



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
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by Rail

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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 4, 1 February 2007

Chapter “Germany”

Following the inclusion of the ferry line Hamburg-Helgoland (31.03.2007-28.10.2007) operated by the “Förde Reederei Seetouristik GmbH & Co. KG” (Postfach 26 26, DE – 24916 Flensburg) and the modifications made in the chapter Germany, 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 4, 1 February 2007

Chapter “Germany”

Following the modifications made in the chapter Germany, the chapter has been re-issued.

See COTIF 1999, Article 24 §§ 1, 3-5.

Panel of Arbitrators

In accordance with Article 30 of COTIF, the Secretary General must establish and keep up to date a panel of arbitrators. Each Member State may nominate two of its nationals to the panel of arbitrators. In order to bring the panel of arbitrators kept previously in accordance with COTIF 1980 up to date, the Secretariat used the occasion of the entry into force of COTIF 1999 to ask the Member States to check the existing panel and to let the Secretariat have any amendments.

Six Member States responded to this request and have either nominated new arbitrators or have updated the details of the current panel. The updated panel of arbitrators is published on OTIF’s website

(www.otif.org). The Arbitration Rules prepared by the Secretariat are also available on the website.

According to Title V of COTIF, disputes under international or civil law concerning the interpretation and application of COTIF – including the Protocol on the Privileges and Immunities of OTIF – and disputes concerning the application of the Appendices to COTIF may be referred to the Arbitration Tribunal.

Mr Gerfried Mutz Conseiller honoraire of OTIF

At a reception for the Diplomatic Corps held on 18 January 2007, the Secretary General conferred the title of Conseiller honoraire of OTIF on Mr Gerfried Mutz. He was awarded this honorary title in recognition of, and as a tribute to, his services to OTIF and for the dedication he demonstrated during more than thirty years in the service of the Secretariat of OTIF.

The Secretary General commended the merits of his deputy, Dr Gerfried Mutz. He referred firstly to the great professional respect Dr Mutz had gained in his more than thirty years of service to the Organisation. The Secretary General pointed in particular to the many years of intensive, persistent and successful influence Dr Mutz has had on the development of international railway law. He especially highlighted Dr Mutz's work in connection with the revision of COTIF 1980, which, after years of preparatory work, was successfully concluded with the signing of the 1999 Vilnius Protocol. The Secretary General expressed his pleasure that Dr Mutz had still been able to experience the entry into force of the Vilnius Protocol and hence of COTIF 1999 during an active term of office. As another key point of the merits that Dr Mutz had brought to the Organisation as such, he referred to his success in representing the Organisation externally, irrespective of whether this happened through written expert opinions, advice in legal matters or through his countless presentations given both in Switzerland and abroad.

The Secretary General concluded his commendation by observing that one consolation for the OTIF Secretariat, the Organisation and for him personally, was that Mr Mutz's reputation, both as a person and a lawyer in the world of international railway law, would in future continue to be upheld even beyond OTIF's sphere of influence.

As Mr Mutz starts his retirement, we wish him many happy days surrounded by his family and friends.

Legal Matters concerning COTIF

Russia's possible accession to COTIF with only part of the railway infrastructure (Article 1 § 6 of CIM)

In the negotiations between Germany and Russia on setting up direct train-ferry connections between Sassnitz in Germany and the Russian ports of Baltijsk and Ust-Luga, the question arose as to the legal regime to be applied to traffic using this ferry connection.

The subsequent international rail transport in Russia is subject to SMGS; for maritime transport, a bill of lading would also have to be made out and transport by sea would be subject to maritime law. On the German side, in addition to rail transport itself, COTIF allows the CIM Uniform Rules (CIM UR) also to be applied to supplementary carriage by sea. Germany made use of this possibility and on 1 December 2006, entered the Sassnitz-Baltijsk ferry route into the CIM list of maritime and inland waterway services (see Bulletin 4/2006, p. 53).

This would therefore enable the CIM UR to be applied on the basis of Article 1 § 2 of CIM, provided that the parties to the contract of carriage so agree and that this choice of law is permissible under Russian law. The latter proviso would become superfluous if Russia were to accede to COTIF.

In this context, the Secretariat of OTIF has replied to various questions concerning the interpretation of the provisions of COTIF and the CIM UR that are of importance for Russia's accession to COTIF, with a reservation concerning the scope of application in accordance with Article 1 § 6 of CIM.

Article 1 § 6 of CIM allows a State to accede to COTIF for the purpose of applying the CIM UR to carriage performed on only part of the railway infrastructure situated on its territory, provided this part of the railway infrastructure is precisely defined and is connected to the railway infrastructure of a Member State. One of the questions was whether the condition prescribed in Article 1 § 6 of CIM is also met if the connection to the railway infrastructure of a Member State is only via a ferry connection. The Secretary General confirmed the view to both States concerned that the connection to a railway infrastructure of a Member State may also be provided by a ferry connection entered in the CIM list of

maritime and inland waterway services (Art. 24 § 1 of COTIF). However, he also made clear at the same time that accession with a reservation in accordance with Article 1 § 6 of CIM could not be considered if the CIM UR were only applied to the ferry route. He pointed out that no provision is made for acceding to COTIF only for the purpose of subjecting a ferry line - i.e. transport that is a supplement to carriage by rail (Art. 1 § 4 of CIM) - to the CIM UR.

In the meantime, it has been explained that the goods will not be reconsigned at the Russian ports, but at the nearest railway station. Against this background, Russia is considering acceding to COTIF, limiting its accession to the short line from each of the ports to the nearest Russian railway station. From the perspective of COTIF law, there is nothing to prevent this. According to Article 1 § 6 a), the CIM UR would then apply to transport where the route according to the contract of carriage, including the Russian station, would be part of the infrastructure described in accordance with the contract of carriage. The Russian station concerned would either be where the goods were to be taken over or where the goods were to be delivered, depending on the direction of transport.

(Translation)

CIT/OSJD Project on “Interoperability of CIM/SMGS Transport Law”

CIM/SMGS Steering Group

*Košice (Slovakia), 11 July 2006
and Warsaw, 25 January 2007*

According to the concept of the joint project of the International Rail Transport Committee (CIT) and the Organisation for Railways Cooperation (OSJD) on the “Interoperability of CIM/SMGS Transport Law”, the task of the Steering Group is to take decisions of principle, to issue mandates to two smaller, specialized working groups (the Legal Group and the Expert Group) and to approve the work of these two groups before it is formally adopted by the competent bodies within CIT and OSJD (CIM Committee, OSJD Commission II).

Last year, at the invitation of the Cargo Slovakia railway undertaking (ZSSK Cargo), the Steering Group met on 11 July 2006 in Košice. It dealt with the subject of the “electronic CIM/SMGS consignment note” and mandated the Expert Group to draft legal and functional specifications for the electronic consignment note. The Expert Group was also mandated to examine solutions for using a single CIM/SMGS consignment note with a

wagon list for full train loads and wagon groupings and to propose corresponding additions for the CIM/SMGS Consignment Note Manual.

Two decisions were taken with regard to the work of the Legal Group, firstly concerning the joint publication by CIT and OSJD of the guidelines on CIM/SMGS liability and secondly concerning a modification to the objective of the second phase of the project, which is underway at present. The aims of the Legal Group’s work, in which OTIF participates, were set out in Bulletin 4/2006 (see p. 62).

At its next meeting in Warsaw on 25 January 2007, the Steering Group noted the implementation status of the CIM/SMGS consignment note in the various corridors and the progress of work in the Expert Group and Legal Group. The Expert Group’s work on a model for the wagon and container list for full train loads and wagon groupings with a single consignment note and the work in connection with the introduction of the electronic CIM/SMGS consignment note must be continued; the preliminary results were not yet ripe for approval. The same can be said of the Legal Group’s work on the model of the uniform CIM/SMGS report and the associated implementing provisions. The final version of these model forms that are linked to the use of the CIM/SMGS consignment note, and the associated provisions (under contract law or, in some States, under administrative law) should be submitted to the next meeting of the Steering Group in July 2007 for approval. The Legal Group’s mandate was stated more precisely to specify that it must formulate uniform rules for dealing with claims.

Uniform regulations for performing the carriage of goods by rail in Eurasia are to be drafted in a third phase of the project. There was a general discussion on the steps required to introduce this phase of the project. Next time, the CIT’s General Secretariat wishes to submit a concept paper on this topic.

(Translation)

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3163/2007, p. 92/93 – Le charme discret de la CIM (M. Tilche)

Internationales Verkehrswesen, Hamburg, Nr. 3/2007, S. 95-99 – Verspätungsentschädigungen der Bahnen (H.E. Jochim)

Transidit, Rouen, N° 51/2007, p. 1-9 – Le 1^{er} juillet 2006, la nouvelle COTIF, adoptée à Vilnius le 3 juin 1999, est entrée en vigueur (M. Allégret)

Transportrecht, Hamburg, Nr. 2/2007, S. 45-55 – Neue Entwicklungen im Eisenbahnrecht anlässlich des Inkrafttretens des Übereinkommens COTIF 1999 (R. Freise); S. 58-62 – Der schlafende Wachoffizier vor dem BGH. Anmerkung zu BGH, Urteil vom 26. Oktober 2006 (I ZR 20/04) (K. Ramming)

Idem, Nr. 3/2007, S. 89-94 – Teilstrecken einer multimodalen Beförderung und ihre Abgrenzung. Zugleich Anmerkung zu BGH, Urteil vom 3. November 2005 – I ZR 235/02 – (K. Ramming); S. 103-110 – Die Rechte des Flugreisenden im Überblick (W. Peterhoff)

Uniform Law Review/Revue de droit uniforme, Rome, Unidroit, 2006-4, p. 824-837 – The Preliminary Draft Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment / L'avant-projet de Protocole ferroviaire à la Convention du Cap relative aux garanties internationales portant sur des matériels d'équipement mobiles

Zeitschrift der OSShD, Warschau, Nr. 1/2007, S. 16-23 – Über den eurasischen Landweg nach Fernost. Schienengüterverkehr mit den Staaten außerhalb des Geltungsbereichs der COTIF (W. Bach)

Transport of Dangerous Goods

RID/ADR/ADN Joint Meeting

Berne, 26-30 March 2007

Experts from 24 Governments (including the USA) and 20 international governmental organisations (including the European Commission) and non-governmental organisations (including UIC, UIP, CEN and IRU) took part in the work of this session chaired by Mr C. Pfauvadel (France). More than 90 delegates attended the meeting.

Working group on the revision of Chapter 6.2 – gas receptacles (see Bulletin 3/2006, p. 42-43)

It will be recalled that the main objective of this revision was to incorporate into Part 1 the principles of the Transportable Pressure Equipment Directive (TPED), along with two new definitions (conformity assessment and applicant) and two new sections covering administrative checks for carrying out conformity

assessments and the procedures to be followed for the periodic and exceptional tests and inspections. The second objective was to align Chapter 6.2 more closely with the provisions of the UN Model Regulations, particularly with regard to the structure. Lastly, the meeting wished as far as possible to delete the obsolete texts specific to RID/ADR. In contrast however, certain aspects of the TPED Directive, such as monitoring the market and organising working groups for the competent authorities and testing bodies to exchange experiences, were not retained. Two and a half days were needed to adopt this revision. The representative of the European Commission pointed out that TPED would be revised on the basis of the decisions taken at the current session. In addition, the representative of Belgium considered that the new provisions should have been designed to apply in general not only to pressure receptacles, but also to all other kinds of packagings and tanks. The Joint Meeting did not agree to keep an important Note which specified that with the agreement of the competent authority, more recent versions of the standards referred to could be used, if need be, as this would call into question the procedure for verifying conformity with RID/ADR initiated within the Joint Meeting and the working group on standards; the collective agreement envisaged differed from the procedure set out in the UN Model Regulations, which requires the agreement of the competent authority, that is – unless otherwise specified by the words “of the country of origin” – of all the competent authorities of the countries concerned by the carriage.

In this context, an informal document submitted by Belgium was the subject of lengthy debate. Belgium proposed broadening the scope of application of RID and ADR by changing the definition of “carriage” to include loading, unloading, filling and emptying of receptacles. The reason for the proposal was that, in practice, the filling of gas receptacles in a country other than the country of approval of such receptacles was not always authorized, despite the fact that it would not be against the provisions of RID and ADR. Several delegations referred to the fact that, according to Article 4 § 1 of ADR, each Contracting Party retained the right to regulate or prohibit, for reasons other than safety during carriage, the entry of dangerous goods into its territory. Article 3 of Appendix C to COTIF also allows a similar restriction. Numerous reasons could be invoked for the additional regulation: security, environmental protection, labour law, economic considerations, etc. Unlike the legal framework governing the international carriage of dangerous goods, the legal frameworks for other regulations were often a matter for national authorities. The various national requirements

in fact created obstacles to international trade. It did not appear, however, that such problems could be resolved within the legal framework of RID and ADR alone, as the acceptance of RID and ADR requirements for purposes other than carriage must be covered rather by the appropriate legal instruments.

The representative of Germany proposed that the Joint Meeting should take a position on the question of principle of whether a country could refuse the filling of a receptacle that was in conformity with RID and ADR (for example, a receptacle approved in another country) for reasons unrelated to transport regulations. Several delegations considered that it was inadvisable to put this question to a vote, because legal interpretation issues of that kind required appropriate consultations, which had not been possible, as the informal document had only been submitted at the beginning of the meeting. The representative of Belgium proposed that his informal document be discussed at the next session as an official document.

Report from the informal working group on dangerous wastes (see Bulletin 3/2006, p. 43)

The new texts proposed by the working group were adopted. They call for assignment to a packing group but no exemptions for quantity limits are provided. It was no longer considered necessary to prescribe the use of certain n.o.s. (not otherwise specified) entries, based on the properties of the dangerous waste. In principle, all the collective headings could be used. In addition, it was not considered advisable to use the European nomenclature of wastes instead of the technical name. The representative of the United Kingdom said that he would have preferred the new provisions to be applicable in a multimodal context, through the UN Model Regulations.

Report from the working group on standards

The Joint Meeting took note of the status of the discussions on ways of dealing with the chemical compatibility of plastics packagings.

Report from the working group on tanks

The requirement for surge-plates or dividing walls for shells that are not divided into sections with a maximum capacity of 7500 litres will no longer apply in the case of liquids only, but also for most liquefied gases or refrigerated liquefied gases. With regard to the application of standards, it was decided that standards referred to for the first time would only become

mandatory two years later. In the case of an amended or revised standard, only the version referred to previously could be used as an alternative during the two year transitional period. In addition, the competent authority may recognize the use of a technical code guaranteeing the same level of safety in order to take account of scientific and technical progress or when no standard is listed or to deal with specific aspects not covered by the standards listed.

Safety obligations for unloaders and consignees (see Bulletin 1/2006, p. 4)

The decision on transferring part of the consignee's obligations to the unloader, with a new definition of unloader, had to be deferred to the next session as there was no consensus on part of the new text.

Providing the technical name in the transport document

The UN Model Regulations and RID/ADR are not aligned with regard to the assignment of a special provision concerning the technical name to generic entries and n.o.s. entries. The representative of CEFIC agreed to coordinate the work of a correspondence group, which would verify, on a case-by-case basis, whether there were grounds for retaining this special provision in RID/ADR for entries to which it was not assigned in the UN Model Regulations, it being understood that Governments wishing to retain it would provide the necessary justifications; that would enable the issue to be brought to the attention of the United Nations Sub-Committee of Experts. If necessary, CEFIC would organize an informal working group.

Tracking and tracing system for dangerous goods vehicles

The representative of the European Commission presented the salient facts of a discussion document from the Commission's Regulatory Committee, particularly the setting up of an ad hoc working group within the Commission to look especially at the possible role of the European Union, and of another ad hoc working group of the Joint Meeting. The Joint Meeting would be kept informed of future developments within the European Commission.

Dangerous goods telematics in intermodal transport

In a document, the representative of Germany particularly drew attention to the urgency of taking these problems into account in order to avoid systems being

developed which were not suitable for the carriage of dangerous goods. He informed the meeting that a study had been commissioned in Germany with the particular aim of examining the various projects. He proposed that an ad hoc working group be set up to decide the mandate, the programme of work, and the procedure and to submit the results to the Joint Meeting. The Joint Meeting accepted the principle.

Future work

The autumn session of the Joint Meeting will be held from 11 to 21 September 2007 in Geneva. It will deal with the harmonisation with the 15th revised edition of the UN Model Regulations.

(Translation)

Publications and interesting links

Der Gefahrgut-Beauftragte, Hamburg, Nr. 1/2007, S. 5-11 – Vorschriften 2007. Wichtigste Änderungen 2007 zum ADR – Teil 8/9. Wesentliche Änderungen im 33. Amendment des IMDG-Codes. (J. Conrad, D. Dabels, E. Kessler, V. Krampe, U. Mann, H.-J. Niegel, T. Pindris, E. Sigrist)

Gefährliche Ladung, Hamburg, Nr. 1/2007, S. 8/9 – Drei Tage bis Moskau. Transkontinentaler Güterverkehr zwischen Mitteleuropa und den GUS-Staaten. (R. Gödde)

Gefährliche Ladung, Hamburg, Nr. 1/2007, S. 9-12 – „Alle müssen an einem Strang ziehen“. COTIF 1999 und Allgemeiner Verwendungsvertrag. (S. Klein)

Gefährliche Ladung, Hamburg, Nr. 1/2007, S. 13-15 – Aufholbedarf im Schienenverkehr. Einsatz von Telematiksystemen. (T. Rieckenberg)

Gefährliche Ladung, Hamburg, Nr. 1/2007, S. 16/17 – Wer deutet die Zeichen. Angabe der Tankcodierung und der Sondervorschriften auf Kesselwagen. (E. Winkler)

Gefährliche Ladung, Hamburg, Nr. 1/2007, S. 30/31 – Technischer Fortschritt. 43. Tagung des RID-Fachausschusses. Gemeinsame Tagung September 2006 (J. Conrad)

http://www.gelaweb.de/artikel/gemeinsame_tagung9-06.pdf: Gemeinsame Tagung (Genf, 11. bis 15. September 2006) (J. Conrad)

Rail Facilitation

International Conference on the Facilitation of Border Crossing in Rail Transport

UN/ECE-OSJD Preparatory Meeting

Warsaw, 6-8 March 2007

Within the framework of the United Nations Economic Commission for Europe (UN/ECE) and the Organization for Railways Cooperation (OSJD), the Secretariat of OTIF is involved in the work to develop a new Annex 9 to the 1982 Convention on the Harmonization of Frontier Controls of Goods, which deals with border crossing in rail transport, and a new Convention to facilitate border crossing in international rail passenger transport.

Both convention texts have been discussed in six preparatory meetings organised by UN/ECE, together with OSJD. The last of these was held from 6 – 8 March 2007 in Warsaw (see also Bulletin 4/2005, p. 61/62). The Secretariat of OTIF introduced numerous proposals of substance into the discussion.

With regard to freight traffic in the new Annex 9, the meeting succeeded in transposing some declarative provisions, which did not amount to anything more than declarations of intent, into mandatory provisions. Also at the last preparatory meeting, a provision was included on the basis of which regular checks can be made to ensure that the periods of time specified for customs clearance and other border crossing procedures are being observed, the causes of irregularities can be analysed and the necessary measures can be taken.

The draft new Convention to facilitate border crossing in international rail passenger transport provides various possibilities as to how and when passengers and their luggage can be checked. The OTIF Secretariat thought it was important to specify in the new regulations that the preferred alternatives should always be those that do not require additional waiting times at border stations or at other stations intended for such checks, i.e. the preferred alternative should be to carry out checks in the train during the journey and while passenger carriages are being changed over to another gauge. The systematic arrangement in the latest version of the draft takes into account this approach. However, the representatives of the OSJD Member States who took part in the preparatory meetings saw no possibility of incorporating

an obligation requiring that the time needed to change gauge must always be used for control purposes as well.

The sixth preparatory meeting, which was attended by representatives from ten OSJD Member States and from Serbia, considered that the drafts of both texts that have been prepared are advanced enough for the procedure to adopt them at UN/ECE to be got underway. The International Conference will probably take place once both convention texts have been adopted by the relevant bodies. At this Conference, among other things, the situation at the border crossings that are important for Eurasian rail transport and the inspection and control procedures that are carried out there should be presented and analysed against the background of the new regulations.

(Translation)

Other legal Matters

Rail Protocol

Diplomatic Conference

Luxembourg, 12-23 February 2007

The “Luxembourg Protocol” provides new perspectives for financing railway rolling stock¹

Introduction

At a Diplomatic Conference held in Luxembourg from 12 to 23 February 2007 under the auspices of the International Institute for the Unification of Private Law (UNIDROIT) and OTIF, and attended by representatives from 42 States and eleven international organisations, discussions on the text of the “Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock” were completed and the text was adopted^{2 3}.

1 On this subject, see also the study entitled “The International Registry for International Interests in Railway Rolling Stock” published in Bulletin 2/2003, p. 34 ff.

2 See <http://www.unidroit.org/english/conventions/mobile-equipment/conference2007/main.htm>

3 The texts adopted at the Diplomatic Conference in Luxembourg will be published in a future edition of the Bulletin.

The Basic Convention

In order to gauge the significance of the Protocol, it is first necessary to examine the “Convention on International Interests in Mobile Equipment”, which underlies the Protocol. This Convention was adopted on 16 November 2001 in Cape Town and entered into force on 1 April 2004 after it had been ratified by three States. Since then, numerous States have acceded to the Convention and others are expected to do so⁴.

The essence of what the Cape Town Convention contains can be summarized as follows:

1. In order to facilitate the acquisition and use of mobile equipment of high value or particular economic significance (aircraft, locomotives, satellites etc.), particularly in areas of the world that are especially dependent upon foreign capital, a legal framework standardized to the greatest extent possible has been created for the global recognition and protection of secured interests in this regard.
2. The core of the regulations covered by this framework is an international registration system (Internet based, round the clock).
3. Subject to certain prescribed formalities (it must be in writing, identification of the object etc.), an international interest can be constituted by three types of agreement under private law:
 - (a) a security agreement between a chargee (e.g. a secured lender) and a chargor,
 - (b) a title reservation agreement between a conditional seller and a conditional lessor, and
 - (c) a leasing agreement between a lessee and a lessor.
4. The Convention only applies if the chargor etc. is situated in a Contracting State at the time of the agreement, e.g. if he has his place of business in that State; however, this requirement does not apply to the chargee.
5. With regard to the three following categories of mobile equipment, “Protocols” are already provided for in the basic Convention, which,

4 See <http://www.unidroit.org/english/implementation/i-2001-convention.pdf>

together with the Convention, are to be considered and interpreted as a uniform instrument. These Protocols do not merely implement the Convention, they also adapt it and take precedence over it in the event of incompatibility:

- (a) aircraft equipment (airframes) etc.
- (b) railway rolling stock and
- (c) space assets.

6. Other provisions cover:

- (a) Default remedies available to the chargee, where States have a degree of flexibility by means of declarations. Apart from this, these remedies are in any event subject to the disposition of the parties in the mutual relationship in the form of a written agreement (for exceptions, see below).
- (b) Details concerning the registration system, such as the Supervisory Authority (legal personality, immunities), Registrar (liability and insurance), registration in, interrogation of and deletions from the Registry.
- (c) Effects of a registered international interest in respect of third parties (e.g. insolvency administrators, priority over non-registered interests or those registered at a later date), effects of assignments.

The Rail Protocol

To implement and adapt the Cape Town Convention, the Luxembourg Protocol contains the following particular rules for railway rolling stock:

1. For railway rolling stock, the identification of the object required in order to constitute an international interest (see above) may be provided either by a description of an individual item or by general descriptions (but see item 10 below).
2. The rule in the Convention that certain default remedies available to the chargee must be exercised in a “commercially reasonable manner” has been extended to say that any remedy given by the Convention must be exercised in this manner and that this requirement cannot be made mandatory in an agreement between the parties.

3. In addition to the default remedies given in the Convention, the export and actual transfer of the railway rolling stock from the territory on which it is situated may be occasioned, in which case certain interested persons must be given “reasonable prior notice” of the intended export.
4. If, in the event of default, a chargee intends to sell or lease an object of railway rolling stock with which he is charged, the “reasonable period” prescribed in the Convention for providing prior written notice to certain interested persons is at least fourteen calendar days. A shorter period may not be agreed in an agreement between the parties.
5. Subject to an appropriate declaration (“opt-in”) by a Contracting State, in accordance with certain rules, the court may grant relief in this State pending final determination of alleged default.
6. Remedies on insolvency – a particularly significant event for interests – are subject either to national law or to three alternative rules (via an opt-in), which vary considerably from each other with regard to the extent of the rights and obligations for insolvency administrators, the parties, authorities and courts. Cross-border co-operation between courts and insolvency administrators requires an additional opt-in.
7. A State can use a declaration to exclude so-called “public service rolling stock” wholly or partly from the registry provisions or from the provisions that apply in the event of default or insolvency. This prevents rolling stock that is used to provide services of public importance being withdrawn from circulation (e.g. in local public transport).
8. In the absence of a default within the meaning of the Convention, a debtor is largely entitled to the quiet possession and use of the object.
9. The registration system in accordance with the Convention is put into concrete terms as follows:
 - (a) The Supervisory Authority (SA) will consist of representatives from the Contracting States, and until there are ten Contracting States, also of no more than three State representatives nominated by UNIDROIT and OTIF respectively, in accordance with the principle of achieving a broad geographical distribution.

- (b) The SA may form a committee of experts to support it.
- (c) The SA will also be supported by a secretariat, to be provided by OTIF.
- (d) The first Registrar will be appointed for a period of not less than five years and not exceeding ten years.
- (e) A Contracting State may, by means of a declaration, decide that information required for registration need not be sent directly to the Registrar, but must be transmitted via specific entry points.
10. In contrast to the requirements for constituting an international interest (see above), when it is entered in the Registry, each individual piece of railway rolling stock must be clearly identified (by means of an identification number allocated by the Registrar). This number need not be affixed to the item of rolling stock, but may also be associated with another identification number affixed to the item of rolling stock (e.g. from a national or regional system). In the latter case, it is essential that if numbers are changed, they are allocated to the respective periods of use without any gaps, from the date of the first registration in the International Registry.
11. With regard to the Registrar's liability, a maximum amount per calendar year applies, except in the event of gross or wilful breach of duty (see below).
12. The fees for registration, interrogation etc. must recover the "reasonable" costs of operating the Registry and secretariat. The costs of the Supervisory Authority must be borne by the States represented in it.
13. Information on the sale of rolling stock may be included in the Registry purely for the purpose of information. This should improve transparency, as there are currently no opportunities for registering this type of transaction.
1. Instruments of ratification, acceptance, approval or accession from four States, and
2. Written confirmation from the secretariat (OTIF) that the "International Registry" is fully operational.
- The second condition was added as a preventive measure in the event that when (or because) the first condition is met, there is no corresponding registration coverage, or in case other prerequisites are not in place, such as suitable insurance cover for the Registrar's liability.
- Six resolutions adopted jointly by the Conference are attached to the Final Act. From OTIF's point of view, the following three should be highlighted:
- No. 1 Establishment of the Supervisory Authority and the International Registry,
- No. 4 Official Commentary on the Luxembourg Protocol, and
- No. 6 Regimen of the Registrar's liability under Article XV(5) of the Protocol.
- The Commentary referred to will be prepared by the Conference rapporteur (Sir Roy Goode, United Kingdom, who has already written the official commentary on the Convention on International Interests) in close cooperation with OTIF and UNIDROIT and in consultation with the Chairmen of four of the Committees set up at the Conference (Committee of the Whole, Committee of the Final Clauses, Registry Committee and Editorial Committee), as well as with all members of the Editorial Committee (A, CDN, D, EAK, F, J, L, RUS, SF, USA) and it will be sent to all those who attended the Conference for their comments before it is officially published.
- With regard to the liability regimen, the Supervisory Authority should as soon as possible make use of its right to revise upwards the maximum liability limit set in the regulations at 5 million SDR per calendar year, provided that in so doing, the Registrar remains insurable in an economically reasonable manner.

Preparing the entry into force

The Protocol opened for signature in Luxembourg will enter into force when the following instruments have been deposited with the Depositary (UNIDROIT):

Resolution No. 1 sets out the next steps up until the time at which the Registrar and Supervisory Authority become fully operational.

Setting up of a “Preparatory Commission” composed of

1. qualified and experienced representatives of
 - (a) States that have ratified or acceded to the Cape Town Convention (see above),
 - (b) ten States from amongst those that participated in the Conference in Luxembourg, and
 - (c) six States nominated by UNIDROIT and OTIF
2. the Chairmen of the Committees set up by the Conference (see above, including Credentials Committee), where not already represented under a) to c),
3. two representatives of the Conference Secretariat provided by UNIDROIT and OTIF (one from each Organisation)
4. a representative of the Rail Working Group (RWG).

The Preparatory Commission will carry out the following functions:

1. establish the Commission’s Rules of Procedure and the working structure (Chairman, committees of experts, venue and date of the meetings),
2. prepare regulations and procedures for the International Registry (IR),
3. ensure that the IR is set up in accordance with a fair selection process,
4. enter into a contract with the Registrar on details such as the testing of software, the user application process, extending the range of languages used (e.g. for France and francophone States in Africa) etc. and
5. initiate consultations to ensure co-operation with any existing national and regional registries.

The Preparatory Commission will also prepare the establishment of the Supervisory Authority in accordance with Article XIII of the Luxembourg Protocol and will draft its first regulations concerning the Registry.

For the whole preparatory phase, it is anticipated that UNIDROIT and OTIF will participate in the work, providing as far as possible the necessary administrative support and facilities. In particular, it is expected that the work in this phase will be based on experience with the existing International Registry of aircraft equipment and on the know-how of the relevant private sector (RWG, railway rolling stock manufacturers, railway undertakings, financiers etc.).

The benefits for the railways

Some of the numerous advantages to be gained from the Protocol are set out below:

1. To the extent that the direct financing of railway rolling stock from public funds or by institutions endowed with public funds (e.g. EUROFIMA) is coming up against increasingly tight limits as a result of escalating budget restrictions or for reasons of competition law, private financing, especially from funds on the international capital market, is becoming increasingly important. This is particularly so because the development of public transport being driven forward in many countries of the world, particularly in major conurbations, generates an increased need for investment that goes beyond that required for locomotives, passenger and freight wagons to include rolling stock for rapid transit and underground railways as well as tram lines etc.
2. Access to private financing is made considerably easier if the financiers can be given security interests to provide them with effective protection in the event of non-payment of loans, insolvency of the debtor and cross-border transfer of the rolling stock.
3. The reduced risk in respect of internationally secured loans leads to considerably lower lending costs.
4. The decision by lenders to invest in the rail sector for the first time is considerably helped by the uniform international legal situation the entry into force of the Protocol creates, as well as by the legal certainty and transparency it brings.⁵

⁵ See the comprehensive review of these and other advantages under <http://www.unidroit.org/english/conventions/mobile-equipment/conference2007/conferencedocuments/dcme-rp-04-e.pdf> p. 20 ff.

The outlook for OTIF

At present, UNIDROIT has 61 Member States⁶, 29 of which are not also Member States of OTIF. There are Member States from all continents, some with substantial railway networks; their accession to OTIF would bring with it a valuable impetus for the globalized view and promotion of the rail sector. But the Rail Protocol and the advantages it brings are also of interest to States whose overall transport systems still need to be developed. In these States, the mistakes that have been made elsewhere can be avoided, i.e. the investment in roads that has been preferred, as a result of which it has then been an uphill struggle to balance out the railways' poorer competitive situation. The accession of such States would be a worthwhile challenge for OTIF and its present members. The considerable extension to the range of OTIF's tasks and activities brought about by the Vilnius Protocol has been supplemented by the Luxembourg Protocol and the role of OTIF that results from it, which signifies a further step towards becoming an intergovernmental organisation covering all the issues relevant to the railways as a mode of transport, along the lines of IMO and ICAO.



From left to right: Mr Gerfried Mutz, Conseiller Honoraire of OTIF, Mr Gustav Kafka, deputy to the Secretary General of OTIF, Mr Stefan Schimming, Secretary General of OTIF, Mr Luc Frieden, Luxembourg's Minister for Justice, the Treasury and the Budget, Mr Herbert Kronke, Secretary General of UNIDROIT.

(Translation)

Co-operation with International Organizations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Inland Transport Committee (ITC)

69th Session

Geneva, 6-8 February 2007

As usual, OTIF took part, at least for part of the time, in the annual session of the UN/ECE Inland Transport Committee, which this year was held in Geneva from 6 to 8 February.

One subject of particular interest to OTIF was included on the agenda of this 69th session: facilitation of border crossing in international rail transport. This item was not discussed at length. The Inland Transport Committee supported the work carried out so far and invited involved countries, OSJD and other international organizations to finalize the two new legal instruments (new Annex 9 to the 1982 Convention concerning the carriage of goods and the new Convention based on the model of the 1952 Convention concerning passenger traffic). Even though it was not specifically mentioned, OTIF is among these international organizations, as it has actively taken part in this work, and continues to do so (see esp. Bulletin 4/2006, p. 60 and p. 6).

As in previous years, the Inland Transport Committee supported the convening of an international Conference in the second half of 2007, again emphasizing that the international Conference would achieve increased importance and more results if it was carefully prepared and if the two new legal instruments were adopted beforehand by the Committee's relevant subsidiary bodies.

(Translation)

⁶ See <http://unidroit.org/english/members/main.htm>

Case Law

Cour d'Appel de Versailles

Ruling of 5 October 2006

The irregularity of the consignment note (the particulars specifying that the carriage is subject to the provisions of the Convention are missing) does not have the effect of relieving the parties from the mandatory provisions of the Convention, with which each of them is supposed to be familiar, particularly those concerning the limitation of compensation for loss or damage.

Cf. Articles 4, 6, para. 1 (k) and 7, para. 3 of CMR¹

With regard to the claim for compensation for the loss of the equipment:

Whereas under the terms of Article 1 of the CMR Convention, the Convention applies: “to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country”;

Whereas, this being the case, the provisions of CMR apply *ipso jure* to the transport of the contentious IT equipment from France to Great Britain;

Whereas under the terms of the combined provisions of Articles 4 and 6 para. 1 (k) of the CMR Convention, the contract of carriage is confirmed by a consignment note which must contain, among other particulars, “a statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention”;

Whereas Article 7 para. 3 specifies that: “If the consignment note does not contain the statement specified in Article 6, para. 1 (k), the carrier shall be liable for all expenses, loss and damage sustained through such omission by the person entitled to dispose of the goods”;

¹ The provisions comparable to those of Articles 4, 6 para. 1 (k) and 7 para. 3 of the Convention on the Contract for the International Carriage of Goods by Road (CMR) can be found in Articles 6, 7 § 1 p) and 8 § 3 of CIM.

Whereas in this case, the only document relating to the carriage in question is the pick-up order issued on 29 September 2001 to C.H.I. of Poissy Saint-Germain en Laye, by virtue of which the latter entrusted to Sernam the carriage of the IT equipment that turned out to be faulty;

Whereas this document does not meet the requirements of the above-mentioned Article 6 and in particular, does not mention that the carriage in question is subject to the provisions of the CMR Convention;

But whereas Article 4 *in fine* of the CMR Convention indicates that: “The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention”;

Whereas for all that, the aforesaid Article 7 para. 3 in no way prescribes that omitting the particulars required under Article 6 para. 1 (k) denies the carrier the right to take advantage of the limitations of liability or compensation provided in the CMR Convention;

Whereas the result is that the irregularity in the consignment note within the meaning of Articles 6 para. 1 (k) and 7 para. 3 does not have the effect of relieving the parties from the mandatory provisions of the CMR, with which each of them is supposed to be familiar, particularly those concerning the limitation of compensation for loss or damage;

Whereas therefore, in accordance with Article 17 of the CMR Convention, all the provisions of which apply in this case, Sernam Xpress SAS, which has succeeded to the rights of Sernam, must be declared liable for the loss of the contentious IT equipment, which occurred between the time this package was taken over and the time it was delivered.

From: *Bulletin des Transports et de la Logistique* (Transport and Logistics Bulletin), Paris, No. 3153/2006, p. 711
(Translation)

Book Reviews

Allégret Marc, Taïana Philippe, *Transport ferroviaire interne (Inland Rail Transport)*, LexisNexis JurisClasseur Transport, volumes 618 and 619 (8, 2006 – up to 30.4.2006)

In volume 619, the authors analyse and provide detailed comments on Fret SNCF's new commercial conditions (NCC), which entered into force on 1 June 2005. They examine each of the seven texts that make up the new NCC, i.e. the general sales and transport conditions (CGVT), tariffs, specific conditions concerning railway wagons, specific conditions concerning combined shipping (intermodal transport units), specific conditions concerning private sidings (ITE), specific conditions concerning additional services (lifting devices, customs, weighing, special consignments...) and the specific RESA fret conditions.

The texts of these NCC are reproduced in full in volume 618.

The reform of Fret SNCF's former general sales conditions can without doubt be described as revolutionary. Apart from the attempt to make relations between Fret SNCF and its customers subject to contract, the reform of the CGVT consists of adopting CIM contractually to govern French domestic transport. Only a few provisions of French law remain applicable. These are public order provisions relating to the carrier's liability for loss and damage (Article L. 133-1 of the Commercial Code) and the extinction of the claim against the carrier (Article L 133-3 of the Commercial Code). They are also provisions relating to the legal expert assessment and the sale of the goods (Article L. 133-4 of the Commercial Code) and those relating to the prescription of claims resulting from the contract of carriage (Article L. 133-6 of the Commercial Code).

In their international assessment of the reform, the authors do not omit to note that CIM represents the source of ideas for drafting or amending national legislation and that the provisions of CIM have been introduced into the texts concerning the domestic carriage of goods, or else inspired them, particularly in Switzerland, Germany, Austria and the Netherlands. SNCF is now getting itself involved in the process of extending CIM. Like the authors, the editor of this Bulletin notes that as far as standardization of the law is concerned, this is a beneficial outcome for the European (and international) carriage of goods by rail.

This publication is again characterised by the depth and relevance of the analysis and its reliability and completeness. It is co-authored by one of the best legal experts in rail transport law, both national and international. All these qualities make it an indispensable tool for legal professionals.
(Translation)

Bidinger, Helmut, *Personenbeförderungsrecht*, Commentary on the Carriage of Passengers Act and other relevant provisions, continued by **Rita Bidinger**, with assistance from **Ralph Müller-Bidinger**, ISBN 3503008195, supplements 1/06 as at November 2006 and 2/06 as at December 2006, Erich Schmidt Verlag, Berlin-Bielefeld-Munich.

The book produced in 1961, the 2nd loose-leaf 1971 edition of which is continuously adapted to developments in the law, contains almost 4,000 pages in two folders. As previously, the commentary on the current version of the German Carriage of Passengers Act (PbefG) forms a major part of the work. This Act deals with the trading laws for road transport and the related matters of transport safety and the administrative procedure.

There is extensive analysis of case law, including numerous unpublished rulings. A comprehensive list of contents makes it possible to find the respective details quickly. A clear layout and the successive introduction of margin numbers ensure that the work is very user-friendly.

As a result of amendments made by means of a new Act against unfair competition, the commentary on the PbefG has been adapted in supplement 1/06. This supplement focuses on the revised commentary on the German Regulations concerning the operation of road passenger transport undertakings (BOKraft).

The part of the text containing provisions relating to the PbefG, e.g. the German Regulations on compensation for services of public interest in road passenger transport on the one hand, and in rail transport on the other, has been brought up to date.

In supplement 2/06, one of the new provisions that is explained is Article 64a of the PbefG, which authorizes the Federal Lander to have a self-standing rule on compensation for services of public interest in the area of student travel. The revision of the commentary on the BOKraft is continued with explanations on what the operational staff on duty or those who are serving passengers have to do in the event of illness.

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

Catharin/Gürtlich, *Railways Act (Eisenbahngesetz)*, Commentary together with Economic and Legal Foundations of the Railways, as at 1.12.2006, Linde-Verlag Vienna 2007, 548 pages

In Austria, railway law in general and the Railway Act in particular have had a long tradition of stable foundations. In 2006, following a comprehensive revision of the Railways Act, the process of restructuring railway law prompted by the EC's reform initiatives was concluded for the time being. At the same time, this process of reform brought with it a "purging" and a simplification of administrative procedures, at least as far as national law was concerned.

Both authors, who, as officials of the Austrian Ministry of Transport, were actively involved in this reform, therefore thought the time had come to present for the first time an overall view, with a commentary, of this new Railways Act.

In addition to the details of the Railways Act, the book also covers the relationship of the Act to other provisions of railway law, such as those of the Federal Railways Act, the Private Railways Act or rail transport law. As public railways are traditionally subject to strong State influence with regard to their organisation and funding and as, for a good ten years, they have had to comply ever more closely with the guidelines arising from the EC's transport policy, the authors have placed two sections before the part of the book containing the actual text of the Railways Act:

The first section begins with an introductory overview of the fundamental considerations of transport policy and the economic foundations of the organisation and funding of the railways;

The second section contains a brief overview of the systematics of the legal basis in railway law collectively, in order also to highlight the other crossover points between the Railways Act and domestic and international railway law.

In the form of a compendium, these two sections are aimed at those readers who are looking for a self-contained presentation of the general context and how it has developed.

The extensive third section contains the remarks and information commenting on the individual paragraphs of the Railways Act itself. This commentary is useful for those applying the law, since the main focus is on a practice-based commentary. Case law is only quoted in so far as its conclusions still need to be drawn on,

although many paragraphs have been systematically renumbered. The references to specialist literature and other sources are particularly highlighted. In the interest of legibility, word for word quotations are avoided and a summary is provided, although readers interested in the details are referred to the sources cited.

As is usual, the commentary is accompanied by an overview of the contents, a list of abbreviations and a bibliography, and in an appendix to the third section, a list of key words in the Railways Act is provided, thus making practical use of the book easier. This commentary has been carefully prepared and can be recommended unreservedly to all those who are interested in railway law.

(Translation)

Last but not least

Flying the flag!

Who would have thought it? Finally, after 114 years in existence, OTIF will be able to fly the flag. The Diplomatic Conference in Luxembourg succeeded where the centenary of OCTI failed. OTIF now has its own flag. Too bad for those doubting Thomases who, about fifteen years ago, rejected the idea of a flag, thereby avoiding having to pay out some 750 SFr. under the pretext that the quality of the work delivered constituted an Organisation's best corporate image. In fifteen years though, circumstances and people's ideas change. The colour, logo and design of the new flag were unanimously and, for the most part, tacitly agreed, and amazingly, nobody fretted about the cost, so there really are grounds for celebrating! But enough niggling...long live the flag!

(Translation)