



## ORIGINAL PAPER

# Considerations on the Intergovernmental Organization for International Carriage by Rail (OTIF)

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### Abstract:

At the 1878 International Conference in Bern a draft was drawn up on the basis of which, in 1890, the Convention concerning International Carriage of Goods by Rail (the first in the history of rail transport) was concluded in Bern. Under this convention, the Central Office for International Carriage by Rail, the forerunner of the Intergovernmental Organization for International Carriage by Rail, was established in 1893. The 1890 Convention was revised several times; in 1980, the eighth revision of the convention took place in Bern. On this occasion, the Convention concerning International Carriage by Rail (referred to as C.O.T.I.F.) was concluded. The contracting parties agreed to establish the Intergovernmental Organization for International Carriage by Rail (OTIF). O.T.I.F. was established on 1 May 1985, the date of the entry into force of C.O.T.I.F.. The organization has its headquarters in Bern and has legal personality. C.O.T.I.F. governs the functioning of the organization, sets its objectives, structure and operation. The fundamental purpose of O.T.I.F. is to establish a uniform legal regime applicable to the carriage of passengers, luggage and goods in direct international traffic between Member States using railways, and to facilitate the implementation and development of this regime. Its basic legal instrument is the Convention concerning International Carriage by Rail, with its seven annexes. Romania ratified the Convention concerning International Carriage by Rail in 1983. In 2011, the European Union adhered to C.O.T.I.F..

**Keywords:** *international convention; uniform legal regime; international carriage by rail; intergovernmental organization; structure and functioning of the organization.*

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## 1. Preliminary issues

At the 1878 International Conference in Bern a draft was drawn up on the basis of which, in 1890, the Convention concerning International Carriage of Goods by Rail (the first in the history of rail transport) was concluded in Bern; it entered into force in 1893 (on the history of this convention and those that succeeded it, see Manolache, 2001: 97); the Central Office for International Carriage by Rail was established in the same year. Romania signed this convention in 1904 (regarding the establishment of the Romanian Railways, as an institution, in 1880, and the evolution of the railway infrastructure in Romania, see Stanciu, 2015: 191).

The 1890 Convention was revised several times (in 1924, 1952, 1970); in 1980, in Bern, a new essential revision of the convention took place. On this occasion, the Convention concerning International Carriage by Rail (referred to as C.O.T.I.F.) was concluded (regarding the imperatives of concluding this convention and its institutional framework, see Căpățână, Stancu, 2002: 36-37). The contracting parties, as Member States, laid the foundation of the Intergovernmental Organization for International Carriage by Rail (referred to as O.T.I.F.), to carry on the activity of the Central Office for International Carriage by Rail.

Romania ratified the 1980 Bern Convention concerning International Carriage of Goods by Rail (commonly referred to as “C.O.T.I.F. 1980”), in 1983 (Decree 100/28.03.1983 for the ratification of C.O.T.I.F. was published in the Official Bulletin no. 23 of 1 April 1983).

On the date of entry into force of C.O.T.I.F. 1980 (1 May 1985), the following were repealed: the International Conventions on the Carriage of Goods by Rail (C.I.M.) and Passengers and Luggage (C.I.V.) of 7 February 1970, as well as the Additional Convention to the C.I.V. relating to the liability of the railway for death of and personal injury to passengers, of 26 February 1966 (art. 24 par. 2, C.O.T.I.F. 1980).

The Intergovernmental Organization for International Carriage by Rail (hereinafter referred to as “the Organisation”) was established on 1 May 1985, the date of entry into force of C.O.T.I.F. 1980. The Organisation is based in Bern and has its own legal personality (art. 1, C.O.T.I.F. 1980).

The Organisation currently has 50 member countries in Europe, Asia and Africa and one associated member country (Jordan).

The European Union joined C.O.T.I.F. in 2011 (Council Decision of 16 June 2011, 2011). So far, C.O.T.I.F. 1980 has been amended three times (regarding the amendments to the Bern Convention, 1980, see Sitaru, Buglea, Stănescu, 2008: 359): a) by the Bern Protocol of 1990 - commonly referred to as “the 1990 Protocol” [Romania ratified the “1990 Protocol” on amendments to the Convention concerning International Carriage by Rail (C.O.T.I.F.) of 9 May 1980 by Law no. 27 of 24/03/92, published in the Official Gazette no. 55/01.04.1992]; b) by the Vilnius Protocol of 3 June 1999, which entered into force in 2006 (Romania ratified the Vilnius Protocol of 1999 by G.O. no. 69 of 30.08.2001, published in the Official Gazette no. 538 of 01.09.2001); c) by the Amendments of 29-30 September 2015, adopted at the 12th session of the General Assembly of O.T.I.F., held in Bern, 29-30 September 2015 (Romania accepted the Amendments of 29-30 September 2015 to the Convention concerning International Carriage by Rail of 9 May 1980 by Law no. 98 of 29.06.2020, published in the Official Gazette, Part I, no. 593 of 7 July 2020). Due to the importance of the changes that were made to C.O.T.I.F. 1980 by the Vilnius Protocol of 3 June 1999, *now the usual name of this Convention is “C.O.T.I.F. 1999” (hereinafter referred to as “the Convention”)*.

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C.O.T.I.F. 1999 comprises two parts: a) the Convention as such, which governs the functioning of the Organisation; b) the seven annexes to the Convention, which establish a uniform railway law; these annexes contain: i) model contracts for the carriage of passengers and goods, and ii) technical requirements for railway equipment used in international carriage.

The Convention as such sets out the objectives and tasks of the Organisation, the specific obligations of the Member States, the structure and functioning of the Organisation, it includes clarifications on the lists of maritime and inland waterway services referred to in art. 1 of the CIV Uniform Rules and art. 1 of the CIM Uniform Rules, on which transport is carried out, the financing of the expenses of the Organisation, the settlement by arbitration of disputes between Member States, generated as a result of the interpretation or application of C.O.T.I.F. 1999, as well as disputes between Member States and the Organisation arising from the interpretation or application of the Protocol on Privileges and Immunities of the Organisation.

### **2. Aim of the Organisation**

The Organisation has the fundamental aim of promoting, improving and facilitating international traffic by rail. Its basic legal instrument is C.O.T.I.F. 1999, with the seven annexes (In this sense, see also Caraianni, Ion, 1998: 253).

In order to fulfil this mission, the Organisation has the following specific objectives (art. 2, C.O.T.I.F. 1999 - the articles indicated in this paper, without mentioning the regulation, refer to C.O.T.I.F. 1999): a) establishing systems of uniform law in the following areas: i) international carriage of passengers and goods in international through traffic by rail, including complementary carriage by other modes of transport subject to a single contract; ii) use of wagons as means of transport in international rail traffic; iii) contract of use of infrastructure in international rail traffic; iv) carriage of dangerous goods in international rail traffic; b) removal of obstacles to the crossing of frontiers in international rail traffic; c) achievement of the interoperability and technical harmonisation in the railway field by the validation of technical standards and the adoption of uniform technical prescriptions; d) establishing a uniform procedure for the technical admission of railway material intended for use in international traffic; e) developing the systems of uniform law, rules and procedures referred to before while taking into account the legal, economic and technical developments.

Pursuant to art. 5, in turn, in order to facilitate and improve international rail traffic, the Member States are required to contribute by achieving the highest possible degree of uniformity in the regulations, standards, procedures and methods of organization relating to railway vehicles, railway personnel, railway infrastructure and auxiliary services.

Member States also have the following obligations: a) to remove any unnecessary procedure; b) to simplify and standardize the formalities already required; c) to simplify border controls.

Finally, the Member States have the obligation to facilitate the conclusion of agreements between infrastructure managers, with the aim of optimizing international rail traffic.

### 3. Fields of activity of the Organisation

The Organisation has three important areas of activity: law of railway contracts, carriage of dangerous goods and technical interoperability. The Organisation develops uniform legal regimes for: contracts for the carriage of passengers and goods, rules for accessories to the contract of carriage, such as the contract for the use of wagons or infrastructure, rules for the carriage of dangerous goods, technical provisions and the procedure for the technical approval of the rolling stock.

The Organisation provides the Member States with the legal and technical means to facilitate international rail traffic, to develop such traffic on their territory and to connect to the rail networks of other Member States. To achieve these goals, the Convention includes “Uniform Rules”, “Regulations”, grouped in “Appendices” to the Convention.

Thus, pursuant to art. 6, the international rail traffic and the admission of railway material for use in international traffic are, as a matter of principle, governed by: a) “Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV)”, which constitute Appendix A to the Convention (Both the uniform rules contained in Appendix A to the Convention and those contained in Appendix B to the Convention are mandatory, an aspect that undoubtedly results from art. 5 of CIV, respectively from art. 5 of CIM, both having as a marginal title the phrase “Mandatory law” and the following content, relevant to the binding nature of the provisions of those rules: “Unless provided otherwise in these Uniform Rules, any stipulation which, directly or indirectly, would derogate from these Uniform Rules shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract of carriage. Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in these Uniform Rules”. In the same sense, see Ungureanu, 2014: 101); b) “Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM)”, which constitute Appendix B to the Convention (regarding the applicability of the CIM Uniform Rules, see Piperea, 2003: 122); c) “Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)”, which constitutes Appendix C to the Convention; d) “Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV)”, which constitute Appendix D to the Convention; e) “Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI)”, which constitute Appendix E to the Convention; f) “Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU)”, which constitute Appendix F to the Convention; g) “Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF)”, which constitute Appendix G to the Convention; h) other regimes of uniform law elaborated by the Organisation based on art. 2 par. 2, letter a), also constituting an Appendix to the Convention.

All Uniform Rules, Regulation and other regimes of uniform law developed by the Organisation, including their Annexes, are part of C.O.T.I.F. 1999 (art. 6, par. 2).

Pursuant to art. 10, two or more Member States or two or more carriers may agree on additional provisions for the implementation of the CIV Uniform Rules and the CIM Uniform Rules, but without being allowed to derogate from these Uniform Rules. These additional provisions enter into force and are published in the manner required by the laws and regulations of each State. Additional provisions of the States and their entry

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into force are communicated to the Secretary General, who will notify the Member States of this information.

### **4. Common calculation currency. Special drawing right**

In order to make the payment system efficient, which is of particular interest to the discount of transport tariffs and compensation between the national railway networks of the member countries of C.O.T.I.F., art. 9 enshrined as a common currency of calculation and payment, as a unit of account, the Special Drawing Right (S.D.R.), as defined by the International Monetary Fund – IMF [special drawing rights are the virtual currency of the International Monetary Fund designed as a replacement for the gold standard. Transactions within the International Monetary Fund are calculated in S.D.R. A number of national currencies are fixed at a certain ratio in relation to the S.D.R. Its value is calculated according to the US dollar (41.73%), the euro (30.93%), the Japanese yen (8.33%), the British pound (8.09%) and, since 2016, the Chinese yuan (renminbi) (10.92 %), according to the exchange rate from the London Stock Exchange.

The conversion of national currencies in relation to the S.D.R. aims at establishing the monetary relationship between the debtor and the creditor railways, having no effects in the relations between each national railway network and its customers; the pecuniary relationship between the carrier and the passenger or consignor, respectively the consignee is established in the national currency of the beneficiaries of the transport (Gh. Stancu, 2005: 251-252).

Pursuant to art. 9, the following ways of converting national currencies into S.D.R. are used: a) in the case of states that are members of the IMF, the value in S.D.R. of the national currency is calculated in accordance with the method applied by the IMF for its own operations and transactions; b) in the case of states that are not members of the IMF, but whose legislation allows the conversion of their national currencies into S.D.R., the value in S.D.R. of the national currency is calculated by the railway by the converting method determined by that State. This converting calculation must express in the national currency a real value as close as possible to that calculated by the IMF; c) in the case of a state which is not a member of the IMF and whose legislation does not allow the conversion of the national currency into S.D.R., the unit of account referred to in the CIV Uniform Rules and the CIM Uniform Rules is considered to be equal to three gold francs (one gold franc is defined by 10/31 grams of gold with an alloy title of 0.900). The transformation of the gold franc must express in the national currency a real value as close as possible to the calculation of the IMF.

In the case of the last two hypotheses presented above, within three months from the entry into force of the Convention and each time there is a change in their method of calculation or in the value of their national currency, in relation to the unit of account, in the first hypothesis to which we refer the states will communicate their method of calculation to the Secretary General, and in the second hypothesis they will communicate the results of the conversion. The Secretary General will notify this information to the other Member States.

Pursuant to art. 10, which has the marginal title “Supplementary provisions”, two or more Member States or two or more carriers may agree, by additional provisions to the Convention, to make payments directly in their national currencies, in order to implement the CIV Uniform Rules and the CIM Uniform Rules; however, they cannot derogate from these Uniform Rules; the supplementary provisions enter into force and are published in the manner required by the laws and regulations of each State. Such

additional provisions by States and their entry into force will be communicated to the Secretary General, who will notify the Member States of such information.

## **5. Membership of the Organisation**

### **5.1. Acquiring membership of the Organisation**

According to C.O.T.I.F. 1999, there are three types of members of the Organisation: Member States that acceded to the Convention, regional economic integration organizations that acceded to the Convention, associate states.

Accession to the Convention in order to acquire the status of a Member State is open to any State in whose territory a railway infrastructure is operated. The State wishing to accede to the Convention will address an application to the depositary. The depositary has the obligation to fulfil the procedural measures, provided by art. 37, for the accession of the requesting state.

Pursuant to art. 38, accession to C.O.T.I.F. 1999 is open to regional economic integration organisations which have the competence to adopt their legislation, which is binding on their members, in the fields covered by this Convention, and to which one or more Member States are members. The conditions of such accession are defined in an agreement concluded between the Organisation and the regional organisation.

The rights which the regional organisation may have, the conditions for the exercise of these rights, the obligations incumbent on the Member States under C.O.T.I.F. 1999 are provided by art. 38(2)(3).

Finally, any state in whose territory a railway infrastructure is operated may become an associate member of the Organisation (art. 39 provides for the rights and obligations of associate members, as well as the conditions for the suspension of associate membership).

### **5.2. Suspension of membership of the Organisation**

Any Member State may request, without denouncing the Convention, the suspension of its membership of the Organisation when international rail traffic is no longer carried out on its territory, for reasons not attributable to that Member State. The procedure to be followed in this case, the body that is competent to decide on the application, the consequences of admitting the application, the conditions under which the suspension of membership of the Organisation ceases are provided by art. 40.

### **5.3. Termination of membership of the Organisation. Denunciation of C.O.T.I.F. 1999**

Pursuant to art. 40, the Convention may be denounced at any time. The Member State wishing to denounce the Convention will notify the depositary thereof and the denunciation will take effect on 31 December of the following year.

## **6. Structure and functioning of the Organisation**

The functioning of the Organisation is ensured by the following organs (art. 13):  
a) the General Assembly; b) the Administrative Committee; c) The Revision Committee; d) the Committee of Experts for the Carriage of Dangerous Goods (RID Expert Committee); e) the Rail Facilitation Committee; f) the Committee of Technical Experts; g) the Secretary General.

### **6.1. Chairmanship of the Organisation**

The chairmanship of the Organisation is ensured by three bodies: the General Assembly; the Administrative Committee; the Secretary General.

**6.1.1. The General Assembly** is the supreme decision-making body and is composed of representatives of all Member States. As a rule, the General Assembly meets every three years at the invitation of the Secretary General. It may hold extraordinary sessions in the cases mentioned by C.O.T.I.F. The last General Assembly took place in Bern on 27 February 2019.

The General Assembly has the following powers (art. 14, par. 2): a) to establish its rules of procedure; b) to designate the members of the Administrative Committee as well as a deputy member for each member and elect the Member State which will provide the chairmanship of the Administrative Committee; c) to elect the Secretary General; d) to issue directives concerning the activity of the Administrative Committee and the Secretary General; e) to establish, for three-year periods, the maximum amount that the expenditure of the Organisation may reach in each budgetary period; in case such an amount has not been fixed, it will issue directives relating to the limitation of that expenditure for a period no longer than three years; f) to decide whether the headquarters of the Organisation should be located in another place; g) to examine whether the attitude of a State should be regarded as a tacit denunciation; h) to take decisions about proposals aiming to modify the Convention; i) to take decisions about applications for association submitted to it; j) to take decisions about the conditions of accession of a regional economic integration organisation; k) to take decisions about applications for association submitted to it; l) to take decisions about the dissolution of the Organisation and about the possible transfer of its attributions to another intergovernmental organisation; m) to take decisions about other questions placed on the agenda.

The Secretary General of the Organisation convenes the General Assembly every three years or at the request of either one-third of the Member States or the Administrative Committee, as well as in the cases mentioned in the Convention. It sends the draft agenda to the Member States at least three months before the opening of the session, in compliance with the rules of procedure of the Organisation (art. 14, par. 3).

As for the General Assembly, a quorum is obtained when the majority of the Member States entitled to vote are represented. A Member State may be represented by another Member State; however, a state can only represent one other state (this rule is also established in the case of the Administrative Committee, by art. 15, par. 6). In the event of a vote in the General Assembly of amendments to the Appendix to the Convention, the Member States which have made a declaration in respect of that Appendix in accordance with the provisions of the Convention are not entitled to vote. The General Assembly takes its decisions by a majority of the Member States represented to vote, except as expressly provided in the Convention, for which a two-thirds majority is required.

At the invitation of the Secretary General, in agreement with a majority of the Member States, the following may attend sessions of the General Assembly in an advisory capacity: States which are not members of the Organisation, international organisations and associations, which have competence in matters relating to the activities of the Organisation or which deal with issues on the agenda (art. 14, par. 7).

**6.1.2. The Administrative Committee** (hereinafter referred to as “the Committee”) is responsible for monitoring the administrative and financial activities of the Secretary General. It consists of one third of the Member States designated by the General Assembly for a period of three years, based primarily on a fair geographical distribution (art. 15, par. 1). At the same time, the General Assembly appoints, for the same period, one deputy member for each member of the Committee, as well as the Member State holding the chairmanship of the Committee.

In the event of a vacancy or the suspension of a member’s right to vote or the absence of a member for two consecutive sessions of the Committee, without the latter having arranged his representation by another member, in accordance with the provisions of the Convention, the deputy member appointed by the General Assembly exercises its functions for the remainder of the period. (art. 15, par. 3).

No Member State may be part of the Committee for more than two consecutive full terms, unless a deputy member has become a member of the Committee during such a period, in which case (in accordance with art. 15, par. 2) he must be designated as a member of the Committee for the following period.

The Administrative Committee has the following powers (art. 15, par. 5): a) to establish its rules of procedure; b) to conclude the Headquarters Agreement; c) to establish the staff regulation for the Organisation, implying rights and obligations; d) to appoint the senior officers of the Organisation while taking into account the ability of the candidates and an equitable geographical distribution; e) to establish a regulation concerning the finances and book-keeping of the Organisation; f) to approve the work programme, budget, management report and accounts of the Organisation; g) to establish, on the basis of the approved accounts, the definitive contributions due from the Member States in accordance with art. 26, for the previous calendar year, as well as the amount of the treasury advance due from the Member States in accordance with art. 26, par. 5 for the current year; h) to determine the attributions of the Organisation which concern all the Member States or only some of the Member States and, as a result, the expenses to be borne by these Member States (in accordance with art. 26, par. 4); i) to fix the amount of specific remuneration (in accordance with art. 26, par. 11); j) to issue special directives concerning the auditing of accounts (in accordance with art. 26, par. 1); k) to approve the taking on of administrative functions by the Organisation (in accordance with art. 26, par. 3) and to establish the specific contributions due from the Member State concerned; l) to communicate to the Member States the management report, the statement of accounts as well as its decisions and recommendations; m) to draw up and communicate to the Member States, with a view to the General Assembly which is to decide the composition of the Committee, at least two months before the opening of the session, a report on its activity as well as proposals as to how it should be reconstituted (in accordance with art. 14, par. 2, letter b); n) to keep a check on the conduct of business by the Secretary General; o) to keep a watch on the proper application of the Convention by the Secretary General and the execution, by the Secretary General, of decisions taken by the other organs; to this end, the Committee may take all measures likely to improve the application of the Convention and of the above mentioned decisions; p) to give reasoned opinions on issues which may affect the activities of the Organisation and are submitted to the Committee by a Member State or by the Secretary General; q) to settle disputes between a Member State and the Secretary General with respect to his function as Depositary (in accordance with art. 36, par. 2); r)



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to take decisions relating to applications for suspension of membership (in accordance with art. 40).

In the Committee, a quorum is obtained when two-thirds of its members are represented. Pursuant to art. 15(6), a member may be represented by another member; however, one member can only represent one other member (this rule is also established in the case of the Administrative Committee, by art. 14, par. 4). The Committee takes decisions by a majority of its members represented during the vote.

As a rule, the Committee meets at the headquarters of the Organisation. The minutes of the sessions are sent to all Member States.

The Chairman of the Committee has the following powers (art. 15, par 9): a) to convene the Committee at least once a year, as well as at the request of four of its members or the Secretary General; b) to present the draft agenda to the members of the Committee; c) to deal, within the limits and under the conditions defined in the rules of procedure of the Committee, with some urgent issues which have arisen between meetings; d) to sign the Headquarters Agreement; e) to perform the specific tasks established by the Administrative Committee.

**6.1.3. The Secretary General.** The Secretary General is elected by the General Assembly for a period of three years, which can be renewed twice at most.

The Secretary General assumes the functions related to the Secretariat of the Organisation, manages the organization, but is also an operational body that performs the tasks of Depositary and represents the Organisation; thus, pursuant to art. 21(3), he has the following powers: a) to perform the functions of Depositary of the Convention (in the same sense, see art. 36); b) to represent the Organisation externally; c) to send the decisions taken by the General Assembly and by the Committees to the Member States (in the same sense, see art. 34, par. 1, and art. 35, par. 1); d) to perform the tasks entrusted to him by the other bodies of the Organisation; e) to examine proposals of the Member States aiming to modify the Convention, if necessary with the assistance of experts; f) to convene the General Assembly and the other Committees (in the same sense, see art. 14, par. 3, and art. 16, par. 2); g) to send to the Member States, in due time, the documents necessary for the meetings of the various bodies; h) to draw up the work programme, draft budget and management report of the Organisation and submit them to the Administrative Committee for approval (in the same sense, see art. 25); i) to manage the financial affairs of the Organisation within the limits of the approved budget; j) to endeavour, at the request of one of the parties concerned, by using his good offices, to settle disputes between them arising from the interpretation or application of the Convention; k) to give, at the request of all parties concerned, an opinion on disputes arising from the interpretation or application of the Convention; l) to assume the functions which are given to him by Title V of the Convention, concerning arbitration; m) to receive communications from the Member States, international organisations and associations referred to in art. 16(5), and from the undertakings (carriers, infrastructure managers, etc.) which participate in international rail traffic, and notify them, where appropriate, to the other Member States, international organisations and associations, as well as undertakings; n) to exercise the management of the staff of the Organisation; o) to inform the Member States, in due time, of any vacancy in the posts of the Organisation; p) to maintain and publish the lists of maritime and inland waterway services referred to in art. 24; r) to present, on his own initiative, proposals aiming to modify the Convention.

## 6.2. The Committees of the Organisation

The Committees of the Organisation are the following: the Revision Committee; the Committee of Experts for the Carriage of Dangerous Goods (referred to as the RID Committee of Experts); the Rail Facilitation Committee; the Committee of Technical Experts, as well as the temporary committees created by the General Assembly; for example, the 13th General Assembly of the Organisation, held in Bern on 25-26.09.2018, set up the Ad hoc Committee on Cooperation for a period of three years.

The first three committees are responsible for the annexes to the Convention, each with its own competences (the Revision Committee takes decisions on amendments to Appendices A, B, D and E and certain amendments to Appendices F and G; the Committee of Technical Experts takes decisions on amendments to Appendices F and G and the adoption of uniform technical requirements; the RID Committee of Experts takes decisions on amendments to Appendix C and its Annex). The Rail Facilitation Committee was established under C.O.T.I.F. in 1999 and aims to propose standards and methods for improving frontier crossing in international rail traffic. Its role took shape with the development of the main international corridors, which have been the subject matter of a recent study of the Organisation.

The four committees of the Organisation consist, in principle, of all the Member States. By exception, when the Revision Committee, the RID Committee of Experts or the Committee of Technical Experts deliberate and decide, within their competences, on any amendments to the Appendices to the Convention, the Member States which have made, in accordance with art. 42, par 1, a declaration on those Appendices are not members of the Committee concerned (art. 16, par. 1).

Within the committees, one Member State may be represented by another Member State; however, one Member State cannot represent more than two other States (art. 16, par. 3); a similar rule on representation is laid down for the General Assembly (art. 14, par. 4), as well as for the Administrative Committee (art. 15, par. 6).

Each committee makes its own rules of procedure (art. 16, par. 10).

The committees may create working groups in charge of dealing with the established problems (art. 16, par. 9).

*Working procedure of the committees.* The Secretary General convenes the Committee either on his own initiative or at the request of five Member States or at the request of the Administrative Committee. The Secretary General sends the draft agenda to the Member States at least two months before the opening of the session (art. 16, par. 2).

Each represented Member State is entitled to one vote. A proposal is adopted if two cumulative conditions are met (art. 16, par. 4): a) the number of votes in favour is at least equal to one third of the number of Member States represented at the time of the vote, and b) the number of votes in favour is greater than the number of votes against.

The meetings of the Committees may be attended, in an advisory capacity, by an invitation from the Secretary General, issued in agreement with the majority of the Member States: a) states which are not members of the Organisation, b) Member States which are not members of the respective Committees; c) international organisations and associations, which have competence in matters related to the activity of the Organisation or which deal with some problems on the agenda (art. 16, par. 5).

The committees elect for each meeting or for a determined period a Chairman and one or more Deputy Chairmen (art. 16, par. 6).

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The proceedings are conducted in the working languages. What is said during the meetings, in one of the working languages, is translated into the other working languages, and the proposals and decisions are fully translated (art. 16, par. 7).

The minutes summarise the proceedings. Proposals and decisions are reproduced in full. With regard to decisions, the French text prevails. The minutes are sent to all Member States (art. 16, par. 8).

### **6.2.1. The Revision Committee**

The Revision Committee has responsibilities in relation to amendments to the Convention; thus, in accordance with art. 17, the Revision Committee has the following powers: a) to decide on proposals to amend the Convention, in accordance with art. 33(4), on the competence of the Revision Committee to amend the Convention; b) to examine the proposals to amend the Convention that will be submitted to the General Assembly in order to take a decision, in accordance with art. 33(2).

Within the Revision Committee, a quorum is obtained when the majority of the Member States having the right to vote are represented.

### **6.2.2. RID Committee of Experts**

The RID Committee of Experts decides on proposals to amend the Convention, in accordance with art. 33(5), which provides that the RID Committee of Experts decides on proposals to amend the provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), ie takes decisions on amendments to Appendix C and its annex. When such proposals are submitted to the RID Committee of Experts, one third of the States represented in the Committee may request that these proposals be submitted to the General Assembly for a decision.

Within the RID Committee of Experts, the quorum, referred to in art. 13(3), is obtained when one third of the Member States having the right to vote are represented (art. 18).

### **6.2.3. The Rail Facilitation Committee**

The Rail Facilitation Committee has the following powers (art. 19): a) to decide on all issues aimed at facilitating frontier crossing in international rail traffic; b) to recommend standards, methods, procedures and practices regarding railway facilitation.

Within the Rail Facilitation Committee, the quorum, referred to in art. 13(3), is obtained when one third of the Member States having the right to vote are represented.

### **6.2.4. The Committee of Technical Experts**

The Committee of Technical Experts takes decisions on amendments to Appendices F and G and on the adoption of uniform technical prescriptions (UTP), with the following powers (art. 20): a) to decide, in accordance with the APTU Uniform Rules, on the validation of a technical standard relating to railway material intended to be used in international traffic; b) to decide, in accordance with the APTU Uniform Rules, on the adoption of a uniform technical prescription relating to the construction, operation, maintenance or relating to a procedure concerning railway material intended to be used in international traffic. The Committee of Technical Experts can either validate the technical standards or adopt uniform technical prescriptions or refuse the validation or adoption thereof; however, it cannot modify them; c) to keep a watch on the application of technical standards and uniform technical prescriptions relating to

railway material intended to be used in international rail traffic and examine their development with a view to their validation or adoption in accordance with the procedures provided for in the APTU Uniform Rules; d) to decide on proposals aiming to modify the Annexes to the APTU Uniform Rules; when such proposals are submitted to the RID Committee of Experts, one third of the states represented in the Committee may request that these proposals should be submitted to the General Assembly for the purpose of taking a decision; e) to deal with all other matters which are assigned to it in accordance with the APTU Uniform Rules and the ATMF Uniform Rules.

Within the Committee of Technical Experts, a quorum is obtained when half of the Member States having the right to vote are represented. On the occasion of taking decisions regarding the provisions of the Annexes to the APTU Uniform Rules, the Member States that have formulated an objection in accordance with art. 35(4), concerning the provisions in question or have made a statement in accordance with art. 9(1) of the APTU Uniform Rules (art. 20, par. 2), are not entitled to vote.

### **6.3. The Bulletin of the Organisation**

The Organisation publishes a Bulletin which contains official communications as well as others necessary or useful communications with respect to the application of the Convention. The communications for which the Secretary General is responsible, in compliance with the Convention, may, if necessary, be made in the form of a publication in the Bulletin (art. 23).

### **6.4. Lists of lines or services**

The maritime and inland waterway services referred to in art. 1 of the CIV Uniform Rules and art. 1 of the CIM Uniform Rules, on which carriage is performed, which make the object of one carriage contract, in addition to carriage by rail, are included in two lists (art. 24): a) the CIV list of maritime and inland waterway services, b) the CIM list of maritime and inland waterway services.

The railway lines of a Member State which has issued a reservation in accordance with the CIV Uniform Rules or in accordance with the CIM Uniform Rules are included in two lists, in accordance with this reservation: a) the list of CIV railway lines; b) the list of CIM railway lines.

The Member States send the Secretary General their communications concerning the listing or delisting of maritime and inland waterway services. Maritime and inland waterway services connecting some Member States are registered only with the agreement of those States; for the cancellation of one of these services, the communication from one of these states is sufficient. The Secretary General notifies all Member States of the listing or delisting of a service.

## **7. Arbitration relating to the Organisation**

### **7.1. Competence of the Arbitration Tribunal**

Pursuant to art. 28, disputes between Member States arising out of the interpretation or application of the Convention, as well as disputes between Member States and the Organisation arising out of the interpretation or application of the Protocol on Privileges and Immunities of the Organisation may be settled by an Arbitration Tribunal at the request of one of the parties (so far, there has been no dispute between the Member States and no need for an interpretation of COTIF requiring the use of the

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arbitration procedure. Using the uniform law of COTIF, the national courts have managed to find satisfactory solutions.

The other disputes arising as a result of the interpretation or application of the Convention and other conventions drawn up by the Organisation, in accordance with art. 2(2), if they have not been settled amicably or subject to the decision of ordinary courts, may be submitted for settlement to an Arbitration Tribunal, by agreement between the interested parties.

### **7.2. Characteristics of the Arbitration Tribunal**

This Arbitration Tribunal has both elements specific to institutionalized arbitral tribunals and elements specific to ad-hoc arbitral tribunals. Thus, like an institutionalized arbitral tribunal, it has the authority to appoint arbitrators (the Secretary General of the Organisation), a panel of arbitrators (this panel is drawn up by the Secretary General of the Organisation on the premise that each Member State may nominate two of its nationals for the panel of arbitrators) and a secretariat (the Secretary General assumes the functions of the Registrar). In exchange, like an ad-hoc arbitral tribunal, it does not have its own arbitration procedure, a situation in which the litigants freely decide the arbitration procedure (art. 28, par. 2).

### **7.3. Composition of the Arbitration Tribunal**

The parties concerned conclude an arbitration agreement specifying in particular the following: a) the subject matter of the dispute; b) the composition of the tribunal and the terms agreed for the appointment of the arbitrator or arbitrators; c) the place agreed as the seat of the Arbitration Tribunal (art. 29).

The arbitration agreement is communicated to the Secretary General, who assumes the functions of the Registrar.

Pursuant to art. 30(2), when establishing the Arbitration Tribunal, the following rules are taken into account: a) the Arbitration Tribunal consists of one, three or five arbitrators in accordance with the agreement concluded by the litigants; b) in principle, the arbitrators are selected from persons who are on the panel drawn up by the Secretary General; however, if the agreement to refer to arbitration provides for five arbitrators, each of the parties may select one arbitrator who is not on the panel; c) if the agreement to refer to arbitration provides for a sole arbitrator, he is selected by mutual agreement between the parties; d) if the agreement to refer to arbitration provides for three or five arbitrators, each party selects one or two arbitrators as the case may be; these, by mutual agreement, appoint the third or fifth arbitrator, who presides over the Arbitration Tribunal; e) if the parties cannot agree on the selection of a sole arbitrator, or the selected arbitrators cannot agree on the appointment of a third or fifth arbitrator, the appointment is made by the Secretary General, who acts as the appointing authority; f) where the litigants are not of the same nationality, the sole arbitrator or the third arbitrator or the fifth arbitrator, must be of a nationality other than the parties; g) the intervention in the dispute of a third party remains without effect regarding the composition of the Arbitration Tribunal.

### **7.4. Arbitral proceedings**

The Arbitration Tribunal decides on the procedure to be followed, taking into account, in particular, the following provisions (art. 31): a) it enquires into and determines cases on the basis of the evidence submitted by the parties, but will not be

bound by their interpretations when it is called upon to decide a matter of law; b) it may not award more than the claimant has claimed, nor anything of a different nature, nor may it award less than the defendant has acknowledged as due; c) the arbitration award, setting forth the reasons for the decision, is drawn up by the Arbitration Tribunal and notified to the parties by the Secretary General; d) save where the mandatory provisions of the law of the place where the Arbitration Tribunal is sitting otherwise provide and subject to contrary agreement by the parties, the arbitration award is final.

The award of the Arbitration Tribunal determines the amount of costs and expenses and decides how they and the fees of the arbitrators are to be apportioned between the parties (the fees of the arbitrators are determined by the Secretary General).

### **7.5. Effects of the arbitral proceedings**

The application of the arbitration procedure has, as regards the interruption of the limitation period, the same effect as that provided by the substantive law applicable for bringing an action before the ordinary courts or tribunals (art. 32).

## **8. Finances of the Organisation**

### **8.1. Work programme. Budget. Accounts. Management report of the Organisation**

Regarding the budget, accounts, work programme and annual management of the Organisation, the Convention lays down the following rules (art. 25): a) the budget and accounts of the Organisation cover a period of one calendar year; b) the work programme covers a period of two calendar years; c) the Organisation publishes an annual management report; d) the total amount of expenditure of the Organisation is fixed, for each budgetary period, by the Administrative Committee on a proposal by the Secretary General.

### **8.2. Financing the expenditure**

In principle, the expenses of the Organisation, which are not covered by other receipts, are met by the Member States, according to a formula established by art. 26.

The contributions of the Member States to the expenditure of the Organisation are due in the form of a treasury advance to be paid by 31 October of the year included in the budget. The treasury advance is determined on the basis of the definitive contributions for the previous year.

Upon transmission to the Member States of the management report and statement of accounts, the Secretary General notifies the final amount of the contribution for the previous calendar year and the amount of the treasury advance for the following calendar year.

After 31 December of the year in which the Secretary General sends the notification, the amounts due for the last calendar year bear interest at the rate of five per cent per annum. If, two years after that date, a Member State fails to pay its contribution, its right to vote is suspended until it has fulfilled its payment obligation.

Upon the expiry of a further period of two years, the General Assembly considers whether the attitude of that State should be regarded as a tacit denunciation of the Convention and, if necessary, determines its actual date.

A Member State which has denounced the Convention may become a Member State again by accession, provided that it has paid the sums owed.

### **8.3. Auditing of accounts of the Organisation**

As a rule, the auditing of accounts is performed by the State where the Organisation has its headquarters, in accordance with the rules laid down in art. 27 and with the Financial and Accounting Regulation of the Organisation.

The auditor performs the audit of the accounts of the Organisation, including all trust funds and special accounts, as he deems appropriate and makes a report on financial operations.

The Auditor informs the Administrative Committee and the Secretary General of the findings on the occasion of the audit. Moreover, he may submit any comment considered appropriate with regard to the financial report of the Secretary General.

## **9. Conclusions**

The first International Convention concerning International Carriage of Goods by Rail was concluded in Bern in 1890. The 1890 Convention has been revised several times so that its rules may correspond technically and legally to the evolution of international rail transport; in 1980, a new major revision of the convention took place in Bern. On this occasion, the Convention concerning International Carriage by Rail was concluded. The Bern Convention, 1980, was subsequently amended; the most important change was made by the Vilnius Protocol of 3 June 1999, which entered into force in 2006.

The Parties to the 1980 Bern Convention, as Member States, established the Intergovernmental Organisation for International Carriage by Rail (O.T.I.F.), which has the fundamental purpose of promoting, improving and facilitating international rail traffic. Its basic legal instrument is the Convention concerning International Carriage by Rail, with its seven annexes; The Convention contains “Uniform Rules”, the most important for the establishment of uniform legal regimes in the field of international carriage of passengers and goods in direct international rail traffic being the “Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV)”, which constitute Appendix A to the Convention and “Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM)”, which constitute Appendix B to the Convention.

Through the Convention, the Organisation ensures the coherence of regulations between its Member States and makes it possible to organize international transport between the various railway systems on the three continents on which the Member States of the Convention are located. The Organisation provides the Member States with the legal and technical means to facilitate international rail traffic, to develop such traffic on their territory and to connect to the rail networks of other Member States.

The functioning of the Organisation is ensured by its governing bodies (General Assembly, Administrative Committee and Secretary General) and by the four Standing Committees (Revision Committee; RID Expert Committee for the Transport of Dangerous Goods, Rail Facilitation Committee, Committee of Technical Experts), as well as the temporary committees created ad hoc by the General Assembly.

The accession of the European Union to C.O.T.I.F., in 2011, made the Organisation strengthen its role as a bridge between the EU and non-EU Member States.

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