ("simple" majority).

8. The Fifth General Assembly has clarified that, in the taking of decisions concerning provisions which do not apply to certain States due to the fact that they have expressed an objection in accordance with Article 35, § 4 of COTIF or have made a declaration, in accordance with Article 9, § 1 of the APTU Uniform Rules, the States in question do not have the right to vote (Report, p. 40/41)

Article 21
Secretary General

1. With regard to the creation of a "Secretary General" body, see Nos. 2 and 3 of the remarks relating to Article 13.

2. § 2 repeats the addition to Article 7, § 2, letter d) of COTIF 1980, as provided for by the 1990 Protocol, concerning the duration of the mandate of the Director General of the Central Office, but with the period reduced to *three* years. This corresponds to the three-year period provided for the Administrative Committee. The Secretary General may remain in post for a maximum period of nine years (Report on the Fourteenth Session, p. 14). The actual Convention does not refer to either the regulation of a post of "Vice Director General" or of "Deputy Secretary General" (Report on the Eleventh Session, p. 12.13; Report on the Thirteenth Session, p. 31/32). The posts and grades are regulated in a staff regulation for the Organisation.

3. The functions of the Secretary General (§ 3) correspond, to a large extent, to the current powers of the Central Office. Newly introduced functions are those of the depositary of the Organisation (letter a) and the right to propose amendments to the Convention as provided for in § 4 (letter d), (Report on the Eleventh Session, p. 10/11; Report on the Fourteenth Session, pp 21-23), as well as the right to request the convening of the Administrative Committee (Report on the Nineteenth Session, pp 21-23).

Article 22
Staff of the Organisation

The Central Office is not retained as an independent body of OTIF, in addition to the Secretary General (see No. 2 of the remarks relating to Article 13). Consequently, the position of the Organisation's staff is regulated in general terms in a special article (Report on the Nineteenth Session, p. 24/25).

Article 23
Bulletin

1. The Organisation is under obligation to publish the Bulletin, but the body of the Organisation responsible for its publication is not specified. This appears judicious, since neither the Administrative Committee nor the Secretary General, as bodies to be taken into consideration, are "editors" of the Bulletin. The Bulletin in question, as currently the case, is an official Bulletin, but which also contains other information which is necessary or useful in the application of the Convention. The Convention does not provide for a specific publication frequency for the Bulletin which, as the case may be, would allow it to be published at irregular intervals according to need. The required flexibility would thus necessarily be assured in the future.

2. In accordance with Article 21, § 3, letter m), the Secretary General must bring various communications to the notice of the Member States, the international organisations and associations and the companies. In the case of the current system of registered lines, the Central Office has available the name and address of all the rail companies involved in international rail traffic; this will no longer be the case in future. § 2 consequently creates the possibility of replacing the separate communications, which the Secretary General is obliged to promulgate, by a publication in the Bulletin.

Article 24
List of lines or services

1. The administration of the current system of registered lines, for the purpose of determination of the scope of application of the CIV Uniform Rules and CIM Uniform Rules, is not retained. In accordance with the decisions of the Revision Committee (Report on the Third Session, pp 3-9; Report on the Fifth Session, pp 3-5) relating to Article 1 of the new CIV Uniform Rules and CIM Uniform Rules, these Uniform Rules are mandatory in respect of any contract of carriage of passengers or goods by rail when the place of

departure and the destination are located in two different Member States. The obligation to carry has been removed. In addition, the system for administration of the "lists of lines", which is cumbersome and costly, becomes essentially superfluous with regard to railway lines (see Nos. 4 and 5). This is also a consequence of the separation between rail transport and infrastructure management, cases of which are increasing.

2. To apply the CIV Uniform Rules or CIM Uniform Rules to *complementary* transport performed by another mode of transport as *internal traffic* of the Member States, it is also no longer necessary for the corresponding lines to be registered, since the application of the CIV Uniform Rules and CIM Uniform Rules ensues directly from the contract of carriage. As long as the complementary transport does not involve the crossing of frontiers, there is no conflict with the international law regulating the other modes of transport such as, for example, the Convention on the Contract for the International Carriage of Goods by Road (CMR).

3. This does not apply to the case of complementary maritime transport or to inland waterway transport, since this part of the transport is itself trans-frontier. This is why, in these cases, the application of the CIV Uniform Rules and the CIM Uniform Rules continues to be determined by the registration of such lines on the corresponding lists (see the decisions of the Revision Committee concerning Article 1, § 4 of CIV and Article 1, § 4 of CIM cited in No. 1, as well as No. 19 of the remarks relating to Article 1 CIM, General Assembly document AG 5/3.5 of 15.2.1999). These are taken into account in Article 24, §§ 1, 3 and 5. To this extent, the regulation corresponds to Article 10 of COTIF 1980. The retention of the system of registered lines for maritime trans-frontier complementary transport or for inland waterway transport is possible due to the fact, for example, that application of international maritime transport law is not mandatory, as is the case with the CIM Uniform Rules.

4. The Central Office draft of 30 August 1996 for a new COTIF had made provision, in Article 18, whereby lines which, in certain Member States, are not available to direct international traffic conducted on the basis of the CIV Uniform Rules or CIM Uniform Rules, could be registered in separate lists, known as negative lists. Such a provision would, in future, have enabled certain States to accede to COTIF if the application of the CIV Uniform Rules or CIM Uniform Rules to the whole of the rail network of the State concerned could not be considered for practical, economic or financial reasons.

5. The idea of a negative list had been approved in principle by the Fourth General Assembly (8 – 11.9.1997) (see Guideline 7.2). In accordance with the suggestions of the Administrative Committee concerning the financing of the Organisation, the Revision Committee decided, for practical reasons, to replace this "negative list" by the possibility of making the scope of application of the CIV Uniform Rules and CIM Uniform Rules subject to reservation (Report on the Twenty-First Session, p. 17/18). This reservation consists in registering on lists those railway lines on which international transport is conducted which is subject to the CIV Uniform Rules and CIM Uniform Rules ("positive list"). This possibility, however, is reserved for certain future Member States (see No. 8 of the remarks relating to Article 1 of CIV and No. 26 of the remarks relating to Article 1 of CIM).

Title IV
Finances

Preliminary remarks

1. The future regulations concerning the financing of the expenditure of the Organisation has constituted one of the most difficult questions, if not the most difficult, encountered in the preparatory work on the revision of COTIF. All the problems relating to this matter were discussed repeatedly in detail within the various bodies of OTIF, namely, the Revision Committee (Report on the Tenth Session, pp 47-51; Report on the Fourteenth Session, pp 30-38; Report on the Twenty-First Session, pp 2-18), the Fourth General Assembly (Report, pp 47-50; Guidelines, 7.1 to 7.3) and the Administrative Committee (Report on the Eighty-Seventh Session, p. 30/31; Report on the Eighty-Eighth Session, p. 7; Report on the Eighty-Ninth Session, pp 11-13; working group, supplemented by representatives of France and the Slovak Republic, on 13/14.8.1998 and extraordinary session, in the presence of representatives of France and the Slovak Republic, on 30.9.1998).

2. In its twenty-first session (19 – 23.10.1998), the Revision Committee finally adopted the recommendation of the Administrative Committee concerning the financing of the Organisation (Rev. Doc. 28/8 of 30.9.1998). This is compromise in respect of all questions relating to financing, based on the following values:

   - minimum contribution: 0,25 %
   - maximum contribution: 15 %
   - “economic power” ratio (UNO key): “length of network” : 40 : 60 (2/5 : 3/5).

3. The Fifth General Assembly rejected France’s proposal to fix the “economic power” ratio (UNO key): “length of network” at 2/3 : 1/3 (Report, p. 45/46).

4. With regard to the transitional solution provided for by Article 6 , § 7 of the 1999 Protocol, see the remarks on that article.

Article 25
Work Programme. Budget. Accounts. Management report

1. The introduction of a special article is considered to be judicious in the interest of editorial simplification, the Revision Committee having decided to change to a biennial timetable in matters relating to the programme of work, the budget, the accounts and the management report (Report on the Nineteenth Session, pp 21/22 and 39/40; Report on the Twenty-First Session, p. 33).

2. Notwithstanding the fact that provision has been made for publishing the Management Report on a biennial basis, there is nothing to prevent the Organisation from publishing an annual Management Report insofar as this is justified by the volume of work or the results achieved (Report on the Twenty-First Session, p. 33).

Article 26
Financing the expenditure

1. This article replaces Article 11 of COTIF 1980. The regulations on contributions, currently based solely on the length of the registered lines, does not take sufficient account of the very varied economic and traffic situations in the Member States or of the very wide variations between Member States in the amount of international rail traffic. For this reason, the Central Office has been repeatedly requested in the past to examine replacement solutions. This was done, but it was not possible to achieve a consensus on any of the variants examined. Since, in future, the system of registered lines is to be abandoned, there is a need to create a new system.

2. The solution adopted by the Revision Committee represents a compromise in the form of a "package" (see preliminary remark on Title IV).

3. § 2 takes account of the special situation of the States which, for practical, economic and financial reasons, are not in a position to apply COTIF and its Appendices, particularly the CIM Uniform Rules, on all of their rail infrastructure. The possibility of making the CIV Uniform Rules and CIM Uniform Rules subject to reservation is limited to those States which will be members of COTIF in the version of the 1999 Protocol after it comes into force and in which the Convention concerning International Goods Traffic by Railway (SMGS) is applied (see No. 8 of the remarks relating to Article 1 of CIV and No. 26 of the remarks relating to Article 1 of CIM). For these States, it is not the total length of the rail infrastructures that is taken into account, but only the length of the infrastructures on which transport is undertaken in accordance with the CIV Uniform Rules and CIM Uniform Rules, plus the length of the registered maritime lines and inland waterways. The economic power (UNO key) is also only taken into account according to the ratio between the length of the lines on which CIV and CIM transport is undertaken and the total length of the rail infrastructures, plus the length of the maritime lines and inland waterways.

4. The possibility, provided for by Article 42, § 1, first sentence, of declaring certain Appendices to the Convention not to be applied in their entirety, will have the result that the Member States of OTIF, which will no longer derive the same benefits from OTIF, will no longer be affected in the same way by OTIF's activities and, hence, its expenditures. For this reason, § 4 provides that the portion of expenditure arising from activities which benefit only some of the Member States will be borne by those States only, but according to the same formula as that provided for in § 1. The Administrative Committee is responsible for deciding on the allocation of the expenditure.

5. In order to ensure the liquidity of OTIF, the contributions for the current biennial period are due, in the form of a cash advance, payable in two instalments, by not later than 31 October of each budget year (§ 5). The cash advance is fixed on the basis of the final contribution due for the preceding year. With the exception of the biennial timetable, the new § 5 corresponds, essentially, to the current Article 12 of the Financing and Accounting Regulations.

6. § 6 corresponds, to a large extent, to Article 11, § 2, indent 1 of COTIF 1980.

7. § 7 corresponds to Article 11, § 2, indent 2 of COTIF 1980, but with the following amendment: the sums due bear interest from 1 January of the following year and the voting right of a debtor State is suspended for one year starting from the year for which it is under formal notice to pay.

8. §§ 8, 10 and 11 correspond, apart from some rewording, to Article 11, §§ 3, 5 and 6 of COTIF 1980. § 9 has been markedly simplified by comparison with Article 11, § 4 of COTIF 1980.

Article 27
Auditing of accounts

The additional mandate relating to the auditing of accounts, decided by the Second General Assembly (17 – 20.12.1990) (see 1990 Protocol), applied since 1 January 1994, has been incorporated as it stands in the actual Convention. The General Assembly, however, has the right to entrust the auditing of accounts to a State other than the Headquarters State (§ 1).

Title V
Arbitration

Title V (Articles 28 to 32) concerning arbitration corresponds, to a large degree, to the current Title III (Articles 12 to 16) of COTIF 1980. Article 28, § 2 (current Article 12, § 2) has been simplified and extended to other lawsuits arising from the application or interpretation of other conventions devised within OTIF (see Article 2, § 2).

Title VI
Modification of the Convention

Title VI (Articles 33 to 35) corresponds – but with significant amendments – to Title V (Articles 19 to 21) of COTIF 1980.

Article 33
Competence

1. The General Assembly remains competent in respect of amendments to the actual Convention and its Appendices, unless possible amendments come expressly within the scope of competence of particular Committees (§ 2). In addition, it may continue to declare its competence in respect of amendments which are related to fundamental provisions (§ 3) (Report on the Eleventh Session, p. 23).

2. A newly created possibility is that whereby one third of the States represented in the Revision Committee, the RID Expert Committee or the Committee of Technical Experts may require amendment proposals relating to the Appendices to the Convention to be submitted to the General Assembly for decision (Report on the Eleventh Session, p. 22).

3. With regard to amendments subject to the simplified procedure, the Central Office draft of 30 August 1996 had made provision to extend the competence of the Revision Committee to all the provisions of the CIV Uniform Rules and CIM Uniform Rules, as well as to the new Appendices D (CUV Uniform Rules – vehicle law) and E (use of the infrastructure). The objective of this broadening of competence was to allow both the transport law and the two newly created Appendices to be more rapidly adapted to economic and legal changes. In addition, the Central Office draft had provided that the decisions of the General Assembly should no longer be mandatorily subjected to a ratification procedure.

4. In the course of the deliberations of the Revision Committee, it became evident that, in view of the constitutional law of numerous Member States, it is not possible to achieve such an extensive simplification of the revision procedure, for either the Convention itself or the Appendices (Report on the Eleventh session, pp 19-28). The provisions concerning the bases of liability, the burden of proof, the scope of application, compensatory damages, the limitation and extinguishment of rights and the place of jurisdiction have been excluded from simplified revision procedure (Report on the Nineteenth Session, p. 75/76; Report on the Twenty-First Session, pp 36 – 38 and Report on the Fifth General Assembly, pp 48-51).

5. The Revision Committee, on the other hand, will be competent in respect of amendments to various provisions of the actual Convention, namely, Article 9 (unit of account) and Article 27 (auditing of accounts), with the exception of § 1 (transfer of the auditing of accounts from the Headquarters State to another State). This corresponds to the current legal situation.

6. With regard to the APTU Uniform Rules and ATMF Uniform Rules (Appendices F and G to the Convention), the Revision Committee, in its deliberations, retained the same principles (see No 4) as for the Uniform Rules mentioned in Nos. 3 and 4. The Committee of Technical Experts, on the other hand, will be competent in respect of amendments to the *Annexes* of the APTU Uniform Rules (§ 6).

7. The Revision Committee, and subsequently, the Fifth General Assembly have decided that the RID Expert Committee must be competent not only in respect of decisions relating to the Annex of Appendix C, but also in respect of proposed amendments to Appendix C proper (Report on the Nineteenth Session, p. 77; Report on the Twentieth session, First Meeting, p. 7; in addition, the remark relating to Article 18, as well as Nos. 10-16 of the General Points relating to RID).

Article 34
Decisions of the General Assembly

1. Article 34 partially abandons the system according to Article 20, §§ 1 and 2 of COTIF 1980 applied previously. This amendment is justified by the experience with the COTIF of 9 May 1980, which did not come into force until 1 May 1985, and with the Protocol of 20 December 1990, which did not come into force until 1 November 1996. In the first case, almost five years elapsed between adoption and entry into force, and almost six years in the second case, due to the fact that the necessary number of ratifications, adoptions or approvals was not achievable within a shorter period.

2. The Central Office Draft of 30 August 1996 had provided for amendments to the Convention decided by the General Assembly coming into force automatically for States which did not declare opposition to the amendments prior to the expiry of a period set for their entry into force. Such an extensive simplification of the revision procedure in respect of the decisions of the General Assembly did not achieve the necessary majority (Report on the Eleventh Session, p. 23/24; Report on the Fourth General Assembly, p. 58/59, Guideline 8.1; Report on the Fourteenth Session, pp 67 – 69; Report on the Twenty-First Session, p. 41/42). A solution was finally adopted according to which the amendments to the Convention proper decided by the General Assembly come into force, for all Member States except those which have made a declaration to the effect that they do not approve the said amendments (§ 2), twelve months after their approval by two-thirds of the Member States. In the case of amendments to the Appendices decided by the General Assembly, approval by half of the Member States is sufficient. The period of twelve months remains unchanged (§ 3).

3. A newly introduced possibility is that whereby the General Assembly may specify, at the time of adoption of an amendment, that the amendment in question is of such a nature that those States which are unable to accept that amendment must leave the Organisation (§ 6). The legal consequence of the suspension of the application of the Uniform Rules, previously provided for by Article 20, § of COTIF 1980, has been retained insofar as the decisions of the General Assembly concern the Appendices to the Convention (§ 7). The purpose of these two legal consequences is to maintain legal unity in international rail traffic (Report on the Twenty-First Session, pp 44-46). It is granted that this is not an ideal solution, but it has been possible to avoid legal uncertainty of the type that exists in international air traffic due to the different versions of the Warsaw Convention that are in force.

Article 35
Decisions of the Committees

1. Article 35 corresponds, in essence, to Article 21 of COTIF 1980. The period of twelve months for the entry into force of decisions adopted by the Revision Committee has been retained (Report on the Eleventh Session, p. 26). On the other hand, the period for the entry into force of decisions adopted by the RID Expert Committee has been reduced to six months and thus has been adapted to the periods as provided by the European Agreement

concerning the International Carriage of Dangerous Goods by Road (ADR) (Report on the Eleventh Session, p. 24/25; Report on the Fourth General Assembly, p. 60, Guideline 8.5; Report on the Twenty-First Session, p. 43).

2. A paragraph § 6 has been added which prevents, for example, States which have declared a reservation against an Appendix in its entirety, or States which no longer have a right to vote because they have not fulfilled their payment obligations (Article 26, § 7), or States whose membership has been suspended in accordance with Article 40, § 4, from being able to influence the entry into force of decisions adopted by the Committees. The version decided by the Revision Committee has been revised and supplemented by the Fifth General Assembly in the interest of legal clarity (Report, p. 53/54).

3. The Fifth General Assembly has changed the legal consequence of the suspension of the application of Appendix F in its entirety in the case of objections against the validation of a technical standard or against the adoption of a uniform technical specification, insofar as only the application of this standard or of this specification is suspended (§ 4, third sentence) (Report, p. 53.54).

Title VII
Final provisions

Article 36
Depositary

1. Article 36 corresponds approximately to Article 26 of COTIF 1980. In future, however, the functions of Depositary are to be performed by the Organisation itself, i.e., by its executive body, the Secretary General. This is also the current practice in other international organisations (see also the remarks relating to Article 2 of the 1999 Protocol).

2. Instead of a detailed list of the functions of the Depositary, as provided by Article 26 of COTIF 1980, general reference is made to Part VII of the Vienna Convention of 23 May 1969 on Treaty Law (§ 1).

3. Experience in recent years has shown that, even within a relatively “apolitical” organisation such as OTIF, difficult legal questions can arise in connection with the role of Depositary. For this reason, § 2 provides for the possibility of regulating possible differences between a Member State and the Depositary.

Article 37
Accession to the Convention

1. Article 37 corresponds, to a large extent, to article 23 of COTIF 1980, but without differentiating between accessions after signature, but before the entry into force of the “new” Convention, i.e., the Convention amended by the 1999 Protocol, and accessions after its entry into force. Accessions prior to the entry into force of the 1999 Protocol and

the amended Convention relate to COTIF 1980 and are governed by Article 23 of the latter. See also the remarks relating to Article 4 of the 1999 Protocol.

2. In principle, accession to COTIF and, consequently, to the Organisation, is open to each State on whose territory a railway infrastructureis managed (§ 1). It is not of importance that the State in question has its "own" railway. Nor is the possibility of accession necessarily linked to the existence of a direct rail link with the current Member States. It would be conceivable, and should be possible, for example, for Bangladesh, India and Pakistan to accede to COTIF even if currently there is no uninterrupted rail link between Pakistan and Iran (breach to the east of Zahedan) and thus to the west and the other Member States of OTIF. These three States could very well apply the CIV/CIM Uniform Rules, as well as the rest of the uniform law, in international rail traffic between their territories. The same could be true of other groups of States in North America, Latin America, Africa and Asia. See also Article 39 and the remarks relating to it.

3. OTIF could develop, following the example of the ICAO and the IMO, to become an intergovernmental organisation operating on a global scale. This could prove to be of even greater benefit and significance if OTIF becomes more involved in other legal areas relating to international rail traffic in addition to carriage proper. Finally, the increase in international traffic in the intermodal transport sector, particularly in the carriage of dangerous goods, means that there is an ever-increasing need for the creation of a global-scale, uniform law that can be applied in trans-frontier rail traffic. To this end, OTIF could be the appropriate organisation. The International Union of Railways (UIC) is also a railway (company) association operating on a global scale.

4. §§ 2 to 5 correspond to §§ 2 and 3 of Article 23 of COTIF 1980, the conditions for the taking effect of an accession having been simplified (§ 3). The current double use, between "application for accession" and "depositing of an instrument of accession following expiry of an objection period" (Article 23, § 2, indent 4, COTIF 1980) has been abandoned.

Article 38
Accession of regional economic integration organisations

1. Some Member States have, in certain matters, transferred sovereignty rights (legislation and application) to the EC, which represents a regional economic community within the meaning of § 1. For this reason, it appears necessary to offer such a supra-national organisation the possibility of acceding to OTIF. Such was the objective of Article 38, in the version decided by the Revision Committee (Report on the Fourteenth Session, p. 75/76; Report on the Nineteenth Session, p. 78). Its content was based on Article 22, Parag. 3 of the draft UNECE Convention on an International Customs Transit System for Goods Transported by Railway (document TRANS/WP.30/R.141). Upon the suggestion of the European Commission, taken up by Germany in the form of a proposal, the Fifth General Assembly completely amended the text decided by the Revision Committee. Consequently, Article 38 provides for the possibility of accession by right instead of simple association

(Report, pp 52-54). On account of the future activities of OTIF in connection with the APTU Uniform Rules, the accession of the EC could prove advisable.

2. The conditions of an accession must be the subject of an agreement between the regional organisation and OTIF. The General Assembly is the body of OTIF which is competent to approve such an agreement (Article 14, § 2, letter n).

3. §§ 2 and 3 regulate the extent of the rights exercised by the regional organisation in place of the different member States, or by the Member States themselves. § 4 regulates the termination of membership. Regional organisations which have acceded are treated equally with the Member States.

4. The decision concerning a possible accession of the EC to OTIF does not come within the competence of the European Commission. Such a decision must be taken by the Member States of the European Community. Currently, the questions relating to an accession to international organisations operating in the area of transport or relating to accession as party to an international Convention have not been clearly resolved, from a political and legal standpoint, within the Community. Thus, the EC is party to the Geneva Agreement of 1958 (concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and / or used on a wheeled vehicle and the conditions of reciprocal recognition of approvals granted on the basis of these prescriptions); nevertheless, despite the fact of it having been proposed or requested by the Commission, the EC is still not a member of, for example, the CCNR or Eurocontrol. OTIF is free to propose to the EC that it accede, in the same way that the EC is free to accept or decline such an offer of accession (Article 238 of the EC Treaty; Report on the Twenty-First Session, pp 50-52).

Article 39
Associate Members

1. The current COTIF provides for only one form of membership for States, namely, that with full rights and full obligations. The "obligations" include the application of the Appendices in international rail traffic between the Member States (COTIF 1980: CIV and CIM; COTIF in the terms of the 1999 Protocol: at least one of the Appendices, cf. Article 42, § 1). It is conceivable, however, that States could be interested in the work of OTIF without wishing initially to accept all the rights and all the obligations associated with an accession in accordance with Article 37. For this reason, it is judicious to make provision for a nuanced level of membership in the form of association, as provided, for example, by other international organisations and associations (European Conference of Ministers of Transport – CEMT, UIC). Such a participation, in the form of association, could facilitate the subsequent accession of the State in question. States which would come into consideration would be, for example, the United States of America, the Russian Federation, India and other States whose railways undertake international transport.

2. § 2 regulates the obligation to pay contributions and limits certain rights of participation of the associate members.

Article 40
Suspension of membership

These provisions have their origin in a suggestion by the Central Office seeking to fill the gap between, on the one hand, rightful membership, with all its rights and obligations and, on the other hand, denunciation of the Convention (see Rev. Doc. 13/2.33a of 15.10.1997 and Report on the Fourteenth Session, pp 76-78).

Article 41
Denunciation of the Convention

Article 41 corresponds to Article 25 of COTIF 1980. Due to the possibility of a State declaring non-application of certain Appendices in their entirety (Article 42, § 1, first sentence), provision of the possibility of also denouncing one or more Appendices was relinquished (Report on the Twenty-First Session, p. 55).

Article 42
Declarations and reservations to the Convention

1. § 1 admits two forms of reservations and declarations: firstly, reservations and declarations concerning the non-application of certain Appendices in their entirety and, secondly, reservations and declarations concerning the non-application of certain provisions of the Convention proper or of certain provisions of its Appendices. This latter possibility, however, is admitted only if such reservations and declarations are expressly provided for by the provisions themselves. To this extent, § 1 corresponds to Article 27 of COTIF 1980. The distinction between reservations and declarations is made according to the time at which they can be issued or made. Reservations can be issued at certain times only, whereas declarations can be made at any time.

2. The possibility of issuing reservations and making declarations in accordance with § 1, second sentence, concerning the non-application of certain provision is provided for by:
   - Article 28, § 3 of COTIF, concerning arbitration
   - Article 1, § 6 of the CIV Uniform Rules, for the States of the SMPS, concerning the application of the CIV Uniform Rules only to carriage on a part of the railway infrastructure located on their territory
   - Article 1, § 6 of the CIM Uniform Rules, for the States of the SMGS, concerning the application of the CIM Uniform Rules only to carriage on a part of the railway infrastructure located on their territory
   - Article 2 of the CIV Uniform Rules, concerning the non-application of any of the provisions of the CIV Uniform Rules relating to the carrier's liability in case of death of or personal injury to passengers who are nationals of the State which has made the declaration or whose usual place of residence is in that State

- Article 2 of the CUI Uniform Rules, concerning the non-application of any of the provisions relating to the carrier's liability in case of bodily loss of damage when the event resulting in the injury occurs on the territory of the State which has made the declaration and the victim is a national of that State or has their usual place of residence in that State
- Article 9 of the APTU Uniform rules, concerning the application of technical standards which have been validated and uniform technical prescriptions which have been adopted.

Article 43
Dissolution of the Organisation

1. Even if the question of dissolution is not one that arises at the present time, the Revision Committee has considered that it would be expedient to provide for a clear regulation on this matter, particularly in respect of the possible apportionment of assets, taking into account the considerable differences in the participation of the Member States in the financing of the Organisation (Report on the Twenty-first Session, p. 59).

2. The decision on a dissolution of the Organisation would have to be taken by the General Assembly, in accordance with Article 14, § 6, with a two-thirds majority. A possible transfer of the remaining attributions to another international organisation would have to be preceded by negotiations with that organisation, and with the Member States concerned. The details concerning the dissolution and possible transfer of remaining attributions, the time of entry into force of this decision, etc., could only be regulated by the General Assembly when the latter has decided upon the dissolution (Report on the Twenty-First Session, p. 60).

Article 44
Transitional provision

Article 44 provides that existing contracts concluded in accordance with the CIV, CIM, CUV and CUI Uniform Rules remain in the event of suspension of the application of these Uniform Rules (Article 34, § 7 and Article 35, § 4), in the event of denunciation of the Convention (Article 41) and in the event of declarations of non-application in their entirety of the relevant Appendices to the Convention (Article 42, § 1), subject to the law in force at the time of conclusion of the contract.

Article 45
Texts of the Convention

1. The proposed extension of the attributions and activities of OTIF, the continually increasing importance of English, including in international rail traffic, and the prospect of OTIF operating on a global scale have indicated the need not only to introduce English as a third working language of OTIF but also to draft the Convention in English (see also No. 5 of the remarks relating to Article 1).

2. At the Fifth General Assembly, Germany and the Slovak Republic proposed abolishing the primacy of the French versions over the German and English versions in cases of differences (§ 1, second sentence. The following arguments were put forward:

- international custom; in international Conventions drafted in several languages, primacy is not accorded to any language in the event of differences
- the three linguistic versions are authentic texts
- translation into other languages, e.g. Slovak, must be possible on the basis of each of the three linguistic versions
- the original texts of the new Uniform Rules were drafted first in German; with regard to the French version, in the majority of cases these are translations
- in the event of differences being ascertained, it is possible for the French version to be deemed authentic, even if it may be incorrect

The proposals only narrowly failed to achieve the necessary two-thirds majority (Report, pp 58/59 and 178).

3. The Central Office draft of 30 August 1996 had made provision for official translations of COTIF into the Arabic and Russian languages only and, for reasons of cost, had rejected official translations into Italian and Dutch (see No. 36.1 of the Explanatory Report, Annex IV to the circular letter of 30.8.1996, A 50-00517.96). With regard to the official texts, the Revision Committee decided, by a relatively small majority, to restrict itself initially to the working languages of the Organisation (Report on the Fourteenth Session, p. 78/79).

4. The question of translations was again raised in the context of the global solution relating to the financing of the Organisation's expenses (Report on the Twenty-First Session, p. 6). The Revision Committee and the Fifth General Assembly have finally adopted the solution provided for in § 2. Insofar as a language is an official language on the territory of at least two Member States of the Organisation, the Member States concerned have an interest in having an identical official translation of the Convention. The bulk of the cost associated with the translation (the actual translation work) would have to be borne by the States concerned (Report on the Twenty-First Session, p. 58). At the present time, this compromise would be of significance for Belgium and the Netherlands (Dutch), Italy and Switzerland (Italian), Algeria, Iraq, the Lebanon, Morocco, Syria and Tunisia (Arabic) and for Sweden and Finland (Swedish). It could prove to be important for the Russian Federation and Belarus (Russian) if these two States were to accede to COTIF.