



Organisation intergouvernementale
pour les transports internationaux
ferroviaires (OTIF)

Zwischenstaatliche Organisation
für den internationalen
Eisenbahnverkehr (OTIF)

Intergovernmental Organisation
for International Carriage
by Rail (OTIF)

Annual Report

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GENERAL PART

For OTIF and its Secretariat, 2009 was again marked, as in 2008, by an extraordinarily high workload, an unusually large number of meetings of its various organs, conferences and other events and by challenges that OTIF did not bring about itself and whose cause and development it was unable to influence.

But despite all this, there is no question that the Organisation and the Secretariat again managed these challenges admirably in 2009. This is clear not just from the fact that a number of plans and projects were concluded successfully and to the satisfaction of all concerned, but also because the careful analysis of various situations, the timely and appropriate reaction to certain events, the selection of suitable courses of action, the Member States' decisiveness in bringing about the relevant decisions and the resolve of those involved to take initiatives reaching far into the future all opened perspectives that confirm and develop OTIF's position as an acknowledged international governmental organisation that is able to take action, to resolve problems and to work creatively.

There were two particular areas at the forefront of OTIF's activities. One was the Revision Committee's preparations, negotiations and decisions concerning COTIF 1999 and its Appendices E, F and G. The other was the preparation, holding and outcome of OTIF's 9th General Assembly. The basis for the Organisation's overall ability to act and for maintaining the Secretariat's efficiency were established for the next three years, and the conditions for the Administrative Committee to be able to carry out its tasks and responsibilities in the manner expected by all the Member States up to the 10th General Assembly in 2012 were put in place. The General Assembly also dealt with a key personnel issue in re-electing the serving Secretary General.

As in 2008, throughout the whole of 2009, OTIF and especially the Secretary General were occupied with the question of the conditions of the European Community's accession. As a result of a new negotiating mandate the European Commission had received from the Council in spring 2009, it again became necessary to hold intensive bilateral negotiations, although these were marked by both sides' willingness to reach agreement. Following a round of negotiations in Berne at the beginning of June 2009, which resulted in very specific possibilities for compromise, the text of an accession agreement was drafted by mid July. Both sides considered this to be a workable final outcome and it was therefore initialled by the Secretary General and the head of the European Commission's negotiating team. The aim was to submit this accession agreement to the 9th General Assembly, planned for the beginning of September, for final agreement. However, the prerequisite for such a decision would have been the prior conclusion of the European Community's related internal decision-making procedures. However, at the meeting, the Swedish Presidency of the Council was not in a position to give the General Assembly the required endorsement. Nevertheless, in order to secure the way for further developments, the General Assembly authorised the Secretary General to sign the accession agreement to make it legal and binding, insofar as it accorded with the text that had been initialled.

In contrast, there was no further favourable progress on this issue in Brussels. Challenges from various Member States of the European Union led to the jointly achieved result of the negotiations not being endorsed by the Council bodies. Without returning to the negotiating table with these desired amendments to the text, the Secretariat was merely sent the new draft text that the EU bodies wanted, with a request to initial it. However, after careful examination

of the text, it emerged that for reasons of international law and organisational policy, the text amendments the European Community wanted were unacceptable. In mid December 2009, the Secretary General informed the Commission accordingly, with careful justification. At that time therefore, it was no longer clear what further developments there would be in this matter in 2009. However, there was a strong possibility that the Secretary General would not be able to make use of the authority to sign which the General Assembly had given him.

It was already reported at length in the 2008 Annual Report that when revising the rules in Appendices E (CUI), G (ATMF) and F (APTU), the Organisation's Committee of Technical Experts and in June 2009, its Revision Committee, had been confronted with some highly complex issues, newly required ways of resolving these, and far-reaching consequences for the OTIF Member States that are not Members of the European Union. The work in the organs referred to and in various sub-committees and working groups can best be characterised by describing it as a series of breakthroughs. In February 2009, the Committee of Technical Experts reached agreement on all the pending questions concerning the revision of the technical Appendices F and G and was able to submit the resulting proposals for solution to the Revision Committee. This was also the case for the work of the informal working group between the European Community and OTIF that had dealt with the CUI Appendix. So at its session in June 2009, the Revision Committee had before it an extensive and demanding agenda in terms of the content to be dealt with. Of course the work again suffered from the fact that the EU Member States had entered reservations against these Appendices in accordance with Article 42 of COTIF 1999 and could not therefore be counted as Members of the Revision Committee for the agenda items dealing with them. This also meant that these Member States were not taken into account in determining whether there was a quorum. In view of the large number of Member States in this position, the commitment and skill of the relevant members of staff of the OTIF Secretariat and of the two Chairmen of the Revision Committee in ultimately achieving and maintaining the quorum for all the agenda items cannot be emphasised enough.

As the Revision Committee only had the English version of the amended provisions available for its discussions and as it was necessary to take some decisions at the 9th General Assembly in September 2009, the OTIF Member States' final decision on the amendments could only be obtained in two written procedures, which were started in October and concluded at the beginning of December 2009 and in which the Member States signalled their agreement. Everyone involved in this undertaking deserves thanks and recognition.

In 2009, one of the main focuses of the work in connection with RID was harmonisation with the 16th revised edition of the UN Recommendations on the Transport of Dangerous Goods. Also in 2009, all the proposals for amendments where efforts have centred upon a date of entry into force of 1 January 2011 had to be finalised. With a busy programme of meetings, the 2008/2009 biennium and the work on the 2011 amendments to RID were brought to a successful conclusion. As a result of reducing the period for notifying texts from 11 to 5 months, which came into force with COTIF 1999, it will still be possible to adopt final amendments to the legal texts as late as May 2010.

Developments which at first only suggested a welcome future development for OTIF resulted from the running of a test train on the route from Islamabad in the Islamic Republic of Pakistan to Istanbul in Turkey via Tehran in August 2009. In connection with this, it turned out to be appropriate that at the OTIF workshop on issues surrounding an international transport regime for rail traffic held in Istanbul at the beginning of June 2009, the Secretary General,

together with the Secretary General of the Economic Cooperation Organization (ECO), which has its headquarters in Tehran, had signed a Memorandum of Understanding on the form and further development of cooperation between the two organisations. As Pakistan is a member of ECO, this Organisation was successful in recommending to Pakistan that it should accede to COTIF 1999 in order to subject rail traffic between these States to the legal regime of OTIF. In future, such traffic is to become more regular. Appropriate efforts will continue in 2010.

Similarly, OTIF's activities in the Kingdom of Jordan, which borders Syria - an OTIF Member State - also took on a welcome development. As Jordan has in principle agreed to modernise and extend rail connections with its neighbours Syria, Saudi Arabia and Iraq, and has taken the accompanying financial decisions to be able to do so, the Secretary General also suggested to the Kingdom of Jordan that it might like to consider acceding to OTIF. According to the latest news, the relevant decisions have been taken at national level, at any rate for associated membership in accordance with Article 39 of COTIF 1999. Once international rail traffic has started on the new routes, this can of course be broadened to full membership. At the end of 2009, the Secretary General was anticipating that the corresponding application for accession would shortly be received.

The procedures for the Russian Federation's accession to OTIF to take effect were also completed in substance in 2009. There were no objections to the application for accession from the OTIF Member States, so the accession took effect on 1 February 2010.

In addition to these forward-looking and now promising initiatives and activities, in 2009 OTIF also turned its attention to internal matters. It had already become clear in previous years, at first unobtrusively and then increasingly visibly, that the Secretariat's increased workload, caused by the considerable growth in the Organisation's aims and tasks after the entry into force of COTIF 1999, the increase in the number of Member States, and the greater cooperation with other international organisations, could only be mastered by increasing the number of staff. At its meeting in spring 2009, the Administrative Committee therefore decided to strengthen the Secretariat with another three posts, namely a 50% post for the ever increasing tasks in connection with human resources, at long last a post for a German translator, and a post for a secretary for the Rail Facilitation Committee in accordance with Article 19 of COTIF 1999, which, as a result of this personnel decision, can start its work in 2010 after a four year delay.

At the 9th General Assembly in September, not only were these decisions approved, they were also explicitly secured by the General Assembly's raising the maximum amounts that the Organisation's expenditure may reach in 2010, 2011 and 2012, in accordance with Article 14 § 2 e), so as to cover personnel expenditure, which in future will increase accordingly. The increased budget also made it possible to carry out the work on converting the headquarters building in Berne, which had to be done in order to create the required space and technical working arrangements for the new members of staff. The new posts were advertised in September/October 2009. The building renovation work was commissioned in 2009 and was carried out at the beginning of 2010.

In 2009, the continuing global financial crisis, which was already referred to in the 2008 Annual Report, expanded to become a far-reaching economic crisis. Of course this could not fail to have an impact on international trade and hence on rail transport. Using a number of initiatives, OTIF has tried in particular to contribute to drawing more attention to the possibilities

for facilitating cross-border traffic and its clearly positive effects on the flow of trade. The Secretary General made use of his participation at a number of conferences and other events to make this subject a central point of rail policy initiatives. It should also be pointed out here that by means of facilitation in rail traffic, outcomes promoting trade can be achieved at a relatively low cost in comparison with, say, investments in infrastructure, and these outcomes are admirably suited to combating the effects of the financial and economic crisis. OTIF will continue to maintain such efforts in 2010 and will create a further impetus here, particularly when the above-mentioned Rail Facilitation Committee starts its work. Thus in this context too, OTIF will become a force that will contribute to the other global efforts to combat this crisis.

The Organisation's financial situation is still satisfactory, and in 2009, the proportion of membership contributions and advances paid on time and the subsequently paid amounts owed from previous years again reached a welcome high level as a result of the Secretariat's efforts. In May 2009, the Auditor accepted and certified the Secretariat's book-keeping as faultless.

SPECIFIC PART

AREAS OF ACTIVITY

I. SCOPE OF COTIF

1. Member States of OTIF

At the end of 2009, OTIF had 43 Member States.

2. Extending the scope

After preparations for **Russia's** accession to COTIF made definite progress in 2008, the close contacts between the Ministry of Transport of the Russian Federation and the Secretary General were continued in 2009. The Secretary General received ongoing information on the status of Russia's national procedures for preparing and adopting an "act concerning the accession of the Russian Federation to COTIF". The act was adopted in July 2009. On 21 August 2009, the Russian Government deposited an application for accession to COTIF with three reservations: the non-application of Article 28 §§ 1 and 2 (Arbitration), the non-application of Appendices A, C, D, E, F and G and restriction of the application of Appendix B (CIM) to two short railway lines, i.e. from the landing stage at the Baltiysk ferry terminal to the railway station near the port of Baltiysk and from the landing stage at the Ust-Luga ferry terminal to Luzhskaya railway station, which is situated near the port, subsequent to the Sassnitz - Baltiysk and Sassnitz - Ust-Luga ferry connections (see also chapter II para. 4).

The period in which the Member States were able to lodge objections in accordance with Article 37 § 3 of COTIF expired on 27 November 2009. No objections were lodged. In accordance with Article 37 § 3 of COTIF, the accession will take effect on 1 February 2010. Russia will become the 44th Member State of OTIF.

Depending on the experiences it has following its accession, Russia will consider whether it will be useful to subject further lines to the new uniform transport regime. In so doing, the possibility of introducing Russian as a working language of OTIF might have a role to play. Despite Russia's very limited scope of application of the uniform law of COTIF at the time of the accession, it is nevertheless a significant milestone for the Organisation.

Following his visit to Syria in spring 2009, the Secretary General visited the Ministry of Transport of the Hashemite Kingdom of **Jordan**. This followed the discovery during preparations for the journey that in connection with the extensive development of its rail network towards Syria, Saudi Arabia and Iraq, Jordan intends to move towards OTIF and hence towards the international legal regime in the rail sector which currently stretches to Syria's southern border. Before the visit, both sides were already inclined to work towards associate membership for Jordan in accordance with Article 39 of COTIF 1999. In the discussions in Amman, during which the Secretary General also met the Jordanian Minister of Transport, it emerged that Jordan's plans to accede had already been put into concrete terms. The Minister gave instructions that the preparatory work required internally should begin immediately. The Jordani-

ans were provided with all the documentation necessary for the decision-making process. To provide Jordan with access to specific and practical information on how OTIF functions and on the application of COTIF, Jordan was also invited to a workshop organised in Turkey, which had originally been targeted at the States of Central Asia (see chapter VI). At the time of OTIF's 9th General Assembly in September 2009, which Jordan attended as an observer, the only remaining points were the concluding formalities before the application for associate membership was finalised. The Secretary General received advance notice of the application before the end of the year by e-mail.

In spring 2009 it became known that the work on constructing the link between the rail networks of the Islamic Republic of Iran and the Islamic Republic of **Pakistan** had been completed. Shortly after this, it was discovered that on 14 August 2009, a trial container train would run for the first time on the line from Islamabad to Istanbul via Tehran.

On the basis of this information, both Pakistan and its neighbour, **India**, were invited to the OTIF workshop held in Istanbul from 9 to 11 June 2009 (see chapter VI). Both these States sent representatives to this workshop, during which it emerged that the Pakistani railway company is very interested in Pakistan's acceding to COTIF 1999. ECO (see chapter VII, para. 36), of which Pakistan is a member, has requested the country to take the appropriate initiatives. Pakistan was provided with the relevant basic materials and information to advance the national process to establish a firm intention to accede. Progress was also made from the practical point of view in that for the liability regime to be applied to the carriage of goods from Pakistan to Turkey, the CIM UR (with the support of the CIT) were agreed by contract for the section in Pakistan; the CIM UR already apply in the Islamic Republic of Iran and Turkey.

After the Secretary General discovered that both **Azerbaijan** and **Georgia** are considering acceding to COTIF as a result of the construction of the line from Kars in Turkey to Baku (Azerbaijan) via Tbilisi (Georgia), OTIF, together with the Ministry of Transport of Azerbaijan, organised a seminar in Baku from 16 to 19 December 2008. More than 50 representatives from the Azerbaijani authorities, the Ministry of Transport and from both the railway companies took part. The representatives of the Georgian and Azerbaijani railways stated that they wished to encourage their countries' accession. Azerbaijan's Ministry of Transport had already taken the initial decisions in this direction. The aim of course is to apply COTIF along the entire length of the new railway line that is to be built. Azerbaijan informed OTIF's 9th General Assembly that the internal procedures to prepare the accession were already underway. OTIF's contact with Georgia was limited to an exchange of e-mails, in the course of which the Secretary General learned that Georgia was in the process of translating COTIF into Georgian.

In a lively exchange of e-mails between January and May 2009, the Secretariat answered a range of questions that have arisen for the Government of **Montenegro** in connection with preparing the Government bill concerning accession to COTIF. The Secretary General received the application for accession on 21 December 2009.

See also the General Part.

II. APPLICATION OF COTIF

3. Status of ratifications of COTIF 1999. Application of individual Appendices

In 2009, OTIF still had 37 Member States of COTIF 1999. Six Member States, which regrettably have not yet ratified COTIF 1999, have remained Member States of COTIF 1980 (Iraq, Ireland, Italy, Lebanon, Morocco and Sweden). In transport with and between these Member States, the application of the CIV and CIM Uniform Rules is suspended.

Now that most of the EU Member States and one EEA Member State have followed the European Commission's request to make declarations in accordance with Article 42 § 1 of COTIF concerning the non-application of Appendices E, F and G, the following is the situation with regard to the application of the various Appendices to COTIF:

- 17 OTIF Member States applied all 7 Appendices; two of these Member States made declarations concerning the non-application of Appendices E, F and G before the end of 2008, which took effect on 31 December 2009. Another Member State made such a declaration before the end of 2009, which will take effect on 31 December 2010;
- 20 Member States only applied Appendices A, B, C and D.

With regard to the work aimed at resolving the problems that gave rise to the declarations concerning Appendices E, F and G, see chapter V, para. 9, Chapter V, para. 15, and Chapter VIII, para. 42.

4. Lists of lines

In principle, application of the 1999 Protocol version of the CIV and CIM Uniform Rules does not depend on a system of registered lines. In accordance with Article 24 of COTIF 1999, the Secretary General will only keep the lists of lines up to date and publish them in particular cases.

Railway lines belonging to a newly acceded State which lodges a reservation concerning the scope of application in accordance with Article 1 § 6 of CIV/CIM are entered in **the CIV and CIM lists of railway lines** in accordance with this reservation (Art. 24 § 2 of COTIF).

As Russia's application for accession contained a reservation on the scope of application in accordance with Article 1 § 6 of CIM, a new "Russia" section has been included in the CIM list of railway lines (see also Chapter I, para. 2).

For international maritime transport performed on the basis of a single contract of carriage in addition to carriage by rail under the CIV or CIM legal regime, **the CIV and CIM lists of maritime and inland waterway services** are kept (Art. 24 § 1 of COTIF, Art. 1 § 2 and 3 of CIV, Art. 1 § 3 and 4 of CIM).

The Secretariat mediated the agreements between Germany and Russia that are required in accordance with Article 24 § 3 of COTIF, so that the Sassnitz-Baltiysk and

Sassnitz-Ust-Luga ferry routes connecting these two States can be included in the CIM list of maritime and inland waterway services in due time, i.e. when Russia's accession takes effect. Germany agreed to the inclusion of two routes operated by a Russian undertaking, while Russia agreed to the inclusion of the Sassnitz-Baltiysk line, which is also operated by a Danish company. A new "Russia" section was therefore included in the CIM list of maritime and inland waterway services with effect from 1 February 2010 and the "Germany" section was re-issued.

The "Switzerland" section in the same list was also re-issued to take account of another update notified by Germany concerning a service on Lake Constance between Germany and Switzerland.

Following some minor amendments to the "Germany" section of the CIV list of maritime and inland waterway services, an updated version of this was also re-issued to reflect the situation as at 1 January 2010.

At the end of 2009, 7,596 km of maritime and inland waterway services were subject to the CIV UR and 8,982 km of maritime and inland waterway services were subject to the CIM UR.

5. Information

The Secretariat considers that part of its role is to answer written and oral questions OTIF receives both from State administrations and associations and from rail transport undertakings and private individuals, such as customers of the railways, representatives of the scientific community, etc. Such questions may be of a general nature or perhaps specific legal queries.

In the year under review, the queries received concerned the procedure for acceding to COTIF, amendments to COTIF and its Appendices, the relationship between COTIF and EC law, the arbitration procedure, the reservations lodged against the Convention and the interpretation of individual provisions in the Appendices.

The carriage of dangerous goods was again a particular focal point in the provision of information.

With regard to the carriage of dangerous goods, the RID service has to give its opinion on questions of interpretation of the regulations; it has to provide a great deal of information of a general or specific nature concerning the existing regulations and has to carry out documentary research in order to explain decisions taken in the past. The RID service thereby makes an important contribution to the uniform application of RID in the Member States and contributes to a better understanding of the international dangerous goods requirements. If ambiguous provisions are identified in the course of dealing with queries, the RID service takes the initiative to propose amendments to the regulations.

The RID service provides regular information on new features in the transport of dangerous goods in the trade press. The RID staff take part as speakers or observers in various specialised events.

III. LAW

6. General

OTIF's main task is to establish international uniform law in the area of pure transport law and associated areas, such as liability for the use of the means of transport, but also in areas that are attributed to public law, such as dangerous goods law and the technical provisions and procedures for the approval of railway material.

The legal service is consequently the one that is involved in almost all the Secretariat's activities. Its tasks include preparation of the documents for the General Assembly, the Administrative Committee – except those dealing exclusively with the accounts – the Revision Committee and the as yet still provisional Supervisory Authority in accordance with the Luxembourg Protocol, and the provision of advice in connection with the activities of the Organisation's other organs. In 2009, the legal service's work focused in particular on the following.

7. Depositary functions

Several formal questions arose in 2009 in connection with carrying out the Depositary functions, particularly with regard to the acceptance of declarations, e.g. the time at which the declaration is made if, prior to the declaration's being made in due form, a Member State has issued a notification that does not meet the requirements of a binding instrument under international law. As in previous years, it was possible to resolve questions such as these on the basis of the practice followed by the UN Secretary General as the Depositary of multilateral conventions.

At the request of one Member State, the Secretariat made clear that the declarations and reservations in accordance with Article 42 § 1 of COTIF related to the version of the Appendices in force at any one time. When an amended version of these Appendices entered into force, the declarations and reservations against these Appendices did not automatically become ineffective, but remained effective until they were withdrawn.

See also Chapter I, para. 2 and Chapter II, para. 3.

8. Interoperability of transport law – CIM/SMGS consignment note

In 2009, the work of the CIM/SMGS Legal Group set up in the context of the joint CIT-OSJD project focussed on issues relating mostly to the cooperation and relationship between rail transport undertakings. At the forefront were specific rules for the payment of compensation. The rules drafted in the Legal Group were approved by the CIM/SMGS Steering Group and were also adopted by the competent bodies of CIT (CIM Committee) and OSJD (Commission II). They entered into force on 1 January 2010. OTIF's involvement was limited to participating in a meeting of the CIM/SMGS Steering Group (Berne, 8.7.2009, following a meeting of the CIM/SMGS Coordinators on 7.7.2009).

With a view to the interest in extending the CIM/SMGS consignment note to traffic with China, the decision to add rules to the CIM/SMGS consignment note manual and to Annex 22 of SMGS concerning the use of Chinese is important.

For some time, there has been discussion in the Legal Group and the CIM/SMGS Steering Group on the possibility of introducing a uniform transport regime for traffic between Europe and Asia, including uniform rules governing liability, in the form of General Conditions of Carriage based on international private law. Positions on this proposition continued to develop throughout 2009. There was no consensus on a through contract of carriage; however, there was some readiness to consider joint and several liability in respect of customers in CIM/SMGS transport operations. The members of the CIM/SMGS Steering Group agreed on the next steps, in which the CIM/SMGS Legal Group will draft “proposals for harmonised CIM/SMGS liability in relation to the external customer-carrier relationship and in relation to the internal carrier-carrier relationship”.

Although the CIM UR offer the possibility of carrying out transport from or to States that are not Member States of COTIF, e.g. Belarus, Kazakhstan or China, in a uniform regime (see Art. 1 § 2 of CIM), this is hardly ever made use of in practice, because in the SMGS area, the legal and organisational conditions necessary for this have not yet been put in place. In 2010, OTIF will take part in the work aimed at achieving harmonised liability and will contribute in particular to investigating the legal possibilities offered by Article 1 § 2 of CIM.

9. Infrastructure law

Ambiguities concerning the relationship between EU law and the CUI UR have led to Appendix E, as well as Appendices F and G, becoming the subject of declarations in accordance with Article 42 § 1 of COTIF and to their not being applied by a number of Member States (see Chapter VII, para. 21). Thus there is no legal basis for asserting mutual claims for compensation by the carrier and infrastructure manager. Carriers in particular find this a distinct disadvantage, as according to Article 51 of CIV and Article 40 of CIM, they are also liable to their customers for loss or damage caused by the infrastructure. Throughout 2009, the Secretariat of OTIF was approached by the industry with complaints along these lines.

Based on a proposal from the ad hoc working group on Appendix E (CUI) drafted in 2008, the Secretariat submitted a proposal for the partial revision of Appendix E (CUI) of the Convention to the 24th session of the Revision Committee held from 23 to 25 June 2009 in Berne. This proposal contained amendments to the text and Explanatory Reports on some of the provisions for which the Revision Committee is responsible and proposals for Explanatory Reports on some of the provisions for which the General Assembly is responsible. The text amendments and Explanatory Reports concerned the following particular areas:

- the scope of application,
- the definitions of “manager”, “carrier”, “licence” and “safety certificate”,
- the provisions on the contract of use,
- the special obligations of carriers and managers,
- liability for damage caused by delays or disruptions to operations, and

- conciliation procedures.

The Revision Committee adopted the proposed amendments and Explanatory Reports with some additions and minor amendments (see also Chapter VIII, para. 42).

10. Luxembourg Protocol

The Luxembourg Protocol to the Cape Town Convention (CTC) on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock was adopted in 2007 by the Diplomatic Conference held in Luxembourg for this purpose. In accordance with a decision of the Conference, a Preparatory Commission (Prep-Com) was to be set up until the Protocol enters into force. By agreement with OTIF and UNIDROIT, this Commission will function as the provisional Supervisory Authority for setting up the International Registry. The first two meetings of the Prep-Com were held in Berne in 2007 and in Rome in 2008. The third meeting was held on 1 and 2 October 2009 at OTIF's headquarters in Berne and was jointly chaired by Finland and the United States of America. The main purpose of the meeting was to provide Members of the Commission with detailed information on developments since the second session, especially the failed negotiations on the contract with the successful bidder for the tender for the International Rail Registry, and to clarify the re-tendering. The Commission supported considerable amendments to the structure and content of the request for proposal (RFP) as compared with the original version. It also decided that an information day for potential bidders should be organised in 2010. As a further step, it is planned to set up a working group to deal with the formation of the Supervisory Authority for the Registry and to draft its Rules of Procedure. In addition, issues surrounding the legal personality, immunities and the pros and cons of locating the Registry in Switzerland or Luxembourg should be clarified. To take account of the difficulties in achieving the quorum for the Commission's meetings, which arise as a result of the increasing number of Commission members following numerous accessions to the CTC, the Commission decided to amend its Rules of Procedure to establish a fixed quorum and to introduce the possibility of voting in writing. Extensive support from the OTIF Secretariat in organising the meeting and the deputy Secretary General's contributions on all the documents to be dealt with and the items for discussion ensured that the meeting achieved a positive outcome, combined with the prospect of a successful re-tendering for the Registry.

IV. DANGEROUS GOODS

11. RID/ADR/ADN Joint Meeting (Harmonised European dangerous goods regulations for rail, road and inland waterways)

The RID/ADR/ADN Joint Meeting met for three weeks in 2009 (Berne, 23-26.3.2009, Berne, 8-11.9.2009 and Geneva, 14-18.9.2009).

The Secretariat of this meeting (translation of proposals, reports and adopted texts) is provided jointly by the RID service and the Secretariat of the UN/ECE Transport Division.

At the Joint Meeting in March 2009, a question of detail concerning the harmonisation of RID/ADR/ADN with the UN Recommendations on the Transport of Dangerous Goods (UN Model Regulations) was successfully resolved. The issue was

whether the technical name of dangerous goods should also be entered in the transport document. Before this issue could be resolved, some work had to be carried out to convince the UN Sub-Committee of Experts that the UN Model Regulations should also require the technical name to be given for a further 80 substances.

At this session, the Joint Meeting also dealt with a proposal that had been submitted by 14 non-governmental organisations to the UN Sub-Committee of Experts, the aim of which was to encourage further efforts to improve harmonisation of the provisions for the carriage of dangerous goods at worldwide level.

In the discussion on this proposal, it was recalled that in accordance with its terms of reference the Joint Meeting systematically reviews any amendment to the UN Model Regulations so as to reflect it in RID/ADR/ADN. In some instances, however, such amendments are not detailed enough to be incorporated into legislation, as was the case for certain provisions relating to Class 6.2 and, in that event, the Joint Meeting provides feedback to the UN Sub-Committee. The Joint Meeting generally considered that RID/ADR/ADN are well harmonised with the UN Model Regulations and that the existing variations are well justified in the European land transport context without constituting an obstacle to international multimodal transport.

The Joint Meeting agreed that harmonisation should not be an end in itself and should not lead to provisions that had existed for many years in European land transport being given up (e.g. tank provisions in Chapter 6.8). Various delegates thought it would be better to take up individual problems and resolve them step by step, as in the case of providing the technical name of dangerous goods (see above).

The Joint Meeting also adopted an extensive proposal submitted by an informal working group, the aim of which was to limit the period of validity of design type approvals for pressure receptacles of Chapter 6.2 and for tanks, battery-wagons/battery-vehicles and MEGCs of Chapter 6.8 to ten years, or else to extend them if the agency that issued the design type approval ascertains that the design type approval is still in conformity with the requirements when the ten years have expired. It should also be up to the agency issuing the design type approval to withdraw the design type approval if, within the period of validity, requirements are amended that lead to the design type approval no longer being in conformity with the requirements. The tables of standards to be applied to pressure receptacles, tanks, battery-wagons/battery-vehicles and MEGCs would be amended so that it is clear from them when a standard may be used for issuing or extending a design type approval and when an existing design type approval issued on the basis of a standard that has since been superseded must be withdrawn for safety reasons.

Lastly, the Joint Meeting in March adopted a proposal from Spain to include obligations for the unloader in Chapter 1.4 (Safety obligations of the participants) by adapting the obligations of the consignee. Among other things, these obligations include the removal of dangerous residues on the outside of the means of transport, ensuring that the prescribed cleaning and decontamination is carried out and removing the placards and orange-coloured marking after unloading.

The Joint Meeting in September 2009 dealt primarily with issues surrounding harmonisation with the 16th edition of the UN Recommendations on the Transport of

Dangerous Goods. It based its decisions on the comprehensive preparatory work carried out by an ad hoc working group which met in May 2009 and drafted extensive proposals for harmonisation.

In connection with the harmonisation work, the following amendments, which will be included in the 2011 edition of RID/ADR/ADN, should be highlighted.

The criteria for aquatic pollutants included in RID/ADR/ADN in 2009 are being revised on the basis of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). However, the Joint Meeting noted that, given the procedures for amending the MARPOL Convention (International Convention for the Prevention of Pollution from Ships), the implementation of the new GHS criteria relating to substances hazardous to the aquatic environment might be delayed in the case of maritime transport (IMDG Code). The Joint Meeting agreed that if the International Maritime Organization (IMO) was not able to reflect the criteria set out in the third revised edition of the GHS in the forthcoming edition of the IMDG Code, transitional measures would have to be envisaged so that multimodal transport was not impeded.

14 new UN Numbers were added to Table A of Chapter 3.2, including, among others, substances toxic upon inhalation of Class 6.1 with subsidiary hazards of classes 3 and 8 and classes 4.3 and 3.

In connection with the new marking for exempted quantities adopted by the UN Subcommittee of Experts, the ad hoc working group had established that this marking could not be included in RID/ADR/ADN just as it was, as there was a big difference between the UN Recommendations and RID/ADR/ADN with regard to the quantity threshold for carriage in limited quantities. The ad hoc working group had therefore asked the Secretariat to draft a proposal to introduce the quantity limits of the UN Recommendations into RID/ADR/ADN, but at the same time, the proposal had to maintain the existing quantity limits of RID/ADR/ADN for a long transitional period in those cases where these exceed the quantity thresholds prescribed in the UN Recommendations. The Joint Meeting decided to harmonise Chapter 3.4 of RID/ADR/ADN fully with Chapter 3.4 of the UN Model Regulations and, by virtue of a transitional provision, to allow the parallel use of Chapter 3.4 with each of the quantity thresholds until 30 June 2015.

The Joint Meeting welcomed the introduction of new provisions in the UN Model Regulations facilitating the use of electronic data interchange techniques. It noted, however, that RID/ADR/ADN already contained such provisions. Therefore, the texts of RID/ADR/ADN were only slightly amended in this area.

The marking requirements for portable tanks were revised, with the information on the tank plate being grouped into information on the owner, manufacturer, approval, pressures, temperatures, materials, contents and periodic inspections. It was also stipulated that the appropriate marking for portable tanks must be shown on the portable tank itself or on a metal plate, as is already the case for RID/ADR tanks by indicating the tank code.

11.1 RID/ADR/ADN Joint Meeting informal working group on telematics

This informal working group, which started its work in 2008 on the initiative of Germany and France, has set itself the task of further improving safety in the carriage of dangerous goods by the use of telematics applications, firstly by detecting in good time any circumstances on the means of transport or the tank that could lead to an increased risk (e.g. increases in pressure or temperature), and secondly by providing the emergency services early on with relevant information on the dangerous goods being carried.

Although this is an informal working group in which the secretariat work is usually carried out by the initiating State, owing to its major significance for the safety of dangerous goods transport in future, OTIF has decided to act as its Secretariat and provide the interpretation.

At the invitation of Germany, this working group met on 14 and 15 May in Munich and at the invitation of France from 14 to 16 October 2009 in Arcachon. The first session was held in the margins of the “transport logistic 2009” trade fair, at which the German Ministry of Transport had organised a workshop on telematics applications in the international transport of dangerous goods. At this workshop, areas in which telematics could be used were identified as the electronic transport document, the control of transport processes using “tracking and tracing”, the continuous monitoring of certain transport operations, monitoring irregularities that might lead to incidents and reporting conditions during and after accidents/incidents.

At the session in Arcachon, work was completed on a table summarising all the pieces of information required in various places in RID/ADR/ADN and identifying the participants who must have this information. Also included in the table were applications that are not yet prescribed, but which could contribute to improving safety.

The next step of the work will now be to transpose the information listed in the table into technical specifications. In so doing, the application of telematics systems during transport, the prescribed requirements and the system characteristics, the interfaces to ensure interoperability and the data structures for the exchange of data between the various systems must be described in particular.

11.2 Translation conference for the German speaking States

The RID service also took part in a one week translation conference for the German speaking States, the aim of which was to iron out any differences between the various language versions of the 2011 amendment texts for RID/ADR/ADN. Here the main focus was the German edition of the provisions for classifying aquatic pollutants, whose wording was aligned as far as possible with the German version of Regulation (EC) No. 1272/2008 of 16 December 2008 on the classification, labelling and packaging of substances and mixtures.

12. RID Committee of Experts

The RID Committee of Experts is one of the most important organs of OTIF, as the provisions for the international carriage of dangerous goods by rail are continuously amended, which leads every two years to a completely new edition of the 1500 page

RID. As the provisions of RID must also be applied to domestic transport in the EU Member States in accordance with EU Directive 2008/68 on the inland transport of dangerous goods, amendments to RID automatically lead to changes in national law. As a result, it has been possible to withdraw some European Directives after corresponding provisions have been included in RID (e.g. the appointment and professional qualifications of safety advisors for the carriage of dangerous goods and minimum requirements for testing safety advisors).

At the invitation of the Bulgarian Ministry of Transport, the 47th session of the RID Committee of Experts was held in Sofia from 16 to 20 November 2009. This session focused on approving the texts adopted by the RID/ADR/ADN Joint Meeting.

In the area of railway specific provisions, the issue of markings in piggyback transport was a central theme. At its previous session, the RID Committee of Experts had already taken the decision of principle to dispense with orange-coloured markings and placards on carrying wagons in piggyback transport when the transport units or trailers being carried bear orange-coloured plates and placards in accordance with the provisions of ADR, including in cases where ADR only prescribes a marking on the front and back of the transport unit.

Trailers carrying packages only were considered an exception, as once they become separated from the traction unit, they only bear an orange-coloured marking on the back and no placards on the sides. For this situation, an orange-coloured marking was required on the front of the trailer.

In connection with this, the RID Committee of Experts also noted a proposal from Sweden for WP.15 to require the orange-coloured marking on the front of parked trailers (trailers not attached to a motor vehicle), as the markings on the sides can be obscured by other trailers parked nearby.

Another focal point of the work was the introduction of instructions in writing for the locomotive driver, as already prescribed for lorry drivers in ADR and for steersmen in ADN. Here the aim was to provide the locomotive driver with a standard set of instructions to replace existing national rules. Once a decision of principle on this had already been taken at the last session of the RID Committee of Experts, the task of this session was to ensure that there was no conflict with European Directive 2007/59/EC (on the certification of train drivers operating locomotives and trains on the railway system in the Community) or the Technical Specifications for Interoperability for the subsystem "Operation and Traffic Management" for the conventional trans-European rail system.

Pages 2 and 3 in particular of the four-page RID model of the instructions in writing (hazard characteristics of dangerous goods and additional guidance for self protection) are now virtually congruent with the equivalent pages of the ADR and ADN models.

At this session of the RID Committee of Experts, it was unfortunately not possible to bring the subject of the detection of derailments to a successful conclusion, although at the 45th session of the RID Committee of Experts (Zagreb, 19-23.11.2007), the provisional decision had been taken to include in the 2011 edition of RID provisions for fitting derailment detectors to tank-wagons for the carriage of certain very dan-

gerous substances. This compromise concerning the time frame had become necessary because the European Commission objected that with regard to vehicle technology requirements, the RID Committee of Experts was not solely competent. It was agreed at that time to use the interim period to set up an impact assessment study by the European Railway Agency (ERA) and to carry out field trials in Sweden and Finland on how derailment detectors function at low ambient temperatures.

ERA's impact assessment was submitted to the European Commission's Railway Interoperability and Safety Committee with the recommendation not to adopt the new requirement for derailment detection. This then led to a joint meeting of the Transport of Dangerous Goods Regulatory Committee and the European Commission's Railway Interoperability and Safety Committee, and to a Community position, which was to include the provisions for the detection of derailments in the 2013 edition of RID at the earliest and to carry out a whole range of studies in the meantime. Among other things, these studies should look at preventive measures to avoid derailments, the impact of automatic braking and false alarms in tunnels/bridges and market research on products that meet the planned provisions. These additional measures are intended to ensure that compatibility between RID and the technical specifications for railway interoperability are maintained.

The RID Committee of Experts reinforced its aim of including provisions for the detection of derailments in RID, but agreed to defer the entry into force of the provisions. The working group on tank and vehicle technology was asked to check whether the detection of derailments should also be prescribed for other dangerous substances in order to increase the benefit for the railway infrastructure (less damage to assets, shorter line closures, etc.).

13. RID Committee of Experts Working Groups

13.1 Working group on tank and vehicle technology

At the invitation of the Belgian "Service Public Fédéral Mobilité et Transports", the 10th session of the RID Committee of Experts working group on tank and vehicle technology was held in Brussels on 11 and 12 June 2009. The aim of this working group is to improve the safety of tank transport by rail, following several severe accidents.

At this meeting, the working group dealt primarily with the issue of derailment detection. Knorr-Bremse (Knorr Brakes) informed the meeting about the tests on derailment detectors that had been carried out at the request of Sweden and Finland between January and April 2009 at low ambient temperatures in order to prove that the derailment detectors also function reliably in extreme temperature conditions.

The working group also discussed ERA's impact assessment study on the introduction of derailment detection.

The working group has been looking at the question of monitoring the main brake pipe and the air brake check for some time, because in the past, numerous accidents involving dangerous goods have been traced back to a defective or non-existent brake check.

Knorr-Bremse described several technical possibilities for ruling out human error in this respect:

- An end of train device on the last wagon could be connected to the main brake pipe. In particular, this would measure the pressure in the main brake pipe and in an emergency, it could also be activated by the locomotive driver to vent the main brake pipe;
- Sensors in the locomotive braking system that measure the volume flow rate in the main brake pipe when applying and releasing the brakes, and a software algorithm that estimates the length of the main brake pipe or the number of wagons from this measurement;
- Electronically controlled wagon brakes, which have already been introduced in North and South America, South Africa and Australia, but for which the prerequisite is an electricity supply on the wagons.

As this issue is not related specifically to dangerous goods, the RID Committee of Experts is not in a position to take an independent decision, as is also the case for the detection of derailments. It will need to work together with ERA, which needs a corresponding mandate from the European Commission. The Member States were therefore called upon by the Chairman of the working group to demand that technical measures to prevent human error in brake checks be pursued via their representatives in the European Commission's Transport of Dangerous Goods Committee.

V. TECHNOLOGY

14. Committee of Technical Experts (CTE)

The OTIF Secretariat convened the third session of the Committee of Technical Experts (CTE) for 11 and 12 February 2009. 26 Member States and one State considering becoming a member of OTIF took part in the session. 16 Member States that have made a declaration in accordance with Article 42 of the Convention not to apply Appendices F (APTU) and G (ATMF) only had the right to vote on general matters. The quorum was reached for general matters and for the adoption of proposals concerning the APTU and ATMF Appendices. The European Union (DG TREN and ERA) as supranational organisations, and CER, CIT, UIC and UIP as international non-governmental organisations or associations, participated in the session as observers.

The outcome of the session was a breakthrough in relations between OTIF and the European Union. The session adopted Rules of Procedure for the Committee of Technical Experts and four APTU Annexes in a two-column format, which was decided upon by WG LEGAL and prepared at the sessions of WG TECH. This format enables both OTIF and the corresponding EU regulations to be read in one document; identical/equivalent provisions are shown across the whole page width (both columns), whereas specific COTIF regulations are shown in the left-hand column, with the corresponding EU regulations (TSI and/or other) shown in the right-hand column.

The following APTU Annexes were adopted:

- Annex 1-A: General Provisions – Essential requirements
- Annex 1-B: General Provisions – Subsystems
- Annex 1-C: General Provisions – Technical File
- Annex 1-E: General Provisions – Assessing Entity – Qualifications and Independence

An APTU Annex 1-D: General Provisions – Assessment Modules had been prepared by WG TECH but was postponed until the ongoing revision of the corresponding EU regulation was published.

An important step for international railway transport was the adoption of OTIF National Vehicle Registers for Rolling Stock. A minor change to the rules for the Vehicle Keeper Marking (VKM) was also adopted, the change entered into force on 1 April 2009.

The adoption of these APTU Annexes and the National Vehicle Register was notified to the Contracting States in circular A 92-03/501.2009 on 27 February 2009 and they entered into force on 1 August 2009.

With a few amendments, the CTE agreed with the results of the intensive work of the so-called “Schweinsberg group”, which WG LEGAL had also endorsed; the proposed amendments to Appendices F (APTU) and G (ATMF) are necessary in order to make them compatible with the current regulations of the European Union. The CTE unanimously agreed to submit the proposals to the OTIF Revision Committee in June 2009 for final adoption.

Moreover, the CTE decided to dissolve the working group WG LEGAL, as it had finished its task, and at the same time to turn WG TECH into a permanent group according to Article 22 of the CTE Rules of Procedures.

15. Revision of the APTU and ATMF Appendices

The 24th session of the Revision Committee (RC) in June 2009 unanimously adopted the amendments to Appendices F (APTU) and G (ATMF) (the English version) as submitted by the 3rd session of the Committee of Technical Experts and asked the General Assembly to agree to the changes proposed where the RC had no competence. The French and German versions and the Explanatory Report were to be finally adopted by the RC in a vote in writing before the end of 2009. The basic principle of the amendments is to ensure the validity of European Union (EU) law with regard to traffic between the OTIF Member States which are also Members of the European Union and the precedence of COTIF law over EU law for international traffic between EU OTIF Member States and non-EU OTIF Member States on the same technical basis. These amendments will allow the EU OTIF Member States (and Norway) to revoke their declarations according to Article 42 not to apply COTIF 1999 Appendices F (APTU) and G (ATMF). These amendments will enter into force on 1 December 2010 unless one quarter of the OTIF Member States object

in accordance with Article 35 § 2 of the Convention; whether this will be the case will be known by the end of April 2010.

16. Annexes to APTU

The term used in the revised APTU/ATMF regulations for the technical specifications laid down according to APTU is “Uniform Technical Prescriptions” (UTP); formerly the technical specifications were called APTU Annexes.

After adoption of the first four APTU Annexes (see para. 14), it was decided at the 9th session of WG TECH in November 2009 that the OTIF Secretariat will prepare the UTP Freight wagons (UTP WAG) based on the TSI Freight wagons (TSI WAG) in force as amended by EU Commission Decision 2009/107/EC. As important technical specifications for the design of freight wagons are included in other TSIs in force (TSI CCS and TSI OPE) those specifications will be included in the UTP WAG. If the UTP Noise (UTP NOI) is adopted together with the UTP WAG, all technical specifications for freight wagons will enter into force at the same time and the conditions for mutual recognition of technical admissions of freight wagons by all COTIF Contracting States will be met. For further details, see para. 17 below.

17. WG TECH

WG TECH continued its work in 2009. 15 Member States took part in the 9th session held on 18 and 19 November 2009. The European Union (DG TREN and ERA), as supranational organisations and CER, UIC and UIP, as international non-governmental organisations or associations, participated in the session as observers. The session discussed the activities and priorities of WG TECH until the next session of CTE (September 2010).

The main items dealt with by WG TECH were:

- Work plan for WG TECH for 2010 and 2011,
- Evaluation of the “pilot” consultation of non-EU OTIF Member States on three draft TSIs (on Infrastructure, Energy and Locomotives and passenger carriages) and the related workshop in Zagreb, 2 to 5 June 2009,
- APTU Annex 1-F, Definition of High Speed Subsystems – proposal,
- APTU Annex 2, Rolling Stock - Freight Wagons – how to proceed,
- Comment from the Secretary General on the General Assembly’s decision to replace the word “ensure” with “ascertain” in ATMF Article 15 § 3.

With regard to the work plan, WG TECH agreed an overall list of tasks for the near future and laid down the priorities for preparing the UTPs and other regulations to be adopted by the next CTE in September 2010. The main priority would be the UTP WAG and UTP NOI.

The Member States appreciated the organisation of the workshop in Zagreb and requested that such workshops be organised more frequently for different TSIs/UTPs

and other important issues. ERA considered the workshop to have been very successful, as it provided an opportunity to explain the detailed and complex TSIs and to receive questions from so many participants, not only from Ministries, but also from the rail industry and users.

The work on the UTPs will be continued at the next WG TECH meetings to prepare them for adoption by the next session of the Committee of Technical Experts, which will take place in late September 2010. The aim is to have UTP WAG and UTP NOI adopted by that CTE session and WG TECH asked the Secretary General not to await the ongoing revision of the TSI WAG, which could take years, but to prepare the UTP WAG on the basis of the TSI WAG in force, although it is well known that the TSI WAG contains a considerable number of errors. Moreover all the provisions applicable to the design of freight wagons which are in other TSIs will be included in UTP WAG, although these regulations are also being revised.

WG TECH started the discussion on the wording in ATMF Article 15 § 3, but asked the Secretary General to withdraw his document distributed for the session proposing the replacement of the word “ensure” with “ascertain”, which was the word used in the version of ATMF adopted by the Committee of Technical Experts in February 2009 and by the Revision Committee in June 2009; the reason behind this request from WG TECH was that the adoption of the five years of difficult and complicated work on the proposed amendments to APTU and ATMF, which at the same time were voted upon in the Revision Committee by the written procedure, should not be jeopardized or delayed by the uncertainty of any possible impact of just one word. The Member States and organisations should be asked for their opinion and the discussions continued later; the problem only concerns the English version – the German and French versions are correct. In the event of any discrepancies, the French text prevails.

18. External working parties (European Commission and ERA)

In 2009 the OTIF Secretariat participated as an observer in those ERA Working Parties (WP) where the Secretariat was still allowed to take part, namely TSI Infrastructure and TSI Locomotives, where OTIF defends the interests of non-EU OTIF Member States. The Secretariat was also invited to the ERA WP on the certification of “Entities in Charge of Maintenance” (ECM) as from the 2nd WP meeting in November 2009.

Communication from ERA and the European Commission on what is going on in other relevant areas (WPs) of the EU regulations being developed is still very sparse and unreliable, which makes the work of the Secretariat difficult and not as efficient as it could be.

19. Register, database and coding

The 3rd session of the CTE adopted a proposal for the specifications and setting up of National Vehicle Registers (NVRs) in the non-EU OTIF Member States, based on the European Commission decision of 9 November 2007 establishing NVR in the EU Member States. The adoption of a National Vehicle Register was notified in circular A 92-03/501.2009 on 27 February 2009 and entered into force on 1 August 2009. The non-EU OTIF Member States are required to implement the NVR by 1 August

2010. The OTIF Secretariat is preparing a solution to implement a “common NVR” (OTIF host) which those non-EU OTIF Member States which do not have many vehicles to register may choose to use. This solution is expected to be less expensive for them. The users will bear the running costs of the OTIF host. The NVRs will contain the data relating to the admission of a vehicle; the technical details will be included in a central type register, the specifications of which have not yet been drafted by the EU (ERA).

With regard to the Vehicle Keeper Markings (VKM), the joint ERA/OTIF system listing the approved, unique VKMs was continued, with monthly updates to the list. At the end of 2009, the list included more than 1,600 keepers. The duplications in the preliminary list have now all been removed and at the beginning of 2010 the VKM register is stable.

20. Consultation of the non-EU OTIF Member States concerning draft TSIs - Workshop in Zagreb for non-EU OTIF Member States

After lengthy efforts, the OTIF Secretariat achieved the possibility for the non-EU OTIF Member States (MS) of being involved in the consultation procedure on TSIs before they are adopted by the EU.

At the beginning of March 2009 the OTIF Secretariat received from the European Commission three TSIs for conventional rail (TSI Energy (ENE), TSI Infrastructure (INF) and TSI Locomotives and Passenger Rolling Stock (LOC&PAS)) for consultation of the non-EU OTIF Member States.

The first step of this procedure was the workshop on the TSIs, which was held in Zagreb at the kind invitation of Croatia. The workshop aimed to provide the coordinators and experts from the non-EU OTIF MS with basic information about European Union legislation concerning the railway sector, the three relevant TSIs and the consultation procedure itself. This information was provided to participants in presentations excellently prepared by representatives of the European Railway Agency (ERA) and the OTIF Secretariat.

The idea of arranging the workshop in the “local” area was very much appreciated, as this reduced travel costs and made it possible for more representatives from the area to participate. The workshop was attended not only by government representatives, but also by representatives from the users of the OTIF regulations, such as the railway undertakings and railway industry; transport academics also participated actively. In total 47 participants from Bosnia-Herzegovina, Croatia, FYR of Macedonia, Montenegro and Switzerland took part. All documents and presentations from the workshop in Zagreb can be downloaded from the OTIF website¹.

Due to the short deadline (3 months) given by the European Commission, comments on the three voluminous and complex TSIs (in total 360 pages plus a vast number of references to different EN standards also to be studied) were only received from Switzerland. The Secretariat sent consolidated comments to DG TREN, with a copy to ERA on 7 July 2009. On 2 October 2009 OTIF received the response from

¹

<http://www.otif.org/en/technology/consultations-workshops-and-presentations.html>

DG TREN. Few comments on the TSIs were taken account of, but the level of understanding of the TSI (and UTP) specifications was certainly raised among the non-EU OTIF Member States which took part in the consultations and in the workshop.

VI. TRAINING

In cooperation with the Economic Cooperation Organization (ECO) and with organisational support from Turkish State Railways (TCDD), a workshop entitled “Rail Transport between Europe and Asia” was held in Istanbul on 9 and 10 June 2009. At the opening of the workshop the Secretaries General of OTIF and ECO signed a Memorandum of Understanding (see also Chapter VII, para. 36).

More than 50 participants from 8 States (Azerbaijan, Bulgaria, India, Jordan, Kazakhstan, Pakistan, Turkey and Uzbekistan) took part in the workshop. The welcome fact that representatives of Pakistan and Jordan took part in an OTIF event for the first time must be seen in the context of efforts to extend the scope of application of COTIF (see Chapter I, para. 2). For these two States, the findings of the workshop and the discussions that took place in the margins were very useful in allowing them to develop their level of knowledge, which is necessary for the work in connection with preparations for acceding to COTIF.

The purpose of the workshop was firstly to introduce those areas of OTIF’s and ECO’s activities that are of significance for rail transport in Central Asia and for transport between Asia and Europe and secondly, to formulate the problems of the States in the region that could be resolved with assistance from both organisations. The International Rail Transport Committee (CIT) and the International Union of Railways (UIC), which have drafted general conditions for the uniform application of some of the Appendices to COTIF, also sent speakers to the workshop. See also Bulletin 2/2009.

With regard to training activities in the technical area, see Chapter V, para. 20.

Members of staff of the Secretariat also gave presentations at various training events organised by other organisations and institutions.

VII. COOPERATION WITH INTERNATIONAL ORGANISATIONS AND ASSOCIATIONS

21. European Community (EC)

After 2008 brought no substantial developments with regard to the EC’s accession to COTIF, 2009 was marked quite considerably by this issue in terms of cooperation between OTIF and the European Community. However, the major success signified by the results of the Revision Committee’s negotiations on Appendices E (CUI), F (APTU) and G (ATMF), which have already been described, should not be forgotten (see Chapter VIII, para. 42).

Developments began on 3 April 2009 with information from DG TREN’s Land Transport Director that discussions had started within the competent EC bodies on a more specific negotiating mandate for the Commission and that these would be concluded imminently with a promising result. Direct talks were held in two rounds of

negotiations on 7 May in Brussels and on 2 June in Berne. These resulted in some promising possibilities for compromise on various issues, particularly after the discussions on 2 June 2009, which had previously been contentious. As already reported several times, these talks concerned a so-called “disconnection clause”, the European Community’s role in the Administrative Committee, the question of languages and various Appendices to the accession agreement that has to be concluded.

In the meantime, it had also emerged that a disconnection clause, no matter what form it might take, would not be able to cover the situation of the Member States of the European Economic Area (EEA) (Norway, Liechtenstein) or of Switzerland. On the basis of existing agreements with the EC under the EEA Treaty and bilateral agreements respectively, these countries are required to apply EC law in the rail sector, but on the other hand, as non EU Member States, they would not be able to benefit from a disconnection clause. Following talks with representatives of the States concerned on 5 May 2009 in Berne, the Secretary General drafted some wording which seemed to make it possible also to resolve this problem in the context of the accession agreement.

Based on the result of the negotiations on 2 June 2009, the OTIF Secretariat drafted a new version of an accession agreement, which led to an intense exchange of correspondence between Commission representatives and the Secretary General between the beginning of June and the beginning of July and on which final agreement was reached on 8 July 2009, thanks to the readiness of both sides to negotiate and compromise. This text was also initialled by both heads of negotiation.

At that time, it still seemed possible that this accession agreement could be finally adopted by the competent bodies of the European Community in time for OTIF also to take an equivalent final decision at the 9th General Assembly (Berne, 9/10.9.2009). Unfortunately, at the General Assembly, the Swedish Presidency of the Council had to explain that it had not been possible for the European Community to put in place the required conditions for such a decision to be taken. The General Assembly nevertheless adopted a decision according to which the Secretary General was authorised to sign a version of the accession agreement as initialled to make it legally binding for OTIF if, in the period following the General Assembly, the European Community managed to put in place the required conditions.

In the period that followed, the Secretary General was only informed orally about further progress in the matter. This was how he learned that the European Parliament had been consulted on the basis of the text initialled in July, and had reacted positively. On the other hand, the impression was that the necessary agreement had not been reached in the result of negotiations in the competent Council “Land Transport” working group. In fact, the Secretary General was informed that some Member States of the European Community still wished some amendments to be made, particularly to the so-called disconnection clause, the question of languages and the Appendices. In addition, the Commission was to delete the statement concerning representation of the European Community within OTIF.

It came as a complete surprise when, in the middle of November, the Commission announced that a new version of the accession agreement “had been agreed” in the

competent Council bodies. Without returning to the negotiating table with this new version, this text was merely sent to the Secretary General to initial again.

In reply, the Secretary General sent a letter dated 17.12.2009 in which, first of all, he criticised this course of action, along with comprehensive legal justification according to international law, and secondly, rejected three of the desired amendments. This rejection related to the new wording of the disconnection clause, which differs substantially from the wording used in other agreements under international law which the EC has concluded or acceded to. This clause, at least in the English translation, which was the only one sent to OTIF, contains an instruction for how the EC Member States are to act, which of course cannot be issued by the Secretary General by means of his signature on the accession agreement. Equally unacceptable was the language clause now being proposed by the EC, which says that the accession agreement should be drafted in all 23 official working languages of the EC and that all language versions should be equally authentic. This is in clear contravention of OTIF's language regime under Article 45 § 1 of COTIF 1999, which must be applied to the accession in accordance with Article 38. It is also unthinkable from a purely logical point of view that the Secretary General should sign such an accession agreement to make it legally binding in, for example, Estonian, Portuguese or Greek, neither should it be expected that the General Assembly should agree to such an accession agreement in languages other than OTIF's 3 working languages. Lastly, another (minor) difficulty arose from the fact that the European Community had proposed an Appendix to the accession agreement, which OTIF had already previously rejected, and which from a purely factual point of view makes incorrect statements and for this reason alone was therefore unacceptable as far as the Secretary General was concerned.

In this letter however, for the sake of orderliness, the Secretary General had made absolutely clear that he had to take this approach in order to do justice to the General Assembly's mandates, to act correctly in accordance with international law and to avoid OTIF setting a precedent in international law, the consequence of which it cannot possibly foresee in terms of other agreements under international law or other international governmental organisations.

The Secretary General obviously signalled his readiness to negotiate further, so it remains to be seen how this matter will develop in 2010.

22. United Nations Economic Commission for Europe (UN/ECE)

The Secretariat of OTIF maintains many contacts with the UNECE, although of differing importance and intensity. While there is always very close and dynamic collaboration as regards dangerous goods, the degree of collaboration in the other areas of activity of the UNECE Inland Transport Committee and its subsidiary bodies varies, depending on the subjects dealt with and the particular interest these subjects might have for OTIF. Progress in the work on the facilitation of border crossing was not rapid enough to enable Annex 9 to the 1982 Convention on the harmonization of frontier controls of goods to be adopted before the end of the year under review.

23. Inland Transport Committee (ITC)

As usual, OTIF was represented at the annual session of the Inland Transport Committee, which was held in Geneva from 24 to 26 February 2009.

The Secretary General represented OTIF in the debate on the political orientation, which this year focused on the “Impact of globalization on transport, logistics and trade”. More than 300 people took part in the Conference organised jointly by ITC and the UN/ECE Committee on Trade. The conclusions from the Conference were used as the UN/ECE’s contribution to the work of the 2009 International Transport Forum, the subject of which was “Transport for a Global Economy: Challenges & Opportunities in the Downturn” (see para. 31).

With regard to issues relating to the work of the Committee in general, two items of particular interest to OTIF were included on the agenda of the 71st session of the ITC: transport and security and facilitation of the crossing of frontiers in international railway transport.

The Committee endorsed the report of the Chairman of the Multidisciplinary Inland Transport Security Expert Group, which held its last session on 15 and 16 January 2009 (see para. 29). However, the Committee agreed that the Multidisciplinary Group should be re-activated annually to discuss issues addressed at the ITC’s subsidiary bodies and to provide a platform for the exchange of best practices.

With regard to the facilitation of the crossing of frontiers in international railway transport, the Committee underlined the importance of coordination between all the governmental authorities concerned at national level so that the draft Annex 9 could be adopted (see para. 26).

In connection with the draft new Convention to facilitate the crossing of frontiers for passengers, the Committee asked Contracting Parties to the existing 1952 Convention to confirm if they will consider positively proposals to amend the Convention as proposed by OTIF and OSJD, once more countries have acceded.

With respect to rail transport, the Committee particularly welcomed the decisions taken by the Working Party on Rail Transport to establish an informal task force to address security issues in the rail sector (see para. 24 and 2008 Annual Report, para. 25).

Unless otherwise indicated under the following items, cooperation with the Inland Transport Committee was limited to the exchange of documents and the OTIF Secretariat's evaluation of UNECE documents.

24. Working Party on Rail Transport (SC.2)

SC.2 held its 63rd session in Geneva from 18 to 20 November 2009. A representative of OTIF took part in the session.

The two items of the agenda in which OTIF is particularly interested were rail security and the facilitation of international rail transport.

The Chairman of the Task Force on Rail Security set up by SC.2 at its 2008 session (see 2008 Annual Report, para. 25) presented the report and recommendations² prepared by the Task Force on this subject (see Bulletin 4/2009). SC.2 thanked the Task Force for the timely fulfilment of its mandate and took note of the recommendations proposed in its report, including the formation of a technical working group of government and industry representatives outside the UNECE.

With regard to the facilitation of international rail transport, SC.2 mainly took note of the activities undertaken in other bodies, including recent developments in connection with the draft Annex 9 of the 1982 Convention on the Harmonization of Frontier Controls of Goods (see para. 26), progress on the draft CIM/SMGS consignment note (see Chapter III, para. 8) and the report submitted jointly by OTIF and OSJD on activities concerning interoperability and harmonisation of the different rail transport systems.

SC.2 nevertheless expressed its full support for all initiatives that aim to unify railway law in the pan-European region and decided to set up an informal group of experts that would prepare a position paper on this issue for the next session of SC.2 in 2010. The informal group would also be tasked to prepare, in cooperation with the Organization for Security and Co-operation in Europe (OSCE) and the Secretariat of the TER project, a workshop on the principal Euro-Asian rail transport issues that would take place during the session of SC.2 in 2010. Representatives of UNECE Member States, OTIF, OSJD, the European Community and railway industry organisations (CIT and UIC in particular) were invited to participate in the work of the informal group of experts. OTIF will participate actively in this work.

25. Working Party on Intermodal Transport and Logistics (WP.24)

In 2009, WP.24 met twice in Geneva. It held its 51st session on 19 and 20 March 2009 and its 52nd session on 12 and 13 October 2009. A representative of OTIF took part in these two sessions (see Bulletins 1/2009 and 4/2009).

At these sessions, WP.24 examined the effects of the financial and economic crisis on intermodal transport. It noted that in the first half of 2009, unaccompanied intermodal transport in Europe had decreased in the order of 20 to 25% and up to 15% for accompanied traffic. The Working Party also noted that European Governments, with the exception of Switzerland and France, had not yet decided to provide specific fiscal, financial or regulatory support measures allowing intermodal transport operators to counter the crisis. It was felt that the transport industry should use the crisis to adjust to new trends and demands, streamline internal procedures, enhance cooperation and improve quality of services.

Among the other items on the agenda of this session of WP.24, OTIF has a particular interest in the following two issues: procedures to facilitate the crossing of frontiers in relation to intermodal transport operations in a pan-European context and reconciliation and harmonisation of civil liability regimes in intermodal transport.

²

<http://www.unece.org/trans/doc/2009/sc2/ECE-TRANS-SC2-63-inf01e.pdf>

With regard to the facilitation of the crossing of frontiers, WP.24 noted in particular the progress on the CIM/SMGS consignment note project presented by CIT (see Chapter III, para. 8).

There was lively discussion in WP.24 on the issue of the reconciliation and harmonisation of civil liability regimes and particularly the new Rotterdam Rules, in other words the new Convention on Contracts for the International Carriage of Goods wholly or partly by Sea developed by UNCITRAL and adopted by the United Nations General Assembly on 11 December 2008 (see para. 32 and 2008 Annual Report, para. 33). The Working Party did not consider that this new Convention met the specific requirements of European intermodal land transport. It therefore decided to continue, in cooperation with the European Commission, its consideration of civil liability regimes to increase the competitiveness of intermodal transport at the pan-European level.

26. Working Party on Customs Questions affecting Transport (WP.30)

Among other matters, the draft new Annex 9 to the 1982 Convention on the Harmonization of Frontier Controls of Goods prepared jointly by OTIF and OSJD was on the agenda of the three sessions of WP.30 held in 2009. OTIF was represented at all these sessions, which were held in Geneva.

At the 121st session (2-6.2.2009), the text of this Annex, with an addition requested by the EC, was adopted in principle. It was just noted that the text still needed to be checked from the editorial point of view, particularly to ensure that the various language versions were the same, before the new Annex could be submitted to the competent Administrative Committee (AC.3) for final adoption. See Bulletin 1/2009.

At the 122nd session (16-19.6.2009), the representative of the EC raised the question of a possible inconsistency between the new Annex and the basic Convention. After checking the text, the Secretariat of WP.30 submitted a revised draft of the Annex to the 123rd session (29.9-2.10.2009) in which this concern was taken into account. At the same meeting, Russia announced that (as a result of some suggestions from Russian Railways), it was considering further proposals. Regrettably therefore, the Administrative Committee could not be convened in 2009. See also para. 35.

There has been no progress with regard to the facilitation of border crossing in passenger transport since the examination of the draft new Convention to Facilitate the Crossing of Frontiers for Passengers was deferred until clarification of the alternative of an amendment to the existing 1952 Convention (see 2008 Annual Report, p. 30). WP.30 invited the contracting parties to the existing Convention to consider introducing an amendment clause into this Convention.

27. United Nations Sub-Committee of Experts on the Transport of Dangerous Goods

The RID service took part as an observer in the 35th and 36th sessions of the UN Sub-Committee of Experts (Geneva, 22-26.6.2009 and 30.11.-9.12.2009). Following a final decision by the UN Committee of Experts in December 2010, the decisions taken at these sessions will be included in the 17th revised edition of the UN Recommendations on the Transport of Dangerous Goods (UN Model regulations) and will be in-

cluded in the 2013 edition of RID in the context of harmonisation. The decisions taken at these two sessions have been described in detail in Bulletins 2/2009 and 4/2009.

28. Working Party on the Transport of Dangerous Goods (WP.15/ADR)

The RID service attended part of the 86th and 87th sessions of this UNECE Working Party (Geneva, 5-8.5.2009 and 2-6.11.2009), which dealt mainly with the adoption of the 2011 amendments to ADR. The main aim of attending these sessions is to ensure that the RID/ADR/ADN regulations develop in parallel.

Among the subjects relating specifically to road transport that were dealt with at these two sessions, the first that should be mentioned is the revision of the model of the instructions in writing for the drivers of vehicles carrying dangerous goods, which was included in the 2009 edition of ADR, and which was also taken into account in introducing instructions in writing for locomotive drivers (see Chapter IV, para. 12). Another such subject was the fundamental revision of the provisions for training the vehicle crew in Chapter 8.2 of ADR. The decisions taken by WP.15 have been detailed in Bulletins 2/2009 and 4/2009.

29. Multidisciplinary Group of Experts on Inland Transport Security

On 15/16 January 2009, the Group of Experts held its meeting in Geneva, beginning with a seminar on “Inland transport security – the way ahead: prevention and resilience?”, at which a large number of projects and activities were presented on the subjects of “Prevention: research and innovation” and “Resilience: critical infrastructure protection and business continuity planning”. The Group of Experts went on to examine feedback from the various UNECE services on their activities and standpoints with regard to the field of security. The final report of the Group of Experts was submitted to the 71st session of the UNECE Inland Transport Committee in February 2009, which approved it and decided that the Group should be reactivated as an informal group meeting once a year to deal with parallel issues from the Inland Transport Committee’s subsidiary bodies and to provide an international platform for exchanging best practices.

The Working Party for rail transport (SC.2) had set up its own Task Force on Rail Security, which held its first meeting on 14 May 2009 in Geneva and which, after a discussion of general items, decided to focus its attention on guidelines for the regulatory area, the effective exchange of best practices and economic issues. At the second meeting held in Geneva on 1 October 2009, documents dealing with the main issues referred to and the final report to SC.2 were discussed. At its 63rd session on 18 – 20 November 2009 in Geneva, SC.2 noted and agreed the final report and all the recommendations it contained (see also para. 24).

30. Organization for Security and Co-operation in Europe (OSCE)

For OTIF, the deputy Secretary General took part in this workshop on an integrated approach to supply chain security for the Mediterranean region organised by the OSCE on 16-17 December 2009 in Malta, which was attended by around 60 participants, mainly from the countries concerned and from international organisations with an interest in the subject. The deputy Secretary General gave a presentation on secu-

rity in the carriage of dangerous goods by land. This also gave him the opportunity to strengthen the awareness of OTIF in the participating States of this region and in the international organisations, and to ensure OTIF's involvement in OSCE's recently expanded activities in the rail sector.

31. International Transport Forum (ITF)

The 2009 International Transport Forum was again held in Leipzig from 26-29 May. In the decisions of principle taken by the members of the former European Conference of Ministers of Transport (ECMT), Leipzig was chosen as the permanent meeting venue for the annual conferences. OTIF was represented by the Secretary General.

On both main days of the event, this year chaired by Turkey, the participants, numbering approximately 800, including 52 Ministers of Transport, dealt with the subject of "Transport for a Global Economy: Challenges and Opportunities in the Down-turn". The keynote speakers were Jacques Attali (former President of the European Central Bank), Ray LaHood (new US Secretary of Transportation) and the Vice-President of the European Commission and Transport Commissioner, Antonio Tajani. Mr Attali's contribution was of particular interest to OTIF. With great foresight from today's perspective, he claimed that

- the global financial sector is unlikely to learn anything much from the origins and course of the current financial and economic crisis,
- owing to its global development opportunities, the transport sector could make a substantial contribution to maintaining or restrengthening worldwide flows of trade and
- the global economic system known today would not re-emerge after the crisis.

On the other hand, for understandable reasons, the other two contributions threw some light on issues that were explained from the point of view of their individual areas of occupation. The US Secretary of Transportation from the new Obama Administration emphasised his Government's intention of wishing to assign rail passenger traffic, particularly high-speed systems, a far more important role as far as US conditions go. He reported enthusiastically on journeys he had taken in high-speed trains in Europe in the run-up to the Conference. Commissioner Tajani surprised the audience by referring to the Commission's wish to extend the TEN networks to the African continent. In the astonished hush, he justified this intention by saying that such a step should reduce the pressure of immigration from Africa towards southern Europe.

In the panel discussions, in which the Secretary General took part and which he selected from the standpoint of OTIF's aims and tasks, it was surprising that the transport sector's tasks in mitigating the global economic crisis, highlighted by Mr Attali, were only looked at in more depth in the margins. Contributions to the discussion were kept very general and suffered from being influenced by the respective sector and company interests. Overall, the impression that emerged was that neither the moderators nor the participants in these panel discussions had been sufficiently briefed by the Forum Secretariat. The panels also suffered partly from a very incon-

sistent mixture of participants, which might be illustrated by the fact that on one panel, both the Russian Minister of Transport and a Director of a Polish infrastructure manager were represented.

Nevertheless, OTIF's presence at the annual meetings of the International Transport Forum should be maintained, firstly because it provides the opportunity for an extraordinarily large number of interesting contacts to be established and secondly, as repeatedly expressed by representatives of OTIF Member States who were present, it is considered necessary that the Organisation be represented at the Forum at a high level.

The so-called "Ministers' key messages" adopted by the Forum at the end only contain general transport-related statements. They deal with avoiding protectionist measures, the importance of environmentally friendly transport modes for possible agreements in the context of the then imminent climate conference in Copenhagen and the need for long-term investment in the transport sector.

32. United Nations Commission for International Trade Law (UNCITRAL)

The "Convention on Contracts for the International Carriage of Goods wholly or partly by Sea", the so-called "Rotterdam Rules", adopted by the United Nations General Assembly in 2008, which OTIF helped to develop in connection with the multi-modal provisions, were signed on 22 September 2009 in Rotterdam by 16 States and by a further five States by the end of 2009.

33. International Institute for the Unification of Private Law (UNIDROIT)

With regard to co-operation with UNIDROIT, the OTIF Secretariat contributes articles to the "Uniform Law Review" published by UNIDROIT. Similarly, UNIDROIT is informed of ratifications, approvals and acceptances of the Vilnius Protocol and accessions to the Protocol or COTIF so that they can be published in the above-mentioned review. This way, the degree of familiarity with OTIF and knowledge of international rail law is improved.

There is close cooperation in the context of preparing the entry into force of the Luxembourg Protocol (see also Chapter III, para. 10) and setting up the International Rail Registry, which has its basis in the Protocol.

34. International Maritime Organisation (IMO) / International Civil Aviation Organisation (ICAO)

As in the previous year, cooperation with these two organisations was limited to studying documents and publications and consulting their websites.

35. Organization for Railways Cooperation (OSJD)

The deputy Secretary General took part in the XXXVIIth meeting of the OSJD Conference of Ministers (Astana, 4/5.6.2009). Among other matters, the meeting dealt with the draft new OSJD statutes. The OSJD members who belong to the EU consider that they are obliged to avoid incompatibilities with EU law. To ensure this, it was decided that the new statutes should be negotiated at an international conference

before being formally adopted by a meeting of the Conference of Ministers (see Bulletin 2/2009).

In addition to the interoperability of CIM/SMGS transport law (see Chapter III, para. 8), OTIF and OSJD also cooperated in the areas of facilitation of border crossing, revision of SMPS, updating the provisions for the carriage of dangerous goods and technical rail transport issues.

With regard to the facilitation of border crossing, OTIF and OSJD sent the UN/ECE Secretariat a joint draft for a new Annex 9 to the 1982 “Harmonization Convention” (facilitation of international rail freight transport) in October 2008. Before the meeting of WP.30 in February, both Secretariats also agreed a common position on an additional proposal from the EC. The reason the new Annex could not be adopted in 2009 was because of the comments received from some important parties to the Harmonization Convention which only contained general information or announcements without any specific texts being submitted (see para. 26). In view of this situation, the Secretary General invited OSJD to bring additional pressure to bear to ensure that a decision on adopting the text could finally be taken in the competent bodies.

Another focal point of cooperation concerned the aim that OSJD has been pursuing for three years of revising SMPS in a new form - similar to the CIV UR – as an Annex to a new intergovernmental convention (“Convention concerning through international transport by rail”). A representative of OTIF took part in three sessions of a working group set up to revise SMPS and in one meeting of Commission II on this subject (Warsaw, 17-20.2, 21-24.4, Spala, 16-19.6 and Warsaw, 24-27.11.2009). The explanations she provided helped meeting participants better to understand those rules that are in the CIV UR and which are to be included in SMPS in its new form (“General provisions for the contract of carriage of passengers in international transport”) (e.g. joint and several liability of the contractual and substitute carrier in the event of an accident that occurs during the performance of transport by a substitute carrier, or the provision to protect the passenger in cases where the accident suffered by the passenger is partly caused by the behaviour of a third party, which makes it easier for the passenger to assert his claims). The aim of her suggestions was to achieve agreement between the conception of these intended rules, which are new in the SMPS area, and those underlying the CIV UR.

Together with the OSJD Committee, the Secretariat of OTIF submitted a joint report to the UNECE on the work carried out by both organisations on harmonising the different rail transport systems (see also para. 24).

Since 2001, OSJD has been working to align Annex 2 of SMGS with the restructured RID. In order to speed up this harmonisation and to be in a position to highlight, at the stage when amendments to RID are being drafted, any technical difficulties for the Member States of OSJD in implementing these changes, OSJD is invited to all the RID/ADR/ADN Joint Meetings and to all sessions of the RID Committee of Experts.

For the translation of RID into Russian, OSJD can to a large extent refer to ADR, which the UN/ECE also publishes in Russian. In order to avoid duplication of trans-

lation work and to speed up harmonisation, the RID service provides a synoptic presentation of RID and ADR, from which the mode-specific differences can be seen.

Now that harmonisation with the 2009 edition of RID has been completed, OSJD is currently working to achieve harmonisation with RID 2011. This will, de facto, extend the geographical scope of RID and will make the international carriage of dangerous goods between the different legal systems considerably easier.

At the 24th session of the Conference of the General Managers of the OSJD Railways in April 2009 the Secretariat gave a presentation concerning the VKM and possible cooperation between OTIF and OSJD in this area. The session mandated the OSJD “permanent standing working group for informatics and coding” to prepare a decision for the next session of the Conference of the General Managers of the OSJD Railways in April 2010.

A similar presentation was made at the invitation of the OSJD permanent standing working group in October 2009 in Varna.

36. Economic Cooperation Organization (ECO)

In 2009, cooperation with this Organisation was intensified, especially in connection with preparations for holding the OTIF workshop for Central Asian States (Istanbul, 9/10.6.2009) (see Chapter VI). In order to further cooperation between OTIF and ECO and to put it into concrete terms, a corresponding Memorandum of Understanding was signed by the Secretaries General of both Organisations at the beginning of the workshop.

At the same time, the Secretary General of ECO informed himself thoroughly of how OTIF functions. The Secretary General of OTIF provided him with various documents, particularly the Rules of Procedure of the OTIF organs. In accordance with the principle of rotation used by ECO, in August the representative of Pakistan was replaced in the role of Secretary General by a representative of Afghanistan. In his letter to the new Secretary General of ECO, the Secretary General of OTIF set out the areas in which the two Organisations could take a common approach to specific projects on the basis of the Memorandum of Understanding.

ECO is an intergovernmental organisation operating at a regional level with 10 Member States. Two of these are Member States of OTIF (Turkey, Iran); one Member has already indicated that it is interested in acceding to COTIF (Azerbaijan). The other Members include some for which accession to COTIF might be of use.

Like OECD, ECO is involved with economic and trade policy. In the transport sector, it deals with projects in road transport, such as the implementation and broadening of the application of the TIR Convention, and in rail transport, the organisation of test runs of container trains on important links in the region, such as Islamabad-Tehran-Istanbul, Istanbul-Almaty and Bandar Abbas-Almaty. Although it does not aspire to creating a regional system of railway law, ECO encourages its Member States to create conditions for the processing of rail transport on these lines under a uniform legal regime. In so doing, there should be recourse to existing regulations.

Insofar as the CIM regime could be considered for performing these transport operations, the aims of both ECO and OTIF coincide.

A representative of OTIF took part in the meeting of the Transit Transport Coordination Council (TTCC) and its supporting organs, including the Railway Committee, held from 3 to 6 November 2009 in Astana, thus obtaining a direct insight into this concept and into ECO's methods of working in the areas of transport and trade. She used this opportunity to highlight that the flexible COTIF system enabled interested States, particularly Pakistan, to apply all seven of the Appendices to COTIF, or only some of them, depending on requirements. Both Organisations wish to give Pakistan practical support in preparing for accession to COTIF so that goods trains between Istanbul and Islamabad can also run under the CIM UR on Pakistani territory. See also Chapter I, para. 2.

37. European Committee for Standardisation (CEN)

In 2009 the Secretariat continued its active participation in the CEN WG drafting the new standard prEN 15877 for external markings on vehicles. Part 1 for freight wagons has now passed the consultation of the CEN Members and will be finalised in 2010; Part 2, which deals with locomotives, passenger rolling stock and other vehicles will be sent for consultation during 2010.

38. International Union of Railways (UIC)

In the carriage of dangerous goods field, UIC participates through its own organs in the development and application of RID, particularly by means of the UIC leaflets, which are referred to in RID. UIC's contributions and standpoints on the proposals that are submitted are particularly important in the dangerous goods meetings because of the practical implementation of new provisions.

In 2009, the RID service took part in an advisory capacity in the UIC "group of experts on the transport of dangerous goods" (Bönigen (Switzerland), 11 and 12 March 2009, and Clervaux (Luxembourg), 28 and 29 October 2009). At these meetings, the RID service can gain better awareness of the difficulties encountered by the railways in applying and implementing these provisions, as well as with regard to the training of personnel. In return, the RID service supports UIC in drafting proposals and in formulating the UIC leaflets.

39. International Rail Transport Committee (CIT)

There is helpful cooperation with this association, whose membership is composed of rail transport undertakings from the Member States of OTIF. The association deals with practical questions concerning application by these undertakings of the Appendices to COTIF and its headquarters are also in Berne. Cooperation ranges from the mutual exchange of information, discussions and participation at meetings and workshops to issues such as office organisation, IT and matters concerning official travel.

CIT's participation in events organised by other railway associations which OTIF does not attend often leads to valuable information being obtained which is also useful for OTIF, e.g. information on test trains.

The main areas of cooperation between OTIF and CIT at specialist level were the interoperability of CIM/SMGS transport law (see Chapter III, para. 8), infrastructure law (see Chapter III, para. 9) and the electronic consignment note.

THE OTIF ORGANISATION

VIII. THE GENERAL ORGANS OF OTIF

40. General Assembly

In accordance with the three year cycle prescribed in COTIF 1999, the 9th General Assembly met in Berne on 9 and 10 September 2009. 35 of the 43 Member States were represented. Representatives of the Russian Federation, the Hashemite Kingdom of Jordan and Azerbaijan, as well as representatives from the European Community (EC) and from four international associations attended as observers in an advisory capacity.

In accordance with the mandate of the 8th General Assembly, the agenda included an item on the “resolution of outstanding legal and practical problems between the European Commission and OTIF concerning Appendices E, F and G”. Luckily, it was possible to submit the results of the 24th session of the Revision Committee to the General Assembly, which offered such a solution (see para. 42). The General Assembly approved the results subject to some editorial amendments.

The General Assembly re-elected Mr Stefan Schimming as Secretary General for the period from 1 January 2010 to 31 December 2012. With regard to the election of a new Administrative Committee for the period from 1 October 2009 to 30 September 2012, the General Assembly adopted the proposal from the Administrative Committee in place until 30 September 2009 concerning its new composition (see para. 41 and page 48).

In order to take account of OTIF’s increased range of tasks in accordance with COTIF 1999 and to ensure that they can be carried out, the General Assembly approved an increase in the maximum amount of the budget. This would enable the Secretary General to raise the number of staff in the Organisation’s Secretariat by making new appointments and to create the conditions for accommodating them by extensively restructuring the headquarters building.

It was also planned that the General Assembly would take a decision on the conditions of the EC’s accession to COTIF (see Art. 14 § 2 n) of COTIF). However, as the EC’s internal decision-making processes had not yet been concluded, the relevant decisions could not be taken. An extraordinary General Assembly might have to be convened at a later date to deal with this issue. See also Chapter VII, para. 21. See also Bulletin 3/2009.

41. Administrative Committee

In 2009, the Administrative Committee met twice in Berne.

It held its last session with the composition decided by the 8th General Assembly on 13 and 14 May 2009 under the chairmanship of Spain.

At this 111th session, a large part of the Committee’s work focused on preparations for the 9th General Assembly (see para. 40). It particularly discussed perspectives with regard to personnel. The Committee agreed with the Secretary General’s point

of view that the number of staff in the Secretariat should be increased and that the premises should be converted so as to provide accommodation for the new members of staff in the OTIF Secretariat, and decided to propose to the General Assembly to increase the maximum amounts that OTIF's expenditure may reach between 2010 and 2012 (see Chapter X). The Committee also decided to propose to the General Assembly to give the two candidates for the post of Secretary General for the period from 1 January 2010 to 31 December 2012 the opportunity of presenting their applications in person to the General Assembly's plenary session. It also approved the draft report on its activities for the period from 1 January 2006 to 30 September 2009, which was submitted to the General Assembly. Lastly, the Committee decided proposals concerning its composition for the period from 1 October 2009 to 30 September 2012.

The Committee approved the 2008 Annual Report and the 2008 Financial Management Report. On the basis of the approved accounts, it set the definitive contributions for 2008 at SFr. 3,099,660.-, thus confirming the debit of SFr. 381,087.70 from the reserve fund to increase the provision for loss on shares resulting from the effects of the global financial crisis on OTIF's investments.

The Committee held its first session with the composition decided by the 9th General Assembly on 25 and 26 November 2009 under the chairmanship of the Czech Republic, in the shape of Mr Petr Stejskal.

The Committee discussed the investment situation at length (see 2008 Annual Report, para. 43). In future, it asked the Secretariat to provide it with a more specific document on the virtual and real losses and gains and it mandated the Secretary General to submit proposals to the Committee's 113th session on the strategy to be applied with regard to investments between June and November 2010.

After hearing the legal opinion on the appointment of delegates to the Administrative Committee (see 2008 Annual Report, para. 43), the Committee decided to maintain the status quo with regard to this matter. As a consequence, the Committee decided not to amend its Rules of Procedure in this respect.

In addition, the Committee approved the 2010/2011 work programme, the draft 2010 budget and the draft provisional budget for 2011 submitted by the Secretariat.

At these sessions, the Committee also dealt with various personnel matters. It approved some amendments to the Staff Regulations. It regularly noted information from the Secretary General on the question of resolving outstanding legal and practical problems between the European Commission and OTIF and on the work underway resulting from the Luxembourg Diplomatic Conference, particularly the International Registry, which has to be put into place under the Rail Protocol.

42. Revision Committee

The Revision Committee held its 24th session from 23 to 25 June 2009 in Berne. This was the first time the Revision Committee had met after an interruption of around ten years. The main aim was to align Appendices E (CUI), F (APTU) and G (ATMF) of COTIF with developments that had since taken place in EC law. First of all though, the Committee had to update its Rules of Procedure. By amending the provisions of

Article 9 of the Convention (Unit of account), it also took the opportunity of removing the “gold franc”, and by deleting some parts of Article 27 (Auditing of accounts), it removed the need to hold a meeting for every minor amendment to the very detailed provisions. Both these Articles are within the Revision Committee’s competence. The provisions that were deleted from the Convention are to be incorporated into the Organisation’s Finance and Accounts Rules before the amendments come into force. According to Article 15 § 5 e) of the Convention, the Administrative Committee is responsible for these Rules.

For the amendments to CUI, the Committee based its work on the results of a “CUI group” comprised of representatives of the European Commission and the OTIF Secretariat and legal experts from the EU Member States and Switzerland. In the course of several meetings, they identified contentious areas of incompatibility between EC law and the CUI and drafted suitable proposals to resolve them (see also Chapter III, para. 9).

Similarly, the “Schweinsberg group” that has existed since 2004, in which all the Member States of OTIF, the European Commission and the sector organisations were able to participate, had worked on aligning the APTU and ATMF technical Appendices with the EU’s legal instruments, which had been considerably broadened since these Appendices were adopted, particularly with regard to railway safety and interoperability. As expected, efforts in this area focussed on making it even clearer when EU law takes priority over COTIF with regard to the technical provisions for railway material used in international rail transport, and when it does not, as well as which technical approvals and certificates have to be mutually recognised. It was mainly the huge effort on the part of OTIF’s technical service and constructive contributions from the deputy Secretary General (two-column system) that were central in achieving successful solutions to these issues (see also Chapter V, para. 14).

The Revision Committee largely followed the proposals put forward by the two working groups and in addition to the amended texts, agreed accompanying Explanatory Reports. As these also concerned provisions on, for example, the scope of application, for which OTIF’s General Assembly is competent, the vote on these provisions at the 9th General Assembly on 9 and 10 September 2009 had to be awaited.

As the adopted texts were only available in English and the subsequent General Assembly decisions had to be taken into account in the Explanatory Reports, all language versions of the adopted texts and Explanatory Reports were subject to a vote using the written procedure, which was held between 30 October and 4 December 2009. This was made possible by the updated Rules of Procedure. Notification of the very positive results of the Revision Committee by the Secretary General followed on 21 December 2009. According to Article 35 §§ 2 and 3 of the Convention, such notification is required before amendments can enter into force.

IX. COMMUNICATION

43. Bulletin

In 2009, the circulation of the Bulletin of International Carriage by Rail (the Bulletin) remained unchanged at 350 copies. As always, communications, meeting reports, studies and transport related case law were published in the Bulletin.

In addition to 142 copies distributed free of charge (mainly to administrations and railway undertakings), 70 subscribers paid for the Bulletin in the 2009 financial year, and 33 copies were provided in exchange for other publications. Efforts to reduce the number of people who receive a free copy and to increase the number of paying subscribers were continued. Since 2008, the Bulletin has had an ISSN (International Standard Serial Number), which ensures free, worldwide dissemination of information on the Bulletin.

In 2009, the Bulletin was another victim of the excessive workload in almost all the Secretariat's areas of work, as already explained in the General Part. In addition to the large number of regular and extraordinary sessions of the organs and other working groups, there were also delays resulting from the lack of resources in the translation service, which lasted several months. Therefore, only two issues were published in 2009.

44. Internet

The OTIF Secretariat's news and events were reported in 53 series of updates, particularly in the following menus:

- "About OTIF", particularly with regard to general information, job vacancies and new posts;
- "News", with announcements concerning requests for accession to COTIF, the Memorandum of Understanding signed by OTIF and ECO and the main points concerning the Workshop held in Istanbul on 9 and 10 June 2009;
- "Law" highlighted the work carried out by the Revision Committee and included the Request for Proposal for the International Registry in the joint ambit of OTIF and UNIDROIT;
- "Dangerous Goods" listed the various meetings, such as the sessions of the RID/ADR/ADN Joint Meeting, the Committee of Experts and the various working group activities, as well as relevant information on multilateral special agreements, information on the Member States' competent authorities and a list of approved experts. The new version of RID applicable from 1 January 2009 and the errata were also published under the "Publications" menu;
- "Technology" published the numerous and voluminous documents detailing the activities of the sessions of the Committee of Technical Experts, the WG TECH and WG LEGAL working groups and the Workshop organised in Zagreb from 2 to 5 June 2009. The data relating to the Register of Vehicle Keeper Markings (VKM) were updated on a regular basis;

- “Publications” informed internet users more particularly about the status of ratifications or declarations and reservations concerning the 1999 Protocol; a Russian edition of COTIF (3.6.1999) was also added, along with the usual information concerning the Bulletin, changes to the lists of lines and lastly, publication of the Annual Report.

X. FINANCES

45. Important development

In order to take on the additional new tasks imposed by COTIF 1999, the 9th General Assembly held in Berne on 9/10.9.2009 accepted the Administrative Committee’s proposal concerning perspectives in relation to personnel and the refurbishment of the headquarters building. As a result, the General Assembly decided that the maximum amounts that expenditure may reach in the budget period 2010 to 2012 should be increased. For 2010, the increase is around SFr. 350,000.-, and in 2011 and 2012 the increase is SFr. 240,000.-.

46. Financial management

The general development of the Organisation's finances was again satisfactory in the 2009 financial year. The Member States were very prompt in paying their contributions to the Organisation’s expenses in the form of an advance for the current financial year. Of the total amount of SFr. 2,867,745.60 to be paid in advances for 2009, SFr. 2,434,837.67, i.e. 84.90%, was paid during the 2009 financial year. At the end of the 2009 financial year, six of the 43 Member States still owed part or all of the advance. In the same period, an amount of SFr. 1,050,418.67 was collected covering contributions outstanding from previous years and the payment of default interest. The actual income of SFr. 3,485,256.34, to which are added the reserves accumulated and debits from the reserve fund, meant it was possible to cover the 2009 financial year expenditure of SFr. 3,510,680.99.

The 2009 accounts show an increase in expenditure of SFr. 225,098.14 as compared with the budget forecast, owing to the adjustment to the provision for repatriation grants and the provision for accumulated annual leave. Income was SFr. 551,529.78 more than anticipated thanks to the partial dissolution (SFr. 540,389.-) of the provision for loss on shares. The result is surplus income of SFr. 326,431.64 for the financial year.

The accumulated value of the reserve fund at 31 December 2009 was SFr. 7,619,651.41 (2008: SFr. 7,627,991.41).

Following the entry into force of COTIF 1999 on 1 July 2006, the contributions from Member States that have ratified the 1999 Protocol were calculated in accordance with Article 26 § 1 et seq. Contributions from Member States that have not yet acceded to the 1999 Protocol were calculated in accordance with the provisions of Article 11 § 1 of COTIF 1980 (notional rate per kilometre of SFr. 7.65938).

For more information, please refer to the 2009 Financial Management Report, which will be sent to the Member States after it has been adopted by the Administrative Committee at its 113th session (2/3.6.2010).

Member States of COTIF (31.12.2009)



1.	Albania	AL	23.	Lithuania	LT
2.	Algeria	DZ	24.	Luxemburg	L
3.	Austria	A	25.	Former Republic of Macedonia	FRY
4.	Belgium	B	26.	Monaco	MC
5.	Bosnia and Herzegovina	BIH	27.	Morocco	MA
6.	Bulgaria	BG	28.	Netherlands	NL
7.	Croatia	HR	29.	Norway	NO
8.	Czech Republic	CZ	30.	Poland	PL
9.	Denmark	DK	31.	Portugal	P
10.	Estonia	EE	32.	Romania	RO
11.	Finland	FIN	33.	Serbia	RS
12.	France	F	34.	Slovakia	SK
13.	Germany	D	35.	Slovenia	SLO
14.	Greece	GR	36.	Spain	E
15.	Hungary	H	37.	Sweden	S
16.	Iran	IR	38.	Switzerland	CH
17.	Iraq	IRQ	39.	Syria	SYR
18.	Ireland	IRL	40.	Tunisia	TN
19.	Italy	I	41.	Turkey	TR
20.	Latvia	LV	42.	Ukraine	UA
21.	Lebanon	RL	43.	United Kingdom	GB
22.	Liechtenstein	FL			

Member States of the Administrative Committee (1.10.2006-30.9.2009)

	States	Delegates	Deputies
1.	Germany	M. Harting	T. von Gäßler
2.	Belgium	B. Daneels	L. Van Den Bleeken
3.	Croatia	B. Jerneić	B. Mikulić
4.	Spain	C. del Olmo Morand	D. Soto Gúrpide
5.	Greece	T. Papatriantafyllou	M. Provatas
6.	Ireland	M. Wallace	P. Carney
7.	Liechtenstein	H. Büchel	D. Frick
8.	Lithuania	L. Zumeriene	K. Vasauskaitė
9.	Morocco	M. Khlie	
10.	Norway	E. Classon	
11.	Poland	K. Kulesza	
12.	Romania	C. Dumitrescu	F. Sararu ¹ I Balan ²
13.	Syria	G. Mokabari	Y. Wa'ez
14.	Czech Republic	P. Stejskal	

Secretary General of OTIF

S. Schimming

¹ Until 29.4.2009

² From 30.4.2009

Member States of the Administrative Committee (1.10.2009-30.9.2012)

	States	Delegates	Deputies
1.	Germany	M. Harting	T. von Gäßler
2.	Belgium	B. Daneels	L. Van Den Bleeken
3.	Croatia	D. Krakić	B. Mikulić
4.	Spain	C. del Olmo Morand	D. Soto Gúrpide
5.	France	F. Davenne	P. Billard
6.	Iran	M. Azizi	A. Farhadfar
7.	Liechtenstein	H. Büchel	D. Frick
8.	Lithuania	S. Garuolis	L. Jasinskiene
9.	Slovenia	K. Peer	
10.	Sweden	S. Bårström	
11.	Czech Republic	P. Stejskal	
12.	Tunisia	S. Rejeb	A. Fredj
13.	Turkey	V. Kurt	I. H. Çevik
14.	Ukraine	O. Yakymchuk	I. Rodneva

Secretary General of OTIF

S. Schimming

Organigram / Staff of the Secretariat of OTIF

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL (OTIF)

