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2022 CISG CONFERENCE

**THE CISG, 40 YEARS AND BEYOND:
WHAT THE PAST
WILL BRING TO THE FUTURE**

27

March 2022
1500-1915 (GMT+8)

— OPENING CEREMONY OF THE WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT

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How the CISG May Have an Impact on Future Work on Railway Consignment

**Professor Dr. Andreas Maurer, LL.M.
University of Mannheim, Germany**

Background:

14 June 2019: China proposed to UNCITRAL a work programme on possible future work regarding railway consignment notes (Document United Nations A/CN.9/998)

- Main objective: Introducing consignments notes that also serve as documents of title → such as bills of lading in maritime trade in order to
 - Reduce trading risks
 - Reduce transaction costs
 - Facilitate the usability of documentary credits

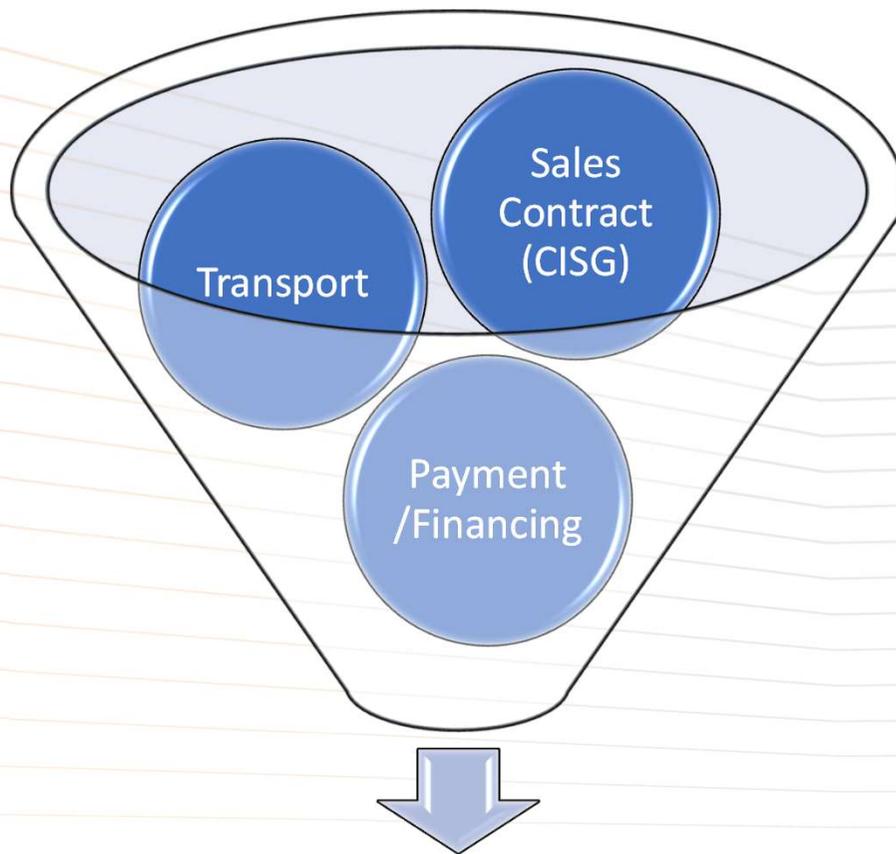
11 May 2020: The UNCITRAL Secretariat reportet on the research it conducted.

Result: „The exploratory work and consultations [...] have so far indicated that there seems to be a demand for negotiable transport documents that could cover carriage by other modes than sea carriage, in particular by railway.

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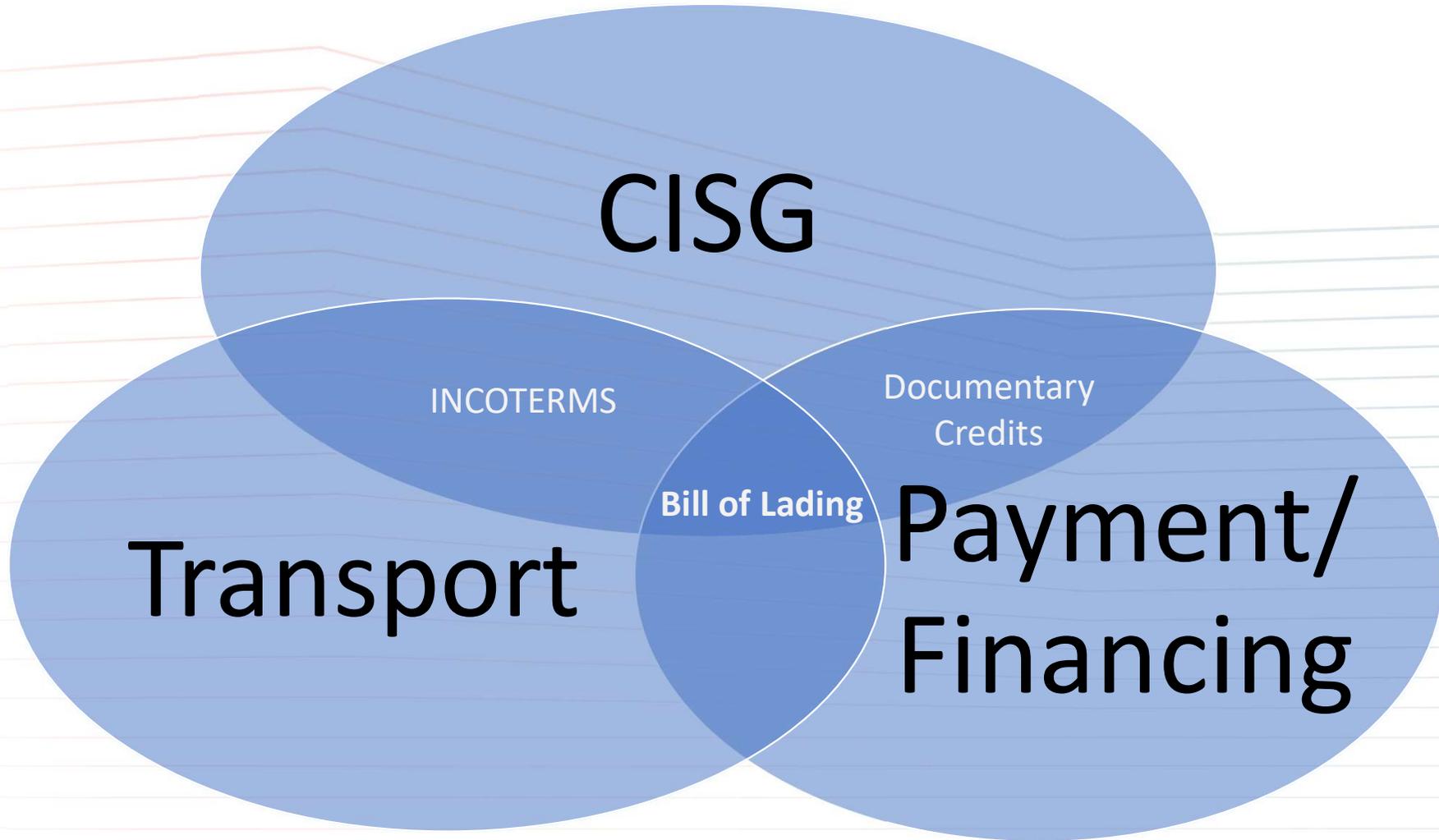


Transaction

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Consignment note

- Document accompanying goods in transit
- Often serves as contractual document for the transport of goods
- Contains information on the consignment (e.g. nature of the goods, number of packages, weight, instructions)
- Proof of receipt of goods by the shipper/freight forwarder
- Usually non-negotiable → does not represent ownership

Bill of lading (B/L)

- Used in maritime trade
- Serves the same purposes as a consignment note
- Also is a document of title

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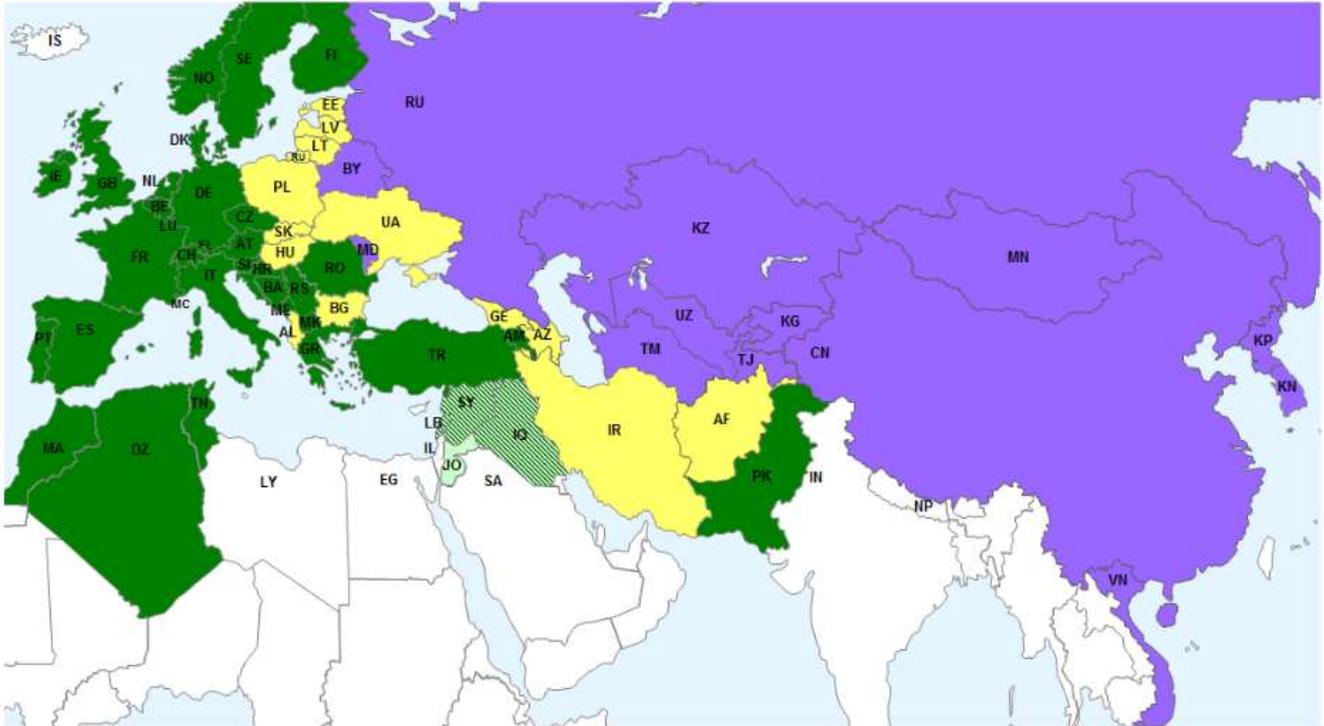
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Situation today for transport by rail:

Neither the CIM nor the SMGS provide for negotiable transport documents



Freight Traffic CIM/SMGS



- SMGS
- CIM + SMGS
- Associate Member
- CIM
- Membership suspended

Situation 1 May 2019

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Noteworthy:

China also indicated that the need for a negotiable document (transport document of title) is not only needed for railway transport, but also for other modes of transport

(„This demand may not only exist in railway transport, but also in road and air transport. Documents of title used for international trade and transport services need to be circulated and applied among different countries.”)

But: That points to a(nother) convention on **multimodal transport**

→ **The Rotterdam Rules 2010 – not in force**

Mainly focused on maritime trade, but designed for door-to-door (multimodal) transport

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Interim conclusion:

If UNCITRAL continues to work on a unified law on consignment notes, it should focus on a multimodal solution

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How should the CISG be reflected in the work on a future convention?

Since the CISG will most probably not be changed, the new convention should reflect some issues:

E.g.:

Art. 30 CISG → The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. → Document of title enables the seller to transfer title by handing over documents.

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Art. 32 CISG → appropriate transportation

- **Appropriate price of transportation**
- **Appropriate liability of the shipper**

→ Contracting around Limitations of liability in favour of the shipper in excess of the rules in the future convention should not be possible.

Art. 35 (2) d CISG → appropriate packaging

A future convention should adopt similar standards of packaging obligations for the seller

Art. 52 CISG → right of refusal of delivery → a future convention should regulate the rights and duties of the shipper if the buyer refuses the goods.

Art. 71 (1) CISG → Right of stoppage in transitu

A future convention should also reflect the CISG in this respect and contain a right of stoppage in transitu for the seller (who not necessarily is the sender) in relationship to the shipper.

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Conclusion:

- A future convention on consignment notes should allow for negotiable documents for all modes of transport and not only focus on railway transport.
- More than that: The work on a future convention should focus on a comprehensive solution for multimodal transports rather than on unimodal solutions
- A future convention should reflect CISG regulations on the sales contract in light of the transport contract

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