



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**2/2002**

110th Year • April - June

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# 2/2002

110<sup>th</sup> year – April - June

## **Bulletin of International Carriage by Rail**

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### **Central Office Communications**

#### **Ratification of the 1999 Protocol**

Switzerland and Spain

In application of Article 20 § 1 of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and of Article 3 § 2 of the Protocol of 3 June 1999 for the Modification of COTIF (1999 Protocol), two further Member States - Switzerland on 7 May 2002 and Spain on 18 June 2002 - deposited their instruments of ratification of the 1999 Protocol with the Provisional Depository<sup>1</sup>. This brings to eight the number of Member States that have ratified this Protocol up to now.

The 1999 Protocol and thus the new version of COTIF will come into force only after they have been ratified, accepted or approved by more than two-thirds of the Member States of OTIF, i.e. at least 27 States (Article 20 § 2 COTIF 1980).

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<sup>1</sup> According to Article 2 § 1 of the 1999 Protocol, OTIF performs the functions of the Depository Government provided for in Articles 22 to 26 of COTIF 1980 from 3 June 1999 to the entry into force of this Protocol.

### **OTIF Organs**

#### **Administrative Committee**

97<sup>th</sup> session

*Vienna, 23/24 May 2002*

At the invitation of Austria, the Committee held its 97<sup>th</sup> session in Vienna on 23 and 24 May 2002 under the chairmanship of Mr. Michel Aymeric (France).

The Committee approved the summary of conclusions of the Meeting on the Strategic Orientation of OTIF held on 7/8 March 2002 in Berne (see Bulletin 1/2002, p. 9). The Committee also decided that the summary of conclusions would not be published.

The Committee examined the question of the composition and mandate of the delegation charged with negotiating the accession agreement with the EC in accordance with Article 38 of COTIF 1999. As this delegation must be both small and balanced, but in a position of strength to discuss matters, it was decided that it would be comprised of representatives of two Member States that are also Members of the EC, one Member State that is a candidate for accession to the EC and one Member State that is neither an EC Member State nor a candidate for accession to the EC. These States are Germany, the United Kingdom, Hungary and

Tunisia. The Committee would look at the matter of the negotiating mandate again at the 98<sup>th</sup> session.

The Committee also approved the 2001 Annual Report and the 2001 Financial Management Report. The definitive rate per kilometre, which is used as the basis for calculating contributions for 2001, was set at SFr. 6.30. The Committee noted OTIF's financial situation, which was found to be satisfactory, and the current position with regard to investments. However, an overspend of SFr. 150,955.55 must be debited from the reserve fund, owing in particular to the negative performance of the share portfolio.

The Committee approved the amendment to Article 26 (Amendments to the Rules) of the Finance and Accounts Rules, which was made necessary by the decision the Committee took at its 96<sup>th</sup> session to authorize the Central Office to make any necessary and appropriate amendments to the chart of accounts at its own discretion (see Bulletin 4/2001).

The conference room modernization project was abandoned for the time being (see Bulletin 4/2001). This matter would be looked at again in due course. In the meantime, a minimum of renovation work would be carried out to ensure optimum use of the conference room as it is at the moment.

Lastly, the Committee noted an interim report concerning the personnel policy. The final draft should be submitted to the next session of the Committee. The advertisement for the specialist technology/approvals post was briefly discussed (see Bulletin 1/2002, p. 5), but the Committee did not approve reducing the advertising period from six to three months. The advertisement for the post is available on the OTIF website (see also p. 27).

To conclude, the Committee decided to hold its next ordinary session in Berne on 7 and 8 November 2002. (Translation)

### **RID Committee of Experts working group on tank and vehicle technology**

*Bonn, 17-19 April 2002*

see "Dangerous Goods"

## **Dangerous Goods**

### **RID Committee of Experts working group on tank and vehicle technology**

*Bonn, 17-19 April 2002*

At the invitation of the Federal Ministry of Transport, Construction and Housing, a formal working group of the RID Committee of Experts (see Bulletin 4/2001) met in Bonn from 17 to 19 April 2002. The aim of the meeting was to examine the report of the German working group that was set up following several rail accidents involving dangerous goods and based on this, to draft proposals for amendments to RID or for standards.

The following states took part in the discussions: Austria, Belgium, Czech Republic, France, Germany, Lithuania, Netherlands, Norway, Poland, Romania, Spain, Sweden, Switzerland, and the United Kingdom. The International Union of Railways (UIC) and the International Union of Private Railway Wagons (UIP) were also represented.

#### **Election of Chairman**

Mr. H. Kellerhaus (Germany), Chairman of the German working group, was elected Chairman.

#### **Adoption of the agenda**

The first step was to examine the measures the RID Committee of Experts had passed to the working group to deal with. The second step was to check which measures had an influence on each other or were even mutually exclusive.

The representative of Switzerland explained that the aim of the work was to increase the level of safety of the whole system without prejudicing the rail-road situation in respect of competition. In addition to tank wagons, container and piggy-back transport should be taken into account.

The representative of France drew attention to the fact that rail accidents involving dangerous goods did not happen frequently and that in the discussion, the effects of individual measures on modal shift should be kept in mind.

The representative of Germany reminded the meeting that the final report of the German working group contained a catalogue of measures based on accidents that had in fact occurred. It was in the chemical industry's own interest to implement such measures for certain transport operations (e.g. for chlorine) in order to increase public acceptance of them.

The working group agreed first to discuss the individual measures listed in the final report of the German working group. After all the measures had been discussed, the priorities should then be decided.

### **Devices to protect against overriding of buffers**

The Chairman explained that there were already various approaches to this:

- By means of constructional measures, the rising buffer is diverted in such a way that the tank cannot be penetrated.
- The front of the chassis is constructed in such a way that buffers cannot touch the tank wall.
- Finnish construction: the buffer beam has a catching claw that stops the rising buffer on the striking wagon. Only one buffer at each end of the wagon is fitted with this catching claw to avoid two buffer overriding devices being opposite each other.
- Protective shield placed in front of the tank end, covering just over half of the tank end. The protective shield is also fitted with a catching nose that stops the rising buffer on the striking wagon.

The Chairman considered that retrospective fitting of existing tank wagons was not economically viable. In addition, it should also be remembered that retrospective fitting was not always technically feasible, which was not the case for new-build tanks.

The working group devised the following objectives of protection:

- Measures to prevent the overriding of buffers (when they rise up) in the event of a violent collision between wagons resulting from incidents.
- Devices must be designed in such a way that allows ongoing/retrospective fitting and that

prevents the potential for danger increasing during the period of fitment/refitment (i.e. different stage of fitment). In particular, the protective equipment must not have any negative effects on the body of the tank.

- The constructions must be mutually compatible and not lessen the objective of protection.

The outcome of the discussion was as follows:

- There was general recognition that devices to protect against overriding of buffers were useful.
- For new-build tanks, additional costs of the order of 10 to 15 T€ should be reckoned with.
- Compulsory fitment of the fleet of old wagons was not endorsed.
- There did not appear to be any correlation with other measures.
- Applying the measures to certain groups of substances only has still to be examined.
- Constructions that favour the possible penetration of the tank following the overriding of buffers (e.g. an obliquely fixed tank, because of which the buffers are pointed directly towards the tank) must be excluded.

### **Sandwich-cover for tank ends**

The discussion resulted in the following conclusions:

- The effectiveness of sandwich-covers at higher accident speeds should be studied in a research project. Up to now, the Federal Institute for Materials Research and Testing (BAM) has only carried out semi-static tests, although dynamic tests have been carried out on road tank vehicles.
- The sandwich-cover is considered to be a sensible protective measure for materials where it is not possible to achieve a higher energy absorption capacity (e.g. aluminium).
- Because of the problem of corrosion, increasing the wall thickness should be considered as an alternative.

### Crash elements

The working group drafted the following objective for energy absorption elements:

In the event of a collision shock or accident, energy absorption of at least 800 kJ by means of plastic deformation of defined components or by means of a procedure with similar effects, without it leading to a dangerous, direct transfer of energy to the tank.

Crash elements can be an effective way of achieving this.

### Surge protection

The working group did not support the introduction of sheet-metal surge plates for tank wagons. Surging, on its own, was not acknowledged to be a cause of accidents.

### Checking/monitoring the air brake

The working group drew the following conclusions:

- Technical feasibility and effectiveness should be determined in a study.
- The brake test and training in the different Member States should first be compared and later harmonized.
- The competent authority should develop instructions which would give a clear indication to the locomotive driver that a brake test had not been carried out.
- The above-mentioned short term solution could be considered for new-build locomotives.
- It was acknowledged that there was a correlation with the "check-list" measure.

### Side bearer friction on bogies

There was a consensus in the working group that only steel-plastic side bearers should henceforth be used for new-builds. Whenever possible, consideration should be given to changing the side-bearers when repairing old vehicles.

### Buffers and buffer heads

The working group agreed to discuss this item in conjunction with the "energy absorption elements" measure.

### External/central solebars/self-supporting tank

The representative of UIC listed three ways of fixing tanks to a chassis:

- "German variant": tank fixed on external solebars in the area of the bogies.
- "French variant": external solebars are welded to the tank along its whole length.
- "Russian variant": tank supported in the middle on external solebars.

The working group expressed the wish that before this item was dealt with further, there should be a study to investigate the best way of fixing tanks to a chassis. In so doing, it should also be checked whether the tank should become detached from the bogie in the event of a severe accident.

### Tank attachments (manhole on tank wagons for gas under pressure, ladders, platforms, etc.)

The working group endorsed the conclusions contained in the Final Report of the German working group, i.e. tank attachments on new-build tanks should be designed such that in the event of an accident, they become detached (theoretical breaking point) or else penetration of the tank is prevented by means of sheet metal bases. Reference could be made in RID to a UIC leaflet that already prescribes measures such as these.

With regard to the existing wagon fleet, it was agreed that in the light of the additional costs and the considerable work created by the removal and refitting of attachments, this measure should only apply to attachments in need of repair or modification.

### Dome/dome cover/filling and discharge devices

With regard to new-build tanks, the working group endorsed the conclusions contained in the report of the German working group, i.e. to prescribe by reference to EN 12561 a 4 bar hinged dome with 4 fixture points.

With regard to the existing wagon fleet, the question of replacing domes with one locking bolt with a minimum

test pressure of 1.5 bar was controversial, as some delegates were of the view that for substances such as petroleum products, existing domes with a minimum test pressure of 1.5 bar were sufficient and that transitional provisions (until the next periodic inspection, i.e. eight years) were required. Other delegates were of the view that replacement should be restricted only to very dangerous substances, particularly toxic substances. In order not to disadvantage rail transport, it was suggested that this be discussed at the Joint Meeting.

In an indicative vote, five delegations supported the abolition of domes with one locking bolt, five delegations voted for them to be retained until the tank wagon was scrapped. In a further indicative vote, seven delegations supported the fitting of domes with four locking bolts in the event that domes with one locking bolt had to be removed as a result of being damaged.

### Check-list

With regard to operational and emergency measures, the working group noted that such check-lists already existed in rail transport, in particular UIC leaflet 579-2, the RID Agreement between various railways and/or UIC leaflet 471-3, item 5, which is referred to in 1.4.2.2.1 (Carrier's Obligations). Some delegates therefore considered that an additional list was not justifiable, especially as in accordance with RID Chapter 1.3, everybody who is involved in the carriage of dangerous goods must receive training appropriate to their responsibilities and duties.

However, it was pointed out that this measure originated from the accident in Elsterwerda (inadequate brake test). This demonstrated the need to include the locomotive driver in this checking process and to prescribe the general obligation to carry out checks, even if, for example, the brake test is already prescribed for rail transport.

It was finally agreed that the representative of Germany would prepare a proposed text containing general provisions and possibly a reference to a check-list for the next meeting. It was proposed that the other states be consulted with regard to measures at national level.

### Staff safety training (drivers, traffic control staff, etc.)

The representative of UIC welcomed this measure and emphasized that the situation had become more difficult (communication problems) as a result of the EU

Directive (division of infrastructure and operation) and privatization of the railways.

The Chairman suggested that this measure be pursued, and asked delegates to collect information on the training measures that exist in the different states.

### Measures to reduce the quantity that escapes in accidents, particularly in relation to very toxic gases

The representative of the Netherlands, who had proposed that this item be placed on the agenda, asked for a discussion on reducing the effects connected with the leakage of large quantities of highly toxic liquid gases, even if the overall safety risk (probability of an accident together with the effects of an accident) was lower than in the case of liquid hydrocarbon gases, for example. He considered in relation to this that the limit value referred to in RID (LC<sub>50</sub> value of 200 ppm) for the approval of transport operations involving toxic gases in tanks should be checked.

The representative of Switzerland introduced his informal document on this subject, which dealt with the measures put in place in Switzerland on the basis of the "Federal Order on Serious Accidents". These measures were designed to protect the population and the environment from serious damage resulting from severe rail accidents. In Switzerland, 4% of the rail network was subject to unacceptable risks. One of these measures was to build better tank wagons, particularly for the carriage of chlorine and sulphur dioxide.

In view of the major political significance and the multimodal aspect of this problem, the working group came to the conclusion that this matter would best be dealt with by the RID/ADR Joint Meeting.

During the discussion, the representative of France noted as an example that 80% of the volume of dangerous goods carried by road consisted of hydrocarbons and that the main risk was from these substances because of the quantity carried. In contrast, the most dangerous substances were only carried in small quantities. In France, 8000 deaths occurred annually in road transport. From a political point of view, the tendency was to place the emphasis on prevention in road transport rather than on possible risks, the likelihood of which was difficult to assess.

The representative of Germany thought there might be a problem with using risk analyses as the basis for developing the law, following the example of the Seveso II Directive on fixed installations. The German working

group had based its work on real accidents and had derived technical measures from them.

### **Improving the state of repair of tank wagons**

The representative of UIC, who had proposed that this item be placed on the agenda, explained that removing certain deficiencies, e.g. leakages, led to delays and additional costs. He regretted the absence of a standard covering maintenance work. He reminded the meeting of the provision in the restructured RID (1.4.3.5) requiring the tank wagon operator to carry out repairs to the tank wagon in such a way as to ensure that it satisfies the requirements of RID until the next inspection. He explained that UIC intended drafting a standard with a catalogue of measures, the aim of which was to standardize the state of repair. He asked other delegations to support his plan.

The representative of Germany pointed to the fact that Standard EN 12972 contained uniform inspection criteria. He recommended the incorporation into RID of repair and maintenance procedures, with references to standards, and suggested that UIC and UIP work together and submit a proposal to the next meeting of the working group and subsequently to the RID Committee of Experts. The RID Committee of Experts could then decide which parts of the proposal also concerned tank-containers and transmit these to the Joint Meeting.

### **Setting priorities for consideration in RID**

Germany will submit specific proposals on measures concerning sandwich-covers, crash elements, buffers and buffer heads, external/central solebars, securing attachments to tank wagons, domes and dome covers and on check-lists.

UIC and UIP will submit a proposal on the state of repair of tank wagons.

The representative of the Netherlands proposed including the problem of re-using tank wagons following an accident.

The representative of Germany requested that the problem of the functioning of the internal stop valve in the event of damage to the external devices (6.8.2.2.2) also be examined.

The representative of Sweden explained that attachments other than the dome and dome cover could be damaged. He was requested to submit an informal document on this, with photographs.

Telematics, which could not be dealt with at this meeting, would be dealt with at the next meeting.

The "Further procedures concerning subjects of importance to other bodies" item was no longer required.

### **Date and venue of the next meeting**

The next meeting will be held in Bonn on 5 and 6 September 2002 (beginning on 5 September at 9am and finishing on 6 September at 3pm), again with simultaneous interpretation into German, English and French, which has proved both excellent and necessary.

The full report is available on the OTIF website.  
(Translation)

### **Consultation seminar for experts of the OSZhD Member States**

*Warsaw, 22-26 April 2002*

At the invitation of the Finnish Ministry of Transport, an informal meeting of representatives and experts from OSZhD's Commission II and the RID Committee of Experts was held on 24 and 25 September last year in Helsinki (see Bulletin 4/2001). It was acknowledged at the meeting that there was a need for closer cooperation between OSZhD's Commission II and the RID Committee of Experts in order to harmonize the provisions of Appendix II of the SMGS Agreement with those of RID. The meeting was of the view that it would be useful to organize a seminar for experts from the OSZhD Member States.

At the invitation of the OSZhD Committee, such a seminar, chaired by Mr. Anzor Glonti, was held from 22 to 26 April 2002 in Warsaw at the Committee's offices. The following were invited as speakers: Mrs. Seija Miettinen from the Finnish Ministry of Transport and Communications, Mr. Helmut Rein from the German Federal Ministry of Transport, Construction and Housing in his capacity as Chairman of the RID Committee of Experts, and Mr. Jochen Conrad as Secretary of the RID Committee of Experts. The talks given by the speakers covered the relationship between the dangerous goods provisions that apply internationally (UN Model Regulations and the mode-specific provisions of the ICAO TIs, the IMDG Code, RID, ADR and ADN), the work of OTIF, the purpose of the RID/ADR/ADN Joint Meeting and the RID Committee of Experts, and the new structure of RID.



There was a lively discussion on each of the talks, during which those attending the seminar pointed out, amongst other things, that despite harmonization, certain differences in Appendix II of the SMGS Agreement would have to be maintained. In Russia, for example, different construction requirements for tank wagons were essential because of the sometimes very low temperatures. The speakers were not calling these differences into question, but suggested that they be identified in Appendix II of the SMGS Agreement and perhaps submitted to the RID Committee of Experts.

According to Mr. Anzor Glonti of the OSZhD Committee, the harmonization work should be finished this year. Three meetings of experts and one Commission II session were to be held for this purpose. This ambitious work would be financed by a special payment of \$20,000 agreed at the XXIX<sup>th</sup> OSZhD Conference of Ministers held in Baku (7/8.6.2001). (Translation)

### **Working Party on the Transport of Dangerous Goods (WP.15, UN/ECE)**

*Geneva, 13-17 May 2002*

25 ADR States and 12 governmental and non-governmental organizations took part in this 72<sup>nd</sup> session with Mr. Franco (Portugal) as Chairman.

The Director of the Transport Division, Mr. J Capel Ferrer, in particular drew the Working Party's attention to the second phase of the reform of the United Nations initiated by the Secretary-General in relation to the Millennium Declaration and the development objectives of the United Nations for the Millennium. In this context, the UN/ECE secretariat had been led to make a self-assessment of its activities and programmes in order to measure them against the objectives in question while proposals concerning the updating of ECE's mandate, the re-focusing of its activities, identification of priorities, intergovernmental structure, redeployment of resources, etc. had already been submitted to the Commission at its annual session. He said that for the time being there had been no suggestion of doing away with or modifying the Inland Transport Committee, but that the proposals were aimed in particular at giving greater importance to policy dialogue (rather than technical discussion) and the implementation of standards or conventions (rather than their development or updating). These proposals would be discussed with the UN/ECE Member States in June, and the delegations

of the Working Party might wish to keep in touch with their permanent missions in this regard.

### **Corrections to ADR**

The Working Party made new corrections to the 2001 edition of ADR which also partly concern RID, and to the 2003 version, arising mainly from the RID/ADR Joint Meeting (see Bulletin 1/2002, p. 5).

### **Carriage of limited quantities exempt from the conditions of carriage**

The Working Party recognized that the present provisions of ADR were not wholly adapted to the logistical practices of large-scale retailing, particularly in the context of the supply of craftsmen, supermarkets, farmers or retailers.

The Working Party also noted that while problems arose for the most part in the context of domestic traffic, industry preferred a global, international, harmonized solution in the context of ADR to the various derogations negotiated nationally on a case-by-case basis.

Most delegations considered, however, that the exemptions requested by industry were not acceptable, since in the form in which they were proposed they would concern all sorts of products, including the most dangerous, and all sorts of situations unrelated to those of final distribution.

After exchanging views on the subject, the Working Party accepted an offer by CEFIC to organize an informal working group to draw up proposals for settling these problems.

### **Safety in road tunnels (continued)** (see Bulletin 4/2001)

(Recommendations of the Group of Experts on Safety in Road Tunnels)

The Working Party took note of measure 1.07 recommending the rationalization of requirements relating to the carriage of dangerous goods in tunnels. However, in order to follow up these recommendations, Governments would have to offer to prepare specific proposals for amendments to ADR, for example, the assignment of the current entries in the dangerous goods list to categories 1 to 5. The Working Party also noted that categories 1 to 5 corresponded to criteria established in accordance with the old classification of ADR and it would therefore be advisable possibly to

review these criteria in accordance with the restructured ADR.

Where quantitative risk analysis was concerned, the representative of Spain said that it was difficult to apply standard methods to all tunnels. She offered to supply statistics of accidents involving dangerous goods in order to compare them with those for other goods.

The Working Party noted that the recommendations did not concern road transport only and stressed that the carriage of dangerous goods by rail in tunnels presented the same risks, often on a large scale in view of the quantities carried. In the same type of tunnel, the restrictions on road transport should therefore also apply to rail traffic not only for safety reasons, but also to avoid distortions of competition between the two modes on similar journeys.

The Chairman said that reflection was needed on the danger of such goods in tunnels and that the report and conclusions of the OECD/PIARC group should be assessed in greater depth so as to follow up the recommendations of the group of experts, bearing in mind possible repercussions on the different aspects of transport policy in general.

In this context, it was also recalled that the interests of safety and security policies were sometimes at odds; speculation should also then be given to the extent to which the safety measures recommended might influence security (for example, divergence of quantitative risk analyses, identification of terrorist targets, etc.).

### **Security in the transport of dangerous goods**

The Working Party noted that the Inland Transport Committee had requested its subsidiary bodies to pinpoint the differences between the notions of “safety” and “security” and identify the specific questions they could study bearing in mind the work of other bodies.

The Working Party had pointed out that the provisions of ADR addressed principally the “safety” aspect, but that some of those provisions could serve the interests of “security” (personnel training, supervision of vehicles, etc.) or go against those interests (for example, the labelling of vehicles carrying explosives); conflicts of interest between the two concepts had already been the subject of lengthy discussion in the past.

The representative of the United Kingdom said that the European Commission had established a small working group to finalize a non-binding list of recommendations to be addressed to Member States of the European Union. These recommendations could be brought to the attention of the Working Party at its November session.

The representative of IRU expressed the hope that discussions on the subject would take place within the Working Party or the Joint Meeting in order to ensure a harmonized global approach for all ADR Contracting Parties and avoid a plethora of national or regional approaches.

The Chairman concluded by inviting delegations to reflect and to submit their proposals and initiatives to the Working Party at its November session.

### **Follow-up of the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD) (continued) (see Bulletin 4/2001)**

The Working Party noted that the Inland Transport Committee had decided to establish a group of experts on the CRTD which would meet twice in 2002 (10-12.6.2002 and 4-6.11.2002 during the session of WP.15). In the light of the group’s conclusions, the Inland Transport Committee would decide if the CRTD should be revised or whether separate conventions should be envisaged for each transport mode.

### **Programme of work**

The Working Party noted the information concerning the discussions of the Economic Commission for Europe at its annual session on the reorientation of programmes in connection with the strengthening of the organization and the Millennium Declaration.

It was pointed out in this regard that the Working Party’s role could not be reduced to that of drafting standards, since it was rather a question of establishing a harmonized statutory framework which would meet the major political safety concerns of the Governments of Member States and would also be part of a European transport policy aimed at the economic development of all Member States. These activities were further situated in a context of intensive cooperation with other international intergovernmental or non-governmental organizations and standardization bodies, both in the sphere of transport and in other spheres, including the environment, health and employment. The UN/ECE had a principal role to play since, in also acting as the

secretariat of ECOSOC's Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals, it coordinated a complex and efficient mechanism for intersectoral cooperation at the international level.

In addition to the benefits to the Governments of the UN/ECE Member States and others, whose domestic legislation was directly based on RID, ADR, ADN or the United Nations Recommendations, the activities of the Working Party and of the ECOSOC Committee of Experts had direct economic repercussions on the transport sector and the industrial world of chemicals, petroleum products, packagings, tanks and the construction of vehicles and vessels, of prime importance in the context of international trade, which should be taken into account in the development of a global partnership for development.

The Working Party welcomed the inclusion of an item on the interpretation of ADR in the agenda of the current session and requested the secretariat to consider the possibility of making available the interpretations of the paragraphs of ADR on which the Working Party had taken decisions on the web site of the Transport Division, primarily in a concern to avoid argument between inspectors and inspected.

(Translation)

## Technology

### **Advertisement for a technology/approval specialist in the OTIF Secretariat**

The Secretariat of the Intergovernmental Organisation for International Carriage by Rail (OTIF) has a vacancy for a technology/approvals specialist

The major revision of COTIF (Convention concerning International Carriage by Rail) finished in Vilnius in 1999 as part of the European railways reform process (COTIF 1999) extended the regulatory scope of COTIF to the technical sphere and to the approval of railway equipment. The aim is to achieve uniform Rules covering the approval of railway equipment, particularly railway rolling stock. COTIF 1999 is expected to enter into force during the next two years. Preparations must now be got underway so that the new Instruments can be used as soon as possible after COTIF 1999 enters into force. Preparations must be closely coordinated with

ongoing developments in European Community Law covering railways, particularly with regard to interoperability. The person being sought will be required to support these preparations competently and effectively.

Essentially, the post involves the following tasks:

- the post holder must supply and document the necessary know-how within the Central Office;
- he will monitor the work of organisations and authorities responsible for technical standardization;
- he will be responsible for the Secretariat of a pilot of the future OTIF Committee of Technical Experts, in respect of its tasks in accordance with the new Appendices F and G to COTIF 1999;
- the post holder must be capable of dealing with particular specific specialist tasks (analyses, surveys, evaluations);
- he will ensure that OTIF's Member States are kept informed and support Central Office publications by means of contributions covering his specialist area.

This newly created post has been approved for a provisional period of three years. After this period, the situation and the need for the post will have to be reassessed. The post is graded in accordance with a system comparable to the UN grading system, although OTIF is an independent organisation.

The post holder being sought must be educated to university level in a technical field. Experience in railway technology, particularly in the approval of railway rolling stock, would be an advantage. He must be a good administrator and communicator. Ability to speak and write English easily, as well as at least one of the other two working languages of OTIF (French or German) is essential.

Applications including the usual information and references must be sent to the **Central Office for International Carriage by Rail (OCTI), Gryphenhübeliweg 30, CH-3006 Bern**. The Director General of OCTI, Mr. H.R. Isliker, would be pleased to answer any questions or provide further information. More information on COTIF (COTIF 1980 currently in force and COTIF 1999 and its Appendices), as well as on OTIF itself, can be found on the Organisation's website at [www.otif.org](http://www.otif.org).

(Translation)

## Other Activities

### Meeting on the Strategic Orientation of OTIF

At its 97<sup>th</sup> session, the Administrative Committee approved the summary of conclusions of the Meeting on the Strategic Orientation of OTIF, which was held on 7 and 8 March 2002 in Berne. However, contrary to the announcement made to readers of the Bulletin, this report will not be published (see p. 19).  
(Translation)

### OTIF-UNIDROIT

#### Draft protocol on Matters specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment

##### Second Joint Meeting of the Committee of Governmental Experts

*Rome, 17-19 June 2002*

The meeting was organized by the UNIDROIT Secretariat together with the OTIF Secretariat at the UNIDROIT headquarters in Rome. This meeting was better attended than the first meeting in Berne (see Bulletin 1/2001), with delegates from 25 States, a representative of the European Commission, the Association of American Railroads (AAR) and UNIFE. This shows the increasing interest the community of states has in the Convention and the Railway Protocol. It should be mentioned though that this time, UIC, UIP and EUROFIMA were not represented by observers.

The meeting was chaired by Professor Inés Weinberg de Roca (Argentina), who had already been elected to perform this function at the first meeting in Berne. As German is an official language of OTIF, in addition to French and English, which will be official languages of both UNIDROIT and (after COTIF 1999 enters into force) OTIF, simultaneous interpretation was also provided in German. A range of delegations and a representative of the OTIF Secretariat made full use of the opportunity of expressing themselves in German.

In his welcoming speech, the representative of OTIF went over what had happened since the first meeting in Berne in March 2001:

- Report on the first Joint Meeting of Governmental Experts, together with documents and list of participants, Unidroit 2001 Study LXXIIIH – Doc 5; OCTI/JGR/3;
- Diplomatic Conference in Cape Town successfully concluded with the signing of the Convention on International Interests in Mobile Equipment and the Aircraft Protocol on 16.11.2001 (see Bulletin 4/2001);
- Meetings of the Rail Working Group (RWG) in November 2001 (see Bulletin 4/2001) and in May 2002, and various gatherings to publicize the basic ideas behind the Cape Town Convention (Risch 21.11.2001, Utrecht 29.11.2001, see Bulletin 4/2001);
- Meeting of a drafting group in February 2002, which was deliberately restricted in size: Report by the Chairman, Professor Karl Kreutzer (see Bulletin 1/2002, p. 10), see also the written preliminary remark, in draft OTIF/JGR4 (UNIDROIT 2002 Study LXXIIIH – Doc 6);
- First and, so far, only meeting of the Registry Task Force set up at the first Joint Meeting in Berne in March 2002: Chairman Peter Bloch (USA), Co-Chairman Fabio Croccolo (Italy) (see Bulletin 1/2002, p.10);
- Activities of the European Commission in respect of the railway register (kick-off meeting in Brussels, 10.6.2002);
- Interest of the EU, which had already attended the Diplomatic Conference in Cape Town, particularly in view of the EC Directive on legal competence and enforcement and the EC Directive on insolvency procedures; DG TREN is also now showing interest, even though their representative was unavailable at the last minute.

The following documents were available at the Joint Meeting of Governmental Experts:

- Letter of invitation of 15.4.2002, F 15-02/501.2002;
- Agenda OTIF/JGR5 of 15.4.2002 (attached to the letter of invitation of 15.4.2002);
- Draft Protocol on Matters specific to Railway Rolling Stock (to the Convention on International

Interests in Mobile Equipment) OTIF/JGR/4 (UNIDROIT 2002 Study LXXIIIH – Doc 6) of March 2002 (attached to the letter of invitation of 15.4.2002);

- Report on the first Joint Meeting of Governmental Experts held in Berne in March 2001, together with documents and list of participants (Unidroit 2001 Study LXXIIIH – Doc 5; OCTI/JGR/3 (referred to above)).

The Chairman of the Drafting Group (February 2002), Professor Karl Kreutzer, reported on its work, which is also presented in writing in the preliminary remark in the draft in document OTIF/JGR4.

The Chairman of the Registry Task Force (RTF), Peter Bloch (USA) gave an overview of the first and, so far, only meeting of this group (March 2002). The questionnaire drawn up at the request of RTF was handed out to the experts during the Joint Meeting of Governmental Experts with the request that they reply as soon as possible. The representative of OTIF referred to the draft "Registry Regulations" he had drawn up, in English only for the time being (19.4.2002), following the model of the Regulations for the aircraft register. RTF Members have not yet reacted to this draft.

As Chairman and coordinator of the Rail Working Group (RWG), H. Rosen gave an overview of the work of this group and set out the most important problems that still need to be resolved, i.e.:

- Exceptions for rolling stock used in "public service";
- Insolvency law and relief pending final determination on the basis of the Protocol;
- Identification and search criteria for the international register;
- Regional (transnational) rail networks and international register;
- Application to existing transactions and transitional period.

The rapporteur, Sir Roy Goode, gave a thorough report on the results of the Diplomatic Conference in Cape Town.

Following on, the text was then discussed Article by Article with the help of the working documents. In order that various questions could be clarified, small informal

working groups were set up outside the normal meeting time to draft proposals for text. This proved to be an excellent way of working. This way, it was possible in particular to resolve the "public service" problem and the questions surrounding insolvency law, which must nevertheless be thoroughly checked again at the next Joint Meeting of Governmental Experts.

Matters that come mostly under the RTF remit still remained open, particularly in respect of the identification and search criteria and the transnational (regional) register. The problems arising from the fact that the States that are members of UNIDROIT and those that are members of OTIF are very different were discussed, but by no means resolved.

Under the agenda item on "Further Work", the following programme was established, subject to credit approval by OTIF's Administrative Committee:

- End July 2002: report of the 2<sup>nd</sup> meeting in English and French (produced by UNIDROIT Secretariat),
- August 2002: official German translation of the Cape Town Convention (drafting conference involving Germany, Austria and Switzerland to agree text),
- September 2002: report of the 2<sup>nd</sup> meeting in German (produced by OTIF Secretariat),
- Not yet decided: Registry Task Force meeting (September in Washington?),
- 23-25 October 2002: small drafting group for the English and French texts on the basis of the results of the 2<sup>nd</sup> meeting,
- End October 2002: official German translation of the Aircraft Protocol (drafting conference involving Germany, Austria and Switzerland to agree the text),
- November/December 2002: German text of the Rail Protocol based on the work of the small drafting group and the official German translation of the Cape Town Convention and Aircraft Protocol,
- January 2003: invitation to the 3<sup>rd</sup> Joint Meeting of Governmental Experts,

- 5-13 May 2003 in Berne:  
3<sup>rd</sup> Joint Meeting of Governmental Experts; the Saturday  
(or if necessary the whole weekend) should be given over to working in a drafting committee.

The 3<sup>rd</sup> meeting is again to be jointly organized by the OTIF and UNIDROIT Secretariats, this time in Berne.

The particular significance of this meeting for the future of OTIF stems from the fact that at the 2<sup>nd</sup> Joint Meeting of Governmental Experts, practically all the participants had to concede that at present, OTIF is the only existing Governmental Organisation representing the railways. As far as OTIF is concerned, it is prepared fully to take on this task in accordance with the decisions of Vilnius. The Rail Protocol could be an important step in this direction.

(Translation)

## Co-operation with International Organizations and Associations

### European Communities (EC)

#### EU Study on railway vehicle identification and registration

*Brussels, 10 June 2002*

The kick-off meeting for the above-mentioned study was held under the chairmanship of Mr. Vinois (DG TREN). The following were also represented: UIC, CER, UIP, AEIF, UNIFE, the contract partners commissioned for the study (Colin Buchanan and Partners and Pegasus Transconsult Ltd.), and OTIF.

In his introduction, Mr. Vinois referred amongst other things to the timetable for completion of the study: the final report should be available on 10 February 2003. He talked about OTIF's role in connection with the eastern European States and OSZhD and emphasized the Commission's efforts towards expanding the EU's rail sector policy and COTIF in the direction of the Russian Federation (visit to Moscow in May by Commission Chairman Prodi, Commissioner Loyola de Palacio and Director General Lamoureux).

The representatives of the contracted companies gave a presentation on their project and methodology, and on the aims of the study. They had to concede though that

in the cost-benefit analysis, the data are relatively difficult to evaluate, so in the end, they would have to make a best guess.

The UIC representative presented the UIC's RMR study (Centralized Railway Rolling Stock Register), and in his capacity as a member of the UNIDROIT Railways Working Group, the OTIF representative presented the tasks and objectives of the international register of interests, on the basis of the Convention on international interests in mobile equipment, which was signed on 16 November 2001 in Cape Town.

Several participants, including the UIP and OTIF representatives, steered attention towards questions that could arise in connection with the protection of trade secrets and personal data protection on the basis of European law or the national law of different States. The study, in which an expert in European law will take part, is also to take these legal aspects into account. It is just in respect of documentation for rolling stock maintenance work that such questions can arise, especially when such work is to be carried out on a performance related basis. On the other hand, data on the operating performance of rolling stock in connection with safety problems are of major significance.

An appropriate infrastructure database, together with the register of rolling stock, is to provide the required transparency in respect of open access and the single market.

(Translation)

### Organization for Railways Cooperation (OSZhD)

#### XXX<sup>th</sup> OSZhD Conference of Ministers

*Vilnius, 13/14 June 2002*

The Director General was invited to be a guest at the annual OSZhD Conference of Ministers which was held in Vilnius (after the meeting in Baku in 2001 - see Bulletin 2/2001). This meeting was of course particularly symbolic for the representative of OTIF, Vilnius symbolizing for OTIF the gateway to the future—which to a certain extent can also now be said of OSZhD.

It should be noted that on this occasion, as in 1999, the Lithuanians were attentive and generous hosts, and there was similar cooperation between the Ministry of Transport and the railways (LG). On both occasions, the

railways' invitation to the historic Trakai Castle was a highpoint.

From OTIF's point of view, the decisions on the institutional renewal of OSZhD are of particular significance; this time, they were mature enough and enjoyed such a degree of mutual agreement that the meeting was able to adopt them almost without discussion. They are evidently the expression of OSZhD's will to establish itself as the authoritative, fully equivalent intergovernmental organisation representing the interests of the railways in Eurasia.

The assumption is therefore of an OSZhD that believes in its future and that, with the two heavyweight influences of Russia and China within its sphere of influence, wants to play the leading role.

It seems that those OTIF States that are Members of both organisations are also convinced of this, irrespective of whether they are EU candidates or not. In so far as transport towards Russia/Asia is significant or even vital for them, they have to live with the reality of SMGS/SMPS – particularly for freight transport.

This applies precisely to all the Baltic States, where rail freight transiting to and from Russia and Belarus is of central importance and is handled on the basis of SMGS, which (at an appropriate IT standard) works.

But there have also been concrete successes in respect of mutual rapprochement and harmonization between the COTIF and OSZhD laws of carriage. OSZhD's intended programme for aligning the dangerous goods section of SMGS with the new, restructured RID (as defined with strong support from the RID Committee of Experts and the Central Office's specialist) was fully endorsed at the XXX<sup>th</sup> OSZhD Conference of Ministers.

The Ukraine is pursuing a policy aimed strongly at rapprochement with the EU. The revived interest in OTIF should probably also be seen in this context. It was possible to make direct contact again with people in the Ukrainian State Administration who are responsible for the accession procedure and who want to commit themselves to it.

In contrast, it is still open to question how far and whether the Russian Federation (and its Railways Ministry) is interested in acceding to COTIF. This must be given careful consideration, particularly in the light of the EU's planned accession to COTIF 1999 and the interests of the EU that lay behind this. However, the relationship with Russia, and Russia's role in connection with the future position of OTIF and OSZhD, are

without doubt key questions for OTIF, which will have to be discussed purposefully in the near future, particularly with a view to the significance and specific management of the "OTIF/OSZhD Common Position". The IRCA Congress to be held in 2005 in Moscow could be an interesting potential platform. There was very promising contact with representatives of IRCA in Vilnius (also on the question of whether OTIF does indeed have an interest in becoming a member of IRCA). In the context of a first step towards rapprochement, it was agreed that OTIF would be on a panel looking at the subject of "technical harmonization/mutually recognized approval" in the framework of an IRCA seminar to be held in 2003 in Ljubljana.

The opportunity arose at the end of the XXX<sup>th</sup> OSZhD Conference of Ministers to take stock with Mr. Szozda – the re-elected Chairman of the OSZhD Committee - of the Common Position from the point of view of both organisations and with regard to next steps. Mr. Szozda confirmed the advanced status of the document, so that it is realistic to assume that it can be fully adopted in 2003 at the XXXI<sup>st</sup> OSZhD Conference of Ministers to be held in Tbilisi (Georgia). Apparently, an elaborate and formal run-up, along with consultation of the Member States, is essential in OSZhD. In the meantime, contact for the necessary exchange of information should be maintained at head of Secretariat level in the two organisations (as already well established). The idea of drawing up a three year plan for specific activities, starting with the Common Position, was well received by Mr. Szozda.

(Translation)

## **International Rail Transport Committee (CIT)**

### **General Assembly 2002 and "100 years of CIT" jubilee**

*Lucerne, 30/31 May 2002*

The celebrations on the occasion of the centenary of CIT began with CIT's 2002 General Assembly. As is usual, the Assembly dealt with statutory matters such as approving the annual report, the annual statement of accounts and the budget, and elections to the Board. Also on the agenda were matters mainly surrounding the reorganisation of CIT and reports on the implementation of COTIF and liberalization and cooperation in the context of COTIF.

Liberalization in the rail sector requires a fundamental change in the legal organization of rail transport. This will be marked in future by more leeway in the preparation of contracts, new legal relations and new transport models. In addition to the law of carriage, more consideration will have to be given to competition law, tax law and customs law. This change in the legal organization of rail transport also has consequences for the work of CIT. However, the 2002 General Assembly did not make any final decisions. The date for the next General Assembly was set at 22 May 2003.

The ceremony marking 100 Years of CIT took place on the afternoon of 30 May. Amongst others, Mr. Michel Aymeric, Chairman of the OTIF Administrative Committee, gave the Organization a message of greetings in which he referred to the close links that exist between OCTI and CIT. The ceremony was followed by an aperitif and celebration banquet held on board an historic paddle steamer. The wonderful weather and culinary pleasures afforded the opportunity not just for a sociable get-together, but also for a lot of working discussions.

To round off the festivities, a symposium was held on Friday, 31 May on "Legal interoperability in a liberalized environment". This made it possible to draw attention again to the importance of the speedy entry into force of COTIF 1999 and to emphasize the significance of timely preparation for implementing the decisions of Vilnius.

Panel 1 at the symposium was led by Mrs. I. Garcin, senior lecturer at the University of Lyons and Director of IDIT. The Panel focussed on "Deregulation and security in the law". Mention was repeatedly made in this respect of the increasing complexity of legal relations and it was emphasized that deregulation would not necessarily mean fewer provisions.

Panel 2 looked at the new international law of rail carriage. The discussion was led by Mr. J. Capel-Ferrer (Director of the UN ECE Transport Division, Geneva). Mr. M. Burgmann, former Director General of the Central Office for International Carriage by Rail, gave the introductory talk. Since 1 April 2000, he has been the Head of the subdivision dealing with road transport in the German Federal Ministry of Transport, Construction and Housing in Bonn. The Director General then took the opportunity of highlighting the current problems and challenges linked with the implementation of COTIF 1999. If there were then criticism – to a certain extent justifiable – that it took a very long time to reach the decisions of Vilnius, it would be even more incomprehensible if everything

were not now done to ratify them in the individual OTIF Member States. The entry into force of COTIF 1999 will also mean that the conditions for the EC's accession to COTIF 1999 will have been put in place. OTIF welcomes the fact that the EC has included its intention to accede to COTIF in its second rail package, and has already begun making the necessary preparations on its side. OTIF is also of the view that it would be logical within the meaning of such an accession for the European Commission actively to encourage the EU Member States to proceed quickly with ratifying the Vilnius Protocol, and to refrain from entering a general reservation at the outset in respect of Appendices F and G to COTIF 1999, which weakens their importance as a forward-looking, comprehensive set of Instruments covering the widest possible geographical area. The expansive point of view is lent particular weight not least by the EC being a member of OTIF, which immediately points up the question of the future relationship between OTIF and OSZhD, which should be considered from a wide-ranging perspective.

Panel 3 dealt with new problems surrounding liability and insurance. Mrs. R. Elzinga, Chief Lawyer of Dutch Railway Holdings, Chairman of the UIC Legal Group and guest professor at Erasmus University in Rotterdam, led the discussion. While in his introductory talk Mr. R. Freise referred to the need for clear liability relations in order to arrive at defensible insurance solutions, the discussion on the podium mainly underlined the difficult insurance situation since 11 September 2001.

Mr. J. Compère, a member of the CIT Board, presented the conclusions of the symposium. His skilful summary brought clearly to light a whole range of important open questions.

Overall, this celebratory event, which was attended by other representatives of the Central Office in addition to the Director General, was a great success, thanks to careful and perfect preparation, and to the ideal working conditions.

(Translation)

## Case Law

### Cour d'Appel de Lyon

#### Ruling of 15 September 2000

#### Obvious misconduct on the part of the railway



**in providing suitable means for ensuring the safekeeping of goods with which it is entrusted, demonstrated by the fact that access to the marshalling yard by unauthorized persons was not prevented (metal gates not closed, wire fencing partly missing, partly destroyed, no surveillance system) constitutes a clear case of gross negligence. Gross negligence having thus been proved, the railway is not entitled to limit its liability and is required to compensate the entire loss.<sup>1</sup>**

Cf. Article 103 of the Commerce Code

### Facts, claims and grounds of the parties

On 1 March 1994, the company Hermès entrusted the company Vallier Vicher Frères with the carriage of 39 packages containing items made of silk weighing 828 kilogrammes which were forwarded as a collective consignment in a sealed wagon from SNCF's Lyon Vaise station to its own warehouses at Paris Bercy station;

When it arrived at the destination at 6 a.m. the next morning, it was noted that the seals on one of the doors of the wagon had been broken and that some of the goods had been stolen, including 14 packages belonging to Hermès;

It was against this background that in a notice dated 27 October 1994, both Hermès and its insurers, P.F.A., G.A.N. and Le Continent, subrogated to all rights of the former, as well as practice D. and agency Q., summoned the transport company Vallier Vicher, its insurers Allianz via Assurances and French railways (SNCF) to appear before the Lyons Commercial Court to be held jointly and severally liable to pay the sum of FF. 440,604.-, the value of the loss, as well as FF. 20,000.- in accordance with Article 700 of the new Code of civil procedure;

In accordance with a judgement dated 2 May 1994, Vallier Vichier was placed under a legal procedure (*redressement judiciaire*) whereby, because it could not pay its debts, it was able to obtain more time by preparing a transfer plan, which it submitted in favour of the new Vallier Vicher company, and which the court adopted on 26 October 1994, with an effective date of 1 November 1994;

In another transport operation carried out on 19 December 1994 under the same conditions as the previous one, the disappearance of 49 packages belonging to Hermès was noted upon arrival at Paris Bercy station;

Thus in new summonses issued on 19 December 1995, Hermès and its insurers ordered Vallier Vicher and ... its receiver, the new Vallier Vicher company, Allianz via Assurances and SNCF to be held jointly and severally liable to pay the sum of FF. 1,144,584.20;

Lastly, in a further summons dated 10 October 1996, the applicants summonsed ..., the new Vallier Vacher company's liquidator by proxy;

Having consolidated these actions, the Court in its ruling of 9 February 1998,

...

- ruled that Vallier Vicher Frères and New Vallier Vicher had indeed acted as forwarding agent and therefore declared that Hermès' claims against them and against SNCF were justified, but only in respect of the first case of loss;
- ordered the latter to pay Hermès the sum of FF. 44,550.- in application of the limitation of liability clauses, in the absence of gross negligence having been otherwise demonstrated, the said sum to include interest at the legal rate to run from 27 October 1994;
- dismissed Hermès' claim for compensation for the second loss, as the amount of the loss had not been determined;

Hermès, P.F.A., GAN, le Continent, practice D. and agency Q. appealed against this decision and under the terms of their summary statement of claims notified on 9 March 2000, requested that they be awarded the entire amount of their summonses seeking payment from the respondents, except Allianz via Assurances, against whom they dropped their appeal, of the principal sums of FF. 484,664.40 in respect of the first loss, and FF. 1,144,584.20 in respect of the second, including interest at the legal rate accrued since their summonses and capitalized over whole years, ...;

SNCF EPIC<sup>2</sup>, the cross-appellant, deposited a summary statement of claims on 4 April 2000, positing

<sup>1</sup> Article 44 of the CIM UR contains a comparable provision.

<sup>2</sup> Etablissement Public à caractère Industriel et Commercial – (Public Enterprise of an Industrial and Commercial nature)

inadmissibility of the claims made both by Hermès' insurers and by Hermès itself on the grounds that they did not have the right to bring an action in the absence of proof that Vallier Vicher acted as the forwarding agent, claiming that it was involved merely as the transit agent with no control over the choice of the means of transport, and in any case positing preclusion of the action in accordance with Article 105 of the Commerce Code; secondarily, SNCF considered the action to be unfounded as there was no proof of the alleged loss and still more secondarily, disputing gross negligence on its part, SNCF invoked the benefit of the limitation of liability clauses;

...

**Upon which, the Court,**

...

**On the admissibility of the claims made against SNCF**

**(a) concerning the transport companies' role as forwarding agent**

Whereas to be admissible to bring an action against SNCF on the basis of Article 101 of the Commerce Code, the applicants must prove that both the Vallier Vicher companies were involved in the operation as forwarding agents (*commissionnaire de transport*);

Whereas SNCF disputes that they acted as forwarding agents, claiming that as they had neither control over the lines and means of transport nor the free choice of carrier, they were acting merely as transit agents (*transitaire*), mandated by Hermès to collect the goods from the subcontractors and carry out the rail consignment formalities;

But whereas the designation on the two transport contracts of Vallier Vicher as consignor and consignee of the goods at Paris Bercy station demonstrates that it was not charged merely with acting as the handler, but with acting as the agent responsible for the carrier's collecting and freighting operations, the monopoly in rail transport not being of such character as to deprive it of free choice as regards the carrier, particularly by having the choice of a road carrier;

The Court is correct in having granted the admissibility of the direct action brought by Hermès against SNCF in its capacity as Vallier Vicher's substitute.

**(b) concerning the subrogation of the insurers**

Whereas to reject the action brought by Hermès' insurers, the Court considered that in the absence of a date and locality the subrogation documents they produced were invalid;

But whereas as soon as it is signed by the insured, who is the sole beneficiary thereof, a subrogation receipt constitutes sufficient proof of the subrogation of the insurers to its rights in conformity with Article L. 121-12 of the Insurance Code;

That in any event, the production in an appeal case of cheques drawn on the Société Générale, addressed by the companies summonsed to their policy holder, amounting to FF. 474,664.40 in October 1994 for the first loss and to FF. 600,000.- plus FF. 544,584.20 in May and June 1995 for the second, attesting payment in effect of the damages they were seeking to recover, means the disputes raised on this count concerning the validity of the receipts produced are of no value;

That they are therefore justified in having the ruling reversed in so far as it declared them unable to bring an action in default of the power to act;

**(c) concerning the plea of preclusion**

Whereas since SNCF neither contested nor objected to the express reservations entered in the consignment notes with regard to the missing items noted upon arrival and that SNCF even expressly recognized that these reservations were well-founded by having the wagons checked upon arrival and by reporting theft to the police, the claim of inadmissibility SNCF raises against the claimants for non-respect of the formalities of Article 108 of the Code is unfounded;

**With regard to the action being well-founded****(a) concerning the carrier's liability and the extent thereof**

Whereas in accordance with Article 103 of the Commerce Code, SNCF is liable by law for losses occurring during carriage by rail that it has performed, the reality of which is established by the reservations entered in the consignment note by the consignee;

Whereas to be justified in obtaining full compensation for the loss, the plaintiffs must provide proof of gross negligence on the part of SNCF in carrying out its contract;

Whereas in this respect the report Hermès had drawn up on 16 February 1995 and which the President of the Lyons Commercial Court, charged by the former to examine the case in a simplified procedure (*saisi en référé*), considered sufficiently conclusive to reject the request to nominate an expert Hermès presented to the Court to establish the conditions under which the goods were guarded once SNCF had taken them, demonstrates that the marshalling yard at Lyon Vaise, within the perimeters of which the departing wagons were parked, is accessible from rue Mouillard and at the intersection of this road with rue Saint-Cyr through unclosed metal gates, that in several places, the wire fencing surrounding the premises is either missing or partly destroyed and that the premises have no surveillance system, such that access to the platforms is completely open and can even be gained using a vehicle;

That these observations, which SNCF has not denied, demonstrate obvious misconduct on its part with regard to providing suitable means for ensuring the safekeeping of goods with which it is entrusted, which constitutes gross negligence, which is even more serious since SNCF does not give proof of having made even minimal arrangements to avoid repetition of the thefts between the first and second incidents;

That this fault does not allow SNCF to limit its liability as provided for in the transport contract, and it is required to compensate the plaintiffs for the entire loss resulting from the thefts;

**(b) concerning the value of the loss**

Whereas it is shown by the consignment notes prepared by the transport company Vallier Vicher that it took over from the consignor, "Sport soie", 39 packages weighing 828 kilogrammes on 1 March 1995 and 153 packages weighing a total of 1,672 kilogrammes on 19 December;

Whereas the reservations entered on these same consignment notes upon arrival and confirmed by the wagon check statements prepared by SNCF refer to 14 missing packages for the first transport operation, representing 297 kilogrammes, and to 49 missing packages for the second transport operation, representing 535 kilogrammes;

Whereas, under the terms of the transport contract of 19 December the total weight of the goods declared, which were the subject of the consolidated consignment forwarded by Vallier Vicher, i.e. 11,000 kilogrammes, was less than the weight of the goods documented upon arrival, SNCF, although under the terms of the general conditions of the contract, the guarantor of the mass declared by the consignor, could not use this underestimate of the load handed over by the forwarding agent to dispute its guarantee since on the one hand it expressly recognized that some of the consignment was missing, and the nature of the stolen packages, and since on the other, it was up to SNCF to weigh the consignment upon departure, knowing that the declared mass of 11,000 kilogrammes was obviously approximate;

Whereas it follows from this that if the forwarding agent made a false declaration, underestimating the load actually handed over, this fault was covered by that of SNCF who, required in its capacity as depositary to hand over the entire object with which it was entrusted, should have checked the actual state of the load handed over at the time of departure;

Whereas since the consignor's incorrect declaration would not be sufficient reason to exonerate the carrier from all responsibility beyond that for the load declared, even though he recognized the reality and exact state of the deficiencies upon arrival;

Whereas, consequently, it is appropriate to allow all the claims for compensation submitted by the plaintiffs against SNCF.

**On these grounds,**

Reverses the judgement made and, coming to a new decision,

...

Declares the claims entered by the appellants against SNCF to be admissible and well-founded.

Consequently orders SNCF to pay the principal sums of FF. 484,664.40 and FF. 1,144,584.20 plus interest at the legal rate to run from the time of their introductory filing of the action and capitalized from the time of their reasons for appeal of 9 June 1999;

...

[Related decisions]

(Direct communication)  
(Translation)

### Miscellaneous Information

#### **International Liaison Group of Government Railway Inspectors (ILGGRI)**

*Lisbon, 23/24 May 2002*

ILGGRI's second meeting this year was held in Lisbon at the same time as the 97<sup>th</sup> meeting of OTIF's Administrative Committee, which is why the Central Office was not represented this time. However, OTIF was involved in the preparations for the meeting and is affected by the outcome – taking as a starting point tasks that it took on at ILGGRI meeting 1/02 in Amsterdam (see Bulletin 1/2002, p. 13).

The Central Office had accordingly initiated a survey looking at sovereign tasks in railway inspection, and the definition and organisation of inspection tasks in individual states. The results of the survey were able to be reported in Lisbon, where it was agreed that further work would be done on this subject so that it could be returned to at a later stage. In the meantime, particular attention will need to be given to monitoring the further development of the 2<sup>nd</sup> rail package in the EU, particularly discussions on the planned Safety Directive. For its part, the Central Office plans to amalgamate the

results of the survey with the outcome of its efforts to date towards a meaningful picture of the institutional prerequisites for the transposition of the new Appendices F and G to COTIF 1999. The longer term aim of this is to obtain a systematic overview for the whole area covered by the Member States of OTIF.

In addition to this, the Central Office had also started a survey on holding a joint RID Committee of Experts/ILGGRI meeting on the subject of risk evaluation and ideas for measures in connection with the safety of transport operations involving dangerous goods. It was evident in Lisbon that there is a great deal of interest in this. The conditions are therefore in place for starting the detailed planning and to send out firm invitations for a meeting to be held in Berne on 23/24 November 2002.

(Translation)

#### **Association of German Transport Undertakings (VDV)**

*Berlin, 10/11 April 2002*

The VDV and the VDV Academy organized a seminar on the subject of "International Freight Transport – an Opportunity for the Railways", as regional railways too are becoming increasingly involved in international rail freight transport.

The first day of the seminar was used to consider more closely the framework of conditions that apply to international rail freight transport at present, and new international railway law, including so-called wagon law. Representatives of both international State and non-State Organizations, including a representative of OTIF (Mr. Mutz), who spoke on the new wagon law and its effects on the bringing into service and use of freight wagons, gave talks, as well as representatives of the Federal Ministry of Transport and Federal Ministry of Finance.

The second day was given over to short talks by representatives of undertakings on the questions of which obstacles have to be overcome in international rail freight transport and what potential there might be for improving international cooperation on the part of the railways.

The very well attended seminar, with about 80 participants, was conceived as an occasion both for speech-making and for discussion, and it concluded with

a discussion forum. Mr. Manfred Montada, former VDV freight transport manager, led the seminar

### French Private Wagon Association (AFWP)

*Paris, 6 June 2002*

The General Assembly was followed by a seminar on "The European Union's rail freight policy: the practical consequences for operations and equipment". Mr. G. Mutz from the OTIF Secretariat took part in the seminar.

The representative of DG TREN, Mr. Vinois, pointed out that the European Commission accords the UIP and private wagon owners generally a substantial role in the context of the work on interoperability, especially in the following areas:

- Quality
- Vehicle identification
- RMMS (market monitoring)
- Vehicle registration and
- Noise.

Also, the European Commission considers the CUV UR to be a suitable legal instrument in the contract for use area. In this respect, Mr. Vinois based himself on the principle of subsidiarity in the EU. But from the competition law point of view, the equal treatment of all rail wagons as a means of transport is of great interest to the European Commission.

Mr. Vinois also emphasized that the Commission accorded particular significance to the so-called "network statement" in accordance with Article 3 of Directive 2001/14, since successful transposition of this Directive will depend on it.

In the discussion, the different working methods of the European Commission (Community law) and OTIF (intergovernmental legislation) in the technical field and OTIF's planned role in the expansion eastwards (OSZhD) were raised. In principle, the Commission is interested in incorporating Russia into the COTIF area (visit to Moscow in May 2002 by Commission Chairman Prodi, Commissioner Loyola de Palacio and Director General Lamoureux).

Mr. Raoul (Director of AEIF) gave a presentation on how this Institution works. It has more than 10 permanent experts available. It has three working groups

under its wing (coordination, sub-systems and cross-cutting problems) and two editorial groups (noise and maintenance). Mr. Raoul also mentioned that the OTIF Secretariat was one of the significant partners in his work.

Mr. Raoul believes the first group of TSIs (wagons, noise, traffic management systems, freight telecommunications and freight operations) could be ready by 2004 and the second group of TSIs (infrastructure, energy, power sources, passenger informatics and passenger operations) by the middle of 2005.

Mr. Rolin (Director of "Transports terrestres", French Ministry of Infrastructure, Transport and Housing) pointed out that in France, the Commission's so-called first railways package is to be transposed into national law by means of regulations by 2003. With regard to the ratification of COTIF though, he was not able to specify a date.

(Translation)

## Book Reviews

**Bidinger, Helmuth**, *Personenbeförderungsrecht* (Law on the Carriage of Passengers), commentary on the Carriage of Passengers Act and other relevant provisions, 2<sup>nd</sup> completely revised edition into which supplements can be inserted, continued by **Rita Bidinger**, ISBN 3503008195, supplement number 1/02, as at February 2002, Erich Schmidt Verlag, Berlin-Bielefeld-Munich.

The commentary on the law on the carriage of passengers, the development of which has been followed under this heading for years, has been brought up to date again in supplement number 1/02, particularly in relation to European Communities (EC) legislation and the implementation of EC law in Germany.

Apart from adapting the German Carriage of Passengers Act to the introduction of the Euro, mention should be made of the new wording of § 28 of the Carriage of Passengers Act. The conditions under which there is a requirement to draw up building plans and submit them to the competent body (Planfeststellung) or, in certain cases, obtain planning approval, have been amended. This implements several Council Directives concerning environmental protection, notably Directive 97/11/EC amending Directive 85/357/EEC on the assessment of

the effects of certain public and private projects on the environment, and Directive 96/61/EC concerning integrated pollution prevention and control.

The amendments made are reflected both in the commentary on the Act and in the parts attached, in which the relevant provisions are reproduced.

The book produced in 1961, the 2<sup>nd</sup> loose-leaf 1971 edition of which is continuously adapted to developments in the law, still fulfils its objective of "ensuring practice-oriented and sound commentary on the law on the carriage of passengers".

(Translation)

**Stolzlechner Harald, (Editors)**, *Recht der Verkehrsgewerbe* (Transport Industry Law) Springer-Verlag Vienna, New York, 2002 ISBN 3-211-83729-9, ISSN 1434-9051, XXIX, 271 Pages

At present, transport industry law is in a period of flux. The lines along which this change is developing can be characterized by the words deregulation, liberalization, privatization and the formation of relationships ensuring fair competition. The impetus for most of these changes in the law comes from European law. A functioning transport system is vitally important for the internal market. In recent years therefore, transport policy has become one of the main areas of European policy and lawmaking.

Developments in the law continue incessantly, but in Austria, a certain stage has now been reached in the transformation of transport industry law. The editor was therefore of the view that it was time for the moment to take stock and to document the current position in respect of this reshaping of the law.

This book attempts to present the legal position in Austria, taking into account the basic constitutional principles there, as well as European and international law. The literature and case law are considered accordingly.

In total, this anthology includes nine contributions covering:

1. Transport industry law – an area of public commercial law in flux. Here, the editor attempts to set out the position in this branch of law
2. Road passenger transport
3. Road freight transport

4. Coach companies
5. Law covering railway undertakings and the rail transport market
6. Aviation undertakings
7. Inland navigation undertakings
8. Transport of dangerous goods
9. Law covering transport infrastructure.

The authors of the individual contributions are all well-known specialists in their branch of law, some of whom work at the Austrian Federal Ministry of Transport, Innovation and Technology, dealing with the application of the law and in lawmaking, and some of whom are from academic circles. The author of both the contributions dealing with passenger and freight transport by road is the general manager of the Transport Safety Committee. Two of the authors, Dr. Wolfgang Catharin – editor of the Chapter on "Law covering railway undertakings and the rail transport market" – and Dr. Gustav Kafka – editor of the Chapter on "Transport of Dangerous Goods" – are officers in the above-mentioned Ministry and have been closely connected with OTIF for many years. The authors ensure that the commentary is of a high quality.

A list of abbreviations and a subject index make the book easier to use. The anthology is intended as a reference work for the practice of transport law, particularly for transport undertakings, lawyers, State institutions, bodies representing interests and any other institutions with an interest in transport industry law, and it is heartily recommended. The book can also be profitably used as an aid in studying public commercial law.

(Translation)

### **Publications on transport law and associated branches of law, and on technical developments in the rail sector**

*Bulletin des transports et de la logistique*, Paris, n° 2941/2002, p. 350/351 – Avaries occultes. Comment réagir ? (M. Tilche)

*Idem*, n° 2944/2002, p. 397 – Contrat de transport. Quand le destinataire opère seul (M. Tilche)

*DVZ - Deutsche Verkehrszeitung*, Hamburg, Nr. 51/2002, S. 9 – Gefahr durch Zug. Die Haftung eines Privatwagenhalters bei Betriebsunfällen im Eisenbahnverkehr (G. Meisch)

*Idem*, Nr. 63 /2002, S. 16 – Auch für den Non Vessel Operation Common Carrier (NVO) gilt: Wer das Konnossement ausstellt, haftet

*Idem*, Nr. 71/2002, S. 14 – Haftung ja, aber bitte in Grenzen. Risikomanagement: Vor dem Abschluss der Police muss der Haftungsumfang sinnvoll bewertet werden (R. Neuschütt)

*European Transport Law*, Antwerpen, No. 1/2002, p. 3-35 – Responsibility for Fire in the Carriage of Goods by Sea (W. Tetley)

*Journal pour le transport international*, Bâle, n° 20/2002, p. 16/17 – Qui paiera la note ? Un nouveau projet de convention pour les transports multimodaux de porte à porte (T. Young)

*Transportrecht*, Hamburg, Nr. 3/2002, S. 89-92 – Die Gesetzgebung zum elektronischen Geschäftsverkehr und die Konsequenzen für das Transportrecht (I. Geis); S. 93-97 – Zum Begriff des Güterfolgeschadens und zur Reichweite des Interessebegriffs von Ziff. 11 der Mindestbedingungen zur Speditionsversicherung SpV (J.H. Weber)

*Idem*, Nr. 4/2002, S. 133-136 – Gehilfen des CMR-Frachtführers und Art. 31 CMR (I. Koller)

*Idem*, Nr. 5/2002, S. 182-192 – Das fehlende Konnossement in der Massengutfracht des Seehandels und die Haftungsgefahren für den Reeder (K. Klemme)