



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**4/2005**

113th Year • October - December

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# 4/2005

113<sup>th</sup> year – October - December

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### **Central Office Communications**

#### **List of CIV lines**

(published on 1 May 1985)

#### **Central Office circular no 57, 1 November 2005**

##### *Chapter “Croatia”*

Deletion of the railway line Karlovac – Sisak Predgrade operated by the Croatian Railways (Mihanovićeve 12, pošt. pretinac 971, HR – 10000 Zagreb).

See COTIF, Article 10 §§ 1, 3.

#### **Central Office circular no 58, 1 November 2005**

##### *Chapters “Germany” and “United Kingdom”*

Deletion of the shipping line Cuxhaven - Harwich operated by the “DFDS Deutschland GmbH” (Van-der-Smissen-Str. 4, DE – 22767 Hamburg).

See COTIF, Article 10 §§ 1, 3.

#### **Central Office circular no 59, 11 November 2005**

##### *Chapter “Germany”*

Deletion of the automobile service line operated by the “Reederei Baltrum-Linie GmbH & Co. KG” (DE – 26577 Baltrum).

Deletion of the shipping line operated by the “Reederei Baltrum-Linie GmbH & Co. KG” (DE – 26577 Baltrum).

See COTIF, Article 10 §§ 1, 3.

#### **List of CIM lines**

(published on 1 May 1985)

#### **Central Office circular no 75, 1 November 2005**

##### *Chapter “Croatia”*

Deletion of the railway line Karlovac – Sisak Predgrade operated by the Croatian Railways (Mihanovićeve 12, pošt. pretinac 971, HR – 10000 Zagreb).

See COTIF, Article 10 §§ 1, 3.

## OTIF Organs

### 7<sup>th</sup> General Assembly

*Berne, 23/24 November 2005*

The 7<sup>th</sup> General Assembly was held in accordance with COTIF 1980 on 23 and 24 November 2005 in Berne in the Universal Postal Union building. 34 of the 42 Member States of OTIF were represented. Representatives of Estonia, whose accession should soon be concluded, and of Azerbaijan, were present as observers. The European Community, whose accession is being prepared with a view to the anticipated entry into force of COTIF 1999 (see Bulletin 2/2003, p. 22), OSZhD and four non-governmental international associations also took part in the General Assembly in an advisory capacity. The Director General of the Universal Postal Union attended the opening session and gave a welcoming speech.

Two of the most important subjects the General Assembly dealt with were the legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time, and the development and implementation of the COTIF approval system (COTIF 1999 Appendices F (APTU) and G (ATMF)). Important decisions were taken on these two matters concerning the way forward and co-operation between OTIF, the EC and OSZhD. The General Assembly took another forward-looking decision with its agreement that OTIF should take on the task of Secretariat of the Supervisory Authority in accordance with the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (see Bulletin 2/2003, p. 24). Lastly, the General Assembly examined the version of its Rules of Procedure that will enter into force when COTIF 1999 enters into force, statutory business in accordance with COTIF 1980 and the problem of the membership contributions owed by the former Yugoslavia. The decisions that were taken concerning these matters can be found in the following extract from the final document.

#### **Final document (extract)**

1. Pursuant to Article 6 of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the 7<sup>th</sup> General Assembly met on 23 and 24 November 2005 in Berne.

2. The following took part in the General Assembly:
  - 2.1 **34 Member States of OTIF**
  - 2.2 **2 States with observer status**
  - 2.3 **1 supranational organisation**
  - 2.4 **2 international organisations**
  - 2.5 **4 international associations**
3. In accordance with Article 6 of the Rules of Procedure, the Central Office provided the Secretariat.
4. **The General Assembly** elected as chairman:  
Mr Wolfgang Catharin (Austria)  
as first deputy chairman:  
Mr Mahmoud Ben Fadhl (Tunisia) and  
as second deputy chairman:  
Mr Knud Elm-Larsen (Denmark)
5. The General Assembly formed the Committees as set out below:
  - 5.1 **Credentials Committee**  
chairman:  
His Exc. Mr Mladen Andrić (Croatia)  
deputy chairman:  
Mr Claudiu Dumitrescu (Romania)  
members:  
Ireland, Netherlands, Poland
  - 5.2 **Editorial Committee**  
chairman:  
Mr Michel Aymeric (France)  
co-chairmen:  
Mr Wolfram Neuhöfer (Germany)  
Mr Colin Poole (United Kingdom)  
members:  
Belgium, Finland, Switzerland
6. The General Assembly deliberated on the basis of the Rules of Procedure as adopted by the

5<sup>th</sup> General Assembly, 26 May 1999, applicable from 1 January 2000, with the amendments adopted by the 6<sup>th</sup> General Assembly which entered into force on 15 November 2000.

7. The General Assembly

7.1 adopted its agenda;

7.2 adopted its Rules of Procedure applicable from the entry into force of COTIF 1999 (Annex 1);

7.3 discussed the legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time, and took decisions on this subject as contained in Annex 2;

7.4 discussed the development and implementation of the COTIF technical approval system (COTIF 1999 Appendices F (APTU) and G (ATMF)) and reached conclusions on this subject, which are contained in Annex 3;

7.5 noted the report of the Administrative Committee on its activities during the period 2000-2005 and approved it;

7.6 decided the composition of the Administrative Committee for the five year period 2006-2010 as follows:

Germany

Belgium

Croatia

Spain

Greece

Ireland

Lithuania

Morocco

Poland

Romania

Switzerland

Syria;

7.7 fixed the maximum amount that the Organisation's expenditure may reach in each annual budgetary period for the five year period 2006-2010 as follows:

the annual increase in the amount of expenditure of the OTIF budget may not exceed the index fixed, based on the average of inflation recorded in the Euro zone countries and Switzerland; the theoretical maximum amount of expenditure at the end of 2006 is fixed at SFr. 3,301,890.-, which corresponds to the amount of the 2006 budget. The maximum amount for 2010 is fixed at SFr. 3,720,000.-, unless the 8<sup>th</sup> General Assembly decides otherwise after the entry into force of the Vilnius Protocol.

7.8 agreed that OTIF should assume the role of Secretariat of the Supervisory Authority in accordance with Article XIII § 2 of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment concerning Matters Specific to Railway Rolling Stock, as adopted by the 3rd Joint Meeting of Governmental Experts, on condition that

a) the Secretariat of the Supervisory Authority enjoys the usual international immunities from legal and administrative procedures and exemption from tax, and other privileges provided by agreement with the host State;

b) the fees of the International Registry in accordance with Article XVIII § 1 of the preliminary draft referred to above cover the Secretariat's costs incurred in connection with the fulfilment of these tasks;

c) the conditions for the Secretariat to fulfil its activity will be set out in an agreement between the Administrative Committee of OTIF and the Supervisory Authority of the Rail Registry;

7.9 until the International Registry is fully operational, authorised the Administrative Committee to exceed the maximum amount fixed by the General Assembly for each budgetary period from 2006 to 2010. The overspend may at most reach the amount equivalent to the costs of half a post of a First Secretary and the material expenses made necessary by the decisions of the Diplomatic Conference (to adopt the Rail Protocol referred to) in the development phase of the International Registry. The General Assembly considers that this additional expenditure that is necessary in the start-up phase and that will have to be borne by the OTIF budget will be repaid to

this budget by the fees raised in the operational phase of the International Registry;

7.10 with regard to the arrears of contributions of the Former Yugoslavia

- endorsed the initiative and the strategy of the Director General to resolve the open questions in relation to outstanding contributions of the Former Yugoslavia to the OTIF debts/budget. It encourages him to pursue the endeavours in this direction;
- welcomed the preparedness of Serbia and Montenegro, Slovenia and Croatia to accept, in principle, the compromise proposal put forward by the Central Office;
- urged Bosnia-Herzegovina and FYR of Macedonia also to consider accepting, in principle, this compromise proposal;
- agreed that additional consultations have to be undertaken to determine the extent to which the successor countries will be assuming their responsibility for amounts originally owed by the former Socialist Federal Republic of Yugoslavia;
- expressed its expectation that the issue concerned will be resolved before, and the results presented to, the 8<sup>th</sup> General Assembly.

\*

The Director General will send the Governments of the Member States of OTIF and all other delegations a copy of this final document, adopted by the General Assembly on 24 November 2005.

Annex 1

...<sup>1</sup>

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<sup>1</sup> will not be printed in the Bulletin. The new Rules of Procedure will be published on the OTIF website ([www.otif.org](http://www.otif.org)) once COTIF 1999 enters into force.

Annex 2

**Legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time**

**I.**

In consideration of the fact that on the one hand, the 1999 Protocol will probably enter into force before all the Member States of OTIF have ratified, accepted or approved it or have acceded to it,

in consideration of the fact that on the other hand, the 1999 revision was carried out by the 5<sup>th</sup> General Assembly in Vilnius, ensuring legal continuity on the basis of Article 20 of COTIF 1980 and that those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it also continue to be Member States of OTIF,

further, in consideration of the fact that 33 Member States have signed the 1999 Protocol, four Member States have acceded to this Protocol and two other States have acceded to COTIF since 1999 – including the 1999 version,

considering the general principle under international law of utmost good faith (*bona fides*),

considering the general principle under international law, according to which signing the new version of the Convention obliges the signatory State to refrain from acts which would defeat the object and purpose of the treaty and

considering further principles under international law established in the Vienna Convention on the Law of Treaties (e.g. Art. 30 and 34),

in the interest of the smoothest possible application of the new rules, while ensuring Member States' existing rights,

the General Assembly deems that

- the Member States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it, are to be considered as third countries in relation to the 1999 Protocol,
- but the existence of the organs in accordance with COTIF 1980 and

COTIF 1999 in parallel is not acceptable, since it is not practicable,

- there are thus only uniform organs of OTIF, although it must be assumed that the right to vote can only be granted to States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it to the extent that the discussions in these organs concern provisions that it would be possible to amend on the basis of the enabling power in accordance with COTIF 1980; in particular, this means
  - only one **General Assembly**, in which those Member States that have not ratified, accepted or approved COTIF 1999 or have not acceded to it may also exercise their right to vote, provided this is consistent with the rights and obligations they have in accordance with COTIF 1980, without defeating the purpose of COTIF 1999;
  - only one **Administrative Committee** consisting of one third of the Member States, which however, in its decisions, particularly on financial matters, must take account of the interests of the Member States that have not (yet) ratified, accepted or approved the 1999 Vilnius Protocol or have not acceded to it, in accordance with the principles under international law that have been referred to;
  - only one **Revision Committee**, in which the States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote in decisions concerning amendments to COTIF 1999, while the Revision Committee should refrain from making amendments to COTIF 1980;
  - only one **RID Committee of Experts**, in which all Member

States are entitled to develop further the Annex to RID, while those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote in decisions concerning amendments to Appendix C itself;

- a new organ, the **Committee of Technical Experts**, in which the Member States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote;

- the European Community cannot exercise such rights in the organs of OTIF as are not granted to the Member States concerned because they have not ratified, accepted or approved the 1999 Protocol or have not acceded to it,
- in contrast, the European Community can exercise its Member States' right to vote in such matters, under the conditions applicable in this respect, where such States could have the right to vote, even though they have not yet ratified, accepted or approved the 1999 Protocol or have not acceded to it,

the General Assembly requests the Secretary General,

not only to keep the Lists of Lines prescribed in Article 24 of COTIF 1999 up to date and to publish them, but also – for those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it – to continue to keep the Lists of Lines in accordance with Article 10 of COTIF 1980 up to date, in view of Article 11 of COTIF 1980, and to publish them.

## II.

In consideration of the fact that application of the CIV and CIM Uniform Rules, and hence of RID as an executive order in respect of Article 4 (d) and Article 5 § 1 (a) of CIM 1980, is suspended when the 1999 Protocol enters into force, in accordance with Article 20 § 3 of COTIF 1980, in respect of traffic with and between those Member States which, one month before the entry into force of the 1999 Protocol have not yet



deposited their instruments of ratification, acceptance, approval or accession,

Conscious that application of the CIV Uniform Rules on the basis of an agreement between the parties to the contract of carriage is not provided for in the 1999 CIV UR, in contrast to the 1999 CIM UR,

Conscious that the public law provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID – Appendix C to COTIF 1999) are not subject to disposal by the parties,

the General Assembly recommends the Member States concerned

to use suitable measures to make the existing possibilities available to the parties to the contract of carriage, in order to prevent the negative consequences of the suspension of the application of the CIM and CIV Uniform Rules, by

- making use of the possibility of applying the 1999 CIM Uniform Rules to the international carriage of goods by choice of law in accordance with Article 1 § 2 of CIM 1999, and
- choosing the 1999 CIV Uniform Rules as contract law on the basis of international private law for the international carriage of passengers, provided the respective national law so permits.

In addition, with regard to the international carriage of dangerous goods, the General Assembly recommends that the Member States to whom the provisions of RID do not apply on the basis of the European Communities' RID Framework Directive should check, bearing in mind their national law, the extent to which the provisions of RID should be applied, given that these provisions reflect the current state of science and technology and thus define the degree of care required.

Annex 3

### **Conclusions concerning the development and implementation of the COTIF technical approval system (COTIF 1999 Appendices F (APTU) and G (ATMF))**

The General Assembly agrees that the objectives of the revision of the ATMF and APTU Appendices are that:

- the EU/EEA Member States of OTIF are able to operate within the confines of their own borders in accordance with the European legislation only;

- railway vehicles and other railway material running from EU/EEA Member States may be admitted to circulation or use into international traffic in non-EU/EEA Member States of OTIF on the basis of the certification and approval given under European legislation;
- railway vehicles and other railway material running from non-EU/EEA Member States may be admitted to circulation or use into international traffic in the EU/EEA Member States on the basis of the certification and approval given under the COTIF 1999 system.

The General Assembly agrees that urgent discussion is needed between the Commission and the Secretary General as to how the EC Member States are to reconcile their obligations under the EC Treaty and COTIF 1999.

The General Assembly concludes that ATMF/APTU may and must include provisions concerning operation. It asks the Secretary General to prepare a draft which makes this legally clear in a way that requires no ratification process. The General Assembly assumes that this clarification be adopted by the Committee of Technical Experts or by the Revision Committee. The EU (ERA) is invited to make contributions to this work.

The General Assembly accepts the introduction of national requirements into ATMF/APTU as a temporary provision in order to obtain compatibility with the EU regulations. However, the aim of full harmonization of the requirements in order to make the national requirements superfluous within a relatively short time, and the principle that the user should only apply for the approval to one of the OTIF Member States and subsequently receive it from the same Member State is maintained. The implementation of mutual recognition of approvals, and the related processes for notification and translation of national provisions needs further consideration and cooperation between the relevant bodies of the EU and OTIF with the objective of avoiding duplication and maximizing efficiency on the condition that safety requirements are maintained.

The General Assembly, recognizing that for EU Member States the article 21 Committee is competent to take decisions on technical specifications, requests that a coherent procedure must be agreed and implemented between the EU Commission (ERA) and the OTIF Secretary General to ensure continued compatibility after the revision of ATMF/APTU. This must include fully transparent, close cooperation and – as far as possible - mutual invitations and participation in all

relevant bodies of EU and OTIF dealing with questions concerning the technical regulations.

The General Assembly agrees to assign competence to the Committee of Technical Experts to propose, discuss and decide upon technical questions/provisions concerning the facilitation of border crossing, coordinating as far as possible with the EU TSI OPE (operation) provisions on this matter.

The General Assembly agrees that OTIF shall apply the same code system for registration of vehicles as prescribed in Annex P of the EU TSI OPE (operation) with appropriate transitional provisions. A solution for the registration of vehicles when COTIF 1999 enters into force and the railways are no more obliged to register private wagons must be agreed between the competent bodies of the EU and OTIF with the objective that vehicles have only to be registered once. This has a very high priority and the Member States expect that cooperative and flexible approaches will be developed.

The General Assembly asks the Secretary General to discuss and agree a solution for the Vehicle Keeper Marking (VKM) with the competent bodies of the EU and OSJD. This has also a very high priority and the Member States expect that cooperative and flexible approaches will be developed.

The General Assembly agrees to ask the General Director to take the initiative to solve the outstanding legal and practical problems between the EC Commission and OTIF as mentioned in Document AG 7/4 by –

1. Identifying problems of priority between EU and OTIF
2. Inviting the EU Commission to a number of scheduled negotiating meetings with the objective to find and agree common understandings that can be implemented concerning all subjects outstanding

and

3. Keeping the Governments of all the OTIF Member States informed during this process by transmitting information on dates and agendas for the planned meetings and the minutes related to these.

A report on this subject shall be given to the 8<sup>th</sup> General Assembly.  
(Translation)

## **Administrative Committee**

104<sup>th</sup> session

*Berne, 22 November 2005*

The Administrative Committee met on 22 November 2005 in Berne for the last session of the five year period 2001-2005. This session was held immediately before the 7<sup>th</sup> General Assembly (see p. 46). The session was chaired by Mr Michel Aymeric (France).

The Committee approved the 2006 work programme.

In the field of finances, the Committee noted the financial situation and the current situation with regard to investments. It also approved the draft 2006 budget as proposed by the Central Office; however, in the part concerning income, the Committee set the provisional rate per kilometre at SFr. 6.80.

With regard to personnel matters, the Committee approved the creation of an additional post in the "technology/approval" area. This post, to be filled from 1 July 2006, will be advertised at international level.

Lastly, the Committee dealt with certain matters in connection with the preparation of the 7<sup>th</sup> General Assembly, such as the term of office and date of the first session of the new Administrative Committee. With regard to this, it approved the Director General's proposal to convene the new Committee in the margins of the 7<sup>th</sup> General Assembly in order to decide which State would chair the Committee from 1 January 2006. It should be noted that the term of office of the Committee designated by the 7<sup>th</sup> General Assembly will be relatively short. It will begin on 1 January 2006 and will end on the date of commencement of the mandate of the Committee (members and deputy members) designated in accordance with COTIF 1999 by the 8<sup>th</sup> General Assembly, which must be convened no later than six months after the entry into force of the 1999 Protocol.

## **Extraordinary session**

*Berne, 24 November 2005*

The Administrative Committee in the composition decided by the 7<sup>th</sup> General Assembly (see p. 47) met in an extraordinary session on 24 November 2005.

The Committee designated Spain, in the shape of Mr Carlos del Olmo Morand, to chair the Committee

for the next term of office, which will begin on 1 January 2006.

(Translation)

### **RID Committee of Experts**

*Madrid, 21-25 November 2005*

see "Dangerous Goods"

## **Dangerous Goods**

### **RID/ADR/ADN Joint Meeting**

*Geneva, 13-23 September 2005*

Experts from 26 Governments, including that of the United States, from the European Commission, the Danube Commission and OSZhD, as well as 14 non-governmental international organisations, including UIC, CIT and UIP, took part in the work of this meeting chaired by Mr C. Pfauvadel (France). This meeting was mainly given over to the subject of harmonisation with the 14<sup>th</sup> revised edition of the UN Recommendations on the Transport of Dangerous Goods. (The complete report of this meeting will be available on the UNECE Transport Division's website in French, English and Russian and on the OTIF website in German).

#### **Harmonisation with the UN Recommendations (14<sup>th</sup> edition)**

The Joint Meeting adopted almost 80 pages of new text or amendments to existing text. The main new texts concern infectious substances of Class 6.2 (cultures for diagnostic purposes, human or animal specimens, medical or clinical waste, animal carcasses), the default classification table for fireworks of Class 2 (classification by analogy without the need to carry out tests in each case) and the construction and testing of receptacles for gas (particularly aerosols) of Chapter 6.2 (see also Bulletin 1/2005, p. 3).

#### **Interpretation of RID/ADR/ADN (Carriage prior to or following maritime or air carriage)**

This issue, which had already been discussed and commented on at WP.15 for ADR and at the RID Committee of Experts (see Bulletin 4/2004, p. 77 and p. 82) with the aim of facilitating multimodal transport, given the differences in exemptions, documentation,

packaging, labelling, marking and placarding between the various transport modes, was still partly controversial. These problems concern dangerous goods packed in limited quantities and exempted, excepted quantities for carriage by air and consumer commodities for carriage by sea. The Joint Meeting was to put forward a policy approach for future work, namely, that it would take account of the diversity of situations arising from a lack of harmonization among the requirements and take precautions to ensure that information on the nature of the hazard was available in some form or another for the various participants, the inspecting authorities or the emergency services.

#### **Carriage in tanks**

The Joint Meeting examined the report of the ad hoc working group which met in parallel with the meeting. The Joint Meeting broadly followed the working group's recommendations. The old problem of whether or not to fit tank-wagons with safety valves to avoid the BLEVE (boiling liquid expanding vapour explosion) phenomenon would be the subject of research announced by the Netherlands, and delegates were asked to hold appropriate discussions in their countries and to submit relevant documents to be able to continue discussions on a well-founded basis. An ad hoc working group should continue the work without a priori excluding the options of the mandatory installation of safety valves and the use of sun shields or thermal insulation, or restricting the work to flammable gases alone. The other important matter that was examined was the use of standards or technical codes approved by the competent authority for the construction of tanks. It was agreed that from 2009, application of the standards referred to in the regulations would be made mandatory and that they would then invalidate the national codes that can be used at present, and which should therefore no longer be used in this context.

#### **Reference to standards**

In addition to examining the new standards proposed, the ad hoc working group was mandated to consider the problems of communication between the Joint Meeting and CEN and to propose solutions. A revised procedure for cooperation with CEN was adopted which will allow delegations to download the new standards to be considered from a specific page on the CEN website to be set up and protected by a password. A proposal would be submitted to the United Nations Sub-Committee of Experts so that references to standards adopted by the Joint Meeting would also be introduced into the UN Model Regulations insofar as they were relevant.

## Miscellaneous (new amendments)

### Empty uncleaned means of containment

Use of the transport document for running under load when returning empty uncleaned means of containment was adopted for road transport. The representatives of Switzerland and the International Railway Transport Committee (CIT) said that in rail traffic the physical use of the same consignment note for the return of empty uncleaned means of containment was not possible. The matter was therefore referred to the RID Committee of Experts and the representative of Portugal said that he hoped that this possibility would be taken into account for multimodal equipment.

### Harmonisation of the requirements for orange-coloured plate marking

The Joint Meeting agreed in principle that RID terminology should be brought into line with that of ADR. It decided in favour (9 in favour and 7 against) of eliminating the possibility of using self-adhesive sheets for placarding tank-wagons. This was an indicative vote for the RID Committee of Experts and was motivated in particular by the needs of the emergency services. Where the maintenance of the alternative provision of non-reflectorized orange-coloured plate marking in rail traffic was concerned, the RID Committee of Experts was requested to reconsider the question in the light of a survey which UIC would conduct with the rail networks, since it was a question of safety in rail operations.

The Joint Meeting adopted a proposal by the representative of Norway to apply the provisions concerning resistance to fire to all orange-coloured plates and not only to those bearing hazard identification and substance numbers. It also adopted his proposal that the orange-coloured plate should not become detached from its mount in the event of 15 minutes' engulfment in fire.

There was no consensus on the proposal to extend the duration of the resistance of orange-coloured plates to fire to 30 minutes, since some delegations considered that certain tanks would in any case not resist for more than 20 minutes; others thought that 15 minutes would be sufficient to ascertain the information on the plate and transmit it to the emergency services while others considered that steel plates with numbers embossed in relief could resist for 30 minutes if they resisted for 15 and still others believed that the cost of a measure of that nature was not justified by the benefits in terms of safety.

## Definition of the safety obligations of unloaders

The principle of the proposal by Spain was approved for the most part. The introduction of a definition for the unloader and a better differentiation of his obligations from those of the consignee would, however, be desirable. The representative of the United Kingdom recommended a more global approach and the representative of Portugal considered that there would be a need to envisage, in parallel with the distinction between loader and filler, a distinction between the unloader of packages and the unloader (discharger) of bulk goods and tanks whose obligations were not the same. Several delegations, however, felt that many of the obligations were already covered by those of the consignee.

The representative of Austria considered that it was time for an overall review of Chapter 1.4 on the basis of the experience acquired, particularly in view of the new COTIF Convention which envisaged other participants. The representative of Germany drew attention here to his document concerning the obligations of the loader and consignee. He proposed that the document should not be discussed for the time being but that it should remain on the agenda.

### Carriage of transport units ventilated after fumigation

The Joint Meeting noted that Germany would submit a proposal to the DSC Sub-Committee of the International Maritime Organization on transport equipment under fumigation, concerning the fact that the danger could be reduced when this equipment underwent ventilation.

The Joint Meeting acknowledged that classification under UN No. 3359 could entail substantial economic consequences as a result of the additional costs linked to classification as dangerous goods, particularly when any danger could be removed by ventilation.

It was noted, however, that the existing requirements made provision for marking indicating the nature of the fumigant, its quantity and the date of fumigation, and that these particulars should enable the competent authority to ascertain, when these transport units were received in ports, whether there was any risk in follow-on carriage by land under specific conditions of ventilation, and consequently to decide whether carriage by land remained subject to the conditions required for UN No. 3359, in particular the placarding.

Some delegations considered that a precautionary approach should be taken in the absence of specific

criteria concerning the hazards presented by these transport units under fumigation. Specific criteria should therefore be developed, according to the method of fumigation, its duration and possible conditions of ventilation, in order to determine cases for derogation.

#### **Carriage of uncleaned static tanks**

It was decided to replace the current exemption relating to the condition of the openings, with the exception of decompression devices, i.e. hermetically closed, and to replace it by a new exemption for empty uncleaned static tanks that had contained certain substances under certain conditions. The representative of the European Commission hoped that national derogations from the intra-Community implementation of RID and ADR would be progressively eliminated and their proliferation avoided, and welcomed this initiative.

#### **Reports of informal working groups**

##### **Informal working group on Chapter 6.2** (construction and testing of pressure receptacles)

The Joint Meeting took note with satisfaction of the work of the informal working group on Chapter 6.2 that had produced a revision of this Chapter. It agreed that it would be premature to bring this revision into force on 1 January 2007 and that it would be preferable to continue working to incorporate the principles of the European Transportable Pressure Equipment Directive (“TPED Directive”) into RID and ADR. The working group on Chapter 6.2, while conserving the gains of the work already achieved, should consider arrangements for evaluating conformity bearing the Directive in mind. Since the TPED Directive also concerned gas tanks, the working group on tanks should at the same time consider the same issues in cooperation with the informal working group on Chapter 6.2; a consistent consolidated proposal should be submitted to the Joint Meeting in order to ensure the entry into force of these provisions on 1 January 2009.

Several delegations noted that the incorporation of the provisions of the European TPED Directive into RID/ADR would not necessarily involve the principle of the reciprocal recognition of approvals under national law concerning the use of pressure receptacles in non-European Union countries. It was, however, pointed out that it would at least permit the reciprocal recognition of inspection and approval bodies.

The representative of the European Liquefied Petroleum Gas Association (AEGPL) announced that he would submit a new official proposal to amend the provisions

concerning periodic tests and inspections for the next meeting. He was requested to take into account the comments made and in particular not to envisage procedures and provisions that would apply only to national transport in a single country and that would be contrary to the RID and ADR Framework Directives.

##### **Report of the informal working group on the examination of the safety adviser**

The addition concerning the independence of the examining body vis-à-vis the training body was the subject of a lengthy discussion. It was pointed out that it should be possible for the examining body and the training body to belong to the same legal entity but that this did not appear in the proposed text. A proposal set out in an in-session document stipulating that the examining body must be administratively and commercially independent of any organisation in which the candidate had been trained was supported by only five delegations. The basic proposal was finally adopted.

##### **Future work**

The Joint Meeting approved in principle the draft programme of work of the Inland Transport Committee. In its view, the five topics the Committee considered to be pertinent (development of Europe-Asia transport links; use of telematics and smart transport systems; European integration; transport security; globalisation of the world economy and implications for transport) were duly taken into account in its programme of work. It considered that special efforts needed to be made to improve cooperation with OSZhD and to bring Annex 2 of the Agreement on International Goods Transport by Rail (SMGS Convention) into line with RID/ADR/ADN in order to encourage the development of Europe-Asia transport links.

The representative of OSZhD said that Annex 2 of the SMGS Convention had been brought into line as far as possible with the 2001 version of RID, that it was planned to prepare a new version which would be brought into line with RID 2005, and that the objective was as complete a harmonisation as possible for 2007, although account must be taken of the specific features of current practices of Eastern countries, particularly for the transport of tank-wagons.

(Translation)

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

*Geneva, 7-11 November 2005*

26 Member States of ADR, 10 non-governmental international organisations and the European Commission took part in the work of this 79<sup>th</sup> session with Mr Franco (Portugal) as Chairman.

### **Work of the Joint Meeting**

The Working Party endorsed the amendments adopted by the Joint Meeting in 2004 and 2005, particularly the new texts on harmonisation with the 14<sup>th</sup> revised edition of the UN Model Regulations.

**Carriage for sale on delivery** (see Bulletin 4/2004, p. 78)

The Working Party completed its work and decided that instead of giving the name and address of the consignee in the transport document, the words "sale on delivery" would be entered, although this derogation would have to be approved by the competent authority.

### **Carriage of petrol in IBCs**

In contrast to carriage in tanks, the Working Party decided to prohibit the carriage of petrol in IBCs when the vapour pressure is more than 110 kPa. This old provision, which originally applied to carriage in tanks because of the different climatic conditions in summer and winter, was again called into question for safety reasons, because these tanks are undersized and because of the large quantities carried. This matter will be the subject of a Joint Meeting decision.

### **Safety in road tunnels**

The texts that had been adopted at the 77<sup>th</sup> session and that had been called into question again at the 78<sup>th</sup> session were again discussed at length on the basis of new proposals. As there was no consensus and in order to ensure the essential entry into force on 1 January 2007, 2 additional meeting days will be used during the January 2006 session of the Joint Meeting of Experts on ADN.

### **Programme of work** (see also p. 54 of this Bulletin)

The Working Party adopted the programme of work prepared by the Secretariat on the basis of the report of the Inland Transport Committee.

In the context of the development of transport links between Europe and Asia recommended by the Inland Transport Committee, the representative of Finland said that she had recently taken part in a meeting of the Organization for Cooperation between Railways (OSZhD) on bringing Annex 2 of the SMGS Convention into line with RID and that OSZhD had expressed a wish to strengthen cooperation with OTIF and UNECE so that in the future, Annex 2 of the SMGS Convention would be harmonised with RID, ADR and ADN.

It was recalled that in European countries, the carriage of dangerous goods by rail was governed by RID for COTIF Contracting Parties and by Annex 2 to the SMGS Convention for Contracting Parties to that Convention, while some countries were Contracting Parties to both Conventions.

The representative of Hungary confirmed that for these countries it was of crucial importance for the development of international transport, not only by rail but also multimodal transport, that Annex 2 of the SMGS Convention should be brought into line with RID and ADR.

It was also stressed that several countries that were Contracting Parties to ADR were not Contracting Parties to COTIF but were Contracting Parties to the SMGS Convention, and that for these countries the harmonisation of Annex 2 of the SMGS Convention and ADR was as important as the harmonisation of RID and ADR.

This harmonisation would also facilitate the development of international transport operations between Europe and Asia, since several Asian countries were Contracting Parties to the SMGS Convention.

The Working Party accordingly agreed that it would be advisable to envisage the introduction into the programme of work of an appropriate cooperation process, for example, within the Joint Meeting, between UNECE, OTIF and OSZhD, with a view to bringing the sections common to RID, ADR, ADN and Annex 2 of the SMGS Convention into line.

The Secretariat was requested to undertake consultations with OTIF and OSZhD in order to consider possibilities for cooperation, subject to the agreement of the Inland Transport Committee.  
(Translation)

## RID Committee of Experts

42<sup>nd</sup> Session

*Madrid, 21-25 November 2005*

18 Member States (17 with the right to vote) and 6 governmental and non-governmental international organisations, including the European Commission and the UNECE, took part in the work of this session with Mr Rein (Germany) as Chairman and Mrs Bailleux (Belgium) as Vice-Chairman.

As the report of this session will be available on OTIF's website ([www.otif.org/html/e/rid\\_CExp\\_RID\\_rapport2005.php](http://www.otif.org/html/e/rid_CExp_RID_rapport2005.php)), along with all the documents, only the main decisions taken are reproduced below.

### **Harmonisation with the 14<sup>th</sup> revised edition of the UN Model Regulations and texts adopted by the Joint Meeting in 2004 and 2005**

The RID Committee of Experts approved the relevant amendments already adopted by the Joint Meeting and WP.15, which will be incorporated into a new edition of RID and ADR on 1 January 2007.

### **Using the transport document for running under load when running empty**

Using the transport document for running under load when carrying empty means of containment was not adopted because this possibility does not exist under CIM.

### **Carriage of petrol in IBCs**

The Committee of Experts decided to prohibit the carriage of petrol in IBCs and to review the existing derogation for carriage in tanks at the Joint Meeting (see p. 55 of this Bulletin).

### **Obligations of participants**

The use of the terms "packer", "filler" and "consignor" in the UN Model Regulations, in contradiction of the provisions of RID/ADR Chapter 1.4, will be the subject of a proposal from Austria to the UN Sub-Committee of Experts so that the latter no longer continues to assign specific obligations in its regulations and leaves it to the various transport modes to deal with these specific provisions.

## Other proposals

### **Hand luggage and registered luggage**

The carriage of dangerous goods in hand luggage and registered luggage was covered by a new regulation (Chapter 7.7) based on the exemptions under 1.1.3. The planned leaflet relating to this will be called a "publication" as it will generally be in the form of a poster.

### **References to railways**

References to the railways' tariffs or to the railways' competent bodies were replaced by references to agreements between States or to the competent authority.

### **Experts**

With regard to the mutual recognition of experts for carrying out tests and inspections of tank-wagons, the Committee of Experts decided not to amend the current text. Based on the existing legal situation, the Committee of Experts assumed the following situation:

- a) A tank-wagon used in a COTIF Member State may be tested by an expert recognised in that State.
- b) A tank-wagon used in a COTIF Member State may be tested in another COTIF Member State by an expert recognised there.
- c) However, under the existing law, it is not possible for a tank-wagon used in a COTIF Member State to be tested in another COTIF Member State by an expert recognised in yet another (third) Member State.

The RID Committee of Experts agreed that the discussion on c) should be continued, taking into account the outcome of the working group on the revision of Chapter 6.2 (pressure receptacles containing gas) in relation to the cross-border activities of notified bodies, which would also have an effect on Chapters 6.7 (portable tanks) and 6.8 (tank-wagons).

### **Placards and orange-coloured marking on carrying wagons**

In order to remove a practical problem in transhipment stations, the Committee of Experts decided to do away with placards on carrying wagons if the road vehicles bear the placards corresponding to the packages being carried.

The Committee also decided not to affix orange-coloured marking on carrying wagons unless the road vehicles do not bear the orange-coloured plates prescribed under ADR.

It was agreed to settle these issues later in order to avoid having to affix placards and orange-coloured marking in transshipment stations.

### **Working Group on Tank and Vehicle Technology**

#### **Drip leaks**

The representative of the Netherlands reported that initial consultations had been held, but he was still waiting for an official reaction from Railtech. It did not seem practicable to perform tests on filled tank-wagons, so it would be better to carry them out when the tank-wagons were empty. The preferred option was a test to be carried out once a year.

The discussion revealed that drip leaks pose a real problem because of the associated line closures and soil decontamination. The subject would remain on the working group's agenda and the Member States were asked to provide the working group with information on these problems in order that a solution could be sought. It was recommended that the cause be investigated in each individual case and that the filling body be informed so that quality could be improved there.

#### **Proposals for measures to be considered in future**

The representative of Switzerland proposed two measures to increase safety that could be discussed in the working group in future. The first measure concerned extending the "barrier wagon" rule in 7.5.3 to other very dangerous substances, the second measure the reduction of the risk of derailment by using four-axle wagons.

In principle, the RID Committee of Experts thought the measures proposed were worth considering. However, the measures would have to be well-founded and supported by a positive cost/benefit analysis.

With regard to the first measure, investigations would also have to be made to find out whether more frequent marshalling manoeuvres led to an increased risk and whether the running performance of the mostly empty barrier wagons was stable enough. The representatives of Finland and Sweden said they were prepared to provide the working group with provisions for barrier wagons that existed or had existed in their countries.

With regard to the second measure, the investigations carried out by UIC-ERRI should be consulted before a proposal was made to the working group. In addition, the discussions in the German working group on tank and vehicle technology concerning four-axle wagons should also be taken into account.

#### **Transmission of data to the railway infrastructure manager**

Based on the discussion at the last session of the Committee of Experts with regard to the transmission of data to the railway infrastructure manager so that in the event of an incident, the emergency services can obtain information from him, the representative of Switzerland submitted a document with an appropriate proposal for a text setting out the obligations of the carrier and the railway infrastructure manager. He also said he agreed with the alternative text submitted by the representative of UIC, which only suggested that data should always be available, but not that they should always be communicated in advance.

Most delegates supported the advance communication of data, in order that when an accident occurred, there would be no need to make telephone calls asking for information and to enable the railway infrastructure manager to set alternative routes or, for example, to avoid dangerous goods trains and passenger trains meeting in tunnels.

However, as these were questions that are dealt with differently between the railway infrastructure manager and the carrier in each country, the Committee of Experts decided to adopt the text proposed by UIC and with regard to how the data are transmitted, to refer in a Note to the agreement on the use of infrastructure. The text was also amended slightly so that the data need not be kept indefinitely.

At the request of the United Kingdom, the text concerning the disclosure of data was broadened to cover all parties that require these data for safety, security or emergency response purposes.

#### **Working Group on Standardized Risk Analysis**

The Chairman of the working group, Mr G. Hundhausen (Germany), informed the meeting about the progress the working group on standardized risk analysis had achieved. The working group had drafted guidelines for calculating risks in the carriage of dangerous goods by rail, which should ensure transparency of the decisions taken on the basis of risk analysis and which reflected the current state of the art. The next step planned was to



observe more closely the practices in Switzerland and the Netherlands.

The Committee of Experts decided to place this revised version of the guidelines on OTIF's website and to refer to the website in a footnote to 1.9.3. The Secretariat was also asked to submit the guidelines to the Joint Meeting and WP.15 so that they could check the multimodality aspect.

For the continuation of the work, the representative of France proposed a research project, to be financed jointly by the Member States, the railway industry and the European Commission. In this research project, comparative appraisals of the risk assessment models applied in different States should be carried out in order to highlight current practice, propose harmonisation of practice and to lay down common minimum requirements for the mutual recognition of transit restrictions.

The Chairman reminded the meeting that the funding for such a research project had already been discussed in the past. While the European Commission had said that it was prepared, in principle, to help finance a project, reciprocal funding from contributions paid by States or associations had not been successful.

It was agreed that the working group would accept Switzerland's and possibly the Netherlands' offer to observe more closely the practical execution of a risk analysis in these countries. The evaluation of these observations would be communicated to the Committee of Experts. At the same time, the working group would look at France's proposal to undertake a research project and would assess whether the States and associations could make resources available. A representative of ERA should be invited to participate in the group's work in order to avoid parallel work and conflicts.

#### **Amending the Rules of Procedure of the RID Committee of Experts**

The Secretariat proposed revised Rules of Procedure for the RID Committee of Experts on the basis of COTIF 1999.

With regard to the rules concerning the quorum, it was established that the presence of the representative of the European Commission did not mean that 23 Member States (EU Member States except Malta and Cyprus, which are not Member States of COTIF) were represented as long as the representative of the

European Commission did not exercise the right to vote for them after consulting the EU Member States.  
(Translation)

### **Sub-Committee of Experts on the Transport of Dangerous Goods (UNECE)**

28<sup>th</sup> Session

*Geneva, 28 November-6 December 2005*

Experts and observers from 25 countries and 24 governmental and non-governmental international organisations took part in the work of this 2<sup>nd</sup> session of the 2005-2006 biennium for the 15<sup>th</sup> revision of the UN Model Regulations.

The Sub-Committee continued with the examination of new matters on the agenda for this biennium (see Bulletin 3/2005, p. 36-38). Little text was adopted, and it mainly concerned the use and construction of pressure receptacles for gases and intermediate bulk containers (IBCs).

#### **IBCs**

In this context, it was noted that contrary to tanks (above 450 kg/l) subject to stricter provisions than those for IBCs (up to 3000 kg/l), the latter were becoming increasingly lightweight, less secure and above all, less expensive. At present, 15 million IBCs were in circulation throughout the world, and even though incidents involving them made up a very low percentage of the total, the approximately 30 million tonnes (estimated) carried each year constitute more than a negligible risk. A working group looked at the issues of strength and testing.

Moreover, single trip IBCs are a special case, as they have no relevant marking to verify this single use. While the receptacles themselves were in conformity with the construction requirements, the same was not necessarily true with regard to their frames. These IBCs and their frames should be subject to the same tests as those for multiple use (period of use 5 years). Although in its last biennium, the Sub-Committee had decided not to continue the discussion on the requirement for a vibration test, the debate might be reopened.

**Options to facilitate global harmonisation of transport of dangerous goods regulations with the UN Model Regulations: global Convention?**  
(See Bulletin 1/2005, p. 3-5 and 3/2005, p. 37/38)

The Sub-Committee noted that the Economic and Social Council had amended operative paragraph 5 proposed by the Committee in section A of the draft resolution it had prepared in December 2004. The final resolution places more emphasis on studying the possibilities of improving the implementation of the Model Regulations including through further harmonisation between international agreements and conventions, but also keeps the possible alternative of a joint approach to the development of an effective international instrument on multimodal international transport of dangerous goods, as appropriate.

Several experts supported the two-step approach suggested by the expert from Italy, i.e. first discuss the possibility of improved cooperation between the international organisations concerned and national delegations participating in that meeting, and then analyse in 2007-2008 whether this enhanced cooperation produced real improvements and whether it would be appropriate to develop a proposal for a world convention.

With respect to the first step, it was mentioned that there was already rather effective cooperation between organisations, and although some well-known differences remained, in general the provisions included in the modal instruments were largely harmonised with the UN Model Regulations. However this was not the case for national regulations in all countries of the world, and the disparity of such national regulations caused practical problems of trade facilitation when international transport was not governed by international instruments such as exist in maritime or air transport. Another area where progress could be made was harmonising the dates of entry into force of amendments to the various existing international legal instruments.

Some experts felt that it would be useful to carry out a survey at worldwide level in order to evaluate whether governments would be favourable to the development of an international convention for the multimodal transport of dangerous goods. Others recalled that there were already several conventions for different modes of transport and the development of a new global convention would require close cooperation with several organisations. Some experts felt that the Secretariat should provide guidance on the procedure for drafting a convention.

It was also noted that the present periodicity of amendments to the Model Regulations causes problems of implementation in some countries which had difficulties in updating their national regulations every

two years. It was suggested that the Sub-Committee should avoid amending the Model Regulations when not absolutely necessary, bearing in mind that the Model Regulations had reached a reasonable maturity and were often subject to editorial changes which did not change the substance of the regulations.

It was also mentioned that the present system was rather flexible and allowed the Sub-Committee to take ambitious decisions which could be quickly called into question if not accepted by modal bodies, while in the context of a global convention, such decisions would require wide consensus and, as a consequence, it might be much more difficult to take account efficiently of technological developments.

Attention was drawn to the discussions which took place in this respect at the last sessions of the IMO and ICAO Sub-Committees, where both organisations had expressed their commitment to improve multimodal harmonisation, but where ICAO had also expressed some reluctance to the development of a global multimodal convention.

It was finally agreed that this issue required more consultations with the various international bodies concerned and Member States, and that it should be further discussed at the next session on the basis of official documents.

(Translation)

## **Co-operation with International Organizations and Associations**

### **European Communities (EC)**

#### **European Commission Workshop on Wagon Law and Wagon Use Issues**

*Brussels, 26 October 2005*

The above workshop was originally organised with the intention of discussing the legal, economic and organisational changes that will occur for rail transport undertakings, private wagon owners, private finance institutions and the insurance industry after the entry into force of COTIF 1999 and hence the CUV Appendix. An accordingly broad spectrum of institutions was invited, represented by more than 100 people. At the same time, OTIF's main concern was that a legal basis for a so-called "General Contract of Use" (GCU) could

not be created between the rail transport undertakings and private wagon owners before the CUV Rules enter into force. Rules such as this, to be agreed on the basis of private law, were urgently desired in order to supplement the CUV Rules. Worryingly, negotiations between the UIC and UIP associations had been delayed and in the meantime, threatened to fail completely.

It came as a complete surprise and was to the satisfaction of all the workshop participants that there was nevertheless a breakthrough in these negotiations on the day before the workshop, which means the railway undertaking associations and the private wagon owners can be sure that the last details for this GCU can be determined amicably, so that this model contract governing the rights and obligations of those involved with the use of wagons in future will be available.

This development of course changed the focus of discussions at the workshop, which should really have been aimed at removing continuing differences. The presentation given by the deputy Director General of the Central Office on the legal principles and effects of the CUV Appendix nevertheless met with great interest and provided many participants with a clear view of the future legal position. In so doing, it was also recalled that during the negotiations on the CUV Appendix, the Central Office had proposed much more detailed contractual provisions, but that in the Revision Committee and lastly in Vilnius, the Member States had not accepted these, preferring a much greater freedom of disposal for railway undertakings acting as private undertakings and for private wagon owners.

In order to take account of the radically improved negotiating situation between UIC and UIP, in his intervention at the end of the workshop, the Director General of the Central Office called firmly upon the participants in the rail sector, who would now be reliant upon agreements under private law, to collaborate more cooperatively from the point of view of content and to continue their cooperation more intensively.

The hope for positive developments in the rail sector could only be maintained if this requirement can be fulfilled. Conflict among such associations and the lack of understanding for the interests of other actors in the rail sector must result in transport modes other than the railways benefiting from such situations. He endorsed the EU Commission's well-founded conjecture that the railway undertakings, infrastructure managers, private wagon owners and other participants "compete where they should cooperate and cooperate where they should compete". From this he derived that the readiness to cooperate in the rail sector must be secured and

improved in the very phase where fewer and fewer provisions under international public law are determining how the legal relationships between the various participants are formed.

(Translation)

## **United Nations Commission on International Trade Law (UNCITRAL)**

### **Working Group III (Transport Law)**

#### **16<sup>th</sup> Session**

*Vienna, 28 November - 9 December 2005*

The basis for the discussions was the Draft Convention on the carriage of goods [wholly or partly] by sea (UNCITRAL document A/CN.9/WG.III/WP.56, available from the UNCITRAL website, [www.uncitral.org](http://www.uncitral.org)).

The Secretariat of OTIF was represented in the second week of the session by an observer.

During the second week, the Working Group dealt with the question of the transfer of rights and the legal consequences this has for the consignor with regard to liability. The Working Group also discussed the chapter concerning delivery, including the carrier's period of liability, and lastly, questions concerning jurisdiction and jurisdiction in respect of arbitration. In this regard, the Working Group had before it a compromise text from the European Community, Japan, Norway and the USA (doc. A/CN.9/WG.III/XVI/CRP.3). This compromise proposal was based on a proposal from the Netherlands and the Working Group basically deemed it to be a balanced compromise, so substantial amendments were not really considered possible.

For the details, please see the report of the session (doc. CRP.1/Add.1-16), which will be available on the UNCITRAL website.

The work will also be continued in 2006 in two two-week meetings (New York, 3-13.4 and Vienna, 6-17.11). Items on the agenda of the 17<sup>th</sup> session will include questions concerning the right of control, the transfer of rights and continuation of the discussions on the subject of delivery. In addition, the scope of application and freedom of contract, the shipper's obligations and the transport documents will also be looked at. At the 18<sup>th</sup> session, the discussions on the remaining issues will be concluded and above all, the

limitation amounts, the revision procedure for these and the final clauses are to be discussed.

Overall, it is certainly conceivable that the Working Group's work on the draft can be concluded in 2006 or 2007. However, the consolidated draft can still only be read with difficulty, because of the numerous cross references and further references, and this makes it very difficult to assess the balance of the consignor's and carrier's rights and obligations. There is still the impression that the draft favours the carrier with regard to charges, which in itself, would be an advantage from the perspective of rail transport undertakings. However, if there is too much imbalance between the rights and obligations of the customers and of the carriers, this could jeopardize general acceptance of the Convention by the community of States. Accordingly, the chances of a sufficiently general, global acceptance of this instrument by the various delegations are reckoned very differently.

(Translation)

**United Nations Economic  
Commission for Europe (UN/ECE)**

**Organization for Railways Co-operation  
(OSZhD)**

**Facilitation of border  
crossing in rail transport**

International Conference

Preparatory meetings

*Brest, 16-18 March 2005, Warsaw, 1-3 June 2005  
and Vilnius, 18-20 October 2005*

With a view to preparing an International Conference that is to take place in 2006 under the aegis of the UN/ECE with the involvement of OSZhD, work on modifying and supplementing existing international conventions has been started, the aim of which is the facilitation of border crossing (see also Bulletin 1/2005, p. 9 and 3/2005, p. 39). OTIF also took part in this work and submitted a range of proposals.

With regard to freight transport, the work involved a draft new Annex to the 1982 Convention on the Harmonization of Frontier Controls of Goods, which is to deal exclusively with border crossing in rail transport.

In February 2005, a small working group, comprised of representatives from Belarus, Latvia, Lithuania, Poland, Russia, the Ukraine and the OSZhD Committee prepared a preliminary draft of this new Annex. The draft was discussed and developed further in the meetings held in Brest, Warsaw and Vilnius in 2005.

From the beginning, one of OTIF's concerns was to lay down, in place of non-binding forms of words, obligations that were as specific as possible, which could lead to reductions in the stopping times at borders. There was no dispute, for example, that facilitating the issuing of visas for locomotive drivers and other personnel who regularly cross borders in the course of their work performing rail transport must be one of the aspects to be simplified in the administrative area. However, OTIF lobbies to ensure that the "pursuit of facilitation" in this area takes on a more specific form (e.g. permanent visas, "most-favoured" treatment or best practice rules, which benefit railway personnel as well as the privileged – diplomats – or other applicants). It was also a question of ensuring that for customs officials, their employment identity cards are recognised everywhere as being sufficient for crossing borders. In the meantime, a suitable amendment and addition have been made in respect of this second concern.

OTIF also pointed out that if the new Annex were to contain a reservation in favour of stricter national control criteria, as was the case at the start of the discussions, this would run contrary to the true purpose of the Convention. However, during the discussions, the possibility of including unilateral stricter conditions was effectively ruled out.

Lastly, the principle was agreed that there should be no controls for goods in transit in closed containers – except at the place of departure and destination – insofar as reliable documentation concerning their contents was available. In deciding this, the last preparatory meeting had also thus followed a suggestion made by OTIF.

The idea of setting up a new Convention to facilitate border crossing in rail passenger transport on the basis of a modified version of the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail of 10 January 1952, of which the contracting parties do not include the Member States of OSZhD, was approved at the preparatory meeting in Brest in March 2005. A draft of this prepared by two members of the working group was discussed in the working group meeting, which OTIF also attended (Warsaw, 1-3.6.2005) and in a further preparatory meeting (Vilnius, 18-20.10.2005).

With regard to passenger transport, the principle was adopted that controls would be carried out jointly or unilaterally at the border station, in the moving train or while the wagons were changing from one gauge to another. OTIF favoured a further-reaching provision: it asked the future contracting parties to the Convention to agree to the principle of carrying out the controls at each place a change of gauge was carried out, whilst it was being carried out. Two important principles were taken over from the 1952 Convention: firstly, exemption of administrative officers from passport formalities and recognition of their employment identity cards as a satisfactory document for crossing the border and secondly, the maximum stopping time of 40 minutes for each train composition (except where there was a change of gauge). Following a suggestion from OTIF, a provision whereby luggage that could not be checked in time before the train continued its journey would be unloaded, was linked to this maximum stopping time.

Technical controls at borders could be optimised in both freight and passenger transport if border stations were in a position to receive and use data concerning approval and technical inspection. The principle of the mutual recognition of technical approvals and inspections has in fact been incorporated into the Annex concerning freight transport, but without putting into concrete terms the basis on which the recognition is effected. In OTIF's view, it is necessary to be specific in this respect. OTIF will endeavour to achieve this up to the final adoption of the drafts.

(Translation)

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

### **General Assembly 2005**

*Berne, 20 October 2005*

The General Assembly met under the chairmanship of the newly elected Chairman, Mr Enrique Fernández Diez. Mr Diez replaces Mr Marcel Verslype, who was chosen as the Executive Director of the European Railway Agency (ERA) at the beginning of this year. Around 60 delegates from the member undertakings took part in the General Assembly. The Secretariat of OTIF was represented by an observer.

Apart from the statutory business, such as closing the accounts, the budget and the work programme, the main topic of the Assembly was the implementation of COTIF 1999. CIT's work in this respect has almost been concluded.

The General Assembly also discussed the project for a common CIM/SMGS consignment note, which got off the ground following the Conference in Kiev in October 2003 (see Bulletin 4/2003, p. 81). This project was one of the focuses of CIT's work in 2005 and will continue to be so in 2006. The first phase of the project is due to be completed in December 2005 and the common consignment note is to be ready for use in September 2006.

The following main items of CIT's work programme for 2006 will be of particular interest to readers of this Bulletin: CIT's endeavours in connection with the 3<sup>rd</sup> Railway Package, the work on quality management and the drafting of contractual principles for a contract for the use of infrastructure.

(Translation)

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

### **Organization for Railways Co-operation (OSZhD)**

#### **CIM/SMGS Consignment Note**

##### **Steering Group**

*Warsaw, 17 May 2005 and  
Kiev, 10/11 November 2005*

CIT is working together with the Organization for Railways Co-operation (OSZhD) on the "CIM/SMGS consignment note" project in order to facilitate the transition between the CIM and SMGS systems of transport law and to eradicate the problems (loss of time, costs, source of errors) in connection with drawing up the consignment note for the other law of carriage at the crossover point, as required at present. According to the concept and organisation of the project, a large working group (steering group) has to take decisions of principle, while a smaller group of experts is responsible for preparing the model consignment note itself and the associated manual. Apart from participating, as an exception, in two of the expert group's sessions, OTIF has regularly taken part in the work of the steering group and was represented at their meetings in Warsaw (17.5.2005) and Kiev (10/11.11.2005) (see also Bulletin 1/2005, p. 11).

From a legal point of view, reconsignment does not become unnecessary with a consignment note issued at the start of a transport chain that meets the requirements

of both laws of carriage: the CIM/SMGS consignment note documents two contracts of carriage, which are performed according to the respective rules of the CIM and SMGS laws of carriage. The provisions of the CIM UR and of SMGS will remain unaffected. Even though it will not be necessary in future to issue a new consignment note at the place of reconsignment, other transactions resulting from the fact that one of the contracts of carriage ends upon (notional) delivery and another one begins will still be necessary.

The question therefore becomes important as to who acts as consignee for the consignor at the place of reconsignment and what duties of care this person has to observe. According to the CIM/SMGS consignment note manual, the respective last carrier under the first contract of carriage acts for the consignor at the place of reconsignment, in other words the last CIM carrier for consignments from CIM States and the last SMGS carrier for consignments from SMGS States. In cases where grounds for liability, particularly loss of or damage to the goods, are discovered at the end of the first contract of carriage, it is a matter of securing the rights of action of the other party to the contract of carriage (consignor/consignee) or of avoiding these rights of action being extinguished by unconditional acceptance of the goods (see Art. 47 of CIM 1999). The customer must not be prevented from asserting his right of action arising under the contract of carriage if the carrier who has custody of the goods neglects to represent the interests of the consignee at the place of reconsignment, for example by not recording the circumstances in the event of loss or damage by drawing up a report. At the suggestion of OTIF, a provision was included in the manual, after it had been examined by the group of experts and the steering group, laying down this duty of care and the legal consequences with regard to liability if the duty of care is breached.

The model CIM/SMGS consignment note and the manual should be approved by the competent bodies of CIT and OSZhD in the first few months of 2006, so that the CIM/SMGS consignment note will be available from 1 September 2006. It will first be introduced in pan-European Transport Corridors II (Berlin-Moscow) and III (Dresden-Kiev). This will conclude the work of the first phase of the project.

In a second phase of the project, the aim will be to develop, on a contractual basis, uniform provisions for liability in CIM/SMGS transport both for the customer-carrier relationship and for the relationship between carriers.

(Translation)

## **Economic Cooperation Organization (ECO)**

*Tehran, 2-7 October 2005*

During his visit to Tehran for the OSZhD Conference of Ministers, the Director General met the Secretary General and the Director of the Transport Directorate of ECO. The aim of the meeting was to agree closer cooperation between OTIF and ECO. ECO's Member States are Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan and Uzbekistan. Iran and Turkey are thus members of both organisations. ECO deals with issues surrounding trade and investment policy, transport and telecommunications, energy and environmental matters, agriculture, research and statistics. The aim of the Organization is the long-term improvement of cooperation between the Member States in the areas referred to above and – like OTIF – to remove barriers to trade, e.g. obstacles to the cross-border transport of goods and passengers by rail, improvement of the transport infrastructure and in particular, to provide land-locked States with connections to the sea and to neighbouring regions. The tasks of ECO and OTIF therefore overlap to a considerable extent, and this should be used for productive cooperation, the exchange of information and mutual advice. At the meeting, it was agreed to initiate cooperation by means of reciprocal official letters. The Central Office's corresponding letter has now been sent to the Secretary General of ECO.

(Translation)

### **Studies**

#### **Wagon law:**

#### **the "contract of registration" is replaced by the "contract of use"**

Jean-Pierre Lehman, Legal Director of UIC

#### **1. Brief historical reminder**

The railways first began to use privately owned wagons in England towards the 1830s, then in Germany and France during the second half of the 19<sup>th</sup> century.

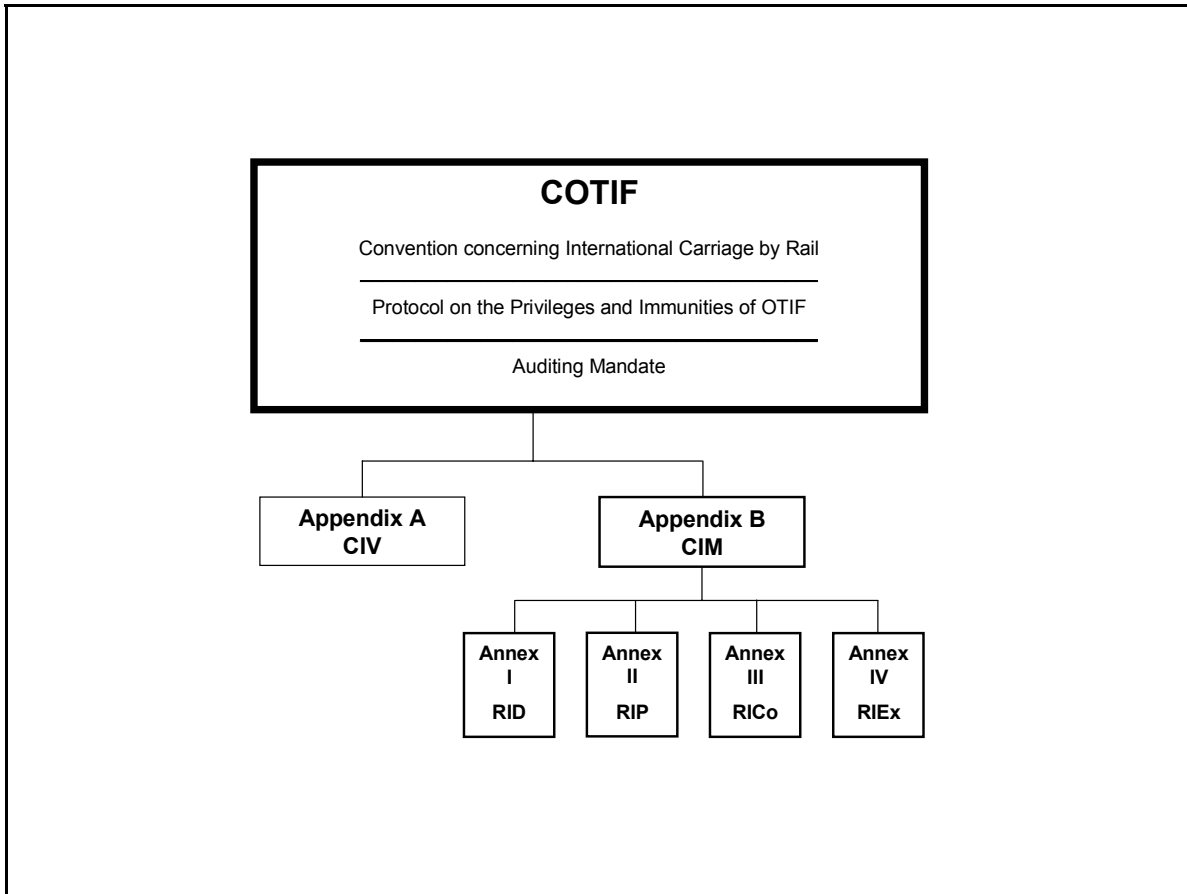
The first international regulations concerning private owners' wagons (RIP) were developed at the 4<sup>th</sup> Revision Conference for the 1923 International Convention concerning the Carriage of Goods by Rail (CIM). These regulations thus formed Annex VII to

CIM of 23 November 1933, which entered into force on 1 October 1938.

It was not until 13 May 1950 that an additional convention to CIM setting up a Committee of Experts for RIP and a simplified revision procedure was signed in Berne.

Nearer to our own time, during the 8<sup>th</sup> revision, the RIP Committee of Experts, as laid down by the CIM of 7 February 1970 and in accordance with the task it had

been assigned by the Diplomatic Conference of 9 May 1980, revised Annex IV (RIP) of CIM and made editorial changes to align it with COTIF; it was in these circumstances that Annex II (RIP) to the CIM Uniform Rules of COTIF was developed, which came into effect on 1 May 1985. The diagram below makes clear the position of the Convention and its Appendix B, which contains the CIM UR. RIP appears as an Annex to the latter.



(diagram 1)

**2. COTIF of 9 May 1980: the contract of registration is unavoidable**

Reading the Convention, its Appendix B and RIP enables one to paint a picture of how the international carriage of goods by rail was organised in the 1980s (diagram 1).

Within each country, the railways belong to the State or are run by one or more companies which are themselves State owned. On a given national territory or on a part of it, each network has a monopoly. The borders are the natural interfaces between the various national networks

and at each of these border points, there exists an obligation to carry<sup>1</sup>, which leads to a co-contracting system of rail operations by successive carriers succeeding each other in each country. The traffic thus formed is organised on registered lines<sup>2</sup> on which international trains run.

1 Article 3 of the CIM UR

2 These lines are entered on the list referred to in Articles 3 and 10 of COTIF

Application of the CIM UR allows uniform international contracts of carriage to be drawn up<sup>3</sup>. Covering only the carriage of goods, these contracts are evidenced by a CIM consignment note<sup>4</sup> which must be provided for each wagon, including privately owned wagons. The latter, as prescribed in RIP, must be registered by a railway<sup>5</sup>.

As stated unambiguously in Article 3 § 4 of COTIF, the CIM UR, including their Annexes, form an integral part of the Convention. More specifically, RIP is explicitly referred to in Article 8 § 1 of the CIM UR. Consequently, RIP, like COTIF itself, has force of international law.

Looking again at the above diagram, it can be seen in practice that in a legal structure such as this, the contract of carriage for goods (the CIM UR) takes "precedence" over the act of carriage (by privately owned wagons, for the purpose of this study) itself.

## 2.1 The registration of privately owned wagons within the meaning of RIP

In order to obtain authorisation to be used in traffic, privately owned wagons must satisfy some precise technical characteristics. The States themselves or the State railways here lay down these specific provisions for approval. RIP makes no reference to this administrative approval and does not specify how it is to be managed.

RIP<sup>6</sup> considers that to be accepted for international traffic, wagons must be registered in the name of an owner<sup>7</sup> by a railway to whose lines the Uniform Rules apply and must be marked by that railway with the distinguishing mark  $\boxed{P}$ .

In reality, this administrative authorisation results from the conclusion of the contract of registration between the railway and the owner. Once the parties have concluded this contract, the privately owned wagon is

3 Title III of the CIM UR deals exclusively with the making and execution of the contract of carriage

4 Article 13 of the CIM UR, Article 6 of RIP

5 Article 2 of RIP

6 Article 2 of RIP

7 The owner indicates the person who has obtained registration of the wagon. It should be remembered that in the case of hiring, for example, it is not the keeper who makes such a request. It is therefore the name of the owner that must appear on the wagon.

then legally and physically registered<sup>8</sup>. The consignor may of course only use the wagon for the carriage of goods for which it is designated in accordance with the contract of registration<sup>9</sup>.

The legal texts have tried several times to qualify this contract from a legal perspective. All these attempts have been in vain. *In fine*, the contract of registration (which is not a contract of carriage, a rental contract or a safekeeping agreement) must be considered as a contract *sui generis* necessary for the performance of transport using privately owned wagons. Thus with regard to the verification of damage to a wagon or loss of parts, the text specifies<sup>10</sup> that the railway must immediately draw up, in accordance with Article 52 of the CIM UR, a report stating the nature of the damage or loss. In addition, if the wagon is loaded, a separate report must be drawn up in respect of the goods.

Consequently, it is tempting here to assimilate a wagon with "moving goods"<sup>11</sup> and this could become the source of legal ambiguity. But this temptation is groundless because with regard to the railway's liability in the case of loss or damage to a wagon or its parts, the compensation the railway pays to the owner is set by... the contract of registration<sup>12</sup> and not by the CIM UR. Obviously in the case of loss or damage to a wagon or its parts which occurs after they have been accepted for carriage and up to the time of delivery, the railway is liable (except if it can prove that the damage was not its fault)<sup>13</sup>. In addition, it is the contract of registration that also governs the railway's actions against the owner, in this case for damage caused *by* the wagons<sup>14</sup>.

RIP, which is at the centre of all the problems surrounding "wagon law", deals with the contract of registration without ever defining it, and at no time does

8 In addition, tank-wagons used for the international carriage of dangerous goods must be in conformity with the technical requirements of RID.

9 Article 3 of RIP

10 Article 10 of RIP

11 In fact, Article 52 of the CIM UR comes under Title V, "Assertion of Rights" and does not deal specifically with the contract of carriage alone (in respect of the ascertainment of loss or damage, claims, legal actions and competences and extinction of the right of action).

12 Article 12 § 2 of RIP

13 Article 12 § 1 of RIP

14 Article 12 § 6 of RIP



RIP deal with the practical conditions of its content. UIC's great merit, by means of leaflet 433<sup>15</sup>, has been to devise, together with the International Union of Private Wagons (UIP), "Standard General Conditions for the introduction into service and operation of privately owned wagons" (SGC), which explain these practical conditions.

## 2.2 UIC's SGC set the conditions for Registration

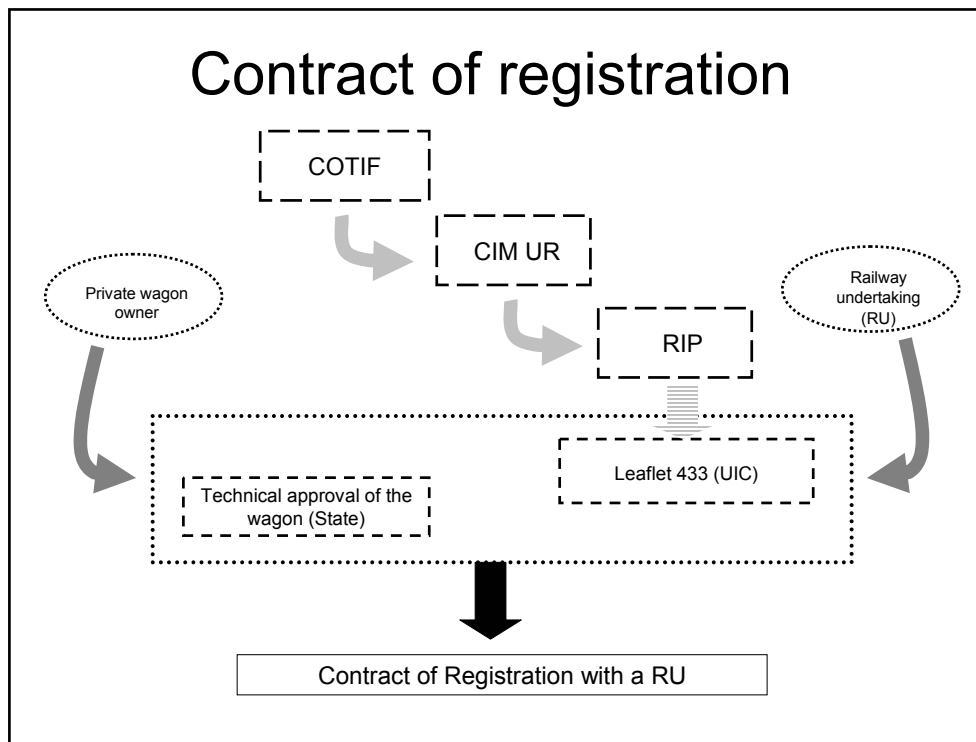
Among other things, UIC leaflet 433 describes the technical approval procedure. It forms the basis for the legal relationship between a P wagon owner and the railway undertaking that wishes to conclude a contract of registration for the said wagon as described in diagram 2 below.

In fact, the SGC contain two parts: the first relating to the registration of P wagons *stricto sensu* and the second relating to their operating conditions, particularly commercially.

### 2.2.1 Registration of private wagons

A prerequisite for registration by a railway undertaking is that P wagons must be technically approved. This approval comes within the competence of an authorised body: "the body authorised to carry out technical approval", a public or other body whose decisions apply to the railway undertakings.

Once technical approval has been obtained, owners may take out a contract of registration<sup>16</sup> with the railway undertaking of their choice. Under the terms of this contract of registration of course, the registering railway undertaking guarantees the owner the free movement and free operation of his wagon in accordance with the international operating agreements in force between the railway undertakings. Amongst these agreements is of course RIV. It should be noted that private wagons that are in conformity with the rules laid down in the latter are automatically accepted for exchange.



(diagram 2)

## 2.2.2 Operation of P wagons

In order to ensure as far as possible the greatest free flow of traffic and to keep traffic standstill to a minimum, after discussions with UIP, UIC included five provisions of an operational nature in the SGC,

concerning: the legal problems in connection with damage to a wagon preventing it from continuing its journey, the liability of the railways in the event of loss or damage to a wagon, the liability of the owner for damage caused by a wagon. Table 1 sets out these 5 provisions.

RIP	UIC leaflet 433
Article 11, § 2	<p style="text-align: center;"><b>Repair of damage</b></p> <p><b>Point 3.4.3.3</b> In order to make a damaged P wagon reusable or to repair damage which makes use of the wagon dangerous or difficult albeit not impossible, the Railway Undertaking may carry out repairs on its own authority, up to a value of <u>500 euros</u>.</p>
Article 11, § 6	<p style="text-align: center;"><b>Apportionment of repair costs for damage to P wagons or their parts</b></p> <p><b>Point 3.5.3.4</b> The amount invoiced must cover the cost of repairs actually carried out, including overheads and ancillary charges, as well as any carriage charges when these can not be entered in the consignment note and charged to the consignment. However, all of these costs shall be borne by the user Railway Undertaking if the amounts of the repair costs, taken individually, are lower than <u>40 euros</u>, irrespective of who is responsible for the damage.</p>
Article 12, § 2	<p style="text-align: center;"><b>Damage to a wagon</b></p> <p><b>Point 3.5.5.4</b> When a P wagon is withdrawn from service as a result of damage for which the railway is liable, the contracting Railway Undertaking will, if the wagon can be repaired, pay the owner [daily] compensation for loss of use. The amount of compensation varies from <u>8.80 to 14.85 euros</u> depending on the type of wagon concerned.</p>
Article 12, § 2	<p style="text-align: center;"><b>Loss of a wagon</b></p> <p><b>Point 3.5.5.6</b> When a wagon (including bogies or wheelsets) is lost or declared beyond repair, or when a bogie is declared beyond repair, if the railway is liable, the contracting Railway Undertaking on request will pay the owner compensation calculated as follows: from <u>110,000 to 165,000 euros</u> for a wagon from <u>2,200 euros</u> for a bogie</p>
Article 12, § 6	<p style="text-align: center;"><b>Damage caused by wagons</b></p> <p><b>Point 3.6.3</b> The contracting Railway Undertaking shall be responsible, under the conditions set out below, for repairing the damage for which the owner is liable<sup>17</sup> In return, the owner makes payment of a sum of <u>24 euros</u> which is due in advance and calculated per wagon and per calendar year.</p>

(table 1)

The railway undertakings of course, always eager to find quick and effective solutions, have put in place tools enabling them to spread the costs of damage resulting from the use or movement of privately owned wagons

between themselves. UIC leaflet 992 gives the details on these shared costs that are to be applied both for damage caused by wagons and to wagons.

<sup>17</sup> The owner is liable for all damage caused by the P wagon to the railway or to another owner as a result of the use or operation of the wagon in traffic. The liability of the wagon owner remains unchanged if, in particular, the damage can be attributed to a hidden defect in the P wagon.

### 2.2.3 A tried and tested legal framework

Since 1 October 1938, when the 1<sup>st</sup> RIP entered into force, the flexibility of the various texts adopted by the Member States within OTIF has contributed to providing a particularly well adapted legal framework with regard to relations between railways and private wagon owners. The Uniform Rules, which have been kept up to date for nearly 70 years, have undeniably facilitated the development of international rail freight transport, principally in Europe.

In addition, the model contract of registration contained in the Annex to UIC leaflet 433, which has been accepted by the railways as well as UIP, has contributed greatly to the development of rail freight in Europe.

**However, the way in which the European legal environment has been developing since the beginning of the 1990s will call into question the very concept of implementing the contract of registration.**

## 3. Development of the European legal framework

The liberalisation of the rail transport sector and the developments in jurisprudence concerning common competition law will certainly call into question the principle of the obligation to conclude a contract of registration in order to be able to run privately owned wagons.

### 3.1 The liberalisation of the rail transport sector

The Council Directive of 29 July 1991 on the development of the Community's railways (91/440/EEC)<sup>18</sup> unquestionably started the liberalisation of rail transport. According to this Directive, the Member States of the European Union are required to manage railway undertakings in such a way that they benefit from a healthier financial situation, particularly by taking all measures to reduce their debts. The text explains that this first objective must be made easier by allocating these railway undertakings a budget and accounts separate from those of the State. One of the other objectives of liberalisation is also to guarantee access rights to railway undertakings of other Member States offering combined international transport services. The Directive also creates the possibility of opening up international freight and passenger transport services to competition. Lastly, each Member State has been asked

to keep separate accounts with regard to the rail infrastructure and rail transport operations.

After more than 150 years' good and loyal service, the "State railways" have thus undergone a profound change. The "infrastructure managers", who are quite obviously absent from the various provisions of COTIF and its Appendices, will become the privileged partners of the "railway undertakings". As a result, the division of responsibilities, for example in the event of damage caused by a wagon, between the infrastructure manager and the railway undertaking in charge of a wagon still has to be defined.

### 3.2 Developments in jurisprudence concerning common competition law

Since the beginning of the 1980s, the competition authorities have been interested in the practices of undertakings or their associations which, while technically approving equipment, were in competition with other undertakings when the products they were responsible for approving were being marketed.

As an example, in the *"Régie des télégraphes et des téléphones v GB-Inno-BM SA"* case<sup>19</sup>, on 13 December 1991, the Court considered that: "Articles 3(f), 86 and 90 of the EEC Treaty preclude a Member State from granting to the undertaking which operates the public telecommunications network the power to lay down standards for telephone equipment and to check that the economic operators meet those standards when it is itself competing with those companies on the market for that equipment. To entrust to an undertaking which markets telephone equipment the task of drawing up specifications for such equipment, of monitoring their application and granting type-approval in respect thereof is tantamount to conferring on it the power to determine at will which equipment can be connected to the public network and thus gives it an obvious advantage over its competitors which is inimical to the equality of chances of traders, without which the existence of an undistorted system of competition cannot be guaranteed. Such a restriction on competition cannot be regarded as justified by a public service of general economic interest within the meaning of Article 90(2) of the Treaty."

Consequently, and obviously, if the railways defined the conditions for approving railway equipment themselves, the railway undertakings set up on the basis of historical networks would no longer be able to have such an advantage in relation to other railway undertakings that

18 OJEU No. L 237 of 24.8.1991, p. 25-28

19 Case C-18/88 rep. 1991 page I-05941

would not miss the opportunity of setting themselves up during the process of liberalisation. In other words, they could no longer carry out technical approval and commercially operate P wagons at the same time.

### 3.3 Conclusion

The emergence of a new legal entity, the infrastructure manager – since the development of Community jurisprudence is a matter of the approval of equipment by an entity that is independent of the operators performing activities of an economic nature – was going to make the revision of COTIF inevitable, as it would have to take account of this double development in Community law.

For its part, at its 2<sup>nd</sup> meeting to prepare the revision work, the CIT Committee of Experts considered that "*RIP should be replaced by a general wagon law*". It was clear for these experts that a distinction should be made between technical approval and the registration of wagons. In addition, the railways of tomorrow needed legal rules both for transport and for the technical approval of wagons.

This development that made the revision of COTIF necessary was at the same time going to call into question wagon law as it existed.

## 4. The necessary revision of COTIF

### 4.1 The origins of the revision

Faced with these rapid developments in the Community's legal framework, in a circular dated 3 January 1994, the Central Office asked the Member States whether more detailed provisions concerning approval to operate in international traffic and the registration of P wagons would be necessary in COTIF 1980, and more specifically in the CIM UR.

Following work carried out with various international organisations, including CIT, UIC and UIP, the Central Office thought it necessary, from 4 April 1996, to become involved in four main areas: the technical approval of railway vehicles, the reciprocal use of wagons/carriages, the registration of wagons and the specific transport law requirements relating to the carriage of wagons. Of these four main areas, the first three are not dependent upon the conclusion of a contract of carriage in accordance with the CIM UR. Faced with this new development, at the beginning of 1997, the Central Office made known its projects concerning the technical approval of equipment and the validation of technical standards.

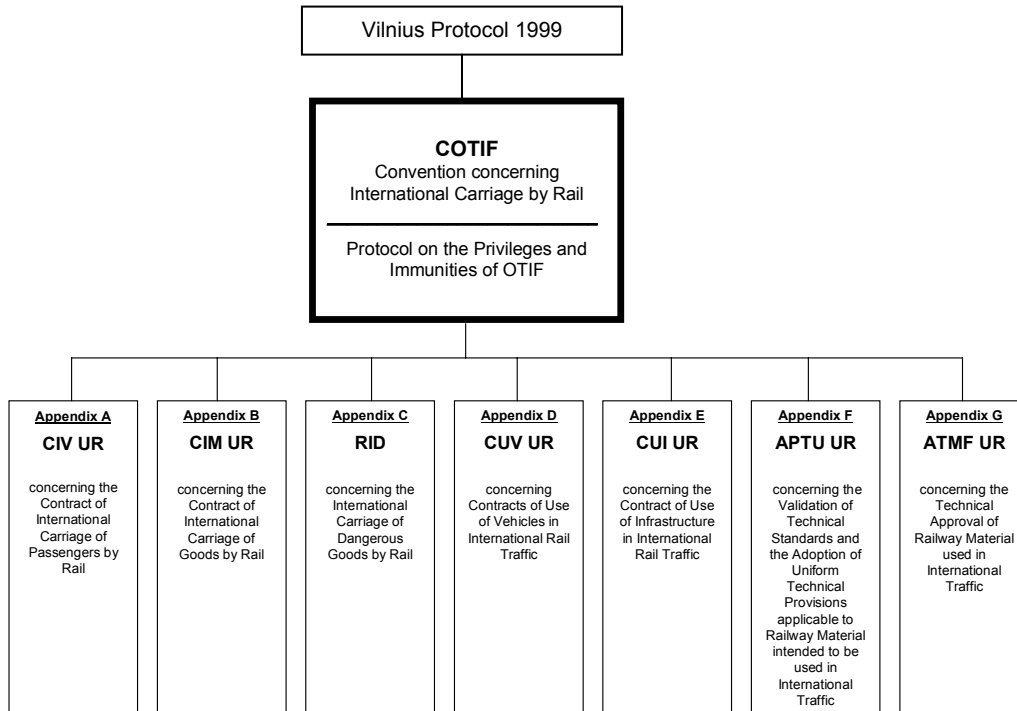
At the 20<sup>th</sup> session of the Revision Committee on 1 September 1998, the "*Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic*" were adopted. These were to become Appendix D to the Convention. Lastly, after the CIM and CIV UR were in turn revised, the Vilnius Protocol was signed by the Members of OTIF on 3 June 1999.

The Convention, as amended by the Vilnius Protocol, now contains seven Appendices. For our purposes – and this is the crux – the CUV UR<sup>20</sup>, APTU<sup>21</sup> and ATMF<sup>22</sup> are not Annexes to the CIM UR, but are in fact Appendices to the Convention itself. Separating the text concerning the contract of carriage (CIM UR) from the Appendices relating to vehicles (CUV UR, APTU and ATMF) shows clearly that the legislator has tried to intervene in the various areas of law governing rail transport which is undergoing liberalisation.

Reading the Convention and its Appendices B and D enables one to paint a picture of how the international carriage of goods by rail will be organised when the Vilnius Protocol enters into force (diagram 3).

Within the European Union, railway undertakings belong either to a Member State or to one of its sectors, or to private undertakings. On the territory of a given State, or within part of the latter, each infrastructure manager has a monopoly. To this day, the Member States' borders still form the natural interfaces between the various infrastructure managers. Following developments in the European legal framework, it is now the competition between railway undertakings, thanks to competition law, that forms the new legal framework. In these conditions of course, while co-contracting between railway undertakings still remains technically possible, other types of contract are equally conceivable. To this end, at the time the work on transposing the new COTIF was being carried out, CIT prepared various general conditions relating to co-contracting (joint contract GC), sub-contracting (sub-contracting GC), the contract of hire of a locomotive (hire GC) and the contract of traction (traction GC).

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- |    |   |
|----|---|
| 20 | Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic   |
| 21 | Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (Appendix F to the Convention) |
| 22 | Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (Appendix G to the Convention)   |



(diagram 3)

Application of the CIM UR still permits the drafting of uniform contracts of international carriage. As these contracts cover the carriage of goods, they are evidenced by a CIM consignment note, which must be available for each wagon, including privately owned wagons. The latter can run either as moving goods (on the basis of a contract of carriage) and thus be subject to the CIM UR, or as a means of transport on the basis of a contract of use subject to the CUV UR, with a railway undertaking.

An immediate consequence of this development, which is without precedent in the legal environment of international rail transport, has in particular been the modification of the scope of international rail transport law (in principle, loss of the lines entered), loss of the obligation to carry and of the mandatory conclusion of contracts of registration of P wagons with railway undertakings.

## 5. The Protocol of 3 June 1999: the CUV contract of use becomes distinct from the contract of registration.

### 5.1 The problem of the technical approval of vehicles

While RIP was silent with regard to technical approval by a competent body, the major advantage of the ATMF

UR is that it now provides a precise legal framework for this approval.

The aim of this approval for international traffic<sup>23</sup> is to check that, as far as we are concerned here, vehicles<sup>24</sup> satisfy the construction requirements as defined in the APTU UR Annexes on the one hand, and the provisions contained in the Annex to RID on the other.

After summarising the procedure to be followed to obtain this approval,<sup>25</sup> the text states clearly that the competent authority in this respect is "*the national or international authority [...] in accordance with the laws and prescriptions in force in each Contracting State*". Clearly, in order to maintain the interoperability of the rail system, the validation of this technical approval by the competent authority of a State is also recognised by the authorities, rail transport undertakings and infrastructure managers in the other contracting States.<sup>26</sup>

23 Article 3 of the ATMF UR

24 Article 2 of the CUV UR defines the vehicle thus: "a vehicle, suitable to circulate on its own wheels on railway lines, not provided with a means of traction".

25 Article 4 of the ATMF UR

26 Articles 5 and 6 of the ATMF UR

This technical approval may be requested by the manufacturers, a railway undertaking or the keeper or owner of the vehicle<sup>27</sup>. It should be noted that approval of a type of vehicle construction and approval to operate are certified by two separate documents.

The "certificate of admission of a type of construction" in particular specifies all the technical characteristics necessary to identify the type of construction of a railway vehicle.

The "certificate of admission to operation" specifies, among other things, all the technical characteristics necessary clearly to identify the railway vehicle<sup>28</sup>.

Although the Central Office has recommended standard models of certificates prepared and adopted by a Committee of Technical Experts, unfortunately no such document is yet available<sup>29</sup>. A data bank concerning railway vehicles admitted to circulation in international traffic must also be established and updated under the responsibility of OTIF<sup>30</sup>.

Railway vehicles thus admitted to circulation will bear a distinctive sign showing that they have been admitted to operation in international traffic in accordance with these Uniform Rules. They will also bear the other inscriptions and signs prescribed in the Annexes to the APTU UR<sup>31</sup>.

It should be noted that at the same time, Community legislation anticipates the adoption of Technical Specifications for Interoperability (TSIs). As a result, the technical area potentially covered by the APTU Appendix is covered, or eventually risks being covered by that of the TSIs. Negotiations concerning the APTU and ATMF UR are currently underway between the European Commission and the Central Office.

## 5.2 For the CUV UR, vehicles are used as a "means of transport"

Let us recall that in law, wagons may themselves be the subject of a contract of carriage as "moving goods" and that as such, they are then subject to the CIM UR.

For their part, the CUV UR apply to bilateral or multilateral contracts concerning the use of railway vehicles as a "means of transport" for carriage in accordance with the CIV UR and the CIM UR<sup>32</sup>.

Use of the vehicle as a means of transport and not its qualification as goods carried is one of the key elements of the contract of use: it is fundamental in order to differentiate it from the contract of carriage.

The following in particular must appear on a vehicle one wishes to approve for use in international traffic: the keeper's details and, if necessary, information on the rail transport undertaking to whose vehicle stock the vehicle belongs<sup>33</sup>. It should be pointed out that it is always possible to keep the existing designation of P wagons if the parties to the contract of use so wish.

As regards liability in the event of loss of or damage to a vehicle<sup>34</sup>, loss or damage caused by a vehicle<sup>35</sup>, presumption of loss of a vehicle<sup>36</sup> or fault on the part of persons whose services the railway undertakings make use of for the performance of the contract of use<sup>37</sup>, it is essential to note that the provisions of the CUV UR are of an auxiliary nature, as in these different cases, the contracting parties may agree provisions that derogate from the provisions set out in the said Uniform Rules (table 2). This broad legal freedom allows both railway undertakings and vehicle keepers to find the contractual solution that is most suited to their interests.

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27 Article 10 of the ATMF UR

28 Article 11 of the ATMF UR

29 Article 12 of the ATMF UR

30 Article 13 of the ATMF UR

31 Article 14 of the ATMF UR

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32 Article 1 of the CUV UR

33 Article 3 of the CUV UR

34 Article 4 of the CUV UR

35 Article 7 of the CUV UR

36 Article 6 of the CUV UR

37 Article 9 of the CUV UR

<b>CUV UR</b>
<b>Liability in case of loss of or damage to a vehicle</b>
<p><b>Article 4, § 1</b></p> <p>The rail transport undertaking to which the vehicle has been provided for use as a means of transport shall be liable for the loss or damage resulting from loss of or damage to the vehicle or its accessories, unless it proves that the loss or damage was not caused by fault on its part.</p>
<b>Presumption of loss of a vehicle</b>
<p><b>Article 6, § 1</b></p> <p>The person entitled may, without being required to furnish other proof, consider a vehicle as lost when he has asked the rail transport undertaking to which he provided the vehicle for use as a means of transport, to have a search for the vehicle carried out and if the vehicle has not been put at his disposal within three months following the day of receipt of his request or else when he has not received any indication of the place where the vehicle is situated. This period shall be increased by the time the vehicle is immobilised for any reason not attributable to the rail transport undertaking or owing to damage.</p>
<b>Liability for loss or damage caused by a vehicle</b>
<p><b>Article 7, § 1</b></p> <p>The person who, pursuant to a contract referred to in Article 1, has provided the vehicle for use as a means of transport shall be liable for the loss or damage caused by the vehicle when he is at fault.</p>
<b>Liability for servants and other persons</b>
<p><b>Article 9, § 2</b></p> <p>Unless the contracting parties otherwise agree, the managers of the infrastructure on which the rail transport undertakings use the vehicle as a means of transport, shall be regarded as persons whose services the rail transport undertaking makes use of.</p>

(table 2)

Let us take up each of these points in turn:

### **Liability in case of loss of or damage to a vehicle**

In accordance with the provisions of Article 4 of the CUV UR, the liability in question in this case is of the contractual type. In law, the consequence of this is that on the basis of the contract of use, the railway undertaking answers to its co-contractor with regard to its co-contractor and not to third parties. In addition, this liability is conceived here as liability for presumed fault, thus allowing the possibility of proving otherwise. Such a concept of the proof mechanism draws on the system of liability that applies in case of loss of or damage to a P wagon handed over for transport, i.e. Article 12 § 1 of RIP.

It emerges from reading Article 4 § 3 and § 4 that in case of loss of the vehicle or its accessories, the compensation is limited to the usual value and in case of damage to the vehicle or its accessories, compensation is limited to the cost of repair. In contrast, no system of compensation is provided for financial loss, such as loss of profit. However, the contracting parties may of course agree derogating provisions by virtue of § 5 of the same Article. As an example, let us recall here that

compensation for loss of use is specifically prescribed in point 3.4.4. of UIC leaflet 433.

### **Presumption of loss of a vehicle**

The provision concerning the standard period of three months is of an auxiliary nature. This legal measure enables the rules in force to be maintained (e.g. 3 months for private wagons, in accordance with Article 13 of RIP).

In the meetings to revise the text, the majority of the Member States represented wished to find an auxiliary solution to the case where a vehicle that was presumed lost was subsequently found. It is for this reason that the provisions of Article 13 of RIP were supplemented, for example for the case where restitution of the vehicle is not requested. For the sake of legal clarity of course, Article 29 § 4 of the CIM UR was taken as the model for § 3 of Article 6 of the CUV UR.

### **Liability for loss or damage caused by a vehicle**

Third parties, who have no legal link with the wagon owner and the railway undertaking that are parties to the contract of use, would here be acting at the near tortious

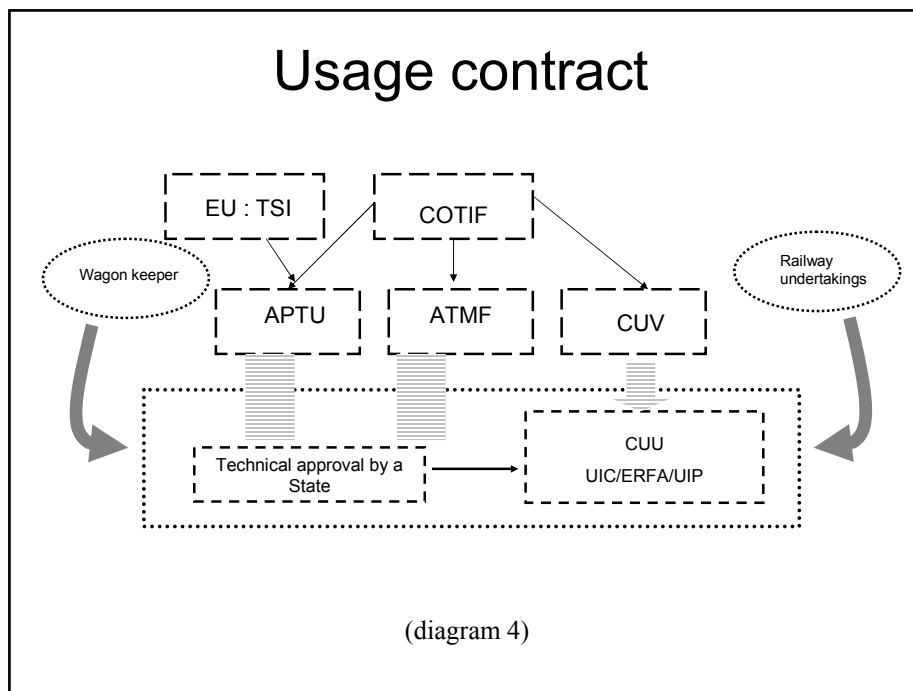
level if they were to claim compensation for the damage caused by the vehicle by availing themselves of the provisions of their national law.

In most cases, this recourse will be exercised against the railway undertaking using the wagon at the time the damage was supposed to have occurred and the railway undertaking, by virtue of Article 7 § 1 of the CUV UR, will then have contractual recourse against the wagon owner on condition that it can be established that the latter is at fault.

However, a legal difficulty may arise in respect of this recourse if the contract of use authorises the original railway undertaking to entrust the vehicle to other railway undertakings for use as a means of transport.

The subsequent railway undertakings do not have a contractual link with the owner under the same conditions as the original railway undertaking; consequently, according to certain national laws, the right of action that the solvens could bring under the conditions referred to above might not be considered as having a contractual basis.

However, at the 12<sup>th</sup> session of the Revision Committee, a majority of the States represented supported "liability based solely on the contract". It must therefore be considered that by authorising the transfer of its wagon from one railway undertaking to another for the requirements of a transport operation, the wagon owner has accepted a transfer of contract by change of co-contractor and that the railway undertaking to which the wagon has been transferred may be subrogated in the rights of the original railway undertaking (Article 8 of the CUV UR).



### Liability for servants and other persons

Article 9 of the CUV UR states clearly not only that the parties to the contract of use are liable for their servants and other persons, but also for the railway undertaking or keeper substituting for them by subrogation.

Implementing the CUV UR and considering that the use of wagons by railway undertakings as a means of transport called for the setting up of contractual provisions defining the rights and obligations of each of the parties, the European Rail Freight Association

(ERFA), UIC and UIP have developed "*a standard usage contract (CUU)*"<sup>38</sup>.

### 5.3 The CUU developed by UIC, ERFA and UIP governs the conditions of use

Diagram 4 shows the statutory structure which facilitates the creation and content of the usage contract:

38 Version dated 19.8.2005, draft adopted by the UIC's Freight Forum on 4.7.2005.



After a reminder of how railway undertakings and wagon keepers can join this CUU, we will analyse how wagons are operated from the legal point of view in the context of this model contract.

### 5.3.1 Membership of keepers and railway undertakings

This contract and its appendices set out the conditions for the handover of wagons for use as a means of transport by railway undertakings in national and international traffic within the scope of application of COTIF and the CUV Uniform Rules. So that there can be no conflict with competition law, commercial conditions for the use of wagons are outside the scope of this contract<sup>39</sup>.

It should be noted that use and custody begin "when the wagon is accepted by the railway undertaking and end with the handover of the wagon to the keeper or to some other authorised party, for example another signatory railway undertaking, the contractual consignee of the goods conveyed or the owner of private sidings authorised to take delivery of the wagon"<sup>40</sup>.

Parties to the contract are railway undertakings and wagon keepers who have sent an application to the CUU Bureau (opting in procedure)<sup>41</sup>. This Bureau is responsible in particular for keeping the list of signatories and for keeping the contract up to date.

Clearly the provisions of the contract are not mandatory for the signatories "to the extent that they have not concluded other provisions between themselves"<sup>42</sup>.

Pursuant to Article 3 of the CUV UR, the CUU prescribes that: "the keeper shall ensure that his wagons are technically approved in accordance with the Euro-

pean legislation in force and that they remain so throughout the period of their use"<sup>43</sup>. It is the wagon keeper who retains control over his wagons for the economics and logistics of the use of his wagons by railway undertakings<sup>44</sup>.

### 5.3.2 Wagon operations

Subject to the keeper's respecting the obligations placed upon him by the preceding point, member railway undertakings must accept the wagons as part of their commercial offer and manage them with "care and due diligence". With regard to forwarding times for loaded wagons<sup>45</sup>, these "depend on the delivery time for the goods being conveyed. Forwarding times for empty wagons shall be determined by agreement. In the absence of such an agreement, the periods set out in Article 16 of the CIM for wagonload traffic shall apply".

If a railway undertaking is responsible for exceeding these forwarding times, the keeper may claim compensation for loss of the use of his wagons<sup>46</sup>. Unless otherwise agreed, the amount of compensation for loss of use is fixed by joint agreement between the members of the CUU and is included in one of the annexes to the contract.

In order to ensure that traffic can move as freely as possible and to keep to a minimum the time that traffic is stopped, the architects of the contract included four operational type provisions in the CUU concerning: legal problems linked to reporting and handling of damage to wagons in the custody of a railway undertaking, liability in the event of loss of or damage to a wagon, liability for damage caused by a wagon, liability of servants and other persons. Table 3 shows these different provisions.

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39 Article 1.1 of the CUU

40 Article 1.4 of the CUU

41 Article 2.2 of the CUU

42 Article 2.3 of the CUU

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43 Article 7.1 of the CUU

44 Article 9.1 of the CUU

45 Article 13.1 of the CUU

46 Article 13.3 of the CUU

CUV UR	CUU
Articles 4, § 1 and 6, § 1	<p><b>Chapter IV:</b></p> <p>"Reporting and handling of damage to wagons in the custody of a railway undertaking"</p> <p><b>Articles 18</b></p> <p>When damage to a wagon or the loss or damage of the removable tackle mentioned on the wagon are discovered or presumed by a railway undertaking or the keeper claims they exist, the railway undertaking shall without delay and, if possible, in the keeper's presence, draw up a damage report documenting the nature of the damage or loss and, insofar as possible, the cause and the time it took place.</p> <p><b>Articles 20</b></p> <p>A wagon shall be considered lost if it is not placed at the keeper's disposal within three months of the date of arrival of the search request submitted to the railway undertaking to which the wagon was last transferred, or if the keeper has received no indication on the whereabouts of the wagon. To this period shall be added the time during which the wagon is immobilised for any reason not ascribable to the railway undertaking or because of damage.</p>
Article 4	<p><b>Chapter V: "Liability in the event of loss of or damage to a wagon"</b></p> <p><b>Articles 22</b></p> <p>The railway undertaking which has custody of a wagon shall be liable to the keeper for any loss of or damage to the wagon or its component parts insofar as it cannot prove that it was not to blame.</p>
Article 7	<p><b>Chapter VI: "Liability for damage caused by a wagon"</b></p> <p><b>Articles 27</b></p> <p>The keeper or a previous user subject to this contract shall be liable for damage caused by the wagon when they can be shown to be at fault. The liable party shall guarantee the user railway undertaking against any third party claims if the user railway undertaking cannot be shown to be at fault.</p>

(table 3)

Let us take up each of these points in turn:

### Reporting and handling of damage to wagons in the custody of a railway undertaking

Here, the architects of the contract favoured the setting up of procedures that would ensure that traffic moves as freely as possible. As an example,<sup>47</sup> "*When the damage or the loss of a part does not prevent the wagon from running, the keeper does not need to be invited to attend this operation*". On the other hand<sup>48</sup>, when a wagon sustains damage or loss of a part and is unable to run or be used as a result, the railway undertaking must also inform the keeper immediately, providing all the information that will enable him to decide the legal and economic fate of his wagon.

When a railway undertaking repairs a wagon so that it can be returned to running condition, the CUU lays

down the specific procedure to be followed<sup>49</sup>. For example: "*If the cost of repairs is more than 750 Euros, the agreement of the keeper must first be sought, except in the case of brake block replacements. If the keeper does not respond after 2 working days (not including Saturdays) the repair work shall go ahead*".

### Loss of or damage to a wagon

To facilitate the handling of damage and to take account of the normal wear and tear of the wagon, the quality of its maintenance and its use by third parties, a catalogue of the types of damage is given in an Appendix to the CUU. This says, for example<sup>50</sup>, that damage ascribable to the keeper must be borne by the keeper and that damage ascribable to the railway undertaking must be borne by the user railway undertaking up to a maximum of 750 Euros.

<sup>47</sup> Article 18.2 of the CUU

<sup>48</sup> Article 18.5 of the CUU

<sup>49</sup> Article 19.1 of the CUU

<sup>50</sup> Article 22.4 of the CUU

### Damage caused by a wagon

Here again, to simplify and speed up the procedure in cases of less significant damage, the user railway undertaking may, in its general conditions of sale, specify an amount per occurrence of damage up to which it will waive its rights vis-à-vis the keeper even when the latter is to blame<sup>51</sup>. In addition, a railway undertaking may propose to co-insure a keeper under its own civil liability insurance<sup>52</sup>. It should be noted that where the user railway undertaking and the keeper or previous user are jointly responsible, the compensation shall be borne by each party in proportion to their respective share of blame<sup>53</sup>.

#### 5.3.3 A legal framework that must demonstrate its value

Implementation of the CUU within the context of the CUV UR, which form part of the new COTIF, clearly brings the monopoly of the contract of registration to an end and with it, all the legal certainty it provided. The

CUU is not a contract *sui generis* as the purists like to point out when referring to the contract of registration. Rather, it is a more classic legal tool which allows the movement and exchange of wagons in Europe to be set up rapidly and defined clearly in a legal framework, despite its offering considerable editorial flexibility. Only the practical skills and pragmatism of CUU signatories will allow this legal tool to be updated through the years as we move from cooperation between integrated railways to competition between railway undertakings in the new international railway order.

### 6. Conclusion

Table 4 below shows how implementation of the Vilnius Protocol of 3 June 1999 will change the international legal environment for wagon law.

	System resulting from the 1980 COTIF	System resulting from the new COTIF
<b>CIV and CIM Contract of Carriage</b>	Appendices A and B of the Convention	Appendices A and B of the Convention
<b>RIP</b>	Annex II of Appendix B	<b>Not applicable</b>
<b>CUV UR</b>	<b>Not applicable</b>	Appendix D of COTIF
<b>Technical approval of equipment</b>	<ul style="list-style-type: none"> <li>• Article 2 of the RIP</li> <li>• Article 3.1.1 of UIC leaflet 433</li> </ul>	<ul style="list-style-type: none"> <li>• Appendix F (APTU) and G (ATMF) of COTIF</li> <li>• European Union TSI</li> </ul>
<b>Registration of wagons</b>	Article 2 of the RIP: for railways subject to the CIM.	Regulation (EC) No. 881/2004 for national registers <ul style="list-style-type: none"> <li>• Draft OTIF register</li> </ul>
<b>Contract of use</b>	RIV for wagons suitable for exchange	The CUU

(table 4)

51 Article 27.4 of the CUU

52 Article 27.5 of the CUU

53 Article 27.2 of the CUU

One remark must be emphasised: **the contract of registration (COTIF 1980) is replaced by the contract of use (Vilnius Protocol 1999).**

COTIF 1980 will no longer apply once the Vilnius Protocol comes into force. Likewise, Annex II to the 1980 CIM Uniform Rules (the RIP) will disappear. Instead, implementation of the CUV Uniform Rules, Appendix D to the Vilnius Protocol, will authorise the implementation of the CUU which has been jointly drafted by the railway undertakings and private wagon owners.

In future technical approval of vehicles will be undertaken in a significantly clearer legal environment (Appendices F and G of COTIF and the TSIs planned by the European Union). This approval will be clearly separated from the process of registering equipment which, it must be admitted, has not yet been entirely defined (the national registers defined in EU Regulation 881/2004 are not yet operational and the OTIF database is still at the draft stage).

A fundamental point in this connection is that in respect of the major liability issues, there is legal continuity between the legal tools of COTIF 1980 and those of the Vilnius Protocol, whether it be recording and dealing with damage to a wagon, the liability for the loss of or damage to a wagon or the liability for damage caused by a wagon.

This continuity guarantees operators, whether railway undertakings or private wagon owners, the maximum legal certainty.  
(Translation)

## Case Law

### Østre Landsret Dombog (Denmark)

#### Ruling of 24 August 2004

**Proof that the accident is attributable to the fault of the passenger. The railway is not liable for the accident involving a passenger who jumped off the train once it had started moving.**

Cf. CIV Article 26 §§ 1 and 2

A passenger who was injured when alighting from a train brought an action against the Danish Railways. She

was travelling with an international CIV ticket from Germany to Denmark, where the accident occurred. She claimed that the train suddenly started moving as she was alighting. However, two witnesses stated in court that the passenger deliberately jumped off the train even though it was moving at considerable speed (approx. 45 km/h).

The Court established that the CIV Uniform Rules apply and concluded from the evidence that the accident was due solely to fault on the part of the passenger. For this reason, the railway is relieved from liability in accordance with Article 26 § 2 of CIV. The case was therefore dismissed.<sup>1</sup>

(Direct communication)  
(Translation)

## Miscellaneous Information

### Association of German Transport Undertakings Academy

*Frankfurt am Main, 7 October 2005*

In order that the railways can provide customer oriented rail transport services for freight traffic, various conditions must be satisfied. These include, in addition to the availability of personnel, lines and traction, the availability of suitable wagon equipment as a means of transport. Without suitable goods wagons that meet the specific requirements of the goods (petroleum products, chemical products, etc.), the railways cannot provide a corresponding range of services in freight traffic.

Against this background, the amendments to the current RIP and its replacement with the CUV/UR as a fundamental component of COTIF 1999 assume particular significance.

As already announced in issue 2/2005, page 32, the Academy organised a focus seminar on "The new wagon law – using goods wagons in the future". As an introduction, Dr Mutz (OTIF) presented a general overview of the content and components of COTIF 1999. Dr Freise then presented the Uniform Rules

<sup>1</sup> Cf. the case law published in Bulletin 3/1997, p. 142 ff. (French and German only): Belgian Cour de Cassation, ruling of 5 January 1995; cf. also Transidit, Rouen, No. 40-2004, p. 9/10, Cour d'Appel de Rouen, ruling of 27 January 2004

concerning Contracts of Use of Vehicles in International Rail Traffic, CUV/UR, and Mrs A. Brugger (DB) presented the General Usage Contract as the basis for future cooperation between keepers and freight railways. The afternoon was given over particularly to looking at liability in the new wagon law and to developments from the historical "liability agreement" to new commercial solutions, again presented by Dr Freise. In addition, Mr Trolliet (CIT) gave a presentation on the areas of application, contents and function of the "wagon consignment note".

After each presentation and before the seminar concluded, there were extensive discussions with the speakers. Once again, the seminar demonstrated both the major interest wagon keepers have in the new wagon law and the need for information in all the groups of people concerned.

(Translation)

## Symposium

### "Multilateral Trade Treaties and Developing Economies"

*Geneva, 31 October - 3 November 2005*

The Symposium organised by the International Trade Centre (UNCTAD/WTO) was held under the chairmanship of Sir Roy Goode (United Kingdom) and Professor Hans van Houtte (Belgium). The aim was to convey to the participants from more than 50 countries an understanding of the advantages, basic problems and issues connected with the various categories of multilateral trade rules in the field of contracts, transport, customs, intellectual property etc.

The Symposium provided the Secretariat of OTIF with an opportunity to present the system of COTIF and the possibilities it offers countries that are interested in acceding to OTIF.

(Translation)

## Book Reviews

**Alléret Marc, Taïana Philippe**, *Transport ferroviaire interne* (Inland Rail Transport), JurisClasseur Transport, volume 625 (8, 2005 – up to 16.4.2005)

In this volume, in a little more than twenty pages, the authors explain SNCF's and the consignee's obligations in inland rail transport when goods are delivered and the consignee's reservations for partial loss or damage and circumstances preventing delivery, while encouraging the reader to make connections or comparisons with international rail transport or with other modes of transport.

The volume contains six parts preceded by key points, an analytical summary and an alphabetical index. Part I deals with the formal notice of delivery in the event of delay.

In the part dealing with delivery of the goods (Part II of the volume), the authors begin by describing the situation of the consignee before and after law no. 98-69 of 6 February 1998 (the so-called "Gayssot Law"). Let us recall that before this law, the consignee, by virtue of the third-party beneficiaries of contracts ("stipulation pour autrui") theory, only became a party to the contract of carriage upon delivery of the goods, whereas since this law, the consignee has the status of a party to the contract of carriage right from its inception. Consequently, the consignee no longer has the opportunity of refusing the advantage of the contract of carriage upon delivery, as he could previously. In contrast, he now has the opportunity of acting against the carrier before delivery and even in the absence of delivery, as, like the consignor, he is henceforth a party to the contract of carriage.

There then follows an in-depth analysis of SNCF's fundamental obligations upon delivery and of the consignee's right to check and his obligations in the context of delivery. The legal nature of the delivery, the importance of the date of delivery, the specific provisions concerning full loads and those concerning express consignments are also examined and presented in specific chapters.

The authors rightly emphasise the importance of the date of delivery because it marks in particular the beginning of the period laid down in Article L. 133-3 (formerly Art. 105) of the Commercial Code for lodging reservations in the event of partial loss or damage. These reservations are dealt with in part III of the volume. Following a brief historical reminder, the authors describe the field of application of Article L. 133-3 of the Commercial Code and the effect of the consignee's non-compliance with this Article, i.e. foreclosure of his liability action against the carrier, then to present the means to enable avoiding foreclosure (formal protest, lodge reservations, request an assessment).

In the last three parts of the volume, the authors on the one hand address the questions of returned goods (or goods which, in the event of delay or major damage, the consignee abandons to the carrier against payment of the value as if there had been total loss) and of circumstances preventing delivery and, on the other, the case of the consignee in collective proceedings (redress procedure or legal liquidation procedure) and seizure under a prior claim by the consignor.

The JurisClasseur collection is especially renowned for the reliability of the selection of information and the depth and relevance of the analyses. From the theoretical and practical perspective, it provides exhaustive consideration fostered by current case law. This volume, co-authored by one of the best legal experts in rail transport law, only serves to enhance the reputation of this collection, which is an essential working tool for legal professionals.  
(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° 3098/2005, p. 613/614 – Quelle indemnisation ? (M. Tilche)

*Idem*, n° 3100/2005, p. 647/648 – Prix de transport : Pomme de discorde (M. Tilche) ; p. 660/661 – Jurisprudence. CMR. Champ d'application

*Idem*, n° 3102/2005, p. 687/688 – Loi sur (tous) les transports. Le ferroviaire super star (N. Grange)

*Idem*, n° 3104/2005, p. 723/724 et 731 – Le ver est dans le fruit ... (M. Tilche). Jurisprudence. Commission. Frontière avec la sous-traitance

*Idem*, n° 3107/2005, p. 780/781 – Calcul de l'indemnité (M. Tilche) ; p. 787/788 – Jurisprudence. Préjudice indemnisable. Calcul ; p. 789/790 – Jurisprudence. Vol. Appréciation de la faute lourde

*Idem*, n° 3110/2005, p. 832/833 – Constatation des dommages. Attention aux formalités !

*CIT Info*, Berne, N° 5/2005, p. 2-4 – Nouveau droit du wagon. Le « contrat d'immatriculation » s'efface devant le « contrat d'utilisation » / Neues Wagenrecht. Der „Einstellungsvertrag“ wird vom „Verwendungsvertrag“ abgelöst / New Wagon law. The „contract of

registration“ gives way to the „usage contract“ (J. P. Lehman); p. 5/6 – La lettre wagon / Der Wagenbrief / Wagon consignment note (H. Trolliet)

*CIT Info*, Berne, N° 6/2005, p. 2/3 – Le régime de responsabilité de la COTIF / Das Haftungssystem des COTIF / The liability system defined in COTIF (Th. Leimgruber)

*European Transport Law/Droit européen des transports*, Antwerpen, N° 4/2005, p. 463-470 – New Interpretation of Art. 1, Para. 5 of the CMR Convention ? (S. Rogov)

*Idem*, N° 5/2005, p. 629-639 – Die unbeschränkte Haftung des Luftbeförderers nach dem Montrealer Übereinkommen 1999? (I. Koller)

*Transportrecht*, Hamburg, Nr. 9/2005, S. 329-345 – Das neue Übereinkommen über den internationalen Eisenbahnverkehr (Convention relative aux transports internationaux ferroviaires – COTIF) (W. Kunz)<sup>1 2</sup>

*Idem*, Nr. 11-12/2005, S. 421-429 – Der Multimodal-Vertrag im schweizerischen Recht (S. Erbe, Ph. Schliengel)

1 For the history, cf. in this regard: K. Spera, Die „Einheitlichen Rechtsvorschriften für den Vertrag über die internationale Eisenbahnbeförderung von Gütern (CIM)“ im Vergleich mit dem SMGS und dem SAT, Zeitschrift 4/1993, S. 179-205 and M. Allégret, Historique des conventions CIM, CIV, COTIF et des unions ou organismes internationaux ferroviaires, Bulletin 1/1994, p. 3-20

2 With regard to COTIF 1999, cf. *inter alia.*: Protocole 1999 portant modification de la Convention relative aux transports internationaux ferroviaires (COTIF) du 9 mai 1980, note rédigée par M. Gerfried Mutz / 1999 Protocol for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, note drafted by M. Gerfried Mutz, Revue de droit uniforme / Uniform Law Review, Rom, 1999-3, ISSN 1124-3694, p. 732-743; G. Mutz, Schwerpunkte der COTIF-Revision, Transport – Wirtschaft – Recht, Gedächtnisschrift für Johann Georg Helm, Hrsg. Schachtschneider/Piper/Hübsch, Bd. 133 der „Schriften zum Wirtschaftsrecht“, Duncker & Humblot, Berlin 2001, S. 243-262; G. Mutz, La révision 1999 de la Convention relative aux transports internationaux ferroviaires (COTIF), Etudes offertes à Barthélemy Mercadal, Editions Francis Lefebvre, Paris 2002, ISBN 2 85115 518 0, p. 477-491; R. Freise, Das neue internationale Eisenbahnfrachtrecht (CIM 1999), Transportrecht 11-12/1999, S. 417-424; R. Freise, Reform der Reform des Eisenbahntransportrechts in Europa? Transportrecht 10/2004, S. 377-393 und Zeitschrift 4/2004, S. 91-116

*Zeitschrift der OSShD*, Warschau, Nr. 6/2005, S. 4-10 –  
Das neue internationale Eisenbahnbeförderungsrecht für  
den Güterverkehr auf der Grundlage des COTIF (in der  
Fassung des Änderungsprotokolls vom 03.06.1999,  
Vilnius) (W. Bach)

*Zeitschrift für Verkehrswissenschaft*, Köln, Nr. 2/2005,  
S. 134-163 – Die Liberalisierung des Eisenbahnsektors  
in Schweden – Ein Beispiel vertikaler Trennung von  
Netz und Transportbetrieb (R. Merkert)