



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

4/2006

114th Year • October - December

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4/2006

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Bulletin of International Carriage by Rail

Quarterly publication of the OTIF

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Official Communications from the Secretariat of OTIF

Lists of lines 1999

CIV list of maritime and inland waterway services

(published on 1 July 2006)

Secretary General circular no 3, 1 December 2006

Chapter “Germany”

Following the inclusion of the ferry lines Dagebüll–Amrum (31.03-28.10) and Dagebüll–Amrum via Wyk auf Föhr operated by the “Wyker Dampschiffahrts-Reederei Föhr-Amrum GmbH” (DE – 25938 Nordseebad Wyk auf Föhr), the chapter has been re-issued.

See COTIF 1999, Article 24 §§ 1, 3-5.

CIM list of maritime and inland waterway services

(published on 1 July 2006)

Secretary General circular no 3, 1 November 2006

Chapter “Germany”

Following the inclusion of the ferry line Sassnitz-Baltijsk operated by the “DFDS A/S” (Sundkrogsgrøde 11, DK – 2100 Copenhagen Ø), the chapter has been re-issued. The entry of this line allows transport between Germany and Russia on the basis of the CIM Uniform Rules (Article 1 § 2 CIM).

See COTIF 1999, Article 24 §§ 1, 3-5.

OTIF Organs

Administrative Committee

106th session

Berne, 29/30 November 2006

The Administrative Committee in the new composition decided by the 8th General Assembly for the period fixed

from 1 October 2006 to 30 September 2009 (see Bulletin 3/2006, p. 36/37) met in Berne on 29 and 30 November 2006 under the chairmanship of Mr Carlos del Olmo Morand (Spain).

The 106th session was the first session of the Administrative Committee held under the COTIF 1999 regime.

Taking account principally of the amendments made necessary by the entry into force of COTIF 1999, the Administrative Committee approved a new version of the Finance and Accounts Rules and the Staff Regulations. The new Finance and Accounts Rules and the new Staff Regulations will both enter into force on 1 January 2007.

As the work programme and the budget will in future cover a period of two calendar years (Art. 25 of COTIF), the Committee approved the work programme for 2007/2008 and the draft budget for 2007 and the draft provisional budget for 2008 submitted by the Secretariat.

With regard to financial matters, in accordance with the decisions of the 8th General Assembly (see Bulletin 3/2006, p. 35/36), the Committee also took the decisions required with regard to the application of Article 6 § 7 of the Vilnius Protocol. It also noted the financial situation of the Organisation and the current situation with regard to investments.

In addition, the Administrative Committee nominated Mr Gustav Kafka to the post of Counsellor. Mr Kafka will succeed the current deputy to the Secretary General, Mr Mutz, who will be retiring on 1 February 2007.

The Administrative Committee was also informed about the progress of negotiations between the European Commission and the Secretary General with regard to the European Community's accession to COTIF. In particular, the Committee supported the negotiating objectives set by the Secretary General on behalf of OTIF with a view to arriving at an agreement on the European Community's accession, without losing time unnecessarily.

Lastly, the Administrative Committee noted the information provided by the Secretariat concerning the Diplomatic Conference to adopt a Rail Protocol¹ to the Cape Town Convention, which would be held in Luxembourg from 12 to 23 February 2007. It

encouraged all the Member States of OTIF to participate in this Diplomatic Conference.

The 107th session of the Administrative Committee will be held in Berne on 23 and 24 May 2007.
(Translation)

RID Committee of Experts

Helsinki, 2-5 October 2006

see "Dangerous Goods"

Dangerous Goods

Committee of Experts on the Transport of Dangerous Goods

43rd Session

Helsinki, 2-5 October 2006

16 Member States (quorum) and the Russian Federation, the European Commission, CIT, UIC, UIP and for the first time, OSJD and ERA (European Railway Agency) took part in the work of this session, which was held at the invitation of the Finnish Ministry of Transport. Mr H. Rein (Germany) chaired the session.

Working group on tank and vehicle technology (see Bulletin 2/2006, p. 22-24)

Derailment detection

The representative of Switzerland explained that there would not yet be any results from the extended operational trial using modified derailment detectors as announced at the seventh session of the Working Group. Information should be provided by the manufacturer at the working group's next session. As the RID Committee of Experts had decided to describe the objectives of derailment detectors in RID by 2009, at the next session of the working group, the manufacturers of derailment detectors should provide information on the extent to which the various systems are ready for use.

Measures to prevent and limit damage from the overriding of buffers: sandwich covers

In a document, the representative of Germany explained the ideas for an alternative to the quasi-static test method used in standard EN 13094. In his view, opting

¹ For more details, see www.otif.org/html/e/droit_CD_otif_unidroit_inv_oj2007.php

for a sandwich cover was only suitable in those cases where, for the substance to be carried, insulation of the shell was necessary. He did not consider the use of mild steel for the sandwich construction to be worthwhile, as in this case, the “protective shield” option would use less material.

As the work of the Federal Institute for Materials Research and Testing (BAM) would be continued, it was agreed not to change the wording adopted for the relevant special provision at the moment. In particular, the construction of the sandwich cover should not be described more precisely, as different constructions were able to satisfy the aim (equivalent energy absorption capacity).

Telematics

The representative of Germany informed the RID Committee of Experts that in Germany, a research project was to be awarded by the end of October, the aim of which would be to examine how the stand-alone solutions available for telematics applications, for example in various forwarding companies, could also be used for safety aspects in the carriage of dangerous goods (e.g. linking up with emergency services and other participants). All previous studies that have been carried out in this area, e.g. MITRA, should be incorporated into this project. He asked the other Member States to provide him with any other studies. In order to ensure that the project was carried out in a manner that reflected practice as closely as possible, he suggested having a discussion at the next session of the working group on tank and vehicle technology.

Reducing the speed of complete train-loads of dangerous goods and by-passing built-up areas and stations

The RID Committee of Experts agreed with the working group’s recommendation to come back to these two topics again only when specific documents had been submitted.

Emergency management and dangerous goods atlas

The representative of UIC pointed out that for purposes of environmental and civil protection, not only rail transport data, but also road transport data were necessary in order to form a complete picture.

At the moment, the RID Committee of Experts did not consider it necessary to include a mandatory requirement in RID for the production of a dangerous goods atlas. The working group’s work on this subject would therefore be discontinued.

Drip leaks

The Chairman explained that the discussions in the working group had shown that it was not absolutely necessary to seek to change the requirements as long as no systematic causes were identifiable.

The representative of UIC explained that drip leaks had consequences for the entire operation of a railway. He would try to submit more precise statistical data concerning drip leaks.

The representative of the Netherlands was of the view that in addition to the testing and repair of tank-wagons, the filling of tank-wagons should also be given closer consideration. In his view, the problem was one of quality assurance.

The representative of Germany explained that the problem of drip leaks also existed in Germany. In order to improve the situation, the Petroleum Industry Association had commissioned a research project, and information about this would be provided at the next meeting of the working group.

Position of the wagon in the train (barrier wagon rule)

There was a lengthy discussion on this subject. Finland had proposed to extend the barrier wagon rule to tank-wagons for toxic gases and in view of the risk of a BLEVE, to initiate a discussion on extending the rule further to cover LPG tank-wagons. In addition to the existing provisions, it was proposed for tank-wagons for toxic gases to require a barrier wagon between the locomotive and the tank-wagon and at the end of the train. It was finally agreed that the working group on tank and vehicle technology should first look at this problem.

Other Proposals

Under this item of the agenda, the RID Committee of Experts dealt with the reference to item 5 of UIC leaflet 471-3 O (Inspections by the forwarding railway), protection of the folding panels on tank-wagons and the definition of “rolling road”.

Exchange of experiences for tank experts (see Bulletin 3/2006, p. 45)

It was recalled that this exchange of experiences for recognised experts had emphasised the aim, which was to achieve harmonised inspection procedures in cases where RID contained provisions that were open to interpretation. This was of particular significance

against the background of the liberalisation of inspection work and the pressure of competition between the various inspection bodies.

The representative of France asked that the remit of this exchange of experiences be better defined in order to avoid infringing upon the competencies of the RID Committee of Experts.

The representative of the Netherlands pointed out that the test and inspection requirements for the tanks of tank-vehicles and of tank-wagons were identical, so a common platform should be sought for an exchange of experiences.

The Chairman reminded the meeting that an exchange of experiences for experts was only prescribed in RID. If similar provisions for aerosols and tanks from the TPED Directive were transferred into RID/ADR, as had been discussed at the last RID/ADR/ADN Joint Meeting, the existing procedure could be replaced by a new one at Joint Meeting level.

The RID Committee of Experts supported the conclusion reached at the exchange of experiences, i.e. that there was no need to prescribe mandatory participation for all experts. Instead, it would be sufficient if a representative of the competent authority and at least one expert from each Member State were present, who would then be in a position to disseminate information in their country.

Technical information in the tank record

It was suggested that there should be a discussion on how to avoid a rejected tank being taken to another testing body without eliminating the defects that had been noted.

The representatives of Belgium and France also supported the alternative according to which the owner or operator of a tank has to return a document issued by the original testing body to the original testing body in due time, giving information on the reasons the tank was rejected, with the stamp of the expert has who ascertained that the defects have been eliminated. The representative of Belgium emphasised that Belgium's proposal submitted at a previous Joint Meeting for an obligation to retake a failed test at the same testing body could be re-examined.

Working group on standardized risk analysis

The meeting of the working group planned for 2006 could not take place owing to the lack of time.

Switzerland would probably host this meeting in April 2007. Now that risk analysis had also become more significant for road transport in connection with the new tunnel regulations in ADR, the Chairman asked the representative of Switzerland also to invite the Chairman of WP.15 to this meeting.

Any other business

Cooperation with the European Railway Agency (ERA)

In a presentation, the representative of ERA, which was represented at the RID Committee of Experts for the first time, explained the working methods, organisation and tasks of ERA. He defined the interfaces that arise between the RID Framework Directive 96/49 on the one hand and the Interoperability Directive 2001/16 and the Safety Directive 2004/49 on the other. He also emphasised the importance of future cooperation to ensure that the various legal provisions did not contradict each other.

The RID Committee of Experts agreed that continual cooperation with ERA was vital, and asked that in future, a representative of ERA should take part in all sessions of the RID Committee of Experts and the working group on tank and vehicle technology. This was particularly important because in future, the TSIs would also be referred to in RID. Because of harmonisation with the other transport modes, discussions concerning the carriage of dangerous goods should take place exclusively in the RID Committee of Experts.

Information from the European Commission on the joint Dangerous Goods Framework Directive

The representative of the European Commission explained that the draft joint Directive for rail, road and inland waterway transport had been completed and had now been submitted to the other areas of the Commission for their views. Translation of the Directive would be completed in December 2006, so it could be discussed in the Council at the beginning of 2007.

(The full report of this session is available on OTIF's website).

Next session

The next session of the RID Committee of Experts would be held from 19 – 23 November 2007, possibly at the invitation of Croatia in Zagreb.

(Translation)

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

Geneva, 25-27 October 2006

28 Governments and 9 governmental or non-governmental international organisations, including the European Commission, took part in the work of this 81st session chaired by Mr Franco (Portugal).

Documentation

The Working Party expressed concern that the documents had been circulated very late, that certain documents had not been translated on time and that it had not been possible to download some others from the Transport Division's website. It also noted that the situation with regard to documentation had progressively worsened with each session, without any explanation being offered by the Conference Services Division, which was supposed to send out all the documents 6 weeks before the opening of the session. Such a situation was not conducive to effective working.

Safety in road tunnels

As the new proposals relating to safety in road tunnels entering into force in 2007 do not provide a sufficient guarantee of safety, the representative of Switzerland had registered an objection against these provisions. Switzerland is the only contracting party to have registered such an objection to these provisions. Moreover, the Working Party had agreed to examine some problems more closely, particularly driver training and determination of the tunnel code by or for the driver before a transport operation.

Supervision of vehicles

The Working Party decided to revise the old provisions relating to the supervision of vehicles in order to ensure that they agreed more closely with the safety provisions of the new Chapter 1.10, while taking account of the exemptions linked to the quantities carried per transport unit.

Languages to be used in the transport document according to international tariffs

The Working Party took note of the request by the RID/ADR/ADN Joint Meeting to ascertain whether, in accordance with the suggestion by the International Union of Railways (UIC), it would be possible to delete from ADR the possibility of using languages in the

transport document that were acceptable according to the international tariffs in force.

Several delegations took the view that the original idea behind this provision had been to harmonize the relevant provisions of ADR with those of RID, but that it could be deleted, firstly because international road carriage tariffs no longer existed, and secondly because it did not seem acceptable to accept arrangements between private companies.

It was agreed to reconsider the matter at the following session, when the UIC suggestion could be submitted as an official document.

Alignment with RID

The Working Party did not accept alignment with RID with regard to the orange-coloured marking in a transport chain including a rail journey and for the placarding of transport units carrying packages, in order to facilitate piggyback transport and combined transport. It agreed that it was up to the participants concerned to facilitate these types of transport, as ADR neither prohibited nor prescribed this. In contrast, the Working Party accepted aligning with RID with regard to the orange-coloured marking on vehicles carrying articles in bulk (e.g. batteries).

Safety advisers

The Working Party took note of the measures taken by the Belgian authorities to monitor the work of safety advisers in undertakings.

The ensuing discussion revealed that the measures taken by the competent authorities in this respect varied from country to country. It was recalled that, although ADR provides for spot checks to ensure implementation of the Agreement, there is no provision for systematic control of the work of safety advisers. However, the competent authority is authorized to verify the identity of advisers at each undertaking and to audit their annual reports.

The representative of IRU proposed that the preparation of advisers' reports and the monitoring of their work should be harmonized.

Interpretation of the provisions concerning loading, unloading and handling

Although it is stipulated that vehicles and drivers should conform to regulatory provisions, it does not prescribe a mandatory inspection to verify conformity prior to loading or unloading. It is only stated that a transport

operation must be halted if it is considered, on the basis of documents or visual inspection of vehicles, that a violation has occurred. Most delegations were of the view that these provisions should be interpreted flexibly as a matter of common sense, for example it is unnecessary to recheck the ADR training certificate of a driver who arrives at the same loading point three times a day, but a minimum level of vigilance is required, vehicles should be inspected before each loading, and each party involved should at least respect the provisions outlined in Chapter 1.4. It was noted that it was the responsibility of all the parties involved to enforce these provisions and that, where applicable, they would incur liability for negligence.

Guideline for the calculation of risk

The Working Party noted that the RID/ADR/ADN Joint Meeting had invited it to apply to road transport, on a voluntary basis, the Guideline for the Calculation of Risk inherent in the Carriage of Dangerous Goods by Rail, as adopted by the RID Committee of Experts, which would facilitate standardized risk analysis in cases where competent authorities were authorized to impose additional requirements in their territory under Chapter 1.9 of RID.

It was recalled that the Working Party had not undertaken to align Chapter 1.9 of ADR with Chapter 1.9 of RID. Some delegations thought that the Guideline adopted by the RID Committee of Experts could be of use to competent authorities responsible for road traffic, but most were of the opinion that the decisions to restrict traffic authorized under section 1.9.3 of ADR were highly political in nature and lay within the domestic jurisdiction of States. The European Commission approved the approach adopted by the RID Committee of Experts.

Unfortunately, the official report of this session does not mention the Chairman's conclusion, which was that this question will be discussed at the next session.

Mandate and Rules of Procedure of the Working Party (see Bulletin 3/2006, p. 39)

The Working Party adopted these two documents. For the Rules of Procedure, the Working Party noted with satisfaction that the ECE Executive Committee had accepted that countries that were not members of ECE could have the right to vote subject to the approval of the Inland Transport Committee. The Working Party adopted, by a very large majority, a procedure whereby decisions relating to a legal instrument could only be taken in the presence of at least one third of the

contracting parties, and on condition that the number of votes in favour was at least equal to a third of participants with full rights represented at the time of the vote. This was an alignment with the Rules of Procedure of the RID Committee of Experts.
(Translation)

Sub-Committee of Experts on the Transport of Dangerous Goods (UN/ECE)

30th Session

Geneva, 4 – 12 December 2006

Experts and observers from 26 countries and 37 governmental and non-governmental international organisations took part in the work of this last session of the 2005-2006 biennium for the 15th revision of the UN Model Regulations.

The Sub-Committee considered and adopted all the amendments to the UN Model Regulations, including the restructuring of the provisions concerning radioactive material adopted at the three previous sessions. The Sub-Committee also stated its position on matters pending (see Bulletin 3/2006, p. 40) and on new matters. This 15th revision will be taken into account in the modal regulations, including RID/ADR/ADN and will be brought into force simultaneously on 1 January 2009 in a new edition. The main problems and matters discussed by the Sub-Committee were as follows:

Limited quantities, excepted quantities

With regard to the new provisions on dangerous goods packed in excepted quantities, in comparison with dangerous goods packed in limited quantities, in addition to the different marking, another problem arose with respect to documentation, i.e. that if a consignment was accompanied by a document, which should generally be the case, the latter must include a relevant statement, which was not the case in respect of limited quantities. This would not facilitate multimodal transport, especially as the consignor and consignee indicated in the documentation could be different people for each successive transport operation. Still in this context, several experts considered that the lack of harmonization between the provisions applicable to the carriage of limited quantities by different modes of transport was unfortunate, and it would be difficult to solve the problem if ICAO continued to impose labelling and marking requirements which were not consistent with the provisions of the UN Model

Regulations. Matters would have been even more complicated if the Sub-Committee had adopted new exemptions for small quantities of substances intended for pharmaceutical research and development. How could anybody know what they were supposed to do in such a confused situation?

Classification of fireworks

The possibility of default classification of fireworks was introduced to permit classification by analogy, without recourse to tests, so as to enable competent authorities that lack the means to carry out tests to authorize classification within an acceptable margin of safety. The merit of this possibility has been endorsed, as in certain cases, the industry sidesteps these new rules by modifying the pyrotechnic components, and bearing in mind another dramatic accident that occurred recently in the United Kingdom.

Target for drop tests

The new provisions relating to the target for the drop testing of packages, IBCs and large packagings were controversial, as the target mass at many test laboratories did not meet the specifications of the relevant ISO standard. However, it was stressed that the industry recognized that the characteristics of the drop target had a decisive influence on test results and that it would therefore be advisable to standardize them. It was ultimately decided to introduce in the regulations a text that reproduced only the performance requirements, without actually quantifying them at the current time.

Packing Instructions

With regard to the packing instructions (P099) and IBC instructions (IBC99), which refer to the approval of the competent authority, it was suggested that it would be useful to consider harmonizing them, as the provisions of IATA, RID/ADR/ADN and of certain national regulations were sometimes more precise and different. It was noted that this generally only applied to substances that posed very specific or serious dangers that do not require special permits in these cases, as this derogation caused difficulties in multimodal traffic and in the course of controls. Several experts opposed the requirement that a copy of the competent authority approval should accompany such shipments, since paper documentation is an obstacle to trade facilitation. However, the requirement for a copy of the approval was adopted.

Packing certificates

The proposal relating to container/vehicle packing certificates to authorize facsimile signatures where applicable laws and regulations recognize the legal validity of facsimile signatures, and their replacement by the name of the authorized person in the case of electronic data interchange, was adopted

Radioactive material

With regard to radioactive material, the Sub-Committee noted that, at its session in September 2006, the IAEA General Conference had adopted a Resolution aimed at encouraging cooperation between IAEA and the United Nations with a view to harmonizing the IAEA Regulations with the United Nations Model Regulations. IAEA intended to pursue its efforts in this area, which should lead to the publication in 2009 of a revised version of its regulations. A team of consultants had been established for this purpose.

The Sub-Committee noted the serious problems that occur when port and airport authorities and carriers and forwarders refuse to accept shipments of radioactive material, even if all regulations and requirements have been complied with. Many radioactive materials have a limited lifetime, and if delays occur in the course of transport they may lose their usefulness, which has particularly serious consequences in the case of radioactive sources destined for medical or pharmaceutical use.

The Sub-Committee noted the efforts of IAEA, IMO, ICAO and IATA to reverse this trend towards denial of shipments, considering that it was right to join in these efforts and to encourage all organizations concerned to cooperate with IAEA.

The Sub-Committee took note of the IAEA draft security guide entitled "Security of Radioactive Material during Transport" that had been distributed to its Member States for comments, and a number of differences between this document and the security provisions in the Model Regulations.

These differences might necessitate a future re-examination of the provisions in the Model Regulations. In the meantime, members of the Sub-Committee were invited to liaise effectively with the authorities responsible for the possible application of the provisions contained in this guidance document.

Guiding principles for the UN Model Regulations

The Sub-Committee adopted these guiding principles prepared by the representative of the United Kingdom, which explain how the Model Regulations were developed. These principles can be consulted on the Transport Division's website.

Programme of work for the next biennium 2007-2008

The Sub-Committee adopted a busy and ambitious programme of work for the next biennium (see para. 100 of the report on the Transport Division's website).

Election of officers for the 2007-2008 biennium

The Sub-Committee elected Mr Robert Richard (USA) as Chairman in a random draw by the innocent hand of the outgoing Chairman (after an equal number of votes for the two candidates proposed after two ballots!) and Mr Claude Pfauvadel (France) as Vice-Chairman. (Translation)

Co-operation with International Organizations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Working Party on Rail Transport

60th Session

Geneva, 15-17 November 2006

The third joint meeting (so-called "back-to-back" meeting) of the UN/ECE and ECMT "railway" working groups was held in Geneva from 15 to 17 November 2006. The meeting was chaired by Mr Croccolo (Italy).

Delegates from 27 of the 55 UN/ECE member countries attended the 60th session of the UN/ECE Working Party on Rail Transport (SC.2). Representatives from the European Commission, the TER Project, OSJD, UIC, CER and the European Transport Workers' Federation (ETF) also took part in the session. OTIF was also represented.

Among other things, the Working Party dealt with the following matters that are regularly included on its agenda: facilitation of border crossing in international rail transport, safety and security in railway transport,

European Agreement on Main International Railway Lines (AGC), information on developments in various railway fields, determination of railway infrastructure capacity, including aspects related to the fee for the use of infrastructure, interoperability and harmonization of conditions of different rail transport systems, productivity in rail transport and the TER Project.

With regard to the **facilitation of border crossing** in international rail transport, the discussion again focussed mainly on the preparation of the International Conference, which should be held under the aegis of the UN/ECE, and on the two draft texts (Annex 9 to the 1982 "Harmonization Convention" relating to the transport of goods and a new Convention relating to the transport of passengers) prepared in the context of the preparatory work for the International Conference.

It must be acknowledged that this question has hardly progressed since the last session of SC.2 (see Bulletin 1/2006, p. 7).

Only OTIF had followed up the Secretariat's invitation and had sent its observations and proposals¹ on the two draft texts, which have not yet been discussed in depth either by the Working Party on Customs Questions affecting Transport (WP.30) or by SC.2.

OTIF commented on its proposals, again emphasising the fact that these proposals had clearly been prepared with the aim of setting obligations that were as specific as possible in order to reduce the waiting times at borders, the objective being to improve as much as possible the competitive situation of the rail sector. OTIF said that until these two legal instruments were finally adopted, it would continue to work to ensure that the desired facilitation in the rail sector took a more specific form in the sense of the proposals it had made. As for the International Conference, OTIF, like the Secretariat and SC.2, was of the view that the Conference would have considerably more impact if it adopted the two new legal instruments, because it was indeed essential that they be applied as soon as possible by a large majority of the UN/ECE Member States.

The representative of the Netherlands asked in particular that the question of the implications of the UN/ECE's two new legal instruments on intra-community transport be clarified, as transport and customs questions inside the EC were governed by Community law.

¹ OTIF proposals: see www.unece.org/trans/main/sc2/sc2inf_60.html

Finally, SC.2 mandated the Secretariat again to ask the Member States of the UN/ECE, this time via their permanent representations in Geneva, to make their observations and to submit their proposals on the two draft texts before 15 January 2007 so that WP.30 could have them in time to examine them at its next session, which will be held from 30 January to 2 February 2007. The restricted working group tasked with preparing the International Conference would then meet in spring 2007 to finalise the two drafts that would be officially adopted at the International Conference, which should be held in Russia in the second half of 2007.

The European Commission's legal service would be asked to check that the two draft texts did not conflict with Community law.

With regard to the **interoperability and harmonization of conditions of different rail transport systems**, OTIF presented the report¹ submitted jointly with OSJD on their cooperation on matters concerning interoperability and the harmonization of the different transport systems, while particularly underlining firstly, that cooperation between OTIF and OSJD had increased in 2006 with regard to the carriage of dangerous goods and secondly, that the cooperation pursued in 2006 between OTIF and OSJD in the technical area would be strengthened in 2007. OTIF also informed the Working Party about the work carried out by CIT and OSJD on the "CIM/SMGS" consignment note, in which OTIF had participated very actively (see p. 62/63 and Bulletin 2/2006, p. 25) and which it would continue to monitor closely. Lastly, OTIF drew the Working Party's attention to the Diplomatic Conference² to adopt the Rail Protocol to the Cape Town Convention, which would be held in Luxembourg from 12 to 23 February 2007.

(Translation)

United Nations Commission on International Trade Law (UNCITRAL)

Working Group III (Transport law)

18th Session

Vienna, 6-17 November 2006

In the second week of this session of the Working Group, OTIF was represented by the deputy Secretary General as an observer.

The basis for discussions was the draft Convention on the carriage of goods [wholly or partly] by sea (UNCITRAL doc. A/CN.9/WG III/WP.56, available on the UNCITRAL website, www.uncitral.org, where the other meeting documents (WP.71 – WP.78) can also be found). The main topic of the second week was the relationship between the draft Convention and other conventions on the international carriage of goods.

At its 9th session (New York, April 2002), the Working Group had decided that in principle, in a system of door-to-door transport, the draft Convention should not replace the respective latest versions of the mandatory land transport conventions such as COTIF and CMR. There was a consensus (12th session, Vienna, October 2003) that provision should be made for a limited network system. This will be provided for under Article 27 of the draft Convention.

The Working Group was unable to agree whether this Article, which creates a limited network system if the place where the damage occurred is known, constitutes a provision concerning the conflict of conventions or not. Irrespective of this, the Working Group decided to delete both Article 89, which lays down the precedence of unimodal transport conventions over the draft Convention, and the converse Article 90, which is supposed to ensure the precedence of the new Convention over previous conventions.

The representative of OTIF maintained the view that the draft Convention did not result in any conflict of regulations with existing unimodal conventions such as COTIF or CMR. The draft Convention governs carriage by sea, preceded or followed by land transport (maritime plus), while CIM governs the international carriage of goods by rail, preceded or followed by carriage by sea (railways plus). In addition, the draft Convention only

1 Joint OTIF – OSJD report: see www.unece.org/trans/doc/2006/sc2/ECE-TRANS-SC2-2006-10e.pdf

2 For more details, see www.otif.org/html/e/droit_CD_otif_unidroit_inv_oj2007.php

covers so-called “maritime performing parties”, while for “non-maritime performing parties”, the liability regime of the draft Convention does not apply (see doc. A/CN.9/544, paras. 28-42).

The 18th session of Working Group III also dealt with questions concerning signatures and agreed to leave the consequences of unauthorised signatures to land law. It also dealt with the question of liability for deficient information provided by the consignor, the possibilities for checking this information, the evidential value of this information and the carrier’s reservations in this respect.

The issue of liability for delays was also discussed at length, including the carrier’s and the shipper’s liability and the limit of this liability. With regard to limiting the carrier’s liability, it was again emphasised that the unimodal conventions for land transport only provide for a limit per kilogram, while in maritime transport law, a limit per packing unit is also prescribed, which means that in certain cases, there may be a considerable increase in the limit of liability.

At this session, the Working Group also examined the questions of the right of action, limitation of the right of action, jurisdiction and arbitration.

The Working Group was able to conclude the second reading of the draft Convention at its 18th session. A final reading of the draft is to take place in 2007 in April in New York and in October in Vienna, so that the draft Convention could be submitted to the Commission for adoption at its 41st session in 2008.

(Translation)

International Rail Transport Committee (CIT)

Organization for Railways Cooperation (OSJD)

CIM/SMGS Consignment Note

Legal Group

*Warsaw, 12/13 September 2006
and Berne, 17/18 October 2006*

As already reported in Bulletin 2/2006 (see p. 25), the legal group set up in the context of the joint CIT/OSJD “CIM/SMGS consignment note” project, in which OTIF participates, deals mainly with questions relating to liability, as the purpose is to mitigate the disadvantages that arise as a result of the co-existence of two liability

regimes (CIM and SMGS), before they can be overcome. The legal group’s work in the following areas is intended to fulfil this aim:

- guidelines on CIM-SMGS liability, including a synthesis of the basic principles of CIM-SMGS liability and a comparative table showing the relevant provisions from both sets of regulations (German and Russian),
- a provision in SMGS parallel to Article 28 of CIM for the presumption of loss or damage in case of reconsignment and if it is not known where the loss or damage occurred,
- a uniform CIM/SMGS report and
- apportionment of the compensation paid by the carriers in accordance with both laws of carriage.

The work on the liability guidelines was concluded at the meeting in Warsaw (12/13.9.2006). They will be published shortly.

In Warsaw, the representative of OTIF presented the proposal for the inclusion in SMGS of a provision equivalent to Article 28 of CIM. According to this, if loss or damage has been ascertained after reconsignment, it is presumed that the loss or damage occurred under the latest contract of carriage, provided the presumption is not disproved by evidence that the loss or damage occurred under the previous contract of carriage. The legal group approved the proposal in principle, but decided to give priority at this stage to the other two projects, i.e. the uniform report model and harmonised rules concerning the apportionment of compensation. It was made clear that the proposal concerning the presumption of loss or damage should relate not just to transport with the CIM/SMGS consignment note, but also to transport with two separate CIM and SMGS consignment notes. The discussion on this issue will be continued next year.

At both meetings, the legal group dealt with the uniform report model which is to be used both for transport operations with the CIM/SMGS consignment note and for transport operations with separate consignment notes. The final design of the model should be approved next year. One advantage of the joint model is that such a report will be recognised in both the CIM and SMGS areas. At present, the reports made in accordance with CIM and in accordance with SMGS are not mutually recognised. Introducing a uniform report will also make it easier for customers to assert their claims in cases

where it emerges that the loss or damage did not occur in the period of liability of the contract of carriage during which the loss or damage was ascertained.

With regard to harmonising the provisions governing liability in the relationship between carriers, for the time being the legal group had a discussion of principle. (Translation)

International Rail Transport Committee (CIT)

2006 General Assembly

Berne, 26 October 2006

The General Assembly met under the chairmanship of Prof. Rainer Freise (DB), who was elected following the brief period of office of his predecessor, Mr Fernández. Delegates from around 40 member undertakings took part in the General Assembly. OTIF was represented as an observer. The Community of European Railway and Infrastructure Companies and the International Union of Railways (UIC) were also represented as observers.

The General Assembly adopted some amendments to the Statutes, including an amendment to reduce the quorum needed to take decisions. This is linked to the accession of numerous smaller railway undertakings that do not take part in every General Assembly.

Attention at the Assembly was focussed on the entry into force of the new COTIF 1999 and the non-application of certain COTIF Appendices. The unanimous view of the Assembly concerning the fact that application of certain Appendices is currently ruled out in some Member States of COTIF was that this jeopardises legal uniformity and certainty.¹ CIT will continue to endeavour to make the Member States of COTIF aware of the problem.

According to the view that has been set out several times by the Secretary General of CIT, including at OTIF's General Assembly (Berne, 6/7.9.2006), it is particularly the European Commission's reservations against the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI) that are incomprehensible. There is no incompatibility between CUI and EC law; on the contrary, they complement each

other well, as EC law is predominantly public law which aims to ensure non-discriminatory access to the infrastructure, while the CUI UR, as private law, deal mainly with questions relating to liability. As the carrier is also responsible to customers for damage caused by the railway infrastructure, application of the CIV/CIM UR without simultaneous application of the CUI UR, which uniformly govern recourse between the railway undertakings and the infrastructure managers, presents a major legal failing in the system.

The Secretary General of OTIF shared this assessment. He informed the Assembly that negotiations with the European Commission on the EC's accession to COTIF in accordance with the mandate of OTIF's 8th General Assembly (see Bulletin 3/2006, p. 33 ff.) would be continued. Like the Secretary General of CIT, he also considered it useful and necessary that the EC Member States should analyse specifically all the legal aspects of the declarations on the non-application of COTIF Appendices E (CUI), F (APTU) and G (ATMF), which the European Commission requested its Member States to submit shortly before the entry into force of COTIF 1999, and that they should notify their conclusions to the European Commission. This analysis would enable those Member States that had complied with this request under pressure of time to review their position.

In close cooperation with CER and UIC, CIT intends to take appropriate steps to clarify and improve the situation.

The General Assembly was also informed about the progress of work in the areas of passenger transport, freight transport, CIM/SMGS transport law interoperability, the electronic consignment note and the European General Terms and Conditions of Use of the Railway Infrastructure. The work programme, objectives and budget for 2007 were approved. (Translation)

¹ The status of ratifications of COTIF 1999, declarations that have been submitted (non-application and de facto application of certain Appendices) and of reservations can be found on the OTIF website (www.otif.org under Publications).

RailNetEurope (RNE)

International Rail Transport Committee (CIT)

Community of European Railway and Infrastructure Companies (CER)

International Union of Railways (UIC)

European General Terms and Conditions
of use of the railway infrastructure

*Vienna, 19/20 April, Brussels, 8/9 June,
Berne, 30/31 August and 16/17 November 2006*

The first stage of negotiations that started in September 2005 between CIT and RNE, with the participation of CER and UIC, on the “European General Terms and Conditions of use of the railway infrastructure” (European GTC) was concluded on 17 November 2006 in Berne. As the provisions in the European GTC governing liability were drafted on the basis of the liability provisions of the CUI Uniform Rules, OTIF received several questions of interpretation on this issue during the negotiations (see Bulletin 1/2006, p. 8). OTIF was subsequently invited to take part in an advisory capacity in the other negotiation meetings. A representative of OTIF attended four meetings.

The outcome of the negotiations, reflected in the subtitle of the European GTC, “Proposal for a common structure and common principles” still has to be approved by the RNE General Assembly and by the CIT’s CUI Committee. The European Commission will then be notified.

At the end of the negotiations, the associations of infrastructure managers and the rail transport undertakings agreed that the adoption of the “common structure” and the “common principles” only represented the first step towards standardising the content of the contract of use. Nevertheless, in relation to the most important points, i.e. especially the rights and obligations of the contracting parties and mutual liability, there was success in formulating not only the principles, but specific rules as well (e.g. requirements concerning on the one hand the availability of the infrastructure and on the other rolling stock, what to do in the event of disruptions to services, liability arrangements and grounds for relief from liability). Other parts concerning, for instance, the modalities for paying the fee for using the infrastructure, will have to be completed at a later stage. It is likely that implementation of the common structure and the

common principles and the further development of the European GTC until detailed General Terms and Conditions have been drafted will still take some time. (Translation)

Case Law

Cour d’Appel de Paris

Ruling of 22 February 2006

The mudslide on the railway line that caused the accident does not constitute a case of *force majeure* relieving the railway from liability, given that it was not entirely unforeseeable. Despite the fact that it knew the site was already unstable, the railway took no action to mitigate the risk of a landslide.

Cf. Article L. 133-1 of the French Commercial Code (Code de commerce)¹

The facts:

In 1993, a mudslide and various debris falling onto the line caused a goods train to derail. The train driver was killed in the accident and twelve containers and fifteen wagons belonging to the Compagnie Nouvelle des Conteneurs (hereinafter CNC) were severely damaged or destroyed. Damage assessors valued the amount of damage caused by the accident at € 2,372,728.67. It was against this background that, in a document dated 30 August 1994, CNC brought an action against SNCF before the Paris commercial court.

CNC claimed compensation for the damage on the basis of the contract of carriage, as the rail carrier is subject to the Commercial Code and is the guarantor of damage or loss (Art. L 133-1). The judge at the court of first instance upheld the claim to the amount of € 409,741.58 for damage estimated at more than 2 million. SNCF appealed.

Reasons:

“Considering that if, in order to set aside the issue of the guarantee provided for in Article L. 133-1 of the

¹ A similar provision can be found in Article 23 § 2 of CIM 1999 (formerly Art. 36 § 2 of CIM 1980), although the term “*force majeure*” is not used and the element of “unforeseeability” of the “circumstances which the carrier could not avoid and the consequences of which he was unable to prevent” is absent.

Commercial Code, SNCF invokes *force majeure* which, according to its depositions, would be constituted by the mudslide on the railway line that caused the accident, and if it claimed in this regard that the unpreventable nature of the incident would alone constitute a fact of *force majeure*, it should be specified that this would only provide relief from liability if foreseeing it did not allow its effects to be avoided and if the debtor of the obligation had taken all the measures necessary to avoid the incident occurring;

Considering, in this particular case, that the train derailed after it had hit, while travelling at a speed of around 100 km/h, a mass of material that had fallen onto the railway line, itself situated at the foot of a steep rocky bank; that while on the day of the accident exceptional rainfall had been recorded, the investigating report shows that the geomorphological fragility of the area had been known about for a long time and that on 18 July 1993, i.e. only two months before the accident in litigation, a less major incident, but of the same nature, had occurred and should have acted as a warning sign; that an account of a visit had also been prepared on that occasion; that nevertheless, and despite its irrefutable knowledge of the previous instability of the site, SNCF took no action to mitigate the risk of a landslide, which was therefore not at all unforeseeable; that the company making the appeal must consequently be regarded as not having taken the measures required to prevent the occurrence of the landslide of 22 September 1993, especially as it was not unaware, and itself told the experts that were appointed, that the site, already considered sensitive, had been further destabilised by the work undertaken on ground situated above the line; that under these circumstances, in the absence of any measures being taken to remedy either the effects of the above-mentioned structural instability of the piece of land concerned or those of the alterations carried out on this land by third parties – risks of which SNCF was aware and which have not been demonstrated to have been impossible to remedy – SNCF has no valid reason to invoke the claim of *force majeure* in relation to this case to relieve itself from its legal liability; that it is therefore appropriate to confirm the ruling to make the interested party pay CNC, now called Naviland Cargo, the sum, the amount of which is not contested as such, of € 409,741.58 with interest at the legal rate as of 30 August 1999 and compound interest under the conditions of Article 1154 of the Civil Code;

With regard to application of Article 700 of the new Code of Civil Procedure:

Considering that in the circumstances of this case, fairness demands that SNCF be ordered to pay Naviland Cargo the sum of € 1,500 to cover extra costs.”

Taken from: Bulletin des Transports et de la Logistique, Paris, N° 3120/2006, p. 165
(Translation)

Miscellaneous Information

International Conference on financing means of transport and transport infrastructure

Mannheim, 9 November 2006

The University of Mannheim, which is one of the few German universities with a chair of European transport and traffic law, organised this Conference, together with the German *Verkehrswissenschaftliche Gesellschaft* (Transport Science Society). It afforded the deputy Secretary General of OTIF the opportunity of presenting the new wagon law in accordance with COTIF 1999, taking into account the law governing approvals.

In addition, three presentations dealt with the problem of the international registry in accordance with the Cape Town Convention for Interests (in air equipment and rolling stock). This part of the event was used to draw attention to the Diplomatic Conference to be held in Luxembourg from 12 to 23 February 2007, which should lead to the adoption of the Rail Protocol.

Questions concerning Public Private Partnerships (PPP) in the financing of transport infrastructure formed another key topic of this Conference. These were analysed from the tax law and business management points of view.
(Translation)

ZSSK Cargo “Business Year 2007” Conference

Piešťany (Slovakia), 21 November 2006

The Cargo Slovakia railway company (ZSSK Cargo) organised its annual conference on 21 November 2006 in Piešťany. The conference was well attended, with around 200 participants, including, in addition to the host company’s staff, more than 130 people from various logistics and forwarding companies, some railway undertakings and other firms with which ZSSK Cargo deals in a business capacity.

The conference programme had two parts, each followed by a discussion. In the first half of the programme, three guest speakers gave presentations on current issues in international rail transport. In the second half, ZSSK Cargo board representatives set out their aims, planned investments and specific projects in which this railway company is dealing with the needs of customers.

A representative of OTIF gave a presentation on “CIM/SMGS Transport Law Interoperability”. In her presentation, she set out the results achieved so far in the joint CIT/OSJD project of the same name, in which OTIF has been involved, i.e. the CIM/SMGS consignment note and the accompanying manual, as well as the guidelines for CIM/SMGS liability in the context of the various efforts at State level to achieve legal unity and legal certainty in international rail transport.

Another presentation by a member of UIC’s general secretariat illustrated the current position with regard to the use of railway wagons in international transport. The speaker explained the principles of the General Contract of Use (GCU), looked at some of the unresolved issues, including the vehicle keeper marking and the register, and set out pragmatic solutions (on the basis of RIV) for the interim period until such issues are finally resolved.

A third presentation given by a representative of the Ukraine focussed on the tariff policy of the Confederation of Independent States (CIS) and Estonia. It was clear from this presentation and from the discussion that followed what a significant role transport to and from the Ukraine plays within ZSSK Cargo’s business activities.

(Translation)

Book Reviews

Andresen, Bernd/Valder, Hubert, *Speditions-, Fracht- und Lagerrecht* (The Law on Forwarding, Freight and Storage), transport law handbook with commentaries, ISBN 3 503 05904 0, supplements 1/05 and 1/06, as at March 2005/March 2006, Erich Schmidt Verlag, Berlin.

This loose-leaf volume, which was first published in 2000 (see Bulletin 4/2004, p. 111), contains the texts of regulations (acts, general conditions) concerning the law on forwarding, freight and storage and a commentary on the main provisions of the German Commercial Code (HGB).

The authors, who are practising lawyers, have made use of their experience in applying the provisions of transport law, thus producing this practice-based guide for lawyers working in this area. The supplements ensure that the volume is always kept up to date.

Supplement 1/05 rounds off the commentary on the main provisions of the HGB (§ 407-475h) relating to forwarding, freight and storage. Among other things, the provisions concerning multimodal transport (Articles 452-452 d) are commented on for the first time. As multimodal transport operations are often international, it is important to separate the scope of § 452 of HGB from those cases where the corresponding provisions of international conventions apply. Among the particular provisions of unimodal conventions that govern the special cases of multimodal transport, reference is made to provisions of CMR, COTIF 1980 with CIM and RICO and to provisions of the Warsaw/Montreal Convention. With regard to carriage by rail supplemented by carriage by another mode, one of the next supplements will have to take into account COTIF 1999, which has entered into force in the meantime.

In both supplements, newly enacted case law has been incorporated into the commentary. The collection of texts has also been broadened (Montreal Convention and the Act implementing it) and updated (Road Haulage Act and Inland Waterways Transport Act).

The updated handbook, together with supplements 1/05 and 1/06, is aimed at all practitioners and lawyers dealing with transport law as an aid to their work, whether it be in undertakings, insurance companies, courts or associations. No library on transport law in the German speaking area should be without this volume. (Translation)

Dickinson, Andrew/McBain, Graham S./Baggallay, Roger/ Murphy QC, Laurence (consultant editors), *Butterworths International Commercial Litigation Handbook*, 2nd edition, LexisNexis Butterworths, London, ISBN 10: 1405718366, ISBN 13: 9781405718363

This 2354 page handbook is aimed primarily at users in the United Kingdom, particularly those who deal with cases of cross-border case law and arbitration in the UK. It is also aimed at those who work as advisors in international businesses that are governed by English or Scottish law or which are subject to English or Scottish jurisdiction.

A substantial part of the handbook deals with matters relating to legal procedures, including the enforcement of foreign judgments (national regulations, provisions of EC law together with related reports, bilateral agreements). Other legislation in the handbook, together with the relevant conventions, concerns international transport (road, rail, air, sea) and a range of other branches, such as international organisations, State immunity, trustees, evidence, reciprocal legal assistance, statutory time limits and currencies.

As the editors completed their work before the United Kingdom ratified COTIF 1999 (29.6.2006), the applicable law that is given in the area of international rail transport is the 1980 version of COTIF with its CIV and CIM Appendices. However, users will find a reference to the Vilnius Protocol (1999 Protocol) where COTIF 1980 appears, and elsewhere, the text of the Modification Protocol itself, without the Annex. The text of COTIF 1999 and its Appendices is freely accessible on OTIF's website (www.otif.org) and can be viewed there at any time.

(Translation)

Spera/Svoboda: *Die Haftung des Beförderers im internationalen Güterverkehr* (The Carrier's Liability in International Freight Transport), LexisNexis ARD Orac, 2006, XII, 139 pages.

This book was published by LexisNexis at the end of 2006 in the Orac-Legal Practice series.

The lack of an up to date, short, summary presentation of the chosen subject in the German speaking area prompted the authors to bring this book out. Its purpose is to provide a rapid overview of the main principles of liability in the conventions governing international freight transport, particularly for those in the field and students. The principles, scope and grounds for relief from liability of carriers in international transport, and the means of enforcing the law, are set out concisely. Liability in accordance with the forwarding contract is dealt with in a short aside.

The specific section is split between the transport modes:

- Road freight transport,
- Rail freight transport,
- Maritime freight transport,

- Inland waterway transport,
- Air freight transport and
- Multimodal freight transport.

Two Appendices, Appendix A: Scope of the various international conventions, and Appendix B: Carriage of Dangerous Goods, complete the presentation.

It goes without saying that in view of the scope of this work, there is hardly any room for considerations of legal theory. Case law is also limited to a few key rulings by Austrian and German high courts. A more comprehensive legal comparative investigation would exceed the book's scope. In addition, there has not yet been much administration of law in the context of the newer conventions, such as the Montreal Convention, the 1999 Vilnius Protocol version of COTIF, which entered into force on 1 July 2006, and the CIM Uniform Rules. Nevertheless, this overview of international freight transport law is a suitable means of providing those in the field and students with a rapid overview of the main principles concerning liability in the international conventions.

(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° 3149/2006, p. 646 – 12 questions sur la déclaration de valeur

Idem, n° 3155/2006, p. 740 – Colis. Ce qu'il faut savoir (M. Tilche)

CIT Info, Berne, N° 4/2006, S. 2 – Intermodalité : survol des projets en cours / Intermodalität: Überblick über laufende Projekte / Intermodality: résumé of projects in hand (I. Oberson)

Der Gefahrgut-Beauftragte, Hamburg, Nr. 10/2006, S. 5-11, 11/2006, S. 3-9 und 12/2006, S. 5-9 – Vorschriften 2007. Wichtigste Änderungen 2007 zum RID/ADR – Teil 3 und 4 (J. Conrad, E. Kessler, V. Krampe, U. Mann, H.-J. Niegel, T. Pindris, E. Sigrist)

Revue générale du Droit International Public, Paris, N° 2/2006, p. 273-302 – La clause de déconnexion en faveur du droit communautaire : une pratique criticable (C.F. Economides, A.G. Kolliopoulos)

Transidit, Recueil de jurisprudence et d'information en droit de transports, Rouen, N° 50/2006, p. 1-5 – Tableau comparatif des régimes juridiques des transporteurs aériens dans les conventions de Varsovie-La Haye et de Montréal (F. Létacq)

Transportrecht, Hamburg, Nr. 10/2006, S. 373-380 – Die CMNI – erste Fragen der Rechtsanwendung (K. Ramming); S. 384-388 – Der Spediteur-Frachtführer als aufeinanderfolgender Frachtführer (H. Neumann)

Idem, Nr. 11-12/2006, S. 413-421 – Schadensverhütung und Quersubventionen bei der CMR aus deutscher Sicht. Überlegungen aus Anlass des 50-jährigen Bestehens der CMR; S. 421-428 – Neue Entwicklungen im Lufttransportrecht vor dem Hintergrund des Inkrafttretens des Montrealer Übereinkommens (E. Ruhwedel); Prozessuale Besonderheiten im Transportrecht (H. Neumann); Neue Entwicklungen im Recht des Multimodaltransports (R. Herber)

Uniform Law Revue/Revue de droit uniforme, Rome, Unidroit, 2006-3, p. 517-521 – La Convention CMR – Pilier du transport international par route (J. Capel Ferrer); p. 523-531 – L'adaptation de la Convention CMR à l'ère informatique (J. Putzeys); p. 545-568 – Application et interprétation de la Convention CMR à la lumière du droit international (W. Czapski); p. 569-583 – La Convention CMR, les transports supersposés et multimodaux (Ph. Delebecque); p. 585-607 – The Degree of Default under Article 29 CMR (O.J. Tuma); p. 609-618 – Forum shopping – Article 31 de la CMR (S. Grignon-Dumoulin); p. 619-631 – Les juges nationaux face aux silences de la CMR : jurisprudence française (G. de Monteynard) ; p. 633-639 – National Judges Facing Gaps in the CMR : British Case-law (M. Clarke)