



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

3/2002

110th Year • July - September

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Annual subscription to the Bulletin : SFr. 48,-
Orders are to be sent to :

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3/2002

110th year – July - September

Bulletin of International Carriage by Rail

Quarterly publication of the Central Office
for international Carriage by Rail, Berne

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Central Office Communications

Acceptance of the 1999 Protocol

Netherlands

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), the Netherlands deposited on 11 September 2002 their instrument of acceptance of the 1999 Protocol with the Provisional Depository¹. The Netherlands are the ninth State that has ratified or accepted the 1999 Protocol.

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).

¹ 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.

List of lines CIV (published on 1 May 1985)

Circular letter from the Central Office Nr. 52 of 15 August 2002

Chapters “Ireland” and “United Kingdom”

Because of the removal of the ferry-boat line Rosslare Harbour – Pembroke and various modifications made in the chapters Ireland and United Kingdom, the chapters have been re-issued.

OTIF Organs

RID Committee of Experts working group on tank and vehicle technology

Bonn, 5/6 September 2002

see “Dangerous Goods”

Dangerous Goods

Sub-Committee of Experts on the Transport of Dangerous Goods (UN/ECE)

Geneva, 1-10 July 2002

Attendance

Experts and observers from 26 countries and 7 international governmental organizations and 24 international non-governmental organizations took part. Several ad hoc working groups met either in parallel with the session or outside the normal meeting hours.

The main topics dealt with (see also Bulletin 3/2001 and 4/2001) and decisions taken were as follows:

Additional provisions for the transport of gases

The ad hoc working group adopted a number of texts mainly concerning the approval and periodic inspection and testing of pressure receptacles and the related standards. These texts will make the international carriage of such receptacles easier. The representative of the United States reiterated his Government's willingness to accept receptacles approved in other countries. He nevertheless deplored the attitude of the European Union regarding the mutual recognition of approvals insofar as the European transportable pressure equipment, or "TPED" Directive made the filling, use and periodic inspection of UN certified receptacles subject to the authority of recognized European bodies. He therefore hoped that a political solution could be found as rapidly as possible so as to eliminate these technical and administrative barriers to international trade.

Fireworks

To the great regret of the representative of the Netherlands, the ad hoc working group did not reach any consensus on conclusions for the default classification of fireworks.

Several delegations stated that they were not in favour of a solution of that nature since they already applied a default system in their countries which they would not agree to review in order to bring it into line with the United Nations system unless the latter was a complete and reliable system. They considered that since that was not the case, more consultations with manufacturers and

more test results were necessary in order to arrive at definitive conclusions.

In view of the fact that it would not be possible to discuss these matters in detail at the next session, the Chairman said that the Sub-Committee should either postpone the work on default classification until the next biennial period or take an immediate decision on the default classification of rockets and Roman candles.

This alternative was put to the vote; in a first round of voting the Sub-Committee pronounced itself in favour of concluding the work during the current period. However, following the Chairman's request for an immediate decision on the default classification of rockets and Roman candles, the expert from the United States, supported by another two experts, asked that another vote should be taken, in which it was decided to defer the question of elaborating a system of default classification until the next biennium.

Discussion of the administrative requirements suggested by Germany (approval by the competent authority, transport documentation) was also deferred. This is one of those deferred items that seem never actually to be reached.

Ammonium nitrate emulsions

The Sub-Committee adopted the ad hoc working group's proposals on classification and carriage in tanks. These provisions were also extended to cover explosives, very insensitive, classified as 1.5D.

Transport of infectious substances in bulk

The Sub-Committee did not take a final decision with regard either to infectious substances affecting humans (UN No. 2814) and infectious substances affecting animals (UN No. 2900), or to clinical wastes (UN No. 3291). The meeting considered that the problem of the carcasses of sick animals, such as that which the United Kingdom had had to deal with in the epidemic of mad cow disease, was for the competent authorities and, if necessary, the health authorities of the country in question, and that the Model Regulations concerned not only international transport operations but served also as a model for national regulations and should therefore take this type of situation into account.

Transport of solids in bulk in containers

The provisions proposed by the working group which the Sub-Committee adopted created some problems in

the context of RID/ADR, where such provisions already exist and are less stringent with regard to the approval of containers and referring in the transport document to the competent authority which has issued the approval.

Transport of solids in portable tanks

An ad hoc working group met to discuss this topic and the matter was discussed as to how to carry molten solids at temperatures below or above 100°C and those loaded in the molten state but carried as solids after they have cooled, as well as the matter of the list of authorized substances in comparison with the IMDG Code, RID/ADR and the United States' regulations. The expert from the United States will submit a revised proposal for the next session.

Packaging puncture test

This new test proposed by the representative of Spain to improve the safety of some packagings, particularly those intended for the carriage of liquids, could perhaps be included in the programme of work for the next biennial period, in so far as it could be justified by statistical data, and taking account of the fact that the matter concerned accidental occurrences during carriage or handling.

Packaging vibration test

Although the Sub-Committee had decided on the principle of introducing such a test, it rejected in a tied vote the United States' proposal, which was redrafted in an ad hoc working group. The debate centred mainly around the replacement of this mandatory test on the design type, as is the case for the other tests, with a design type capability test to satisfy the vibration test, since the test was not part of the certification process and manufacturers should assume responsibility for ensuring that their packagings satisfy this test. In these circumstances (previous decision and tied vote), the expert from the United States said he would prepare a new proposal for the next session.

Transport of infectious substances

This Class (6.2) was completely revised in an informal working group (Paris, 11-13 March 2002) with the active cooperation of the WHO and the Secretariat of the Basel Convention. Two ad hoc working groups were held to finalize the text, which the Sub-Committee adopted.

Genetically modified micro-organisms and genetically modified organisms

The United States' proposal to add appropriate provisions to Class 9 (Miscellaneous dangerous substances and articles) was adopted. The systematic exemption of all genetically modified organisms intended for food or feed was not accepted. However, the reference to competent authority authorization of the transit countries as well as those of the countries of origin and destination was reinserted.

Harmonization with the IAEA Regulations for the transport of radioactive material

The Sub-Committee adopted the proposals drafted by the IAEA. As the IAEA was questioning the trefoil as a warning sign, the meaning of which was well-known to all participants in a transport chain and to the public at large, IAEA had launched a consultation procedure with its Member States and relevant organizations as regards the possible development of a new warning sign.

Correct assignment of UN numbers to substances and solutions with respect to physical state (liquid or solid)

This proposal from the Netherlands and Germany, which was considered by an ad hoc group of experts, was adopted. About a hundred new headings had therefore to be created and the words "solid", "liquid" or "solution" had to be added to existing headings.

Relevance of the system of exemption for the transport of dangerous goods packed in limited quantities

The Sub-Committee took note of the study undertaken by France and of its various conclusions, notably that the transport of dangerous goods packed in limited quantities could not be regarded as harmless in safety terms and that requiring placarding of cargo transport units should be envisaged. The Sub-Committee did not take a decision on the matter. This was also the case for a proposal to align the provisions for consumer commodities with the system applied in North America and in air transport and another proposal, the aim of which was to simplify the system by having one set of provisions for goods packed in limited quantities and consumer commodities.

Emergency measures

For the purpose of possible harmonization of the hazard identification (identification code) and the related emergency measures, the representative of UIC had carried out a comparison of the various systems in force across the world (IMO, RID/ADR, United Kingdom, North America and the European chemicals industry). This comparison, based on a rationalized approach, brought to light certain inconsistencies in certain systems (different emergency measures for substances with the same hazard). As might be expected, there was no willingness to harmonize and the Sub-Committee did not wish to recommend a specific, uniform system, given that it considered that emergency measures were not part of transport conditions ... and that the marking, labelling and placarding provisions of the Model Regulations were mostly intended for effective hazard communication elements.

Accident reporting

At the request of the European chemicals industry and having noted that provisions for accident and incident reporting, along with related criteria, had been included in RID/ADR/ADN for entry into force on 1 January 2003, the Sub-Committee agreed that such provisions could also be included in the Model Regulations during the next biennium.

Transport and security

The Sub-Committee noted that in the wake of the tragic events of 11 September 2001, the Inland Transport Committee of the United Nations Economic Commission for Europe was considering measures for intensified international cooperation and action to prevent, suppress and control terrorist acts and to evaluate the security aspects of transport in the ECE regions, particularly with respect to the transport of dangerous goods.

The representatives of ICAO and IMO informed the Sub-Committee of the measures being undertaken by their organizations in this respect.

The Sub-Committee also noted that the United States of America had already adopted measures for implementation at national level and that the European Commission was also preparing such measures.

Several delegations expressed the wish that measures related to the security of the transport of dangerous goods be harmonized at international level and

considered that, in the absence of another relevant international instrument, they should become a subset of the transport safety regulations which could be addressed to governments and international organizations through the Model Regulations.

The expert of the United Kingdom considered that action could already be taken during this biennium, at least for measures concerning all modes of transport, and proposed to establish a correspondence working group which could develop proposals for relevant provisions for inclusion in the Model Regulations to be discussed at the next December session. This proposal was adopted.

In conclusion

Contrary to the last session, the Sub-Committee adopted numerous texts. Further texts will be adopted at the 22nd session (December 2002). This 13th revision of the Model Regulations will have a considerable effect on 2005 versions of the modal regulations. It will prove difficult to reconcile the current provisions of RID/ADR with some of the new provisions of the Model Regulations, particularly for the carriage of solids in bulk in containers or tanks.

(Translation)

RID Committee of Experts working group on tank and vehicle technology

Bonn, 5/6 September 2002

The following states took part in the discussions: Austria, Belgium, Czech Republic, France, Germany, Lithuania, Netherlands, Norway, Poland, 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.

Energy absorption elements/crash elements

Alstom presented the crash elements they had developed under the CeSa project (Chemical tank wagons for increased safety requirements). Each participant at the meeting received a folder of slides showing the information contained in the presentation.

In connection with this, those attending the meeting asked the company representatives various questions, which were answered as follows:

- For a new build tank, the cost of a crash buffer is between €750 and €1000 more per buffer than a conventional buffer (including additional costs for fitting). It is not possible to give an exact figure for conversion of the existing fleet owing to the many different types of tank wagon.
- As the crash buffer casing is visible, a simple sight inspection will reveal whether a crash element has been compressed. It can also be seen from an additional colour marking whether any damage has occurred.
- No tests were carried out with an empty wagon (CeSa prototype), as the crash tube only responds when a certain force is exceeded. This means that if this level of force is not reached, damage cannot occur to the chassis suspension or to other areas.
- Tests were carried out using two conventional high volume tank wagons, filled to 95% with water, at an impact speed of 34 km/h. The tank wagons withstood the impact relatively well. No leaks occurred. However, both vehicles showed major deformation in the head assembly areas. They had high energy absorption from the surge effect. The lower speed caused a lower amount of force. There was no overriding of buffers. With regard to the aim of the protective measure (no escape of the load), neither vehicle performed significantly worse than the CeSa prototype.
- Crash elements should not be changed on the spot. The vehicle must be removed to a workshop and inspected more thoroughly.
- In principle, it is possible to move a wagon with a compressed crash element. The element can be pulled out and the construction can be blocked. The buffer then continues to work as a normal buffer. However, difficulties can arise with hydraulic buffers, e.g. if the hydraulic cartridge has to be changed.
- The crash element can be combined with any buffers.

Proposal from Germany on crash elements

The UIC representative pointed out that the mandate of this working group only covered rail tank wagons. The words "battery wagons and wagons carrying tank-containers" should therefore be removed from the proposal.

The UIP representative considered that the proposal reflected state of the art research rather than state of the art technology. He was critical of the fact that no operational tests had been carried out over a longer period and that up to now, as far as he was aware, there was only one manufacturer of such crash elements. He therefore considered that it was premature to include specific texts in RID.

The representative of Switzerland said that Switzerland supported the introduction of such a measure to improve the safety of tank wagons.

The representative of the Netherlands thought the conditions should be laid down under which a wagon that had suffered an impact at a speed between 20 and 40 km/h could continue to be used.

Following these comments, the Chairman pointed out that energy absorption elements are already regularly built into traction units. The representative of Alstom confirmed that the crash elements had been sufficiently researched and that they could also be used in this form in practice.

The Chairman pointed out that the way the proposal was worded meant it was also possible to achieve the protective aim by means of a corresponding construction of the front attachment, i.e. apart from the crash element, a manufacturer could design the front part of a tank wagon in such a way that it absorbed the relevant amount of energy. It was also pointed out that both Siemens Krauss-Maffei Keystone and EST manufacture similar crash buffers.

Taking into account the objections raised by the UIC representative, the Chairman proposed the following new wording:

"In the event of a collision shock or accident, tank wagons shall be capable of absorbing at least 800 kJ of energy by means of plastic deformation of defined components or by means of a procedure with similar effects (e.g. crash elements), without it leading to a dangerous, direct transfer of energy to the tank. Energy absorption shall only occur in conditions other than those encountered during normal conditions of rail transport ($v > 15$ km/h)."

The representative of Germany pointed out that the guidelines in the latest edition of ERRI B12/RP 17 assumed that impact speeds of more than 12 km/h are outside those encountered during normal conditions of rail transport.

In reply to a question from the representative of the Czech Republic, the Chairman explained that this proposal only concerned new builds and was not intended to lead to retrospective fitting of the existing fleet.

With regard to the question from the representative of France as to what was meant by "without it leading to a dangerous, direct transfer of energy to the tank", the Chairman noted that it had to be established how much energy must be absorbed before being transferred to the tank.

The UIC representative asked whether the above wording meant that a maximum transfer of energy to the tank must not be exceeded or that a certain amount of deformation of the tank was allowed, provided it did not lead to the load escaping. The Chairman replied that as he understood it, the aim was that the transfer of energy into the tank via the saddles should occur as late as possible.

The representative of Germany added that the word "plastic" could be deleted in order to allow elastic deformation as well.

The UIC representative proposed amending the protective aim such that instead of an absorption energy of 800 kJ, a minimum impact speed should be prescribed. The Chairman pointed out that at its 1st meeting, the working group had formulated the absorption energy of 800 kJ as a proposal.

The UIP representative was of the view that such a measure should only be introduced for certain especially dangerous goods (e.g. chlorine or sulphur dioxide), in order first to gain some experience. He also noted that in his view, the protective aim should be worded in such a way that for impacts up to a certain speed, it must be demonstrated by calculations or tests that the tank will not rupture. In reply, the Chairman noted that, based on what had been learnt from the research procedure, a requirement should be formulated on how much energy a tank wagon must be capable of absorbing outside normal conditions of rail transport.

Following this discussion, the working group agreed the following new wording for this protective measure:

"In the event of a collision shock or accident, tank wagons with tank codes in accordance with Table 1 shall be capable of absorbing at least 800 kJ of energy by means of elastic or plastic deformation of defined chassis components at each end or by means of a similar procedure (e.g. crash elements).

Energy absorption by plastic deformation shall only occur in conditions other than those encountered during normal conditions of rail transport (impact speed above 12 km/h).

Energy absorption shall not lead to a direct transfer of energy to the tank that might cause plastic deformation of the tank."

Owing to the lack of time, the working group was unable to discuss the matter of limitation to particularly dangerous goods only.

Buffers and buffer heads

In introducing his document, the representative of Germany pointed out that the proposed measures should be restricted to tank wagons and that battery-wagons and wagons carrying tank-containers should not be included, as was decided for the previous document.

The Chairman summarized the discussion as follows:

- In future, new build tank wagons must be fitted with high performance category C buffers. As the dynamic energy absorption of a C buffer starts at • 70 kJ, Germany's proposal should be changed from "75 kJ" to "70 kJ".
- Tank wagons carrying certain dangerous goods should be fitted with high performance category C buffers (• 70 kJ).
- Tank wagons built before 1985 not yet fitted with high performance buffers of categories A to C must, by a date yet to be fixed, be fitted with high performance buffers with an energy absorption capacity of at least 30 kJ.

The working group adopted the following:

"New build tank wagons shall be fitted with buffers that each have a dynamic energy absorption capacity of at least 70 kJ.

Buffers with lower energy absorption capacities shall also be permitted in combination with energy absorption elements, provided the overall system has equivalent values.

Existing tank wagons with tank codes in accordance with Table 1 shall in general be fitted with buffers with a dynamic energy absorption capacity of at least 70 kJ.

By xx.xx.2011, all tank wagons shall be fitted with buffers each having a dynamic energy absorption capacity of at least 30 kJ."

The year 2011 as the deadline for fitting older tank wagons is based on a period of 6 years for the periodic technical inspection of the vehicle following a planned entry into force date in 2005.

The UIP representative said that in his view, it would not be possible for all wagons to comply with this deadline.

Protection against overriding of buffers

No documents had been submitted for discussion under this item of the agenda. The Chairman asked Germany to submit a proposal to the next meeting, taking into account the protective aim, which had already been described at the first meeting. It should be checked whether this measure should perhaps be prescribed for certain dangerous goods only.

Sandwich-cover for tank ends

The representative of Germany introduced his document and explained that in the BAM tests referred to, a so-called IAEA spike had been used, which was also used in tests on packagings for radioactive material.

The UIC representative mentioned similar tests carried out at TNO in the Netherlands, where the energy needed to penetrate the ends of rail tank wagons was investigated in model tests. Those attending the meeting received a copy of the 1990 report of these tests. Of particular note was that in these tests, the penetration of a tank end by a buffer was investigated. According to the UIC representative, as tank ends were often penetrated by a buffer in rail accidents, the test should not be carried out with a sharp spike, but with something resembling a buffer.

The representative of Belgium referred once again to the problem of corrosion. The representative of Germany reported that BAM had been gaining experience with insulated tanks for about 20 years. Initially, there were problems with corrosion caused by the chloride component in the foam and glass wool. However, this problem had now largely been resolved. For example, the surface of the tank can be suitably pre-treated. Nevertheless, this problem should continue to be watched out for.

The Chairman asked Germany to submit a proposal to the next meeting to take matters forward, taking into

account the TNO report. The proposal should also contain a more precise description of the research procedure (including the costs).

External/central solebars/self-supporting tank

The representative of Germany presented the various ways a tank can be attached to a chassis, or subframe. The essential difference between the German/French variants and the Russian variant was that in the Russian variant, vertical displacement was only prevented by the tightening clamps that fix the tank to the outside supporting solebars, whilst in the German and French variants, the tank is fixed to the external solebars. In order to prescribe an optimal means of attachment, it would be useful to study this subject in a research project.

The representative of the United Kingdom reported that in his country, there was experience of self-supporting tanks; these should also be considered in any research project. The United Kingdom would wish to be associated with in such a research project.

The Chairman asked the representative of Germany to discuss the matter with the representative of the United Kingdom and to submit a more precise description of the aim and content of the research, and of the cost of the research project, to the next meeting, taking into account all four variants.

The UIC representative pointed out that on the so-called self-supporting tank wagons in operation in Great Britain a beam was fitted each side of the wagon between the frame bolsters. If these beams were also capable of absorbing a certain amount of longitudinal energy, these wagons should then be considered as "partly self-supporting". The representative of the United Kingdom would provide diagrams of these tank wagons.

With regard to this document, the UIC representative pointed out for clarification that there were Russian variant tank wagons in East European countries that also corresponded to the UIC criteria.

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

The representative of Germany introduced his document containing two alternatives for a new statutory text.

The UIC representative proposed that the protective aim should first be worded generally in RID and then to say

that the protective aim is achieved if UIC leaflet 573 is applied. For the wording of the protective aim, he proposed the following sentence adapted from paragraph 1.1.10 of UIC leaflet 573:

"The attachments of equipment welded on shall be made in such a way that the shell is prevented from being ruptured as a result of stresses caused by an accident."

In addition to including the aim of this protective measure, the Chairman asked whether a deadline should be included for conversion or retrospective fitting of the existing fleet.

The UIP representative was of the view that this effort was not in proportion to the improvement in safety being aimed at, and therefore asked that this measure be applied only to new builds or in the event of major refitting work where the requirements for a new approval would in any case apply.

The Chairman considered that this new requirement should be applied not just to new builds and refitting where a new approval was required, but that those repairs where a piece of equipment was removed for repair purposes and was later welded back on should also be included.

The representative of the United Kingdom proposed adding the words "where practicable" to the proposal concerning the existing fleet, as there were tank design types where it was not possible to carry out refitting/retrospective fitting easily.

The representative of Germany would submit a proposal to the next meeting of the RID Committee of Experts, taking into account the above comments.

Dome and dome cover

With regard to the proposal from Germany, the UIC representative said that in his view, it would be desirable henceforth to permit only 4 bar tanks in rail transport. However, in the United Kingdom for example, there are hinged dome constructions designed for 4 bar which do not have four fixture points. These design types should not be excluded. In addition, the restriction concerning hinged dome covers should also be deleted.

Based on the agreement in principle within the working group, the Chairman asked the representatives of Germany and UIC to draft a joint proposal for the next meeting of the RID Committee of Experts. In so doing, it should be checked whether the words "having at least

four fixture points and" as well as the restriction concerning hinged domes could be deleted.

Improving the maintenance of tank wagons

The representatives of UIC and UIP reported on the outcome of their exchange of views and asked the working group to agree to the setting up of a separate working group to establish guidelines on "recommendations for the maintenance of tank wagons".

The working group agreed with this proposal. On the question of how detailed such guidelines should be, it was pointed out that only safety-related technical points should be collected, which could however be supplemented by certain statements, e.g. on personnel qualifications. It was also noted that these guidelines could only contain recommendations concerning the tank and its equipment, not the subframe. The Chairman also proposed that the handbook should be divided into three parts covering operation, servicing and maintenance.

Mr. Visser (UIC) offered to take on the chairmanship of this separate working group. The Chairman asked all participants to check whether people from each of their countries wished to take part in this separate working group and whether any documents were already available in their countries that could be of use in the group's work (e.g. information from tank wagon manufacturers/operators and from the chemical industry). They were asked to get in touch directly with Mr. Visser.

Function of the internal stop-valve in the event of damage to the external devices (RID 6.8.2.2.2)

No document had been submitted for discussion under this item of the agenda. The representative of Germany therefore explained the background to this item. According to the third sentence of RID 6.8.2.2.2, the internal stop-valve can be dispensed with under certain conditions for certain crystallizable or highly viscous substances. This also applies to shells with an ebonite or thermoplastic coating. According to this, it would be possible to carry certain corrosive and toxic substances or flammable liquids in tanks thus coated, without an internal closure. The representative of Germany did not understand why a tank coating should justify not having an inner closure. However, he considered that it would perhaps be better to discuss this question in the Joint Meeting tank working group than in this working group.

The UIC representative pointed out that as far as he was aware, this was an old requirement that had also been adopted in the UN Recommendations.

The Chairman therefore recommended that this matter should be followed up in the Joint Meeting. In so doing, it should be checked whether other substances for which two shut-off devices are required may also be carried in these tanks.

Devices attached high up on the shells of tank wagons

In Sweden, it has recently been permitted more often to have devices high up on the shells of tank wagons. From the safety technology point of view, the representative of Sweden considered this development questionable, especially when comparing this development with the results of the CeSa projects, where, amongst other things, a dome cover fitted low down was used.

The UIC representative recalled that the old version of UIC leaflet 573 prescribed that top discharge devices on the tank had to be provided with a protective cap. In RID, these protective caps were only prescribed for tank wagons for the carriage of toxic substances (4.3.5, special provision TU 14 and 6.8.4, special provision TE 21). Consideration should be given to whether a protective cap must be prescribed generally for tanks with such devices. Alternatively, an internally fitted valve could be prescribed for top discharging.

The UIP representative was of the view that protective caps did nothing to improve safety and that it would therefore be better to restrict the height of devices.

The representative of Sweden was asked to submit a document to the next meeting to take matters forward. The document should deal with the question of the height of devices and of the type of devices permitted.

Checklist

On the basis of his document, the UIC representative explained that German railways already carried out safety relevant activities (e.g. the brake test) using checklists.

The Chairman recalled that in investigations of rail accidents in Germany, it had been established that the cause of the accident in Elsterwerda was an incorrectly performed brake test. It had therefore been recommended that completion of certain steps in work carried out should be checked using a checklist, as was the case for air transport.

The ensuing discussion revealed that the division of duties is regulated differently in different countries. In Belgium, for example, the locomotive driver is responsible for the train. His tasks are assigned to him on the basis of a split between work on preparing a train and on carrying out a train journey. A checklist would be more likely to disrupt the work.

In Switzerland, the locomotive driver and wagon technician are jointly responsible. In Spain, a distinction is made in the tasks between preparation and the train journey, as the brakes can only be checked once the train has been joined together.

The UIC representative was of the view that the technical wagon check and the brake test should be considered separately. The technical wagon check is already regulated in section 6.5 of UIC leaflet 579-2. The working group should check whether the guidelines given there could be considered as sufficient.

Summing up, the Chairman established that the checklist should only be used when a train was being prepared. During the journey, it is no longer possible for the locomotive driver to deal with such a checklist. He therefore asked participants to establish the entire brake testing procedure and other preparatory technical tasks for wagons, split up into work stages, and to set them out in a working paper for the next meeting. On that basis, it should then be checked how far this should be regulated in RID.

Staff safety training

The representatives of the Netherlands and the UIC provided information on staff training in their countries and at DB Cargo Ltd. In the Netherlands, there were 4 training stages corresponding to employees' responsibilities and duties. Since the end of 2000, DB Cargo has also trained employees in several stages. The basic training lasts 3 days. Building on this, certain members of staff undergo further training for one day every two years. In addition, locomotive drivers must undergo specific safety training and use train simulators for training in how to respond in the event of irregularities and disruptions.

The UIC representative added that in the railways' experience, the most important aspect of the training is that the staff involved (wagon technician, marshaller and locomotive driver) should have sufficient knowledge of tank wagons and their equipment. In connection with this, he referred to Railion's information leaflet which explained by means of diagrams what staff had to do in the event of irregularities.

In Spain, 12 further training courses each lasting 20 hours were carried out each year for staff involved in the carriage of dangerous goods. However, following the separation of infrastructure and operations, the training concept would have to be reviewed.

In Belgium, wagon technician, marshalling staff and locomotive drivers receive basic training which also covers the transport of dangerous goods. In addition, further training is provided every 18 months on how to proceed in the event of an incident.

Wagon technicians, marshalling staff and locomotive drivers also receive basic training in Switzerland, and this also contains a special part covering dangerous goods. Each year, periodic training is also provided. Special training for locomotive drivers is currently being developed.

The Chairman again referred to the earlier considerations of the German national working group, where it was revealed in a modal comparison that for road transport, drivers must undergo special initial training related directly to dangerous goods and then every five years, they must undergo refresher training. Successful attendance at these training courses is then documented in a special dangerous goods driver certificate, the ADR certificate. The question should therefore be examined as to whether corresponding regulations should also be included in RID for locomotive drivers and wagon technicians.

The representative of Germany pointed out that the legal basis for training was set out in a very general way in Chapter 1.3 of RID. However, the question was whether, for the rail sector, additional regulations should be incorporated in RID for certain staff (locomotive drivers, wagon technicians and marshalling staff, i.e. regulations on training, the duration of such training and how often it should be repeated. As training already existed in the various States, consideration should be given to how it could be standardized in the light of staff working in transfrontier operations. With the help of the European Commission, preparation of a training catalogue could be envisaged, which could also be used for examinations. If the working group and the RID Committee of Experts agreed to proceed in this way, specific contents could be drafted.

The UIC representative supported the proposal by Germany. Discussions should be held in the next sessions of the various UIC working groups on how the railways could contribute to this work so that a basis could be submitted to the next meeting. He also thought

the available training material should be standardized and perhaps supplemented.

The Chairman requested delegates to submit a document to the next meeting containing information on groups of people, the minimum duration of training, training cycles and what the minimum training covered.

Status of the telematics research project

Professor Hecht of the Berlin University of Technology reported on the status of the research project undertaken in Germany on the use of telematics. On behalf of BMVBW, series of tests were carried out in two stages on the detection of derailments and load monitoring. The main outcome of phase 1 was that it is possible to detect a derailment with certainty. In the following phase 2, 3 tanks wagons (1 chemical tank wagon, 1 gas tank wagon and 1 mineral oil tank wagon) were equipped in a field experiment with various sensor apparatus (GSM/GPS location finder, acceleration sensor to detect derailment and shunting impacts and temperature sensors to measure the temperature of the load and the axle bearing). The chemical tank wagon was put into operation for the longest period and most intensively in a fixed connection between Germany and Finland. Use in daily operation showed that the limit value found in the first phase in respect of derailment detection was not exceeded and that this was therefore suitable in actual practice. In addition, important aspects surrounding the monitoring of the load (e.g. tank pressure and longitudinal impacts), logistics and data transmission were investigated. The results demonstrated the technical feasibility of using telematics. For further information, participants received a copy of an article that appeared in ZEVrail Glasers Annalen magazine on "Monitoring Rail Tank Wagons using Telematics". Following these two research projects, a further research project (so-called phase 3) in Germany was entrusted to Dornier. At the moment, phase 3 is investigating communication between the vehicle/load and locomotive driver/vehicle driver.

The representative of Germany added that for using telematics in accordance with the current status of the discussion, there were two relevant interfaces: communication between the wagon and the locomotive driver and communication between the wagon and a control centre. In order to ensure integrated communication, the impetus for the use of telematics should be provided in a legally binding set of regulations (RID). As current findings had shown that stationary devices are out of the question with regard to the factors which are important for the carriage of dangerous goods (precise derailment detection, pressure detection),

wagon-related telematics should be advanced. The requisite interfaces and technical specifications should not appear in RID, but should be regulated by means of standards (e.g. in a UIC leaflet or in an all-embracing standard covering all transport modes).

The UIC representative said that at present, around 13,000 DB Cargo Ltd. wagons were fitted with telematics systems. These were fleet management systems and technical devices to prevent theft. The systems were powered by batteries with a lifetime of one inspection period (6 years). The representative of Germany asked the representative of UIC to make a report to the RID Committee of Experts on exactly how these wagons were equipped, so that the current state of knowledge within DB Cargo Ltd. could be taken into account in further discussions.

Swiss Federal Department for the Environment, Transport, Energy and Communications (UVEK) press release dated 27 June 2002

As a result of the accident in Schweizerhalle in Basle in 1986, the "Major Accidents Act" was enacted in Switzerland in 1991. The aim of the Act is to protect the population and environment. It also applies to rail systems. Later, uniform risk assessment criteria were established and published in a directive. The result of the assessment was that 34 km of the Swiss rail network falls within the unacceptably high risk category. For this reason, measures were developed to bring all parts of the Swiss rail network back within the acceptable risk category. The Swiss Government, Swiss railways (SBB) and the chemical industry signed a joint declaration to this effect, and the measures it contains were set out in this document.

The Chairman of the RID Committee of Experts pointed out that the measures adopted by Switzerland had considerable consequences for national and international rail transport. He asked the representative of Switzerland to make this information available to the RID Committee of Experts as well so that a political discussion could be held there. The representative of Switzerland confirmed that he would do so and added that these measures only applied to transport operations within Switzerland and only to the signatories of the joint declaration. They did not apply to transit transport operations.

The representative of France expressed interest in the risk assessment method. It was particularly interesting how the risk of certain lines had been assessed and how the existence of an unacceptable risk had been established. The representative of Switzerland explained

that each line had been divided into 100 metre sections and the risk for each section had been assessed. He offered to provide the next meeting of the working group with information on the exact criteria that were used.

With regard to fitting tank wagons with derailment detectors, the representative of Switzerland added that SBB and the chemical industry had chosen the wagons jointly. These were wagons that carried particularly dangerous goods. These wagons were operated both in integral and mixed trains within Switzerland and abroad. The measure had cost SBB about 7 million Swiss Francs.

With regard to how the derailment detectors worked, the representative of Switzerland said they were mechanically and pneumatically operated derailment detectors that required neither electrical energy nor technical data transmission devices. They could be fitted to existing vehicles. A test carried out in the course of SBB's daily operations had not led to the detector being activated in error, so a high degree of reliability could be assumed. UIC permits the derailment detector, i.e. it can also be used in transfrontier transport. UIC leaflet 541-08 describes general requirements concerning derailment detectors, so a particular manufacturer does not have a monopoly. Amongst other things, the UIC leaflet also regulates details such as marking and what to do in the event of a false alarm. In order to explain how they work, the representative of Switzerland would show a short film at the next meeting and present a model and diagram. At present, the cost of fitting a wagon with derailment detectors is €1600.

The representative of Germany pointed out that using a mechanically and pneumatically operated derailment detector had already been discussed within Germany's national working group. Based on information provided by the representative of Switzerland, the detector SBB were using was of the same construction as that mentioned in the Final Report. This would mean that once enforced braking had been initiated, it could not be aborted, even if a train came to a halt in a tunnel or on a bridge. The representative of Switzerland explained that the Swiss philosophy in such cases involving freight trains – as opposed to passenger trains – was that if a train derailed or caught fire, it was left standing in the tunnel and the locomotive driver could escape wearing a mask.

In reply to a question, the UIC representative explained that the problem of tunnels had not been taken into consideration in producing the UIC leaflet on derailment detectors.

The representative of Germany reported that in his country, there had been an accident in which a goods wagon carrying paper had been dragged along for several kilometres while derailed and had then come to a stop, on fire, in a tunnel. The accident caused enormous problems with regard to managing the fire in the tunnel. Another reason why it should be made possible to have control over enforced braking was the possibility of meeting passenger trains in tunnels.

The Chairman added that the accident in the Mont Blanc tunnel had shown that in a tunnel, levels of heat can arise that cause almost all the other vehicles in the tunnel to catch fire. In the case of a whole train made up of chemical tank wagons, this would cause a huge disaster.

The Chairman of the Committee of Experts suggested that the technical proposals on improving safety contained in Switzerland's catalogue of measures (e.g. special tank wagons for chlorine and sulphur dioxide) should first be discussed by the working group on tank and vehicle technology and then specific proposals should be submitted to the RID Committee of Experts.

The UIC representative pointed out that route prohibitions in accordance with Chapter 1.9 of RID were possible. The representative of the Netherlands informed the meeting that in his country, the Ministry of the Environment had concluded an agreement with the chlorine industry to reduce the volume of transport to 10 to 20% of the current volume. The representative of France added that France and the United Kingdom had planned restrictions for carriage through the Channel Tunnel.

The representative of Germany pointed out that Chapter 1.9 of RID also said that route prohibitions had to be communicated to other States. He also recommended that uniform standards should be drafted for applying this Chapter so that States had uniform procedural instructions and so that it could be ensured that international transport operations could still be planned and carried out. Since the railways, as carriers, should have a major interest in this, he asked the UIC representative to draft the uniform procedural instructions.

In connection with this, it was mentioned that uniform procedural instructions would also be useful in dealing with tank wagons after an infringement in accordance with RID 1.4.2.2.4 had been noted. The representative of Germany was asked to submit an appropriate draft to the working group's next meeting.

Incident in Roermond (Netherlands) on 18 April 2002

The representative of the Netherlands gave a report on the incident that occurred in Roermond, in which a tank wagon carrying methanol had lost part of its braking system and derailed. A short distance further on, the wagon rerailed itself without the locomotive driver having noticed anything. At the end of the journey, it was noticed that the wagon was damaged. In inspecting the infrastructure, it was established that points and sleepers had been damaged. A connection between the damage on the wagon and that caused to the line was only made subsequently.

He came to the following conclusions:

- it is vital that derailments are detected,
- RID must regulate the general maintenance of the tank wagon and not just of the tank,
- in more minor repairs, the use of replacement parts that are not necessarily made for the wagon must be prohibited.

When Professor Hecht was asked, he said that the telematics derailment detector and also the derailment detector used by SBB would have detected this derailment within 2 seconds.

Incident in Amersfoort (Netherlands) on 20 August 2002

In an incident that occurred in Amersfoort, 50 to 100 litres of acrylonitrile leaked out. The cause was probably a defective seal.

Next meeting of the working group

The representative of Germany offered to organize two two-day meetings again in Germany next year. The dates should be set at the next session of the RID Committee of Experts (Berne, 18-21 November 2002). (Translation)

RID/ADR Joint Meeting

Geneva, 9-12 September 2002

26 Governments and 10 governmental and non-governmental international organizations, including the European Commission, took part in this session with

Mr. A. Johansen (Norway) as Chairman and Mr. H. Rein (Germany) as Vice-Chairman. This session was given over to the following main topics:

- Proposals pending
- New proposals
- Miscellaneous
- Tanks (with **ad hoc** working group)
- Standards (with **ad hoc** working group)
- Future work

As far as "ridologists" can remember, this was the first time such a meeting has ever been shortened by a day, as all the official documents and all the informal (INF) documents relating to official documents were, contrary to the new rules, dealt with! This is probably also a first!

Proposals pending

The Joint Meeting adopted new provisions for the carriage in bulk of solids (excavated waste material) contaminated by PCBs or PCTs with a limitation of concentration of 1,000 mg/kg, thereby excluding PCBs and PCTs in the pure state. A gap in the regulations was therefore filled, as there was clearly a need to regulate such transport operations.

In contrast, the Joint Meeting did not, as was requested by the chemical industry, accept deletion of the requirement to affix on overpacks the different UN numbers of each of the dangerous goods contained in the overpack. Harmonization with the UN Model Regulations and the IMDG Code, as well as with the requirements concerning packages, was therefore ensured.

Safety adviser

A document from Belgium on the renewal of the professional training certificate for the safety adviser and in particular the choice between the refresher course and an examination gave rise to a lengthy discussion during which the following was noted:

- the legal context (provisional coexistence of two legal contexts - European Directive and RID/ADR);
- harmonization of the provisions for renewal;
- minimum requirements as regards duration (in terms of the changes to the regulations), the contents and the range of questions;

- the adviser's role, also with reference to the security of the transport operation.

As regards the coexistence of different legal frameworks, it was noted that the annexes to the European Directive containing the text of the restructured ADR and RID, and therefore of section 1.8.3, had still not been published, and that the European Directive concerning safety advisers could not be repealed until a new "ADN" directive for transport by inland waterway had been prepared and adopted by the European Commission.

Several delegations considered that this administrative and procedural blockage should not prevent the development of the provisions relating to the safety adviser so that any practical problems of application in international transport could be settled, in particular because paragraph 1.8.3.17 would, if these provisions were developed, enable the countries of the European Union to continue to apply those of the European Directive.

As far as the basic principle was concerned, the Joint Meeting confirmed that the renewal of the certificate could be based on a training course or on an examination, and that the examination was not compulsory if the refresher course had been taken.

The Joint Meeting decided by a large majority that a set of minimum requirements should be established in respect of measures for harmonizing training courses and examinations. The representative of Belgium said that these requirements should be made available as rapidly as possible so that they could be applied at the country level as from 2004 although the corresponding amendments to RID/ADR could not enter into force until 1 January 2005. Noting that Germany and Portugal already had basic requirements and that IRU was also working on the question, he said that he would submit a proposal at the next session.

New proposals

On the basis of a straw poll, the Joint Meeting agreed to encourage UIC to continue its work and to submit to the Joint Meeting and to the UN Sub-Committee of Experts a proposal concerning the introduction of a definition of the initial boiling point according to the ASTM D 86 standard, so as to regulate the problem of the carriage in tanks of flammable mixtures containing small quantities of dissolved gases with an initial boiling point below 35°C but a vapour pressure less than or equal to 110 kPa, which is not provided for in RID/ADR.

Miscellaneous

Risks posed by the carriage of dangerous goods packed in limited quantities and exempt from the conditions of transport

The representative of France introduced a document he had submitted to the UN Sub-Committee of Experts on the Transport of Dangerous Goods, containing a study on the relevance of the system of exemptions for the transport of dangerous goods packed in limited quantities, with a view to reinstating the debate on the risks posed by this type of transport operation.

He explained that where flammability was concerned, the study showed that splitting up a quantity of dangerous substances into small packages did not systematically lead to a proportional reduction of the risk, since a fire in a single pallet of such goods generated a considerable heat flow and could be more difficult to contain than a fire involving the same quantity in large packagings.

As for toxicity, the study showed that the leakage of a small quantity of substances of Class 6.1 could have as serious ecological consequences as a large quantity of environmentally hazardous substances of Class 9.

He recalled that the rules of the IMDG Code, the ICAO Technical Instructions and those of RID/ADR/ADN were not harmonized in this area. France would seek a solution acceptable for all transport modes with the UN Sub-Committee of Experts, particularly with regard to the labelling of packages, but if it were not possible to find a solution at that level, the Government of France would submit proposals for amendment to RID/ADR/ADN, at least in respect of vehicle marking, since it considered that existing provisions did not take sufficient account of the hazards posed by such transport operations. These amendments could be implemented for domestic transport at regional level.

Several delegates approved France's approach and stressed the difficulties encountered at present: a lack of conformity between the rules applicable to other transport modes and the ensuing problems in ports and airports; lack of a transport document and problems of information for the emergency services. Two solutions could be envisaged: reduction of the limited quantity thresholds in such a way as to eliminate unacceptable risks or action in respect of information and labelling so as to inform those involved of the risks.

Other delegates considered that the maritime rules were not adapted to the economic situation of land transport

in Europe, but that the situation could be improved not by requiring a transport document but by making provision for a consistent system of appropriate marking for packages and transport equipment.

The Joint Meeting examined the issue of specific systems linked to consumer products that existed in certain modal regulations and noted that the UN Sub-Committee of Experts had also studied proposals concerning this matter.

Delegations were invited to reflect on these questions.

Transport of dangerous goods and security

The representative of the United Kingdom introduced a document he had submitted, along with Namibia, the European Commission and the International Association of the Soap, Detergent and Maintenance Products Industry, to the Sub-Committee of Experts on the Transport of Dangerous Goods for consideration at its next session (2-6 December 2002).

The aim of this proposal was to include in the United Nations Model Regulations a Chapter 1.4 on security provisions (with a table listing the most sensitive dangerous goods) and a Chapter 7.2 on provisions specific to the different modes of inland transport (road, rail and inland waterways).

The representative of the United Kingdom stressed the importance his Government attached to a rapid international implementation of these security measures and asked delegations attending the Joint Meeting to make preliminary comments.

The representative of Germany supported the principle of the proposal, but said that the proposal differed from the draft recommendation drawn up by a working group and being discussed in the European Union and tended to reflect the provisions of Anglo-Saxon law, in particular in assigning responsibilities to transport companies that they could not assume because they did not have the necessary information and because these responsibilities devolved on the competent authorities.

He stressed the need to consider the cost/benefit ratio of the measures being proposed and the practical and legal difficulties relating to their implementation, in particular the compilation of a register of carriers (1.4.2), the elements of a security plan (1.4.3.2), checks of the criminal records of staff by the employer (1.4.5), etc.

He hoped that the secretariats would check with their respective legal services whether security provisions of

this nature could be included in the annexes to COTIF and ADR, bearing in mind the objectives of these agreements and conventions.

The representative of France supported most of the reservations put forward by Germany and pointed out the differences between the security recommendations and their transposition into binding legal instruments.

The representative of the Russian Federation considered that the proposal by the United Kingdom was of great interest and that the majority of the measures proposed were already in force in his country, but that the problem of routes had still to be resolved. He was therefore pleased that these discussions had been revived by the Government of the United Kingdom and that they could take place officially.

The representative of Belgium considered that the measures proposed were unrealistic and unsuitable for the intended aim.

The representative of Portugal recalled the discussions on "Transport and security" at the last session of the Inland Transport Committee, which had invited its subsidiary bodies to reflect on these questions, and the follow-up that the Working Party on the Transport of Dangerous Goods had provided.

The representative of Spain stressed the important role of the competent authorities in checks, such as those referred to in Chapter 1.8 of RID/ADR.

The representative of Switzerland recalled that security requirements already existed in RID/ADR (see Chapter 8.4 of ADR, e.g. concerning supervision of vehicles). He said that if necessary, these could be considered in order to make the introduction of new provisions and their implementation by the various participants in the transport chain easier.

The representative of IRU considered that the register of carriers of sensitive dangerous goods referred to in 1.4.2 should concern all participants in the transport chain and not only carriers. He said that IRU was not opposed to security measures with a reasonable cost/benefit ratio, but he feared that this might lead to situations of unfair competition and discrimination among carriers in different countries.

Tanks

Technical matters relating to tanks were entrusted to an ad hoc working group which met for two days in parallel with the plenary session. The Joint Meeting

examined the report of this group submitted by its Chairman (Mr. Ludwig, Germany) and the working group's recommendations were the subject of decisions.

Standards

The Joint Meeting regretted that, contrary to the express request made at the previous session (see Bulletin 1/2002, p. 8)), no EN standard or draft standard had been made available to delegates prior to the session, thus making any decision concerning the introduction of references to EN standards practically impossible at the current session.

The representative of CEN said that he was unable to circulate the standards and draft standards publicly because of copyright and the fact that the product of sales of standards was CEN's main source of income. He invited delegates to obtain them from their national standardization bodies.

The Joint Meeting considered, however, that CEN should be able to transmit these standards and draft standards confidentially to the secretariat and to the government representatives of all States which were Contracting Parties to RID and ADR. It would not otherwise be possible to include references to these standards in the rules and regulations; this would not be in CEN's interest either. A working group chaired by the Vice-Chairman was given the responsibility of preparing procedures for cooperating with CEN.

The Chairman of the working group presented the results achieved by the working group on procedure and terms of reference. This procedure and the terms of reference would be included in Add. 3 to the report in TRANS/WP.15/AC.1/90 and would be available on the UN/ECE Transport Division's website.

The Chairman specified the following:

- Representatives of States which were not members of CEN or had no national representative in CEN's working groups, which had technical comments to make on draft CEN standards, could send them to the CEN consultant, who would transmit them to CEN;
- States interested in participating in the working group were asked to nominate their representatives by 30 November 2002 and to send the secretariats the contact address (by e.mail);

- A first meeting would take place exceptionally before the next Joint Meeting in January 2003 mainly to consider the standards concerning tanks;
- The CEN consultant would transmit the draft standards to the members of the working group with their assessment;
- The members of the working group would check the standards and send their comments in writing to the Chairman of the working group and, if necessary, to the other members of the working group;
- In order to avoid long discussions in the Joint Meeting, the working group would, after internal discussion, submit proposals to the Joint Meeting;
- All countries which were Contracting Parties to RID/ADR could be represented in the working group by experts;
- UIC and ISO, as standardization bodies, would be able to participate in the working group;
- The Joint Meeting had, on the basis of a proposal by the Chairman of the working group, appointed Mr. Schulz-Forberg (Germany) as Chairman and Mr. P. Wolfs (CEN) as Vice-Chairman of the working group.

The Joint Meeting approved all these decisions.

Future work

The Joint Meeting set the following calendar:

February to April 2003:

Preparation by the secretariat of proposals for harmonization with the UN Model Regulations in the form of informal documents in English and French only (13th revised edition)

24-28 March 2003:

Session in Berne, where there will be no discussion of the new UN Recommendations

26-28 May 2003:

Ad hoc group with limited membership (without interpretation, in Geneva) to check the secretariat's proposals, supplement them with the RID/ADR/ADN conditions of carriage for which the UN Model Regulations do not make provision and prepare definitive proposals.

1-10 September 2003:

Session in Geneva giving priority to consideration of the definitive proposals for harmonization and conclusion of other questions pending.
(Translation)

Co-operation with International Organizations and Associations

United Nations Commission on International Trade Law (UNCITRAL)

10th Meeting of Working Group III
(Transport law)

Vienna, 16-20 September 2002

The OTIF Secretariat was represented at the above-mentioned meeting by an observer.

The draft text (document A/CN.9/WG.III/WP.21, which is available on the UNCITRAL website, www.uncitral.org), which served as the basis for discussions both at the previous meeting of the Working Group in April 2002 in New York and at the discussions in Vienna, had been drafted by the International Maritime Committee (CMI) and was therefore mainly, if not exclusively, conceived and prepared in accordance with the principles of maritime law. In the general debate, the OTIF Secretariat nevertheless declared itself in principle in favour of creating a Convention for multimodal transport (door-to-door): the importance of such transport is continually increasing and the legal situation in this sector, especially in Europe, is particularly unsatisfactory.

COTIF contains rules for multimodal transport in as far as they supplement rail transport operations. These rules apply to transport operations performed on maritime or road routes included in the list of lines, and to terminal transport operations performed before or after carriage

by rail. However, these rules are insufficient for resolving the problem of transatlantic or transoceanic container transport operations, which are increasingly important and which, as a rule, end with a road or rail journey.

To this point of view, which is in principle positive, was added the specific proviso that the existing, single-mode, binding Conventions (particularly COTIF) shall be maintained. This would be achieved by means of a network system in conjunction with uniform rules in cases where the place the loss or damage occurred was unknown. From a practical point of view, option 3 of the Canadian proposal (doc. A/CN.9/WG.III/WP.23, available on the UNCITRAL website, www.uncitral.org) could, if necessary, be used as a suitable basis for further discussions.

Discussions during the week focused on the draft Article 6, which deals with the carrier's liability.

Liability is to be based on the fault liability customary in maritime law, with reversal of the burden of proof, mitigated by the classic reasons for exemption from liability. The tendency that emerged was finally to relinquish the traditional reason for exemption from liability of "nautical fault", although a final decision in this direction has not yet been taken.

In addition, a large majority was in favour of maintaining the list of preferential reasons for exemption from liability in a future Convention.

In calculating compensation, the principle that the value of the goods at the time and place of *delivery* prevails, was generally approved, while according to COTIF/CIM, it is the value of the goods at the place and time of *acceptance* for carriage which forms the basis of calculation.

A future Convention should also contain rules concerning the liability of the "actual" or "performing" carrier. The form of this liability and any regulation of the recourse action have not yet been discussed in more detail.

For maritime law, the liability for delay in delivery provided for in the draft is a new feature. A large majority of delegations was in favour of such liability, although the regulation was not discussed in detail.

Also anticipated are rules concerning liability for deviations from the planned transport route and for loading on deck. The maximum level of the liability

limits to be proposed can of course only be settled at a very late stage of the discussions.

The system will be supplemented by rules on breaking the limits of liability, which are based essentially on the current formula of the Hamburg Rules, and of the parity of all claims, which is customary in transport law Conventions, i. e. the same rights an action is founded in contract, in tort or otherwise.

The next session of WG III (Transport law) will be held from 24 March to 4 April 2003 in New York and will be given over, amongst other matters, to a comprehensive discussion on the scope, i.e. on the question of a port-to-port or door-to-door Convention. The UNCITRAL Secretariat will produce a preparatory document for this. (Translation)

International Institute for the Unification of Private Law (UNIDROIT)

Congress on the occasion of UNIDROIT's
75th anniversary

"Worldwide Harmonization of Private Law
and Regional Economic Integration"

Rome, 27 and 28 September 2002

On the occasion of the 75th anniversary of the founding of UNIDROIT in 1926, a congress on the subject of "Worldwide Harmonisation of Private Law and Regional Economic Integration" was held – this was one year late owing to the Diplomatic Conference held in Cape Town in November 2001. The congress met on 27 and 28 September 2002 in Rome in the great hall of the Pontificia Università Urbaniana. The OTIF Secretariat was represented by the author (G. Mutz), who had also prepared beforehand a paper entitled "Aims and Approaches of Legal Harmonization, using Rail Transport Law as an Example". This paper will be published in the minutes of the congress.

The full congress programme is available on the UNIDROIT website (www.unidroit.org).

On 27 September, the round table discussion on the subject of "Unificatory and de-unificatory forces in the law of the carriage of goods: where do we go from here?" offered the opportunity in the general discussion of presenting briefly some of the basic principles in the written contribution referred to above and, at the same time, again to place OTIF at the international level as

the Intergovernmental Organisation for the rail mode. During the round table discussion, emphasis was placed, amongst other things, on the wide gap that exists between maritime transport law and transport law covering the land transport modes. In this context, attention was drawn to the strong correlation between purchase law and transport law. The basic statements concerning future standardization of freight transport law tended towards pessimism, and fragmentation of transport law was cited as a typical element of this sector of law.

The presentations and discussions on the subject of "Harmonised modernisation of the law governing secured transactions: general-sectorial, global-regional" and on "Economic analysis and harmonised modernisation of private law" were of great interest in relation to OTIF's work on the "Rail Protocol" to the Cape Town Convention on International Interests.

Discussion on Professor Jürgen Basedow's general report on "Worldwide harmonisation of private law and regional economic integration" again offered the opportunity of presenting OTIF and the mechanisms of COTIF with regard to the uniform international law it creates, and to draw attention to the possibilities offered by these instruments with a view to legal standardization in a wide regional area extending beyond the EU and including more than 40 Member States.
(Translation)

Studies

The subject of safety from the COTIF perspective

Mr. Hans Rudolf Isliker, Director General of the Central Office for International Carriage by Rail, Berne

Rail safety within a changed setting

Safety has always been a key issue for the railways and without doubt one of its particular qualities. There have of course been some spectacular events recently, which have caused doubt to surface. However, from the statistical point of view, rail remains a safe means of transport.

It is precisely accidents which, in the final analysis cannot be eliminated, that demonstrate that rail safety is an issue in the public arena that evokes emotions and

political reactions, and a very relevant development should be noted in this respect: rail safety is less and less solely the responsibility of the railways. It has become a subject in which other players are getting involved and into which these new players are bringing their own new brand of "internationality".

This is bound up with various relevant background developments in reaction to rail safety. The following require particular mention:

- risk analysis, along with consequent discussions on measures in connection with the transport of dangerous goods that, for example, give a great deal of influence to the emergency services not connected directly with the railways.
- discussions on safety in very long rail tunnels aimed at a politically driven demonstration of safety, into which flow all aspects of rail safety,
- examination of safety issues, starting with structural changes in the rail sector initiated by the reform process.

Considerations in relation to the EU Safety Directive

I should say first of all that in principle, the planned directive doubtlessly fulfils a need. It arises from the logic of all the rail sector developments being pushed through by the EU. A "trustworthy" text on this needs mentioning. It is edited by people who view these developments somewhat critically, particularly with regard to the question of separating infrastructure and operation. They say:

"The EU needs to do a lot of catching up in order to be able to ensure a uniform and high standard of safety across Europe. The following requirements would need to be met to achieve this objective:

- Safety must always take priority over economic considerations.
- Responsibilities must be clearly assigned.
- If more railway undertakings appear on the market, uniform safety standards that apply to every undertaking must be defined.
- Safety certificates must contain clear definitions of standards as well as the conditions covering withdrawal of certificates.

- Every railway undertaking must introduce clear safety management, including an emergency management plan for derogations from routine operation.
- Standards covering qualifications and standards for medical and psychological suitability must be defined for personnel and training centres. These must be inspected, certified and checked. Every railway undertaking must work with a sufficient number of qualified personnel.
- Cross-border operations require more knowledge. Technical systems vary greatly, and knowledge of the network instructions and of languages is necessary to operate trains safely on a foreign network.
- Experience worldwide with ongoing deregulation regarding safety in railway operations must feed into future European Commission proposals for directives. This must apply especially to the Directive on Railway Safety that has been announced, and to the implementation of the railway infrastructure package and the Interoperability Directive.
- European, interoperable and, above all, intermodal working and rest period standards must be set down. It must be consistently ensured that all transport modes observe them. It would be fatal for safety if there were unchecked competition in undercutting working and social standards.

There is no uniform, high safety standard at European level. There is a real risk that with international competition, the standard of safety will be revised downwards (i.e. to the level of the lowest cost supplier)."¹

Behind these statements is the conviction that as far as their fundamental characteristics are concerned, the railways are to be considered as a networked system on the basis of the technical unity of wheel and rail, which is why fully responsible "integrated" railways are bidding for the best conditions for maintenance of a high safety standard.

¹ LITRA public transport information service (Switzerland): publication "Bahnreform 2: Die Vorteile der integrierten Bahn" (Railway reform 2: the advantages of integrated railways), 4 May 2001

This view cannot be ignored, even if it is obviously characterized as traditional and very "unionized". The safety perspective itself lends support to the integrated system point of view, and with this in mind, the following empirical facts should never be disregarded:

- No technology is failsafe. A certain error rate is inherent in any "man-machine system".
- Safety must therefore be "produced" by way of constant effort by those involved in the man-machine system. The "safe operation process", adapted to the state of technology and the condition of buildings, facilities and rolling stock, is crucial.
- Safety technology must serve this process with technical, organizational and personnel components. Incidents that cannot be ruled out must not entail any severe consequences (fail safe).
- Accidents are rare, incidents are more common. Care must be taken constantly to learn from all incidents.
- A safety cost/benefit analysis is also justifiable. The most expensive solution is not necessarily the best. Proportionality must be considered, namely from the system point of view, which can only take account of the cross comparison between different systems in a limited way.

In connection with this, a central point is the assignment of responsibilities: a clear division of responsibilities is at the heart of every safety plan.

In public transport, the main responsibility for safety rests with the operator (on the basis of the manufacturers' and other participants' equally direct responsibility). Only the operator can ultimately ensure the process of safe operation.

There were formerly clear relationships in this respect, but the railways reform process has brought new participants on to the stage, which means all those involved must needs redefine their position.

Some important questions arise in this respect, concerning not only the assurance of a clear division of responsibilities, but also the conditions necessary for being able really to distinguish individual responsibilities:

- who bears responsibility for the system?
- who is responsible for safety certification?
- who issues approvals/authorizations to operate?
- who audits maintenance, operation?
- is an independent accident investigation needed?

There are some justifiable concerns in this respect (not least because in the course of modern restructuring exercises, integrally trained and appointed “professional railwaymen” are becoming a scarce resource). But there is no going back. The new problems therefore need to be resolved by suitable means.

The infrastructure manager has a central role to play. He must have sole responsibility in the course of operations at the interface between infrastructure and transport.

Approaching the present draft directive with these thoughts in mind, it is important to ask the following questions:

- have the real problems been covered; has it been ensured that what must really work does in fact work?
- is there a meaningful overall structure that establishes clear positions, rules out duplication and over-regulation and that, in the end, can work efficiently to the advantage of the railways?

It is not the intention here to develop definite answers. This is the responsibility of other people. However, it should be permissible to note that the draft Directive available takes up the challenge made and works at it in a modern, logical manner.

The connection with COTIF

In the overall sense sketched out above, the subject of safety has not up to now had a role to play in connection with COTIF. As far as there was any public perception of COTIF at all, it was in connection with legal matters surrounding the carriage of passengers and freight in international rail transport, while the subject of safety had generally been regarded somewhat as an "internal matter for the railways" and in many cases probably still is. However, the background developments mentioned above also have a bearing on COTIF. The OTIF Secretariat needs to start thinking about how the current initial situation is to be assessed and how this subject should be dealt with in future.

The COTIF currently in force (COTIF 1980)

COTIF itself is an international law Convention, so its contents come under public law. Both its Appendices – CIM and CIV – form international uniform rules on this basis corresponding to the object of COTIF of primarily private law matters. Safety provisions as a specific matter under public law are not explicitly covered by COTIF.

In conjunction with freight transport law though, safety does indeed appear indirectly. The purpose of the provisions of RID, i.e. the regulations on the transport of dangerous goods, is purely safety law. But in accordance with the idea behind COTIF 1980, application of these provisions is bound up with a CIM contract of carriage; they therefore have no validity on a stand-alone basis. As such a contract exists in the vast majority of transport operations, this legal structure does not result in any serious gaps, although this situation is not wholly satisfactory and has already been put right in as much as RID directly regulates the wagon consignee's safety relevant-duties and those in connection with the carriage of empty, uncleaned wagons, without the requirement for a CIM contract of carriage.

However, this is only the case for those Member States of COTIF that are not in the EU. On the territory of the EU Member States, RID applies integrally to both domestic and international transport, as it has the status of Community law under a Framework Directive (Directive on the approximation of the laws of the Member States on the transport of dangerous goods). The restructured RID, which has been in force since 1 July 2001 and which has been completely harmonized with the corresponding regulations for the transport of dangerous goods by road and inland waterways, therefore applies within the EU on a stand-alone basis, without limitation.

COTIF 1999 (Vilnius Protocol version)

Under COTIF 1999, RID is no longer bound up with CIM and is a self-standing Appendix C to the former.

Two further new Appendices join the purely safety oriented Appendix C, and these are both dedicated mainly to matters of safety: Appendices F (APTU UR) and G (ATMF UR) to COTIF 1999. Together, they form the COTIF Rules for Approval, which is essentially what it is about.

In fact the objectives of Annexes 1 to 8 of Appendix F, which are to define the technical guidelines for approval, are set more widely. In addition to safety, they

cover interoperability, reliability, environmental protection and health. However, with a view to the official technical approval of railway equipment – primarily railway vehicles – which is the core of the Appendix, safety is central. Safety is the reason for approval being made a sovereign task, which, henceforth, can no longer be delegated to the railways.

This brings directly into focus the whole problem of legislating for safety in a substantial part of COTIF 1999, which is a subject that must be taken into account in properly developing and managing the planned instruments.

Three of the seven Appendices to COTIF 1999 are therefore of direct relevance to safety, and are interlinked, not only Appendices F and G as a pillar of the COTIF Rules for Approval, but also rather the Rules for Approval are linked in with Appendix C/RID. The linkages themselves must, in the final analysis, be taken into account from an integral point of view with regard to the problem of safety.

Developments

The EU Safety Directive provides the best evidence for the integral view required. With this requirement, it has decidedly set the keystone in the EU's whole rail sector reform package and particularly the objective of interoperability. OTIF and COTIF will benefit from this since the EU concept will have a decisive influence on the formation of the COTIF Rules for Approval. It would be pointless to want to establish a competing system, apart from the fact that after the EU accedes to COTIF, the European Commission will be able to play a particularly major role in the OTIF organs in those areas where it is representing Community law. A prerequisite for the EU's accession to COTIF is the entry into force of COTIF 1999. This should take place during 2004, which leaves time to examine in depth all the issues concerning working together, starting with the latest status of developments within the EU. Coordinated timing of the work on both sides in this respect should not cause any insuperable problems. Essentially, what needs to be checked is how far the TSIs for the conventional rail system can be more or less directly incorporated into Appendix F of COTIF 1999 and how the concept of the EU Safety Directive that finally results can flow through into the COTIF approval system in an appropriate manner.

It is not only in connection with the EU programme for the rail sector that there are clear signals for development. New approaches are also apparent in the overall way safety is perceived, and these are having an

increasing effect. The new role play with more and new participants in the wake of the reform process that is going on increases the need for regulation, not least in respect of the mutual requirement for forms of evidence. The pressure towards objective, comprehensible forms of evidence increases the need for systematic, or in fact, even quantified risk analysis and assessment. Risk assessment requires secure standards that are politically based, at least as far as their essential features are concerned.

In the end, the increasing international aspect of the whole reform process logically requires standards that are harmonized across frontiers, although the all-embracing way of looking at things, including effects on the environment, goes beyond the more limited perspective of the railways to cover, for example, standards applicable to the emergency services. How this development is to be handled is the subject of wide discussion and various approaches, which, indeed even in relation to the overall way of looking at things, are very different. Among the really comprehensive approaches should be included the efforts in Switzerland and the Netherlands, which are based on quantified risk analyses and assessment on the basis of a "scale of acceptability". More pragmatic in approach are the ALARP (As low as reasonably possible) system in the United Kingdom and the GAME (Globalement au moins équivalent) approach in France. Discussion surrounding the appropriate approach is occupied not least with the concern to maintain realistic proportionality and cost-effectiveness in order to prevent possible creation of the "demonstrably risk-free railway", which would only be so because it would no longer be possible to pay for it, so it would not therefore be in operation.

Lastly, new risks come into play, which, in contrast to that so far mentioned, particularly safety (system safety), come under the security umbrella (personal security). Being terrorized and crime/vandalism that affects safety in trains and around railways, are new risk factors, which call not only for specific protection measures, but which also increasingly play a role in respect of overall safety considerations in railway operations. However, in taking an overall view, weighing up the proportionality and cost-effectiveness of measures against such risks is gaining particular status. It remains to be seen what future developments will bring, in the final analysis here too with a view to international rail transport not just as national concepts but as internationally agreed and harmonized measures, which could raise the issue of making use of the COTIF instruments, which, in accordance with the Vilnius Protocol, should be left open for new requirements.

COTIF and the EU Safety Directive

As already mentioned, the Safety Directive will without doubt be relevant to the COTIF Rules for Approval and the organ planned for this purpose, the OTIF Committee of Technical Experts, and will also be relevant to RID and the RID Committee of Experts. This is because the Directive will create a strong impetus for harmonization, and along with the Safety Agency, a significant centre of competence.

The EU Safety Directive incorporates the "new thinking" referred to, especially via the anticipated coordinating instruments known as the Common Safety Targets (CST), Common Safety Measures (CSM) and Common Safety Indicators (CSI). It remains to be shown what significance these instruments can really gain in order not to be counterproductive in making management of the railways' high safety remit unworkably bureaucratic.

There is thus no doubt that there is a connection between the EU Safety Directive and COTIF. The potential for synergies concerning further developments exists, based on the fact that Community Law in the rail sector is assuming a central position and that, with regard to interoperability and safety, it is setting the standards. But this must not diminish the value of COTIF in any way. In the future, the COTIF instruments will be there primarily to cater for harmonized conditions in international rail transport, in theory unrestricted, looking beyond the EU. It must therefore be noted with some regret that COTIF does not exist in the EU's documents on interoperability and particularly on the Safety Directive. It is not mentioned at all, even though it was really the EU Member States that were key in bringing about the Vilnius Protocol – the same Member States that are also involved in enacting the Safety Directive. The obvious thing to do would be to establish the link, which would require nothing more than pointing out specifically in the EU Safety Directive that in some circumstances, COTIF as an instrument could also be available for certain regulatory requirements where the tenets of Community law needed to be applied as widely as possible.

(Translation)

Case Law

Cour d'Appel de Paris

Ruling of 7 February 2001

The defective installation of the cable of the radiotelephone fitted in a vehicle being carried on a motorail wagon constitutes inherent vice, which relieves the railway of liability in relation to the passenger who handed the vehicle over for carriage; a short circuit in this cable was the cause of the fire that damaged the vehicle.

Cf. Article 103 of the French Commercial Code¹

The appeals lodged by the Société Nationale des Chemins de Fer Français (French railways – SNCF) and by Mr. Ch. respectively against the ruling delivered on 23 November 1998 by the Paris tribunal de grande instance were laid before the court. The tribunal:

- dismissed the actions brought by SNCF,
- dismissed the claims brought by Mr. Ch.,
- ceased proceedings against Préservatrice Foncière d'Assurances (PFA) and Assurances Générales de France (AGF),
- accepted the counter-claim brought by Mrs. A.,
- ordered SNCF to pay her the sum of FF. 79,500 in damages,
- rejected the remainder of the claims
- ordered SNCF and Mr. Ch. jointly to pay costs and to pay Mrs. A. the sums of FF. 20,000 and FF. 10,000 respectively, in accordance with Article 700 of the new Code of civil procedure.

Upon which

In view of the documents on the basis of which SNCF, seeking to have this ruling quashed, requests the court to:

¹ Article 35 § 2 of the CIV UR contains a comparable provision.

- place on record that SNCF withdraws its appeal in respect of AGF,
- relieve SNCF of all orders to pay,
- order in solidum Mrs. A. and AGF, which has succeeded to PFA's rights, PFA being JD Automobiles' insurer, to pay SNCF the sum of FF. 2,230,732.10 before tax, i.e. FF. 2,329,590.36 including tax, with interest at the legal rate on the sum before tax, to run from the date of the order to pay,
- to set the SNCF's claim under JD Automobiles' liabilities at FF. 2,329,590.36, including tax,
- dismiss Mrs. A.'s counter-claim,
- order the latter and AGF in solidum to pay SNCF the sum of FF. 30,000 against its costs;

In view of the documents on the basis of which Mr. Ch., seeking to have the ruling being appealed against quashed, requests the court to order Mrs. A. to pay him, on the basis of Articles 1382 and 1384 of the Civil Code, the sum of FF. 130,000 in damages and subsidiarily to maintain JD Automobiles' liability and to order AGF and PFA to pay this sum and to order the respondents to compensate him for his costs;

In view of the documents on the basis of which Mrs. A., seeking confirmation of the ruling being appealed, requests the court to:

- cease proceedings against her,
- dismiss all the claims brought by SNCF, Mr. Ch., AGF, PFA and Mrs. P.W.,

subsidiarily

- declare JD Automobiles wholly responsible for the fire that occurred on the night of 23 to 24 August 1994,
- declare the decision to intervene opposable to Mrs. P.W., ex-officio receiver of JD Automobiles,
- set her claim under JD Automobiles' liabilities at FF. 2,329,590.36, unsecured, in the event that Mrs. A. were ordered to compensate SNCF,

- in this event, order AGF and PFA in solidum to relieve Mrs. A. of, and to cover her against, all orders to pay that might be pronounced against her,
- order SNCF and Mr. Ch. in solidum to pay her the sums of FF. 100,000 and FF. 30,000 respectively in damages, and the sums of FF. 30,000 and FF. 20,000 in accordance with Article 700 of the new Code of civil procedure;

In view of the documents on the basis of which Mrs. P.W., ex-officio, requests the court to confirm the ruling referred to the court and in any case to declare inadmissible the claims of Mrs. A., Mr. Ch. and SNCF tending to the setting of their claims, and to dismiss their claims;

In view of the documents from AGF tending to confirm the ruling in as much as it exonerated AGF, tending to the nonsuit of the parties' claims against AGF and to an order for SNCF and Mr. Ch. in solidum to pay AGF the sum of FF. 50,000 to compensate its costs;

In view of the documents on the basis of which AGF, succeeding to PFA's rights, requests the court to:

- place on record that AGF succeeds to PFA's rights,
- confirm the ruling referred to the court in as much as it exonerated JD Automobiles and their insurers,
- state, in any case, that PFA's cover be limited to FF. 1,500,000 with an exemption of 10% with an upper limit of FF. 10,000, i.e. a guaranty of FF. 1,490,000,
- order each of the losing parties to compensate its costs;

The court

Whereas during the night of 23/24 August 1994, motorail wagon No. 18 of the Nice-Paris train caught fire between Nuit Saint Georges and Vosne Romanet causing the destruction of a number of vehicles and equipment belonging to SNCF and disruption to traffic; whereas expert R., originally appointed at the request of SNCF, and later *en référé* at the request of Mrs. A., showed that the fire had started in the latter's vehicle in which there had been a short-circuit in the radiotelephone receiver with which it was fitted;

Whereas it was thus that SNCF brought a case before the Paris tribunal de grande instance to have Mrs. A. ordered, on the basis of Articles 1382 and 1384, subparagraph 1 of the Civil Code, to compensate SNCF for the losses caused; whereas Mrs. A. disputed this action and sought, by means of a counter-claim, compensation for the loss she had suffered and served third party notice on the legal receiver of JD Automobiles, the company that installed the defective equipment, and on their insurers; whereas in parallel, Mr. Ch., whose vehicle on board the damaged wagon had been destroyed, brought a case before the Paris tribunal de grande instance for compensation from Mrs. A. for the loss he had suffered; whereas it was under these circumstances, the tribunal having consolidated these actions, that the ruling being appealed against was passed, by which ruling the tribunal upheld that in principal, the fire that occurred during transport brought SNCF's liability into play, SNCF not having produced evidence of the factual or legal circumstances of such nature to exonerate it from liability, that on the contrary, since SNCF had a bounden duty to its customers, it should compensate Mrs. A. for the loss she had suffered;

Whereas, as a preliminary, SNCF withdrew its appeal against AGF; whereas this should be placed on record;

Whereas the policy taken out by JD Automobiles with AGF had been terminated since 23 January 1993, whereas it is proper that the tribunal exonerated this insurance company;

Whereas, however, SNCF and Mr. Ch., who had been perfectly aware of this situation for several years, summoned this insurance company; whereas Mr. Ch. persisted in requesting that as JD Automobiles' insurers, they be ordered to pay, while SNCF waited until 1 September 2000 to withdraw its appeal in this respect;

Whereas it would therefore be inequitable to leave AGF with the unrecoverable costs it had to pay during the appeal procedure, whereas AGF will in this respect be granted the sum stated in the pronouncement, which will be charged in solidum to the two appellants;

On SNCF's appeal:

Whereas in support of its appeal, SNCF claims that as the origin of the fire had been clearly established, Mrs. A. should not be exonerated, whatever the legal basis of her action against SNCF and whereas, contrary to what the tribunal had upheld, the liability in tort of the installer of the defective radiotelephone is also brought into play;

The court upholds that:

- SNCF is exonerated from being presumed liable to Mrs. A. under the transport contract due to the fact of the intrinsic defect of the vehicle transported,
- on the other hand, Mrs. A. has assumed liability by not insuring her vehicle, which has disallowed her from being compensated by the company with whom the vehicle was insured for the whole of the loss she suffered in the fire,
- the radiotelephone installer who had a bounden duty with regard to repairing his customers' vehicles has also assumed liability and his insurer must accept the consequences of the fire resulting from the fitting he carried out;

Whereas following the detailed investigations he carried out, the legal expert concluded his report submitted on 6 January 1997 with these words:

"The origin of the fire is of an electrical nature and started in the boot of the Honda vehicle ... belonging to Mrs. A., where there was a Bosch radiotelephone receiver;

The fire was caused by the radiotelephone's feed cable being crushed. The crushed part of the feed cable is right on the corner of the right-hand side member, level with the bottom of the front right-hand seat back. The loss of insulation between the feed cable conductors was the initial source of a localized increase in temperature, level with the vehicle's front right-hand seat back. This increase in temperature melted the insulation on the sealed connecting cable radiotelephone set located in the interior of the vehicle, as the two cables came into contact with each other. Then, as the insulation was destroyed, the direct contact between the feed cable and the set's connecting cable caused a major short circuit in the radiotelephone casing situated in the boot. The short circuit ignited the contents of the boot and then the vehicles on the wagon.

It is therefore clear that the quality of the radiotelephone installation must be called into question given that the positioning of the radiotelephone cables should have been such that it should have been made impossible for them to be affected by any mechanical action by proper positioning of the conductors."

Whereas it is thus demonstrated, provided the remarks of the expert, who responded to all the parties' statements, are not effectively disputed, that the cause of

the fire lies in the inherent vice of Mrs. A.'s vehicle, consisting of the defective cabling of the radiotelephone fitted to the vehicle; whereas this inherent vice exonerates SNCF, in accordance with the provisions of Article 103 of the Commercial Code (now L 225.39 of the same Code), from being presumed liable on the basis of the transport contract linking SNCF with Mrs. A., who cannot therefore claim compensation from SNCF for the loss of her vehicle;

Whereas Mrs. A., the owner of the Honda vehicle affected by an intrinsic defect before it was accepted by SNCF, which defect was the direct origin of the fire on the motorail wagon and of the consequent damage that resulted for the carrier, must on the other hand be declared liable for the losses suffered by the latter and which amount to an undisputed sum of FF. 2,230,732.10 before tax; whereas since it is a case of damages, this sum will be supplemented by interest at the legal rate to run from the date of the ruling;

Whereas concerning the liability of the installer of the defective radiotelephone, whereas he has a bounden duty towards his customers, this is not the case for SNCF which has not entered into a contract with the installer and which can only ascertain his liability in tort;

Whereas considering that in fact, investigations by expert R. established that the cabling defect attributed to JD Automobiles, who first installed the radiotelephone, as described by the expert on pages 17 *in fine* and 18 of his report, constitutes a professional fault and therefore brings into play his liability in tort in respect of SNCF;

Whereas it follows that AGF, which succeeded to the rights of PFA, JD Automobiles' insurer, will be required in solidum, within the limits of its policy, along with Mrs. A., to pay SNCF the compensation as stated above;

Whereas the cabling defect affecting the radiotelephone fitted in Mrs. A.'s Honda vehicle, is attributable to JD Automobiles, the former therefore has a well-founded basis for applying for PFA to cover the compensation she is ordered to pay to SNCF, whereby PFA will be allowed to remain within the limits of its policy;

Whereas since the case concerns requests from SNCF and Mrs. A. tending to the setting of their claims for which JD Automobiles are liable, whereas these claims must be rejected for not having been formulated at the time of the resumption of proceedings as provided for in Article L 621.41 of the new Commercial Code, it being additionally remarked that SNCF has not justified any claim statement;

On Mr. Ch.'s appeal

Whereas Mr. Ch., whose vehicle was entirely destroyed in the above-mentioned fire, requests that Mrs. A. be ordered to pay him compensation for the loss he suffered and which was not compensated for by SNCF on the basis of Articles 1382 and 1384 of the Civil Code or by the insurers of JD Automobiles, to whom the defective cabling that caused the fire is attributable; whereas he claims not to have received compensation for the whole of the material loss he suffered which he estimates at FF. 60,000 and for the moral injury he suffered which he estimates at FF. 70,000;

But whereas the invoices Mr. Ch. presents do not provide the court with anything more than was provided in the first action concerning the loss he had actually suffered as a result of this fire, the claims he based on these grounds, and all his claims, must therefore be dismissed;

On the related claims:

Whereas it would be inequitable to leave SNCF with the unrecoverable costs it had to pay during the appeal procedure, whereas SNCF will in this respect be granted the sum stated in the pronouncement, which Mrs. A. and AGF, which has succeeded to PFA's rights, are ordered to pay, AGF being required to cover Mrs. A. for this order to pay;

Whereas Mrs. A., judged to be responsible for the fire, cannot lay claim to the granting of damages and to have her costs paid by SNCF and Mr. Ch.;

On these grounds

Upholds SNCF's withdrawal of its appeal against AGF;

Reverses the previous ruling and, ruling anew:

Orders in solidum Mrs. A. and AGF, which succeeded to PFA's rights, to pay SNCF, within the limits of its policy, the sum of FF. 2,230,732.10 before tax, i.e. FF. 2,329,590.36 including tax, plus interest at the legal rate on the before tax sum, to run from the date of the ruling, and the sum of FF. 10,000 on the basis of Article 700 of the new civil procedure Code;

Orders AGF, within the limits of Mrs. A.'s policy, to cover all the costs pronounced against her in favour of SNCF;

Dismisses the claims of Mr. Ch.;

Dismisses the rest of the parties' claims;
[Related decisions]

(Direct communication)
(Translation)

Miscellaneous Information

International Liaison Group of Government Railway Inspectors (ILGGRI)

Rome, 19/20 September 2002

Whenever possible, the Director General of the Central Office attends the regular ILGGRI meetings – a cycle of three meetings a year has evolved, which should be maintained for the time being. At each meeting, it again becomes clear that a lot of issues that are important in relation to the new Appendices F and G of COTIF 1999 (COTIF Rules for Approval) are discussed and advanced within ILGGRI. ILGGRI's work is closely related to the development of EU Community law in the rail sector and to transposing this law into coordinated application. ILGGRI's work can be used directly for preparing the application of the COTIF Rules for Approval, although it makes sense for the Central Office to take part in the work with its own initiatives (see Bulletin 2/2002, p. 37). This will become increasingly possible once the OTIF Secretariat has sufficient expert capacity on the technical side. Recruitment for an additional post for this purpose is still underway (see Bulletin 2/2002, p. 27).

At a meeting at the beginning of July 2002 between the Director General and the people at UIC responsible for its initial work on the Annexes to Appendix F of COTIF 1999 (APTU), it could be seen that there are already significant, tangible results that can be submitted to UIC's competent approval organ this year and that can be fed in to a procedure for coordination with AEIF. UIC's completed work should be ready for adoption internally within UIC in the first half of 2003. The timing, on the one hand of the COTIF Rules for Approval and the first generation of the APTU Annexes and on the other the European Commission/AEIF and the first generation of the TSIs for the conventional rail system, seems optimal, with a view to coordinated validation, acceptable to everybody, of the first generation of the APTU Annexes by the OTIF

Committee of Technical Experts after COTIF 1999 has entered into force – provided the ratifications run according to plan and the EU does not reject Appendices F and G when it accedes to COTIF 1999. It was therefore decided, as a next step, jointly to provide information within the ILGGRI group. It is very important that those responsible for the technical railway inspection authorities represented in ILGGRI have a sufficiently up to date level of knowledge, particularly with regard to harmonization of the Central Office's programme with that of the competent EU organs, which is monitored in the so-called Article 21 Committee (Committee for the interoperability of the trans-European rail system). The Director General and Mr. Werner Breitling, deputy Director General of UIC and co-manager of AEIF, jointly provided information in this respect at ILGGRI's 3/2002 meeting.

Various discussions then showed that the entry into force of COTIF 1999 and the coming into effect of the new instruments dealing with technology/approval will quickly require supporting work. On the one hand, gaps that are already known about will have to be filled, particularly with regard to the matter of minimum uniform requirements for maintenance undertakings that are contracted to carry out maintenance work in the open market in some way or another. But there is also an indication that new requirements will be needed, for example on the matter of how to ensure that a rail vehicle owner who only leases the vehicles undertakes the inspection and maintenance obligations he still has, based, moreover, on internationally harmonized guidelines.

This emphasizes the fact that a certain dynamism will be prevalent in the technology/approval sector – obviously with a strong EU influence, which leads one to expect that the future OTIF Committee of Technical Experts will ultimately be a body similar to the RID Committee of Experts, although both these bodies will have to foster mutual contact.

(Translation)

Francisco Miguel Sanchez Gamborino †

The OTIF Secretariat has heard with regret of the recent death of Mr. Sanchez Gamborino, Q.C.

Mr. Sanchez Gamborino founded a legal practice and was a court lawyer for more than 50 years. He dedicated himself to transport law, becoming one of Spain's best specialists in this area. The deceased was the author of one of the rare Treaties on the transport contract in Spain, which was presented in the 1995 Bulletin. He

also published other works and articles dealing with transport law. He was legal advisor to the "Asociación del Transporte Internacional por Carretera (ASTIC)", a member of the IRU's Legal Affairs Committee and an advisor and lawyer for transport undertakings, particularly those involved in road haulage, in public administration and court cases. He maintained regular contact with the OTIF Secretariat.

OTIF will retain pleasant memories of Mr. Sanchez Gamborino, who dedicated more than 50 years of his life to transport law.

(Translation)

Book Reviews

Danzl, Karl-Heinz, *Eisenbahn- und Kraftfahrzeughaftpflichtgesetz (EKHG)* (Railway and Motor Vehicle Liability Act), Verlag Manz, Vienna, 2002, 7th edition, XX, 564 pages, bound, 99 €. ISBN 3-214-12042-5

The 1st edition of this Act, with a commentary, was printed in the summer of 1959 and has been continuously updated since then. The 5th edition, published by Erika-Doris Veit, the wife of the founder, Rolf Veit, was comprehensively covered in the 1992 Bulletin, p. 105. The 7th fully revised and expanded edition was published by Dr. Karl-Heinz Danzl, who has been a member of the second panel of judges (Expert Panel of Judges for Matters concerning Liability) of the Supreme Court of Justice. The author is therefore a well-placed qualified expert in the area of damages law with which he deals.

What gave rise to the new edition was the alignment of the liability limits of the EKHG with the Euro, with effect from 1 January 2002. Since the 6th edition, which appeared in spring 1998, the literature and case law have also given decisive impetus to the further development of the commentary. In addition to the rulings that are regularly published in the "Bulletin of Transport Law", particularly those of the Supreme Court of Justice, rulings which have not yet been published have been taken into account and worked in, where they are at all accessible, up to and including the status as at 28 February 2002.

In view of the fact that since the beginning of 2001, anyone has been able to access the entire text of all rulings of the Supreme Court of Justice on the internet, these rulings are henceforth quoted only with the

number and location, and not with the date, as was previously the case.

The new rules of spelling in German also posed a certain problem: the author only retains original quotations from earlier (literature, case law, legal material and the text of the Act itself).

Of particular interest for readers of this Bulletin is a parliamentary question directed to the Federal Minister for Justice – up to now the only one on the National Council's EKHG – and the reply, which is reproduced in full in the commentary. The question concerned accidents involving train passengers in wheelchairs when getting in and out of trains.

"Liability for personal injury and material damage in connection with the boarding into trains of passengers in wheelchairs or their alighting therefrom is governed by the general provisions concerning liability in tort In addition, according to standing case law of the Supreme Court of Justice, boarding and alighting from trains is a railway operations matter; therefore, in addition to liability in tort in accordance with the General Civil Code, absolute liability in accordance with the EKHG also comes into effect. The railway operating undertaking has to assume responsibility for personal injury and material damage arising from such accidents when boarding and alighting, unless he can prove that the incident was unavoidable. The operating undertaking may also be liable under the contract of carriage, since on the basis of this contract, it is obliged, amongst other things, to bring its passengers unharmed to their destination.

In accordance with paragraph 1 of § 5 of the Railways Act, the railway is liable for persons in its employ and for other persons they use in carrying out the transport operation. In addition to the railway's liability, liability of an employee whose actions were irresponsible, or of a third party, may apply. In all cases, the general provisions of the law on damages concerning joint responsibility of the injured party are applicable.

Whether and to what extent a disabled person is entitled to claim for damages because of an accident when boarding or alighting from a train depends quite substantially on the circumstances of the individual case. Not using available aids for boarding and alighting may possibly have a role to play in determining joint responsibility. It is not possible to make a general statement here either, because it would crucially depend on the reasons why such aids were not made use of.

Lastly, it is pointed out in a very general way that the position of injured parties in such accidents with regard to legal liability is very favourable under the absolute liability that applies to the railway operating undertaking. This also corresponds with the practice of the courts, which has found reasonable solutions in favour of the passengers concerned.”

The commentary also contains information on foreign literature. Its use is facilitated by a particularly comprehensive list of contents. It is aimed at lawyers, judges, vehicle insurance companies, legal protection insurance companies, car driver clubs, railway undertakings, cable-car and tow lift undertakings, etc. The “Railway and Motor Liability Act” by Danzl is essential reading for everyone who is involved with the law on transport liability.
(Translation)

Schmitt Peter A. (editor), *Langenscheidt's Dictionary Technology and Applied Sciences English-German*, first edition, Langenscheidt Fachverlag, Munich, 2002

The forerunner of this new reference work is Langenscheidt's Polytechnical English-German Dictionary. It has been completely revised and updated, and with more than 240,000 English head words and over 500,000 specialist terms, it has been expanded by more than half. The author, Professor Peter A. Schmitt, holds the chair of Linguistics and Translation (English) at the University of Leipzig.

As a result of the wholly computer-based work on terminology, from data capture to production, this dictionary is uniquely up to date in comparison with other large technical dictionaries.

Before even looking at the content of this new dictionary, the user is struck by the particularly clear presentation of the entries. Headwords are printed in bold text, with translations in normal text alongside, and there are no cross-references. Where they apply to more than one specialist field, entries are repeated in bold text, rather than being buried somewhere in a lengthy list of possible meanings, and each specialist field is also clearly shown so that there is no possible confusion over which translation is used in, for example, telecommunications or mechanical engineering. Together with practical information on the individual descriptions, such as notes on regional particularities or different registers of style, the entries enable the user to choose the correct term from the synonyms for the person or purpose concerned.

The range of technical areas covered is extensive for a "general" technical dictionary (more than 110). In addition to the traditional technologies, IT is well represented as would be expected in an up to date reference work. With over 2200 pages in the main part and 23 pages of current technical abbreviations, the dictionary is of use both to those German speakers who need to read technical texts in English, particularly as it has such a handy presentation, and to translators, whether English-German or German-English, as the book can be used to check English terminology and spelling too.

Hauer Andreas, *Nachbarschutz und Eisenbahnbau* (The Protection of Neighbours and Railway) Construction, XIII, 122, Manz'sche Verlags- und Universitätsbuchhandlung GmbH, Vienna, 2002, ISBN 3-214-09385-1

Railway planning and construction projects regularly affect the interests of numerous people. In the last decade, modernization of the Austrian rail network led to railway construction again moving more prominently into the area of legal interests. The main emphasis of this publication is on questions concerning standing and public participation and on the approval criteria and level of protection afforded by the law. The book takes the 2001 "Deregulation Act" into consideration, so it reflects the legislative position as at 1 January 2002. A further railway law supplement currently being drawn up was not awaited as, according to the current status of the drafts, it would not have any effect on the problems dealt with in this book.

The most important legal source for the construction of railways is the 1957 "Railways Act". This regulates the building and operation of public railways. In addition to these legal standards, there are others that do not deal with all public railways, but just with selected railway construction projects that are particularly significant and sensitive from an environmental policy point of view. These are the provisions of the 1989 "High Performance Railway Lines Act" and the provisions of the 1993 "Environmental Compatibility Test Act", as amended in 2000. Depending on the circumstances of the particular case, other legal provisions also apply, especially the "Nature Protection Act" of the Austrian Laender. These legal provisions are referred to above all in Part 5 of the analysis.

The author qualifies railway law as "unusual" regulation which is also, to a certain extent, the result of historical traditions. He points out that the railway law concession calls to mind an imperial prerogative for the

construction of railways, and that the determination of important railway authority acts of decision lies halfway between a constitutional planning decision and an absolutist act of grace.

The prerequisites for the construction and operation of a public railway are the concession, construction approval and the operating licence, all under the railways legislation. Not long ago, a distinction was made in the Act between the concession as a rail infrastructure undertaking and as a rail transport undertaking.

The 1957 "Railways Act" is silent on the question of standing in the concession procedure and does not concede any standing *ex lege*. In principle therefore, potential "neighbours" and other members of the public with an interest have no standing in the concession procedure under the railways legislation. However, the Act does offer the head of the provincial government and those local authorities whose locality will be affected by the railway the possibility of stating their case.

In contrast, for the construction approval procedure under the railways legislation, the 1957 "Railways Act" gives a summary list of some of those who have standing, particularly the owners of those properties affected. In addition, all those people have standing to whom subjective public rights are accorded in this respect. In its rulings, the Administrative Court has a rather restrictive position in respect of the question as to which interests are recognized as subjective public rights in the construction approval procedure under the railways legislation.

The Federal "High Performance Railway Lines Act" requires that the Ministry of Transport must determine by means of an Order the route a railway line takes when the Federal Government has declared a railway a high performance line. In the outcome, the route the railway line takes is to be determined so that it matches the requirements of an efficient and economic railway and in a way that takes proper, considered account of all other public interests.

In 1999, the 1989 Federal "High Performance Railway Lines Act" was supplemented by an Article prescribing a provisional route Order.

The 2000 "Environmental Compatibility Test Act" was added to the system of the 1957 "Railways Act" and the Federal "High Performance Railway Lines Act".

This results in an extraordinarily complex legal situation which cannot be examined in detail here.

This book is of course supplemented by a list of head words, a list of abbreviations and a bibliography. It is an indispensable aid to the work of lawyers involved in legal questions surrounding the construction and operation of railways.

(Translation)

Kunz, Wolfgang (editor), *Eisenbahnrecht* (Railway Law). Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements, Nomos Publishing, Baden-Baden, ISBN 3-7890-3536-X, 12th supplement, status as at 1 June 2002.

The base volume appeared in 1994 (see Bulletin 1/1995). The ongoing provision of supplements means that in addition to the necessary updating, the texts and commentaries are made more complete step by step (see Bulletin 4/2001).

The collection now includes three volumes, one of which is reserved for German law and one for the law applicable in the Federal Lander. The third volume covers the categories of "European law", "international law", "recommendations/requirements/tariffs" and "other law".

The 12th supplement mainly updates the "German law" section. Two measures transposing European Community Directives in Germany should be mentioned:

- the domestic and transfrontier transport of dangerous goods by road and rail order, and
- the act transposing Commission Directive 2000/52/EC of 26 July 2000 amending Commission Directive 80/273/EC on the transparency of financial relations between Member States and public undertakings.

In the first case, only the text of the order with the annexes is printed. In the second case, explanatory notes by the editor of the collection are printed along with the text of the act. The act covers undertakings which, on the one hand, provide services of general economic interest and which, on the other, undertake a purely commercial activity, as is the case for former state monopoly concerns. The explanatory notes include information on other EC requirements that form specific regulations in this respect for certain areas of business. Some gaps in the regulations and questions that have

remained open are considered from a critical point of view.

This supplement also contains the amended text of the Directive referred to. This year's announcement by the Federal Ministry of Transport, Construction and Housing on amendments to the European Company for the Financing of Railroad Rolling Stock ("Eurofima") statutes and additional protocol appears for the first time in the "international law" section. This section also includes five contracts/agreements that were concluded in the period 1995-1999 between the German Ministry of Transport and the competent Ministries of three of its neighbouring countries – the Czech Republic, Austria and Switzerland.

This comprehensive collection of the requirements covering the many legal relationships in the rail sector can serve as an initial rapid overview in aiding the work of experts in administrations, undertakings and associations, both within their own areas of activity and beyond.

(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° 2950/2002, p. 499/500 – 10 questions sur la faute du commissionnaire (M. Tilche)

Idem, n° 2952/2002, p. 540-542 – Transports maritimes. Les travaux de la CNUDCI (P. Delebecque)

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 87/2002, S. 6 – Klage auf unbegrenzte Haftung geht nicht immer durch. Beweislast liegt nach dem Warschauer Abkommen beim Geschädigten (F. Nolden, S. Hartung)

Idem, Nr. 99/2002, S. 9 – Haftungsgrenzen sind kein Gewohnheitsrecht. Die Einbeziehung der ADSp in einen Transportauftrag (E. Boecker)

European Transport Law, Antwerpen, No. 2/2002, p. 139-166 – Ist grobe Fahrlässigkeit ein Tatbestand des Art. 29 CMR? (O.J. Tuma)

Idem, No. 3/2002, p. 291-299 – Paradoxon dualer Haftungsobergrenze des Art. 23 Abs. 3 CMR (S. Rogov)

Journal pour le transport international, Bâle, n° 28/2002, p. 32/33 – Disparition de chargements routiers en Italie – jurisprudence variable (E. Boecker)

Idem, n° 31-32/2002, p. 30/31 – Chance dans la poisse (E. Boecker) ; p. 31 – Chère, la rupture de contrat

Idem, n° 39/2992, p. 16/17 – Indispensable coopération (Sagitta)

Transportrecht, Hamburg, Nr. 7-8/2002, S. 265-277 – The UNCITRAL/CMI Draft for a New Convention Relating to the Contract of Carriage by Sea (G.J. van der Ziel)