


FINDINGS OF THE CMR-CIM ANALYSES

Workshop on International Road-Rail Transport
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Ana Taliberti, IRU Legal Adviser & Nina Scherf, CIT Legal Adviser

Agenda

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- **Background of CIT/IRU cooperation**
 - **Overview of legal regimes comparison for road transport and rail (CMR/CIM):**
 - Contents of guideline jointly issued by CIT/IRU
 - Synthesis of the comparison
 - Preliminary conclusions
 - **Next Steps of CIT/IRU cooperation**

Background of CIT/IRU cooperation - Introductory Remarks

- **Bern 2013 joint CIT/IRU Conference on Multimodality**
- **Important rail/road traffic interfaces became clear BUT many issues needed to be further clarified because:**
 - ✓ no multimodal transport Convention (1980 UNECE Convention never entered into force)
 - ✓ one single transport mode cannot fulfil growing economic needs door-to-door delivery of goods
 - ✓ CIM/CMR have impact one over another
 - ✓ Important to analyze:
 - Similarities - for multimodal transport
 - Differences - as the characteristics of modes differ

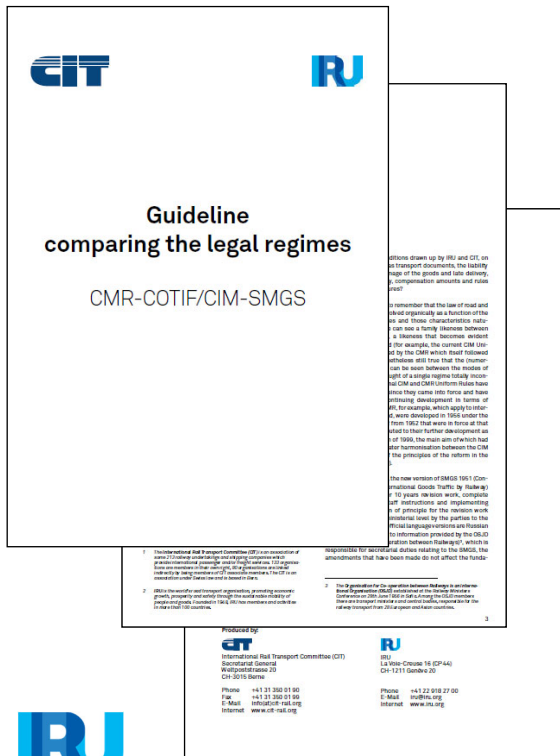


Background of CIT/IRU cooperation - Following actions

- **2014 onwards: CIT/IRU cooperation in relevant practical way forward for road/rail carriers resulting on:**
 - ✓ comparative analysis of road/rail legal framework (CMR/CIM)
 - ✓ publication of a Guideline
 - ✓ checklist for a framework contract to be used in international road-rail transport



CIT/IRU Guideline comparing the legal regimes CMR - COTIF/CIM (and SMGS)



3 years work:

- ✓ 2017- guideline published in brochure for further work on rail/road law harmonization

- **Part I:**
 - ✓ **Synthesis:** summarizes main principles of CIM/CMR legal regimes
 - ✓ **Map with a summary:** CIM/CMR scope of application
- **Part II**
 - ✓ **Comparative Matrix:** between CIM/CMR legal regimes in details



CIM/CMR - scope of application



Scope of application:

- CIM and CMR: every contract of carriage of goods by rail (CIM) or by road in vehicles (CMR) when place of taking over of goods and designated for delivery are situated in two different countries, of which at least one is a Member State

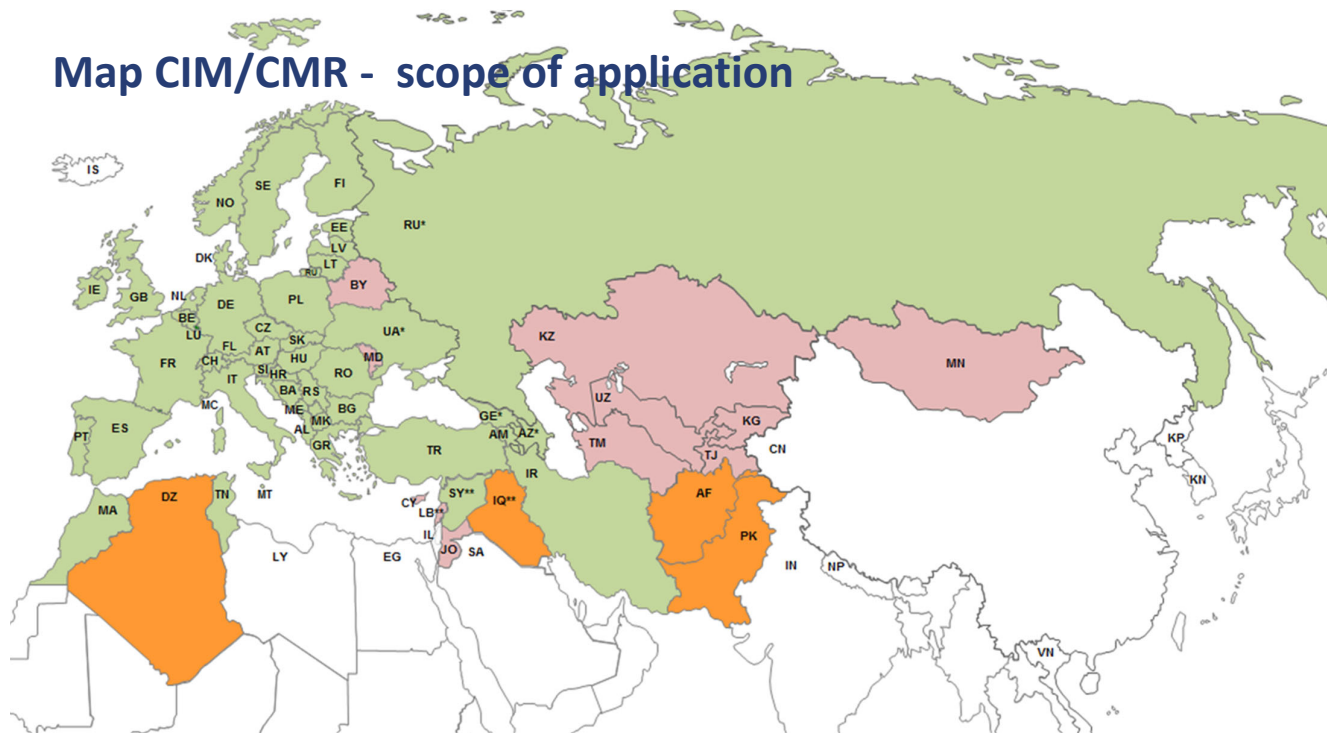
CIM : if only one country is a Member State parties have to agree that the contract of carriage is subject to it

Exception:

- CMR: i.e. funeral consignments, furniture removal
- CIM: the railway stations located on neighbouring States are operated by infrastructure managers subject to only one of those States (example: Badischer Bahnhof, DB AG station, Basle)



Map CIM/CMR - scope of application



* CIM-Application only on part of the railway infrastructure (specific lines)

** CIM applicability is suspended



Situation on 15 February 2019



CIM/CMR - multimodal transport



Treated differently in both Conventions



Multimodal transports by road and rail: the scope of application of CIM/CMR may overlap and imply in a conflict of law

- **CIM** applies to **combined transport**: when international carriage includes carriage by road in internal traffic of a Member State as a supplement to transfrontier carriage by rail (so called “**rail+** approach”)
- **CMR** applies to **combined transport**: when the road vehicle containing the goods itself carried over part of the journey by another mode of transport and goods are not unloaded from the vehicle

CIM/CMR - documentary requirements and contractual relations

- **Documentary requirements:** the same in CIM/CMR
 - ✓ consignment note/electronic consignment note is evidence of the contract and not *condicio sine qua non* for the contract
BUT particulars to be inserted in the consignment note by each of the Conventions are different
- **Contractual Relations:**
 - ✓ **consignor/sender responsibilities:** main principles are the same
BUT principles concerning consignee's right to dispose the goods is different (inverted)
 - ✓ **carriers' obligations:** CMR/CIM are comparable
 - ✓ **no derogation from provisions:** provisions of both conventions cannot be derogated from under special condition



CIM/CMR – liability

	CIM	CMR
Principle of liability	✓ Presumption of liability of the carrier: strict liability (obligation of result)	
Period of liability	✓ From taking over of goods to delivery	
Scope of liability	✓ Loss and damage to goods ✓ Delay in delivery	
Exemption of liability	✓ Possible in case of general grounds and specific risks	
	✗ Specific risks of railway: special privileges are granted to carriers in CIM	✗ Specific risks of road: special privileges are granted to carriers in CMR
Liability of successive carriers	✓ Based on the principle of common liability	
Liability of servants and agents	✓ Carrier is liable	

CIM/CMR – liability / compensation

	CIM	CMR
Compensation	✓ Value of the goods	
Limitation of compensation	<p>✗ Damages to goods: 17 SDR per kg gross weight</p> <p>✗ Delivery period exceeded: 4 times carriage charges</p>	<p>✗ Damage to goods: 8.33 SDR per kg</p> <p>✗ Exceeding the delivery deadline: up to the amount of the carriage charges</p>
Change in limitation of compensation / extension of carriers liability	<p>✓ Declaration of the value and Declaration of interest</p> <p>✗ Carrier may assume a liability greater than those stipulated</p> <p>✗ Apart from declaration of value/ interest, prohibition of higher compensation</p>	

CIM/CMR - procedural provisions

Procedural provisions for:

- ✓ Loss, damage of the goods and delay: in both Conventions
- ✓ Possibility of a jurisdiction clause and the right of recourse: in both Conventions
- ✓ Use of claims procedure before bringing any legal action against the carrier: in both Conventions
- ✗ But form differs (CMR: only written reservation; CIM: formal report)
- ✓ Time limitation on making a claim: in both Conventions
- ✗ But timeframe differs in case of delivery period exceeded (CIM: 60 days after delivery; CMR: 21 days)
- ✗ Arbitration: CIM does not provide for any arbitration in legal dispute as does Article 33 CMR

For more details: Please also refer to our Comparative matrix CMR/ CIM/ (SMGS)



Comparative Matrix CMR Convention, COTIF/CIM, SMGS Convention, Documents IRU, CIT and OSJD

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/UR	DOCUMENTS CIT	SMGS	COMMENTS
Date	19 May 1956		9 May 1980 - 3 June 1999 (Protocol)		1 July 2015	
Mode	Road	Road	Rail	Rail	Rail	
Scope of application	<p>Art. 1.1 This Convention shall apply to every contract for the carriage of goods by road in vehicles¹ for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting country, irrespective of the place of residence and the nationality of the parties.</p> <p>Art. 1.3 This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.</p> <p>Art. 1.4 This Convention shall not apply: (a) To carriage performed under the terms of any international postal convention; (b) To funeral consignments; (c) To furniture removal.</p>		<p>Art. 1 § 1 These Uniform Rules shall apply to every contract of carriage of goods by rail for reward when the place of taking over of the goods and the place designated for delivery are situated in two different Member States, irrespective of the place of business and the nationality of the parties to the contract of carriage.</p> <p>Art. 1 § 2 These Uniform Rules shall apply also to contracts of carriage of goods by rail for reward, when the place of taking over of the goods and the place designated for delivery are situated in two different States, of which at least one is a Member State and the parties to the contract agree that the contract is subject to these Uniform Rules.</p> <p>Art. 1 § 5 These Uniform Rules shall not apply to carriage performed between stations situated on the territory of neighbouring States, when the infrastructure of these stations is managed by one</p>		<p>Article 3 Application of the Agreement § 1. This Agreement shall establish a common legal basis for contracts for the carriage of goods² in international through railway traffic and international through railway-ferry traffic. § 2. The carriage of goods in international through railway traffic shall take place between stations that are open for freight operations in accordance with the national law of the Parties³, and in international through railway-ferry traffic, including a waterway section of the route which the Parties have declared open for such carriage. § 3. If the Parties are at the same time parties to other international agreements establishing the legal norms for the contract of carriage of goods by rail, traffic between stations of the railways⁴ of these Parties may be performed under the terms of those agreements.</p>	<p><i>CMR is a single international Convention applying to every contract of carriage of goods by road.</i> <i>CIM are Uniform Rules to the Convention concerning International Carriage by Rail (COTIF) applying to every contract of carriage of goods by rail.</i> <i>SMGS is an Agreement on International Railway Freight Communications for the purposes of organising freight traffic via direct international railway communications.</i> <i>The COTIF/CIM and CMR shall apply to every contract of carriage of goods by rail (COTIF/CIM) or by road in vehicles (CMR) for reward when the place of taking over of the goods and the place designated for delivery are situated in two different countries, of which at least one is a Member State. If only one country is a Member State, the CIM Uniform Rules shall only apply if the parties to the contract agree that it shall be subject to the CIM</i></p>

¹ According to Art. 1.2, CMR "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949.

² According to Art. 2 SMGS "Goods" means commodities, products, wagons as transport means not belonging to the carrier and other physical objects accepted for carriage with the contract of carriage.

³ According to Art. 2 SMGS "Party" means a State which is a party to the Convention on International through Railway Traffic.

⁴ According to Art. 2 SMGS "Railway" means the infrastructure located in the territory of one State.



Preliminary Conclusions and next steps

Preliminary Conclusions:

- CIM and CMR present some similarities **BUT** also some differences. **BOTH** need to be analysed for intermodal transports
- Neither of them settle all aspects of contracts of carriage of goods. Issues outside their scope is dealt by national law

Next steps:

- Checklist for a framework contract to be used in international road-rail transport



Questions



Thank you!

