



Intergovernmental Organisation
for International Carriage
by Rail

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Official Communications from the Secretariat of OTIF

Application de facto

Belgium

With the entry into force of the 1999 Protocol and hence COTIF 1999, application of the CIV and CIM Uniform Rules is suspended in respect of traffic with and between those Member States which, one month before the date fixed for such entry into force, have not yet deposited their instruments of ratification, acceptance or approval.

This suspension will not apply to Member States which have notified the Secretariat that, without having deposited their instruments of ratification, acceptance or approval, they will apply the amendments decided upon by the 5th General Assembly (de facto application, see Art. 20 § 3, para. 2 of COTIF 1980).

So far, the Ukraine (see Bulletin 3/2005, p. 35) and Greece (see Bulletin 2/2006, p. 20) have made such declarations.

On 17 July 2006, Belgium also gave notice that in order to avoid suspension of the application of the CIV and CIM Uniform Rules, it will apply de facto the CIV and

CIM Uniform Rules as amended by the Vilnius Protocol until ratification of the Vilnius Protocol.

OTIF Organs

8th General Assembly

Berne, 6/7 September 2006

The 8th General Assembly of OTIF was held on 6/7 September 2006 in Berne. The rapid succession of the 8th General Assembly following the 7th, which was held on 23/24 November 2005, is explained by the entry into force of the Vilnius Protocol (1999) and its Annex, COTIF 1999, on 1 July 2006. While the General Assembly had to be held only once every five years in accordance with COTIF 1980, and must be held every three years in accordance with COTIF 1999, the Vilnius Protocol required that the first General Assembly on the basis of the new version of the Convention be held within six months of its entry into force. For various reasons, the Secretary General of OTIF, with the agreement of the Administrative Committee, decided to convene the 8th General Assembly as early as nine weeks after the entry into force of COTIF 1999, because on the basis of the new Convention, fundamental decisions for the Organisation and its further activities had to be taken.

34 of the 42 Member States of OTIF were represented at the General Assembly. Representatives from India and Azerbaijan were present as observers. The European Community and four non-governmental international associations also took part in the General Assembly in an advisory capacity. The deputy Director General of the Universal Postal Union was also present at the opening session and made a speech of welcome.

The 8th General Assembly dealt with questions of principle that arose as a result of the entry into force of the new version of the Convention with regard to organisational matters, in view of the need to amend the Convention and its Appendices that has again arisen since 1999, and with regard to issues concerning the budget and accountancy. In the financial area in particular, there are fundamental changes for the Organisation and for its Member States, because under the new version, a new procedure for collecting contributions from the Member States is in place. Now that so far, 33 of the 42 Member States have ratified or accepted the new version of the Convention or have acceded to it, for the near future at least, there will be some Member States that will pay their contributions in accordance with the previous funding rules (COTIF 1980) and those that will pay them in accordance with the rules of the new version of the Convention (1999). Without counter measures, this would result not only in considerable shortfalls in the Organisation's income, but would also mean that in comparison with the States that have already ratified or acceded, the proportions of the Member States that have not yet done so would lead to a significant financial imbalance with regard to the financial contributions to each budget of the Organisation.

In addition to the decisions on the future system for the contributions, which are of central importance, the 8th General Assembly also elected a new Administrative Committee for a period of three years. In accordance with the rules of the new version of the Convention, the Administrative Committee has been increased from 12 to 14 Member States because of the increase in the total number of Member States. In addition, Switzerland no longer has a permanent seat in the Administrative Committee, which it held under the previous version of the Convention. The General Assembly also fixed the maximum amounts that the Organisation's expenditure may reach in the years 2007 to 2012. This decision acts as an indicator, because each of the Organisation's annual budgets is determined by the Administrative Committee as the highest decision-making organ of OTIF between the meetings of the General Assembly.

Contrary to the original plans, it was not possible to conclude the accession of the European Communities (EC) to COTIF by approving the accession agreement negotiated in 2003. The General Assembly instructed the Secretary General to continue the negotiations on accession with the EC in order to supplement the accession agreement with a suitable disconnection clause. The new version of the Convention makes it possible for a regional economic integration organisation to accede, without giving EC rules precedence in the event of competing regulations. Article 3 of COTIF 1999, which requires Member States to concentrate their international cooperation, in principle, within the framework of OTIF, merely guarantees for those Member States that are also members of the EC or States parties to the European Economic Area Agreement (EEA), that their obligations as members of the EC or as States parties to the EEA are not affected by their obligation to cooperate within the framework of OTIF.

The specific decisions can be found in the final document, reproduced below.

Final Document

1. Pursuant to Article 6 § 1 of the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (Vilnius Protocol), the 8th General Assembly met on 6 and 7 September 2006 in Berne.
2. The following took part in the General Assembly:
 - 2.1 **34 of 42 Member States**
Germany, Belgium, Bosnia-Herzegovina, Croatia, Denmark, Spain, Finland, France, Greece, Hungary, Iran, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Morocco, Norway, Netherlands, Austria, Poland, Portugal, Romania, United Kingdom, Serbia, Slovak Republic, Slovenia, Sweden, Switzerland, Syria, Czech Republic, Tunisia, Turkey;
 - 2.2 **2 States with observer status**
Azerbaijan, India
 - 2.3 **1 supranational organisation**
European Community (EC)

2.4 **4 International associations**

International Association of Tariff Specialists (IVT)

International Rail Transport Committee (CIT)

Community of European Railway and Infrastructure Companies (CER)

International Union of Railways (UIC)

3. In accordance with Article 8 of the Rules of Procedure, the Secretary General provided the Secretariat.

4. The **General Assembly** elected as chairman:

Mr Mahmoud Ben Fadhl (Tunisia)

as first deputy chairman:

Mr Pierre-André Meyrat (Switzerland)

and

as second deputy chairman:

Mrs Brigit C.M. Gijsbers (Netherlands)

5. The General Assembly formed the Committees as set out below:

5.1 **Credentials Committee**

chairman:

H.S.H. Prince Stefan of Liechtenstein, Ambassador of Liechtenstein

deputy chairman:

Mrs Berit Fallan (Norway)

members:

Latvia, Iran, Sweden

5.2 **Editorial Committee**

chairman:

Mr Denis Huneau (France)

co-chairmen:

Mr Thomas von Gäßler (Germany)

Mr Mike Franklyn (United Kingdom)

members:

Belgium, Finland, Austria

6. The General Assembly deliberated on the basis of the Rules of Procedure as adopted by the 7th General Assembly on 23 November 2005, applicable from 1 July 2006.

7. The General Assembly

7.1 adopted its agenda;

7.2 instructed the Administrative Committee,

– to apportion shortfalls resulting from the application of Article 26 § 3 in future budgets to the MS'99 under the procedure of Article 26 § 1 and – where applicable - § 2;

– to apportion shortfalls resulting from an eventual application of Article 6 § 7 of the Vilnius Protocol to the MS'99 in the same way;

– to calculate the advance payments of Member States in the following years by using the percentages of the individual Member States with regard to the total budget incomes for the budget to be estimated and to apportion the totality of the definite contributions for the last but one previous year on the basis of these percentages;

7.3 determined, by derogation from Article 26 of COTIF, to make use of the possibilities resulting from Article 6 § 7 of the Vilnius Protocol, for three years following the year of the entry into force of COTIF 1999, only in cases in which the calculation of the contribution in accordance with Article 26 would result in an increase of more than 100% as compared with the final contribution paid for 1999. The rate of growth of OTIF's expenditure between 1999 and 2006, and 3% for 2007, are to be deducted from this amount. From the amount thus calculated, 50% must be deducted and requested for the advance for 2007 and 25% more for the advance for 2008. The advance for 2009 is calculated in accordance with Article 26 of COTIF 1999;

established that Article 6 § 7 of the Vilnius Protocol is not applicable if higher contributions result only from the mechanism of apportioning shortfalls resulting from the application of this Article;

- 7.4 determined as a point of principle that all Member States share a joint responsibility that the expenditure of the Organisation, not covered by other receipts, is met by all Member States;
- instructed the Administrative Committee in application of Article 14 § 2 d) to set a rate per kilometre for the MS'80 from the financial year 2007 onwards which ensures that the percentage of the contributions of the MS'80 corresponds to the percentage calculated on the basis of Article 26 COTIF 1999;
- instructed the Administrative Committee in the same way to settle shortfalls resulting from the application of Article 6 § 7 of the Vilnius Protocol through corresponding increases of the contributions of the MS'99 and application of the calculation method of Article 26 as far as possible. Member States to which Article 26 § 3 is applied are exempted from this decision;
- decided that shortfalls which remain for the Organisation despite these directives addressed to the Administrative Committee by the General Assembly shall be debited from the reserve fund in accordance with Article 15 § 1 a) of the Finance and Accounts Rules;
- 7.5 instructed the Secretary General to continue to implement the decision taken at its 7th session concerning document AG 7/4 and in particular to discuss with the European Commission on a technical level possible outstanding issues in relation to the implementation of Appendices F and G in view of finding practical solutions – for example setting up the rolling stock database, notification of national rules, vehicle keeper marking. If issues in relation to other appendices are identified, they shall be addressed at the appropriate level in order to find practical solutions. This may lead to meetings between the Secretary General and the European Commission and/or the creation of appropriate working groups. A summary report by the Secretary General on these two subjects will be submitted to the next session of the General Assembly addressing these issues;
- instructed the Secretary General to further the negotiations on accession with the European Community with the aim of making it possible for the European Community to accede to COTIF 1999 as soon as possible, taking into account the positions of non-EU Member States. In order to achieve this aim, a suitable disconnection clause avoiding situations in which the EU Member

States might enter into a conflict of obligations in respect of the two regimes should be included in the accession agreement;

instructed the Secretary General to convene another General Assembly as soon as all the necessary conditions have been met such that the General Assembly can make a final decision on the accession agreement that has been negotiated between the two institutions. One of the conditions for this is that the internal decision-making process of the European Community is concluded by the time such a meeting takes place. The Administrative Committee is instructed to establish the fulfilment of all the conditions necessary for this;

invited the Member States, which are also members of the European Community, to undertake all that they can to facilitate and accelerate the accession of the European Community to COTIF 1999;

invited the Secretary General to consider in cooperation with the European Commission the legal implications of the coexistence of different statuses for Member States (MS that have fully ratified COTIF 99, MS that have ratified but declared non application of certain Appendices, MS that have not yet ratified). The Secretary General and the Commission may propose appropriate actions to their responsible bodies, with a view to avoiding - to the extent possible - negative consequences for the aims of the Organisation and the European Community;

7.6 noted and approved the report on the activities of the Administrative Committee for the period between the 7th and 8th General Assemblies;

7.7 designated the following members of the Administrative Committee and a deputy member for each of them for the next period of office:

member	deputy member
Germany	France
Belgium	Luxembourg
Croatia	Bosnia-Herzegovina
Spain	Italy
Greece	Slovenia
Ireland	Portugal
Liechtenstein	Monaco
Lithuania	Latvia

Morocco	Tunisia
Norway	Sweden
Poland	Ukraine
Romania	Bulgaria
Syria	Iran
Czech Republic	Slovakia;

elected Spain to the chairmanship of the Administrative Committee for the next period;

fixed the date on which the mandate of the Administrative Committee determined in accordance with Article 6 § 2 (b) of COTIF 1980 terminates, which date coincides with the beginning of the mandate of the members and deputy members of the Administrative Committee designated by the General Assembly, at 1 October 2006. The next period of the Administrative Committee is thus fixed from 1 October 2006 to 30 September 2009;

- 7.8 fixed the maximum amount that the Organisation's expenditure may reach in each budgetary period for the period from 2007 to 2012 as follows:

the annual increase in the amount of expenditure under the Organisation's budget may not exceed the index fixed, based on the average of inflation recorded in the Euro zone countries and Switzerland, it being understood that the theoretical maximum amount of expenditure at the end of the 6 year period shall not exceed SFr. 3'950'000.-;

- 7.9 instructed the Secretary General in accordance with Article 14 § 2 d) of COTIF 1999 to convene the 9th General Assembly in September 2009 in accordance with the first sentence of Article 14 § 3, first alternative, of COTIF 1999;

noted and agreed that in order to fulfil its tasks under Article 14 § 2 c) of COTIF 1999, the provisional agenda to be prepared by the Secretary General in accordance with Article 10 § 1 of its Rules of Procedure will contain the item "Election of the Secretary General for the period from 1 January 2010 to 31 December 2012";

decided that a maximum of three candidates should have the opportunity of presenting their applications personally at the 9th General Assembly;

in accordance with Article 14 § 2 d) of COTIF 1999, if there are more than three applications, instructed the Administrative Committee in a procedure which it deems to be suitable, to establish a short list of three applicants selected, who satisfy the qualification profile, and in accordance with their suitability otherwise, and to make all preparations so that the three best assessed candidates can present themselves to the General Assembly for election;

decided that in addition to the requirements in accordance with COTIF 1999 and the Secretariat's Staff Regulations, the advertisement for the post of Secretary General should contain the stipulation that applications will only be accepted if they are submitted by Member States and concern nationals of a Member State, although these need not necessarily be nationals of the proposing Member State;

- 7.10 noted the information from the Secretary General, who feared that the solution would depend on the solution found by the UN, as well as the intervention by Slovenia and by Serbia, and asked the Secretary General to continue his efforts in order to resolve the problem of the former Yugoslavia's debt.

*

The Secretary 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 7 September 2006.

(Translation)

Committee of Technical Experts

1st session

Berne, 4-6 July 2006

see "Technology"

Dangerous Goods

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

Geneva, 8-12 May 2006

29 Governments and 8 governmental or non-governmental international organisations took part in the work of the 80th session with Mr J. Franco (Portugal) as chairman. After finally adopting the new provisions on the transport of dangerous goods in road tunnels, not without problems and not without opposition, the Working Party looked in particular at the reform of the UNECE and its consequences.

In this context, the Working Party noted that two new professional posts had been allocated to the Transport Division as part of the UNECE reform process, the first to intensify activities in the area of border crossing facilitation and the TIR Convention, and the second to ensure more effective implementation of legal instruments managed by the Transport Division.

It was proposed that the second new post should be used, among other things, to expedite the entry into force of the Protocol of Amendment of 1993 to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR). It might also be helpful to broaden the scope of the European Commission's study of implementation of the ADR and the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) in countries of the European Union to UNECE countries that are not members of the European Union.

As to the Inland Transport Committee's request that its subsidiary bodies should expedite their work on transport security, it was recalled that WP.15 had completed its work on this topic, as evidenced by the entry into force in 2005 of new provisions in RID, ADR and the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) designed to ensure security in the transport of dangerous goods, building on the United Nations Recommendations on the Transport of Dangerous Goods.

It was emphasised that although some large firms had already taken the necessary steps to apply those provisions, many small firms and even some larger ones were struggling to implement them correctly. It would

therefore be premature to press ahead with work in this field, at least until the competent authorities had had the chance to assess feedback and make adjustments, if required.

The chairman mentioned difficulties due to the lack of compatibility between the security provisions for the transport of dangerous goods by land and those for sea and air transport, which were more general in scope.

The Working Party further noted that the European Commission was preparing draft regulations concerning transport security that would include voluntary application of provisions on operator security certification.

The Working Party noted that the Governments of the Netherlands, Austria and Belgium were in favour of drafting a general convention on the international transport of dangerous goods that would amalgamate all the common provisions relating to the different modes of transport.

The Working Party noted that the ADN had five Contracting Parties; only two additional Contracting Parties were therefore required for it to enter into force.

It was noted that the application of the new provisions of ADR was separate from the obligations of EU governments under European Directive 2004/54/EC. Under the new ADR provisions, governments are not obliged to conduct risk analyses in tunnels, or to restrict the movement of vehicles carrying dangerous goods in tunnels. If, however, they decide to impose restrictions on the movement of these vehicles in tunnels based on their own criteria, their only obligation is to establish, by the end of 2009, a system of signs and signals that conforms to the new ADR provisions, whatever the nature of the tunnel. As they carry out risk analyses and improve the safety conditions in the tunnels referred to in the Directive, they may also reassess, on a case-by-case basis, any restrictions they wish to apply to the movement of vehicles carrying dangerous goods through each of these tunnels.

The Working Party was informed of the decisions taken by the Commission regarding the general reform of ECE, including the charting of a new system of governance with the establishment of an Executive Committee overseeing the activities of the sectoral committees (including the Inland Transport Committee) and their subsidiary bodies (including WP.15). In that system, the Executive Committee was responsible for approving the terms of reference of each sectoral committee, while the sectoral committees were

responsible for ensuring the relevance of the terms of reference of their own subsidiary bodies and verifying their conference servicing needs, with a view to rationalising their work before February 2007. Accordingly, the terms of reference of WP.15 must be clearly defined, together with its rules of procedure and work schedule, so that they could be presented and justified to the Inland Transport Committee and the Executive Committee.

The Working Party welcomed the preliminary work carried out by the chairman and proceeded to a first reading of the draft terms of reference and the rules of procedure. The resulting text would be circulated by the secretariat in the form of a new working document for a second reading and adoption at the next session.

The Working Party also stated its view that it would be necessary to provide a clear explanation to the Inland Transport Committee of the synergies between the work conducted by the ECOSOC Committee of Experts (whose secretariat services were provided by UNECE but on a quite different scale and system than those of UNECE), that of WP.15 and that of other European organisations, such as OTIF, CCNR and the European Commission. It was also pointed out that the work of WP.15 was supported by the unofficial work of a large number of parallel groups organised on the initiative of Governments or non-governmental organisations, with no budgetary implications for ECE, which enabled WP.15 to make considerable savings in its working time.

Regarding the draft Rules of Procedure of WP.15, the Working Party was of the view that States not members of ECE that are Contracting Parties to agreements within the Working Party's terms of reference should be entitled to vote on decisions relating to these agreements and should therefore automatically participate in meetings of WP.15 devoted to discussion of these agreements.

The Working Party noted that the ECE Executive Committee had envisaged this possibility in the draft guidelines on the terms of reference of working parties, and the question should be re-examined once a final decision had been taken. Granting non-member States the right to vote might require an amendment to the mandate of ECE, which would then have to be approved by the Economic and Social Council. Language to this effect had been provided for between square brackets.

As to decisions made by voting, a number of delegations took the view that a quorum should be specified for votes on amendments to legal instruments currently in

force, for example the presence of at least one third of the participating Contracting Parties to the instrument in question (i.e., currently, for ADR, at least 14 Contracting Parties at the time of voting).

The chairman also proposed that, as in the RID Committee of Experts, a decision to amend a legal instrument could only be adopted if at least one third of the ex officio participants voted in favour, thereby preventing decisions from being adopted with a large number of abstentions.

Some delegations said that this proposal could have awkward consequences. In very technical fields such as the construction of vehicles and tanks, only a handful of countries are closely interested in the evolution of technology, and it often happens that there are a large number of abstentions when proposals on these topics are put to a vote. Such a rule could therefore hamper the technical development of the regulations.

Comment by the OTIF Secretariat: In the RID Committee of Experts, this procedure has not generally been a problem, given that for very technical or specific questions, proposals are first examined by working groups in order to facilitate the decisions of the RID Committee of Experts.

It was decided to place this rule, as well as that referring to the quorum for voting, between square brackets.

The Working Party noted that according to the current Rules of Procedure of ECE, if a proposal garners an equal number of votes for and against, the decision is postponed to the following session. This rule is not currently followed by WP.15 because in such cases the proposal is rejected. It was agreed that this rule should henceforth be applied. The question did, however, arise as to whether a vote on a proposal should also be postponed to the next session in the cases referred to above (lack of a quorum or less than one third of the Contracting Parties present voting in favour of a proposal). The secretariat was requested to mention these eventualities between square brackets.

As part of the ECE reform process, the Working Party noted the emphasis placed on the policy of mobility for secretariat staff. Conceding the merits of staff mobility and the way in which that policy had been usefully applied in various areas with the legitimate aim of career advancement, it stressed that staff assigned to jobs relating to the transport of dangerous goods should have an appropriate basic scientific education and familiarity with the rules and regulations on the transport of dangerous goods, something which took a long time to

acquire. It also highlighted the importance of such expertise and of the secretariat's institutional memory, qualities which would enhance the image of ECE. Accordingly, it suggested that the policy being advocated should be applied with due discernment and should not result in the unnecessary erosion of the secretariat's competence.

The chairman pointed out that the Working Party invested virtually all its resources in the actual work which it performed and suggested that it should consider investing some resources in efforts to give greater political visibility to its results. The fiftieth anniversary of the conclusion of the ADR agreement in 2007 could be such an occasion.

Lastly, with regard to the publication of documents, the secretary drew the Working Party's attention to the fact that the publication of documents on the Transport Division's website in the original language immediately after they were received was contrary to the rules of UNECE. In fact, documents should only appear once they were available in all the working languages, as was the case for distributing them and sending them by post.

Comment by the OTIF Secretariat: Given that the majority of documents are only available in all the languages two or three weeks before the meetings, it would be considerably difficult to take decisions and as a consequence, they would often be postponed to the next session.

(Translation)

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

29th Session

Geneva, 3 – 11 July 2006

Experts and observers from 28 countries and 43 governmental and non-governmental international organisations took part in the work of this penultimate session of the 2005-2006 biennium for the 15th revision of the UN Model Regulations.

Important decisions taken

The introduction of a vibration test for intermediate bulk containers (IBCs) for liquids only and from 2011 for new IBCs only. However, this decision was contested

by some delegations, who considered it unjustified, inappropriate and not easy to implement.

The introduction for all modes of transport of new provisions for exempted quantities, currently a specific feature of air transport only. However, the different marking of these consignments, as compared with limited quantities, currently in force could be a source of confusion.

Matters pending

The RID/ADR/ADN Joint Meeting considered that the new provisions of the UN Model Regulations on the carriage in bulk of infected animal carcasses were not sufficiently developed.

The Sub-Committee contested the definition of the overpack amended unilaterally by the Joint Meeting to take account of the frequent practice of the land transport modes in Europe.

The Sub-Committee would re-examine the carriage of certain substances in portable tanks authorised in RID/ADR/ADN but not authorised in the UN Model Regulations.

The question of the interpretation of what is meant by "competent authority" for the approval of certain packagings would have to be clarified in the legal context of each international instrument applicable, particularly for consignments in transit before reconsignment. Is the competent authority of the country of origin meant, or is it the competent authorities of all the countries involved in the transport operation?

Avoiding the assignment of specific obligations to the various participants in the transport operation in the UN Model Regulations, as requested by the RID/ADR/ADN Joint Meeting, as some of these obligations contradict those assigned in RID/ADR/ADN, would be the subject of a relevant and specific proposal.

Harmonization with the International Atomic Energy Agency (IAEA) Regulations

The Sub-Committee noted that the IAEA had decided not to publish a 2007 edition of its Regulations, and as a consequence did not recommend to any organisation to implement the changes it had adopted in the past two years. Good news!

Options to facilitate global harmonisation of transport of dangerous goods regulations with the UN Model Regulations – Global Convention (follow-up, see Bulletin 1/2005, pp. 3-5, 3/2005, p. 37/38 and 4/2005, p. 58/59)

Some experts considered that the provisions currently reflected in international legal instruments specific to each mode of transport could be made applicable to all modes of transport through a single legal instrument when these provisions are relevant for all modes, and that this would avoid the deviations which currently complicate multimodal transport operations. This would also simplify the implementation tasks of governments and the related administrative burden.

Nevertheless, several experts reiterated their views that a world convention was not necessarily the best solution and that the need for such a convention had not been demonstrated. Some of them felt that there were not so many variations, and when variations existed they were justified either by modal or regional considerations. Reflecting such variations in a world convention would require a complex system of cooperation with the international organisations concerned. In addition, the existing international legal instruments would still be needed for requirements which concern one mode of transport only.

Several experts supported the idea of reviewing the text of the Model Regulations to identify inconsistencies in language and format. Others recalled that since many provisions of the Model Regulations are integrated without any change in certain instruments such as the IMDG Code, RID, ADR, ADN and national regulations of many countries, editorial reviews imply subsequent changes in all these instruments and are not necessarily welcome by governments and international organisations such as IMO, which has repeatedly expressed the wish to avoid frequent editorial changes that are not justified for safety reasons.

A member of the secretariat drew attention to the costs of these changes, since an editorial review of the English text would imply corresponding reviews of the other versions in the five other UN official languages. He recalled that, in the process of reformatting the UN Recommendations into Model Regulations and in the parallel adaptation of the IMDG Code, ADR, RID and ADN, all the provisions had been reviewed and he doubted that there would remain many inconsistencies in the language. He recalled also that since the Sub-Committee is an expert body, expert work is normally carried out by the Sub-Committee itself, and not by the secretariat or experts paid by the secretariat. If the work

to be done were mainly editorial, it could be done by the secretariat within the available resources and in accordance with the applicable administrative rules. He invited all delegations to bring to the secretariat's attention any inconsistency in the existing text.

Some experts felt that essential requirements concerning classification should remain in the Model Regulations and should not be transferred to the Manual of Tests and Criteria. If the Sub-Committee decided that the classification criteria should be made mandatory through references to other texts, referring to the GHS might be a more appropriate solution than amending the Manual of Tests and Criteria. Some experts mentioned also that referring to the Manual of Tests and Criteria might cause legal problems in their country if the Manual contained essential requirements to be known by all users rather than very technical provisions of interest to specialised bodies only, since they would then have to translate the Manual and include it in their legislation.

It was recalled that the Economic and Social Council coordinates the work of its specialised agencies and regional commissions. The UN Recommendations are addressed to governments, specialised agencies and regional commissions through its resolutions, but the way to amend legal texts remains the prerogative of Member States for national regulations and of Contracting Parties to conventions for international legal instruments. The public accessibility of documents and legal texts depends also on the policy decided by the governing body of each organisation.

The representative of IAEA said that certain governments use the IAEA Regulations directly and some of them have expressed reluctance to changing the IAEA format. The issue had been considered, but for the time-being the IAEA had decided to keep the existing format - a decision which could be revisited in the future when the new UN format for Class 7 provisions is discussed by IAEA. The representative of ICAO recalled that closer harmonisation with the UN Model Regulations format would also be discussed by her organisation, e.g. numbering of special provisions, etc.

The Sub-Committee agreed that it would be useful to indicate where changes have been made when revised editions are published. The secretariat will study the practices followed by different publishers and will consider how this can most easily be done in the most cost effective way. The secretariat also said that this might not be possible for all linguistic versions and that this will entail delays for issuing the publication. It was also recalled that the list of changes was issued in all

official languages whenever a new publication was published.

Comment by the OTIF Secretariat: In RID, these amendments are indicated, except provisionally in the French version. With regard to the distribution of documents on the UN/ECE Transport Division's website as soon as they are received and without waiting for them to be distributed in the other languages, the secretariat pointed out that this way of working was contrary to the UN rules... If this were not done, the majority of documents would only be accessible 2 to 3 weeks before the meeting. With regard to the publication of the UN Model Regulations in languages other than English and French, this is usually done by means of a late edition ...

The secretariat was invited to consult the Universal Postal Union about the existing provisions regarding the consignment of dangerous goods and to inform the Sub-Committee accordingly.

The Sub-Committee agreed that when a transitional period is deemed necessary for the effective implementation of new or revised provisions, the recommended date of application should be mentioned in the Model Regulations.

(Translation)

RID/ADR/ADN Joint Meeting

Geneva, 11 – 15 September 2006

Experts from 24 Governments (including the USA) and 18 international governmental (including the European Commission and OSJD) and non-governmental (including UIC, UIP, CEN and IRU) organisations took part in the work of this session chaired by Mr C. Pfauvadel (France).

Working group on tanks

The Joint Meeting rejected the working group's proposal to include a general transitional provision for tanks designed and constructed in accordance with the standards referred to that applied at the time the tanks were built and which have been amended, revised or no longer listed, allowing these tanks to continue to be used. The lack of any time limit on the validity of the transitional measure and the failure to cite the relevant standards or parts of standards also gave rise to objections. Generally, two kinds of transitional measures were found in RID/ADR/ADN: those of

unlimited duration, relating in particular to design and construction, and those of limited duration, for example, those valid until the next periodic test, relating to equipment and marking.

Working group on the revision of Chapter 6.2 – gas receptacles

The Joint Meeting noted that the informal working group had met twice since the previous session, to continue its work with a view to incorporating the principles of the European Transportable Pressure Equipment Directive (TPED) into RID and ADR, as requested by the Joint Meeting in September 2005.

Some delegations said that they had only expected the group to introduce certain elements of the TPED Directive into RID and ADR. Accordingly, they were surprised to find that such issues as market surveillance and the marking of mutual recognition, in the context of usage, had been included in the proposal.

Other delegations pointed out that the issues of construction of receptacles and filling and testing came under both transport and use, so the principles of mutual recognition and market surveillance contained in the TPED Directive could be usefully incorporated into the legal framework of RID and ADR, with a view to their more general application in all the RID and ADR Contracting States.

It was pointed out that RID and ADR already made provision for the mutual recognition of approvals for international carriage issued by any contracting party, without the need to apply the conditions set out in the TPED Directive. The conditions set out appeared to make the mutual recognition of approvals and certificates issued by the contracting parties subject to conditions which could compromise the principles of mutual recognition currently applied in transport areas, such as when a country was unable to attend meetings regularly.

On the issue of the procedure, the OTIF and ECE secretariats said that the document had been submitted too late for them to be able to prepare an adequate response. They would convey their views to the informal working group in due course.

In addition, the informal working group was requested to provide more information on the intended modus operandi of the two working groups envisaged in the document (terms of reference, working languages, number of delegates, frequency and length of meetings), so that the secretariats could assess the budgetary

implications. It was pointed out, however, that the establishment of new subsidiary bodies within ECE was subject to very strict rules and that, in principle, resources for new activities had to be made available by stopping other activities. As the secretariats had not been informed of these proposals prior to the session, they would send their comments in writing.

Several delegations pointed out that the creation of such groups would also have major budgetary implications for their Governments, which would be responsible for funding the participation of delegates.

With regard to the application of the requirements to other tanks in Chapters 6.7 and 6.8, it was recalled that the approval of the tanks in Chapter 6.7 could take place under a different legal framework than that of RID and ADR (IMDG Code).

Report from the informal working group on dangerous wastes

Based on the working group's report, the Joint Meeting adopted the following principles for the further work:

- (a) a simplified classification system for dangerous wastes should be introduced into RID/ADR/ADN; this system would not be a substitute for the current requirements, but it could be applied when application of the current requirements caused too many problems. It would be advisable to indicate clearly the situations in which this simplified system could be applied;
- (b) a quantity limit above which the system could not be applied was conceivable, and this question could be discussed by the group;
- (c) the group would discuss issues relating to default assignment to a packing group;
- (d) the group could examine the possibility of using the European waste descriptions to replace the technical name as an addition to the proper shipping name.

The MITRA Project (Monitoring and Intervention for the Transportation of Dangerous Goods)

The Joint Meeting noted a telematics application project for the transport of dangerous goods which was being financed by the European Commission. The project concerned experiments on an application prototype for tracking by telematics and the remote locating of dangerous goods transport operations.

As several identical projects were underway in some European Union countries, the Joint Meeting wanted these projects to be coordinated in order at least to ensure that the different systems implemented were interoperable.

It would also be useful to ensure that there was coordination between the undertakings interested in the development of telematics applications such as these, the administrations responsible for the regulations, the emergency services and the organisations representing consignors and carriers, in order to see how the telematics and geopositioning centres could be developed to respond to the needs of regulation, emergency intervention and logistics in an international transport context.

Carriage of environmentally hazardous goods in a transport chain including maritime or air carriage

Noting that, under the provisions of RID and ADR 2007, substances classified as environmentally hazardous under RID and ADR but not identified as such in the IMDG Code or under the ICAO Technical Instructions could no longer be exempted from classification as environmentally hazardous, CEFIC proposed the preparation of a multilateral agreement which would enable the industry to benefit from previous derogations, until such time as the new criteria of the Globally Harmonized System of Classification and Labelling of Chemicals came into effect in all modal transport regulations. CEFIC also pointed out that the lack of harmonisation would cause major practical problems for goods arriving in or leaving Europe by sea or air.

A member of the Secretariat explained that special provisions 909 of the IMDG Code and A97 of the ICAO Technical Instructions meant that substances not included in classes 1-8 but considered environmentally hazardous under RID and ADR could be classified under UN Nos. 3077 or 3082. Accordingly, no practical problem was caused by the application of the requirements for the international multimodal transport of such goods.

Several delegations indicated that they were not in favour of reversing a decision taken hardly a year ago, particularly by amending a text that had not yet entered into force.

It was agreed that the additional derogations requested by the industry for environmentally hazardous substances should be granted only through multilateral agreements. The representative of the United Kingdom

said that he would be prepared to draft such an agreement.

Acceptability of labels that are not wholly standard

The proposal to add a note to RID/ADR was not accepted as such. The Joint Meeting preferred to place a remark in the report stipulating that “modifications related to differences in the IMDG Code and the ICAO Technical Instructions which present minor variations compared with those prescribed in RID/ADR should not incur sanctions by the supervisory authorities.”

The Joint Meeting also agreed to consider the minor differences or deviations at a later date, on the basis of examples. It also noted that the problem mainly involved class 8 and 9 labels.

In the end, the Joint Meeting invited the supervisory authorities to show flexibility in general, and especially with regard to the two labels in question.

Languages to be used in the transport document

The Joint Meeting noted the suggestion by UIC to amend paragraph 5.4.1.4.1 of ADR to remove reference to the possibility of using languages other than English, French or German when so envisaged by international tariffs. The justification for the suggestion was harmonisation with RID and the need to prevent transport documents being drawn up in languages other than those three when there was no agreement to that effect between the competent authorities of the countries concerned.

It was judged preferable to ask WP.15 to check whether the reference to international tariffs was still necessary.

Carriage of liquid or solid substances in pressure receptacles

The Joint Meeting adopted a compromise between the specific requirements of RID/ADR and the more recent requirements of the UN Model Regulations. The Secretariat was asked to supplement the proposed transitional measure for the service life of receptacles. The representative of Germany was invited to submit an informal document to the Sub-Committee of Experts so that it could consider the provisions adopted for RID/ADR in the context of harmonisation.

Reference to transitional measures

Several delegations supported the idea of making the transitional measures more user-friendly. It was noted,

however, that the measures had all been listed in Chapter 1.6 precisely for ease of use and that it might be difficult to place cross-references in the requirements, in the form of notes in the text, to the corresponding transitional measures, as some measures were of long duration while others lasted less than six months.

Several delegations believed that it would be useful to have a summary table listing the long-term arrangements applicable to transport equipment, following the date of manufacture, and examples were cited of transitional provisions from ADN for the construction of vessels, and from ADR for the construction of vehicles.

The Joint Meeting decided that in future, the transitional provisions should show in detail the provisions applicable to the types of transport that benefit from these measures.

Transport of fibres of animal or vegetable origin, oily rags and textile wastes

The Joint Meeting was not receptive to the proposal to delete the UN Nos. in question from Table A of RID/ADR Chapter 3.2, which included only the reference “exempted/not subject to RID/ADR” for such substances, which were covered by special provision 117 of the UN Model Regulations, i.e. only applicable to carriage by sea.

Certain delegations considered that such a measure would not be user-friendly in multimodal (sea/land) transport, as the information in question was needed.

Other delegations considered that it would be preferable not to exempt these UN Nos. from the provisions of RID/ADR or to request the UN Sub-Committee of Experts to delete the UN Nos. in question, with the aim of ensuring multimodal harmonisation.

The Secretariat pointed out that the UN Nos. in question, with the exception of UN No. 3360, had previously been covered by RID/ADR, but that following the revision of classes 4.1-4.3 they had been deleted, as the substances did not meet the new criteria for those classes, partly because the test criteria and methods introduced at the time of the revision were not appropriate for classifying substances such as straw or rags, and partly because, although they had previously been classified on the basis of experience, they did not seem to cause any problems in land transport. The UN Nos. had been kept in the UN Model Regulations at the request of the International Maritime Organisation

because of the problems this type of cargo had caused in maritime transport.

It had also been noted that the problem related above all to UN No. 1856 (rags, oily) when such substances contained flammable liquids of Class 3.

In the end the Joint Meeting agreed that Germany would draw up a proposal for a special provision stipulating that oily rags containing flammable liquids of Class 3 should be regulated according to their properties. Before referring the matter to the UN Sub-Committee of Experts, Germany would contact the representative of the United States of America to find out how this issue was dealt with in the USA, so as to find a common solution to enable harmonisation.

(Translation)

Exchange of experiences for recognised experts

Leipzig, 29/30 August 2006

33 Experts from 10 Member States took part in the second meeting of this RID Committee of Experts working group, whose aim is to ensure a uniform procedure of application for the performance of tests, inspections and checks on the tanks of tank-wagons. Testing and inspection requirements result partly from RID itself, and from standards and the competent authority's interpretations for those sets of circumstances that are not covered in RID or in the standards.

The need for standardisation should then be determined for the standardisation bodies, or else there should be a proposal for clarification in RID for the attention of the RID Committee of Experts. To do this, the test and inspection procedures applied nationally should be notified to the Secretariat of OTIF in order that other Member States could take note of them. In addition, the Member States should notify the Secretariat of any problems that have been noted in order to ensure that other Member States could be informed.

The working group agreed that these exchanges of experiences should be held at about the same time as the RID Committee of Experts so that the results obtained could be brought to the attention of the Committee of Experts. As a basic principle, the group also considered the exchange of experiences necessary in order to achieve harmonisation of the testing and inspection procedures. However, it doubted the need to prescribe

the obligatory attendance of all experts. On the other hand, at least a representative of the competent authority should be present, and he could then disseminate information further in his country. In addition though, as many experts as possible should attend, as they had the requisite practical experience. Participants were also requested to send the Secretariat documents on the tests and inspections, where available in a working language, so that they could be brought to the attention of other States.

(Translation)

Technology

National Vehicle Registers (NVR) and Registers of Rolling Stock (RRS)

OTIF participation
in the ERA working party

Lille, 31 May and 28 June 2006

The OTIF Secretariat has actively participated in the work of the Working Party (WP) set up by the European Railway Agency (ERA) to draft the specifications of the National Vehicle Registers to be established in the EU Member States as required by Article 14 of EU Directives 96/48/EC and 2001/16/EC, both amended by Directive 2004/50.

ERA was given the mandate by EU Regulation 881/2004 to draw up and to recommend to the Commission a standard format for the National Vehicle Register (NVR) including: content, data format, functional and technical architecture, operating mode, rules for data input and consultation.

Besides staff members of ERA, the WP was made up of representatives from the National Safety Authorities of EU Member States, the European Commission and relevant organisations (CER, UIP, EIM, ERFA, UIRR, UITP, UNIFE and OTIF).

The objectives of OTIF

The OTIF Secretariat took care of the interests of the non-EU OTIF Member States and the future creation of the OTIF register of approved vehicles, as required by Article 13 of Appendix G to COTIF 1999. The objective of the OTIF Secretariat is to ensure coherency, compatibility and transparency between the NVRs and the OTIF register as the suppliers and users of the

registers, be they authorities, railway undertakings and keepers, are not just situated exclusively within the EU, but everywhere in the railway system where the vehicles may travel, i.e. it should be possible for a user faced with a railway vehicle to obtain information – by interrogating (one of) the registers - on its state of approval, interoperability capability and technical data, irrespective of where the vehicle has been approved or the where keeper is situated.

Moreover, duplication in registering vehicles should be avoided. According to the present regulations, a vehicle approved and registered in the NVR of an EU Member State (applying COTIF Appendices F and G) must also be registered in the OTIF register, and a vehicle approved in a non-EU OTIF Member State and registered in the OTIF register must, according to EU regulations - also when entering the EU - be registered by the first EU Member State where it enters. The WP considered the registering of vehicles from 3rd countries to be particularly difficult, owing to the time factor, data capture and the possible lack of some data.

However, if the specifications of the registers (content, data format, functional and technical architecture, operating mode, rules for data input and consultation) are equivalent, or at least compatible, the registers should be capable of working together and the objectives of the OTIF Secretariat would thus be achieved.

Final report from the Working Party concerning NVRs

The WP defines the *main use* of the NVR as follows:

- Record of authorisation and of the identification number allocated to vehicles,
- Seeking Europe-wide, brief information relating to a particular vehicle,
- Consequent legal aspects, such as obligations and legal information,
- Information for inspections relating mainly to safety and maintenance,
- Enable contact with the owner and keeper,
- Check safety requirements before issuing Safety Certificate,
- Monitor a particular vehicle.

For this use, the final report defines the *data elements* and *formats*, *access rights* and the possible *local and global architecture*. *Queries* can be made for a specific vehicle by inputting its full 12 digit vehicle number; "open" or grouped queries, by means of which the approval status, number and types of vehicles belonging to a specific keeper can be discovered should, for reasons of competition, not be allowed, except for the keeper himself or his fleet manager.

The scope of the WP was originally only vehicles covered by the interoperability directives, i.e. new and refurbished vehicles requiring a "placing into service" approval. But if existing vehicles were not included in the NVR, users might face the following problems, among others:

- Dealing with two registers would not be practical,
- Uncertainty concerning the uniqueness of the vehicle identification number,
- For investigation purposes, existing vehicles would be missing.

Therefore, following the EU Article 21 Committee's endorsement in March 2006 to extend the scope of the NVR to include *existing vehicles*, the WP agreed on the details of such an extension, including processes, transition period, etc. This was very much to the relief of the OTIF Secretariat, as COTIF 1999 requires that the OTIF register must contain all approved vehicles, including existing ones.

With regard to *architecture*, the final report recommends that the EU should implement a *decentralized* solution based on electronic NVRs kept and run in each Member State. The concept is to implement a search engine on the distributed data, using a common software application (a *switch* called the Virtual Vehicle Register), which allows users to retrieve data from all the local registers in the Member States. The NVR data stored at national level will be accessible by using a web-based application (with its own web address). For the few EU Member States that do not already have an electronic national register in place, it is planned to develop a standard NVR that can be offered/sold to them.

A good and far-sighted solution, compatible with COTIF 1999

The OTIF Secretariat considers that in order to fulfil the requirements of Article 13 of Appendix G to COTIF 1999, the recommended solution for the EU NVRs

could easily be reproduced in non-EU OTIF Member States and the search engine could be expanded to form a joint EU-OTIF search engine, by means of which users might retrieve data concerning all vehicles operating, and not just those approved and registered in the EU. If, for practical or economic reasons, some non-EU OTIF Member States might not wish to run a local NVR themselves, they should be given the possibility of buying the service hosting their vehicle data in a central register from the OTIF Secretariat; but the obligation to keep the register up to date would still rest with the approving authorities.

Registers of Rolling Stock (RRS)

The interoperability directives mentioned above require two separate registers to be set up by each Member State: A NVR according to Article 14 containing information concerning the approval (placing into service) of a vehicle, and a RRS according to Article 24 containing information concerning the main features of each subsystem or part subsystem involved (e.g. the basic parameters, including the technical parameters).

However, it was not the task of the WP to determine the specifications of the RRS. The OTIF Secretariat proposed that the two registers could be amalgamated into one, as is the case in some countries today, but as the Directive specifies two separate registers, the WP could not support this. However, it proposed to the European Commission that the WP should be assigned the task of producing the specifications for the RRSs, thus ensuring coherence. The European Commission has accepted this and the OTIF Secretariat will therefore continue to take part in the WP that will be drafting the specifications for the RRS.

The WP final report is available

The WP completed its work by the end of June 2006 and the final report was sent to the European Commission on 28 July 2006 as an appendix to ERA's recommendation. The report (English only) is available on the OTIF website¹ (and the ERA website²).

The OTIF Secretariat is very satisfied with the outcome of the Working Party so far and it considers that by carrying these specifications over into the specifications for the OTIF register and by establishing a similar query architecture as proposed in the final report, the OTIF

Secretariat's objectives of full coherence and of systems that work together which, for the users, are one and the same thing, can be achieved.

Meeting of Experts of OSJD Commission V for Infrastructure and Rolling Stock.

Theme No. 1:

"Rolling stock clearance in interoperable international railway transport"

Warsaw, 20/22 June 2006

In accordance with the joint OTIF-OSJD 2006 plan of activities, the Secretariat was invited to this meeting and participated actively, contributing its technical knowledge.

The meeting of experts, attended by representatives from railways on both sides of the border between the 1435 mm and 1520 mm gauge networks, had to discuss, finalise and adopt a proposal submitted by Russian Railways on behalf of the joint OSJD/UIC working group concerning a new leaflet 502-3: "Transport of special consignments in international traffic between railways with 1435 mm and 1520 mm track gauge".

Before the meeting, the Secretariat participated in a meeting of the joint working group to discuss the Russian draft and to prepare its presentation to Committee V.

The proposal defines special consignments, the organisational regulations, how to deal with transport requests from the consignor, technical checks to be carried out concerning the route and goods, acceptance of the transport, consignment note, loading requirements, labelling, transport obstacles and impediments, correction of load and reloading, liability, delivery dates, etc. It includes forms and labels to be used and defines the organisation responsible for the coordination and organisation of the through transport operation. The rules are in some cases different, depending on whether the direction is east-west or west-east.

In general, the proposal was very well received by the experts of Committee V and was endorsed in principle by the OSJD railway representatives. As always, the differences in languages is a major problem in relation to documents and labels, in this case highlighted by the different alphabets; for example, it cannot always be expected that Cyrillic letters will be understood in western Europe.

1 www.otif.org/html/e/tech_admin_registre_mr2003.php

2 www.era.europa.eu/public/Interoperability/documents/RRS/IU-REG-060727-%20Final%20Report.pdf

Some changes were proposed and some open points were referred back to the working group. The Secretariat will continue to follow this work as it may in future be relevant to the adoption at governmental level of OTIF regulations on this subject.

Committee of Technical Experts

1st session

Berne, 4-6 July 2006

Only 4 days after the entry into force of COTIF 1999, the Committee of Technical Experts (CTE) established by the new COTIF had its inaugural session. Not only members of the Committee as defined by the Convention were invited, but also observers from the OTIF Member States that have not (yet) ratified, Member States that have made a declaration according to Article 42 not to apply Appendices F (APTU) and G (ATMF) (which together form the technical approval system), as well as representatives from relevant organisations such as the EU (the Commission/DG TREN), ERA, UIC, CER, UIP, OSJD, CIT, ERFA, UNIFE, UITP, UIRR, CEN and IVA.

When the session opened, 33 of the 42 OTIF Member States had deposited their instrument of ratification or approval and at the request of the European Commission, 8 of these Member States (D, DK, E, F, FIN, L, NL and GB) had shortly before the session handed in a declaration in accordance with Article 42 of COTIF declaring that they would not apply Appendices F and G.

Of the 16 Member States represented at the session, only 8 Member States were entitled to vote on all the matters on the agenda. As a result, the quorum, which was 17 Member States, was not achieved. The Member States that had made a declaration in accordance with Article 42 of COTIF 1999 would not be entitled to vote when dealing with the items relating to Appendices F and G of COTIF 1999, as these Member States would not be members of the CTE when it deliberated and took decisions about modifications to Appendices F and G (Art. 16 § 1 of COTIF 1999). But the meeting agreed that this limitation did not concern formal matters, such as the Rules of Procedure, election of the Chairman or the date of the next session of the CTE and the work programme.

The representative of Switzerland was unanimously elected to chair the session.

Provisional Rules of Procedure

The meeting agreed on provisional Rules of Procedure to be used until the Committee of Technical Experts could formally adopt them with the necessary quorum.

Coordination between the EU Member States

Just before the session started, the EU Member States, in a separate meeting, had adopted a document giving the opinion of the Community on all the items on the agenda. After the session ended, this document was given to the Secretariat and annexed to the minutes. On several occasions during the session, the representative of the European Commission and the representative of Finland, which currently holds the EU Presidency, asked that the session be interrupted in order that the EU Member States could discuss and agree their coordinated opinion, which was then presented in plenary by the representative of the European Commission.

As there was no quorum, and as the representative of the European Commission informed the meeting that in order to obtain a common position within the EU on documents submitted for adoption in the Committee of Technical Experts, it would need substantially more time than the 4 week period that had been available to study and discuss the documents for this session with the EU Member States, all the other documents and suggestions concerning the "technical" issues of the agenda, such as specifications to be included in the APTU Annexes, problems concerning maintenance, etc. were postponed until the next session of the Committee of Technical Experts.

Working groups reporting to the Committee of Technical Experts

Two working groups, WG STRAT (strategy) and WG TECH (technical), were set up to prepare the next CTE meeting. Both these working groups will report directly to the Committee of Technical Experts and will work in English only

The Committee of Technical Experts assigned the groups the following tasks:

WG STRAT:

- to identify, define and analyse the interfaces between OTIF and the EU (as far as the APTU and ATMF Appendices are concerned) and elaborate collaborative approaches to resolve problems with regard to these disparities between

COTIF 1999 and its Appendices and EU legislation;

- proposals for a CTE work programme and long-term objectives for the Committee of Technical Experts;
- questionnaire to be addressed to the non EU Member States of OTIF in order to identify their needs and expectations;
- to develop an overview of the content of all APTU Annexes, taking account of rail system architecture, in order to ensure coherence and consistency;
- definition and role of the keeper;
- transitional provisions and questions of interpretation.

WG TECH:

- review suggestions and proposals that are to be included as APTU technical annexes or other documents that are to be adopted by the Committee of Technical Experts;
- APTU Annexes concerning wagons, maintenance aspects, traction units, coaches, infrastructure;
- vehicle marking (Annex P, management of the numbering system, etc.);
- setting up the rolling stock register and interfaces with EU registers;
- transitional provisions for technical subjects.

Revision of COTIF Appendices F and G

The chairman (Mr Schweinsberg, Germany) of the small working group set up in the meeting on 7 October 2004 was given the task of drafting the necessary proposals to amend Appendices F and G in order to make them compatible with the existing EU regulations. He gave a short presentation on the proposals that finally resulted. The members of the small working group are France, Germany, Greece, Lithuania, Slovakia, Switzerland, UIC, UIP and the EU Commission.

The chairman of the small working group concluded that the objective of the group had been fully achieved and that the legal problems that arose between the two systems in question could be resolved by

adopting the proposals. The presentation did not elicit any immediate comments, but the representative of the EU Commission informed the meeting that the Commission and the EU Member States would need 8 months to come to a position before the Revision Committee could meet for the formal adoption. The earliest the amendments can enter into force is 12 months after they have been notified to the Member States.

Vehicle keeper marking (VKM)

With regard to the coding for vehicle keeper marking, the representative of the European Commission said that the Commission had instructed the European Railway Agency (ERA) to set up and administrate a register of vehicle keepers within the EU. As freight wagons circulate not only within the EU but also in the other OTIF Member States and beyond, the codes must be unique everywhere. The meeting agreed that the Secretariat and ERA should try as soon as possible to come to an agreement on a VKM register and its administration, including common rules for application and the assignment of codes.

Legal foundation for existing vehicles and new vehicles built according to RIV/RIV

The conclusion of an important and fundamental discussion on whether vehicles marked RIV or RIC and approved and maintained according to the RIV/RIC technical specifications can legally continue to circulate between the States that have ratified COTIF 1999, and whether new vehicles can be approved according to these rules or their equivalent replacement¹, was that a solution could be found in Article 11 of APTU. This Article says that with the entry into force of the Annexes to APTU (the technical specifications) these Annexes will take precedence over the "Technical Unity", RIV and RIC.

The Committee of Technical Experts came unanimously to the conclusion "that Article 11 § 2 of APTU should/must be interpreted to the effect that for the approval of rolling stock in the period between the entry into force of COTIF and the entry into force of technical provisions in the Annexes to APTU, the technical provisions contained in the version of the RIV, RIC and the UIC leaflets applicable at the time of entry into force of COTIF 1999 will continue to be recognised".

¹ As of July 2006, the technical specifications of RIV are substituted by the General Contract of Use (GCU) agreed between UIC, UIP and ERFA.

Therefore, approvals of existing RIV/RIC vehicles and approvals of new or refurbished vehicles on the basis of these rules will be mutually recognised by the OTIF Member States that apply Appendices F and G.

A general opinion was also that the necessary transitional provisions for existing vehicles must be included in the APTU Annexes in order to apply "grandfather rights".

For States that have not ratified COTIF 1999 and States that have made a declaration according to Article 42 of COTIF not to apply these Appendices, Article 11 of APTU and this interpretation of course entail no similar obligations.

Collaborative workspace

The representative of UIP presented the idea of creating a "collaborative workspace", which would be an electronic information platform allowing all actors in the rail sector to access rapidly all the information they needed without having to carry out lengthy research, particularly on numerous websites. This would very much facilitate the work of keeping the level of knowledge up-to-date, thus contributing to safety.

Next meeting

It was agreed that the next meeting of the Committee of Technical Experts would be held in late April 2007.

Documentation

All documents for the session, including the agenda and the minutes with the annexes, can be found on the OTIF website under "technology/approval"².

Case Law

Cour d'Appel d'Aix-en-Provence

Ruling of 19 October 2005

With regard to the nature of the liability incurred by the carrier, in view of the victim's not having a ticket, it cannot be of a contractual¹ nature. Liability can only be binding on a quasi-tortious basis. For the carrier, the false conduct of the passenger trying to board a moving train is foreseeable, and must and can be prevented.

Cf. Article 1384, para. 1 of the French Civil Code

Summary:

While trying to board a moving train, the 17 year old, ticketless victim was knocked off balance and fell under the train, injuring himself seriously. As the victim had no ticket, SNCF's liability must be sought on a quasi-tortious basis. By application of Article 1384, para. 1 of the Civil Code, SNCF is presumed to be liable for the damage caused by the fact of the train it has in its charge. SNCF can only exonerate itself completely by proving that the fault, demonstrating the characteristics of *force majeure*, was entirely the victim's, or by proving that the damage was caused by an unforeseeable and unavoidable fact. In the case in point, SNCF does not furnish this proof. The conduct of a passenger who, upon arriving late at a platform, notes that the train he wishes to take is getting ready to leave and tries to board this train even though it is already moving, is not at all unforeseeable for SNCF, which is confronted with this situation almost on a daily basis. In addition, this conduct is not unavoidable for SNCF, which has up to date methods of preventing this type of accident (automatic platform access gate, blocking access from the platforms to the tracks by means of barriers allowing access to the trains, etc.). Consequently, the victim's conduct, while at fault in that it was particularly rash and imprudent, does not have the character of *force majeure*. Thus SNCF can only be partly exonerated to the extent of 50 per cent.

(From: JurisData n° 2005-288012, LexisNexis SA)
(Translation)

² www.otif.org/html/e/tech_adm_CExp_tech_doc2006.php

¹ The provisions of the CIV UR concerning liability in case of death of, or personal injury to, passengers are also only applicable to contractual carriage (see Art. 1 § 1 of CIV).

Book Reviews

Filthaut, Werner, *Liability Act (Haftpflichtgesetz)*, Beck's Commentary, 7th newly revised edition, Verlag C.H. Beck, Munich 2006, XXV, 662 pages. ISBN 3 406 54903 9

The provisions of the second Act amending the provisions of damage compensation law and the provisions of the Act modernising the law of obligations, which entered into force shortly before publication of the 6th edition of this Commentary, and which fundamentally reform liability law, have in the meantime entered into legal practice in Germany and have been the subject of numerous discussions in the literature. The 7th edition of the Commentary assesses these new features using case law and the literature as at 1 March 2006.

The Commentary also takes into account the amendments to the German General Railways Act, the statute of limitation and the railways' general terms and conditions, as well as impending amendments to the Rail Transport Act, international railway law and the general conditions of electricity supply.

A list of abbreviations and of the literature and an extensive subject index are included, as is traditional with this publisher, and these make it easier to use the volume.

This standard Commentary by the well-known author which, as always, has been edited very carefully, allows lawyers in insurance and other legal services, judges, legal practitioners and other interested parties to find solutions to legal questions concerning liability without too much difficulty, and can therefore be highly recommended.

(Translation)

Kunz, Wolfgang (editor), *Eisenbahnrecht* (Railway Law). Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements, Nomos Publishing, Baden-Baden, ISBN 3-7890-3536-X, 20th supplement, status as at 1 May 2006.

The base volume appeared in 1994 (see Bulletin 1/1995). The ongoing provision of supplements means that in addition to the necessary updating, the texts and commentaries are made more complete step by step (most recently, see Bulletin 1/2006, p. 16). In addition to the editor, around 20 other authors have worked in partnership. The base volume has 2,625 pages.

The collection is in four volumes. The first two volumes cover the law of the Federal Republic of Germany and the third covers the law applicable in the Federal Lander and European law; the fourth volume covers the categories of "international law", "recommendations/requirements/tariffs" and "other law". Each volume contains an alphabetical summary of the laws, regulations and other provisions and an index covering the whole collection.

The most extensive part of the 20th supplement relates to the section on "German law" and the second most extensive relates to the section on "European law". With regard to the first section, the explanations on the law setting up Deutsche Bahn AG have been updated, taking into account newly issued case law. Among other things, this concerns non-discriminatory access to the network. The rest concerns the reproduction of new or amended provisions. The extent of the amendments shows that railway reform is still underway and that it has effects in the most diverse areas.

Against the background of the negotiations between the railway associations (CIT-RNE-UIC-CER-EIM-ERFA) on the European General Terms and Conditions of use of the Railway Infrastructure, the "railway operators' terms and conditions of use of the rail network", the general part of which forms a supplement to be inserted in the section on "recommendations/requirements/tariffs", are currently of interest. These are general conditions recommended by the Association of German Transport Undertakings (VDV) to railway operators for use on a voluntary basis for the entire business relationship with the rail transport undertakings that are entitled to have access.

In view of the anticipated development of rail transport between Europe and Asia, particularly to and from China, it is no surprise that the agreement concluded in 2001 between Germany and China on co-operation in the rail sector was made more precise and extended last year. The current version of the agreement can be found in this supplement.

"Railway Law" forms a comprehensive collection of the requirements relating to the ever increasing number of legal relationships in the rail sector. As such, it is a practical aid to the work of railway specialists. The well thought-out separation into different headings helps the user find the information he requires quickly and reliably so that despite the rapid developments and the flood of information, he can easily retain an overview.

(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° 3120/2006, p. 160/161 – Vente « Franco ». Les implications (M. Tilche)

Idem, n° 3135/2006, p. 412 – Lettre de voiture électronique. L'e-CMR

Idem, n° 3138/2006, p. 457-459 – Interprétation et application [de la CMR] (W. Czapski)

Idem, n° 3140/2006, p. 494/495 – Force majeure. Pour une spécificité « transport » (M. Tilche)

Der Gefahrgut-Beauftragte, Hamburg, Nr. 8/2006, S. 5-12 und 9/2006, S. 7-13 – Vorschriften 2007. Wichtigste Änderungen 2007 zum RID/ADR – Teil 1 und 2 (J. Conrad, E. Kessler, V. Krampe, U. Mann, H.-J. Niegel, T. Pindris, E. Sigrüst)

Transidit, Recueil de jurisprudence et d'information en droit de transports, Rouen, N° 49/2006, p. 1-4 – Tableau comparatif des régimes de responsabilité des transporteurs maritimes dans les Règles de La Haye-Visby et Hambourg (F. Létacq)

Transportrecht, Hamburg, Nr. 9/2006, S.336-339 – Die Aktivlegitimation im Recht des internationalen Eisenbahngütertransports (I. Koller)

Verkehr, Int. Wochenzeitschrift für Logistik und Transport, Wien, Nr. 33/2006, S. 4/6 – Unkenntnis vermeiden (COTIF 1999)