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Navigating global trade: the role of rail freight in the Belt and Road Initiative

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Sommario

1. Introduction. – 2. International rail freight transport within the framework of the Belt and Road Initiative. – 3. The CIM system and the SMGS system. Two modes of operation in comparison. – 4. Conclusive remarks

Abstract

Officially launched in 2013 by Chinese President Xi Jinping, the Belt and Road Initiative (BRI), also known as the New Silk Road, stands as one of the most ambitious geopolitical and economic undertakings of the contemporary era. It aims to establish an extensive network of infrastructural, economic, and cultural linkages between China and a significant number of countries, spanning two grand axes: a terrestrial "Economic Belt" stretching across Eurasia, and a "Maritime Road" connecting China to Southeast Asia, the Middle East, Africa, and Europe. Through this initiative, China seeks not only to foster global economic growth but also to strengthen its position as a central power in an increasingly interconnected international system.

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1. Introduction.

Officially launched in 2013 by Chinese President Xi Jinping, the Belt and Road Initiative (BRI), also known as the New Silk Road, stands as one of the most ambitious geopolitical and economic undertakings of the contemporary era. It aims to establish an extensive network of infrastructural, economic, and cultural linkages between China and a significant number of countries, spanning two grand axes: a terrestrial "Economic Belt" stretching across Eurasia, and a "Maritime Road" connecting China to Southeast Asia, the Middle East, Africa, and Europe[1].

Through this initiative, China seeks not only to foster global economic growth but also to strengthen its position as a central power in an increasingly interconnected international system[2].

The publication of the Vision and Actions on Jointly Building Belt and Road document in March 2015 provided a clear framework for understanding the scope and objectives of the BRI[3]. This text outlines not only the geographical breadth[4] of the initiative but also its guiding principles. Among these, the enhancement of infrastructural connectivity between China and the participating countries stands out, with particular emphasis on the development of efficient transport networks. Specifically, the document identifies key land routes, such as the construction of a new Eurasian land bridge and the development of economic corridors that traverse strategic regions: China-Mongolia-Russia, China-Central Asia-West Asia, and China-Indochina Peninsula. These corridors constitute the backbone of the terrestrial component of the BRI, facilitating the flow of goods and people along these vital routes[5].

Among the most significant infrastructures within the BRI project is the railway network, which serves as the principal means of connection for the terrestrial routes of the Belt and Road. Two economic corridors in particular, the First Eurasian Land Bridge and the New Eurasian Land Bridge, cross through the Russian Federation and various former Soviet republics, serving as a "middle ground" between Europe and

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[1] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, in M. KARABOUE (ed.), *Diritto, economia e innovazione: tra lavoro, mercato e energia*, Youcanprint, 2024, 40.

[2] K. UPRETY, *'OBOR' an Internationalized Initiative for Integrated Development*, GLOB. TRADE CUST. J., vol. 14, n. 5, 2019, 203.

[3] National Development and Reform Commission, Ministry of Foreign Affairs, Ministry of Commerce of the People's Republic of China, with the authorisation of the State Council, *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road*, 2015. Available at http://2017.beltandroadforum.org/english/n100/2017/0410/c22-45.html. Last visited October 9, 2024.

[4] It is emphasised that the geographical expansion of the BRI was gradual: in fact, starting from an original core of reference that was the Eurasian region, it later turned to Africa, Latin America, the South Pacific and the Arctic. A. EKMAN, F. NICOLA, C. PAJON, J. SEAMAN, I. SAINT-MEZARD, S. BOISSEAU DU ROCHER, T. KASTOUEVA-JEAN, *La France Face aux Nouvelles Routes de la Soie Chinoises*, Ifri Center for Asian Studies, Études de l'Ifri, 2018, 5.

[5] National Development and Reform Commission, Ministry of Foreign Affairs, Ministry of Commerce of the People's Republic of China, with the authorisation of the State Council, *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road*, *cit.*

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China. These corridors are largely reliant on railway connections, which have experienced substantial growth in traffic and investments since the BRI's inception[6].
It is worth noting that, although many railway projects linked to the BRI were initiated after 2013, efforts to improve infrastructural connections across the Eurasian region had already been underway for decades. For instance, the construction of the railway linking China's Xinjiang region to Central Asia began in 1984 and was completed in 1990, well before the official birth of the BRI. This project, later incorporated into the initiative, was renamed the *New Eurasian Land Bridge*, expanding to encompass a vast area stretching from China's Jiangsu province to the Netherlands[7].
The rise of railway transportation as a key pillar of the BRI is particularly noteworthy, as it reflects China's commitment to promoting alternative and faster modes of transport compared to traditional maritime navigation[8]. Rail transport offers an intermediate option between the speed of air transport and the cost-effectiveness of sea freight, positioning itself as an efficient solution for transcontinental trade. However, despite the undeniable potential of railway transport within the BRI, it faces a series of challenges and critical issues. These pertain, on the one hand, to regulatory fragmentation between the countries involved, and on the other, to technical matters related to the interoperability of the various national railway networks[9].
In the following sections, the analysis will focus on the distinctive characteristics of international freight transport by rail within the context of the BRI, examining the main challenges that influence its development and efficiency. Particular attention will be devoted to a comparison between the CIM (Convention concerning International Carriage of Goods by Rail) system and the SMGS (Agreement on International Goods Transport by Rail) system, two regulatory frameworks that play a central role in managing the flow of goods along the Belt and Road's railway routes.

2. International rail freight transport within the framework of the Belt and Road Initiative.

In general terms, it should be noted that the transit times for rail transport carried out via block trains—trains that move from a single point of origin to a single destination—

[6] P. J. RIMMER, *China's Global Vision and Actions: Reactions to Belt, Road and Beyond*, Cheltenham, 2020, 42-44.

[7] This demonstrates that the BRI was not an entirely new creation, but rather a framework that absorbed and amplified pre-existing projects, imbuing them with renewed vigor and greater international visibility. See on this point M. SCHMIDT, *Reconfigurations in Central Asia: Challenges, Opportunities and Risks of China's Belt and Road Initiative*, in H. PECHLANER, G. ERSCHBAMER, H. THEES, M. GRUBER (ed.), *China and the New Silk Road Challenges and Impacts on the Regional and Local Level*, Switzerland, 2020, 79.

[8] In particular, in 2011-2013, the first regular connections between China and Europe were opened on the Chengdu-Łódź, Chongqing-Duisburg and Zhengzhou-Hamburg routes, through which mainly food and livestock are transported eastbound and relatively high-value goods (electronic devices, electrical machines, pharmaceuticals and chemicals) westbound. J. JAKÓBOWSKI, K. POPŁAWSKI, M. KACZMARSKI, *The Silk Railroad. The EU-China rail connections: background, actors, interests*, Osw Studies, n. 72, 1.

[9] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 41.

ISSN 2036-7821

are shorter when compared to maritime transport, but not when compared to air freight[10]. Moreover, it is important to consider that the volumes transported by sea are not comparable to those transported by rail. Specifically, the capacity of a train with 41 wagons amounts to approximately 80 TEU (Twenty-foot Equivalent Units), while a container ship can carry around 21,000 TEU. In light of these considerations, it is noteworthy that over 80% of global merchandise trade by volume is conducted via maritime routes. This statistic highlights the dominant role of sea freight in the logistics and supply chain networks that underpin international trade. While rail transport offers a viable alternative for certain routes, particularly in regions where land connectivity is prioritized, it cannot fully substitute the extensive capacity and established infrastructure of maritime transport[11].

For these reasons, despite the considerable efforts undertaken by the Chinese government to bolster rail transport infrastructure and services, it is crucial to understand that rail transport cannot be regarded as a replacement for other modes of transportation; rather, it should be perceived as a complementary component within the broader logistics framework. While the enhancements in rail connectivity promise to facilitate trade and improve transit times, the intrinsic limitations in capacity and the existing dominance of maritime transport for bulk goods render rail freight an adjunct rather than a substitute[12].

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[10] For example, in the aforementioned case of the connection between Chongqing and Duisburg, transport by rail takes around 14 days, transport by air around 12 hours and transport by sea around 35 to 40 days. These differences depend on various factors: by way of example, stopovers in intermediate ports and climatic factors are likely to increase the shipping time considerably. J. JAKÓBOWSKI, K. POPŁAWSKI, M. KACZMARSKI, *The Silk Railroad. The EU-China rail connections: background, actors, interests*, cit., 113.

[11] The predominance of maritime freight can be attributed to several factors, including economic efficiency for bulk goods, the ability to handle larger shipments, and the established global network of shipping lanes and ports that facilitate the movement of goods across continents. As such, while rail transport presents distinct advantages in terms of speed and reliability for specific cargo, it must be viewed as a complementary mode rather than a replacement for the entrenched maritime transport system. This symbiotic relationship between rail and maritime transport is particularly salient within the context of the Belt and Road Initiative, which seeks to enhance connectivity and foster trade across multiple modalities. For an in-depth analysis on these aspects see https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_e.htm. Last visited October 9, 2024.

[12] M. MAMONE, *Il Treno sulla Via di Marco Polo*, *cit.*, 110-112. Moreover, the integration of rail transport into the larger transportation ecosystem enhances overall efficiency, allowing for a more nuanced and flexible approach to logistics. Railways can effectively address specific segments of the market, particularly for goods that require expedited shipping over shorter distances, or for routes that are less accessible by sea. However, the vast scale of maritime shipping, coupled with its ability to handle large volumes at competitive costs, ensures that it will remain the predominant choice for the majority of international trade. In the context of the Belt and Road Initiative, this complementary relationship becomes even more pronounced, as the initiative strives to interconnect diverse transport modalities. The synergy created between rail and maritime transport not only optimizes the flow of goods across regions but also enhances the resilience of supply chains, adapting to varying demands and challenges in an increasingly interconnected global marketplace. Thus, while rail transport stands to gain prominence through strategic investments and innovations, its role should be viewed as an integral part of a multifaceted transportation landscape, one that seeks to harmonize the strengths of each modality to foster greater economic connectivity and collaboration.

From a legal standpoint, it is imperative to acknowledge that China and its trading partners operate under a variety of distinct regulatory regimes governing international rail freight transport[13]. Among these frameworks is the *Agreement on International Railway Freight Transportation* (SMGS), to which the People's Republic of China is a signatory[14] – an agreement classified as an interdepartmental agreement[15]. The SMGS provides a structured approach to the transportation of goods across national borders via rail, facilitating cooperation and standardization among member states[16].
In addition to the SMGS, there exists Appendix B of the COTIF Convention, known as the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM). This set of rules offers a comprehensive legal framework designed to regulate the contractual relationships involved in the international transport of goods by rail. The CIM emphasizes the rights and obligations of carriers and shippers, thereby ensuring a degree of legal predictability and security in rail freight operations[17].

[13] Historically, the existence of two legal regimes for the carriage of goods by rail in Eurasia was not always a given: on 14 October 1890, nine countries (Austria-Hungary, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Russia and Switzerland) signed the International Convention Concerning the Carriage of Goods by Rail (also known as the Berne Convention), which came into force on 1 January 1893. This convention united rail traffic from the Atlantic to the Pacific under the auspices of a single legal regime; however, after the end of World War I, Russia was excluded from the list of member states. As a consequence, the USSR started to maintain bilateral relations with its socialist neighbours (Albania, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania), which led to the conclusion of the Agreement on Carriage of Goods by Railways in International Direct Connection (MGS) on 6 December 1950, called the Agreement on International Railway Freight Transportation (SMGS) as of 1 January 1954. With reference, on the other hand, to the Berne Convention, a revision came into force in 1985 that changed its title to Uniform Rules Concerning the Contract of International Carriage of Goods by Rail and turned it into Annex B of the broader Convention concerning International Carriage by Rail (COTIF). The latter brings together the regulations on contracts for the international carriage of passengers (outlined in Annex A, CIV) and goods (outlined in Annex B, CIM). Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, FRONTIERS L. CHINA, vol. 13, n. 1, 2018, 117-119.

[14] The following countries have joined the SMGS: Afghanistan, Albania, Azerbaijan, Belarus, Bulgaria, China, North Korea, South Korea, Estonia, Georgia, Hungary, Iran, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mongolia, Poland, Moldova, Russia, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam. For a graphic representation of the Member States, see the map available at https://www.cit-rail.org/media/files/documentation/freight/scopes/scope_of_application_of_cim-smgs_2019-05-01.pdf?cid=204902. Last visited October 9, 2024.

[15] An interdepartmental agreement in this case refers to an agreement signed by the ministers of the state railways of the participating countries. The procedure for amending such an agreement is simplified compared to that for conventions, as it does not require parliamentary ratification. Although the SMGS was originally designed for planned economies and socialist legal systems, after the transition to a market economy most former socialist countries continued to apply the agreement, which since 2015 has undergone revisions in order to adapt it to the new economic reality. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, 117-119, *cit.*

[16] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 42.

[17] *Ibid*. One of the primary objectives of the CIM is to create a uniform standard that simplifies the complexities often associated with cross-border rail transport. By establishing clear regulations regarding liability, cargo claims, and documentation requirements, the CIM facilitates smoother transactions and minimizes potential disputes between parties. For instance, the CIM outlines the responsibilities of carriers concerning the care and custody of goods during transit, as well as the procedures to be followed in the event of damage, loss, or delay. Such clarity is crucial in international trade, where varying legal standards can lead to confusion and inefficiencies.

Consequently, in practical terms, the transport of goods between two states may necessitate the conclusion of two separate transport contracts and the application of two distinct international legal regimes. However, it is worth noting that some countries adhere to both the CIM and SMGS regimes[18]. Furthermore, national laws may also come into play for issues that fall outside the scope of international instruments[19].

The participating countries in the Belt and Road Initiative are distinguished not only by the different legal frameworks governing international rail freight transport but also by technical issues[20]. For instance, Russia and the former Soviet republics have preserved a railway track gauge of 1,520 millimeters[21], while most COTIF countries, along with China, employ a gauge of 1,435 millimeters[22].

As a result, international rail routes along the China-EU-EAEU axis require transshipment, bogie exchange, or the use of automatic gauge-changing technology. At the western boundary of the 1,520 mm gauge area, the key gauge breakpoints are located at (i) Brest (in Belarus) and Małaszewicze (in Poland), (ii) Bruzgi (in Belarus) and Kuźnica Białostocka (in Poland), and (iii) between Poland and the Russian station of Chernyakhovsk, from which goods are transported to the Cherny-Shevskoe-Kybartai station (in Lithuania). On the eastern boundary, the following sites are identified: (i) Dostyk (in Kazakhstan) and Alashankou (in China), (ii) Altynkol (in Kazakhstan) and Khorgos (in China), (iii) Zabaykalsk (in Russia) and Manzhouli, and (iv) Erenhot (in China) and Zamyn-Ùùd (in Mongolia)[23].

The efficiency of these gauge breakpoints, in both economic and temporal terms, largely depends on the technology employed. Prior to the inauguration of the Khorgos

[18] Specifically, these are: Afghanistan, Albania, Azerbaijan, Bulgaria, Estonia, Georgia, Iran, Hungary, Latvia, Lithuania, Poland, Slovakia and Ukraine. In addition to these, it should be specified that Russia has been participating in COTIF since February 2010 only with regard to two short lines in the Baltic port areas. Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 117-119.

[19] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 42-43.

[20] Specifically with regard to rail links between China and Europe, several studies have been conducted during the 21st century. Among them, the 2016 Study on Corridors of the Intergovernmental Organisation for International Carriage by Rail (OTIF) analysed the key issues to be addressed for the development of international rail transport, arguing that «[r]ailway transport on a Euro-Asian scale faces both physical and non-physical obstacles, but the two most cumbersome were and still are the existence of two legal regimes and the change of gauge». Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 117.

[21] Historically, the decision to adopt this standard in the mid-19th century was not due to military reasons, but to the recommendations of the American engineer George Washington Whistler. According to Whistler, in this way Russia would reduce construction costs while preserving the efficiency of the railway network. G. CUSCITO, *Il Treno SinoRusso Corre Lento sulle Nuove Vie della Seta*, LIMES, n. 11, 2019, 181.

[22] *Ibid.*

[23] V. LOBYREV, A. TIKHOMIROV, T. TSUKAREV, E. VINOKUROV, *Belt and Road Transport Corridors: Barriers and Investments*, EDB Centre for Integration Studies, Report n. 50, San Petersburg, 2018, 16.

crossing point in 2012[24] rail traffic along the Yuxinou route – which spans 11,179 kilometers between China and Germany – passed through the Sino-Kazakh border at the Dostyk-Alashankou junction[25].

The construction of the so-called *China-Russia Border Bridge* over the Amur River – completed in the summer of 2021 and connecting northwest China with the Trans-Siberian Railway – represents a critical infrastructure within the Belt and Road Initiative. This bridge significantly reduces transportation times and enhances trade routes along the Eurasian corridor, offering a new avenue for the shipment of Chinese goods to European markets. A key feature of this bridge is its versatility, as it supports the transit of trains with both Russian and European/Chinese gauges, allowing for "alternating circulation" and thereby increasing rail freight capacity for goods bound for Europe[26].

As a consequence, while rail transport offers significant advantages in terms of speed compared to maritime routes, its limited capacity, compared to sea freight, and the technical challenges related to differing legal regimes and track gauges, underscore its role as a complementary rather than substitutive modality within the broader logistics framework of the Belt and Road Initiative. Nevertheless, ongoing investments in infrastructure and technology continue to enhance the efficiency and scope of international rail freight, further solidifying its role in global trade flows.

3. The CIM system and the SMGS system. Two modes of operation in comparison.

The Uniform Rules CIM and the SMGS are both fundamentally grounded in the fourth revision of the International Convention concerning the Carriage of Goods by Rail – commonly referred to as the Bern Convention – dating back to 1933. As such, while the two texts exhibit differences in certain respects, they also share a number of significant analogies that merit exploration within this paragraph[27].

To begin with, concerning the scope of application of the *Uniform Rules*, Article 1, § 1 of the CIM stipulates that it is confined to any contract for the carriage of goods by rail

[24] Among the various BRI transport hubs along the China-Kazakhstan border, of particular importance is Khorgos, considered a 'land port' and the main Eurasian trade hub of the Initiative. It provides China with access to Central Asia and is crossed by two of the BRI economic corridors (the New Eurasian Land Bridge and the China-Central Asia-West Asia Corridor). See on this point F. INDEO, *Khorgos, "Porto di Terra" Strategico e Porta d'Accesso all'Asia Centrale*, ISPI, 2017. Available at https://www.ispionline.it/it/pubblicazione/obor-khorgos-porto-di-terra-strategico-e-porta-daccesso-allasia-centrale-17841. Last visited October 9, 2024.

[25] P. J. RIMMER, *China's Global Vision and Actions: Reactions to Belt, Road and Beyond*, *cit.*, 44-46. The opening of the Khorgos Gateway accelerated long-distance connections between numerous Chinese cities (50 in total) and Kazakhstan, where containers are transferred from a railway with a 1,435 mm gauge to one with a 1,520 mm gauge. In a subsequent phase, trains reach the border between Belarus and Poland, where a further gauge change is required to allow the containers to continue on a 1,435 mm line toward 40 cities in Western Europe.

[26] G. CUSCITO, *Il Treno SinoRusso Corre Lento sulle Nuove Vie della Seta*, *cit.*, 184.

[27] Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 117.

for reward when the place of taking over the goods and the place designated for their delivery are situated in two different Member States, regardless of the seat and nationality of the parties involved in the transport contract. This clearly delineated definition underscores the intent of the CIM to regulate cross-border rail transport, thereby facilitating international trade[28].

In a parallel manner, the SMGS, as articulated in Article 3, § 1, asserts that the agreement shall establish a single set of legal standards for contracts of carriage of goods in direct international rail traffic and in direct international rail ferry traffic[29].

This shared commitment to creating a cohesive legal framework highlights the necessity for both agreements to address the complexities inherent in international rail transport[30].

Consequently, the supremacy of the provisions outlined in the CIM and SMGS over ordinary laws is circumscribed to those contracts that adhere to the established criteria. Indeed, neither text includes mandatory provisions governing international freight transport for contracts where the point or station of origin or delivery lies outside the geographical scope of the relevant legal regime. In such scenarios, the parties are afforded the flexibility to either apply domestic laws or engage with alternative international regimes, thus ensuring that they can tailor their agreements to suit specific circumstances[31].

Regarding the issue of carrier liability, such liability may arise in instances of delay in the delivery of the transported goods, as well as in cases of loss or damage to those

[28] More specifically, para. 5 specifies that these Uniform Rules do not apply to carriage between stations situated in the territory of neighbouring States, when the infrastructure of these stations is operated by one or more infrastructure managers employed by only one of these States. In addition, § 6 provides for the possibility for each State to declare at the time of its application for accession to the Convention that it will apply these Uniform Rules only to carriage performed on a part of the railway infrastructure located on its territory' with the proviso that this part of the railway infrastructure must be precisely defined and connected to the railway infrastructure of a Member State. Finally, in case such a statement is made, it is specified that these Uniform Rules shall only apply provided that: a) the place where the goods are taken over or the place of their return as well as the itinerary provided for in the transport contract are located on the designated infrastructure; or b) the designated infrastructure connects the infrastructure of two Member States and has been provided for in the transport contract as a route for a transit transport. A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 44.

[29] Furthermore, as specified in the same article, § 3, «[i]f the parties are at the same time parties to other international agreements that establish legal provisions for contracts of carriage of goods by rail, carriage between the railway stations of these parties may be carried out under the terms of those agreements». The full SMGS text is available at the following link https://d2ugi3gsowvew0.cloudfront.net/assets/downloads/pdf/SMGS-Agreement-English.pdf. Last visited October 9, 2024.

[30] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 44.

[31] *Ibid*. Generally, in situations not governed by international rules, the applicable law will be determined by rules of private international law. For example, Article 41 of the Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships provides that the parties concerned may choose by mutual agreement the laws applicable to contracts.

goods.[32]. Both the CIM and SMGS encapsulate a general rule stating that a carrier is exempt from liability to the extent that their failure to perform is attributable to circumstances that they could not have prevented and/or avoided. This fundamental principle serves to protect carriers from undue burdens in scenarios beyond their control[33].

However, it is imperative to underscore that both legal regimes delineate specific provisions concerning the burden of proof. In practice, depending on the circumstances, the grounds for exemption from liability can be classified as follows:

i) *non-priority*: i n such cases, the burden of proof regarding the existence of a causal link between a specific event and the non-performance falls upon the carrier themselves[34];

ii) *priority*: i n these instances, the existence of the event/non-performance link does not require proof from the carrier; rather, the onus to demonstrate the absence of a connection between the two elements rests with the claimant[35].

Concerning the CIM, Article 25 § 1 states that all grounds specified in Article 23 § 2 fall within the non-priority category[36]. Conversely, § 2 of the aforementioned article establishes that the circumstances outlined in Article 23 § 3 are classified as priority[37].

With respect to the SMGS text, Article 41 places the burden of proof for establishing the connection between event and non-performance (in cases of total or partial loss,

[32] With regard to the duration of the period of the carrier's liability the CIM and SMGS provisions are similar. Pursuant to Art. 23 § 1 CIM, the carrier is liable for the loss arising from the total or partial loss and damage of the goods from the time the goods are taken over until their return, as well as for the loss arising from exceeding the time limit for delivery, irrespective of the railway infrastructure used; conversely, under Art. 37, § 2 SMGS «[t]he carrier shall be liable for the loss, shortage, damage to or spoilage of goods from the time that they are taken over for carriage until they are delivered». It must be specified that the CIM provision is more precise due to the presence of the term 'survenues'. In this respect, reference can be made to the French version of the text, where the term 'survenues' is used. In contrast, in the German and English versions of the CIM, this expression is not present. This is why the provision in the latter two languages is considered more ambiguous.

[33] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 44-45.

[34] Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 127-130.

[35] *Ibid.*

[36] It is stipulated, in fact, that the proof that the loss, damage or exceeding of the time limit for delivery was caused by one of the facts envisaged in Article 23 §2, is incumbent on the carrier.

[37] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 45. In particular, when the carrier establishes that the loss or damage could have resulted, in the circumstances of the case, from one or more of the special risks referred to in Article 23(3), it shall be presumed that such loss or damage resulted therefrom. The person entitled retains, however, the right to prove that the loss or damage was not caused, in whole or in part, by one of those risks. The special risks, described by Art. 23 § 3 CIM, are those arising from the following circumstances: (i) carriage by uncovered wagon; (ii) lack of or defective condition of packaging for goods subject, by their nature, to loss or damage; (iii) loading of the goods by the shipper, or unloading by the consignee; (iv) nature of certain goods subject to total or partial loss or damage (especially by breakage, rust, internal and spontaneous deterioration, drying, dispersion) (v) irregular, incorrect or incomplete description or numbering of packages; (vi) carriage of live animals; (vii) carriage to be performed under escort, if the loss or damage arises from a risk which the escort was intended to avoid.

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damage, shortage, or deterioration of goods) squarely on the carrier, in situations classified as non-priority, as detailed in Article 39, § 2, clauses 1 and 4[38]. Furthermore, in the event of a delay in the delivery of goods, the carrier is also tasked with demonstrating that such delay was not attributable to their own actions. Conversely, if it is established that total or partial loss, damage, or deterioration of the goods was caused by circumstances outlined in Article 39, § 2, paragraphs 2, 3, and 5–10, as well as § 7, paragraphs 2 and 3, it is assumed that the damage occurred as a result of those circumstances unless the consignor or consignee can prove the absence of such a causal link. Therefore, these latter instances can be categorized among the grounds for exemption classified as priority[39].

Moreover, the CIM provides for a form of indirect liability on the part of the carrier for individuals for whom they are responsible. According to Article 40, it is stated that the carrier shall be liable for the acts of his agents and other persons whose services he uses for the performance of the carriage when such agents or other persons act in the exercise of their functions. The managers of the railway infrastructure over which the transport is carried out shall be regarded as persons whose services the carrier uses for the performance of the carriage[40].

Initially, such a provision was absent from the SMGS text; however, it was introduced following an amendment in 2015. Article 38 of the SMGS now provides that «[t]he parties to a contract of carriage shall be liable for the actions of their servants and other persons whose services they make use of for the execution of the contract of carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure shall be considered as persons whose services the carrier makes use of for the execution of the contract of carriage»[41]. As evidenced by an analysis of these provisions, Article 38 of the SMGS constitutes a transplantation of Article 40 of the CIM, with a fundamental exception: it is not solely the

[38] In concrete terms, these are: (i) circumstances that the carrier could not have prevented because they were beyond his control; (ii) reasons connected with the loading or unloading of the goods by the sender or the consignee.

[39] These are, in detail, the following cases: (i) damage or deterioration caused by the inadequacy of the quality of the goods, containers or packaging materials or by particular physical or natural characteristics of the same; (ii) circumstances caused by the sender or the consignee; (iii) damage caused by the absence of containers or packaging necessary for the carriage; (iv) delivery by the sender of articles with an incorrect, inaccurate, incomplete description or not in conformity with the provisions of the Agreement (v) loading by the consignor of the goods in a freight wagon or container unsuitable for the carriage of the same; (vi) wrong choice by the consignor of the mode of carriage of perishable goods; (vii) failure of the consignor or consignee to comply with customs or administrative formalities or inadequate compliance with such formalities; (viii) seizure or confiscation of the goods by public authorities for reasons beyond the control of the carrier. Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 127-130.

[40] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 46-47.

[41] Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 127-130.

carrier who is held indirectly liable, but rather, in a more general sense, «the parties to a contract of carriage»[42]. This expansion of liability implications extends this form of indirect responsibility to include the consignor as well, thereby enhancing the accountability framework within which all parties operate[43].

4. Conclusive remarks.

From the comparative analysis undertaken above, it becomes resoundingly evident that the existence of two distinct normative frameworks governing international rail freight transport can engender considerable delays in the efficient circulation of trains across international borders. Such delays are not merely incidental; they are a direct consequence of the complexities inherent in navigating the divergent legal requirements that each framework imposes.

The necessity for compliance with varying legal regimes can result in significant bureaucratic impediments, often leaving rail operators grappling with a labyrinth of regulations that complicate the timely movement of goods. In this context, the Central Office for International Carriage by Rail (CIT) recognized the urgent need to address these challenges and subsequently introduced the common CIM/SMGS consignment note in 2006, an initiative designed to foster legal interoperability between the two prominent systems.

The introduction of the common consignment note stands as a strategic response to the pressing demands of international rail transport, serving as a vital document that harmonizes the disparate information requirements dictated by both the CIM and SMGS legal regimes. By consolidating these varied requirements into a singular, cohesive format, the common CIM/SMGS consignment note effectively mitigates the potential for bureaucratic slowdowns that have historically plagued border crossings.

The ramifications of this innovation extend far beyond mere administrative convenience; it fundamentally transforms the landscape of international rail transport by ensuring that the downtime experienced at these critical junctures is significantly reduced. This, in turn, facilitates a more seamless and expeditious transit of goods across borders, thereby enhancing the overall efficacy of international supply chains.

Moreover, the implementation of the common consignment note alleviates the administrative burden on the parties involved, as it eliminates the need for stakeholders to duplicate the preparation of transport documents when traversing borders between states that subscribe to different legal frameworks. The time and resources saved as a result of this simplification cannot be overstated; they translate directly into enhanced

[42] A. MANFREDINO, *Belt and Road Initiative: un quadro generale del trasporto internazionale di merci via ferrovia*, cit., 47.

[43] In this regard, some authors suggest that the reference to all parties to the contract extends the principle of vicarious liability to the consignee, but this inference is considered questionable since the consignee is not always a party to the contract of carriage. Z. YAN & V. FILIMONOV, *Comparative Study of International Carriage of Goods by Railway between CIM and SMGS*, *cit.*, 133.

operational efficiency and a more agile response to the ever-increasing demands of global trade.

In summation, the common consignment note is not merely a procedural innovation; it is a transformative instrument that streamlines the multifaceted procedural aspects of international rail freight transport. Its recognition as an essential international banking and customs document underscores its pivotal role in facilitating the simplification of customs formalities. This streamlining of procedures not only enhances the overall efficiency of cross-border trade but also establishes a high degree of legal certainty in transactions, thereby fortifying the trust that underpins international commerce.

Furthermore, the common CIM/SMGS consignment note delineates the transport route with clarity and precision, ensuring that all parties are acutely aware of the logistical parameters governing their transactions. It also allocates transportation costs transparently between the consignor and consignee, mitigating potential disputes regarding financial responsibilities and enhancing the cooperative spirit essential for successful international trade relationships.

Moreover, this document serves as a robust safeguard against the financial repercussions that may arise in cases of damage or loss of cargo. By guaranteeing compensation in such unfortunate circumstances, it fosters a heightened sense of security among stakeholders, thereby reinforcing their confidence in the reliability of rail transport as a viable mode of international freight movement. The common consignment note thus not only mitigates risks associated with cargo loss or damage but also acts as a critical enabler of international commerce.

In addition to these practical benefits, the common CIM/SMGS consignment note plays a crucial role in preventing systemic errors that can occur during the conversion of documentation across differing legal systems. By establishing a uniform standard for documentation, it enhances the accuracy and reliability of information exchanged between various stakeholders, thereby reducing the likelihood of disputes that may arise from misinterpretations or miscommunications.

Ultimately, the introduction of the common CIM/SMGS consignment note represents a monumental advancement in the pursuit of seamless and efficient international trade practices. Its capacity to streamline operations, enhance legal clarity, and mitigate risks positions it as an indispensable tool in the contemporary landscape of global commerce, reflecting the evolving needs of an interconnected world. In this manner, the common consignment note not only addresses existing challenges but also paves the way for a more cohesive and efficient framework for international rail freight transport, underscoring the importance of collaboration and innovation in the face of complex logistical realities.

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