



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
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by Rail

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Central Office Communications

Accession to COTIF

Ukraine

On 29 May 1997, the Government of the Ukraine addressed an application for accession to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 to the Swiss Government as the Depositary Government (see Bulletin 3/1997). No Member States lodged an objection within the six month period prescribed in the Convention. The application for accession was therefore deemed to be accepted on 19 December 1997.

On 11 September 2003, the Ukraine deposited its instrument of accession to COTIF of 9 May 1980 with OTIF, which has performed the function of Provisional Depositary since 3 June 1999. In depositing its instrument of accession, the Ukraine made a reservation not to apply the provisions of Article 12 § 1 and 2 of COTIF 1980. In addition, the Ukraine also made a reservation in accordance with Article 3 § 1 of Appendix A to COTIF 1980 not to apply the whole of the provisions concerning the liability of the railway in case of death of or personal injury to passengers, when the accident has occurred in the territory of the Ukraine

and the passenger is a national of or has his usual place of residence in the Ukraine.

In a letter dated 17 October 2003, the Ukraine notified the Central Office in accordance with Article 10 of COTIF 1980 of the list of lines which will be subject to the CIM Uniform Rules. As a first step, these will be lines of European standard gauge width (1435 mm), i.e. transfrontier lines between the Ukraine and Poland, Slovakia, Hungary and Romania, a total of 216 km. The accession of the Ukraine to COTIF 1980 will take effect on the first day of the second month following the month during which the Central Office has notified the Member States of the list of lines of the new Member State, i.e. on 1 January 2004 (Art. 23 § 2, para. 4 of COTIF 1980).

The Ukraine may accede to the 1999 Protocol before its entry into force by depositing an instrument of accession with the Provisional Depositary (Art. 3 § 3 of the 1999 Protocol). If accession does not take place before the 1999 Protocol enters into force, Article 20 § 3, para. 1 of COTIF 1980 would apply to traffic with the Ukraine, i.e. application of the CIM Uniform Rules would be suspended, unless the Ukraine makes a declaration in accordance with Article 20 § 3, para. 2 of COTIF 1980.

Ratification of the 1999 Protocol

Lithuania and Czech Republic

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), Lithuania deposited the instrument of ratification of the 1999 Protocol with the Provisional Depositary¹ on 10 November 2003 and the Czech Republic did so on 22 December 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). The Czech Republic is the 15th State to have ratified the 1999 Protocol.

List of CIM lines

(published on 1 May 1985)

Central Office circular no 69, 20 November 2003

Chapter "Ukraine"

As the Ukraine deposited its instrument of accession to COTIF on 11 September 2003 a new chapter has been inserted in the List of Lines, together with a new list of the Chapters. The following lines (216 km) operated by the State Administration of Railway Transport of the Ukraine (Ukrzalisnytsia) will be subject to the CIM Uniform Rules: Halmeu/Djakovo-Batjevo-Chop/Čierna nad Tisou (Chop/Záhony), Batjevo-Mukachevo, Medyka/Mostiska II – Mostiska I, Dorohusk/Yagodin-Kovel. In accordance with Article 23 § 2, last paragraph, of COTIF, this accession will come into effect on 1 January 2004.

Central Office circular no 70, 20 November 2003

Chapter "Germany"

Correction to address

On p. 1, under I. 1. a), the address should read

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.

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Recruitment for the post of Director General of the Central Office

The term of office of the current Director General, Mr. Hans Rudolf Isliker, ends on 31 December 2004. He was elected for the remainder of the five year term of office of his predecessor, Mr. Michel Burgmann, who left his post at his own request shortly after he was re-elected. Mr. Isliker will not be applying for a second term of office.

In accordance with Article 7 § 2 (d) of the 1980 Convention concerning International Carriage by Rail (COTIF) currently in force, the Governments were informed in a circular dated 14 November 2003 that the post of Director General of the Central Office is to be filled.

In accordance with the Vilnius Protocol version of COTIF (COTIF 1999), a fundamental change is planned with regard to the head of the OTIF Secretariat: the concept of the Central Office will no longer exist. Instead, the Secretariat of OTIF will be subordinate to the Secretary General as an organ. The General Assembly, not the Administrative Committee, will in future be responsible for electing the Secretary General, whose term of office will be three years; the post holder may be re-elected for two more terms at the most.

As there is no guarantee that the Vilnius Protocol/COTIF 1999 will enter into force in time for the Secretary General to be elected in accordance with the new rules at a first General Assembly, COTIF 1980 will still apply to the election of the current Director General's successor. This election must be held in good time during 2004 so that the new Director General can take up his duties on 1 January 2005. The Administrative Committee is therefore again responsible for the election.

In its letter of 17 December 1998, the Swiss Government renounced its right, as set out in the above-mentioned provision, to submit applications for the post of Director General of the Central Office. The Central Office already performs the function of Depositary. The Governments of the Member States have therefore been requested to send any applications directly to the Central Office for the attention of the Chairman of the Administrative Committee, Mr. Michel Aymeric.

In all probability, it will be possible to hold the first General Assembly in accordance with COTIF 1999 in 2005. In the circumstances, the Director General who will be in post at that time will not need to be reaffirmed as Secretary General, nor will there be new recruitment for his post beforehand. According to Article 6 § 4 of the Vilnius Protocol, when COTIF 1999 enters into force, the incumbent Director General will automatically become Secretary General for the rest of the term of office for which he was elected.

Applications must be submitted within six months, beginning with the date the circular of 14 November 2003 was sent and ending on

14 May 2004.

Applications not received in due form from a Member State of OTIF will not be considered.

The Administrative Committee has decided to hold the election at an extraordinary session at the beginning of July 2004. The new Director General will take up his post on 1 January 2005. In accordance with the existing rules, the election will be for a five year term of office; this will therefore end on 31 December 2009. Re-election in accordance with COTIF 1999 will be possible.

Applicants must satisfy the following requirements:

- must be a national of one of the Member States of OTIF, not necessarily a national of the proposing Member State;
- an individual with a number of years professional experience in different areas of activity and who has demonstrated ability in a position of major responsibility;
- fluency in at least one of the three working languages of OTIF (French, German or English) and excellent knowledge of the other two. For applicants whose first language is not German, English or French, fluency in one of the working languages of OTIF, a very good knowledge of English and a basic knowledge of the other working language of OTIF is sufficient;
- holder of a degree in a discipline relevant to the work of OTIF, preferably in law and political science; in this context, the intended expansion of OTIF's scope of activities and the future challenges that will result from COTIF 1999 must be taken into account;

- ability to head an administration such as that of the OTIF Secretariat, using modern information technology, and personnel management abilities;
- knowledge of how international organisations function and professional experience in the international sector;
- an individual who is able to represent OTIF effectively in the Member States, at international level and in public.

It should be emphasized that the entry into force of COTIF 1999 is of crucial importance for the future of OTIF, not least to provide able, motivated applicants for the post of Director General/Secretary General with a challenging perspective.

OTIF Organs

Administrative Committee

100th session

Berne, 6/7 November 2003

The Administrative Committee held its 100th session in Berne on 6 and 7 November 2003 under the chairmanship of Mr. Michel Aymeric (France).

The Committee noted the work carried out jointly by OTIF and UNIDROIT on the Protocol on Matters specific to Railway Rolling Stock to the Cape Town Convention on International Interests in Mobile Equipment. The Committee supported the Secretariat's efforts in relation to the Rail Protocol (see Bulletin 2/2003, p. 24 and p. 34 ff.).

The Administrative Committee also discussed the advertisement for the post of Director General of the Central Office for the next five year period, as the present Director General's period of office comes to an end on 31 December 2004 (see p. 66). A new Director General will be nominated at an extraordinary session of the Committee to be held on 1 July and, if need be, on 2 July 2004.

With regard to personnel matters, the Administrative Committee noted the Director General's decision to postpone the project for a new personnel policy project until further notice (see Bulletin 4/2002, p. 71). This subject will be addressed again once COTIF 1999 has entered into force. In addition, the Committee deferred

its decision on the personnel measures proposed for 2004 to the next session.

In the field of finances, the Administrative Committee noted in particular the financial situation and the current situation with regard to investments. It approved the draft 2004 budget as proposed by the Central Office. The provisional rate per kilometre was set at SFr. 6.50.

Lastly, the Administrative Committee approved the 2004 work programme.

The 101st session of the Administrative Committee will be held on 3 and 4 June 2004 in Greece and the 102nd session will be held on 4 and 5 November 2004 in Berne.

(Translation)

RID Committee of Experts

40th session

Sinaia, 17-21 November 2003

see "Dangerous Goods"

Central Office

Great honour

for a member of staff of the Central Office

At a major ceremony held in Berlin on 14 November 2003, Mr. Jochen Conrad was presented with the German Dangerous Goods Award for 2003. The award, which is greatly respected in specialist circles, was founded in 1991 by the Storck publishing group of Hamburg, and is presented each year to somebody who has merited it as a result of making an exceptional contribution to safety in the transport of dangerous goods. Mr. Conrad is now the 13th person to have received the award.

The Central Office was pleased and proud to learn of this honour. Mr. Conrad came to the Central Office from German Railways in 1991. Together with his colleague, Mr. Jean-Daniel Dénervaud, he is responsible for the specialist field of RID and oversees principally the German and English editions of this comprehensive and dynamically evolving set of regulations.

The choice for the 2003 winner of the award was shaped by the restructuring of the dangerous goods provisions for road and rail, ADR and RID, which, as is evident

from the honorific speech, has been of outstanding, almost revolutionary significance for "all members of the dangerous goods family". Mr. Conrad carried out excellent work, not least with reference to the very short deadline. His perfect preparation of documents and meetings meant that he was able to manage input elegantly and speed up the decision making process. Once the working group on the restructuring of RID had completed its work, Mr. Conrad was also significantly involved in the meetings of the editorial group to align the German, English and French texts with each other. He produced not only the final text for the 2001 edition of RID, but also a print-ready German language version of the restructured ADR for the German speaking States.

For the Central Office, the happy result is that the significance of RID as an important part of the COTIF regulations has been publicly recognized and that the restructuring of RID, which required intensive commitment on the part of many people over a number of years, is considered to have been a success.

(Translation)

Dangerous Goods

RID/ADR/ADN Joint Meeting

Geneva, 1-10 September 2003

Bonn, 13-17 October 2003

27 Governments and 15 governmental and non-governmental international organizations and the European Commission took part in this meeting under the chairmanship of Mr. C. Pfauvadel (France) and the vice-chairmanship of Mr. H. Rein (Germany). This exceptional 3 week meeting (see Bulletin 1/2003, p. 4) was given over mainly to harmonization with the 13th revised edition of the UN Model Regulations, other subjects being:

- proposals for amendments to RID/ADR/ADN
- security in the transport of dangerous goods
- safety adviser
- standards
- tanks
- future work.

Harmonization with the 13th revised edition of the UN Model Regulations

The Joint Meeting adopted this harmonization in the light of the recommendations of the ad hoc working

group which met from 26 – 28 May 2003 in Geneva. However, some decisions were not adopted unanimously, particularly the new headings for substances toxic upon inhalation and the deletion of the lower limit of 450 litres for RID/ADR tank-containers intended for the carriage of substances other than gases. In contrast, the Joint Meeting decided to defer incorporation of the new provisions covering water-pollutants by two years and thus to extend the multilateral agreement on this subject. It also decided to retain the possibility of carrying certain infectious substances in tanks, such as wastes or blood from abattoirs or blood intended for the production of pharmaceuticals which, according to the new provisions, they no longer could be. With regard to the new provisions covering bulk containers, the meeting reached a compromise, i.e. to keep the present RID/ADR system while offering the possibility of using the new system of the UN Model Regulations. Lastly, on a proposal from the "tank" working group, the meeting accepted authorization of the carriage in RID/ADR tanks of ammonium nitrate emulsions under specific conditions.

Proposals for amendments to RID/ADR/ADN

Various proposals were adopted under this item, particularly with regard to the carriage of waste paint and used batteries and lithium batteries, dangerous goods packed in limited quantities and exempt from the conditions of carriage, the dimensions of the orange panels and the information relating to empty means of containment. Special provision 640, which was very contentious, was amended to make it more comprehensible in order to improve transport safety and to limit its application to carriage in tanks only. With regard to radioactive material, alignment with the IAEA Regulations was accepted. Lastly, new provisions on the chemical compatibility of substances to be carried with packaging and IBC materials were introduced into RID/ADR, with a new list of substances to which the standard liquids are assigned for the purpose of performing this compatibility test. Owing to the lack of time, it was not possible to examine the report of the working group on transport documentation. It was transmitted directly to the RID Committee of Experts and to the WP.15 working group for ADR for a coordinated decision if it affects both sets of regulations.

Security in the transport of dangerous goods

(see Bulletins 2/2002, p. 26, 4/2002, p. 75, 1/2003, p. 4 and 2/2003, p. 22)

The Joint Meeting devoted 3 whole days to the final reading of this 4 page text, to the great consternation of its authors, who thought this would only be a formality! The numerous proposals for amendments submitted demonstrated that this text was not sufficiently clear, precise and comprehensible, which would make it difficult to apply. In particular, it proved necessary to resolve the legal conflict between the safety provisions and those covering security.

Several delegations were not in favour of the mandatory introduction of a programme for identifying consignors, carriers or other participants engaged in the carriage of high consequence dangerous goods, since this measure did not seem to them to be compatible with their domestic legislation. Some delegations would have liked a study of legal practices or possibilities in the different countries which were Contracting Parties to RID or ADR.

A vote was taken on this provision of the UN Model Regulations, but it was not adopted. Since this was a security and not a safety problem, each country maintained its prerogative of ensuring individually the implementation of this provision in its domestic legislation if it so wished.

With regard to exemptions, it was decided to extend the scope to substances covered by the provisions which exempt undertakings from having a safety adviser.

With regard to security plans, it was considered in relation to risk analysis that it was absolutely indispensable to have European guidelines to ensure standardization in this area.

Safety adviser

(see Bulletins 3/2002, p. 53 and 1/2003, p. 4)

The two proposals from the informal working group which met in Geneva from 9 – 11 July 2003 were adopted by a large majority, i.e. to make renewal of the certificate subject solely to passing an examination and the proposal concerning the content of the examination (1.8.3.16).

It was pointed out that this decision could give rise to problems of interpretation for domestic and intra-Community traffic in European Union countries in that Directive 96/35/EC provided for the possibility of renewal on the basis either of an examination or of training.

The representative of Belgium asked whether it would be possible to amend the European Directive to take account of the Joint Meeting's decision.

The representative of the European Commission said that the Directive could be amended or annulled if it were absolutely necessary, but that in his opinion there was no incompatibility between the Directive and the decision taken, in that it was for Member States to decide which option to apply. Since Member States also had to apply RID and ADR Framework Directives, which would reflect the Joint Meeting's decision, they would no longer have to choose between two options.

The representative of Germany considered that it would be possible in accordance with 1.8.3.17 to apply Directive 96/35/EC instead of the RID and ADR Framework Directives, and that European Union Member States would consequently keep their prerogative of a choice between the "examination" or the "training" options.

The representative of the European Commission said he would seek the opinion of the Commission's legal service on these questions of interpretation.

It was then suggested that 1.8.3.17 should be deleted, since the conditions of the European Directive no longer corresponded to those of RID and ADR.

The representative of Germany considered that the deletion of the paragraph could in practice have serious consequences for safety advisers whose certificate had already been issued on the basis of the Directive.

The Chairman said that the problem could easily be solved by means of a transitional measure such as that proposed by France in an informal document.

The representatives of Belgium and the Czech Republic entered reservations regarding the proposal to delete the paragraph in question. If it were to prove later that, in legal terms, the coexistence of different provisions in Directive 96/35/EC and the RID and ADR Framework Directives allowed Member States to choose between the two options, this possibility should also be offered to non-European Union States which were Contracting Parties to ADR or Member States of COTIF. Paragraph 1.8.13.7 would allow them the choice.

The representative of Sweden pointed out that paragraph 1.8.3.17 referred to the "relevant" conditions of the European Directive and that, in view of the decision taken, the option of renewing the certificate on the basis of training alone was no longer relevant.

After lengthy discussion it was considered that the problem could not be completely settled in the Joint Meeting to a satisfactory degree. Since it was a matter of the interpretation of two European directives which overlapped and contained differences, it should be settled by the European Union, bearing in mind the Joint Meeting's opinion that the renewal of certificates for safety advisers in the future should be solely on the basis of an examination. In order to avoid problems of this type in future, either Directive 96/35/EC and related directives should be systematically amended each time that the corresponding provisions of RID and ADR were amended, or rail and road transport should be excluded from the scope of this Directive.

The Joint Meeting considered that there was no need to make provision for special transitional measures for these new provisions since they were not applicable retroactively. Accordingly, all certificates issued or renewed before 1 July 2005 on the basis of the current provisions would remain valid for five years.

The proposal by France in an informal document to authorize the competent authority to extend the validity of certificates issued before 31 December 2000 by six months so as to enable each country to adapt to the renewal procedures for the large numbers of first certificates issued three years ago was not adopted.

The Joint Meeting accepted the offer by France to organize an exchange forum to discuss harmonization of the levels of difficulty of the examinations.

Standards

The meeting accepted the proposals from the working group on standards which met in parallel from 13 – 15 October and which aimed at introducing references to new standards, subject to these standards being available before the deadlines for the notification of amendments to RID.

Tanks

The recommendations by the tank working group, which met in parallel from 13 – 15 October and which examined all the documents on this subject, were adopted in principle by the Joint Meeting (see in this respect the report of the meeting and of the working group published on the UN/ECE Transport Division's website – TRANS/WP.15/AC.1/94 and Add. 8).

Future work

In view of the transfer of the March 2004 session to

October 2003, the Joint Meeting would have only a single week's session in 2004 (13-17.9.2004).

The programme of work for 2004-2005 would include the following:

- Questions pending;
- Harmonization with the UN Model Regulations;
- Harmonization of provisions concerning documentation;
- New proposals for amendments to RID/ADR/ADN;
- Standards;
- Tanks;
- Rationalized approach to the carriage of solids in bulk.

(Translation)

UIC "Carriage of Dangerous Goods" Group of Experts

Spoleto, 5/6 November 2003

At this meeting, the group received information on the following international meetings in 2003:

- RID/ADR/ADN Joint Meetings (March, September and October)
- working groups on documentation (June and September)
- working group on Chapter 1.9 (June)
- working group on the safety adviser (July)
- UN Sub-Committee of Experts session (July)
- working group on tank and vehicle technology (September).

The meeting then dealt in particular with the proposals submitted to the 40th session of the RID Committee of Experts (see the report on this below). With regard to renewing the safety adviser certificate, the meeting was surprised that as far as it was aware, this was the only profession where a certificate had to be renewed, since even doctors were not compelled to do so... With regard to restrictions on carriage imposed by the competent authorities (Chapter 1.9), the meeting considered that States would have to be constrained not to impose restrictions without a risk analysis. With reference to security for the carriage of dangerous goods, the meeting was of the view that application of the security plans would have to be restricted to the 80 marshalling yards covered by UIC leaflet 201 concerning emergency plans (Chapter 1.10).

(Translation)

RID Committee of Experts

40th Session

Sinaia (Romania), 17-21 November 2003

17 Member States and 4 non-governmental international organizations took part in this session with Mr. H. Rein (Germany) as Chairman and Mr. W. Visser (Railion) as Vice-Chairman.

The main item of this session was to approve the decisions taken by the RID/ADR/ADN Joint Meetings in 2002 and 2003, which mostly related to harmonization with the 13th revised edition of the UN Recommendations. The amendments were adopted in their entirety. Among the new provisions RID will contain, special reference should be made to security for the transport of dangerous goods and goods carried in bulk containers (see p. 68 and previous Bulletins). These provisions will be included in the notification texts and will appear on OTIF's website.

Tank and vehicle technology

Another main item was the examination of the reports of the two meetings held this year of the Committee of Experts working group on this subject.

Energy absorption devices

The gradual fitting with these devices of new-build tank wagons for the carriage of particularly dangerous goods, from 2005 and 2007 respectively, as decided at the last session, was called into question by the representative of UIP, since wagons thus fitted were not at present permitted in international transport. After his attention was drawn to the fact that an appropriate UIC leaflet would shortly be prepared, on the basis of which international approval could take place, the decision taken at the last session was endorsed. A proposal from Germany which went beyond this decision, i.e. also to refit the existing fleet of wagons for the carriage of these particularly dangerous goods with such devices, was also adopted, but the energy absorption capacity required at each end of the wagon was reduced to 500 kJ (as opposed to 800 kJ for new-builds).

Derailment detectors

Following serious rail accidents in Switzerland, 600 tank wagons registered with Swiss Railways for the carriage of dangerous goods had been or were to be fitted with mechanically-pneumatically operated derailment detectors on the basis of a national measure.

At the last meeting of this working group, three points were submitted to the Committee of Experts for discussion (see Bulletin 3/2003, p. 54). In a document addressed to the Committee of Experts, the representative of Switzerland said it was difficult to check different hypotheses. However, he proposed that the fitting of these tank wagons be considered as a full-scale trial and to provide the Committee of Experts with all the results of the trial.

Staff training

In order to improve safety in rail transport, the working group had also recommended that more intensive training be prescribed in RID for staff involved in the carriage of dangerous goods. The working group's decisions (see above-mentioned Bulletin) were set out in a document submitted by Germany and were adopted by the Committee of Experts. These new provisions will be included in the notification texts and will appear on OTIF's website.

Protective measures to prevent damage caused by buffers overriding

Germany submitted a document based on the working group's recommendations (see above-mentioned Bulletin) setting out the alternative measures proposed which applied to new-build tank wagons for the carriage of particularly dangerous goods. Even after the proposal had been revised at this meeting, the Committee of Experts did not feel it was in a position to take a final decision for the moment. However, it was agreed in principle to include measures such as these in the regulations in 2007.

Joint Meeting working group on documentation

(see Bulletin 3/2003, p. 50/51)

With the objective of harmonizing the information to be provided in the transport document in order to facilitate multimodal transport, the Committee of Experts took the following decisions:

- to indicate the consignor and consignee, which is also in conformity with Art. 13 § 1(b) and 1(h) of CIM;
- to provide either the date the consignment note was made out or the date of acceptance for carriage in accordance with Art. 11 § 5 of CIM, for reasons of transit periods;
- to indicate that carriage is being performed in accordance with a special agreement;
- to retain the RID box on the consignment note, as this provided the opportunity of establishing an

electronic inventory of all the dangerous goods contained on the train;

- to indicate the number and description of packages in accordance with Art. 13 § 1(e) of CIM;
- to indicate the total quantity of dangerous goods;
- to delete 5.4.1.1.8 concerning the information that a portable tank constructed and approved in accordance with the IMDG Code is being used;
- to delete 5.4.1.1.9 concerning the information that the transport operation involves piggyback transport;
- to retain the information that it is a military consignment, given that specific provisions are still applicable;
- to give the name and telephone number of a person responsible for consignments of infectious substances;
- to delete the information that the substance is a genetically modified organism.

Some of these decisions were taken subject to WP.15 doing likewise for ADR where these provisions were valid for both sets of regulations.

In contrast, the Committee of Experts rejected two proposals from Austria. The aim of one of them was to delete the requirement to indicate the hazard identification number in the consignment note. A large majority of UIC's RID Group of Experts had opposed deleting this information, given that it was necessary for the railways in respect of the checks they are obliged to carry out. The aim of the other proposal was to delete the information concerning the opening of valves for refrigerated liquefied gases. A majority of UIC's Group of Experts had also opposed this proposal for safety reasons.

Documentation for carriage in a transport chain including a sea or air leg

For ADR, a provision had been included in the amendments for 2003 according to which for these transport operations, using the maritime or air transport document was authorized for the road part of the transport operation. It had not been possible to include this provision in RID as CIM prescribed certain provisions concerning the form of the consignment note. In order that rail transport could benefit at least partly from easier conditions, the representatives of CIT and UIC had drafted a document making it possible to use English and to attach the documentation used for maritime or air transport. The language to be used had hitherto been governed by the tariffs in force at the forwarding station. These proposals were adopted.

Chapter 1.9: Restrictions on carriage imposed by the competent authorities

(see Bulletin 3/2003, p. 51/52)

The text drafted by the Würzburg working group, which was another important item, was approved by the Committee of Experts. However, the requirement to undertake risk analyses was not retained for the time being. A working group would deal with this issue together with the European Commission. Two proposals from France were also adopted. The first proposal was to cross-refer to the RID Framework Directive 96/49/EC for restrictions concerning the Channel Tunnel and other tunnels with similar characteristics. The second was to incorporate Art. 1 § 2 of this Directive, which allows Member States to enact special safety provisions in areas not covered by RID, particularly

- the running of trains,
- operating rules relating to operations connected with transport, such as marshalling or stabling,
- the handling of information relating to the dangerous goods being carried.

Other amendments

Mutual recognition of experts

This mutual recognition had been adopted at the last session, but was limited to the initial and periodic inspections of tank wagons. Requirements applicable to these experts and inspection bodies had been defined in the 2005 edition of RID. At that time, it had not been possible to agree to extend mutual recognition to the exceptional checks. This would be the case henceforth, as this was desirable for damaged wagons so that they could be repaired at the nearest workshop. Until this provision entered into force, a special agreement applied to those Member States that had signed it.

Special conditions for the carriage of dangerous goods on certain short shipping routes

The representative of CIT suggested in a document to incorporate Annexes 1 to 3 and 5 of LIF (General List of Frontier Points and restrictions applicable to international rail freight transport) into the unofficial part of RID. These Annexes set out the special conditions for these short shipping routes and the Channel Tunnel in such a way that the user can find all the provisions and restrictions to be observed in a single document. Given that these provisions are more of a general nature for which RID is not the appropriate place, and as they should not be dealt with differently than special agreements, the Committee of Experts

decided to introduce an appropriate reference in a footnote referring to the OTIF website, where they can be consulted.

Safety in rail tunnels

The Committee of Experts was informed of developments in the multidisciplinary working group looking at this issue (see Bulletin 4/2002, p. 74). Various recommendations from this working group which also concerned the carriage of dangerous goods would have to be assessed by a working group before the next session. The working group on tank and vehicle technology would have to examine the technical measures beforehand. The representative of UIC informed the meeting that UIC had prepared a UIC leaflet dealing with safety in rail tunnels which also set out various measures for the carriage of dangerous goods.

Entry into force

Lastly, the Committee of Experts approved a date of entry into force for all these amendments of 1 January 2005, with a six month general transitional period. (Translation)

Co-operation with International Organizations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Working Party on Rail Transport

57th Session

Geneva, 21-23 October 2003

A representative of the Secretariat of OTIF took part in the 57th session of the Working Party on Rail Transport which was held in Geneva from 21 to 23 October 2003. The Working Party was attended by delegates from 16 of the 55 Member States of the UN/ECE as well as representatives from, in particular, UNCTAD, ECMT, OSZhD, UIC and the TER project. Amongst other things, the Working Party dealt with the following questions which are on its agenda as a matter of course: organization of demonstration trains on Euro-Asian transport links, study of the situation of the railways in member countries, determination of railway infrastructure capacity including aspects related to the fee for

the use of the infrastructure, productivity in rail transport, facilitation of border crossing in international rail transport, the role of railways in the promotion of combined transport, harmonization of the conditions of the different legal regimes in rail transport, European Agreement on Main International Railway Lines (AGC) and Trans-European Railway (TER) project. In addition, at the invitation of the UN/ECE Secretariat, a representative of the Galileo Joint Undertaking gave a presentation on the Galileo project and information on the potential use of the Galileo satellite positioning system in the rail sector.

Taking into account the agreement the ECMT Ministers reached on the occasion of the 50th meeting of the ECMT Council of Ministers concerning closer cooperation between the various organs of ECMT and of UN/ECE concerned with rail transport and combined transport, the Working Party examined in depth the proposal from the two Secretariats to establish such cooperation between the ECMT Group on Railways and the UN/ECE Working Party on Rail Transport. The Working Party decided that the joint meeting of the two Groups would be organized as a supplementary meeting ("back-to-back" meeting or meeting with separate and consecutive segments) by the UN/ECE in Geneva in 2004 and by ECMT in Paris in 2005. This exercise will be carried out as a trial for two years (2004 and 2005) and the two Groups will then examine the experience gained.

As 2003 was a particularly eventful year for OTIF, the representative of its Secretariat provided the Working Party with information concerning the holding of an information seminar in June 2003 on the COTIF Rules for Approval (see Bulletin 2/2003, p. 22 ff.), the negotiations concerning the arrangements for the European Community's accession to COTIF (see Bulletin 2/2003, p. 20), the "OTIF-OSZhD Common Position" (see Bulletin 2/2003, p. 28), the Kiev Conference (see p. 81) and the accession of the Ukraine to COTIF 1980 (see p. 65) and finally the status of the work on the draft Protocol on Matters specific to Railway Rolling Stock to the Cape Town Convention (see Bulletin 2/2003, p. 24 ff. and p. 34 ff.).

As is customary, OTIF and OSZhD were invited to report on their activities at the next session of the Working Party.
(Translation)

Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD)

Ad hoc Meeting of Experts

Geneva, 7-9 July and 3/4 November 2003

In 2002, the Inland Transport Committee (ITC) of the United Nations Economic Commission for Europe (UN/ECE) adopted the mandate for an ad hoc Meeting of Experts, which was to investigate firstly which of the CRTD provisions prevented States from becoming contracting parties to this Convention and secondly, to propose appropriate amendments to the provisions concerned. Two meetings were held in 2002 for this purpose (see Bulletin 4/2002, p. 84).

In 2003, the experts met for two further sessions under the chairmanship of the Netherlands – the 3rd session on 7–9 July and the 4th session on 3/4 November 2003. Before the 3rd session, the Secretariat of OTIF, together with CIT, submitted written proposals (definition of "carrier", exceptions with regard to the obligatory insurance) and was represented at the 4th session.

In connection with the main task, both this year's sessions dealt with the relation of CRTD to other international regimes on liability for damage caused during transport of dangerous goods. In so doing, it was established that

- there are no overlaps with conventions regulating contractual liability (Convention on the Contract for the International Carriage of Goods by Road – CMR, Convention concerning International Carriage by Rail of 9 May 1980 – COTIF, Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway – CMNI);
- it was desirable to have parity between the regulations concerning maritime transport (International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996 – HNS, International Convention on Civil Liability for Oil Pollution Damage of 1969, International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 – Bunker Oil Convention) and the regulations covering the land modes;
- adoption of a Directive of the European Parliament and of the Council concerning environmental liability in accordance with the

draft of 28 June 2002 would not prevent the EC Member States from applying CRTD, when in force, as the scope of CRTD is to be excluded from the Directive.

One fundamental question is that of the relationship between the new version of CRTD drafted by the ad hoc Meeting of Experts and the draft European Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Inland Waterway (CRDNI) discussed by the Central Commission for Navigation on the Rhine (CCNR). In other words, the question arises as to whether, with regard to damage that occurs in the carriage of dangerous goods, a uniform liability regime for all three land modes could be set up successfully (CRTD), or whether it would be worth creating a separate liability regime solely for inland waterway transport (CRDNI).

After the representative of CCNR had given a report on the principles of the rules planned for the draft CRDNI and on the outcome of the first meeting of government experts (Strasbourg, 28 – 30.10.2003), the question was raised at the fourth session of whether a fund for damages of catastrophic proportions, as was being considered in connection with the draft CRDNI, should not be set up for all modes.

In February 2004, not only a revised text of CRTD, as adopted at the fourth session, should be submitted to ITC and discussed, but also proposals for the way forward.

In view of the still minor participation by Member States at the ad hoc meeting (5 Member States at the 3rd session and 6 Member States at the 4th session), there would not appear to be any consensus at present for harmonized, ex-contractual liability for all three land modes for damage caused in the carriage of dangerous goods.

(Translation)

United Nations Commission on International Trade Law (UNCITRAL)

12th Meeting of Working Group III (Transport Law)

Vienna, 6-17 October 2003

The 12th meeting of Working Group III continued with its discussions on the basis of the revised draft Convention prepared by the Secretariat (UNCITRAL

doc. A/CN.9/WG.III/WP.34) and a US proposal (UNCITRAL doc. A/CN.9/WG.III/WP.32). In the second week of the meeting, the Secretariat of OTIF was represented by an observer.

Taking into account the US proposal, the Working Group first decided to divide the further discussions into main subjects and as the first subject, it dealt with the question of the scope of application of the future instrument.

The main outcome of the discussions to note is that the majority of the Working Group was in favour of extending the instrument to be set up to cover door-to-door transport operations carried out at least partially by sea, on the basis of a limited network solution. A clear majority of the Working Group supported the idea of prescribing different liability rules for "maritime performing parties" and "non-maritime performing parties". Non-maritime performing parties, such as rail or road carriers, should not be subject to the liability regime of the future instrument. Liability in respect of these carriers would be based on the national law or international conventions applicable to them hitherto. The following definition of a "non-maritime performing party" was considered: "Non-maritime performing party means a performing party who performs any of the carrier's responsibilities prior to the arrival of the goods at the port of loading or after the departure of the goods from the port of discharge."

In addition, the Association of American Railroads (AAR) proposed that where railways were also operating in ports, they should be considered as a "non-maritime performing party". For the time being, this proposal was not discussed further at the 12th meeting of the Working Group.

Some delegations suggested organizing in time before the 13th meeting of the Working Group a seminar on the subject of contractual freedom in door-to-door transport in maritime transport. In so doing, the role of the UNCITRAL Secretariat would mainly be limited to making available its "moral authority". The seminar could be used to prepare the discussion on the "Ocean Liner Service Agreements".

(Translation)

Arab Union of Railways (UACF)

XIth UACF Scientific Symposium

Beirut, 5-8 October 2003

Every two years, UACF organizes a scientific symposium which consistently attracts high level participation, including representatives of the scientific community, but above all Ministers and rail chiefs. The Director General was also invited to participate on this occasion.

These symposia are evidently considered to be a representative platform for the Arabic rail sector, which today manifests clear aims towards an improved, regionally oriented rail network, improved transfrontier cooperation and in general towards promotion of the railways as an ecologically sensible alternative to road transport. It can be observed that for this reason alone, there exists on the part of European rail sector organisations and the industry an active interest and corresponding participation, and the industry has built up a very strongly established network of contacts by means of events which express not only a commercial interest, but also efforts towards advancement.

The UACF platform with its scientific symposia is also important for OTIF and the Central Office, and there is virtually even a duty to become involved when taking into account the particular characteristics in the area covered by the Arab States, where there is no specific platform at State level. This was already apparent when attending the Xth UACF Scientific Symposium in Rabat (see Bulletin 4/2001).

The programme for the XIth Symposium took place under the general banner of safety with the maxim that "all efforts must be deployed to create a developed Arab railway network".

Certainly a very mixed palette of contributions was offered, which said something on the subject to a greater or lesser degree. The programme was primarily an opportunity for those in charge at the level of the railways, who ultimately attested to the same experiences and who used a similar argumentation in favour of the railways as that which is also put forward in Europe.

The Director General's contribution concentrated deliberately on the subject of safety, of necessity with considerations of a more theoretical nature and from a State perspective, from the perspective of the legislator. The subject of safety in connection with COTIF and

OTIF was addressed on this basis, where the 1999 revision of COTIF has lent it new significance. The contribution was based on considerations and activities on this subject, which have been reported on in the Bulletin at various times. An attempt was of course made to deal to some extent with the particular situation of the Arab railways.

The following should be recorded as a conclusion:

- with regard to the subject of safety itself, commitment in support of the Arab States, which indeed potentially all belong to the OTIF area, but which are confronted with the risk of being marginalized, can be strengthened.
- in this context, it might be sensible, with a view to OTIF's specific possibilities, primarily to use the future Committee of Technical Experts for this purpose.

(Translation)

Case Law

Hanseatisches Oberlandesgericht Hamburg

Ruling of 16 May 2002

In a case of loss or damage at an unknown loss or damage location, the carrier in the context of a multimodal transport operation from Germany to the Kyrgyz Republic (carriage by road and subsequent carriage by rail under a CIM-SMGS reconsignment) is liable according to § 452 of the German Commercial Code (*Handelsgesetzbuch* - HGB). International Conventions (CIM, SMGS) do not apply if a multimodal contract has existed between the parties.

Cf. HGB § 452; CIM Article 1 § 1, COTIF Article 2 § 2.

The plaintiff is seeking compensation from the defendant for the partial loss of a batch of cigarettes during transport to the Kyrgyz Republic. The parties are in permanent business contact; the plaintiff produces and exports cigarettes, the defendant carries them at an agreed price fixed in advance.

In December 1999, the plaintiff commissioned the defendant to carry 912 boxes each containing 10,000 cigarettes and 1 box containing 9,000 cigarettes ("Y" and "Y Lights" brands) from its factory in Hanover-Langenhagen to "X Company" in Bishkek, Kyrgyz Republic.

At the plaintiff's factory, the cigarettes were loaded by factory workers into a container with a seal and on 28 December 1999, the intervening third party commissioned by the defendant for this purpose took delivery of the cigarettes. The intervening third party carried the container by lorry to Hanover-Linden station, from where it was carried by rail via Poland and Russia to Alamedin in the Kyrgyz Republic.

For carriage by rail from Hanover to Malaszewicze (Poland), a Deutsche Bahn AG CIM consignment note was made out and for onward carriage by rail from Malaszewicze to Alamedin, a Polish State Railways (PKP) SMGS consignment note was made out. The container arrived at Alamedin station in the Kyrgyz Republic on 11 March 2000 and after customs formalities had been completed, it was brought to the consignee's premises in Bishkek and delivered there on 23 March 2000.

When the container was opened on 24 March 2000, damage assessor B., whom the consignee had charged with checking the delivery, ascertained that the delivery was incomplete. In his Survey Report, he remarked, *inter alia*, that: the seals on the container were intact when it was opened and there were no external signs of damage. With regard to the loading of the container, it was obvious that the goods consignment had been removed for inspection and replaced in the container haphazardly; a gap had appeared in the middle of the container, which indicated that the load was incomplete. Once the container had been completely emptied and the goods counted, the assessor noted that compared with the defendant's commercial invoice of 28 December 1999, 88.9 boxes were missing and there were 16 damaged blocks. He calculated the total loss at US\$ 8,498.57. In view of the intact seals, the assessor deduced that the missing part had been removed at the place where the customs inspection was made.

Owing to the loss of and damage to the goods, the plaintiff issued the consignee with a credit note for US\$ 8,498.51 and in a fax dated 2 May 2001, held the defendant liable for this, which the defendant disputed in the appeal instance.

In the case at first instance, the plaintiff submitted that the loss of and damage to the cigarettes had occurred

during transport, as the intervening third party had taken delivery of a complete load in a sealed container at the plaintiff's factory. The seals mentioned by the assessor were customs seals from Smolensk attached during transport. According to the provisions of HGB, as a multimodal carrier, the defendant was liable for the loss and damage that occurred.

The plaintiff requested that the defendant be ordered to pay the plaintiff DM 17,116.-.

The defendant and the intervening third party requested that the claim be dismissed.

The defendant submitted that it was possible that the delivery might already have been incomplete when it was handed over to the intervening third party. If the seals on the container when it was opened were customs seals from Smolensk – which the defendant disputed pleading lack of knowledge – the cigarettes could only have gone missing as a result of theft by the customs, which constituted an unavoidable occurrence for which the defendant was not liable. In addition, the plaintiff had failed to provide ascertainment of the facts by the railway as required under Article 18 of the Agreement concerning International Goods Transport by Rail (SMGS); moreover, any actions in accordance with Article 31 of SMGS were time-barred. The defendant disputed the amount of damages pleading lack of knowledge.

In the case at first instance, the intervening third party submitted that initially, up to entrainment at the eastern border of Poland, the transport operation was subject to the provisions of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM), and from there onwards, to the provisions of SMGS, since Poland, Russia and the Kyrgyz Republic were SMGS Contracting States. In accordance with Article 57 § 2 of CIM, any claims by the plaintiff were extinguished, as the plaintiff had reported the loss too late; in addition, according to Article 23 § 4 No. 3 of SMGS, the carrier was not liable in the case that the goods were delivered with the seals intact.

The Court of first instance allowed the claim. It asserted that the plaintiff had a claim to compensation under HGB §§ 452, 459, 425 (1), 428, 429 and 431, because a multimodal transport contract had existed between the parties. International Conventions (CIM, SMGS) were not applicable: the plaintiff had not participated in drawing up the SMGS consignment note, nor was the location of the loss known (HGB § 452a). The damage assessor's assumption that the loss could only have occurred at the customs clearance in Smolensk was

purely surmise. However, loss of the cigarettes during transport had been proved. The plaintiff's commercial invoice and witness S.'s statement showed that the delivery was complete when the intervening third party had taken it over. The amount missing and the amount of damages resulting from this were based on the damage assessor's report and the plaintiff's credit note to the consignee. The plaintiff's later report of the loss refuted the presumption in support of the defendant concerning the integrity of the goods upon delivery (HGB § 438). The defendant was not ultimately exonerated in accordance with HGB § 426, since the defendant had not submitted and substantiated that the loss had occurred despite exercising utmost care.

The defendant appealed against the ruling.

The defendant submits that: the location where the loss occurred was known, because the original seal was recorded on the SMGS consignment note drawn up by Polish State Railways, therefore the loss must have occurred thereafter. The plaintiff had not proved that the boxes loaded had contained cigarettes. The loss might also have occurred after delivery. Transport following delivery on 11 March 2001 from Alamedin station to Bishek had been a matter for the consignee and not part of the transport contract concluded between the parties, for which the parties had contractually agreed to apply the CIM Rules. The consignee disputes damage assessor B.'s statements and claims that the container had been delivered with the original seal. She also claims not to have received the plaintiff's report of the loss dated 2 May 2000.

She is of the view that she is exonerated from liability under CIM and SMGS respectively: CIM was applicable even in the absence of express choice of law, as a through CIM consignment note had been prepared (Art. 1 § 1). The 1990 Protocol also made CIM applicable to transport including initial and final transport not performed by rail. Transport had taken place exclusively on CIM and SMGS lines respectively. The plaintiff had not ascertained the facts in accordance with Article 52 of CIM and had not notified the loss within 7 days, so that any actions in accordance with Article 57 of CIM were extinguished. Unless CIM applies, she would be exonerated from liability in accordance with Articles 31 and 29 § 7 of SMGS. Neither would she be liable under HGB, as the presumption of § 438 was not refuted and in addition, the plaintiff had to accept considerable complementary negligence, since she was aware that at the Smolensk customs office, access to goods was regularly made by sovereign bodies.

The intervening third party associates itself with the defendant's submission.

The defendant and intervening third party request that the ruling of the Hamburg Court of first instance be amended and that the action be quashed.

The plaintiff requests that the defendant's appeal be dismissed.

The plaintiff submits that: the extent of the transport service for which the defendant was liable ranged from acceptance of the goods at the Langenhagen factory up to delivery to the consignee in Bishek and was not limited to the rail transport operation from Hanover to Alamedin. The parties had not made a choice of law in favour of CIM and a CIM consignment note had only been made out for customs clearance purposes. In addition, this had not been a through consignment note as it was only valid as far as Poland. In the SMGS consignment note, the number of the original seal was crossed out and another number (UC 6842) had been entered by hand, so it was open as to where the loss had occurred. The boxes handed over to the intervening third party could only have contained cigarettes, as a shortfall would have been noticed during loading.

She is of the view that neither the CIM nor the SMGS rules were applicable. SMGS only applied to reconsignment at all if transport took place to States that were also Member States of the Convention concerning International Carriage by Rail (COTIF), which the Kyrgyz Republic is not.

For further details of the assertions made by the parties, reference is made to the written submissions exchanged and the annexes thereto.

The parties and intervening third party agreed with a decision by the presiding judge as the judge sitting alone.

Grounds for the ruling:

The admissible appeal is unfounded. The Court of first instance rightly ordered the defendant to pay the plaintiff DM 17,116.-, plus 5% interest to run from 3 May 2000. With regard to the submission of the parties and of the intervening third party in the Court of Appeal, only the following is to be added to the grounds for the ruling by the Court of first instance.

The defendant is liable to the plaintiff for the damages incurred as a result of the loss of and damage to the cigarettes, as a multimodal carrier in accordance with

HGB §§ 452, 459, 425 para. 1, 428, 429 and 431. The parties concluded a multimodal transport contract which is not subject to international conventions (I). The location where the cigarettes were lost and damaged is unknown (II). The plaintiff has not lost her claims as a result of delayed notification of defect (III).

- I. According to the contract, the defendant was responsible for transporting the cigarettes from Langenhagen to Bishek/Kyrgyz Republic. The defendant confirmed this in her invoice dated 20 December 1999, which gives Bishek as the point of discharge and destination. The aim of this contract was multimodal transport, as neither the plaintiff's factory nor the consignee's premises have a rail connection, so that the initial and final legs of the journey had to be carried out using other means of transport.

According to Article 28 (4) of the Introductory Law of the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch* - EGBGB), this contract is subject to German law, because both parties have their main place of business in Germany and the goods were loaded in Germany. The Senate (≈ appeals court) could not recognize a choice of law in accordance with Article 27 of EGBGB. In the dispatch order entitled "shipping instructions", the plaintiff had not submitted an offer to the defendants to select CIM as the applicable law, which they could later have assumed. The plaintiff does indeed refer in the contract to CIM, but explicitly in respect of customs matters only.

Moreover, CIM does not constitute an international convention with precedence of application within the meaning of HGB § 452, as it is not applied autonomously. It is true that according to the 1990 Protocol, initial and final transport operations not carried out by rail may also be subject to the CIM regime, but according to Article 1 § 1 of CIM in conjunction with Article 2 § 2 of COTIF, this only applies if carriage is performed "under the responsibility of the railway". In this case, initial and final transport were to be performed by the defendant and the intervening third party respectively, so autonomous application of CIM lapses in the absence of personal scope of application having been established (cf. Senate, ruling of 9.7.1981 – 6 U 51/81, *Transportrecht* (Transport Law) 1981, p. 94). In addition, no through CIM consignment note, as required under Article 1 § 1 of CIM, was made out. The CIM consignment note produced by the defendant gives Hanover-Linden as the

forwarding station and Malaszewicze in Poland as the consignee address. The initial leg of the journey from Langenhagen to Hanover-Linden is not covered in the CIM consignment note, nor is the onward leg from Malaszewicze to Bishek.

Application of SMGS to the transport contract concluded between the parties lapses for the same reasons: in the first place, the plaintiff had neither arranged for the SMGS consignment note to be made out, nor had she taken part in its being made out. Neither can SMGS be applied autonomously as a result of the final transport operation not having been performed by rail, as Article 2 § 1 requires that an SMGS consignment note be made out and that transport takes place "exclusively on the lines of railways participating in this Agreement". There is no provision for the scope of SMGS to be extended to initial and final legs of journeys not carried out by rail, as is the case for CIM and COTIF through the 1990 Protocol.

- II. According to HGB § 452a, application of the conventions referred to to international rail freight transport cannot come into consideration either, because the section of line on which the damage and loss occurred has not been established.

In the considered opinion of the Senate, the assumption should instead be of an unknown loss or damage location, because the loss of and damage to the cigarettes could have occurred during transport from Hanover-Linden to Malaszewicze in Poland or from there to Alamedin or finally from there to Bishek, i.e. on three sections of line. All that can be excluded is incomplete handing over of the consignment by the plaintiff and loss following delivery to the consignee.

As the Court of first instance has already correctly stated, it has been proved on the basis of the statement by witness S. that the goods were handed over intact to the intervening third party. The Court of first instance's consideration of the evidence is cogent and in no respect flawed and there is no need to repeat the taking of evidence. The defendant's objection that the witness had not taken any particulars concerning the contents of the boxes, so that it could be assumed that they were possibly not completely full, is refuted by the Survey Report prepared by damage assessor B., which shows that it was not just individual cigarettes that were missing from the boxes, but

entire boxes. The description of the method of packing makes this clear. According to this description, the boxes were stacked such that they were to cover a gap in the middle of the container, which indicates the absence of entire boxes and not individual cigarettes. Moreover, the Report states that the undamaged boxes were all sealed and contained the specified quantity of cigarettes.

It also follows from the Survey Report that loss following delivery of the goods to the consignee can be ruled out. Damage assessor B. states that he was present when the container was opened and unloaded on 24 March 2000, and that the seals were intact. The defendant's submission that she had met her contractual obligations by delivering the container to Alamedin station on 11 March 2000, so that the goods were already in the possession of the consignee in the period following this up to 24 March 2000 and that loss during this period could not be attributed to the defendant is, as set out above, refuted by her own invoice, in which she had invoiced the plaintiff for the "factory to CFR" Bishek leg. In fact, it was rather the defendant who had to account for any loss between delivery in Alamedin and in Bishek. To the extent that the defendant disputes the assessment made by damage assessor B., her plea is not substantiated. The defendant submits no grounds for her doubts regarding the accuracy thereof and does not explain further what evidence exists that the information in the Survey Report – the conclusions of which she explicitly embraces in another connection – is deficient.

Neither has the defendant proved that the loss occurred on the section of line towards Malaszewicze. It is true that the original seal number EXRI 019782 is entered in field 45 of the SMGS consignment note, but this is crossed out and replaced with other – illegible – entries. The report filed by the Chamber of Trade and Industry of the Kyrgyz Republic also shows that when the container was unloaded, two seals with different numbers ("MSK 03763481" and "TK 02162") were present. The information in the Survey Report is not significant in as much as it only mentions the seals as a whole, without a more detailed description; the information on the location of the loss is mere conjecture, which, as the Court of first instance has correctly stated, cannot be proved in the absence of witnesses. The Senate cannot therefore ascertain whether the consignment arrived in the area of application of

SMGS intact and whether it arrived in Alamedin intact.

- III. Also, the plaintiff's claim for compensation is not inapplicable as a result of delayed notification of defect or the assumption of completeness and accuracy of the consignment note.

For this reason alone, such a surmise cannot be inferred from the CIM consignment note, because it is not made out for the whole journey up to the final destination and therefore no assumption regarding the proper arrival of the goods there can be assumed. Because of the changes made to the SMGS consignment note, such an assumption cannot be derived from it either.

The plaintiff refuted the presumption in HGB § 438 (2) that the consignment is delivered in a condition that accords with the contract, by the fact that the Survey Report prepared by damage assessor B. establishes without doubt that there was loss and damage at the time of delivery and that the plaintiff notified the defendant of this in a fax dated 2 May 2000 and held her liable for the loss and damage. Her assertion not to have received this claim for compensation contradicts her submission to the Court of first instance in the written evidence dated 15 January 2001: "A claim for compensation was first received on 2 May 2000", without providing an explanation for this. That this fax was received is also borne out by the transmission report the plaintiff provided for the files.

It is not a matter of shorter periods for notifying loss or damage and for the limitation of actions, nor of a breach of any obligations by the plaintiff or the consignee under CIM/SMGS, because, as explained, these regulations do not apply in any respect to the relationship between the parties.

The defendant could not exonerate herself in accordance with HGB § 426 by claiming that the loss and damage constituted an unavoidable occurrence, neither can there be consideration of contributory negligence in respect of the loss on the part of the plaintiff in accordance with § 254 of the Civil Code, since it cannot be ascertained that the loss occurred as a result of sovereign access at the Smolensk customs post.

IV. With regard to the calculation of the loss and damage, the period of limitation and the interest, reference is made to the ruling of the Court of first instance.

[Incidental rulings]

The appeal is not permitted because the conditions of § 543 (2) of the Code of Civil Procedure (*Zivilprozessordnung* - ZPO) have not been met. The case has neither fundamental significance nor is the appeal necessary for the further instruction of the law or for securing uniform case law; it was more the case that the Senate had to decide upon purely factual assertions. Protection orders in accordance with § 713 of ZPO were superfluous, as the application against the non-admissibility of the appeal (ZPO § 544) is excluded under § 26 No. 8 of the Introductory Law of the Civil Code.

(From: *Transportrecht* (Transport Law), Hamburg, volume 9/2002, pp. 355-357)
(Translation)

Miscellaneous Information

Conference on International Rail Transport Law

Kiev, 21/22 October 2003

This Conference, which had been announced a long time in advance, and which had great significance from OTIF's point of view, was possible and successful thanks to the Ukrainian organizers' excellent input and the gratifyingly large attendance.

The initiative for the Conference was taken on behalf of OTIF as the logical outcome of its strategy for the future, which derives from the major revision completed in 1999 by the Vilnius Protocol.

In this strategy for the future, it was entirely logical to secure the Ukraine as the host for the desired Conference. Considerations in the Ukraine on acceding to COTIF have already been in progress for some time. It would probably be right to assume that up to now, it has not been at all easy to weigh up fully the advantages and disadvantages to the extent that a decision could be reached. The idea of such a Conference therefore fell on fertile ground. Following the large expansion of the EU, the Ukraine, which fosters close relations with the EU

without ceding its independent role within the CIS and as one of the key TRACECA Corridor States, is moving into a strategically important role at the intersection between the Europe of the EU in the east and the broad expanse of Eurasia. To look at COTIF is to look at a small part of the overall problems surrounding this intersection, but this small part is not insignificant and is undoubtedly of some fundamental interest.

A prerequisite from the beginning was the support of the European Commission. The new Vilnius Protocol version of COTIF does not signify merely a reaction to the wide-ranging railways reform process unleashed within the EU. It also opens the door to the EU's accession to COTIF, which is not possible at present and which should be put into effect formally as soon as possible. The basis of the EU's accession can only really be the intention to implement the aims of the European railways reform process, with the help of COTIF, beyond the areas covered by EU Community law over as wide a geographical area as possible in accordance with the potential opportunities for future international rail transport. It is here that the interests of the EU/European Commission and of the Ukraine merge. It was of course precisely because of this basis of interests that it was justifiable to try not just to include the European Commission prominently in the Conference programme, but also to obtain from it substantial financial support for an event which, in the format chosen, neither OTIF nor the Ukraine could have funded alone.

Fundamentally, it is probably clear to everybody involved in the international rail transport sector that conditions should exist in international rail transport law that are harmonized as much as possible. These conditions should provide the market players with reliable legal rules which fulfil present day circumstances and which firmly sustain the competitiveness of the railways.

From the wider perspective however, the 1999 revision of COTIF unfortunately brings us no nearer to the objective of harmonization – quite the reverse. Rather, the differences between the two systems of transport law in Eurasia, which is such an important area for the future of the railways, have become greater. The coexistence of two systems that differ distinctly from each other in various respects can be explained by the history of the 20th century. Today, this is still a reality that will probably continue to exist for a long while, particularly as it also gives expression to very different circumstances and requirements.

However, this position at the outset must in no way lead to the differences, accentuated as they are, becoming even more marked, for whatever reasons. Instead, the way all those involved should act is to operate a step-by-step process with a clear strategy and intelligent tactics in which every step extracts the best for the railways from the given conditions and primary requirements, but which never strays from the path towards comprehensive, extensive harmonization of the legal framework conditions (which in this case are paramount).

What is required is a constructive, pragmatic and market oriented perspective, which will take into account the fact that to use rail's future opportunities, particularly as regards freight transport, an international and intermodal approach is necessary without question.

This presents a challenge to both Organisations, OTIF and OSZhD, representing the two systems of transport law. They should show the way together and organize the step-by-step process. They are both fully aware of this, as is demonstrated by the recent mutually agreed "OTIF-OSZhD Common Position".

This Conference in Kiev should send an initial, appreciable, enduring signal in order that the good intentions can be followed up with deeds. With the concept and programme chosen, an attempt should be made not just to identify specific approaches to solutions for both the short and the long term, but to set the problems in the broader context of the demands of the market and of a transfrontier railways policy.

At the end of the Conference, a joint declaration was adopted, which we have reproduced here. It expresses the will to make use of the broad readiness achieved by the Conference to follow up the analysis of problems and the enumeration of possible solutions with specific actions. It was in this context that a follow-up programme was drawn up immediately subsequent to the Conference, which will, for a considerable time, form a working basis for the interested participants. Support for this aim is provided by the OTIF website, where the complete documentation concerning the Conference in Kiev, including the follow-up programme, will be available to everybody until further notice.

Joint Declaration

22.10.2003

1. The international "Conference on International Transport Law" was organized on 21/22 October

2003 in Kiev with the aim of finding possible means of bridging the gap between two international rail transport law systems – namely that of OSZhD and that of OTIF – particularly in the area of freight transport.

2. The Conference has established that Central and East European States that will become members of the EU, as well as the CIS States, should direct their attention firstly to improving the legal basis for transiting transport in order to create favourable conditions to attract additional transport and to exclude the possibility of a new dividing line coming into being between the EU and CIS States.
3. The railways should become more efficient and competitive compared with other modes of transport, especially roads. They should provide a quality service to customers, characterized by reliability, punctuality and safety. Special attention should be paid to smooth and efficient border-crossing procedures.
4. The fact that two legal systems regulate international rail transport in the large geographical area of Eurasia should not be an obstacle to exploiting the opportunities available to the railways. Harmonization of legislation between the two regulatory legal systems is needed with short and medium term objectives to be set up.
5. Legal and technical interoperability as well as the development of infrastructure are shared priorities although they have different timeframes.
6. The Conference has established that a real disadvantage for rail transport is the absence of a direct consignment note. Action to improve matters can be provided as follows:
 - development of a direct consignment note as a first step;
 - standardization of the laws governing questions of liability for the entire transport activity as a second step.

For the time being where harmonization is not possible a new solution can be applied; when CIM 1999 enters into force, the parties will have available the option of a legal transport regime.

7. The Conference has agreed that a work programme between OSZhD and OTIF, that will build on the existing "Common position", should contribute to reach the objectives of this declaration.
8. In addition, the European Commission will stimulate the work on a number of transeuropean corridors to facilitate the implementation of joint solutions.
9. The Conference recommends to OTIF and OSZhD to create a joint working group with participation of CIT and other interested rail organizations in order to reach the declared objectives.

The General Director's reflections on the occasion of the Kiev Conference concerning future relations between OTIF and OSZhD

The fact that we have today an "OTIF-OSZhD Common Position" can undoubtedly be regarded as an expression of the will for constructive cooperation between the two organisations. If one wishes to assess their role and significance, the differences between them must always be borne in mind: OSZhD's role is broad based; on the basis of COTIF 1999, OTIF's is clearly aimed at international legislation in the rail sector. It is a matter of the legal basis for international rail transport, with as wide a geographical – and intermodal – perspective as possible. Only at this level is cooperation between OTIF and OSZhD faced with the question of how legal interoperability can be improved step by step, with the long term aim of achieving a uniform legal system covering the whole area.

This question arises in serving the railways in the context of international passenger and freight transport, with freight transport being the most significant. There is of course an interaction between the national and international position of the railways, whose active and ambitious representatives pursue, without exception, more or less geographically extensive cross-border business strategies.

The opportunities for the future are there; where necessary, they must be created. In order to take these opportunities in the context of an increasingly liberalized rail sector, the demands of the market place must be satisfied within a difficult situation with regard to competition. This means that competitiveness, attractiveness and a service corresponding to requirements must be demonstrated credibly to potential customers. The customer is always right. Rail transport

as well is controlled ever less frequently by the State or by a monopoly provider, but by those in the private sector who hand their goods over to the railways for carriage, in a globally networked system driven by the market economy. This demands a wide geographical and, as must repeatedly be emphasized, an intermodal perspective, in order to grasp all the potential for opportunities that exist for the rail transport operations concerned. Seeing this from the perspective of optimized, through transport chains, which should include the available means of transport according to their inherent advantages, is of the essence.

It is precisely in relation to this wide geographical aspect that very different circumstances with respect to technical characteristics, the condition and performance of railway infrastructures and operational conditions will continue to dominate for a long time. Improvements require time and a lot of money, so there is even more reason to put in order what can essentially be achieved "cheaply", i.e. the interoperability of transport law. This is of course only one piece of the mosaic, but its importance should not be underestimated, not least because it can be expected to have a strengthening effect.

In the sense outlined, the 1999 revision of COTIF should be seen as a reaction to liberalization of the rail sector in Europe, particularly within the EU. This liberalization will not stop at today's EU borders. It is therefore logical for OTIF on the one hand to approach OSZhD in order to find a constructive way of working together, and on the other, to try to obtain new Member States in order to widen the applicability of its regulations, which are, as far as possible, adapted to modern requirements.

From OTIF's standpoint, the Ukraine is a key State, which rightly has its sight set towards the East, into the area covered by OSZhD and even beyond. The Ukraine's interest in OTIF has been evident for some time. Now, before the entry into force of COTIF 1999, the clarity needed for a decision concerning accession exists, the more so as the EU will also participate actively in managing COTIF 1999. The EU's commitment probably increases interest in COTIF even beyond the Ukraine, in a wider group of States with a vital link to the European market and mostly with an inevitable, impending liberalization process within their railways.

For this reason, there is even more justification for paying attention to the position of OSZhD and particularly to the position of Russia within it. Without mutually constructive, workable cooperation, it will not

be possible to make full use of the development of the law on the basis of COTIF 1999, which is not – and this must be underlined again and again – an aim in itself, but is intended to provide the railways with the best possible opportunities for the future. In so doing, this cannot be considered as a static exercise.

How are the surrounding developments that are relevant to our subject to be assessed?

It seems clear on the one hand that considerable differences, as compared with Central Europe, will probably continue to prevail for a long time, if not permanently, in a large part of the area covered by OSZhD. Not least of the reasons for this is that in this area, the railways are still in a substantially stronger position as far as the prerequisites are concerned, and they should definitely be able to retain this position. Logically, there is therefore a considerably different view with regard to the rail reform concept being pursued within the EU. This "other view" will of necessity, and with good reason, continue to be the determining factor as the basis for cooperation under similar conditions in the framework of OSZhD - in the framework of an organisation which, in contrast to OTIF, which operates exclusively at intergovernmental level, deals comprehensively with everything that in the OTIF area is traditionally covered at the level of the railways by UIC and CIT in particular, with fundamental influence from the European Commission. The EU, where enormous efforts are required in this respect, must ungrudgingly recognize that in the OSZhD area, overall technical and operational interoperability is largely a reality.

On the other hand, it must be acknowledged that general developments in the global transport system, with the unstoppable technical and qualitative progress in each of the transport modes/means of transport involved, have led the railways to declare that they are finding it difficult to keep up. Their more flexible competition is winning the contest; in many respects, the railways are on the losing side. Their position is becoming increasingly relativized where they still formerly had an unrestricted monopoly and special position. They must develop their inherent elements, which can be defined differently, depending on geography, population and economic potential. Ensuring for the railways strong, all-embracing future positions that are characteristic of their nature, and with a view to the importance of the railways in environmentally sustainable development, will require the railways to adopt a position of defence coordinated and harmonized over a wide area. The aim of a uniform legal basis for international rail transport is part of this. That is why OTIF and OSZhD, as the

relevant organisations in this sector, are called upon to create an effective platform for cooperation over a wide area.

How might such a platform look? Ultimately, it should be formalized so as to make possible coordinated decisions that can be taken at the right time and implemented so that they are binding.

Various models could be envisaged, but these need not be discussed further here. At present, it is a matter of prompting initial considerations in a process for which the OTIF-OSZhD Common Position undoubtedly provides a good basis for the time being. This process should first aim at small, specific steps, as expounded in Session 3 of the Kiev Conference.

These proposed steps should be regarded, without concern, as an opportunity for both sides.

From OTIF's point of view, the Member States of OSZhD must, in so doing, be free to support the process in OTIF by means of membership, which can be very specifically defined. This should not impair cooperation between OTIF and OSZhD. There can be double membership rather than an either/or situation, as long as OSZhD retains the overall importance it has for its Members (which it undoubtedly will outside the borders of the EU). The problem is more likely to arise for OTIF, whose "east strategy", with new Members who only have individual lines to enter, must be borne by the main financial contributors.

The outcome of the Kiev Conference should result in a follow-up programme, which must still be discussed and will require subsequent, more in-depth work.

The view within OTIF is that an attempt should be made to make use of the "weight" of the Conference to set in motion as soon as possible, and with the help of the follow-up programme, some specific projects which will enable real progress to be made within a useful timescale. It will be essential positively to seek the support of the European Commission for this and to claim the funding tools it has at its disposal. This will mean paying exact attention to the rules that are in place for this.

However, this does not cover the entire range of the cooperation between OTIF and OSZhD, although it should without doubt be possible to set down some important key points of mutual interest. The OTIF-OSZhD Common Position provides for the setting up of a medium term programme. To this end, careful preparations are underway on both sides in order to have

available in the course of 2005 an initial basis for discussions. The follow-up programme to this Conference in Kiev should become an important part of the mosaic.

(Translation)

IDIT-UIC-CIT

Paris, 4 December 2003

The one-day seminar on "Liberalisation of rail transport" was organized jointly by the French Institute for International Transport Law (IDIT), the International Union of Railways (UIC) and the International Rail Transport Committee (CIT). The seminar was arranged in three parts.

In the first part, following an introduction by Director General Mr. H.R. Isliker, Dr. G. Mutz gave an overview of COTIF 1999. Mr. O. Silla from the European Commission then gave a presentation on European transport law in the rail sector.

In the second part, under the heading "The new railway package", Dr. C. Heidersdorf, Dr. T. Leimgruber and Dr. J. Compère dealt with the standard contracts for the carriage of goods, the standard contracts governing the use of infrastructure and the standard form cooperation contracts (co-contracting, sub-contracting, leasing, supply of traction and other services) developed by CIT. Dr. P. Delebecque was the chairman.

The third part was a round table discussion lead by the Chairman of IDIT, Mr. G. Brajeux, on various subjects, such as liability and insurance, cooperation contract problems of a legal nature and matters concerning competition law.

The summary was presented by the scientific director of IDIT, Dr. I. Bon-Garcin, who also covered various subjects not dealt with during the seminar.

The extraordinarily high number of over 200 participants at this very well organized event demonstrated the topicality of the subject chosen and the great interest specialists in the world of railways have in legal matters concerning the liberalisation of rail transport.

(Translation)

Book Reviews

Baumbach/Hopt (editors), *Handelsgesetzbuch mit GmbH und Co., Handelsklauseln, Bank- und Börsenrecht, Transportrecht (ohne Seerecht)* (Commercial Code, with Ltd. and Co., commercial clauses, banking and stock exchange law, transport law (excluding maritime law); 31st newly edited and extended edition, Munich, Verlag C.H. Beck, 2003 (Beck's brief commentaries; volume 9), ISBN: 3 406 50996 7

The 30th edition of this important brief commentary was published in 2000 and was reviewed in Bulletin 4/2000.

The 31st edition was published this year and takes into account the legal situation as at January 2003.

In the adapted 31st edition, which has again been considerably augmented, Professor Hanno Merkt, LL.M., full Professor at the University of Freiburg appears on the scene. He is responsible for the 3rd book, commercial books (with some exceptions, for which he and Dr. Hopt are jointly responsible) and for parts of the 4th book, particularly for transport law and the relevant provisions of auditing law.

The new edition covers, among others, the 2001 German reform of the law of contract. In fact, the 26 November 2001 Act modernizing the law of contract has only amended a few points in the Commercial Code, particularly in the field of commercial transactions, but the consequences of this amendment extend throughout the entire commentary. They have made it necessary to carry out a great number of factual amendments and amendments to references. The editors have taken this opportunity completely to rewrite and amplify the commentary on the law covering commercial transactions (§§ 373-381) and extensively to revise the commentary on commission law (§§ 383-406).

In the first book, it is mainly the law covering commercial agents (§§ 84-92c) and the related commentary where large parts have once again been revised. More than 150 new court rulings on this subject have been incorporated. New developments in the law covering commercial brokers and employment law, and new Supreme Court rulings have also been taken into account.

In the second book in the 31st edition, the law of groups of private companies has been rewritten. Moreover, the case law of the European Court has a considerable influence on German theory on the place of business,

which in future will henceforth apply fully to non Member States of the European Community only.

The third book incorporates primarily the amendments the Act has brought to the further reform of the shares and auditing law, to transparency and publicity. As a companies and capital market law specialist, Professor Merkt is particularly well qualified to deal with this branch of law. In the future, he will also monitor and comment attentively on the effects of the European Regulation of 19 July 2002 concerning the application of international standards to German auditing law.

In the fourth book, it is mainly the fourth section on freight business which will be of interest to readers of this Bulletin. As already mentioned above, Professor Merkt is responsible for this section. Following the major reform of transport law in 1998, transport law in Germany has entered a phase of consolidation. However, it was necessary to append the latest case law and literature. Overall, a continuation of the trend can be observed, whereby the autonomous transport law of the German Commercial Code is slowly but surely becoming less significant in relation to international uniform transport law, particularly CMR.

Lastly, it should be noted that a large part of the texts concerning secondary commercial laws has been reformulated or considerably amended.

In the mean time, the "brief commentary" on the German Commercial Code has grown to over 2000 pages. This commentary, which has proved useful for decades, nevertheless enables interested lawyers to obtain quickly and optimally an overview of the legal position, the latest case law and literature, and is therefore an indispensable working tool, and is highly recommended.

(Translation)

Bidinger, Helmut, *Personenbeförderungsrecht* (Law on the Carriage of Passengers), commentary on the Carriage of Passengers Act and other relevant provisions, continued by **Rita Bidinger**, with assistance from **Ralph Müller-Bidinger**, ISBN 3503008195, supplement number 1/03, as at September 2003, Erich Schmidt Verlag, Berlin-Bielefeld-Munich.

The book produced in 1961, the 2nd loose-leaf 1971 edition of which is continuously adapted to developments in the law, contains 3,772 pages in two folders. As previously, the commentary on the current version of the German Carriage of Passengers Act forms a major part of the work.

Supplement 1/03, which goes together with supplement 3/02 (see Bulletin 1/2003, p. 14/15), contains the new commentary on a provision dealing with the compensation of public service "student transport" by road (§ 45a of the Carriage of Passengers Act).

Parallel provisions also exist in railway law in the *Allgemeines Eisenbahngesetz* (General Railways Act) and in the (EEC) Regulation 1893/91 version of Council Regulation (EEC) 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway.

The idea behind the rule is that transporting school children, students and apprentices at reduced prices is a loss-making task imposed by the State on the transport undertaking which must therefore be compensated. Detailed explanations are given on which undertakings may apply for compensation under which conditions and in relation to which tickets. The relevant case law is presented at length.

The details concerning calculation of the compensation are set out in a (national) regulation ("Regulation on the compensation of public service road passenger transport services"), which is also reproduced and has a commentary. In view of the 2002 amendment to this regulation, which dates from 1997, this part has also been substantially revised.

The opportunity has also been taken to update some other provisions linked with the Carriage of Passengers Act.

A new addition is the Convention on the carriage of passengers in transfrontier non-scheduled bus services (Interbus Convention), which entered into force on 1 January 2003.

The commentary on passenger transport law, the development of which has been followed under this heading for many years, still fulfils its objective of "ensuring practice-oriented and sound commentary on the law on the carriage of passengers".

(Translation)

Knorre, Jürgen, Dr. Temme, Jürgen, Müller, Peter, Dr. Schmid, Reinhard Th., Demuth, Klaus, *Praxis-handbuch Transportrecht*, (Practical Handbook of Transport Law), 3rd supplement, as at July 2003, Verlag C.H. Beck, Munich, ISBN 3-406-43892; base volume in loose-leaf folder (cloth edition), 865 pages with 3rd supplement insert (175 pages), € 86.-.

The aim of the Handbook, first published in 1999 (see Bulletin 3/1999), is to present for all circumstances important in goods transport the correct solutions in accordance with the regulations applicable in Germany. The clear presentation and practice oriented case studies aid everyday decisions in dealing with the business of transport, negotiating contracts with customers and subsidiary undertakings, concluding insurance, examining the requisite approvals, safeguarding claims for refunds and damages and other legal questions.

The loose-leaf format with ongoing supplements ensures the Handbook is always up to date (see Bulletins 3/2000 and 3/2001).

The main content of the third supplement is a revised version of the explanatory notes in the first part, "Basic Structures and Types of Activities of Transport Undertakings". This heading deals not only with the different legal forms of the freight and forwarding business, but also the principles of carrier and forwarder liability.

In so doing, the trends and opinions reflected in case law and the literature since the *Transportrechtsreformgesetz* (Transport Law Reform Act) entered into force (1.7.1998) are set out. The following observations and conclusions merit particular mention:

1. It has become necessary to revise the notion that has clearly prevailed up to now concerning the legal nature of the *Allgemeine deutsche Spediteur-Bedingungen* (German general conditions for forwarding agents – ADSp) as a readily available set of regulations which is to be automatically applied to the contractual relationship by virtue of tacit submission. This revised thinking is the result of a ruling passed by the German Federal Court at the beginning of 2003, according to which, in the case where the legal status of the contracting partner has deteriorated in respect of liability, these conditions only apply if this has been brought to the attention of the contracting partner "specifically in printed form".
2. Cases have increased where, as a result of qualified fault, the German courts have assumed unlimited liability on the part of the carrier and forwarder, to the extent that this is "rather the rule" than the exception.
3. This development was one of the reasons why, from 2003, the German transport insurers have restricted transport undertakings' insurance protection in various ways. Risk management

therefore has greater significance than ever before.

New features include explanatory material concerning the transshipment of goods and the rules on career access for road freight transport.

The Annex containing various texts concerning freight transport – texts of Acts as well as standardized conditions of contract of German road freight transport undertakings, and forwarding, logistics and insurance undertakings – has been brought up to date and supplemented.

The Handbook is aimed at lawyers, transport undertakings, insurance companies and everybody concerned with transport law. It can be said that it meets the user's expectation of being able quickly to find precise answers to the many questions concerning practice from the standpoint of German transport law. (Translation)

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

Bulletin des transports et de la logistique, Paris, n° 3006/2003, p. 691 – Contrat de transport : perte ou inexécution ?

Idem, n° 3012/2003, p. 786/787 – 10 questions sur le transport de conteneurs

Idem, n° 3014/2003, p. 819-822 – Le Fer découvre l'Amérique... (Spécial ferroviaire : Mon enfant, ma sœur... p. 819/820, Frappé par la grâce ! p. 820-822, M. Tilche)

Idem, n° 3015/2003, p. 839/840 – Pot de terre et pot de...fer. Didier Léandri – interview (M. Tilche)

CIT Info, Berne, N° 4/2003, Responsabilité en cas de retards dans le transport international de voyageurs / Verspätungshaftung im internationalen Personenverkehr / Liability for delays in international passenger transport (T. Leimgruber)

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 153/2003, S. 6 – Geplante Umsetzung des Montrealer Abkommens stößt auf Widerstand (A. Gran)

Journal de l'OACI, Revue de l'Organisation de l'aviation civile internationale, Montréal, No. 5/2003, p. 24, 32/33 – Le cadre juridique du commerce international

des aéronefs mérite d'être ratifié promptement
(T. Pickering, J. Wool)

Rail international / Schienen der Welt, Bruxelles, Octobre/Oktobre 2003, p. 18-23 – La modification du paysage juridique du fret ferroviaire va bouleverser son mode de fonctionnement économique / Der neue Rechtsrahmen des Schienengüterverkehrs. Wirtschaftliche und rechtliche Auswirkungen (E. Berthier, J.-P. Lehman)

Transportrecht, Hamburg, Nr. 10/2003, S. 369-377 – Die Haftung des Luftfrachtführers nach dem Montrealer Übereinkommen (C. Harms, M. Schuler-Harms); S. 383-386 – Die Verwendung der Kapitel I bis VI des Budapester Übereinkommens über den Vertrag über die Güterbeförderung in der Binnenschifffahrt (CMNI) als Modell europäischer Binnenschifffahrtsbedingungen. Vorschläge zur praktischen Umsetzung eines internationalen Übereinkommens vor dessen völkerrechtlicher Inkraftsetzung (T. Wieske)

Idem, Nr. 11-12/2003, S. 413-419 – Beweisfragen in Rechtsstreitigkeiten gegen den HGB-Frachtführer wegen Güterschäden (H. G. Bästlein, A. Bestlein); S. 419-435 – Die Nicht-Zurverfügungstellung des Beförderungsmittels zur vorgesehenen Zeit (K. Ramming); S. 436-443 – Will the Montreal Convention be able to replace the Warsaw System and what will the changes be? (M. Clarke)

Verkehr, Wien, Nr. 1-2/2004, S. 9 – Perspektiven für ein gemeinsames Beförderungsrecht mit Russland (K. Spera)