



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

2/2003

111th Year • April - June

Summary

Central Office Communications

Ratification of the 1999 Protocol

Liechtenstein, p. 19

OTIF Organs

Administrative Committee

99th session - Bratislava, 15/16.5.2003 – p. 19

Central Office

Maria Lehmann [†], p. 20

COTIF

Accession of the European Community to COTIF

Negotiations concerning the conditions of accession – Berne, 27.6.2003 – p. 20

Dangerous Goods

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

Geneva, 19-23.5.2003, p. 21

Technology

Information seminar on the COTIF 1999 Rules for Approval – Berne, 26.6.2003 – p. 22

Other Activities

OTIF-UNIDROIT

Draft protocol on Matters specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment – 3rd Joint Meeting – Berne, 5-13.5.2003 – p. 24

Co-operation with International Organizations and Associations

European Communities (EC)

Study on compensation schemes in rail transport – Brussels, 20.6.2003 – p. 25

United Nations Commission on International Trade Law (UNCITRAL)

11th Meeting of Working Group III (Transport law) – New York, 24.3-4.4.2003 – p. 26

European Conference of Ministers of Transport (ECMT)

50 Year Jubilee of ECMT – Brussels, 22-24.4.2003 – p. 27

Meeting of the ECMT Committee of Deputies Group on Railways – Paris, 4.6.2003 – p. 27

Organization for Railways Cooperation (OSZhD)

XXXIst OSZhD Conference of Ministers – Tbilisi, 19/20.6.2003 – p. 28

International Rail Transport Committee (CIT)

General Assembly 2003 – Berne, 22.5.2003 – p. 31

Studies

Hans Rudolf Isliker, Subject: Safety – Safety of the Brenner base tunnel: How should the problem be considered fundamentally? – p. 29

Dr Gerfried Mutz, The International Registry for International Interests in Railway Rolling Stock, p. 34

Case Law

Landgericht Hildesheim – Ruling of 13.2.2003 – Carriage of motor vehicles – Liability of the carrier (damage caused by graffiti) (CIV), p. 39

Miscellaneous Information

EurailFreight

Munich, 22/23.5.2003, p. 43

International Liaison Group of Government Railway Inspectors (ILGGRI)

Berne, 22/23.5.2003, p. 45

French Private Wagon Association (AFWP)

Paris, 5.6.2003, p. 46

International Summer Academy 2003

Sopron, 19-22.6.2003, p. 47

Publications on transport law and associated branches of law, and
on technical developments in the rail sector, p. 47

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

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2/2003

111th year – April - June

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

OTIF Organs

Ratification of the 1999 Protocol

Liechtenstein

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), Liechtenstein deposited its instrument of ratification of the 1999 Protocol with the Provisional Depositary¹ on 13 May 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). Liechtenstein is the twelfth 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.

Administrative Committee

99th session

Bratislava, 15/16 May 2003

At the invitation of Slovakia, the Administrative Committee held its 99th session in Bratislava on 15 and 16 May 2003 under the chairmanship of Mr. Michel Aymeric (France).

The Committee approved the 2002 Annual Report. For the future, the Committee invited the Secretariat to begin considering the difference between: the Annual Report, a strategic direction document, an external communication document.

The Committee also approved the 2002 Financial Management Report and set the rate per kilometre at SFr. 6.40 as the basis for calculating the final contributions for 2002. It noted the financial situation of OTIF and the current situation with regard to investments. However, an overspend of SFr. 192,164.08 must be debited from the reserve fund owing particularly to the negative performance of the share portfolio, which is only shown in the financial outturn as

a result of the strict application of the accounting principles.

The Committee also noted and approved the OTIF-OSZhd "Common Position" (see Bulletin 1/2003, p. 6, and p. 28).

The Committee was informed of developments in the work on the Agreement for the EC's accession to COTIF. On 28 March 2003, the EU Council of Transport Ministers had in fact reached political agreement on the Second Rail Package and had therefore approved in principle the European Commission's negotiating mandate in respect of this accession. Official negotiations between the delegation of OTIF and the delegation of the European Commission would begin on 27 June 2003 in Berne (see Bulletin 4/2002, p. 71).

To conclude, the Committee broached matters in connection with the entry into force of COTIF 1999, particularly the matter of planning the work and the cycle of Committee meetings with a view to preparation of the 7th General Assembly.

It noted a table of comparison between the contributions Member States had to pay under the current system of funding and those they would have to pay under the COTIF 1999 system of funding (see Bulletin 4/2002, p. 71/72).

The 100th session of the Committee will be held on 6 and 7 November 2003 in Berne and the 101st session will be held on 3 and 4 June 2004 in Greece. (Translation)

Central Office

Maria Lehmann †

Mrs. Maria Lehmann was born in Berne on 19 August 1926 and obtained the Certificat d'études pratiques in French, English and Italian from the University of Geneva's Ecole d'Interprètes. After working for a short time in the Secretariat of the Swiss Bank Union (UBS), she took up a post at the Central Office for International Carriage by Rail on 1 March 1949, where she remained until 31 December 1989, when she left as a First Secretary.

During the 40 years she spent at the Central Office, Mrs. Lehmann worked with great attention to detail as a translator, keeper of the minutes and editor of all the texts for publication. Her excellent linguistic abilities

afforded valuable help in performing this often painstaking work.

For almost twenty years (1973 to the end of 1989), Mrs. Lehmann was also responsible for the Bulletin of the Central Office. This meant she had to finalize all the manuscripts, coordinate contributions, manage the deadlines, prepare the proofs and authorize the final copy for printing.

Mrs. Lehmann also carried out all the administrative work in connection with the Central Office library and, together with the Office's legal staff, prepared the documents for the 8th Revision Conference for publication.

Thanks to her exceptional linguistic abilities, great diligence and conscientiousness over several decades, Mrs. Maria Lehmann made a valuable contribution to the successful running of the Central Office for International Carriage by Rail and OTIF.

Everybody at the Central Office who knew Mrs. Lehmann personally will always retain very fond memories of her.

(Translation)

COTIF

Accession of the European Community to COTIF

Negotiations
concerning the conditions of accession

Berne, 27 June 2003

The opportunity for a regional economic integration organisation, such as the European Community, of acceding to the Convention is laid down in Article 38 of the 3 June 1999 Protocol version of COTIF (COTIF 1999). For its part, the European Commission declared that its aim was for the European Community to accede to COTIF as soon as possible in the context of the "second rail package". On 28 March 2003, the Council authorized the European Commission to negotiate an Agreement on the conditions of accession.

Negotiations on this Agreement took place in Berne on 27 June 2003. The negotiating delegations agreed on a text.

For OTIF, the General Assembly which will be convened in accordance with Article 6 § 1 of the Vilnius Protocol will have to approve this Agreement. For the European Community, the Council should by then firstly have given the European Commission its approval to sign the Agreement and secondly, to have come to a definitive decision on accession.

(Translation)

Dangerous Goods

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

Geneva, 19-23 May 2003

26 ADR States and 10 governmental and non-governmental international organizations took part in this 74th session with Mr. Franco (Portugal) as Chairman.

List of competent authorities

The Secretariat said that only Austria had submitted a notification in accordance with 1.8.4, which provided for the notification of the addresses of all the competent authorities and bodies according to national law for the implementation of ADR.

The Working Party considered that it was necessary to have a list indicating at least the main competent authority. Delegations were invited to provide the Secretariat as far as possible with all the information required in 1.8.4, or at least a reference to a website where this information was available.

Central Office comment: This notification requirement is also valid for RID (1.8.4). So far, the number of such notifications can be counted on the fingers of one hand. The Central Office assumes that the main competent authorities are those to whom the RID documentation is addressed and who attend the relevant meetings.

Amendments resulting from the RID/ADR/ADN Joint Meeting

The Working Party approved these amendments adopted in 2002. They will also be adopted for RID at the 40th session of the RID Committee of Experts (November 2003) for entry into force on 1.1.2005.

Safety in road tunnels (see also Bulletin 4/2002, p. 72)

The representative of Austria, who had chaired the informal working group which had met at his invitation in Feldkirch from 12 to 14 May 2003, introduced the report of this group. He said that the group had been able to draw up a draft table for ADR dangerous goods under A, B, C, D or E groupings in terms of the criteria for danger groupings for tunnels defined by OECD/PIARC, and to define the provisions which could be included in Chapter 1.9, relating to the restrictions for tunnels. He stressed that some problems still had to be resolved. The OECD/PIARC work on risk analyses had not been completed, which meant that for the time being, tunnel managers could not determine which goods grouping should be prohibited in a tunnel in terms of the characteristics of the tunnel and other socio-economic or environmental factors which should be taken into account in the decision-making process. It would also be necessary to provide the Working Party on Road Safety with a system of signs and signals to be placed at the entrance to tunnels in order to be able to identify permitted or prohibited groupings.

The Working Party welcomed the progress made by the informal group, and many of the delegations expressed their approval in principle of the results obtained, although they might possibly have to be refined, for example, with reference to quantities of explosives, quantities to be taken into account for tanks or IBCs, or others.

The representative of IRU said that his organization was in favour of these new provisions which should make it possible to harmonize the current extremely varied conditions of passage through tunnels and thus facilitate international transport. He hoped that the information on tunnel transit conditions in each country would be transmitted to the UN/ECE Secretariat in accordance with 1.9.4 and made available on the Secretariat's website.

Several delegations stressed that in order for the system to function, each State and tunnel manager must agree to base the decisions to prohibit or to permit on this system. They feared that if that were not the case, all the work done for ADR would have served no purpose. It was, however, suggested that the introduction of such provisions in ADR could gradually bring tunnel managers to accede to the system, which could be improved with the experience of the passing years.

The Secretariat proposed to supplement the grouping system drawn up by the informal working group by a system of codes which could be attributed to each of the dangerous goods in Table A of Chapter 3.2, thus enabling it to be easily ascertained to which grouping a

load belonged and which tunnels could be used. This would facilitate the practical implementation of the system, particularly for vehicle drivers and the supervisory authorities.

The Working Party finally decided to adopt provisionally the texts proposed by the informal group and the approach suggested by the Secretariat. The Secretariat was asked to prepare a proposal, in consultation with the members of the informal group, encapsulating the results of the latter's work, the coding for the dangerous goods and the signs at the entrance to tunnels, for discussion at the next session.

Central Office comment: The problem of rail tunnels is also on the agenda; see Bulletin 4/2002, p. 74.

Security in the transport of dangerous goods

The Working Party took note of the provisional result of the work of the RID/ADR/ADN Joint Meeting on this subject (see Bulletin 1/2003, p. 4). In this context, the meeting wondered whether it was appropriate to keep the old provisions of Chapter 8.4 concerning the supervision of vehicles, or at least to adapt them, since they interfered with domestic legislation which established parking prohibitions in accordance with a variety of criteria.

Any other business

The Working Party noted that the Association of South-East Asian Nations (ASEAN) had adopted Protocol No. 9 on the transport of dangerous goods, supplementing and forming an integral part of the ASEAN Framework Agreement on the Facilitation of Goods in Transport. This Protocol provided that Contracting Parties should adopt the provisions of the United Nations Model Regulations and ADR, in particular for classification, packing and labelling, the marking of vehicles and packing methods, transport documents, training and precautions against fire and explosions. The spirit of the Protocol was, however, different from that of the ADR Agreement proper, in that carriers of goods in transit had to obtain a permit from all the competent authorities of the countries passed through.

The Working Party welcomed the influence its work had had and hoped that the countries in question would one day accede to ADR and thus benefit from simplified conditions of international transport.

(Translation)

Technology

Information seminar on the COTIF 1999 Rules for Approval

Berne, 26 June 2003

Summary and conclusions

The objective of the seminar was to inform the COTIF Member States of the latest developments and the current position on the COTIF Rules for Technical Approval (Appendices F – APTU UR and G – ATMF UR to the new COTIF 1999) – especially in relation to the connection with the EC system as specified in Directive 2001/16 concerning the interoperability of the conventional rail system, as amended, and the Safety Directive, including the formation of a European Rail Agency (ERA).

In addition to delegates from the COTIF Member States, representatives from the EC, AEIF and UIC took an active part in the seminar.

The presentations and discussions at the seminar clearly showed that **the 2 systems can coexist and cooperate profitably**, with OTIF being assigned the important role of integrating its non-EU Member States into the process of interoperability and harmonization in order to promote the railways over as wide a geographical area as possible. The seminar showed that the COTIF Rules for Approval, with its mutual recognition of approvals, will be of benefit to all COTIF Member States, including the EU Member States, as the aim of them is to speed up and facilitate the approval procedure and to reduce the related costs.

OTIF strategy has changed

Since COTIF 1999 was adopted, the EC has developed its railway legislation further. It will establish substantial manpower in ERA, thereby accelerating the development of the TSIs and the safety provisions (targets, methods). OTIF welcomes this development.

As this legislation is mandatory for the EU Member States and other countries that will eventually enter the EC, and as they are also applied by the EEA (e.g. Norway), OTIF and the EC stress the need to avoid conflicts and to integrate fully the EC provisions (TSIs and safety provisions) into the APTU Annexes, which will form the basis for approval.

On behalf of OTIF, UIC, with its technical experts, has completed wide-ranging and valuable work in order to bring the current status of standards and provisions for the approval of railway vehicles based on the existing UIC leaflets and the technical parts of RIV and RIC into a reference basis that can be integrated into the TSIs for the conventional rail system and the Annexes to the APTU UR. UIC indicated that the index and approximately 80% of the content is now ready. The complete reference basis will be handed over to AEIF, which has the task of drafting the TSIs on the conventional rail system. These will become mandatory within the EC following the hearing of the "Article 21 Committee".

By taking over the EC's TSIs and safety provisions in the Annexes to the APTU UR, the OTIF Committee of Technical Experts and the Secretariat of OTIF will be able to concentrate their efforts on implementing the COTIF Rules for the mutual recognition of approvals. These rules were established in order to avoid a time-consuming and expensive process in which every implicated national authority duplicates work by testing and approving a particular vehicle for international transport. By having the technical standards and safety provisions developed by the EC as input into the COTIF approval system, useful complementarity and a converging process of development can be achieved.

The requirements of the railways and industry

Several examples given in the session indicated that the railway companies and the industry have a great interest in the TSIs for the conventional rail system becoming available quickly, especially for traction, where the greatest interoperability problems seem to arise. With regard to locomotives operating internationally, it became clear, for example, that the different national requirements for the driver's controls would involve the incorporation of numerous display devices having practically the same purpose, so that the locomotive driver's view of the line in front would be considerably reduced. The EC however has made it a priority to draft TSIs for goods wagons, as well as for operations and the environment. AEIF has not thus far been given any mandate or funding to develop the rest of the TSIs, including those which are to cover traction. This surprised a representative of one of the Member States, since the interoperability of goods wagons had already been established for years by the UIC through the leaflets and the RIV Agreement.

The railway companies and the industry stressed the need to simplify and accelerate the current approval process in order to avoid a vehicle intended for

international transport having to be approved by each national authority. The EC Directives would not have improved this situation; on the contrary, they would have cemented it. The OTIF system of mutually recognized approvals would seem to offer a good solution for resolving this problem.

The requirements of the approval authorities

Based on the experience of the approval authority of one of the Member States, it was explained that a clear distinction should be drawn between the technical requirements and the approval procedure. The approval process needed to be simplified, which would require transparency and a structure for the approval procedure acceptable to all sides so that the results would be mutually acceptable at international level. Exemptions should be the exception and if needed, should be clearly justified and documented. Different types of approval procedures depending on the type of vehicle and its condition - new, used or modified - should be made available. Those involved in the approval process and how they work together should be properly identified. This would then leave the way open for the EC to accept the COTIF Approval System for national approvals also.

The qualities of the OTIF Approval System

In order to ensure that an approval certificate issued by one of the OTIF Member States' approval authorities is recognized by all the other authorities and the users, it must be reliable and valid. This means that the **approval procedure must be transparent, carried out according to the rules, and supervised**. Transparency will be ensured if everybody, can, if necessary, verify that the form and content of documentation and tests, the approval procedure and the certificate of approval and its terms are all wholly consistent with the guidelines of the APTU Annexes and with the models based on the ATMF UR, including the requirements in respect of quality, e.g. in respect of the competence and independence of staff in the notified bodies and in the authority itself. The authorities in all the OTIF Member States will supervise the process and the Committee of Technical Experts will be able to intervene and lend support in the event that provisions are not observed or that there is a lack of quality.

Fully developed, the COTIF Approval System will promote interoperability, not only the expensive way by standardizing the hardware (vehicles, infrastructure, safety equipment), but also through the harmonized approval process. Subsequently, the current requirement that every vehicle for use in international transport must be approved in each individual State concerned should

be overcome, also within the EC, and become a pure formality, and eventually superfluous.

The efficiency of the COTIF system and the work the OTIF Committee of Technical Experts can do if the Member States are actively involved are already demonstrated by the RID Committee of Experts, which establishes provisions for the transport of dangerous goods by rail. The RID Committee of Experts should, as far as possible, serve as an example for the future OTIF Committee of Technical Experts.

Next steps

The EC's decision to accede to COTIF and the negotiation on 27 June 2003 of the accession Agreement now mean that nothing should prevent the EU Member States from ratifying COTIF 1999. COTIF 1999 will enter into force as soon as 27 Member States of OTIF have ratified it.

The Committee of Technical Experts must then be convened within 3 months. The agenda of the first meeting must include the Rules of Procedure, election of the chairman and the programme of work. It is hoped that part of the TSIs for conventional rail will already have been adopted by the EC, so that a formal decision to take them on can be made. The Secretariat of OTIF will now concentrate its efforts on a working group to prepare the Rules of Procedure for the Committee of Technical Experts and on a draft approval model for railway vehicles.

One significant area of preparation will be the Member States' appointment of the members of the Committee of Technical Experts. It must be composed of experienced technical experts active in or closely linked with national approval authorities, as well as representatives of the users – railways and industry – who can provide effective support. The ERA will also have to be represented and will increasingly play a deciding role.

Documentation for the seminar

All documentation presented at the seminar is available on the OTIF website: www.otif.org.

Other Activities

OTIF-UNIDROIT

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

3rd Joint Meeting
of the Committee of Governmental Experts

Berne, 5-13 May 2003

The meeting was organized by the OTIF Secretariat together with the UNIDROIT Secretariat in Berne. Bearing in mind the number of participants and the fact that the work was carried out in three languages (German, English and French), and that there are no facilities for simultaneous interpretation at OTIF's headquarters, the Joint Meeting was held in the Universal Postal Union building.

Delegates from 26 States were represented as well as delegates from the European Commission, the Association of American Railroads (AAR) and CIT. Again at this meeting, UIC, UIP and EUROFIMA were not represented by observers.

The meeting was again chaired by Professor Inès M. Weinberg de Roca (Argentina). As Mrs. Weinberg was unavailable on 12 and 13 May, the Vice-Chairman, Mr. Antti Leinonen (Finland), who had likewise already been elected to perform this role at the first meeting in Berne, assumed the chair for the rest of the meeting.

Following the welcome by the Director General of OTIF and the Secretary General of UNIDROIT, a representative of the OTIF Secretariat informed the meeting about the work that had been done since the 2nd Joint Meeting in June 2002:

- Meeting of the Drafting Committee of the Joint UNIDROIT/OTIF Committee of Governmental Experts from 23 – 25 October 2002 in Rome
- Meeting of the UNIDROIT/OTIF Rail Registry Task Force (RRTF) on 19 and 20 March 2003 in Washington
- Revision of the German version on the basis of the now available official German text of the Cape Town Convention and the Aircraft Protocol.

The Joint Meeting of Governmental Experts had the following documents:

- Invitation of 31 January 2003, F 15-02/501.2003 (including the agenda);
- Draft Protocol on Matters specific to Railway Rolling Stock (to the Cape Town Convention on International Interests in Mobile Equipment), OTIF/JGR/6 (UNIDROIT 2002 Study XXII H – doc. 8) of November 2002 (enclosed with the invitation of 31 January 2003);
- Proposals for amendments to the draft Protocol submitted by the Rail Working Group, OTIF/JGR/7 (UNIDROIT 2003 Study LXXIIIH – doc. 9) of March 2003;
- Report of the RRTF, 2nd meeting, Washington, 19/20 March 2003, OTIF/JGR/8 (UNIDROIT 2003, Study LXXIIIH - doc. 10) of April 2003;
- Comments from Austria on the draft Protocol OTIF/JGR/9 (UNIDROIT 2003 Study LXXIIIH – doc. 11) of April 2003.

The Joint Committee appointed a new Co-Chairman of the RRTF in place of Mr. Croccolo (Italy). The RRTF will from now on be headed jointly by Mr. Bloch (USA) and Mr. Henrik Kjellin (Sweden).

As had already been planned in organizing the 3rd Joint Meeting, both the RRTF and the Drafting Committee met several times during the Joint Meeting outside the normal working hours. It was thus possible on the last day to approve a text that was largely finalized.

The Joint Committee of Governmental Experts essentially succeeded in resolving all the "political" problems that were still outstanding (see report in Bulletin 2/2002, p. 28 ff.)

If necessary, individual solutions will be covered further in the Bulletin in a separate study (see p. 34 ff.).

The Joint Meeting of Governmental Experts mandated both Secretariats, the OTIF and UNIDROIT Secretariats, to prepare a Diplomatic Conference which is to be able to meet as soon as possible and by May 2005 at the latest.

As there are still a range of detailed matters to resolve before the Diplomatic Conference meets, the Joint Meeting also mandated the RRTF with various tasks in

connection with the practical operation of the international register for railway rolling stock.

The particular significance for the future of OTIF of the Rail Protocol to the Cape Town Convention is that it is planned that OTIF, as the only GO (governmental organisation) at present, i.e. the only organisation operating exclusively at governmental level for the rail mode, is to assume the tasks of a Secretariat of the future Supervisory Authority for the international register. This reflects the aim of COTIF 1999 and of the Vilnius Protocol. OTIF's assuming this role must still of course be approved by the General Assembly. The members of OTIF's Administrative Committee support the OTIF Secretariat's efforts accordingly.

The Supervisory Authority itself, which is responsible for the international register for interests in railway rolling stock, is a council made up of representatives of the Contracting Parties to the Rail Protocol. It was necessary to choose this solution because not all potential contracting parties to the Rail Protocol are or will be members of OTIF and of UNIDROIT.
(Translation)

Co-operation with International Organizations and Associations

European Communities (EC)

Study on compensation schemes in rail transport

Brussels, 20 June 2003

In its White Paper, "European transport policy for 2010: time to decide", the European Commission announced its intention of taking measures to improve the quality of rail transport. To this end, it commissioned a study focussing on the legal and economic issues surrounding compensation systems in the rail sector, covering both freight and passenger transport. The Member States, European consumer protection groups and interested international organisations and associations were invited to the presentation of the approximately 130 page study produced by the consultancy firms Altyor and Landwell and Associates.

The beginning of the study notes a tendency towards worsening quality in rail transport: slowness, unreliability, delays, lack of information, uncompetitive

prices etc. Reference is made to those issues particular to the rail sector that have a negative influence on quality – a lot of players, obscurity of what they do, susceptibility to external factors that can disrupt the service, which can include natural events as well as human activities. The introduction of new technologies also brings with it potential causes of disruptions to services.

In the description of the existing legal situation, both the version of COTIF currently in force and the 1999 Vilnius Protocol version (COTIF 1999) are presented. With regard to COTIF 1999, particular attention is given to the CIV, CIM and CUI Uniform Rules. There is also a detailed exploration of the legal basis for new European Community legislation in this field.

In the study's conclusions, it is proposed that an EC Regulation be issued listing penalties that would be applicable in the event of breach of contractual obligations, e.g. compensation to be paid depending on the length of delay.

Several contributions to the discussion concerned economic aspects, mainly in connection with the cost/benefit analysis contained in the study.

In so far as the existing legal regulations in COTIF were dealt with and were considered to be insufficient in individual areas, OTIF explained that these regulations in no way prevented improvements in the quality of transport services and the associated ancillary services: Article 5 of CIM/CIV 1999 allows carriers to assume more burdensome obligations and greater liability. All the provisions of the CIV/CIM Uniform Rules quoted in the Study should be considered in the light of this Article.

With regard to passenger transport, participants in the discussion also addressed the need for the interests of passengers to be suitably represented and put into effect, and the questions of how to proceed in the event of claims and the resolution of disputes. Amongst other things, the wish to introduce alternative solutions for resolving disputes was expressed (Alternative Dispute Resolution – "ADR").

A question that arose frequently in discussion was whether some means other than a mandatory legal provision might not be more suitable to achieve the desired aim, such as more competition on the railways and a voluntary commitment on the part of rail transport undertakings. Lastly, it was noted in this respect that all this is indeed welcomed by the customers, but that it was all much too slow and only had a limited effect. In

the transitional phase, before a free market comes into being for rail transport, customer associations and the European Commission consider that bringing pressure to bear by means of legal penalties is a wholly suitable course of action. The more voluntary commitments the rail transport undertakings assume, the more restricted the object of regulation of the intended EC Regulation will be (see also Bulletin 4/2002, p. 81/82).
(Translation)

United Nations Commission on International Trade Law (UNCITRAL)

11th Meeting of Working Group III (Transport law)

New York, 24 March-4 April 2003

In the first week of the meeting, the Secretariat of OTIF was represented by an observer.

The Working Group completed its first reading of the draft instrument (UNCITRAL document A/CN.9/WG.III/WP.21, available on the UNCITRAL website), with the exception of those provisions on the use of electronic commerce techniques in transport documents. These matters are to be dealt with at a later stage of the discussions.

Once the first reading was concluded, the Working Group dealt with the question of the application of the planned door-to-door Convention. On the side of the transport mode representatives, the American Association of Railroads (AAR) said it was strongly opposed to applying the draft instrument, which still had too much of a maritime law bias, to rail transport operations in the context of door-to-door transport.

The representative of the OTIF Secretariat maintained support in principle for the efforts to create a multimodal Convention, but only on condition that the existing single-mode international Conventions, such as COTIF and CMR, also be taken into account accordingly. This would be the case with a network system, which would also make it more likely that the planned Convention would receive wider support. A uniform regime for multimodal transport should only be applied where the place the loss or damage occurred was unknown. The main aim of an international Convention on multimodal transport could not just be the desired uniformity; a fair and acceptable balance between the rights and obligations of the parties to the transport contract must be found. The Secretariat of OTIF expressed doubt that the draft instrument in its present

form could be a suitable basis for this. It suggested first examining other solutions for multimodal transport, for instance on the basis of the UNCTAD/ICC Rules.

The Working Group requested the UNCITRAL Secretariat to produce a revised draft instrument taking into account as far as possible the views expressed within the Working Group. The Secretariat was also encouraged to exercise broad discretion in the restructuring and redrafting. This should enable the discussion to be continued at a future meeting on the basis of different options reflecting the whole spectrum of opinions that had been expressed at the 9th, 10th and 11th meetings of the Working Group.

(Translation)

European Conference of Ministers of Transport (ECMT)

50 Year Jubilee of ECMT

Brussels, 22-24 April 2003

The Director General attended the jubilee event organised by the current Presidency (Belgium/Mrs. Isabelle Durant). However, the invitation was restricted to a hearing of international transport sector organisations held on the eve of the celebrations themselves and to a ceremony at the beginning of a meeting of Transport Ministers, which was held subsequently in accordance with the usual rules.

Two documents on the situation, circulated in advance, were of fundamental importance for the jubilee event:

- Transport policy: successes, failures and new challenges (CEMT/CM(2003)1).
- Report on the future direction of ECMT: from the vision to decisions (CEMT/CM(2003)13).

The Central Office made serious preparations for the hearing and submitted a written contribution, which was distributed at the event along with other such contributions. At the hearing itself, there was only time to make a short statement. As on previous occasions, the focus of OTIF's line of reasoning with regard to ECMT's role, and cooperation with them from OTIF's perspective, was on in-depth analysis and a coherent view of transport problems as a whole, as a priority task for ECMT, including in the context of a think-tank for Transport Ministers. It became clear during the meeting that this is a generally held view; the opportunity was

also used to highlight the usual interests again, in conjunction with demands being made on transport policy and on the Ministers present.

An interesting point is the existence of a certain parallel between the future standing of ECMT and OTIF: the onus is also on ECMT as a result of EC expansion and the increasingly dominant role of EC transport policy, which concerns a majority of the existing 43 Member States of ECMT. ECMT is therefore seeking new horizons, which must be oriented towards the criterion of having a coherent, consistent overall transport policy over as wide an area as possible. The outlook is therefore moving eastwards, although Russia is already a Member of ECMT. OTIF, incorporating the EC when it has acceded to COTIF, finds itself in a comparable situation, with the accent specifically on the rail sector of course.

ECMT's jubilee event provided the opportunity of reviewing OTIF's/its Secretariat's relationship with ECMT. Relations are in themselves good. In view of the fact that the organisations concerned are active at State level, i.e. at the same level, where OTIF has a clear interest in being well placed within ECMT and in being respected, two courses of action seemed necessary:

- With a view to COTIF 1999 and looking at the date it will enter into force – and no later – OTIF should be treated the same as the UN/ECE when attending ECMT events (particularly the Conference of Ministers), and not simply be pitched in with all the other non State-level international organisations. This assertion will be put in writing at some point.
 - In future, the OTIF Secretariat will, whenever possible, be represented in the ECMT Group on Railways by the director.
- (Translation)

The ECMT Committee of Deputies Group on Railways

Paris, 4 June 2003

One of the experiences of dealing in-depth at ECMT's fifty year Jubilee with the role of ECMT, its future direction and its relationship with other inter-governmental organisations, particularly OTIF, is that contacts must be fostered through personal involvement of the Director General. The main platform for this is the ECMT Committee of Deputies Group on Railways.

The principal issue is to integrate OTIF, with its special role, into the wider context, which is embodied by the representatives of an almost identical group of Member States that are ultimately responsible for ensuring that the instruments made available through the inter-governmental organisations at intergovernmental level are used with optimum coordination and with a clear division of roles. This requires of course not least that these international organisations perceive each other correctly.

The meeting also provided the opportunity to tackle the question of coordination on the basis of a UN/ECE suggestion to look at the possibility of having combined meetings of the railway working groups that exist on both sides, since they meet with approximately the same frequency and are attended partly by the same people.

The discussion revealed that different possibilities exist, depending on the importance accorded to the delimitation of tasks/priorities, effects of rationalization/costs and lastly to the problems of coordinated planning by the delegates and by the Secretariat. Attention would have to be paid on the ECMT side to the broader link with development for the future introduced at the Jubilee in Brussels. The Secretariats were instructed to give this further consideration and to submit specific proposals concentrating solely on the two railway working groups.

A good opportunity was provided for OTIF to bring up its own position, starting with its specific role (based of course on COTIF 1999), which is not, however, affected.

OTIF has in any case a specific interest in there being coordinated planning by both sides over several years.

Discussion on the interim result of a review of the situation of the railways and railway reform in Russia by a team of ECMT specialists and the Group on Railways ranged over a wide area. The review is linked with periodic checks carried out by OECD in the Member States, although this ECMT review was launched as an early action that was more in-depth than usual. This gave rise directly to the question of what its purpose was and how the results should be further used with a view to the ECMT Conference of Ministers.

Finally, there seemed to be a consensus that the main issue was to analyse as informatively as possible a particularly interesting, comprehensive case for internal use, but also at the same time to offer as a service an

independent assessment in accordance with recognized benchmarks, together with the resulting recommendations.

A full report is to become available sometime in 2004. (Translation)

Organization for Railways Cooperation (OSZhD)

XXXIst OSZhD Conference of Ministers

Tbilisi, 19/20 June 2003

This year, the invitation to the annual OSZhD Conference of Ministers was of particular significance for the Director General, as the so-called "OTIF-OSZhD Common Position" was on the agenda, with the request for it to be endorsed by the competent OSZhD organ (following its earlier endorsement for OTIF by the Administrative Committee). This document had been drafted during the previous two years by the Secretariats of both Organisations, and was finalized at the beginning of 2003 so that it could first be signed by the Chairman of the OSZhD Committee, Mr. Szozda, and the Director General of the Central Office. This condition having been met, the text could then be endorsed by each of the highest organs on each side in order to make the Common Position into an influential declaration of principles to provide the basis for following up the intentions it contains with specific actions.

OSZhD endorsed the Common Position without any problems, also no doubt as an expression of the recognition that it is necessary to have a clear idea of future cooperation between the two Organisations and to ensure a clear-cut programme. The aim of the programme must be that in order to assist the railways and particularly their customers, we must make the best of the fact that for the time being, there are two systems of transport law. However, the long term aim of harmonizing the two systems must never be lost from sight. The next step now will be to draft together a medium term programme. This work must be undertaken carefully in order to achieve what is feasible today within a useful timescale, but bearing in mind the long term objective. A first draft of the programme is to be ready by the end of this year.

(Translation)

International Rail Transport Committee (CIT)

General Assembly 2003

Berne, 22 May 2003

After concluding statutory matters (annual report, annual statement of accounts and budget), the General Assembly dealt with CIT's new organisation.

The working group on "CIT's new organisation" set up by the 2002 General Assembly had drafted new statutes for CIT. The General Assembly adopted these, with the exception of the provision on CIT's wider-ranging purpose which is linked to questions of funding, and with the exception of the provisions on the new allocation formula for funding CIT's activities. The Board is to examine this problem again before the next General Assembly and draft appropriate proposals. An important new feature of the Statute is the distinction between full and associated members. Associations of undertakings with no financial objective can become associated members of CIT, provided they have legal personality and their members perform international rail transport operations, operate a railway infrastructure on which such transport operations are performed or supply services in connection with such transport operations or with the operation of such infrastructure.

The General Assembly noted the report concerning the work on implementing COTIF 1999 and the general terms of business, general conditions of transport and other documents developed in this context. CIT still presumes that COTIF 1999 can enter into force by the end of 2004.

Discussions also focussed on CIT's training concept. This concept makes a distinction between the training of cadre personnel and that of "hands-on" staff. In connection with the training concept, reference was made to the seminar organized jointly by CIT, IDIT and UIC for 4 December 2003, to which a speaker from the Secretariat of OTIF has also been invited.

The date for CIT's next General Assembly was set at 13 May 2004.
(Translation)

Studies

Subject: Safety

Safety of the Brenner base tunnel:

How should the problem be considered fundamentally?

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

Preliminary remark

So far, two studies have been published on the subject of safety:

- The subject of safety from the COTIF perspective (Bulletin 3/2002, pp. 58-62);
- Joint RID Committee of Experts – ILGGRI seminar: Meeting report, summary (Bulletin 4/2002, pp. 88-91).

The stimulus for these was that because of COTIF 1999, or rather the new Appendices F (APTU UR) and G (ATMF UR) to COTIF 1999, i.e. the COTIF Rules for Approval, rail safety is entering the scene more directly for OTIF, as well as more recent developments requiring not only that traditional safety considerations, but also new safety risks in the sense of transport security, be included in an integrated assessment. Integrated, proof-oriented assessment is leading to a new way of thinking, with an appropriate methodology. In order to arrive at this point, dealing with tunnel safety, particularly in the very long base tunnel for trans-Alpine rail transport through Switzerland, has played a major role.

Using the example of tunnel safety, the following observations serve to illustrate the central considerations of the integrated, proof-oriented methodology. With the permission of the contractors, the Brenner base tunnel EEIG, they have been taken directly from a study which the author, as someone who was formerly involved centrally in the planning and assessment of safety for the Swiss base tunnels, made available to the project managers of the Brenner base tunnel project (BBT) at an early stage.

Task of the Brenner base tunnel EEIG

The purpose of the organisational entity known as a "European Economic Interest Grouping" (EEIG) is to enable a complex, preparation-intensive and, as a rule, international infrastructure project to be brought to maturity for implementation.

There are three main phases:

- The preliminary project phase with the project assessment and all the requisite clarification for each component, so that a sufficiently reliable cost estimate, economic viability assessment and funding solution for the final decision of principle can be made available;
- The support project phase, which satisfies the requirements of the necessary approval procedures under the planning laws and building regulations and brings them to a successful conclusion;
- The completion project phase as the basis for the construction tenders and preparation for the start of construction.

Construction itself requires a new, or at least more developed organization, which for the time being is not uppermost in an EEIG.

The BBT is in phase 1. The following observations focus on its aims and specifications.

Consideration of the subject of safety

Even in the preliminary project phase, the main prerequisites must be created so that ultimately, a safe tunnel can be put into operation.

- There must be a clear definition of what the safety problems are for a tunnel as long as the Brenner base tunnel.
- Accordingly, there must then be the necessary input into the planning process.
- This must be done in such a way that in the context of the approval procedures, a comprehensible, believable demonstration of safety can be provided which will be acceptable to the competent authorities and which meets current and acknowledged future requirements.

- This demonstration of proof must be provided step by step in a way that deliberately leaves room for manoeuvre where no final decision has to be taken, but which guarantees that the next steps can be taken successfully without coming up against a dead-end.

The particular problem of safety in rail tunnels

Essential precondition: the overall perspective must never be lost from view.

- Rail can be regarded as a safe means of transport. Optimum conditions are in place when
 - a uniform standard (in respect of the state of repair, technical safety equipment and quality of operation) is ensured throughout the network,
 - the state of repair and of equipment meets the requirements for transport,
 - fully effective organisation guarantees highly capable staff and a modern safety management system.

At each point on the network, overall safety is of prime importance over and above intricate individual measures. The latter are justified if specific risks are also covered.

Accident statistics show that around three quarters of operational accidents are the result of collisions – with a considerable proportion of collisions occurring at level crossings – and of derailments. Track sections with a lot of points are therefore especially critical. More or less imponderable external hazards are also a factor; these are explained by the railways' many peripheral interfaces and environmental influences.

- From a railway technology point of view, tunnels are not therefore anything exceptional. With regard to the likelihood of an incident occurring, they are even better placed than open lines. As a rule, there are few points, and the weather has virtually no effect. This is borne out clearly by the statistics.

Tunnels pose particular risks because of the narrow space available and limited accessibility in the event of an incident.

- A distinction should be made between

- the more difficult rescue of passengers/people affected,
 - increased operational hazards for personnel (in this respect, it is not quite correct to say that tunnels are generally safer than open lines),
 - the danger of substantial structural damage if there is a fire.
- How significant these aspects are will obviously depend on
 - the length of the tunnel,
 - where the tunnel is – along with the nature of the traffic,
 - the overall standard of the line.

There is no comparison between a short, easily accessible tunnel in a built-up area and a very long base tunnel in a partly inaccessible Alpine area.

In order to clarify the particular safety problems, they can be categorized:

- The influence of the particular safety problems in a tunnel varies, depending on where it is and especially on how long it is. This can be seen from a rough categorization which most countries formulate in a similar way:

short tunnel	up to 600 m	no significant difference to an open line
medium length tunnel	2 – 10 km	side access for external rescue essential; usual scenario = two-way track tunnel
long tunnel	more than 15 km	tunnel system must provide opportunity for people to save themselves; also external rescue via tunnel entrances; usual scenario = two single-track tunnels with cross cuts
very long tunnel	more than 25 km	same as long tunnel; essential to intersperse with emergency stopping areas accessible from outside

Demonstrating safety for long tunnels

Ultimately, the possibility of an accident occurring can never be 100% excluded. It must therefore be ensured at each point of a railway line that an incident cannot develop uncontrollably into a disaster or, in other words, that the effects of an incident remain under control. This requires "evidence that there is a fair chance".

- In the case of long tunnels which are barely accessible from the outside, a disastrous situation would arise if a full passenger train came to a halt somewhere in the tunnel because of a rapidly spreading fire, without people having the chance of at least quickly reaching a place of safety that remained sufficiently protected until effective external help arrived.
- To avoid this and to contain the risks for the most part within an acceptable framework, a cascade of four groups of measures following on from each other in a particular sequence is required:
 - incident prevention measures;
 - damage limitation measures;
 - opportunities for self-preservation;
 - opportunities for external rescue.

From this is derived the residual risk for those involved in an incident. This risk is only acceptable if in the cases that can be envisaged, there is practically no risk to life and limb.

- Consequently, the particular deciding criterion in the case of long and very long tunnels is whether a person involved in an incident still has a fair chance of saving himself before external rescue can be put into effect.
- By the time the tunnel comes into operation, proof of this must be produced for all the standard scenarios. The building approval will lay the foundation stone that will determine everything. The approval relates to the structural encasement of the tunnel. Behind this is the choice of system. Subsequently, the proof can be made more specific in targeted steps, up to the operational approval.
- Providing proof should therefore be seen as a process which, as a first step, confirms the choice of the appropriate tunnel system as creating the

best conditions to meet all the safety requirements as well as possible – also taking full account of the cost/economic viability, operational flexibility, maintenance and sustainability factors.

- Because the prerequisites for "self-rescue" cannot be increased at will. A tunnel with dimensions that ignore the specific situation of the tunnel would be prohibitively expensive. So a high standard of incident prevention must be achieved first of all (through the choice of tunnel system, the quality of the construction and particularly the technical railway equipment), supplemented by targeted damage limitation measures (e.g. in connection with ventilation and drainage). As the technical railway equipment as such has to be in line with that on the rest of the network, the tunnel-specific features are to be found in operations surveillance and management, including a control centre that has a continuous grip on what is happening in the tunnel. The requirements of "self-rescue" are based on these, with the length and the design of escape routes at the core. Overall, this all leads to additional, tunnel-specific costs that are inevitably substantial, but without which a long tunnel cannot be built with a safety risk acceptable by today's standards.

Modern quantitative risk analysis methods (QRA) also permit a general examination of the acceptable risk; this examination makes a comparison with other risks and sets balanced standards.

- The conditions for this have recently been created in connection with the transport of dangerous goods. It was also a matter above all of working out the statistical basis for a QRA. This will ultimately be of service to a transparent, uniform risk policy.
- This makes clear that one of the jobs of the policy is to lay down its standard so that it is binding. It can be expressed in terms of a "line of acceptability" as a sum curve in a diagram of probability/extent, which demarcates in a standardized, and hence comparable fashion, the unacceptable risk zone, from the frequent minor risks right up to the very rare severest risks. In this zone, measures are essential.
- There is still not much experience with this approach. For the moment, it is being applied in the Netherlands and Switzerland. In other countries, e.g. France, more pragmatic methods

of objectified risk policy are preferred. Either way, the outcome cannot be used as the only valid benchmark. Demonstrating the existence of a fair chance, making full use of the technological state of the art, remains a condition.

Safety technology for long rail tunnels

In recent years, the state of tunnel safety technology has been intensively and systematically upgraded. This has been done in connection with the large tunnel projects in Europe, such as the Channel tunnel and the base tunnels in the Alps. At the same time, various external circumstances have led to more widespread preoccupation with the subject than previously. Lastly, accidents that have had serious consequences have alarmed the public and the authorities. Major enquiries have been set up both for roads and railways. These have led to additional, somewhat more stringent requirements and subsequent clean-up programmes.

For long tunnels in the Alpine region, a certain consensus has been formed with regard to the benchmark aspects. This consensus defines the guidelines to be taken into consideration right from the start. This does not mean that there is no more room for manoeuvre with regard to the planning which would allow special conditions or intentions to be taken into account. But it does to a certain extent express the "state of the art", which these days can only be circumvented with a very plausible justification.

Standard incident

- Train fire, developing into a full blaze and releasing toxic gases.

The following assumptions are made:

- Likelihood of occurring every 50 years;
- 80 – 90% probability that the fire is extinguished by passengers or staff in time;
- 90 – 95% probability that the burning train succeeds in leaving the tunnel or reaches an emergency stopping area.

- The fair chance of rescuing oneself must be safeguarded somewhere in the tunnel.

The following conditions apply:

- Those affected must be able to reach a safe place no later than 10 minutes after the

incident, regardless of the atmosphere in the tunnel deteriorating;

- This means there must be an escape route no more than 500 metres long.

Ventilation

- Ventilation is usually assured by the operation of trains and the piston effect of trains respectively.
- Supplementary ventilation that can be brought into operation in set circumstances must enable the minimum required environment in the tunnel to be maintained long enough for people to save themselves and for external rescue.

Quality of rolling stock

- The rolling stock used in trains must comply with the currently applicable quality standard as prescribed in harmonized European standards and which are legally binding on the operator.
- This quality standard must be constantly ensured and monitored on the lines leading up to very long tunnels.
- In a full fire, rolling stock must be capable of continuing to run for 15 minutes.
- An essential part of the quality standard for passenger trains is an emergency brake override.

Operations concept

- Mixed operations (passenger and freight traffic) should be possible in principle.
- The operations concept should permit maximum exploitation of the capacity of the line going through the tunnel.
- However, it must allow characteristic operations scenarios to be clearly distinguished that can be used for the safety assessment and subsequent planning of safety measures.

Managing and monitoring operations in the tunnel

- The number of points and track changes must be kept to the absolute minimum.

- The managing and monitoring of operations in the tunnel must meet the most stringent reliability requirements.
- Train interaction devices and communications devices must be designed so that they are redundant (in the sense of additionally available).
- Train traffic in a very long tunnel must be monitored by a special control centre.

Network-wide monitoring

- A control system on approach sections must reliably record any overheating and shifts in the load in good time.
- Transport operations involving dangerous goods must be specially monitored and notified in good time with detailed information.

General principle for safety devices made available in tunnels as a precaution

- **Keep it simple.**

Guidelines for the Brenner base tunnel

Basic system

Following the planning status and choice of system for the other big tunnel projects in the Alpine region (Gotthard and Lötschberg base tunnel in Switzerland, Mont Cenis base tunnel on the Lyons-Turin axis), the basic system of two single-track tunnels connected by cross cuts, without a continuous longitudinal service and rescue tunnel, is also proposed for the Brenner base tunnel.

However, the favourable geographical and topographical conditions which would permit sealable, short side access points for external rescue at regular distances should be exploited.

Variation

In attempting to evaluate a tunnel project reduced to the lowest possible volume of investment, at least for an initial period of use, step-wise variants are being investigated. This would partly mean that only single-track operations would be processed.

Each step-wise variant would of course have to demonstrate safety to a satisfactory level. In so doing, account must be taken of the fact that apart from

difficult building conditions, the operating conditions will have a greater risk potential. It must remain possible for later complete construction to be carried out without substantial operational restrictions and additional risks.

Proof using the QRA should also be provided for the most promising step-wise variants.

The BBT EEIG's strategy

The BBT EEIG wishes to benefit as much as possible from the comprehensive preliminary work, particularly the many detailed clarifications, that exists in connection with comparable tunnel projects in the Alpine region. It has built up the necessary contact network in order to do this.

Since ultimately, all new base tunnels in the Alpine region have to fit into a European high performance railway network, for which the European harmonized rules concerning interoperability and open access to the network are increasingly the standard, harmonized safety guidelines in the tunnel planning process are essential.

It should be mentioned that even on the incident response services side, where there is a determining influence on the conditions concerning external rescue, increasing transfrontier harmonization is taking place.

For the BBT EEIG, there are thus already substantial guidelines on the subject of safety which are sufficiently documented and require no further particular processing. This is why the subject can for the time being be fully integrated into the task of the planning engineer, i.e. no special work will have to be done on it in parallel. The task of the planning engineer is set out accordingly. Accordingly, the planning engineer's ability to deal competently with the subject of safety under the conditions defined is an important criterion in selecting the contractor.

The internal organization of the BBT EEIG is such that it can constantly monitor how the subject of safety is being dealt with and can intervene with a guiding hand at any time.

(Translation)

The International Registry for International Interests in Railway Rolling Stock

Dr. Gerfried Mutz, Deputy to the Director General of the Central Office for International Carriage by Rail, Berne

Introduction

The Convention on International Interests in Mobile Equipment was signed in Cape Town on 16 November 2001. The aim of the Convention is to facilitate the acquisition and funding of the acquisition of mobile equipment of high value or particular economic significance, and to facilitate the use of such equipment in an efficient manner.

To achieve this aim, the Convention is to ensure that interests in such equipment are recognized and protected universally. The Convention therefore prescribes that an international registry system be set up to protect these interests. In other words, a worldwide "register of mobile property rights" is planned.

Sphere of application

An International Registry will be set up to record

- (a) international interests, prospective international interests and registrable legal rights;
- (b) assignments and prospective assignments of international interests;
- (c) the acquisition of international interests through legal or contractual subrogation in accordance with the law as applicable;
- (d) notices of national interests and
- (e) subordination in respect of the above rights.

This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the *debtor* is situated in a Contracting State.

The debtor is "situated in" any Contracting State

- (a) under the law of which it is incorporated or formed;
- (b) where it has its registered office or statutory seat;

- (c) where it has its centre of administration, or
- (d) where it has its place of business.

The fact that the *creditor* is situated in a non-Contracting State does not affect the applicability of this Convention.

Two-tier structure of the Convention

The set of agreements consists of a base Convention and supplementary Protocols for different categories of objects of equipment (airframes, aircraft engines and helicopters; railway rolling stock; space assets). Different international registries can be set up for different categories of objects.

The Convention and the Protocol are to be read and interpreted together as a single instrument. To the extent of any inconsistency between the Convention and the Protocol, the Protocol prevails.

The Protocol on Matters Specific to Aircraft Equipment (Aircraft Protocol) was signed in Cape Town at the same time as the Convention itself and requires eight ratifications or approvals to enter into force.

The Protocol on Matters Specific to Railway Rolling Stock (Rail Protocol) was drafted by a Rail Working Group (Chairman and Coordinator, Mr. Howard Rosen, UNIDROIT adviser on rail funding matters) set up by UNIDROIT with the participation of the OTIF Secretariat, and was discussed by a Joint UNIDROIT/OTIF Committee of Governmental Experts on 15/16 March 2001 (in Berne), 21 – 23 June 2002 (in Rome) and 5 – 13 May 2003 (in Berne).

The international interest

The Cape Town Convention contains provisions for the constitution and effects of an international interest in certain categories of mobile equipment. For the purposes of this Convention, an international interest in mobile equipment is an interest in a uniquely identifiable object of a category of such objects described in the relevant Protocol and which is

- (a) granted by the chargor under a security agreement,
- (b) vested in a person who is the conditional seller under a title reservation agreement, or
- (c) vested in a person who is the lessor under a leasing agreement.

Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol, and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

A registered interest has *priority* over any other interest subsequently registered and over an unregistered interest.

Registry requirements

The *Registrar* shall ensure the efficient operation of the International Registry and perform the functions assigned to it by the Convention, the Protocol and the regulations.

Under the Convention, a Supervisory Authority will be set up in accordance with the provisions of the Protocol.

The *Supervisory Authority* has to

- (a) establish or provide for the establishment of the International Registry;
- (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
- (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
- (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
- (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;

- (f) supervise the Registrar and the operation of the International Registry;
- (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
- (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
- (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of the Convention and the Protocol, and
- (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

The Supervisory Authority owns all rights in the data bases and archives of the International Registry.

Registration

Requirements

The Protocol and regulations specify the requirements, including the criteria for the identification of the object, for effecting a registration (which includes provision for prior electronic transmission of any consent from any person), for making searches and issuing search certificates, and for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.

The Registrar is not under a duty to enquire whether consent to registration has in fact been given or is valid.

The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

The Protocol may provide that a Contracting State may designate entities in its territory as the entry points through which the information required for registration must or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements to be satisfied before such information is transmitted to the International Registry.

Validity and time of registration

An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

A registration, if valid, is complete upon entry of the required information into the International Registry data base so as to be searchable.

A registration is searchable in the International Registry data base according to the criteria prescribed by the Protocol.

A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

A registrable non-consensual right may be registered by its holder.

A notice of a national interest may be registered by its holder.

Duration of registration

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

Matters specific to the Registry

It is planned to have an *exclusively electronic registry* available 24 hours a day for registrations and searches, in principle with no human involvement, i.e. without the Registrar checking whether the legal conditions for the registration have been satisfied.

Registration in the Registry does not establish whether the interest really exists or whether a required consent, valid in law, has been issued. If necessary, these questions will have to be judged by the courts in accordance with the relevant national law. However, the date of registration is the deciding factor for the *priority of the interest*.

The Registry will *not contain any documents* concerning the transactions on which the interests are based. Potential lenders or borrowers will have to obtain these documents from the people who have registered an interest.

The Registry is "*asset based*", i.e. it is arranged for search purposes by object for which an interest exists, and not by debtor.

Anybody may carry out or request a search of the interests or prospective international interests contained in the International Registry in the manner prescribed in the Protocol and the Registry regulations, using electronic means. The Registrar will issue a certificate concerning the Registry search on the object concerned. This certificate will be issued using electronic means in the manner prescribed in the Protocol and the Registry regulations.

Apart, perhaps, from during the set-up phase, the Registry is to be *financially self-supporting* by means of appropriate fees for registrations and searches.

Specific problems of the Rail Protocol

The Rail Working Group and the Joint Committee of Governmental Experts had frequently to deal with a range of difficult issues affecting the rail sector in particular, and which it was only possible to resolve at the 3rd Joint Session in May 2003. These were mainly

1. the definition of objects for which an interest exists and the identification of railway rolling stock,
2. the provisions concerning remedies pending final determination,
3. rights in the event of insolvency, taking into account transport of public importance,
4. the Supervisory Authority for the Registry.

Identification of Railway Rolling Stock

The Supervisory Authority will, in regulations, prescribe a system for the allocation of identification numbers by the Registrar to enable the unique identification of items of railway rolling stock. The identification number will either be affixed to the item of railway rolling stock or *be associated in the International Registry with a national or regional identification number so affixed*. The purpose of the latter provision is to tie in existing systems with the International Registry.

A Contracting State may by a declaration state the system of national or regional identification numbers it will use for the purpose of the preceding paragraph. Such a national or regional identification system must ensure the unique identification of items of railway

rolling stock and compliance with the basic informational requirements of the Convention and the Rail Protocol for the operation of the International Registry.

Such a declaration by a Contracting State must be made at the time of ratification, acceptance, approval of, or accession to this Protocol and must include detailed information of the operation of the national or regional identification system.

The Supervisory Authority will review the national or regional identification system set out in a declaration by a Contracting State and may give advice on the measures to be taken to ensure that the system complies with the conditions necessary for the International Registry. There is no obligation to follow this advice, but a valid registration in the International Registry will only enter into effect, and with effect for the rule of priority as an international interest, once the necessary conditions have been complied with.

Every registration in respect of a specific item of railway rolling stock shall be made against the identification number allocated by the Registrar.

A registration in respect of an item of railway rolling stock for which a declaration has been made, must specify all the national or regional identification numbers to which the item has been subject since the entry into force of the Protocol and the time during which each number applied to the item. The debtor must, and the creditor may, provide the International Registry with any new national or regional identification number allocated during the currency of the registration of the relevant interest. Any identification number so specified or provided must be registered in the International Registry by the Registrar. This provision was necessary because some of the existing systems require that identification numbers that have already been allocated be used again. The Joint Committee of Governmental Experts agreed that identification numbers may also be alphanumeric.

Relief pending final determination

Any court order in accordance with the Convention authorising the creditor to take possession, custody or control of the object may specify the reasonable measures to be taken by the debtor to make it possible for the creditor to exercise its rights in accordance with the order, e.g. an order concerning transfer to a location where the creditor can gain access.

Public service rolling stock

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare which default remedies are not exercisable in relation to rolling stock, in so far as this rolling stock is used for transport of public importance, particularly *public service rolling stock*, and to what extent individual measures will apply to this Contracting State.

A Contracting State that makes such a declaration must consider protection of the creditor's interests.

Supervisory Authority

As OTIF and UNIDROIT have different Member States, it would not be politically feasible for the Intergovernmental Organisation for International Carriage by Rail (OTIF) to be entrusted with the function of Supervisory Authority for the International Registry of railway rolling stock which, in principle, would be operating world-wide, in accordance with the Convention. At the 3rd Joint Session of Governmental Experts, the solution to this problem was found by agreeing that the Supervisory Authority under the Rail Protocol should be a council of representatives from the Contracting Parties to the Rail Protocol (i.e. State representatives). Each Contracting Party should nominate one representative.

OTIF would be the **Secretariat** of the Supervisory Authority. The Secretariat would assist the Supervisory Authority in the performance of its functions. This would mean that in accordance with the objectives set by the 5th General Assembly, which were contained in the Vilnius Protocol, OTIF would for the first time really be entrusted with world-wide functions in the interests of the railways.

With regard to existing systems of rolling stock registers, which are also used for funding purposes, e.g. in Canada and the USA, a decision by the Supervisory Authority affecting only the interests of a Contracting Party or a group of Contracting Parties is only binding upon such States if the Contracting Party or the majority of the group of Contracting Parties votes in favour of the decision.

The question of the immunity, legal capacity and headquarters of the Supervisory Authority as an entity under international law, and its rules of procedure, etc. must still be examined in detail before a Diplomatic Conference meets to adopt the Rail Protocol.

The role of the Signatory States during the transitional phase up to the entry into force of the Protocol

(Preparations Committee) also needs to be discussed further and could be dealt with in a resolution issued by the planned Diplomatic Conference.

The General Assembly of OTIF must consent to OTIF's assuming the tasks of a secretariat for the Supervisory Authority. In so far as OTIF will be acting as a secretariat, the question of immunity for this new activity must also be dealt with in the Rail Protocol. Funding OTIF's activities for the purposes of the Protocol is covered in Article XVI of the draft Protocol in connection with the registry fees. Fees for using the registry should cover not just the costs of operating the registry but also the costs of the Supervisory Authority and its secretariat.

Subject to the agreement of the Supervisory Authority, the Registrar determines the fees to be paid for registering an interest and for operating the International Register, and may change them. The question of funding during the set-up phase of the International Registry also needs to be looked at more closely before the planned Diplomatic Conference. Different models could be envisaged in this respect.

Next steps

The 3rd session of the Joint Committee of Governmental Experts gave the Rail Registry Task Force various pieces of work in connection with the future operation of the International Registry, such as surveys, which institutions would be interested in acting as Registrar, the preparation of Registry regulations, a fee structure, etc.

In addition, the Committee mandated the Secretariats of the two Organisations involved, UNIDROIT and OTIF, to prepare a Diplomatic Conference to adopt the Rail Protocol, which should meet as soon as possible, and no later than May 2005.

Concluding remark

Although it was possible at the 3rd UNIDROIT /OTIF Joint Meeting of Governmental Experts to reach agreement on practically all the as yet unresolved questions of a *political* nature, a lot of questions of a more technical, practical and editorial nature must still be clarified.

The period up to when a Diplomatic Conference is convened must also be used for a study to inform the industry sectors that are interested. This study is to look at the economic consequences of the Rail Protocol to the Cape Town Convention, and will be carried out

analogously to the study on the economic consequences of the Aircraft Protocol for the aviation industry.

Guarantees by Governments for funding railway rolling stock are a model whose time is past. It is essential to prepare for the future in a liberalized rail transport market. Time is pressing.

(Translation)

Case Law

Landgericht Hildesheim

Ruling of 13 February 2003¹

Cf. CIV Articles 5, 8, 17 § 2, 35 and 41; §§ 1, 25, 31, 36 of the German Rail Transport Act (EVO); § 427 I No. 1 of the Commercial Code (HGB)²; § 309 No. 7b of the Civil Code (BGB).

1. **In transfrontier car train transport, the railway undertaking is, regardless of fault, liable under Article 35 § 1 of CIV for graffiti damage caused by a third party to a passenger's motor vehicle whilst it is in the custody of the railway undertaking.**
2. **EVO §§ 1, 25, 31, 36, in conjunction with HGB § 427 I No. 1 does not exclude the liability of the railway undertaking, as according to EVO § 1, the provisions of EVO only apply to transfrontier transport if and in so far as the CIV Uniform Rules (CIV UR) do not provide otherwise. However, the basis and extent of liability are comprehensively provided for in CIV Articles 35 and 36.**
3. **The rules covering liability in CIV Article 35 ff. are not at the disposal of the parties. A railway undertaking's general terms of business directed at amending the CIV UR**

¹ 1 S 105/02 – final; first instance: Amtsgericht Hildesheim, ruling of 3.9.2002 - 43 C 112/02

² Special risk when performing transport with open wagons ("o-wagon risk")

are to this extent null and void in accordance with CIV Articles 5 and 8.

4. **A railway undertaking will not be able to substantiate its burden of establishing (certain facts) and burden of proof within the meaning of CIV Articles 35 § 2 and 36 in respect of the unavoidability of graffiti being sprayed on a passenger's car whilst in the custody of the railway if no specific security measures have been taken to protect the vehicles.³**

Grounds for the ruling

The appeal brought in is justified. Under CIV Article 35 § 1, the appellant is entitled to claim compensation of 609.91 €, with interest in accordance with BGB §§ 291, 288 I, 247 at 5 percentage points above the basic rate of interest since the date of filing the action, i.e. since 18 May 2003.

- I. In this appeal, the appellant is pursuing his claims as asserted at first instance, and is objecting that the local court is wrong to assume that for the defendant, the damage caused to the appellant's vehicle was unavoidable. The defendant is applying to have the appeal dismissed. In its view, damage as a result of vandalism cannot be effectively avoided at reasonable economic cost. In addition, the defendant would be able to have the benefit of relief from liability. With regard to the details of the position and status of the dispute, reference is made to the statement of facts of the ruling in dispute and to the pleadings exchanged between the parties, particularly the grounds of appeal and the note of the oral hearing and taking of evidence on 23 January 2003.
- II. The appeal is admissible because the appellant is entitled to claim under CIV Article 35 § 1.

Under CIV Article 35 § 1, the railway is liable for damage resulting from damage to luggage between the time of acceptance for carriage and the time of delivery. According to CIV Articles 17 § 2 and 41, motor vehicles are also accepted as luggage. According to CIV Article 1 § 1, the CIV Uniform Rules apply in conjunction with the Convention concerning International Carriage by Rail of 9 May 1980 (COTIF).

³ The guiding principles and comments appended to the ruling are by the sender, Carsten Grau, barrister, Bremen

CIM Articles 36 §§ 1-3 do not apply as they relate to the carriage of goods, and it is clear that this was not a goods transport operation.

§ 1 of the Liability Act does not apply because damage did not occur as a result of railway operations and was not therefore a result of the special operational hazard of the railway, but of a third party intervention during the rail journey.

Contractual claims for compensation are unacceptable as fault-based claims because the appellant has not demonstrated culpable breach of duty by the defendant.

1. CIV Article 35 § 1 sets out a non fault-based claim for compensation of a particular type. Such a claim is subject to luggage being damaged during the journey. It is uncontroversial, and is substantiated by the defendant's report of 10 March 2002, that when the motorail train arrived in Hildesheim, graffiti damage had been caused to the driver's side of the car. Moreover, according to the outcome of the taking of evidence, there is no doubt that the car was intact when loaded in Bolzano, so the damage must have been caused after it had been loaded onto the train. Conclusively, the appellant's wife testified that she was present when the vehicle was loaded in Bolzano and that the car had not left her sight until it had been driven onto the wagon. Thus, at that time, the vehicle was undamaged. There is no reason to doubt the witness's statement. In a clear attempt to give her own recollections as precisely as possible, without contradiction and true-to-life, the witness described the loading procedure. Her statement is also borne out by witness H., whose vehicle was also on the lower deck of the same wagon. The witness checked his car before departure and would probably have noticed graffiti on the appellant's car, which was very close by. However, the witness did not observe the clearly visible daubings.
2. According to EVO §§ 1, 25, 31, 36 in conjunction with HGB § 427, the fundamental liability of the defendant is not excluded. According to EVO §§ 1, 25, 31, 36 in conjunction with HGB § 427, there is no liability if the damage was caused by using open vehicles without a tarpaulin, which is usual in such transport operations (HGB § 427 I No. 1, "O-wagon risk"). As the vehicle was being carried on an open wagon, there is a particular risk of an unhindered intervention by a third party, and therefore, damage from what is nowadays ever-present graffiti is not just made easier, but is a distinct possibility (cf. insurance law ruling by the Dusseldorf Oberlandsgericht 1976, 666).
3. However, according to EVO § 1, HGB § 427 does not apply. Under EVO § 1, the provisions of EVO only apply to transfrontier transport if and in so far as the CIV UR do not provide otherwise. However, in the CIV UR, Articles 35 and 36 provide comprehensive regulation of the grounds for liability and relief from liability. The CIV UR therefore provide arrangements for regulating "damages" which describe the type and scope of liability for damages. Unlike CIM Article 36 § 3, CIV Article 35 § 3 in particular does not provide for relief from liability in the event of carriage in open wagons. This (negative) rule means CIV Article 35 derogates from the provisions of EVO §§ 25, HGB 427, thereby preventing application of EVO to this extent, in accordance with EVO § 1. This is reflected in the commentary by Czerwenka/Heidersdorf/Schönbeck, in which it is explained that EVO is inapplicable in so far as the CIV UR "enter into consideration" (Czerwenka/Heidersdorf/Schönbeck, *Eisenbahbeförderungsrecht* (Rail Transport Law), supplement 2/97, EVO § 1, Note 2). Finally, the view given above also corresponds to the text of the "Notes for our customers", which follow the general terms of business agreed conclusively between the parties, according to which EVO applies to domestic transport, but the CIV UR apply to international transport (as in this case).

additional contractual obligations. The main purpose of the contract is to transport the appellant and the vehicle to Bolzano and back. In so doing, the defendant's responsibility is first and foremost transportation; the appellant's main requirement is to reach the destination, not safekeeping, which arises as a necessary consequence of carriage, just as the vehicle has to be kept in a workshop when being repaired. In both cases, the safekeeping is an additional service obligation (cf. e.g. ruling of the Bundesgerichtshof in *Neue Juristische Wochenschrift* (New Legal Weekly) 1983, 113; Palandt/Heinrichs, BGB supplementary volume, 61st edition, § 280 marginal note 28). However, it is clear that the defendant was not acting with gross negligence or with intent. Neither is the agreement in breach of the *Gesetz über die Allgemeinen Geschäftsbedingungen (AGBG)* (General Terms of Business Act), §§ 9, 11, old version or § 309 No. 7b BGB new version.

However, in so far as they relate to a modification of CIV, the General Terms of Business are not valid according to CIV Articles 5 and 8, because the rules covering liability in CIV Article 35 ff. are not at the parties' disposal. In fact, it is maintained that CIV Articles 35 ff. are not of a mandatory legal nature (as stated explicitly by Czerwenka and others, reference as above, Article 35, Note 1, in consideration of the decision of the Court of Appeal of Liège, 26.2.1976⁴). However, it emerges from CIV Articles 5 and 8 that an international tariff is required to amend the provisions of the CIV UR; but it cannot be concluded from the General Terms of Business that these constitute the terms of such a tariff. The rule in CIV Article 5 § 1 must also be taken into account, which explicitly permits derogation from the CIV UR in the conditions of international tariffs only when this is expressly provided in the CIV UR. For CIV Article 35 ff., there is specifically no such explicit authorization to derogate. This must be taken to mean that the liability rule should expressly not be put at the parties' disposal.

4. The defendant cannot call upon CIV Article 35 § 3(a) either, according to which no claim for compensation can be made if damage arises from the special risk inherent in the absence or inadequacy of packing. The rule obviously covers the case where the packing provided normally or for an individual instance is absent or inadequate, and not the case where there is no packing at all. If it were otherwise, the relief from liability for transport in open wagons to cover the scope of CIM Article 36 § 3 would be introduced for the scope of the CIV UR via CIV Article 35 § 3 (a). But this is clearly not what the legislator intended.
5. The deciding factor therefore is whether for the railway the damage was unavoidable. This cannot be determined from the result.

CIV Article 36 says that the railway, i.e. the defendant, has the burden of establishing and proving the circumstances it could not avoid and the consequences it was unable to prevent within the meaning of CIV Article 35 § 2. An incident is unavoidable if the damage could not have been prevented, even by taking the utmost possible and sensibly reasonable care according to the circumstances (Czerwenka and others, reference as above, EVO § 82 old version, A b). But in this case, the question is not about whether it is at all possible to provide effective protection against graffiti damage, but rather about the specific circumstances of this individual case. It is for the defendant to demonstrate that on 9 and 10 March 2002, train No. 13482AZ, together with the cars it was carrying, was not exposed to inappropriate risks, i.e. that the defendant had on the day in question taken precautionary measures to a suitable extent. The defendant cannot be exonerated by maintaining that precautions would in any case be pointless because there are always ways in which damage can be caused to cars by graffiti. All the time it is possible to imagine types of cases where the simplest protective measures were ignored, there could be no question of accepting relief from liability. There is no substantiation of the measures taken, as it is not clear whether and which stops occur

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See Bulletin 1-2/1978

on the railway line used and how protection was specifically provided. The defendant provides no substantial indication of any spot checks being carried out during longer waiting periods in open areas or of checks at goods stations. The defendant also settles for general statements in respect of the Chamber's indicative decision of 26 November 2002. Difficulties may indeed be encountered in specifying the protective measures further, especially as several railway undertakings worked on the train. However, the defendant is expected to provide further information and to make enquiries by asking train guards or examining duty rosters. The defendant has not identified what specific measures were taken to protect the motorail train. Nothing on safeguarding the train can be gleaned from the controller's report. The "timetable overview" (BI. 130) shows the route the train usually follows, but does not provide definite information on which stations the train actually stopped at on the day of the incident. In addition, it also remains unclear as to where longer stops actually occurred, and neither is this information available from the timetable overview. There is also little indication of which stations the train crew got out at to monitor the train; it is not known which and how many people the crew was made up of and whether the crew was not (as the submission suggests) involved in handing over duties. Nothing is submitted on which stations are equipped with video surveillance, who carried out the surveillance and what the outcome of it was. In fact the defendant's statements are restricted to general assertions, such as that Carabinieri can usually be found at stations. There is no indication as to whether these or other bodies were particularly instructed to watch over the train. The defendant does not say where and at which place signal box checks were set up.

While the defendant refers to having prevented access to the train by means of prohibition notices, this is not a suitable safeguard. Finally, the general indication

that further measures were not economically feasible is void, because it is not clear which measures were taken and why (or which) measures cannot be financed. The defendant's assertion that it entirely satisfied the conditions regulated in the Railways, Construction and Operations Act (EBO) is in this case irrelevant. As public law, the EBO does not cover the contractual safekeeping obligations incumbent upon the defendant in the context of safekeeping as a civil contractual obligation.

6. If, after all this, the defendant cannot demonstrate that the damage to the vehicle constitutes an incident that it could not avoid, the defendant is liable under CIV Article 35 for the damage that occurred in the amount of 609.91 €. The defendant does not actually dispute that damage was caused to the appellant's car. Since in the statement of 6 June 2002 the defendant altogether disputes the claim of "precautionary" and "according to the amount", without providing further details, further proof would be needed here, at least a statement that the car had perhaps not been repaired at the cost set out in detail in the invoice of 28 March 2002 or not at a suitable price.
 7. The appellant is entitled to interest at the legal rate in accordance with BGB §§ 291, 288 I, 247 at 5 percentage points above the basic rate of interest since the date of filing the action, i.e. since 18 May 2003. The action was filed on 17 May 2002 when the damage suit was submitted; the commencement of interest is based analogously on BGB § 187 I (Palandt/Heinrichs, BGB, 62nd edition, § 187 marginal note 1 at the end).
- III. The decision concerning the costs is based on the code of civil procedure (ZPO) § 97, paragraph 1; the decision concerning provisional enforceability follows analogously from ZPO §§ 708 No. 10, 711. The appeal was admissible because according to ZPO § 543, paragraph 2, the case is of leading importance.

(Direct communication)

Notes:

1. It was already recognized in the first instance that in transfrontier motorail train transport in the COTIF UR CIV area, the passenger can remain with his transport contract partner for the whole transport operation. This is because a fundamental *ratio legis* of the COTIF UR CIV is indeed to prevent each of the responsibilities in transfrontier transport from being split up. The key concept of international rail transport law inherent in the COTIF UR CIV is in fact aimed at grouping together several consecutive railways, operating primarily at national level *ex lege* into a transport and liability community.⁵ In this case therefore, the question was quite rightly not concerned with whether the graffiti damage was caused on Italian, Austrian or German territory.
2. According to Article 36 § 1 of CIV/COTIF 1980, in transfrontier motorail train transport, the railway undertaking bears the full burden of proving that damage to the car being carried is not the result of circumstances over which the transport undertaking has an influence.⁶ In this respect, the railway undertaking cannot benefit either from a presumption of law or from any other relief from the burden of proof.⁷ Neither will there be any change in the assignment of the burden of proof under the new version of COTIF CIV UR (COTIF 1999⁸) which was established in Vilnius on 3rd June 1999 and which has not yet entered into force. The rule concerning the burden of proof currently contained in Article 36 § 1 will appear in Article 37 § 1 of the new version without modification. It is not expected that the 3rd June 1999

⁵ Mutz, *COTIF – der Weg ins 3. Jahrtausend* (COTIF – Towards the 3rd Millennium), *Transportrecht* (Transport Law) 1994, p. 173 ff.

⁶ *Landgericht Hannover* (Hanover provincial court) DAR 1993, 469 f; Czerwenka/Heidersdorf/Schönbeck, *Eisenbahnbeförderungsrecht* (Rail Transport Law), commentary (loose leaf volume), 4th edition, Berlin 2001, COTIF – CIV UR Article 36, Note 2).

⁷ Czerwenka/Heidersdorf/Schönbeck, reference as above.

⁸ COTIF/CIV 1999 published in: *Transportrecht* (Transport Law) 1999, p. 466 ff; informative on the structures and essential points of COTIF 1999: *Freise Transportrecht* (Freise Transport Law) 1999, p. 417 ff.

Vilnius Protocol version of COTIF (COTIF 1999) will enter into force before 2004.⁹

3. Overall, the *Landgericht Hildesheim* (Hildesheim provincial court) has taken a leading decision, which in every respect corresponds to the declared philosophy of COTIF: the railway of the future needs an international and intermodal perspective, requiring liberalization of rail markets that are traditionally very nationally oriented and monopolistic, transfrontier cooperation at all levels and an internationally harmonized legal basis.¹⁰ The defendant will have accordingly to adapt its General Terms of Business and will have to adopt suitable measures for organizing its operations to protect its passengers' vehicles from being sprayed with graffiti¹¹.

Carsten Grau, barrister, Bremen¹²
(Translation)

Miscellaneous Information

EurailFreight

Munich, 22/23 May 2003

The first pan-European Conference on Rail Freight was held in Munich on 22/23 May 2003. The Conference was convened and organised by the Community of European Railways (CER) in connection with the specialist trade fair, "transport logistic", which is held in Munich on a regular basis.

⁹ Isliker, Director General of OTIF (Intergovernmental Organisation for International Carriage by Rail), speech at the Railways Congress, Arab Republic of Syria/Arab Union of Railways (UACF) in Aleppo/Syria on 11/12 September 2002, short version of the speech and current status of signatures, ratifications, acceptances, approvals and accessions available at: www.otif.org.

¹⁰ Ibid.

¹¹ Worth reading in this respect: Wesel, *Nachdenken über Graffiti*, *Neue Juristische Wochenschrift* (Thoughts on Graffiti, New Legal Weekly), 1997, p. 1965 f. and: Wohlfahrt, *Strategien gegen Vandalismus durch Farbsprühen*, *Versicherungsrecht* (Strategies to Counter Paint-Spray Vandalism, Insurance Law), 1998, p. 84.

¹² Dr. Schackow & Partner Associates.

The date was well chosen in view of the EU's recently adopted 2nd rail package, but probably also as the last opportunity for frank reassessment - in a long-running discussion which has not so far resulted in a consistent strategy, despite its being unquestionably acknowledged - of the fact that in international freight transport, the railways are confronted with serious problems.

The Conference programme was based on a series of high level panel discussions that repeatedly started out from the same problem base, but which brought the problems to light ever more clearly so that it was possible to obtain some clear, firm information. Much of this information was not new, but was confirmed in a broadened overall context.

It was once again confirmed how important it is distinctly to separate out the railway's problems in respect of freight transport in order not to mix up the railways' various areas of activity, which are to be evaluated quite differently, in the melting pot of the "ordinary" railway, which is hardly future-shaping. The railways are absolutely not the same problem child in every respect, although it is directly in the railways' role in freight transport, which, *a priori*, requires an international perspective, that the acid test for European rail reform is approaching.

In this respect, the problem as a whole and its main aspects have been impressively addressed. With regard to the potential of the railways and the approaches to finding solutions for securing an appropriate role for them, there was broad consensus:

- Most of their customers consider that what the railways offer is insufficient. This is a priority area for action, without delay.
- Accordingly, the obstacles and delays at borders must be removed as a priority. Important developments have certainly been introduced with the concentration on corridors, or freight freeways, the advantages of which are being marketed through "one stop shops".
- But there is no doubt that this will not work without substantial investment in order to modernize key sections of track and to remove bottlenecks, which are linked, not least of all, to the difficulty of leaving sufficient capacity for freight transport in built-up areas where the lines are taken up mainly by passenger trains.

The fact that differences of opinion and uncertainties also continue to exist should not be overlooked:

- to what extent should the railways seek their way forward by means of cooperative actions, to what extent must intramodal competition apply to them?
- what will be the role of the (few) big players, what significance will small railway undertakings and newcomers have, should the latter be supported in some way?
- to what extent is it vital to separate infrastructure and transport, what is the significance of the "common endeavour", is the interface correctly defined at the level of the infrastructure operator in any case?
- what should be the principles for defining access charges, to what extent should they be State influenced? What is the EU's role in infrastructure funding, to what extent do opportunities exist under public private partnerships?
- how significant is the time factor, what priorities must be observed accordingly, where do conditions need to be changed urgently in order to obtain key investment in good time?

An approach to a solution that could deal with a lot of problems and which would ultimately enable a clear, long term strategy to be pursued, emerged surprisingly clearly, at least as an idea: the development of a network dedicated largely to rail freight transport, corresponding to considerations such as those that lay behind the construction of the motorway network and the high-speed transport network for rail passenger transport.

The Conference was marked not least by a declaration that had been introduced at the beginning and which was signed as a special document on behalf of the Community of European Railways, UIC, UNIFE and German Railways. This declaration was conceived as an engaging testimony on the part of the railways and the rail industry, and is to act as a benchmark for monitoring progress in the years to come.

From the perspective of COTIF/OTIF, the outcome was as follows:

- there is also a contribution to be made by COTIF 1999. It is therefore even more important to see that it enters into force.
- at the same time, the need for development is already emerging. Those areas in which, with the help of COTIF, supporting regulations should be available, need to be examined, but this is conditional upon the ability of the OTIF organs to act in accordance with COTIF 1999.
- what emerges quite clearly is that harmonization of the transport law systems in the OTIF area on the one hand, and in the OSZhD area on the other, should be an objective that needs to be pursued energetically.
- there will soon be a need to start discussions on how to set up the new OTIF organ for facilitating border crossing, particularly so that the problems surrounding freight transport can be eased.
(Translation)

International Liaison Group of Government Railway Inspectors (ILGGRI)

Berne, 22/23 May 2003

The second ILGGRI meeting of this year was held in Berne, Switzerland, at the invitation of the Federal Office of Transport.

Just before the meeting, the Federal Office of Transport had organized a presentation of the current Swiss transport policy followed by a presentation of the new rail links through the Alps (Gotthard and Lötschberg base tunnels).

Swiss transport policy is opting for an increase in public transport at the expense of individual traffic and promoting sustainable development, i.e. an environmentally-friendly, efficient public transport system that is compatible with Europe, and affordable. The policy contains 5 main elements: mileage-related Heavy Vehicle Tax (polluter pays); modernisation of railway infrastructure; rail reform; a land transport agreement between Switzerland and the EU (active since 1 June 2002) and finally a Traffic Transfer Act (in force since 1 January 2001) and supporting measures.

The aim of these measures is to reduce the yearly transit freight traffic through the Swiss Alps with heavy vehicles from 1.4 million in the year 2000 to 0.65 million in 2009. The measures have already proved

their efficiency by the fact that the trend upwards has been broken and traffic stabilized at 1.25 million heavy vehicles in 2002.

The Swiss transport programme will enable the railway infrastructure projects for the next 20 years to be wholly funded by public monies, of which 50 % will come particularly from tax on road traffic. This principle is accepted in referendums by the Swiss population and assured by a specific Article (196) in the Swiss Federal Constitution.

The two projects for new base tunnels are making progress and opening is scheduled/estimated for the year 2007 for Lötschberg and 2014 for Gotthard. Together with other line improvements the total cost is estimated at SFr. 13.6 billion.

The ILGGRI meeting itself dealt as usual with safety aspects in many interesting contexts, such as the status of the 2nd rail package and interoperability, enlargement of the EU, the question of driver licences, the working hours of drivers in transfrontier transport, vehicle registration and the results of questionnaires.

Based on a document prepared and circulated before the meeting, the objective and future organisation of ILGGRI was discussed. It was agreed that in the short and medium term there is still a role for ILGGRI to play and that it should continue to be an informal forum. The aim of ILGGRI was changed to: "To promote safety on all aspects of Europe's railways by becoming an accepted and recognized advisory forum for European Safety Authorities which can be consulted on fundamental matters". It was decided that OTIF would be invited to all ILGGRI events. The working arrangements with a model agenda and specific procedures to be used in the future were agreed; they had already been able to demonstrate their efficacy at this meeting.

Taking into consideration a high number of fatalities in shunting activities, the meeting decided to organize an ILGGRI sub-group to discuss, amongst specialists in the field of shunting, different approaches and perhaps initiatives towards the harmonization of safety measures. ILGGRI plans to send the outcome to the AEIF/ERA freight TSI drafting group.

A report was given on the ILGGRI workshop on ETCS held in Berne on 25/26 March 2003. Fine experience was reported from the ETCS line in Switzerland, being in operation since 27 April 2002. No safety relevant failures or incidents have been reported and widespread acceptance by locomotive drivers and traffic controllers

was achieved, but the effort required to reach the necessary reliability and availability was underestimated. The implementation of ETCS in Europe however is moving slowly, the official priority being aimed at high speed lines, the migration strategies are missing and thereby no countrywide impact can be achieved. The main problems are the funding, especially of equipment and systems in rolling stock, and that some interfaces to existing systems are still not available or are extremely expensive. Only when these problems are solved, promoted by the national authorities and the EC, might the ETCS expand its implementation.

The following accidents were presented and discussed:

- Fire in a sleeping car in the Paris-Munich night train at Nancy, France on 6 December 2002.
- Head on collision between an NS regional passenger two-car train and a diesel hauled short line container train at the Roermond station, the Netherlands on 20 March 2003.
- Head on collision between French and Italian train in the Biogna tunnel in France on 27 January 2003.
- Collision of intercity train passing through red signal and hitting a second train, both travelling at low speed, derailing six carriages.

One of the things to be noticed from the first case is that security arrangements, e.g. locks may inhibit safety precautions, e.g. escape routes. To be noted from the Biogna accident is that the interlocking (red signal) was cancelled manually without verification because the signalman - wrongly - thought that the interlocking was caused not by the trains but by an out of order axle-counter (as this device had often been out of order). It is of course possible that the accident might have been prevented if not just one but two persons were asked in sequence to unlock the signal system, but there is no guarantee that this would help. The main problem shown in this case – the OTIF ILGGRI member considered after the meeting – seems to be that a malfunction of safety devices, be it infrastructure or rolling stock, might not be reported, or if it is reported, it might not be corrected properly and quickly, thereby reducing the credibility of safety installations even when they work correctly.

Overall, the meeting confirmed the impression that ILGGRI is a very active group, with 18 new actions derived from the meeting put on the action list. The next

ILGGRI meeting will take place in Vienna on 18/19 September 2003.

OTIF is revamping its internet website. In future the reports on ILGGRI will be placed there and not in the OTIF Bulletin.

French Private Wagon Association (AFWP)

Seminar

Paris, 5 June 2003

The AFWP General Assembly was as usual followed by a seminar on "Opening the European market for rail freight transport operations: where do we stand".

Mr. Menoret, Deputy Head of the Rail Transport subdivision in the French Ministry of Infrastructure, Transport, Housing, Tourism and Maritime Affairs gave a detailed presentation on the 7 March 2003 Act for transposing the whole of the European Community's first rail package into French law. Réseau ferré de France (RFF) and French National Railways (SNCF) have the task of ensuring non-discriminatory access to the national rail infrastructure and to the necessarily associated services in France for all appropriately qualified rail transport undertakings in the European Community. The safety certificate required will be issued by the Transport Minister for the services and lines to be used.

The RFF is drafting the "network statement", which must contain all the information concerning the rail infrastructure needed for exercising the access rights.

Mr. Vinois, Head of the Rail Transport Unit in the European Commission's Directorate General TREN, presented an overview of progress on the transposition of the rail directives in the various Community Member States, and referred to the fact that transposition had so far been achieved in very different degrees. There was a distinction between formal and practical, material transposition. In this respect too, there were still at present large differences, depending on the country. In France too, only practice will show how effective the 7 March 2003 Act will be.

Mr. Raith, Director of the private rail transport undertaking Rail 4 CHEM, which was set up a few years ago, and which has already achieved a substantial share of rail freight transport in Germany, reported on the experiences of a private undertaking in the European rail transport sector.

Mr. Richard, Head of Réseau ferré de France (RFF), concluded with an examination of a range of practical problems that arise in connection with access to infrastructure and the awarding of scheduled routes.

(Translation)

International Summer Academy 2003

Sopron, 19-22 June 2003

This year, the annual summer academy organized by the Training and Research Institute for Transport Management, Transport Logistics and International Business Relations, Logotrans, was as usual held in Sopron, this time under the heading "Guidelines for Business and Transport in the World of Tomorrow". The meeting started with a presentation by the deputy Secretary of State of the Hungarian Ministry of Trade and Transport on the role of Hungary's transport sector in an expanded European Union.

Under the heading "The Perspectives for Rail Transport in the Future", the meeting also provided the Secretariat of OTIF with the opportunity of introducing more fully to an interested public the new legal basis for international rail passenger and freight transport brought about by the 1999 Vilnius Protocol.

Other issues dealt with at the 2003 summer academy concerned, inter alia, the European transport corridors, insurance matters in connection with the liability of rail transport undertakings and rail transport funding problems.

(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° 2981/2003, p. 223/224 – Action directe à l'international. Piégé par le droit français ! (CMR); p. 228/229 – Voyageurs. Transporteurs, veillez sur vous ! (M. Tilche)

Idem, n° 2983/2003, p. 266/267 – Dommages aux tiers. Quel recours, quel délai ? (M. Tilche)

Idem, n° 2993/2003, p. 429/430 – Surcharge. Faute lourde de l'expéditeur ; p. 431/432 – Limites de responsabilité. Pourquoi pas le chargeur ? (M. Tilche)

CIT Info, Berne, N° 1/2003, La nouvelle COTIF – Travaux de transposition du CIT dans le domaine marchandises / Das neue COTIF – Umsetzungsarbeiten des CIT im Bereich des Güterverkehrs / An account of the work done by the CIT to transpose the new COTIF for freight traffic (Ch. Heidersdorf)

Der Gefahrgutbeauftragte, Hamburg, Nr. 5/2003, S. 5/6 – Mal was Besonderes. Sondervereinbarungen (J. Conrad)

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 42/2003, S. 8 – ADR 2003 – hier tanken Sie auf. Tanks vor dem Hintergrund der reformierten Gefahrgutvorschriften (A. Ulrich)

Idem, Nr. 44/2003, S. 6 – BGH: Haftungsbeschränkung nach ADSp nur bei schriftlicher Vereinbarung. Qualifizierte Information des Auftraggebers notwendig (R. Herber)

Shipping & Transport Lawyer International, London, N° 5/2003, p. 10-12 – New Athens Convention Protocol adopted at IMO; p. 13-15 – Carriage of Goods by Rail – the new CIM Rules (D. Glass)

Transportrecht, Hamburg, Nr. 4/2003, S. 133-154 – Quo vadis Gefahrgutrecht? Einblick und Ausblick (G. Hole/H. Busch)

Idem, Nr. 5/2003, S. 177-185 – Die Haftung des Luftfrachtführers für schadensverursachende Passagiere. Der „disruptive passenger“ als Problem des Luftprivatrechts (M. Kilian); S. 185-188 – Der Haftungsanspruch wegen Verlustes von Reisegepäck und die Durchbrechung von Haftungslimits im Luftverkehr. Vergleich zur Rechtslage bei Verlust von Frachtgütern (T. Mühlbauer)