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Summary

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Central Office Communications

Accession to the 1990 Protocol

Iraq

In application of Article VI of the Protocol of 20 December 1990 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1990 Protocol), Iraq deposited on 26 February 2003 its instrument of accession to this Protocol with the Provisional Depositary[1]. The Secretariat informed the Member States of OTIF of this deposition on 20 March 2003.

The 1990 Protocol has been in force since 1 November 1996. Since this date, application of the CIV and CIM Uniform Rules is suspended in respect of traffic with and between those Member States that have not ratified, accepted or approved the 1990 Protocol or have not acceded to it or have not notified the Secretariat in accordance with Article 20 § 3 (2) concerning application of the amendments agreed by the 2nd General Assembly.

This suspension ceases to apply to traffic with Iraq in accordance with Article 20 § 3 of COTIF one month after the Secretariat has notified the Member States of the accession, i.e. on 20 April 2003. The 1990 Protocol will enter into force for Iraq on that day.

The suspension of Iraq's membership of OTIF as agreed by the 4th General Assembly (Athens, 8-11.9.1997) will only be lifted when this Member State has notified that international rail traffic on its territory has been restored. The Secretariat has not received such a notification.

Ratification of the 1999 Protocol

Algeria and Poland

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), Algeria deposited the instrument of ratification of the 1999 Protocol with the Provisional Depositary[1] on 4 February 2003 and Poland on 3 March 2003.

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). Poland is the eleventh State to have ratified the 1999 Protocol.

[1] According to Article 2 § 1 of the 1999 Protocol, OTIF performs the functions of the Depositary Government provided for in Articles 22 to 26 of COTIF 1980 from 3 June 1999 to the entry into force of this Protocol.

OTIF Organs

RID Committee of Experts working group on tank and vehicle technology

Bonn, 20/21 February 2003

see "Dangerous Goods"

Dangerous Goods

RID Committee of Experts working group on tank and vehicle technology

3rd Meeting

Bonn, 20/21February 2003

(See also in this respect Bulletins 3/2002, pp. 44-52 and 4/2002, pp. 78-79; the full report is available on our website, document reference number A 81-03/504. 2003).

The following states took part in the discussions at this meeting: Austria, Belgium, Czech Republic, France, Germany, Lithuania, Netherlands, Norway, Poland, Spain, 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/buffers and buffer heads

The working group saw presentations by two specialist companies (Oleo/Keystone and EST – Eisenbahn-Systemtechnik (Railway Systems Technology)) working in the buffers, energy absorption elements, anti-climbing protection and crash element sectors. These devices meet the new requirements in this area, which were approved by the 38th session of the RID Committee of Experts. It was agreed in this context not to restrict these devices to new types of construction only, but to refit existing wagons intended for the carriage of particularly dangerous substances.

Telematics

The working group received information concerning progress on the telematics research project. It was concluded that various rail transport prohibitions could be lifted by applying solutions involving telematics. The working group considered the usefulness of telematics to be obvious given that various undertakings already use telematics today for financial reasons (monitoring consignments, more efficient use of vehicles).

Staff safety training

It was agreed in this specific area to extend staff training in accordance with the following procedure:

1. Formation of groups;
2. Assignment of staff to the individual groups;
3. Description of the tasks of the individual groups;
4. Training requirements (time needed, need for refresher training) of the individual groups.

The meeting was reminded that not only the rail transport undertaking's staff, but also the filler's, consignor's or wagon operator's staff would have to be considered.

Devices to protect against the overriding of buffers

The meeting considered that the aims of such protection already set out by the working group, as well as the requirements, should be defined more precisely in order to seek compatibility between all the existing systems and to achieve standardization.

Sandwich-covers for tank ends

Before continuing the work in this area in the context of a research project, the meeting concluded that it would be necessary to find out whether the financial resources were available (160,000 €) and to carry out a qualitative assessment with regard to the improvements sandwich-covers could bring to protection against penetration by buffers.

External/central solebars/self-supporting tank

The meeting recalled that the requirements contained in RID (6.8.2.1.13) were targeted towards normal conditions of transport. What needed to be achieved was a comparison of safety in the event of a crash. It was decided to contact the American safety authorities and the Association of American Railroads to obtain information on the positive experiences they had had with the new type of American construction before continuing with the discussion. It was also agreed to invite representatives from the wagon manufacturers industry to take part in the work.

Checklist

With regard to the brake test, the meeting wondered whether it was really necessary to have stricter provisions for dangerous goods trains than for other trains or mixed trains, and whether improving training would not achieve more safety than a checklist. The meeting was of the view that States should explain the tasks incumbent upon inspectors in their country in order that a decision could be reached. It was suggested that this matter should be dealt with by another body, perhaps together with experts in this subject and dangerous goods experts. This suggestion for resolving the problem would be considered after the next meeting.

Next meeting

The next meeting will be held in Berne on 11 and 12 September 2003 and will deal mainly with the subject of derailment detectors.
(Translation)

UIC "Carriage of Dangerous Goods" Group of Experts

Dijon, 26/27 February 2003

At this meeting, the group received information concerning the following international meetings:

- 39th Session of the RID Committee of Experts (Berne, 18-21.11.2002)
- Joint RID Committee of Experts/ILGGRI meeting (Berne, 22.11.2002)
- UN Sub-Committee of Experts (Geneva, 2-6.12.2002)
- 3rd Meeting of the working group on tank and vehicle technology (Bonn, 20/21.2.2003).

The group decided its position on various proposals submitted to the RID/ADR Joint Meeting (Berne, 24-28.3.2003) and particularly on the thorny issue of security in the transport of dangerous goods by rail.

The meeting was also informed about the progress of CIT's work in the context of including legal rules concerning dangerous goods in the PIMs, particularly with regard to the acceptance of goods for carriage and the consignment note with the accompanying documents.

The meeting also dealt with the conformity of the RIV rules with the requirements of RID.

The problems surrounding documentation in combined transport were also tackled. The meeting regretted that on certain combined transport links, intermodal operators were still not applying the 1 July 2001 restructured version of RID and that fines of several thousand Euros had been collected as a result of incorrect information. It should be noted that some language versions of the RID Framework Directive for the restructured RID were only published very late in 2002. In this case, rail transport has nothing to gain!
(Translation)

RID/ADR Joint Meeting

Berne, 24-28 March 2003

25 Governments and 11 non-governmental international organizations, as well as the European Commission, took part in this session with Mr. C. Pfauvadel (France) as Chairman and Mr. H. Rein (Germany) as Vice-Chairman. This session was given over to the following main topics:

- tanks
- standards
- proposals for amendments to RID/ADR
- safety adviser
- security in the transport of dangerous goods in respect of harmonization with the UN Model Regulations
- future work.

The German version of the full report will be placed on the OTIF website. The French and English versions will be available on the UN/ECE Transport Division's website.

Tanks

As is customary, technical matters relating to tanks were dealt with in the ad hoc working group on tanks which met for nearly 3 days in parallel with the plenary session. The Joint Meeting examined the working group's report and most of the group's recommendations were approved.

Standards

The new ad hoc working group set up to look at standards (see Bulletin 3/2002, p. 55/56) met for more than 2 days outside the hours of the plenary session. The Joint Meeting examined the working group's report and decisions were taken on the group's recommendations.

A proposal by Switzerland, the purpose of which was, on the one hand, to specify in the tables referring to standards that the rules of RID/ADR must not be modified by the standards and which, on the other, was to stress that in the event of contradictions between RID/ADR and the standards, the requirements of RID/ADR took precedence, was referred to the working group. The problem stems from RID/ADR and standards being updated out of step as a result of different procedures and publication deadlines.

Proposals for amendments to RID/ADR

To resolve the problem of documentation and of the provisions specific to transport in a transport chain comprising a sea or air leg, as raised at the 39th session of the RID Committee of Experts (see Bulletin 4/2002, p. 72), it was agreed to convene a working group to be held in Hamburg on 10 and 11 June 2003, with the following mandate:

1. Determine the differences between land transport and maritime/air transport;
2. Assess these differences from the point of view of usefulness and safety and draft proposed solutions;
3. Resolve problems of documentation at the cross-over points between maritime/air and land transport;
4. Examine the obligations of the new (intermediate) consignor in ports and airports.

The Secretariats of IMO and ICAO would be invited to take part in the work from the beginning.

Safety adviser

Renewal of the safety adviser's vocational training certificate gave rise to a lengthy discussion which went back over the discussions at the last session (see Bulletin 3/2002, p. 53). It was finally agreed to convene a working group from 9 to 11 July 2003 in Geneva, with the following mandate:

1. Examine the document submitted to the Joint Meeting or to the working group;
2. Assess the suitability of the basic requirements and conditions for obtaining the initial certificate and for renewing it;
3. Draft proposal on the minimum requirements for approving the training and/or the examination depending on the decisions concerning paragraph 2 above;
4. Proposals for short-term solutions concerning renewal of the certificate in the Member States;
5. Exchange experiences on applying the provisions of 1.8.3 and assessment of questions that arise.

Basic rules for the work of the group:

- The safety adviser's existing tasks as set out in 1.8.3.3 would serve as the basis for discussions;
- The aim is to ensure uniform qualification of the safety adviser.

Security in the transport of dangerous goods

As expected, this item gave rise to a long and controversial discussion following those at the RID Committee of Experts, the RID/ADR Joint Meeting, the ADR/WP.15 working party and at the UN Sub-Committee of Experts (see Bulletin 3/2002, p. 54/55 and 4/2002, pp. 73, 75-77 and 78-80). The representatives of the United Kingdom, Germany and France submitted a reworded text in comparison with the text adopted by the UN Sub-Committee of Experts and which took account of the specific features of RID/ADR. The principle of incorporating such provisions in RID/ADR was adopted by a majority of 1 (13 in favour, 7 against and 5 abstentions)! The details will be examined at the next session.

Future work

Agenda for the next RID/ADR Joint Meeting (Geneva, 1-10.9.2003):

1. Harmonization with the 13th revised edition of the UN Model Regulations, including security in the transport of dangerous goods;
2. Safety adviser;
3. Documents pending from this session.

An ad hoc working group will meet in Geneva from 26 to 28 May 2003 to deal with the above-mentioned harmonization. Given the importance and volume of the amendments this will bring, it was suggested holding an additional one-week session before the end of the year in order to implement and adopt the 2005 edition of RID/ADR. One solution would be to swap round the WP.15 session planned for 3-7 November 2003 and the Joint Meeting planned for 22-26 March 2004. The Joint Meeting would thus meet only once in 2004 (in Berne in September).

The UN/ECE Secretariat was asked to look at the various possibilities to arrive at a solution in accordance with the UN/ECE rules of procedure. Delegates were invited to lobby their governments to emphasize the need for an additional meeting and to support the changes to the programme of work the Secretariat will suggest in the light of this request.

The 40th session of the RID Committee of Experts to be held from 17-21 November 2003 will still take place. (Translation)

Co-operation with International Organizations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Inland Transport Committee (ITC)

65th Session

Geneva, 18-20 February 2003

OTIF was represented at part of the 65th session of the Inland Transport Committee held from 18 – 20 February 2003 in Geneva.

The Inland Transport Committee noted the progress achieved by the Ad hoc Multidisciplinary Group of Experts on Safety in Tunnels (rail) at the two sessions it held in 2002 in the preparation of recommendations aimed at improving safety in rail tunnels. In this connection, the Committee also noted that the Ad hoc Multidisciplinary Group would consider issues related to infrastructure, rolling stock and operations together, on the basis of the following four general objectives, namely: prevention of accidents, mitigation of the impact of accidents, facilitation of escape and facilitation of rescue.

Following approval of the report of the 56th session of the Working Party on Rail Transport, the Inland Transport Committee considered the possibility of foreseeing the organization, jointly with ECMT as from 2004 or 2005, of the meetings of the respective Working Parties of the two organizations. This matter was deferred pending the outcome of the bilateral consultations between the two organizations. The Committee also examined the usual topics, such as the determination of railway infrastructure capacity, the European Agreement on Main International Railway Lines (AGC), facilitation of border crossing in international rail transport and the role of railways in the promotion of combined transport.

With regard to combined transport, the Inland Transport Committee endorsed the initiative to include countries in Caucasus and Central Asia in the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) and decided to establish an informal ad hoc expert group on the development of Euro-Asian links of combined transport networks. It prolonged the mandate of the Working Party on Combined Transport and of its Ad hoc expert group in respect of the work on possibilities for reconciliation and harmonization of civil liability regimes governing combined transport. Taking into account the complexity of the issue, the work will be pursued in close cooperation with other intergovernmental organizations in this field (UNCTAD, UNCITRAL). The Committee also endorsed, in principle, the proposal by the Working Party on Combined Transport to refocus its scope of work and the organization of its activities, particularly in close cooperation with the ECMT.

With regard to the facilitation of border crossing, the Inland Transport Committee endorsed resolution No. 50 adopted by the Working Party on Customs Questions Affecting Transport in October 2002, which recommends the use of the SMGS Consignment Note as a Customs transit declaration in countries that apply SMGS. The Committee also requested the Working Party to pursue its work towards finalizing a convention facilitating international Customs transit for goods carried by rail on a pan-European level. If need be, a draft convention on this matter could be endorsed by the Inland Transport Committee at its next session in 2004.

Lastly, with regard to the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD), the Inland Transport Committee noted the very low participation at the sessions of the Ad hoc Meeting of Experts (see Bulletin 4/2002, p. 84) and that, as a consequence, its conclusions might not be representative enough so as to allow the adoption of a revised convention. The Committee urged its members to ensure better participation at the Ad hoc Meeting of Experts sessions scheduled for 2003. Owing to the questions raised during the discussion, it also decided to request

the Bureau to examine the existing conclusions of the Ad hoc Meeting of Experts, possibly to review its mandate and if need be, to define new guidelines for the work and objectives for 2003.
(Translation)

International Institute for the Unification of Private Law (UNIDROIT)

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

Rail Registry Task Force

Washington, 19/20 March 2003

The Rail Registry Task Force meeting was held under the chairmanship of Mr. Peter Bloch, as planned, at the AAR headquarters. The Italian Co-Chairman, Mr. Croccolo, had to send his apologies at the last minute. Only the Members from the USA and Canada, the Secretariats of UNDROIT and OTIF and the Chairman of the RWG, Mr. Rosen, were represented.

The assessment of the replies to the questionnaire on national funding and registration practices provided little information of use for a future registry system. The existing systems, where at all available, do not generally deal with the problems that arise in connection with a future international registry for international interests. The report produced in Brussels, an unofficial outline of which was brought to the attention of the working group, also leaves the question of future vehicle identification largely unresolved.

A contentious issue was whether a regional supervisory authority should be able to take a decision concerning conformity to the Convention, or whether such a decision should be a matter for the supervisory authority for the international registry. The regional registry, which in the USA is arranged according to debtors and not according to the equipment secured (rolling stock), could nevertheless be made accessible via the international registry.

Debtor-based systems would need to be supplemented to meet the requirements of an international registry directed towards the equipment secured. This way, the regional registry could serve as a "portal" for the international registry.

Another contentious point was whether it had to be *all* States in the area of an independent network, or whether only the *majority* of these States should be able to define a regional registry for mobile equipment, as a "designated body" in the context of Article 1 § 2 (c) of the draft Rail Protocol.

The working group finally prepared some text proposals to adapt Article V (Identification and description of railway rolling stock) and Article XIII (Access to Registry) of the draft Rail Protocol.
(Translation)

Organization for Railways Cooperation (OSZhD)

Signing of an OTIF-OSZhD Common Position

Warsaw, 12 February 2003

Looking for ways to overcome the problems arising as a result of the two coexistent systems of freight law (CIM/SMGS) was always the main issue in relations between the Central Office and the OSZhD Committee. Unfortunately, efforts to make the systems more similar or to harmonize them have not so far led to a ground-breaking success. A study on this subject entitled "Harmonization of international transport law. Aligning the two systems of freight law, CIM and SMGS" was published in Bulletin 3/1997.

At the working session between representatives of the Secretariats of both organisations on 28 February and 1 March 2001 in Warsaw, it was established that it would be wise to agree upon a common plan of action (see Bulletin 1/2001). The Meeting on the Strategic Orientation of OTIF (Berne, 7/8.3.2002, see Bulletin 1/2002, p. 9) considered this necessary.

A "Common Position" was drafted as a basis for this. This document first sets out the starting point and the basic concept for cooperation, followed by the individual areas of cooperation, i.e. transport law, dangerous goods law and approval law, and it lays down common lines of action.

At a working session within the OSZhD Committee on 12 February 2003, the Common Position was signed by the Chairman of the OSZhD Committee and the Director General of the Central Office. Within OTIF, this document will be endorsed at the next (99th) session of the Administrative Committee on 15/16 May 2003 in Bratislava. Within OSZhD, final adoption will take

place at the XXXI[st] meeting of the Conference of Ministers on 19/20 June 2003 in Tbilisi.
(Translation)

Studies

Deregulation and legal security[1]

Eric Desfougères, senior lecturer in transport law – University of Haute-Alsace

As it comes into its second century of existence, the International Rail Transport Committee (CIT), a non-governmental organisation whose job is to develop uniform rules for application and to implement the law covering railways governed by the Convention concerning International Carriage by Rail (COTIF), finds itself confronted with the real legal challenge posed by liberalization in this sector. The term liberalization, which is frequently and, without doubt, mistakenly assimilated with plain deregulation[2] does indeed present a new situation for railway undertakings (**I**), which necessarily implies that CIT will propose new solutions (**II**).

I. A new situation imposed

As for the other transport modes, liberalization of the rail sector is of course the result of Community texts (A), but also, and more specifically, the result of the provisions of the new COTIF, which no longer contain an obligation to carry (B).

A. European liberalization

In this sector, characterized strongly by public service obligations which are often passed on to public enterprise monopolies, it can be said that apart from a Council Recommendation of 19 December 1984 encouraging railway undertakings to improve cooperation between themselves, liberalization really began with the European Directive of 29 July 1991[3] which set Member States the objective to be achieved by 1 January 1993 of modelling the legal regime of these undertakings on that of commercial companies and the separation, at least as far as accounting is concerned, of infrastructure management from transport services (Art. 4, 5 and 6). This same Directive (Art. 10) also recognizes access and transit rights to national rail infrastructures for international groupings of rail undertakings between the undertaking wishing to transport goods or passengers and the railway undertaking of the destination State. However, by virtue of the European Regulation of 20 June 1991[4], the Member States still have the possibility of making these undertakings subject to certain public service obligations for reasons relating to the provision of certain services or in the interest of certain social categories of passengers. One of these is the obligation to carry passengers or goods at set prices and under set conditions[5].

An additional step towards opening up to competition was subsequently achieved by means of the Directive of 19 June 1995[6] concerning the licences issued by national governments granting right of access to international traffic. Faced with the failure of the opening-up strategy established by the Commission in a Communication to the Council and European Parliament in March 1998[7], very few undertakings having taken advantage of the right of access, three new Directives amending the previous ones, and often referred to as the "rail package", emerged on 26 February 2001[8]. The aim of these was to achieve by 15 March 2003 a European

1 Talk given at the Symposium organized in Lucerne on 30.5.2002 on the occasion of the 100 years of CIT, see Bulletin 2/2002, p. 32.

2 With regard to the fairly paradoxical consequences of European transport liberalization, see our observations "Vers un retour de l'État en droit des transports" (The Return of the State to Transport Law) in the May/June 2001 edition of "Transports", p. 178 ff.

3 No. 91/440 OJEC L 237 of 24.8.1991 and commentary by A. ALEXIS, "Transports par fer et concurrence, les principaux apports de la directive 91/440" (Rail transport and competition, the main contributions of Directive 91/440) in Droit Européen des Transports 1993, No. 4, p. 499 ff. and IDOT Laure, "L'ouverture des transports ferroviaires" (The opening up of rail transport) in Cahiers de Droit Européen, 1995, p. 263 ff.

4 No. 1893/91 OJEC L 169 of 29.6.1991.

5 See ARSAC Magalie, "L'appréhension du service public ferroviaire par le droit communautaire" (Apprehension of the public rail service by Community law), Mémoire de DEA Droit communautaire, Paris: LGDJ coll. Université Pathéon-Assas, 1997, p. 21.

6 No. 95/18 OJEC L 143 of 27.6.1995.

7 V. GERARDIN Damien, "L'ouverture à la concurrence des entreprises de réseau – analyse des principaux enjeux du processus de libéralisation" (Exposing network undertakings to competition – analysis of what is mainly at stake in the liberalization process) in Cahiers de Droit Européen, 1999, p. 23/24.

8 Nos. 2001/12, 2001/13 and 2001/14 OJEC L 75 of 15.3.2001.

rail freight network that would be freely accessible (without grouping) to Community rail undertakings, to be extended to the entire network of the Member States by 15 March 2008 at the latest. In addition, Community licences would have to be issued by independent authorities and the allocation of paths would also have to be managed by an independent body[9].

Recognizing the considerable impact on the whole of the rail sector, the COTIF signatory States very quickly became aware of the urgent need fundamentally to revise the Convention to take account of these new directions.

B. The removal of the obligation to carry in the new COTIF

According to Article 3 of the CIM Uniform Rules (contract for international carriage of goods by rail), there was an obligation to carry. This meant that once they were entered in the list of CIM lines, the railways were bound to accept goods handed over for transport and to carry them under the conditions prescribed.[10] This then constituted a real community of rail carriers.

But the obligation to carry had already been deleted in the eighth revision of COTIF in 1980 for part-load transport and it had also been removed from most national legislation before that. There was a whole series of limitations to the general obligation. The consignor had to comply with the CIM Uniform Rules, additional provisions and international tariffs. Transport could not be prevented by circumstances the railway could not avoid and which it was not in a position to remedy (especially Art. 3 § 1 (c)). The competent authorities of the State concerned could also take restrictive discontinuation, suspension or quota measures, e.g. for political or health reasons (Art. 3 § 4). An inter-network agreement concluded under the auspices of CIT provided for the systematic and reciprocal exchange of information between the railways, who were also to check by means of a customs facility that the goods were the same at departure and arrival, and they had above all to work together to ensure transport from when the goods entered their territory up to when they left it.

It seems this assortment of national services could not withstand the European liberalization referred to earlier, and through-transport by a single service provider necessarily meant that this obligation to carry was deleted from the new COTIF[11] which is to enter into force in 2003 or 2004, enabling a railway to oppose an international contract to which it is not party. This would obviously not be possible without a new form of regulation to ensure legal security.

II. The proposed new solutions

While CIT has already looked at some issues (A), others are still on hold for the time being (B).

A. The contracts envisaged by CIT

At its own General Assembly held on 19 and 20 May 1999, a few days before the one held at Vilnius from 26 May to 3 June 1999 which resulted in the Protocol of 3 June, the origin of the new COTIF, CIT had already emphasized the obvious paradox according to which deregulation in fact requires new regulation[12]. This is why a working group has been set up within CIT to consider the consequences of liberalization in the areas of transport law and customs law[13].

Very specifically, to overcome the consequences of deleting the obligation to carry, this group identified four legal bases likely to bring about the necessary cooperation of the rail undertakings:

1. The hire contract for a locomotive and driver, where one rail undertaking is the lessor and makes available a locomotive with driving crew to another rail undertaking (carrier or substitute carrier). Running of all the transport operations is thus transferred to the lessee, who assumes full responsibility for them.

2. The haulage contract, where one rail undertaking providing traction makes available to another undertaking a tractive force capable of hauling a set of loaded or empty wagons. As the traction

[9] On these last two aspects, see esp. GRARD Loïc, "Nouvelles régulations et nouveaux régulateurs dans le secteur des transports en Europe" (New regulations and new regulators in the transport sector in Europe) in Revue du Marché Commun et de l'Union Européenne, No. 447, April 2001, p. 264.

[10] With regard to the obligation to carry, see the text itself of the current COTIF in Juris-Classeur commercial, volume 679 and the commentary by ALLEGRET Marc "Transports internationaux ferroviaires" (International carriage by rail), Ibid. volume 683, 1999, p. 8-10.

[11] With regard to this, the ninth and most significant revision of COTIF, see CIT – Info 2/1999, p. 1 and CIT – Info 3/1999, p. 1 ff.

[12] See CIT – Info 3/1999, p. 1, statement repeated in the 2000 Annual Report, p. 4.

[13] See CIT – Info 3/2000, p. 3.

provider is retaining technical control of the vehicle and commercial control, it will have sole responsibility.

3. The transport subcontracting contract made between a railway undertaking which performs carriage, in whole or in part, and another undertaking deemed to be a substitute carrier under the new COTIF. It is then the contracting carrier (principal) that will remain entirely responsible in respect of the consignor or consignee.

4. The service contract under which a rail undertaking entrusts another, a natural or legal person - the service provider - with performing the transport operations. The rail undertaking obviously retains responsibility. It remains that despite the great care that went into drafting them, it would appear that these theoretical models do not resolve all the problems.

B. Matters outstanding

In practical terms, the question of the interoperability of the European rail networks must first be raised. Within these networks, there are still some seventeen signalling and speed control systems, six types of axle load, four types of clearance and three different gauges. However, progress is being made, thanks particularly to the European Directive of 19 March 2001[14] concerning the interoperability of the trans-European conventional rail system and supplementing the Directive of 23 July 1996[15] which only covered the trans-European high-speed rail system, and also with the adaptation of interoperable equipment[16]. There is also the support of the International Union of Wagons (RIV Union), created in 1921 at Stresa and now integrated into the International Union of Railways (UIC), which drafted the Regulations concerning the reciprocal use of wagons in international traffic[17].

Another very practical difficulty international traffic has to face is the coexistence alongside COTIF of SMGS (Agreement on International Goods Transport by Rail, in Russian) which was signed in Budapest and entered into force on 1 November 1951 between the USSR and the countries of Eastern Europe and which, although most of the latter denounced it after the collapse of communism, remains in force in some of these countries[18].

Above all, we must take account of the fact that rail transport is going to become an increasingly complex operation, with the carrier having to sign at least three contracts: one to obtain a path in each country travelled through, one to use all the national infrastructures, with the infrastructure manager becoming a sort of broker, and lastly, a contract along the lines of those set out, which should have been integrated into COTIF. All this leads inevitably to the problems surrounding train management being externalized.

There is also the case of split transport operations[19] where there are several consignment documents, as opposed to direct traffic with reconsignment at each border and the conclusion of successive national transport contracts, the conditions of which apply to each railway. Then there is the problem of incomplete trains where wagons have been uncoupled en route. In addition, some undertakings only provide departure services (loading). Lastly, there remains the attitude of the European institutions who wish to divide up the markets with even a market for wagons being returned empty.

This, briefly, is the extent of the challenge facing CIT, which is under a real obligation to succeed in order that these liberal transformations, whose clearly stated aim was after all to promote rail transport in Europe, do not, because of their implied complexity, paradoxically end up benefiting road transport, and taking the expression used by Mr. José Compère[20], the officer responsible for these matters in the CIT Committee for rail sector liberalization projects and in the think-tank group on cooperation contracts, liberalization should show the way to "cooperation which is free, but not libertarian". (Translation)

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14 No. 2001/16 OJEC L 110 of 19.3.2001.

15 No. 96/48 OJEC L 235 of 17.9.1996.

16 See "La Vie du Rail", 23.1.2002, p. 18 ff.

17 See ALLEGRET Marc op. cit. volume 680, p. 6 and COMPERE José in Bulletin 7/8/1982, p. 108 ff.

18 See ALLEGRET Marc op. cit. volume 680, p. 4/5.

19 See ALLEGRET Marc, op. cit. volume 683, p.3.

20 See CIT – Info 3/2001, p. 1.

Case Law

Oberster Gerichtshof Österreichs

Ruling of 28 February 2001

1. **For application of the CIM UR, the agreed transport route is decisive and not the route on which the consignment was actually carried.**

2. **The mandatory nature of the provisions of the CIM UR governing liability arises from the intended standardization of the special freight law for railways in international transport. Where the CIM UR prescribe liability, they supersede to this extent the agreed Austrian "general provisions for forwarders" (AÖSp). The fixed cost forwarder is liable for claims arising from the rail freight contract itself and may not invoke relief from liability in accordance with § 41(a) of the AÖSp.**

3. **The CIM UR do not prohibit the provision of insurance based on the Austrian certificate of forwarding insurance (SVS); the AÖSp are not superseded in this respect. If a transport operation subject to the CIM UR is covered by the forwarding and haulage insurance, the SVS insurers are liable in addition to the fixed cost forwarder in accordance with the provisions of the SVS.**

4. **The SVS insurer is also liable under the terms of the SVS if, owing to other mandatory provisions, the AÖSp are not applicable to the case of damage (in this case: UR CIM).**

5. **Fixed cost forwarding is also presumed if only certain costs forming only a small proportion of the overall costs are subject to separate settlement.**

Cf. Articles 1 and 51 of CIM; § 413 of the Austrian Commercial Code (HGB); §§ 2, 39, 41(a) of the Austrian general provisions for forwarders (AÖSp); §§ 1, 3 para. 1 of the Austrian forwarding insurance certificate (SVS).

Grounds for the ruling:

…

The plaintiff commissioned the Firm GmbH, based in W (referred to hereinafter as F) to carry 50 tons of powdered milk from Germany to Turkey by rail at a fixed cost per ton. The additional costs to be settled only form a relatively small proportion. It was agreed without dispute that the AÖSp applied. The transport operation lasted from 2 February to 2 March 1998. The consignee finally took delivery of the goods in March 1998. Amongst other things, the defendant paid additional costs for the forwarding and haulage insurance certificate. The forwarding insurance was provided.

The plaintiff is now seeking from the defendant as the SVS insurer a proportion of payment of 252,000 Austrian Schillings in total, including a supplement, in compensation as set out in the details, the justification being that a maximum of 10 days for the transport operation had been agreed with F. The actual length of the transport operation of one month was due on the one hand to F not having taken with it the original of an official veterinary certificate as an accompanying document - contrary to the requirement in force from 1 January 1998 for transit through Hungary - but only a duplicate (the original had had to be obtained first), and on the other, F had not produced a wagon itinerary, so that the wagons, which were carrying 25.4 tons, had had to be repacked in Yugoslavia, as a weight limit of 24 tons is in force there. Because the transport time was exceeded, the plaintiff's customer had to make a purchase to cover supplies, which had given rise to compensation, including costs, for new credit, and so forth, totalling DM 36,000. The goods had only been accepted after the plaintiff had intervened at length, although F refused to pay the consignee's claim.

The defendants argued that the Turkish consignee, but not the plaintiff, was entitled to sue. The defendants could not be sued because on the basis of consignment at fixed costs, the CIM UR and not the AÖSp applied and there was therefore no cover under SVS. Furthermore, no damage had occurred as a result of the delay.

The plaintiff had herself been obliged to provide the requisite accompanying documents. F had had no influence over the delay. There was no claim against the railway if the consignee had accepted the goods.

Damage was limited to three times[1] the carriage charges. Under CIM, only 5% interest was payable.

The Court of First Instance dismissed the action with the justification that according to § 413, para. 1 of the HGB, only freight law could be applied to fixed cost forwarding. It was indispensable to refer to freight law and would lead to any agreement concerning the validity of the AÖSp becoming void. This would mean that no damage covered by the forwarding insurance certificate had occurred and no action could be taken against the defendants.

As a result of the plaintiff's appeal, the Court of Appeal overturned the initial ruling and remitted the case to the Court of First Instance for further action and a fresh decision, because that Court had neither established whether a consignment note had been made out for the entire journey, nor which lines the transport operation in question was supposed to have travelled over, nor whether the lines were entered in the lists in accordance with "Art. 59"[2]. At present therefore, it was not yet clear whether the CIM UR or the AÖSp applied.

The Court of Appeal declared the appeal to the Supreme Court of Justice admissible on the grounds that no legal precedent on the application of the CIM UR existed.

In contrast, the defendants' appeal was a proposal to rule on the matter by rejecting the claim, possibly to overturn the decision of the Court of Appeal and to entrust the latter with making the new decision.

The plaintiff applies not to have the appeal admitted or possibly to leave it as dismissed.

The defendants' appeal is admissible, but unlawful.

Legal rule

On the basis of facts reviewed by the Court of Appeal, the plaintiff agreed with F fixed cost forwarding, as only individual costs forming a small proportion of the overall costs were subject to separate settlement (Schütz in Straube I2, § 413 HGB, marginal note 3, Kerzendorfer/Geist in Jabornegg, § 413 HGB, marginal note 1 ff. with further evidence). According to § 413, para. 1 of the HGB, fixed cost forwarders are only subject to freight law. Provided the corresponding requirements are met, the provisions not only of §§ 425 ff. of the HGB apply, but also the provisions of the special freight laws (7 Ob 586/93, 7 Ob 3/94 both with further evidence). The freight law applicable depends on the means of transport (4 Ob 127/99a). This may therefore also be rail freight law (4 Ob 127/99a; Kerzendorfer/Geist, reference as above, marginal note 7 with further evidence).

According to its § 2 (c), second sentence, legal provisions of a mandatory nature take precedence over AÖSp and limit the scope of AÖSp accordingly. Conflicting agreements concerning application of the AÖSp are void. Where no compulsory liability is prescribed however, the AÖSp supersede the freight law that would otherwise apply. In this respect, freedom of contract prevails (7 Ob 586/93, 7 Ob 3/94 both with further evidence).

In the case in question, transport was to be effected by rail from Germany to Turkey, both Member States of COTIF and the CIM UR (Spera, *Internationales Eisenbahnfrachtrecht*, (International Rail Freight Law), 1.1 (2); Mutz in Münchener Kommentar, vol. 7, p. 1516, Helm in "large commentary", 3rd edition, § 460 HGB, Annex II (Art. 1 of CIM), note 5). If the other conditions were in place, the claims lodged would therefore be subject to the CIM UR (overloading: CIM Art. 23; accompanying documents: CIM Art. 25; loss or damage resulting from the transit period being exceeded: CIM Art. 36).

In respect of the Rail Transport Act (EBG), the Supreme Court of Justice has already declared that rail freight law is to be considered as mandatory (4 Ob 127/99a). Schütz, (reference as above), § 413 HGB, marginal note 1, and Csoklich in *Einführung in das Transportrecht*, (Introduction to Transport Law), p. 60 are of this view specifically with regard to the CIM UR.

According to Article 51 of CIM, in all cases to which the Uniform Rules apply, any action in respect of liability on any grounds whatsoever may only be brought against the railway subject to the conditions and limitations laid down in the Rules. Even if in contradiction of e.g. Article 41 of the CMR, conflicting agreements are not invalidated, the mandatory nature of the provisions governing liability in the CIM UR still, in the view of the ruling Supreme Court, arises from the intended standardization of the railway special freight law in international transport. Therefore, where the CIM UR prescribe liability, they supersede the agreed AÖSp to that extent. This means that the fixed cost forwarder

[1] Editor's note: at the time of the transport operation in question, the 1990 Protocol version of Article 43 § 1of CIM 1980 was in force, according to which compensation for exceeding the transit period was limited to four times the carriage charges.

[2] Editor's note: the plaintiff is still basing her argument on Article 59 of CIM 1970, whereas the Court is correctly basing itself on Articles 3 and 10 of COTIF 1980.

is itself liable for claims arising from the rail freight contract and cannot invoke relief from liability in accordance with § 41 (a) of the AÖSp.

However, this has no effect on the liability of the defendant SVS insurer. The CIM UR do not in fact prohibit provision of SVS insurance, so in this respect, the AÖSp are not superseded. So if forwarding and haulage insurance is provided in respect of a transport operation subject to the CIM UR, the SVS insurers are liable in addition to the fixed cost forwarder in accordance with the provisions of the SVS.

According to § 1 of the SVS, forwarding insurance is insurance for the account of a third party. As the contracting party, the prospective purchaser of the goods is insured, or whoever is entitled to the insured interest at the time of the event which has caused the damage. According to § 2 item 1 of SVS, the insurance covers all damage from so-called "transport contracts", which, according to § 2 item 2 of SVS also includes freight contracts in addition to forwarding contracts (7 Ob 327/97g, 1 Ob 375/98y, Schütz, reference as above, § 415 HGB, Annex II SVS/RVS § 2, marginal note 1). The SVS insurers pay compensation under the terms of the legal provisions concerning liability of the insured party arising from the transport contract. They disclaim the objections the forwarder could raise under the provisions concerning exclusion from and diminution of legal liability in the AÖSp and other agreements or arising from commercial or transport usage (§ 3 item 1 SVS). This means the extent of the forwarding insurer's liability is not determined in accordance with the conditions of forwarding (Helm, "large commentary", 4th edition, § 415 HGB, Annex II § 3 SVS, note 1; also in this respect, P. Bydlinski in Münchener Kommentar, vol. 7, p. 266). This means the SVS insurers are also liable under the terms of SVS if AÖSp does not apply in this respect to the damage in question on the grounds that other mandatory provisions apply. An action could then be taken against the defendants in the event that the CIM UR came to be applied, which cannot be assessed at present.

The plaintiff's right of action stems (provisionally) from the fact that this is insurance for the account of a third party and the goods interest, amongst others, of the contracting party is insured (§ 1 SVS; Helm, reference as above, § 415, Annex I, § 39 of ADSp - German general provisions for forwarders, note 5, Bydlinski, reference as above, p. 265, Csoklich, reference as above, p. 147).

However, the Court of Appeal justly recognized that the findings of the Court of First Instance were not yet sufficient to be able to judge whether the case in point is subject to the CIM UR. A prerequisite for this is that the goods be consigned with a single consignment note for the whole journey for transport on a route on the territory of at least two Member States and which only includes lines entered in the lists in accordance with Articles 3 and 10 of the Convention (Art. 1 § 1 CIM). According to the findings, the only thing that is clear thus far is that the route is on the territory of at least two Member States, but it remains open as to whether a through consignment note for the whole journey was provided and what agreement the parties have come to concerning the lines on which the consignment should be carried and whether these lines are entered in the lists referred to above. The deciding factor is in fact only the route agreed for the transport operation and not the route on which it actually travelled (Spera, International Rail Freight Law, 1.3 (7)). However, the conditions for the applicability of the CIM UR can only be checked on the basis of corresponding findings by the Court of First Instance.

Therefore, the Court of First Instance will only be able to clarify which (special) freight law is to be applied in this case after the procedure of taking evidence has been extended, and only then will it be in a position to judge which findings it needs for the final ruling on the case.

…

[Incidental ruling]

(From: *Transportrecht*, (Transport Law), Hamburg, Volume 9/2002, pp. 346/347).
(Translation)

Miscellaneous Information

International Liaison Group of Government Railway Inspectors (ILGGRI)

York, 30/31 January 2003

The first ILGGRI meeting of 2003 took place in York (UK) on 30/31 January 2003 at a particularly suitable venue, namely the National Railway Museum, which is possibly one of the most impressive of its kind in the world.

As is usual and proper, a wide range of subjects was discussed, from reporting on accidents and specific

special technical questions in connection with rail safety, to noting the status or results of activities and working groups attended by representatives of ILGGRI, and brief discussions on questions of principle, particularly in connection with the development of EC Community law on interoperability/rail safety and on common interests at the level of the national inspection authorities.

This time, the main issues were:

- The approval process and the documentation required for it and the demonstration of safety (along with the problems surrounding the so-called safety level) in respect of official approvals;

- The special subject of the safety certificate;

- The subject of the database/register of vehicles (in conjunction with a European Commission/DG TREN study, UIC work and the special register in connection with interests in mobile equipment in accordance with the Cape Town Convention/Rail Protocol).

Seen from the outside, it is not always quite clear what is actually wanted from the institutional amendments in respect of interoperability, approval and safety:

- The break-up of traditional structures and responsibilities

- Across the board interoperability

- Improving the standard of safety

- Maintaining a margin for different legal and procedural cultures in the individual States.

This makes the discussion very complex, but it is important always to remain aware that in the interest of the railways, sufficient and the most rapid as possible effective interoperability and liberalization should be pushed forward energetically in order to create for the railways a competitive position, particularly in long-distance freight transport.

Some questions of definition are obviously still unclear, e.g. that of the safety certificate. Where is it to be used: only for undertakings or also for railway equipment or staff in connection with the official approval? A definition limited to undertakings must be chosen in order to avoid confusion. In addition, questions concerning definitions arise in connection with the database/register/coding in respect of railway equipment and vehicles. Clear delimitations are essential.

Explanations of terms that avoid misunderstandings are especially important when one considers all those who are involved in keeping up with the reform and reconstruction process:

- The Commission and particularly the experts it contracts to carry out mostly very wide-ranging studies;

- AIEF;

- UIC and its Safety Directorate;

- Those participating in the SAMNET programme.

All are striving towards a comprehensive approach. The most important participants and experts are involved on all sides, not least in order to check that no prejudices are created at some point that will cause difficulties later. For the work needed in connection with the implementation of the COTIF Rules for Approval, it is clear from the way things stand at present that no further working groups with their own programme can be set up. In addition, there is a growing impression that with a view to managing the COTIF Rules for Approval, the RID Committee of Experts must be the model, although clear differences must be taken into consideration. In particular, care must be taken to ensure compatibility with the future EU instrument, the European Rail Agency.

How does the future look for ILGGRI? At the moment, all are agreed that this question will be important once the European Rail Agency becomes fully operational. Until then, ILGGRI with its current formula can continue to play its role. There is no doubt that it can still remain a useful instrument in the coming years. It was therefore even more appropriate to discuss once again the working method in order to ensure good efficiency for a platform for contact which must of necessity remain informal. It therefore makes sense for OTIF to keep available in the background a minimum logistical basis. OTIF is an instrument serving its Member States which is also new to the technical area. OTIF's website is therefore to contain the headword ILGGRI in order that general information can be given out.
(Translation)

Discussion at the Ministry of Infrastructure of the Republic of Poland

During his visit to the OSZhD Committee on 12 February 2003, the Director General had a long discussion with a delegation from the Polish Ministry of Infrastructure headed by Under-Secretary of State Mieczysław Muszyński.

The Director General gained an insight into Poland's thoughts and efforts with regard to a consistent, connective and promising west-east rail policy beyond the borders of the extended EU. The EU wishes Poland to play an active role in this respect. Ultimately, the aim is to achieve optimum investment which, with the necessarily limited resources, will be of maximum benefit to the railways. All Poland's neighbours to the east are included in the activities, although there are different problems in each case:

- The focus is on the Russian Federation, where the Russian Ministry of Railways plays a key role, particularly with regard to the trans-Siberian axis. Great potential for development can be expected here, and Poland's neighbours to the west, especially Germany and the Czech Republic, will also of course be interested.

- Belarus, which follows Russia closely, also comes into the frame.

- Russia's access to the Baltic Sea via its enclave, the Kaliningrad region, is a particular problem. In addition to Lithuania, it also concerns Poland, because it is related to the Baltic States' access to the heart of the old Europe via pan-European Corridor I (branch A). This access is the subject of an independent development programme.

- The fourth line of action is directed at the difficult partner, the Ukraine, where there are major internal differences of opinion, including in respect of railway liberalization, and where ultimately, road transport mostly takes priority.

In the overall context, special attention is focussed on technical and operational interoperability at border crossings and at the cross-over points between normal and broad gauge lines. Poland has experience of both technical systems and has carried out pioneering work in respect of wagons transiting as smoothly as possible, from an operational point of view, between normal and wide gauge, based on bogies with variable gauge widths, with automatic changeover. Ultimately, the aim is "new border crossings" where no stop is required and which are therefore "invisible" and which offer the best possible quality based on commonly accepted high standards, in support of a competitive railway, mainly in freight transport.

This also brings legislative interoperability into play, that is, dealing with the different systems of transport law that apply in the OTIF area on the one hand and in the OSZhD area on the other and which, in the long term, should be harmonized.

Poland supports the strategy set out in the OTIF-OSZhD Common Position concerning cooperation between the two organisations, which takes as its basis a pragmatically managed process of harmonization. On the OTIF side, and with support from the EU, which wishes to accede to COTIF 1999, the opportunity for through-going transport operations under a single legal regime is to be promoted on the basis of reciprocity, by means of specific efforts and provided the market so requires.

This underlines the importance of the entry into force of COTIF 1999. Poland's ratification has been effected and deposition has been arranged (and was subsequently completed after a few days).
(Translation)

Book Reviews

Bidinger, Helmuth, *Personenbeförderungsrecht* (Law on the Carriage of Passengers), commentary on the Carriage of Passengers Act and other relevant provisions, 2nd completely revised edition into which supplements can be inserted, continued by **Rita Bidinger**, ISBN 3503008195, supplement number 3/02, as at December 2002, Erich Schmidt Verlag, Berlin-Bielefeld-Munich.

The book produced in 1961, the 2nd loose-leaf 1971 edition of which is continuously adapted to developments in the law, contains 3,638 pages in two folders. As previously, the commentary on the current version of the German Carriage of Passengers Act forms a major part of the work. The text of the Act (the version published in 1990) has in the meantime undergone several amendments. Three Acts passed in 2002 have entailed amendments that have had to be worked in to the commentary. Mention should in particular be made of the Equality of Disabled Persons Act, amending other

Acts, of 27 April 2002, which was already included in the "Texts" section in supplement number 2/02 (see Bulletin 4/2002, p. 94). The effects of this Act are now also considered in the commentary section.

A new feature valid from 1 February 2003 for issuing approvals means that the written form of the approvals will be specifically prescribed. However, at the same time, the possibility of diverging from this was also made available by allowing approvals and other documents to be issued electronically with a permanently verifiable signature in accordance with legal regulations and general administrative provisions promulgated on the basis of the Act. A comprehensive commentary on this provision is to appear in the next supplement.

Apart from the exemption from the requirement for approval for those organizing excursions and trips to holiday destinations, other new features relate in particular to the promulgation of legal regulations and general administrative provisions and to breaches of the regulations. These new features have provided the opportunity to revise and broaden the commentary on these provisions.

The commentary on passenger transport law, the development of which has been followed under this heading for many years, still fulfils its objective of "ensuring practice-oriented and sound commentary on the law on the carriage of passengers".
(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, 13th supplement, status as at 1 August 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 3/2002, p. 72).

The collection includes three volumes, two of which are reserved for German law and 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 comprehensive 13th supplement (almost 200 pages) mainly updates the "German law" section with the inclusion of new provisions implementing legal acts of the European Community and adapting competencies in the Federal Administration.

The user can see at a glance which provision has been amended by which regulation, as the text of each Act is preceded by an overview of the amendments. In some cases, an amendment to an Act is used as an opportunity to add new explanations or adapt existing ones. W. Kunz has added comprehensive explanations on the text of the Act in relation to an amendment to the Regionalization of Local Public Passenger Transport Act.

The Protection of Animals during Transport Regulations, which implement several European Community directives, are a new addition. The editor of the collection is also the author of the explanations on these regulations. In addition, amendments to the Railway Construction and Operation Regulations and the Railway Liability Insurance Regulations have been taken into consideration.

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)

Filthaut, Werner, *Haftpflichtgesetz (Kommentar zum Haftpflichtgesetz und zu den konkurrierenden Vorschriften des Delikts- und vertraglichen Haftungsrechts)*, [Liability Act (commentary on the Liability Act and on the conflicting provisions of the law governing liability in tort and contractual liability)], 6th newly revised edition, Verlag C.H. Beck, Munich, 2003, ISBN 3 406 50250 4, pages XXV, 638.

The Liability Act, as a separate law, regulates an important branch of German liability law, particularly the liability of undertakings operating a railway or cable railway and of proprietors of certain dangerous installations or a factory.

Even though the number of accidents in railway operations has, overall, tended to decrease in recent decades, liability without fault, introduced in Germany as long ago as 1871, is of considerable importance for victims.

The second amending law on the payment of damages, which entered into force on 1 August 2002,

considerably amended the Liability Act and the liability provisions in the German Civil Code. The aim of this law is to adapt the law governing payment of damages to current conditions and concepts of value and to the European law of neighbours regulations, to improve protection for victims and to simplify the settlement of damages.

In order to improve the position of victims in a case of damages, the "unavoidable event" justification for exclusion from liability has been dropped. In future, an operating undertaking can in principle only be relieved of liability by establishing *force majeure*. However, the legislator decided to maintain the "unavoidable event" justification for compensation for damages and to include a corresponding rule in the Liability Act.

Another important new feature of the law is the introduction of an injuries claim purely under absolute liability. This will also improve protection for victims. As this will mean the end of the assessment in the court procedure for establishing liability in tort, the effect that will be achieved in the settling of damages will be one of rationalisation.

The regulations concerning the maximum limits for liability were amended in order to achieve harmonization within absolute liability. At the same time, the amounts were increased in order to adapt to developments in costs. The maximum amounts have of course been converted into Euros.

In addition, the law on modernizing the law of contract, which entered into force on 1 January 2002, created a uniform provision for *contractual* breaches of duty and fundamentally restructured the statute of limitations.

These numerous and fundamental new features made a complete revision of Filthaut's commentary necessary.

Lastly, the opportunities for rail transport undertakings to use infrastructure belonging to other railways have become more significant. The problems of liability in this respect also needed to be set out in detail in the commentary.

The newly revised edition of the commentary takes account of legal precedents in Germany and the literature up to November 2002. A quick overview in alphabetical order on the cover complements the comprehensive index in the commentary itself and makes it considerably easier to use.

Filthaut's commentary has been edited with the customary care and can be warmly recommended to all those involved with matters concerning the law on damages. It is and will continue to be an up to date and comprehensive standard work on the Liability Act.
(Translation)

Sir Roy Goode, *Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment – Official Commentary.* Published by UNIDROIT, Rome 2002, ISBN 88-86449-10-0, 414 pages, € 100.- including packing and postage.

In accordance with the wish expressed by the Diplomatic Conference in Cape Town in its Resolution No. 5, the Chairman of the drafting group, Professor Sir Roy Goode, emeritus professor of law at Oxford University, has in a remarkably short time, and with the support of the UNIDROIT Secretariat and the ICAO legal service, produced the official commentary to the Cape Town Convention mentioned above, which was opened for signature on 16 November 2001. The official commentary was also produced in close cooperation with the Chairman of the Plenary Committee of the Cape Town Diplomatic Conference, the Chairman of the Committee for the Final Provisions and the members and observers of the drafting group.

The OTIF Secretariat has reported regularly in this Bulletin on the work which led to the adoption of this Convention and on the work carried out within UNIDROIT and OTIF on creating a Protocol to the Cape Town Convention concerning Matters specific to Railway Rolling Stock. With regard to the interest to the rail sector of the Convention and the Protocol, see also, amongst others, the study by G. Mutz in the 4/1999 Bulletin.

The official commentary is available in English and French and is presented in five parts:

Part one presents a brief history of the Convention and the Aircraft Protocol going back to 1988.

Part two gives an overview of the Convention and sets out the aims and dichotomous structure of the Convention, consisting of a base Convention and supplementing protocols concerning matters specific to the various categories of equipment (aircraft equipment, railway rolling stock, space property). The legal principles underlying the Convention are also covered in this part.

Part three contains an overview of the Aircraft protocol and sets out the additions and amendments it contains as compared with the base Convention.

There then follows in parts four and five the article by article commentary on the provisions of the base Convention on the one hand and on the Aircraft Protocol on the other.

The base Convention and Aircraft Protocol and the Final Acts of the Cape Town Diplomatic Conference, with the five resolutions it adopted, are reproduced in the twelve appendices to the official commentary. Attached to Resolution No. 1 of the Diplomatic Conference is a consolidated text of the base Convention and the Aircraft Protocol. This text has no legal force and serves primarily to make the text easier to read, thereby promoting understanding of the provisions of the Convention in the light of the amendments from the Aircraft Protocol, and facilitating their application.

In addition, the following are attached to the official commentary as appendices:

- A table of concordance of the provisions of the base Convention, the Aircraft Protocol and the Consolidated text,
- A matrix showing the Signatory States' declarations permitted under the Convention,
- A chronology of events concerning the development of the Convention, and
- A list of key documents in connection with the development of the Convention.

An index with the most important keywords makes practical use of the official commentary easier.

Not only is this commentary a considerable aid to understanding the Cape Town Convention and applying it in the aviation sector, but it will also be an important aid to drafting and discussing the Protocol on Matters specific to Railway Rolling Stock.

The book can be obtained directly from the UNIDROIT Secretariat, Via Panisperna 28, I-00184 Rome, at the above-mentioned price of € 100.-.
(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° 2969/2003, p. 3 – Marchandises dangereuses : L'ADR nouveau est arrivé (N. Grange)

Idem, n° 2974/2003, p. 96 – Droit de vérification du destinataire. Le point (M. Tilche)

Idem, n° 2979/2003, p. 189/190 – Voyageurs. Sort des bagages (M. Tilche)

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr.1-2/2003, S. 7 – Gefahrgut/Umwelt: Regulierung auf Hochtouren

Idem, 3/2003, S. 3 – ADSp-Änderungen treffen auch Frachtführer. Versicherungsschutz wird erheblich eingeschränkt (J. Knorre)

Idem, Nr. 10/2003, S. 8 – Der Verkehrsträger spielt keine Rolle. Vereinbarter Transportweg entscheidet über Rechtsanwendung (E. Boecker)[1]

Idem, Nr. 15/2003, S. 9 – Schutz für Frachtführer muss nicht eingeschränkt werden. Gleichlauf zwischen Haftung und Versicherung trotz ADSp 2003 möglich (P. Kollatz)

Idem, Nr. 21/2003, S. 3 – ADSp-Vereinbarung sollte schriftlich bestätigt werden. Neues Gerichtsurteil vom Oberlandesgericht Hamburg zu Geschäftsbedingungen (R. Herber)

Idem, Nr. 39/2003, S. 2 – ADSp müssen schriftlich vereinbart werden; S. 9 – Eine Sache der relativen Unmöglichkeit. Ablieferung oder Entladung beendet Frachtvertrag (H. Widmann)

Eisenbahntechnische Rundschau, Darmstadt, Nr. 3/2003, S. 87 – Neuer Gefahrgut-Unfall-Bericht gemäß ADR/RID

European Transport Law, Antwerpen, No. 5/2002, p. 546-602 – La Convention de Budapest (CMNI) (G. Auchter)

Gefährliche Ladung, Hamburg, Nr. 3/2003, S. 25-29 – RID-Wendepunkt (J. Conrad)

IMO News (The Magazine of the International Maritime Organization), N° 4/2002, p. 4 – Athens Protocol marks major advance in compensation regime (W.A. O'Neil); p. 5 - Liability limits for ship passengers raised with

[1] Relates to the case reproduced in this Bulletin (see Case Law)

new Athens Convention, compulsory insurance introduced

Internationales Verkehrswesen, Hamburg, Nr. 3/2003, S. 103-105 – Die ADSp im Umbruch (H. Valder)

Journal pour le transport international, Bâle, n° 7-8/2003, p. 34/35 – RID/ADR 2003

Idem, n° 11/2003, p. 44/45 – Ça coûte, la sécurité. 19ème colloque international matières dangereuses Hambourg 2003

Transportrecht, Hamburg, Nr. 2 /2003, S. 45-50 – Quantum Corporation Inc. v. Plane Trucking Limited und die Anwendbarkeit der CMR auf die Beförderung mit verschiedenartigen Transportmitteln (I. Koller)