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by Rail

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Official Communications from the Secretariat of OTIF

Accession to the 1999 Protocol

Ukraine

The Ukraine acceded to the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1999 Protocol) by depositing its instrument of accession with the Secretary General of OTIF on 31 July 2007 (see Bulletin 3/2007, p. 41). On 26 October 2007, the Ukraine replaced this instrument of accession, which contained two declarations, with a modified instrument, which also contains a reservation on the scope of application of the CIV and CIM Uniform Rules (Art. 1 § 6 of CIV/CIM).

An overview of the state of signatures, ratifications, acceptances and approvals of the Vilnius Protocol and its Annex, COTIF 1999, and of the accessions to this Protocol or to COTIF¹ including the reservations and

declarations lodged by the Member States, and the texts thereof² are published on OTIF's website.

The Ukraine's accession to the 1999 Protocol took effect on 1 November 2007. The 1999 Protocol and COTIF 1999 entered into force for the Ukraine on 1 November 2007. From this date, the CIV and CIM Uniform Rules will be the law applicable to the lines entered in the lists of railway lines in accordance with Article 24 § 2 of COTIF in the territory of the Ukraine³ (a total of 232 km) (see "List of Lines").

Lists of lines 1999

CIV list of maritime and inland waterway services

(published on 1 July 2006)

Secretary General circular no 8, 1 November 2007

Chapter "Germany"

Following the deletion of the shipping line Bremerhaven - Helgoland operated by the "Bremerhaven-Helgoland-

1 see www.otif.org/html/d/pub_cotif_03_06_1999.php OTIF - Publications - Convention(s) – COTIF (3.6.1999) – Depositary (Secretary general) (Art. 36 COTIF) – State of the signatures, ratifications, acceptances, approvals, accession et entry into force

2 see www.otif.org/html/d/pub_cotif_03_06_1999.php OTIF - Publications - Convention(s) – COTIF (3.6.1999) – Declarations et reservations

3 Until this date, the CIM UR were applied de facto to these railway lines, see Bulletin 3/2005, p. 35

Linie GmbH & Co. KG" (Postfach 26 26, DE – 24916 Flensburg) mentioned under A.9 and the modifications made in the Germany chapter, the chapter has been re-issued.

See COTIF 1999, Article 24 §§ 1, 3-5.

CIV list of railway lines

(published on 1 July 2006)

Secretary General circular no 1, 29 October 2007

Chapter "Ukraine"

As the Ukraine's instrument of accession to the 1999 Protocol contains a reservation on the scope of application in accordance with Article 1 § 6 of CIV, a new Ukraine chapter has been included in the CIV list of railway lines in accordance with Article 24 § 2 of COTIF 1999. COTIF 1999 and hence the CIV Uniform Rules entered into force for the Ukraine on 1 November 2007.

See COTIF 1999, Article 24 § 2.

CIM list of railway lines

(published on 1 July 2006)

Secretary General circular no 3, 29 October 2007

Chapter "Ukraine"

As the new Ukraine's instrument of accession to the 1999 Protocol, which was deposited on 26 October 2007, contains a reservation on the scope of application in accordance with Article 1 § 6 of CIM, the CIM Uniform Rules will apply to the lines entered in the CIM list of railway lines in accordance with Article 24 § 2 of COTIF 1999. COTIF 1999 and hence the CIM Uniform Rules entered into force for the Ukraine on 1 November 2007.

See COTIF 1999, Article 24 § 2.

Panel of Arbitrators

Following the entry into force of COTIF 1999, the Secretary General updated the panel of arbitrators (see Bulletin 1/2007, p. 1/2). Belgium has nominated a new

arbitrator, so the panel published on OTIF's website has been brought up to date accordingly.¹

Work of OTIF's General Organs

Administrative Committee

108th session

Berne, 14/15 November 2007

For its 108th session, the Administrative Committee met in Berne on 14 and 15 November 2007 under the chairmanship of Mr Carlos del Olmo Morand (Spain).

The Administrative Committee approved the work programme for 2008/2009, the budget for 2008 and the provisional budget for 2009 submitted by the Secretariat.

The Committee also discussed at length the development of the Organisation's investments and the future direction that should be followed with regard to investments. It took a number of decisions on this subject and instructed the Secretary General to submit proposals to the Committee on the gradual reduction of the reserve fund.

The Administrative Committee also took note of OTIF's general financial situation. It shared the Secretary General's concerns with regard to OTIF's financial situation and urgently invited the Member States to return to a better payment ethic.

With regard to the progress of negotiations between the European Commission and OTIF concerning the European Community's accession to COTIF, the Administrative Committee noted the information provided by the Secretary General. The Members of the Committee expected the European Commission finally to take a position between now and December 2007 on the negotiating objectives outlined by the Secretary General on behalf of OTIF in October 2006 (see Bulletin 4/2006, p. 54), and awaited its position with great interest.

The Administrative Committee also encouraged the Secretary General to continue his contacts with the Russian Federation, which had indicated its intention to accede to COTIF.

¹ see www.otif.org, Addresses and useful links

Lastly, the Administrative Committee heard a report on the progress of the work resulting from the Diplomatic Conference in Luxembourg (Rail Protocol) and more particularly on the setting up of the Registry of international interests on matters specific to railway rolling stock, which must be up and running by the time the Luxembourg Protocol enters into force (see Bulletin 2/2007, p. 18 et seq. and Bulletin 3/2007, p. 52).

The 109th session of the Administrative Committee will be held in Berne on 21 and 22 May 2008.
(Translation)

Legal Matters concerning COTIF

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

CIM/SMGS Steering Group and Legal Group

Predeal (Romania),

20/21 November 2007 and 22/23 November 2007

At the invitation of CFR Marfa, the Steering Group for the CIT/OSJD project to make CIM/SMGS legally interoperable met on 20/21 November 2007 and the associated Legal Group met on 22/23 November in Predeal (Romania).

CIT reported firstly on test movements to implement the CIM/SMGS consignment note in Corridor V and in traffic between China and Europe, and secondly on the progress of work on the electronic CIM/SMGS consignment note¹. In addition, the representatives of RZD (Russian Railways Ltd) and ZSSK Cargo (Cargo Slovakia Railway Company) provided information on movements with the CIM/SMGS consignment note that is already underway or planned.

The representative of the OSJD Committee confirmed that all the additions to Annex 22 of SMGS (i.e. the CIM/SMGS consignment note manual) adopted by the Steering Group in July, as well as the new SMGS provision concerning the presumption in case of recosignment (parallel provision to Article 28 § 3 of CIM for transport using the CIM/SMGS consignment note) had been adopted by OSJD's Commission II at its annual meeting (Warsaw, 9 – 12.10.2007) and that this

should enter into force on 1 July 2008 (see also Bulletin 3/2007, p. 42).

A focus of the discussions, both in the Steering Group and in the Legal Group, were the provisional results of the Legal Group's work concerning uniform rules for dealing with claims (9th meeting of the Legal Group, Vilnius, 11/12.9.2007). The principle being considered can be summarised as follows: if in dealing with the claim – in the CIM or SMGS area – it turns out that the cause of the loss or damage lies wholly or partly within the other area, the claim will not be sent back to the claimants with a negative notification, as previously, but will be passed on by the responsible CIM carrier or the regulating SMGS railway on behalf of and at the cost of the customer to the body responsible for claims handling within the area of the other transport law.

The work on implementing this basic principle in each of the sets of provisions applicable to claims handling (i.e. AIM, the Agreement set up under the aegis of CIT on relations between carriers in the international carriage of goods by rail for the CIM area, and the service regulations for the Agreement on the international carriage of freight by rail in the SMGS area) will be continued in 2008.

(Translation)

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3194/2007, p. 612/613 – Aérien. Faute inexcusable ; p. 614/615 – Responsabilité du chargeur. Face aux intervenants (M. Tilche) ; p. 619/620 – Jurisprudence. Aérien voyageurs. Faute qualifiée

Idem, n° 3196/2007, p. 643 – Grèves. Le parapluie du service minimum (D. Broussolle) ; p. 643/644 – Mouvement sociaux. Quittez toute espérance (quand les marchandises restent en rade – par suite d'une grogne salariale endémique) (M. Tilche) ; p. 652/653 – Jurisprudence. International. CMR ou Varsovie ?

Idem, n° 3197/2007, p. 659/660 – Autoroutes ferroviaires. Quel régime ? ; p. 662/663 – Remise au destinataire. Quand c'est trop tard (M. Tilche)

Idem, n° 3198/2007, p. 675/676 – Les documents de transport (P. Rappatout)

Idem, n° 3199/2007, p. 697 – CMR électronique. Le modèle IRU (M. Tilche)

¹ For more information, see CIT INFO, http://www.cit-rail.org/publications_09/2007 edition, p. 4-5

Idem, n° 3200/2007, p. 711/712 – Autoroute alpine. Statut particulier (M. Tilche)

Idem, n° 3203/2007, p. 758/759 – Déclarations de valeur. Cas pratiques

CITINFO (Comité international des transports ferroviaires, CIT) <http://www.cit-rail.org>, Publications, éditions 08/2007, 09/2007 et 10/2007; Veröffentlichungen, Ausgabe 08/2007, 09/2007 und 10/2007; Publications, éditions 08/2007, 09/2007 and 10/2007

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 139/2007, S. 6 – Kunden müssen Streikschäden oft selbst tragen. Aber: Bahn muss verantwortungsbewusst handeln (K.-H. Gimmler und D. Esslinger)

Idem, Nr. 144/2007, Sonderbeilage Container, S. 18 – ... und der Reeder haftet nicht. Auch ein schlafender „Wachoffizier“ begründet kein schuldhaftes Verhalten (E. Boecker)

European Transport Law / Droit européen des transports / Europäisches Transportrecht, Antwerpen, No. 4-2007, p. 483-494 – Right of suit against the carrier in CMR (R. De Wit)

Idem, No. 6-2007, p. 677-687 – La Convention du Cap 2001 (CCT 2001), le Protocole aéronautique et les hypothèques maritimes (J. Putzeys)

FIATA Review, No. 69/2007, p. 16/17 – What governs the international carriage of cargo? [aviation law] (A. Polivnik)

Internationale Transport Zeitschrift (ITZ)/ Journal pour le transport international (JTI) / International Transport Journal (ITJ), Basel, n° 43-44/2007, S. 25 – Die IATA Resolution 600b (neue Vertragsbedingungen des IATA-Luftfrachtbriefs); S. 38/39 – Luftfrachtrecht. Uneinheitliche Regelwerke (E. Boecker)

Transportrecht, Hamburg, Nr. 10/2007, S. 385-393 – Grenzüberschreitende Transporte in der Binnenschifffahrt (O. Hartenstein)

Transport of Dangerous Goods

RID Committee of Experts' Working Group on Tank and Vehicle Technology

Special session

Berlin, 12 October 2007

At the 8th session of the RID Committee of Experts' working group on tank and vehicle technology (Munich, 14 and 15 June 2007), it was agreed to carry out a derailment test to prove that the EDT 101 derailment detector manufactured by Knorr-Bremse trips reliably at speeds between 35 and 40 km/h (see Bulletin 3/2007, p. 45). In connection with this, a draft proposal from Germany was to be discussed. This proposal to the RID Committee of Experts proposed the inclusion in RID of a requirement to equip tank-wagons with derailment detectors.

The derailment test was carried out by the Technical University of Berlin on 12 October 2007 on behalf of the manufacturers, Knorr-Bremse. Following the test, there was a discussion in the working group on tank and vehicle technology led by the deputy chairman of the working group, Mr A. Bale (United Kingdom).

The following States watched the test and took part in the discussions at this session: Germany, Italy, Netherlands, Sweden, Switzerland and United Kingdom. The International Union of Railways (UIC) and the International Union of Private Wagons (UIP) also took part.

Presentation of the test and test results by the Technical University of Berlin

Professor M. Hecht (TU Berlin) reiterated the objective of the test performed, which was to demonstrate the functional capability of the EDT 101 and to gain knowledge of how wagons perform in the event of a derailment.

The rear bogie of the tank-wagon to be derailed was placed on two assister rails, while the rest of the train (locomotive, barrier wagon, front bogie of the tank-wagon to be derailed and the following barrier wagon) ran on the normal rails. The assister rails were placed as close as possible to the normal rails in order to prevent lateral overriding of the buffers and the end of the assister rails were in the form of a ramp in order to guide

the derailed bogie into the ballast bed as gently as possible.

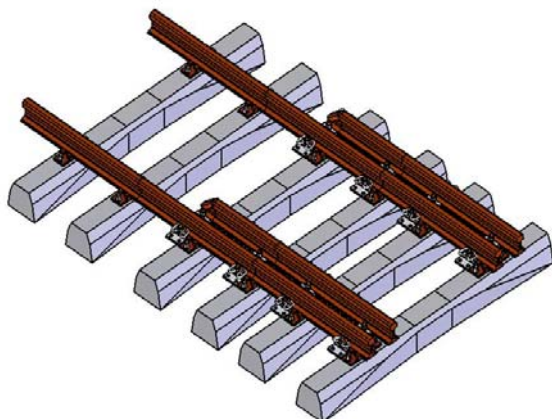


Diagram: auxiliary construction of the acceleration track with ramp

One test was carried out with all empty wagons and one with a loaded wagon between two empty barrier wagons. The test with all empty wagons was carried out the day before (11 October 2007). The train composition reached 50 km/h when empty and 48 km/h with the loaded wagon.

Accelerometers were fitted to the vehicle to be derailed so that the ideal position for the derailment detectors could be determined.

In the test with empty wagons, the main brake pipe was opened by the derailment detector around 0.2 seconds after the derailment, while the tripping time in the test with a loaded wagon was only 0.04 seconds.

With regard to the representative of Sweden's continuing doubt as to whether the EDT really fulfilled the requirements of UIC leaflet 541-08 in respect of low temperatures (-40 °C), Professor Hecht explained that the spring damper system of the ballast bed that was absent from the ground in permafrost conditions would partly be compensated for by the lower sensitivity of the EDT at low temperatures. However, the extent to which the EDT would compensate for this could not be confirmed.

Presentation of a draft proposal for the next session of the RID Committee of Experts by the representative of Germany

The representative of Germany introduced his draft proposal for the next session of the RID Committee of Experts, which had been sent to the working group participants before the meeting. He made clear that this

was a simple proposal, which referred to UIC leaflet 541-08 with regard to the technical details. For the time being, it was only proposed that new-builds for certain dangerous goods should be fitted with derailment detectors, as not all aspects of this new technology were known yet. In order that the conformity of different systems could be assessed, a later date (1 January 2011) could be considered for the entry into force of this new requirement concerning fitment.

The representative of Switzerland said he would welcome an extension of this new requirement to all dangerous goods tank-wagons, perhaps with gradual implementation (1 January 2011 for very dangerous substances, 1 January 2013 for all dangerous substances) as in the case of energy absorption elements. In connection with this, he pointed out that in Switzerland, more than 600 dangerous goods tank-wagons had been fitted with derailment detectors since 2002 and thus sufficient experience in practice would be available. He pointed out that retrospective fitting would cost four to five times more than fitting new-builds with detectors.

Although the extension to all dangerous goods tank-wagons proposed by the representative of Switzerland was supported by some other delegations, the working group preferred at this stage to follow a more cautious approach on the basis of the draft German proposal, as there had not yet been enough experience with the EDT 101. However, the representative of Switzerland was asked to submit his further reaching request in an informal document for the RID Committee of Experts if he so wished.

In order to enable other systems to be developed and tested as well, the working group agreed that this new measure should be included in the 2009 edition of RID, but with a date of entry into force of 1 January 2011. (Translation)

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

Geneva, 5-9 November 2007

25 Governments and 12 governmental or non-governmental international organisations, including the European Commission, took part in the work of the 83rd session chaired by Mr J. Franco (Portugal).

The meeting dealt with the following subjects concerning multimodal transport:

Texts adopted by the RID/ADR/ADN Joint Meetings in 2006 and 2007

The Working Party endorsed all the amendments adopted by the Joint Meeting.

Pressure equipment

It was recalled that the new provisions being planned, as well as the consequential amendments, were intended to introduce into ADR and RID the principles of the European Directive on transportable pressure equipment (TPED), along with amendments aimed at simplifying the use of these principles.

As a consequence, it is planned to modify the TPED, but this might not be finalized by 1 July 2009. Thus from that date, there might be a contradiction between the application of ADR and RID and the TPED with regard to the part of it that applies to the carriage of dangerous goods.

Some delegations were also concerned about the difficulties non Member States of the European Union might face in applying these new measures. The introduction of an appropriate transitional measure could be examined at the next session.

Environmentally hazardous substances

The Working Party endorsed the Joint Meeting's decision to use the classification criteria for environmentally hazardous substances of the Globally Harmonized System of classification and labelling of chemical products (GHS). Other alternatives for simplifying the text in future were mentioned, such as a direct reference to the GHS or to the Regulation of the European Parliament and of the Council concerning the classification, labelling and packaging of substances and mixtures, once these criteria have been incorporated into them and are available in all the United Nations and European Union languages.

Provisions specific to ADR

In the context of safety in road tunnels, some delegations regretted that the wording of the restriction codes for tunnels had been amended at a time when the training of drivers and safety advisors on the rules applicable to transport in tunnels was already underway.

Other delegations expressed their disapproval at having to return to the principles according to which the restriction codes for tunnels are allocated after the rules relating to safety in tunnels had already been introduced

into ADR and at a time when they had already started to be implemented.

With regard to handling and stowage, the meeting adopted the addition of a non-binding reference in ADR to the European Commission's code of good practice for stowage and handling.

As consultations on this issue were underway in the Russian Federation and as the representative of Germany had expressed some reservations concerning the contents of the code, it was decided to keep the text adopted in square brackets until the next session.

Programme of work and biennial evaluations (success indicators)

The Working Party adopted the programme of work for 2008-2012 and with regard to the biennial evaluations, it noted the Secretariat's proposal concerning the indicators and methodology relating to its work that could be proposed to the Inland Transport Committee. This proposal was adopted in respect of the expected outcomes and the first two success indicators (amendments to the ADR Agreement, the RID Regulation and the ADN Agreement adopted in 2007 and 2008, which will enter into force on 1 January 2009 for international transport and before 1 July 2009 for inland transport in all the Member States of the European Union and the European Environment Agency, corresponding in particular to the fifteenth revised edition of the United Nations Recommendations on the Transport of Dangerous Goods, and before the end of 2008, publication of a revised 2009 version grouping together ADR and ADN).

With regard to the third of the success indicator points (e.g. number of dangerous goods drivers and advisors trained; number of courses organised; number of dangerous goods driver and advisor certificates; number of checks carried out; number of vehicle approvals; number of tank approvals; number of new packagings approved; number of certificates issued under ADN, etc., in such a way as to take account of new amendments; possibility of examining only some questions), opinions were divided with regard to the availability and efficacy of the indicators proposed. The quantification of transport in tonne/kilometres and accident statistics were presented as other good indicators, but these data can be difficult to obtain. This item was kept in square brackets. The Secretariat would send delegations a questionnaire in order to find out which data might be available and to collect the data if need be.

50th Anniversary of ADR (see also p. 76 and p. 83)

A round table on the subject of the efficacy of UN/ECE regulations in the area of safety enhancement and the facilitation of international transport, using ADR as an example, was organised in honour of this occasion.

The speakers retraced the history of ADR since the 1950s, explained the importance of ADR for improving safety, security and environmental protection and its role in terms of transport facilitation. They also stressed the importance of multimodal and intersectorial harmonisation, the standardisation of regulations relating to national and international transport and future prospects, particularly in the framework of globalised trade and the development of Euro-Asian and Euro-African transport links.

(Translation)

Committee of Experts on the Transport of Dangerous Goods

44th Session

Zagreb, 19-23 November 2007

19 Member States (quorum reached), the European Commission, CIT, UIC, UIP, OSJD and ERA (European Railway Agency) took part in the work of this session chaired by Mr H. Rein (Germany), which was held at the invitation of the Croatian Ministry of Transport. The session was attended by more than 60 delegates, probably a record.

Harmonisation with the 15th edition of the UN Recommendations

As usual after each of the last sessions in a biennium, the RID Committee of Experts dealt first of all with approving the decisions taken by the RID/ADR/ADN Joint Meetings in 2006 and 2007 and this time particularly with the question of harmonisation with the 15th edition of the UN Model Regulations. These amendments were approved and will enter into force on 1 January 2009 with a transitional provision up to 30 June 2009. Some last minute amendments submitted by various States both to WP.15 and to the RID Committee of Experts were also taken into account.

Other proposals

Stowage and handling

A footnote adopted by WP.15 in square brackets, which contained a non-binding reference to the European Commission's Best Practice Guidelines on Cargo Securing for Road Transport, was not adopted for RID. However, the RID Committee of Experts would welcome the Joint Meeting's dealing with load securing for all the land transport modes. The representative of Belgium thought it would be necessary to check the binding character of the RIV provisions at the next RID Committee of Experts.

Dangerous goods packed in limited quantities

UIC proposed specifying whose responsibility it is to affix the marking for limited quantities on wagons and large containers. An amendment to the ADR text was also proposed with the aim of eliminating problems at the road/rail interface. It was noted in the discussion that the obligations of the loader could not be invoked because the regulations are silent concerning the applicability of these provisions.

The RID Committee of Experts was of the view that following the example of the newly included exempted quantities, there should be a discussion at the Joint Meeting on which other parts of RID should be applied when carrying limited quantities. For carriage in limited quantities, as well as for carriage in exempted quantities, it should be checked which obligations of the participants must be observed.

UIC's first proposal was adopted and WP.15 should also be recommended to adopt it until this Chapter was revised. UIC should submit the second proposal directly to WP.15.

Container loading inspections

Belgium proposed aligning RID with ADR in order to clarify the obligations in connection with the loading of containers. Some delegations questioned the use of the term "loading" for placing containers onto or removing them from wagons, because in transshipment stations, for example, the container is only transhipped or taken off the wagon; no dangerous goods are loaded or unloaded. The term "handling" seemed to be more suitable in this respect.

The representative of the United Kingdom was of the view that the checks proposed should only take place in

the context of representative samples and not for every load. Finally, Belgium's proposal was adopted.

Restrictions on transport imposed by the competent authorities

The Secretariat proposed an editorial alignment of the terminology in the English and French versions in order to rule out the possibility of misinterpretations whereby alternative routes might be construed as routes by other transport modes.

In view of the fact that the new Framework Directive on the inland transport of dangerous goods would in future allow routes to be determined using all modes, the RID Committee of Experts did not consider it necessary to align the terminology in the existing texts, as this might restrict application of the new Framework Directive.

In view of the discussion, UIC withdrew its proposal, the aim of which was to limit supplementary provisions by the Member States in cases where no or no suitable alternative routes were available.

Waiving the requirement for placarding on carrying wagons

UIC proposed to waive the requirement for placarding on carrying wagons used for piggyback transport, including in those cases where road vehicles need not bear placards when carrying packages.

UIRR (International Union of combined Road-Rail transport companies) proposed that some of the relaxations in ADR should also be applicable in combined road/rail transport and that subsequent marking of combined transport in transshipment stations should be dispensed with.

The RID Committee of Experts decided to deal with the problems of the road/rail interfaces by means of new provisions. The representative of UIC would submit a new proposal together with UIRR and interested national representatives. The proposal would offer a solution, with justification from a technical safety point of view, for all problems concerning marking in combined transport.

Energy absorption elements

The representative of Germany proposed some amendments to the special provision dealing with these elements in order to clarify requirements that were open to interpretation. Among other things, only the performance on a straight track, not on a curved section of track, should be taken into account when calculating

the energy absorption. In addition, other amendments to align with the 7th edition of UIC leaflet 573 were made, as this leaflet would be referred to in this special provision in future.

UIP supported the technical amendments in the special provision, but also wished to clarify that for gas tank-wagons, A buffers with energy absorption elements (so-called AX buffers) were also permitted instead of C buffers.

Germany's proposal was adopted.

The representative of France proposed to extend the transitional provision by two years to 1 January 2013 in order to compensate for the time lost as a result of the difficulties in approving energy absorption elements. These difficulties, which had also been noted by Germany, had led to a new edition of UIC leaflet 573. The representative of UIP supported this extension.

The representative of Germany pointed out that the chemical industry in Germany had already started retrofitting in 2005. Extending the transitional provision by another two years would disadvantage those undertakings that had begun retrofitting at an early stage.

Firstly, in order to make up for lost time, which had been caused by technical specifications being laid down at a late stage, and secondly in order not to disadvantage undertakings that had gone through an onerous process of approval and which might otherwise be more reluctant with regard to future technical modifications, as a compromise the Chairman proposed that the transitional provision only be extended for those tank-wagons due to undergo the periodic test and inspection between 1 January 2011 and 31 December 2012. This would ensure that retrofitting could continue uninterrupted.

The RID Committee of Experts approved this compromise.

Protective distance

The representative of Switzerland proposed to clarify that the 18 metre protective distance between two containers or between a container and a wagon cannot be reduced with the justification that a four-axle wagon can be shorter than 18 metres. The proposal was adopted.

With regard to this last amendment, which was provisionally adopted at the last session following an oral proposal from the representative of the United

Kingdom, a discussion began on whether the barrier wagon provisions only applied to moving trains or also to marshalling operations. While some delegations said that the barrier wagon rules also applied to marshalling operations in their countries, other delegations were of the view that applying these rules to marshalling movements would lead to major operational disruptions, particularly at small stations. It was also noted that application to marshalling operations could also be regulated at national level.

In a vote, 7 delegations were in favour of extending the barrier wagon rules to marshalling operations, while 8 delegations were opposed. In the chairman's view, the result of this controversial discussion should be that those States that were interested should submit proposals concerning marshalling operations to the next session of the RID Committee of Experts.

Incorporation of technical requirements from UIC leaflet 573 into RID

Belgium proposed to include two points from UIC leaflet 573 in RID (minimum distance of 300 mm between the headstock plane and the tank; minimum dynamic energy absorption capacity for buffers on tank-wagons for gases). Neither of these two points had so far been included in the Technical Specifications for Interoperability (TSIs) or in RID. The representative of UIP supported this proposal in principle, but requested that transitional provisions also be provided.

The representative of the United Kingdom explained that as a rule, on tank-wagons used in the United Kingdom, the distance of 300 mm required between the headstock and the most protruding point at the tank extremity was reduced by having a longer tank, in order to compensate for the smaller tank capacity; the smaller tank capacity was the result of the smaller loading gauge. However, in cases where the 300 mm could not be achieved, buffer override protection was prescribed. This alternative should also be allowed in RID.

The RID Committee of Experts decided first to discuss the issue of the 300 mm distance in the working group on tank and vehicle technology. The working group should look in particular at whether the alternative proposed by the United Kingdom should be ruled out at least for design types used in continental Europe.

Belgium's second proposal to prescribe a minimum dynamic energy absorption capacity for buffers on tank-wagons for gases was adopted, together with a transitional provision proposed by the representative of

UIP for wagons built before the entry into force of UIC leaflet 573.

Interpretation of the provision concerning observation of the deadline for the next test and inspection of the tank-wagon

The representative of the Czech Republic referred to problems with tank-wagons loaded before expiry of the deadline for the periodic test and inspection, but whose deadline expired during transport. She proposed that a provision similar to that which applied to portable tanks should be included for tank-wagons.

It emerged clearly from the discussion that the case of empty, uncleaned tanks was already dealt with elsewhere, that the problems described were probably not significant for tank-wagons in Europe and that it was only of relevance to the periodic tests and inspections. This last question was a subject for Chapter 4.3 and should be submitted to the Joint Meeting's tank working group, as it might also be of significance for tank-vehicles and especially for tank-containers.

Working Group on Tank and Vehicle Technology (see Bulletin 3/2007, pp. 45 – 47)

The Chairman of the working group on tank and vehicle technology described the progress achieved at the 8th meeting of the working group.

Dangerous goods telematics

The RID Committee of Experts agreed with the course of action chosen by the working group only to take the work on this subject up again once the discussion at the Joint Meeting had progressed to such an extent for all European land transport modes that railway-specific requirements for requirement/functional specifications could be laid down.

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

The representative of UIC presented his study, which had come to the conclusion that on the basis of accident research, the use of barrier wagons could not be considered an effective measure to limit the consequences of major accidents. UIC therefore asked that Finland's request at the last session of the RID Committee of Experts to extend the protective distance measure to other classes of danger not be pursued.

It was mentioned in the discussion that in view of the debate within OECD concerning safety in marshalling yards, it would be useful if the problem were again to be

discussed in the working group on standardized risk analysis. Barrier wagons were also considered to be one of several measures in the informal Joint Meeting “BLEVE” working group.

On the other hand, it was noted that the marshalling movements required to position barrier wagons contributed to increasing the risk, that there were no provisions at all in road transport for the order of vehicles carrying dangerous goods and that the effects of the technical measures which applied to wagons carrying very dangerous substances should be awaited before discussing further measures that might restrict operations.

As no delegations were in favour of Finland’s original proposal, this proposal was not pursued. The reports of the OECD workshop on marshalling yards and of the “BLEVE” working group should be awaited before deciding which questions from these reports, if any, needed to be dealt with.

Monitoring the main brake pipe/air brake check

In various railway accidents in the past, it had been noted that they were caused by the fact that the brake checks had not been carried out in accordance with the rules or had not been carried out at all and that as a result, not all the wagons in a train could be braked.

The Chairman noted that this subject was of great significance to the whole of rail transport in Europe. The representative of ERA was therefore asked to check whether the Agency would be pursuing this subject in relation to all rail transport. If this were the case, there was no longer any need for the RID Committee of Experts to deal with this issue. The representative of ERA assured the meeting that he would provide the working group on tank and vehicle technology with information as soon as possible.

Detection of derailments

Derailment tests

The deputy chairman of the working group on tank and vehicle technology gave a report on the special meeting of the working group (Berlin, 12 October 2007) (see also p. 62), which had been convened to witness a derailment test carried out by the Technical University of Berlin and Knorr-Bremse, and to discuss a draft proposal from Germany.

The representative of the Technical University of Berlin explained the test results. In the test with empty wagons,

a speed of 50 km/h had been reached, the derailment detector had tripped within 0.2 seconds and the derailed wagon had damaged 122 m of track. In the test with a loaded tank-wagon (the one to be derailed), a speed of 46 km/h had been reached, the derailment detector had tripped within 0.04 seconds and 71 m of track had been badly damaged.

The acceleration amplitudes had frequently been more than the tripping value required. From computer simulations with variables from other vehicles, it could be inferred that these would react similarly. The conclusion of the derailment test was that the EDT 101 derailment detector reliably detects a derailment and increases safety in rail transport considerably.

Summing up, the chairman noted that on the basis of the field trials carried out in Switzerland so far, the derailment detectors showed sufficient operating reliability for normal railway operations in central Europe. In theory, operational reliability also existed at very low temperatures, but this would still have to be demonstrated in operations (tests by Knorr-Bremse in Finland and Sweden). The detectors were calibrated down to -40 °C and would be less sensitive at low temperatures, which would be compensated by stronger impacts in the case of ballast beds in permafrost conditions. The tests in Berlin had dispelled the doubts the working group had concerning the functional capability of the derailment detector. These tests had shown that the detector tripped in a very short time, with both empty and loaded vehicles, and that this led to a reduction in energy before major damage was caused. For certain types of track (e.g. rigid tracks), it had not been established for sure that the derailment detector would trip.

Proposal to amend RID

The representative of Germany introduced a document in which he proposed to include a requirement in RID 2009 to fit derailment detectors to new-build tank-wagons and battery-wagons for the carriage of certain dangerous substances, but with a date of entry into force of 1 January 2011. He reminded the meeting that at the working group meeting in Munich on 14 and 15 June 2007, the representative of ERA had stated that ERA experts did not consider it necessary to introduce derailment detectors for wagons generally. Technical provisions that only apply to wagons for the carriage of dangerous goods, i.e. including the derailment detector, should continue to be laid down in RID. The representative of Germany explained that this proposal was in accordance with the RID Committee of Experts’

decision of principle and was the result of many years work within the working group.

Discussion on the competencies of the European Commission and the RID Committee of Experts

In a presentation, the representative of ERA explained his view of the correlation between the provisions of RID and the interoperability and rail safety directives. In particular, he pointed out that if two EU directives overlapped, an internal consultation process has to take place. In the case of real overlaps with the provisions of RID, this meant that at the request of the European Commission or the EU Member States, the internal EU consultation would have to be held before the decision of the RID Committee of Experts. In the context of this consultation process, ERA would check whether the proposal to prescribe derailment detectors for tank-wagons and battery-wagons for the carriage of certain dangerous substances was consistent with European Community legislation on interoperability. ERA's position statement and recommendation to the European Commission would of course include all the results of the RID Committee of Experts and of the working group on tank and vehicle technology that had been reached so far. This would also simplify the European Commission's approximately six month long decision-making process in the context of the Interoperability Committee and the Regulatory Committee for Dangerous Goods.

The Chairman recalled the decisions of principle that had been taken so far concerning the further development of dangerous goods law in Europe. In 1992, a landmark decision was taken in the RID/ADR Joint Meeting, together with the European Commission, according to which no standalone material dangerous goods law would be prescribed for the area covered by the European Community; instead, RID and ADR would be applied to intra-community and domestic transport. The procedure for implementing internationally adopted provisions for intra-community traffic had worked since 1997 and had been confirmed this year by the adoption of the new Framework Directive for the inland transport of dangerous goods. In principle, the law-making mandate of WP.15 and the RID Committee of Experts covered all issues whose purpose was to ensure safe transport by the respective modes, including, if necessary, requirements concerning vehicles in the event that such requirements were not set out sufficiently in general law (e.g. various requirements concerning the brakes on road vehicles). However, there were some interfaces that had to be taken into account. In road transport, for example, there were interfaces with the ECE regulations and EC law on base vehicles. The

procedure whereby only the vehicle requirements specific to dangerous goods vehicles were laid down in ADR and for general provisions, the ECE regulations were referred to, had worked well for a long time and had on various occasions led to requirements that concerned the dangerous goods area becoming general requirements. In rail transport, such interfaces existed with the UIC leaflets and in future, with the Technical Specifications for Interoperability (TSIs). With regard to co-operation with ERA and the European Commission's Interoperability Committee, this meant that the RID Committee of Experts would continue to work independently and would continue to lay down European law, in so far as this was necessary to ensure safety in rail transport. The exceptions to this would be requirements that had already been technically decided and covered or which were of general significance and which would have to be dealt with by ERA alone or in co-operation with the RID Committee of Experts. In particular, requirements concerning wagons not carrying dangerous goods or concerning the entire train composition would have to be dealt with in the consultation process described by the representative of ERA. However, the fact that a requirement under dangerous goods law affected the organisation or railway operations was not sufficient cause for consultation.

The representative of the European Commission confirmed what the chairman had said. He emphasised that there was no intention of reallocating competencies, but of avoiding conflicts between the TSIs and RID by working together. He conceded that the consultations should have been started earlier, rather than at the end of a lengthy process of work in the RID Committee of Experts, but he asked people to understand as well that ERA had only been able to start its work recently. In the event of overlaps, the view of the Interoperability Committee should in future be introduced to the RID Committee of Experts in good time.

The representative of CIT drew the meeting's attention to a legal study carried out on behalf of his organisation which concluded that COTIF law took precedence over Community law, as it applied over a wider geographical area¹. This study had been brought to the attention of the European Commission, which had not reacted.

The Chairman regretted that with its letter of 16 November 2007 to him and to the EU Member States as well as to Norway and Switzerland, the European Commission had introduced an unreasonable degree of acrimony into the debate, instead of seeking co-operation. In its letter, the Commission had asked that

¹ see www.cit-rail.org/PDF_doc/d/Rechtsstudie_060406202.pdf

the RID Committee of Experts' decision on the introduction of derailment detectors be deferred and had threatened to apply Article 3 § 3 of the Rules of Procedure. In contrast, since ERA's inception, the RID Committee of Experts had actively sought to co-operate with it and wished to continue doing so.

For the future, he proposed the following approach: in principle, the RID Committee of Experts would form the competent body for dealing exclusively with provisions concerning the carriage of dangerous goods by rail. The RID Committee of Experts would forward all initiatives of general relevance to rail transport to ERA or would deal with such initiatives only after consultation with ERA (see also decision of the RID Committee of Experts on the end of train device). With regard to matters relating to vehicle technology that are only relevant to the carriage of dangerous goods, ERA should point up any interoperability problems in good time, initiate the consultation process required in the European Commission and provide the RID Committee of Experts with feedback from the work carried out by ERA and the Interoperability Committee. This way of working would also help the reduction of bureaucracy initiated as a result of the new Framework Directive on the inland transport of dangerous goods. In order to ensure good co-operation, he thought it would be a good idea if a representative of ERA were always to take part in the RID Committee of Experts.

The representative of the European Commission welcomed this proposal and assured the meeting that this subject, which might also be of interest to the other transport modes, would be placed on the agenda of the next meeting of the Dangerous Goods Regulatory Committee (Brussels, 30 November 2007). To this end, the Secretariat provided him with an advance extract of the draft report.

Provisional decision

With regard to how to proceed in relation to the derailment detector, the Chairman proposed to take a provisional decision on the use of derailment detectors at this session of the RID Committee of Experts, as announced, but only to implement this decision in the 2011 edition of RID. This would allow ERA to carry out the necessary consultations in the meantime and to come back to the decision, if need be, at the next session of the RID Committee of Experts. At the same time, the result of the field trial anticipated by the manufacturer concerning the functioning of the derailment detector at low ambient temperatures (Sweden, Finland) could also be incorporated.

The representative of the European Commission thanked the Chairman for this compromise and said he was pleased not to have to apply Article 3 § 3 of the Rules of Procedure. He explained that for the vote that would now follow, the European Commission's letter was no longer valid.

The document submitted by Germany, as amended on the basis of the Secretariat's compromise, was put to the vote and was adopted (9 in favour, 9 abstentions).

Exchange of experience for experts

The chairman of the exchange of experience for experts reminded the meeting that following the Secretariat's request of 25 July 2007, very few proposals for subjects for the agenda had been received, which was why the exchange of experience planned for 24 and 25 October 2007 had had to be cancelled for economic reasons. In view of the fact that the experts had reacted very positively after the last meeting, he again appealed to delegates to submit proposals for topics to achieve harmonisation of test and inspection practices.

Provided the Secretariat received enough proposals for topics for an agenda, it was agreed that a one-day exchange of experience for experts would be held in May/June 2008 before the next session of the working group on tank and vehicle technology.

Approval of the adopted texts and transitional measures, and implementation

The Secretariat pointed out that according to the second sentence of Article 35 § 3 of COTIF 1999, which entered into force on 1 July 2006, the Secretary General's notification concerning the amendments adopted by the RID Committee of Experts for a date of entry into force of 1 January 2009 would have to be made by no later than 31 July 2008. As the two States represented in the RID Committee of Experts that had not yet ratified COTIF 1999 had not lodged any objection with the Secretariat against applying this provision of COTIF 1999, the Secretariat proposed that the amendments be notified by no later than 31 July 2008, rather than by no later than 31 January 2008, as was usually the case. This would also avoid having to issue a corrigendum to the notified texts, by means of which editorial corrections had previously been notified owing to the late notification of amendments to ADR. In addition, consideration should be given to postponing the meetings of the RID Committee of Experts from November to May, in order to ensure that the latest decisions of WP.15 could also

be taken into account, particularly at the last session of a biennium.

The meeting expressed concern that if the last session of the RID Committee of Experts were held at a later date, the result might be that in May of the year before the entry into force, even more amendments might be adopted which, owing to the translation work required, could no longer be transposed in time into national law within the five months between notification and entry into force.

It was therefore agreed to adopt the majority of amendments at the end of a biennium in a November session of the RID Committee of Experts reduced to four days and to deal with a manageable number of amendments from WP.15 at an optional one-day session in May or June.

For the 2009 amendments, it was agreed that the Secretariat would issue a consolidated version of the amended texts together with the final version of this report. The translation work in the various States could then proceed on the basis of this consolidated version. As prescribed in COTIF 1999, the States would be notified by no later than 31 July 2008. Subsequent to the Joint Meeting in March 2008, the Secretariat would decide whether a one-day session of the RID Committee of Experts would be necessary in May or June 2008, which could then be held after the exchange of experience for experts (if any) and the working group on

In a final vote, 18 States approved the amendments adopted for a date of entry into force of 1 January 2009, with a transitional period up to 30 June 2009.

Working Group on standardized risk analysis

The representative of Switzerland introduced his report on the fourth session of the working group on standardized risk analysis which was held in Ittigen on 23 and 24 April 2007 at the invitation of Switzerland. The aim of the meeting had been to present the risk analysis methods used in Switzerland. Using the example of Zurich-Oerlikon station, it had been demonstrated that the introduction of derailment detectors in Switzerland had led to a reduction of the risk.

The representative of the Netherlands explained that he would invite the working group to a similar two-day exchange of information in the week from 16 – 20 June 2008.

The Chairman thanked the Netherlands for this invitation and suggested that after this exchange of

information in the Netherlands, consideration should be given to whether and if so how the Generic Guideline for the Calculation of Risk due to Railway Transport of Dangerous Goods could be further strengthened.
(Translation)

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

32nd Session

Geneva, 3-7 December 2007

Experts and observers from 25 countries and 33 governmental and non-governmental international organisations took part in the work of this second session of the 2007-2008 biennium for the 16th revision of the UN Model Regulations under the chairmanship of Mr R. Richard (United States of America) and the vice-chairmanship of Mr C. Pfauvadel (France).

The breath of fresh air blowing through the Sub-Committee has continued blowing (see Bulletin 3/2007, pp. 47 – 49), as demonstrated by the following:

With tank and vehicle technology regard to **dangerous goods packed in limited quantities** and exempt from the regulations, the Sub-Committee noted with satisfaction that the RID/ADR/ADN Joint Meeting and the IMO Sub-Committee had expressed their willingness to find a compromise solution for multimodal harmonization. The latter had agreed to combine the provisions applicable to limited quantities and those applicable to consumer commodities, the use of the diamond-shaped mark as well as the marking of cargo transport units with this mark. IMO would continue to require full documentation. ICAO would also consider the outcome of this work for adapting the ICAO Technical Instructions. After consulting other interested delegations, France would prepare a proposal for the next session.

As regards **electronic data interchange (EDI) for documentation purposes**, the Sub-Committee expressed general support for additional work in this area, although it was recognized that there would still be a number of problems to overcome: legal recognition of electronic documents and electronic signatures, confidentiality, etc. The Sub-Committee would have to agree a long-term plan of action and the resources

needed and seek collaboration with the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT).

With regard to **harmonization with the IAEA regulations**, the Sub-Committee noted that the IAEA intended to make a number of changes with the particular aim of harmonizing the structure of its regulations with the UN Model Regulations in order to make it easier to incorporate amendments in future.

In the context of **special provision 274**, which requires that the transport document contain the technical name of the substance for generic entries or “not otherwise specified” entries in order to facilitate the task of the emergency services, the Sub-Committee noted with satisfaction the work undertaken under the auspices of the RID/ADR/ADN Joint Meeting to try to harmonize the assignment of Special Provision 274 in RID/ADR/ADN with that in the Model Regulations. The ball is now in the Sub-Committee’s court.

The United Kingdom’s proposal to **harmonize the classification of miscellaneous dangerous substances and articles of Class 9** in the UN Model Regulations with the classification used in RID/ADR/ADN was favourably received by the Sub-Committee.

One of the **new issues dealt with** was the concern expressed by an international organisation in relation to reversing the decline in the number of dangerous goods transport experts and the measures it recommended to stop the decline in order to maintain direction with regard to safety. Another new issue was introduced by another international organisation, which intended to equip containers with fire extinguishing systems on board container ships.

Lastly, the Sub-Committee was unable to come to a decision on a proposal from Canada concerning the schedule of Sub-Committee meetings. Canada proposed holding three sessions per biennium rather than four and perhaps to shorten the length of one of the sessions.

The full text of this report can be consulted on the UN/ECE Transport Division’s website.
(Translation)

Publications and interesting links

Gefährliche Ladung, Hamburg, Nr. 11/2007, S. 40-43 – Alles klar für 2009 (II.) – Gemeinsame RID/ADR/ADN-Tagung (Genf, 11. bis 21. September 2007) (J. Conrad)

Der Gefahrgut-Beauftragte, Hamburg, Nr. 11/2007, S. 8-9 – RID/ADR/ADN 2009 – Zukunftsmusik aus Genf (J. Conrad)

Co-operation with International Organizations and Associations

United Nations Commission on International Trade Law (UNCITRAL)

Working Group III (Transport Law)

20th Session

Vienna, 15-25 October 2007

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

The basis for the discussions was the draft Convention on the Carriage of Goods [wholly or partly] [by sea]¹. The main subjects were the relationship of the Convention with other conventions, the upper liability limits and the final provisions.

With a view to co-ordinated dates of entry into force, the provision according to which contracting parties to the Convention must denounce the Hague-Visby Rules or the Hamburg Rules, if they are also contracting parties to these, was redrafted.

Article 84, which was to guard against a conflict with the Montreal Convention only, in so far as the latter governs combined transport with another transport mode in the contract of carriage by air, was considered to be too narrow. Similar conflicts also existed with conventions governing other modes, e.g. CMR and COTIF-CIM. Henceforth, road and rail ferry transport should also be taken into account. However, as the extended scope of COTIF-CIM to cover carriage by sea (CIM Art. 1 § 4, COTIF Art. 24 § 1) only relates to carriage by sea as a complement to carriage by rail on registered lines, but without restricting such transport to ferry transport, this does not correspond to what is required in reality.

¹ UNCITRAL doc. A/CN.9/WG III/WP.81, available on the UNCITRAL website, www.uncitral.org, along with the other meeting documents (WP.92-WP.99).

In place of Article 86, according to which passengers' luggage is only exempt from the provisions governing liability, this is to disappear from the scope of the Convention by means of an addition to the definition of "goods".

It was still not possible to reach a consensus on Article 97, which, with regard to the entry into force of the Convention, says how many States must have deposited their instruments of accession and how many months after this number of instruments has been deposited the Convention should enter into force. The argument put forward by those in favour of a high number of accessions was the need to avoid further fragmentation and the requirement for the Convention to be applied as widely as possible. Those in favour of a lower number of accessions highlighted the need for rapid entry into force, the desire on the part of States to modernise their laws and the avoidance of the development of regional or national stand-alone solutions.

The discussions on the upper liability limits (Article 62, para. 1) were controversial. On the one hand, it was said that the lower values in accordance with the Hague-Visby Rules should form the basis, while others considered the Hamburg Rules as the absolute minimum, and a third group called for upper limits that were considerably higher. A compromise based on the Hamburg Rules, together with the deletion of other equally controversial liability provisions, seems likely, but the relevant text was placed in square brackets for the time being.

As far as the next steps are concerned, despite the still large number of square brackets, the draft should be approved at the next session of the Working Group on 14-25.1.2008 in Vienna, with a view to submitting it to UNCITRAL at its 41st annual session.
(Translation)

Organisation for Economic Co-operation and Development (OECD)

Workshop on safety in marshalling yards

Paris, 15/16 October 2007

The deputy Secretary General represented OTIF at this workshop, which was attended by around 70 people from States (B, CA, CH, CZ, D, DK, EST, F, GB, I, NL, PL, R, ROK, S, SF, TK, USA), organisations (European Commission, IPSC, and ERA, OECD, OTIF, UIC) and undertakings (DB, BASF). In his presentation on the

subject of safety policy and legislation, he pointed out that the very broad scope of RID (broad not least because of the definitions of "carriage" and "dangerous goods") could and should also cover any other relevant rules, but that RID currently in force already contains numerous measures relating both directly and indirectly to safety in marshalling yards.

In Europe, Article 4 of Council Directive 96/82/EC of 9 December 1996 on the control of major accident hazards involving dangerous substances (the so-called "Seveso II" Directive) excluded marshalling yards from the scope of the Directive, but this was accompanied by numerous amendments and additions to RID, among which particular mention was made of

- the special Chapter 1.11 on internal emergency plans for marshalling yards,
- the security provisions in Chapter 1.10, which also improve safety in areas within marshalling yards that are used for temporary stabling during the transport of dangerous goods,
- technical improvements concerning the vehicle (crash buffers etc. and in future, derailment detectors) and lastly
- the express authorization in Chapter 1.9 for Member States to apply additional national provisions on the operational rules for transport related activities, such as marshalling or stabling.

This was recognised, but at the same time it was claimed that there was no equivalence with the provisions of the Directive referred to above for fixed industrial facilities because there was no requirement to carry out a risk assessment of marshalling yards, taking into account the effects on neighbouring areas, including other hazardous facilities ("domino effect"). In contrast, reference was made to the footnote in RID Chapter 1.9, which refers to the Generic Guideline for the Calculation of Risk inherent in the Carriage of Dangerous Goods by Rail approved by the RID Committee of Experts on 24 November 2005 (which includes movements in marshalling yards).

Presentations by UIC and DB with data collected on incidents and accidents in rail transport in Europe, the USA and Canada showed that with regard to less severe incidents (1-5 on a scale of 10), the proportion of marshalling yards in the overall number of incidents recorded is high in comparison with the rest of the network. However, this is due to the fact that staff working in marshalling yards note, notify and deal with

irregularities more often than elsewhere on the network. With regard to the more severe accidents (6-8 on the scale), the proportion is about a third. In the period in which data were recorded (around 20 years), not a single event of catastrophic proportions (9-10 on the scale) was recorded.

The conclusions drawn from this were countered by saying that owing to the potential concentration of various dangerous goods in marshalling yards, one had to assume the worst case scenario. Moreover, the statistical data were insufficient and they had not been recorded homogeneously.

With regard to the statements made in the presentations and discussions concerning risk assessment, it was obvious that there were large methodological differences, despite everyone's agreeing that risk assessments are necessary and useful.

Marshalling yards situated within industrial facilities, which are therefore also covered by the laws that apply to industrial facilities, including accident prevention, are a special case.

The conclusions of the workshop and recommended measures will be discussed by the OECD working group on chemical accidents. The working group could propose amendments to the OECD chemical accident guidelines. OTIF will then have to examine whether there might be any consequences, and what these might be, concerning relevant provisions in RID or the APTU Annexes relating to infrastructure.

(Translation)

International Rail Transport Committee (CIT)

2007 General Assembly

Berne, 8 November 2007

The main focus of the CIT General Assembly was on current topics and problems concerning the application of COTIF 1999, which made it necessary for the Secretary General of OTIF to attend, in addition to the invitation he was given to make a political presentation to the General Assembly. The other main focuses were passenger transport, freight transport – with the emphasis on future developments in the customs area – and the e-RailFreight project, where the General Assembly instructed the Secretary General of CIT to ensure co-ordination between this project and the

“paperless documentation” project in order to make use of synergies between the two.

As with the other agenda items, the delegations from the railway undertakings also endorsed the Executive Committee's proposals for decision on questions concerning the interoperability of transport law (CIM/SMGS) and on all the statutory business, such as the work plan for 2008, the 2006 accounts, the 2008 budget and membership changes.

It must always come as a surprise to the impartial observer that all decisions were taken without any opposition. This indicates that apparently, the proposals for decision from the CIT's Secretary General and Executive Committee meet exactly the aims and expectations, as regards content, that the members have in relation to the work of the Organisation.

In his presentation, the Secretary General of OTIF encouraged the railway undertakings above all to make a coordinated effort, rather than just an individual effort, to develop rail traffic in the direction of the Pacific. In order to reach the growing transport markets from and to the Far East in good time and preferably before other competing land transport modes, and to secure a leading position there for rail transport, there must be co-operation. There should only be competition between undertakings when rail has won an appropriate share of land traffic from the Atlantic to the Pacific. In order to achieve this, the Secretary General emphasised that there must also be close co-operation between the undertakings and each of the States, in order that the latter could work towards the creation of a tailored legal basis in good time, which is necessary to place the development of such rail transport on the requisite safe footing.

At the end of the General Assembly, the Director General of UIC, Luc Aliadière and the Secretary General of CIT, Thomas Leimgruber, signed a new co-operation agreement. This will ensure improved co-ordination at association level and the efficient co-operation in future of both organisations representing railway undertakings.

(Translation)

Other Activities

Coordinating Council on Transsiberian Transportation (CCTT)

16th Plenary Meeting

St. Gallen, 1/2 November 2007

The “Coordinating Council on Transsiberian Transportation” (in the following: Coordinating Council), whose plenary meeting the Secretary General attended, is an international association representing more than 130 members. These members are in turn drawn from a wide range of institutions specialising in very different areas. In addition to a great number of railway undertakings, the Russian government is represented, along with a large number of regional and municipal bodies, scientific establishments, forwarding companies, IT service providers, logistics undertakings, other authorities (including ports) and even some shipping companies and manufacturers of railway rolling stock and companies involved in the construction and maintenance of railway infrastructure. The members come from 23 States. The internal structures of the Coordinating Council are not immediately recognizable. The CEO of RZD, Mr Yakunin, acts as chairman and Mr Bessonov is the Secretary General. The Secretariat of the Coordinating Council consists of 7 people and has its headquarters in Moscow.

Of the almost 30 speeches and presentations given before the participants at the plenary meeting, of whom there were around 250, only the contributions from the CCTT chairman, Mr Yakunin, and the speech given by the deputy Minister of Transport of the Russian Federation, Mr Misharin, contained anything of significance.

Mr **Yakunin** pointed out that at present, the whole Transsiberian region is used mainly for origin-destination traffic. In contrast, the target objective was to achieve a considerable increase in transit traffic. Now that the reduction of the excessive route charges had led to a slow-down in the dramatic decrease in transit traffic that had taken place previously, it was now a question of winning back trust, and with it an increase in transit traffic by means of a high service culture and punctuality. Both these points were also at least as important as the tariff structure. Another problem identified by Mr Yakunin was the defective or completely absent rolling stock. The Russian manufacturers could not deliver enough, although RZD

was ready to provide suitable investment. Providers in the west were invited to set out their delivery terms. The main problem was that in the face of the rapidly growing containerisation on the Transsiberian route, far too few of the flat wagons required for such transport were available. Mr Yakunin ascribed this containerisation particularly to deliveries from western Europe and Japan for the motor vehicle assembly plants built in Russia. In Brest for example, the lack of flat wagons for containers was leading to waiting periods of up to 7 days (!). In these cases, all the efforts to speed up border and customs clearance, where good progress was being made, were fruitless. However, Transsiberian Railways were not autonomous in their efforts. When the route charges were reduced, the ports had increased their prices by 30-80%. They were therefore twice as expensive as comparable ports in Korea, China and Japan. By acquiring shares in port companies, RZD was trying to gain increased influence over these developments.

In his speech, given eloquently and with a modern turn of phrase, the Russian Federation’s deputy Minister of Transport, Mr **Misharin**, set out the main political focus points of his Ministry for the first half of 2008. He made three fundamental statements:

- the common CIM/SMGS consignment note “is used by the railways of the Russian Federation”. At the moment, trials were still being carried out, but “through” use should begin in 2008. Transport operations to Kaluga using this consignment note would however be possible for VW;
- the Russian Federation’s accession to COTIF was being examined; the procedure required for this would be completed in the first quarter of 2008;
- 350,000 (!) goods wagons would be newly brought into service by 2030.

He added that the Government would also be increasing investment in hinterland transport to and from ports.

Apart from these contributions, which were the only ones that met the justifiably high expectations there were on the basis of the circumstances in which the event was prepared, the external framework of the plenary meeting and the social events, the other contributions did not deliver any particular information. Despite the considerable grievances that obviously exist as a result of the complexity and unreliability of the tariff structures, which are due partly to the State’s confusing responsibilities, the particularly huge lack of

flat carrying wagons suitable for container transport and the deficient infrastructure, the other contributions, which were sometimes extremely long, seemed inappropriate and detached from reality. Without any reference to the difficulties that exist in the Transsiberian transport sector, what was instead offered were wholly positive presentations of the performance of the institution or company represented by the particular speaker. In contrast to previous plenary meetings of the CCTT, there were no proposals at all on how the situation in Transsiberian rail transport can be improved.

In contrast, the social events held on both evenings of the meeting were of an opulence that was out of all proportion to the productivity of the congress participants.
(Translation)

At a glance

“50 Years of ADR”

Geneva, 8 November 2007

The deputy Secretary General of OTIF was invited to the Round Table on “50 Years of ADR” to give a talk on “co-operation with the railways”.

He noted in general that there had been good co-operation between UN/ECE and OCTI/OTIF in the field of dangerous goods transport provisions (ADR/RID) since the beginnings of ADR and that such co-operation had been considerably furthered by setting up the “Joint Meetings”. Further progress had been achieved as a result of the harmonised restructuring of ADR and RID, which made it even easier to recognise and correct differences between the texts that were not justifiable on the basis of mode-specific circumstances. Another consequence was that proposals for amendments that clearly did not concern mode-specific matters are almost always rightly submitted to the “Joint Meeting” first. The restructuring has also meant that the provisions for the transport of dangerous goods that apply to members of the OSJD (SMGS Annex 2) have now been completely aligned with RID and are amended at virtually the same time as RID.

With a view to further possible improvements, particularly for combined transport, three suggestions on the subject were made:

1. Extend section 1.1.4 (Applicability of other regulations) to a sub-section “Carriage in a transport chain including carriage by rail/road”, in which the particular features of such traffic (e.g. marking of tank swap-bodies or their carrying vehicles, exemptions as provided for in ADR 1.1.3.6 for the rail leg also) would be quoted as references.
2. Broaden sub-section 1.1.4.5 (Carriage other than by road/rail) to include provisions or references to provisions on piggyback transport and if need be also to the transport on road vehicles of railway wagons loaded with dangerous goods.
3. Remove the anomaly whereby the dangerous goods driver training in accordance with ADR 8.2.2.3.2(1) includes information on multimodal transport operations, but the training in accordance with section 1.8.3 for the safety adviser, who has even more to cope with in this respect, does not specifically prescribe such information.

In conclusion, reference was made to the mutual interest in giving the dangerous goods provisions as broad a common scope of application as possible, and it was recalled that in eight States, including Turkey, RID applies, but not ADR, and in nine States, including the Russian Federation, ADR applies, but not RID. In addition, it would be of considerable interest to both sides if the States represented in OSJD and the States of the former Soviet Union and Asia that apply Annex 2 to SMGS were to accede.

As there have recently been lengthy discussions concerning the use of Latin expressions in RID/ADR (e.g. “mutatis mutandis”), it was appropriate that the speaker closed with the words “ad multos annos”.
(Translation)

Case Law

Bundesgerichtshof (Germany)

Ruling of 5 October 2006¹

Except in the case where qualified fault exists within the meaning of § 435 of the *Handelsgesetzbuch* –

¹ I ZR 240/03; lower courts: Landgericht Bremen, ruling of 26.03.2003 (11 O 397/01) and Oberlandesgericht (OLG) Bremen, ruling of 16.10.2003 (2 U 31/03)

HGB (German Commercial Code), the contractual liability of the carrier as a result of damage to the goods being carried does not include consequential damage. As further damage within the meaning of the second sentence of § 432 of the HGB, they do not need to be compensated. In this respect, non-contractual claims against the carrier are also excluded.

Cf. § 425 para. 1, § 432 second sentence, § 434 para. 1 of the *Handelsgesetzbuch* – HGB (German Commercial Code)²

Facts:

The plaintiff is the insurer of the B. GmbH forwarding company (hereinafter “the insured”). The action for compensation as a result of damage in transit has been brought by the insurer of the B. GmbH forwarding company, as the latter has assigned its right to its insurer.

On 4 August 1999, D. GmbH commissioned the insured to carry 25,000 kg of apple juice concentrate from N. to Bad N. to the party intervening in the action on the side of the plaintiff (No. 4). The insured on its part commissioned the defendant to carry out the transport.

The tank trailer of the truck used by the defendant for the transport, which was insured against third party risk with the party intervening in the action on the side of the defendant (No. 1), originated from the party intervening in the action on the side of the plaintiff (No. 3). The trailer had three chambers; the two end ones contained the goods.

The party intervening in the action (No. 4) took samples of the consignment received and then started – still during the process of unloading – the process of converting the apple juice concentrate to apple spritzer filled into 0.7 litre bottles. After 17,300 kg of the apple juice concentrate had been unloaded, processed and filled into bottles, the party intervening in the action (No. 4) noticed that the apple juice concentrate was contaminated with coconut oil. This had been carried in the tank trailer previously and had not been completely removed during cleaning. The contamination was in the

top compressed air system – presumably as the result of an operating error – and had therefore not been noticed when the samples were taken. After the problem had been established, the party intervening in the action (No. 4) pumped the quantities still remaining in the tubes back into the tank trailer, which at this time still contained 7,700 kg of clean apple juice concentrate. This caused another 3,850 kg of this concentrate to become contaminated with coconut oil. The unprocessed concentrate was subsequently transported back to the manufacturer and was there processed at a cost of 0.28 €/kg and was then further processed.

In the first instance of this dispute, the plaintiff claimed from the defendant compensation of 22,392.03 € for damage to goods, less 4,282.07 € already paid by the representative of the defendant’s transport liability insurer to the party intervening in the action on the side of the defendant (No. 2). In addition, the plaintiff also claimed compensation of 32,907.89 € for further damage caused to the party intervening in the action (No. 4) as a result of raw materials being wasted, packaging costs, machine and personnel costs.

The Landgericht (≈ regional court) allowed the action to the amount of 16,643.83 € with interest and dismissed it for the rest.

The plaintiff, the defendant and the party intervening in the action (No. 2) appealed against this ruling.

In its appeal, the plaintiff pursued her unsuccessful action at first instance to the amount of 32,907.89 €. In its appeal, the party intervening in the action (No. 2) asked for the claim to be dismissed except for the sum of 2,049 €. The defendant withdrew her appeal.

The court of appeal dismissed the plaintiff’s appeal and in accordance with the appeal of the party intervening in the action (No. 2) further rejected the action for an amount of 2,049 € with interest (OLG Bremen, *Transportrecht* (Transport Law) 2005, p. 69 and *Versicherungsrecht* (Insurance Law) 2004, p. 222).

In its appeal (allowed by the court of appeal), the plaintiff is pursuing its action to the same extent as in the second instance.

The defendant and the parties intervening in the action (Nos. 1 and 2) apply for the appeal to be dismissed.

² Cf. Articles 23 § 1 and 41 of CIM. For the international carriage of goods by rail, CIM provides an equally self-contained system of limitation of liability, which ensures that the carrier, who in principle is liable irrespective of fault, and the insurers involved, can from the outset get a general overview of and assess the risk of damage typical in transport, such as loss and damage to the goods for transport.

Grounds for the ruling:

I. The court of appeal justified its ruling as follows:

The defendant is solely liable, contractually and non-contractually, for the damage and costs referred to in § 434 of HGB. The wording of this provision can certainly be interpreted to mean that the limitation of liability also includes other non-contractual damage to goods belonging to third parties. Only this interpretation corresponds to the amendments brought about by the transport law reform act of 29 June 1998. In addition, §§ 435, 436 HGB would not be entirely comprehensible in the case of unlimited liability for consequential damage. Moreover, the rule in the second sentence of § 432 HGB would then be superfluous, as the actual material damage is already dealt with definitively in §§ 429 and 431 HGB. §§ 425 et seq. HGB constitutes a self-contained system of limitation of liability, in so far as no qualified fault on the part of the carrier could be established. This should ensure that the carrier, who in principle is liable irrespective of fault, and the insurers involved, could from the outset get a general overview of and assess the risk of damage typical in transport, such as loss and damage to the goods for transport.

According to this, the defendant would only be liable for material damage occurring up to completion of the delivery. The manufacturer had undisputedly been able to remove the contamination of the apple juice concentrate with coconut oil for 0.28 €/kg of concentrate. The fact that 17,300 kg of apple juice concentrate had had to be destroyed was not due to defective goods, but to the fact that after it had been delivered to the party intervening in the action (No. 4), it had been processed into apple spritzer and therefore could no longer be reprocessed. Thus the damage to the 17,300 kg of apple juice concentrate that was delivered had not cost 1.12 €/kg, as the Landgericht had accepted, but only 0.28 €/kg.

II. This ruling withstands legal examination.

1. The court of appeal correctly assumed that in this case, both in accordance with § 432 sentence 2 HGB contractual claims and in accordance with § 434 para. 1 HGB non-contractual claims by the consignor and the consignee for compensation for the consequential damage they suffered as a result of damage to the goods being transported, which are in question here and which could result from § 823 para. 1 of the *Bürgerliches Gesetzbuch* – BGB (German Civil Code) or from § 7 of the *Strassenverkehrsgesetz* – StVG (German road transport act), are excluded. The question as to

whether the carrier is liable for such consequential damage is not left unregulated in §§ 425 et seq. HGB. Rather, it is dealt with to the effect that unless there is qualified fault within the meaning of § 435 HGB, there is no liability (cf. the explanatory report to the ministerial bill for the transport law reform act, *Drucksachen des Deutschen Bundestags* – BT-Drucks. (Federal Diet Printed Matter), Specific Part - hereinafter BT-Drucks - 13/8445, p. 68 and 69 et seq.; Thume in *Versicherungsrecht* 2002, p. 267, 269; idem in *Transportrecht*, 2004, special edition with volume 3, p. XL et seq.; idem, r+s 2006, p. 89, 92; Koller, *Transportrecht*, 5th edition, § 432 HGB marginal 15 and § 434 HGB marginal 7; idem in Koller/Roth/Morck, HGB, 5th edition, § 432 marginal 1 and § 434 marginal 1; Andresen in Hein/Eichhoff/Pukall/Krien, *Güterkraftverkehrsrecht* (Road Haulage Law), P 100, as at August 2002, § 432 HGB marginal 14; Baumbach/Hopt/Merkt, HGB, 32nd edition, § 432 marginal 1; for another opinion, Heuer in *Transportrecht* 2002, p. 334/335; idem in *Transportrecht* 2005, p. 70/71; Fremuth in Fremuth/Thume, *Transportrecht*, § 434 HGB marginal 5 et seq.; Baumbach/Hopt/Merkt op. cit. § 434 marginal 2).

Both contractual and non-contractual liability of the carrier to the consignor or consignee for consequential damage resulting from loss of or damage to the goods during the period in which the carrier had the goods in its charge cannot be entertained owing to the legislator's aim of protecting the carrier from operating risks that already exist with these persons being passed on. The legal position may be different if the carrier has prejudiced other objects of legal protection belonging to the contracting parties as a result of an independent breach of duty. In contrast, if, as in this case, contaminated goods for transport are mixed with other commodities in accordance with a corresponding order from the consignee during the period in which the goods are in the carrier's charge, the resulting so-called contamination damage constitutes typical consequential damage as covered by the limitation of liability under § 434 HGB (cf. Koller op. cit. § 432 HGB marginal 15; Andresen in Hein/Eichhoff/Pukall/Krien op. cit. § 432 HGB marginal 14; Thume in *Versicherungsrecht* 2002, p. 267, 269).

The question as to whether the exclusion of liability in § 434 para. 2 HGB also works to the detriment of (outside) third parties who suffer loss or damage as a result of the load damaged

during transport is not to be decided in this case (cf. Koller *op. cit.* § 434 HGB end of marginal 13).

(a) According to German law, the duty to provide compensation also routinely includes consequential damage, in so far as this damage has an adequate causal link to the damage itself and comes within the area protected by the rule that has been breached. The obligation of the person who has to be responsible for an occurrence of damage therefore usually extends also to compensating damage caused indirectly by this occurrence. This fact contradicts the assumption that §§ 425 et seq. HGB only governed a priori the compensation of direct damage resulting from the loss of or damage to the goods being carried; instead it supports the interpretation whereby the contractual liability of the carrier in §§ 425 et seq. HGB for consequential damage arising from damage to goods when they are with the consignor or consignee has been excluded in accordance with §§ 429, 431, 432 second sentence, § 434 para. 1 HGB.

(b) The main purpose of the provision in § 434 HGB is to protect the liability system under the contract of carriage, with its exemptions from liability and limitations of liability, against being undermined or devalued by non-contractual actions (cf. the explanatory report to the ministerial bill for the transport law reform act, BT-Drucks. 13/8445, p. 69). The provision is to ensure that all the rules contained in §§ 425 et seq. HGB concerning the terms of and extent of liability are factored in (cf. the explanatory report to the ministerial bill *op. cit.*, p. 70; Gass in Ebenroth/Boujong/Joost, HGB, § 434 marginal 15; Thume, *r+s* 2006, p. 89, 92).³

In contrast to a view expressed in the literature (cf. Heuer in *Transportrecht* 2002, p. 334/335; *idem* in *Transportrecht* 2005, p. 70/71), the phrase “owing to loss of or damage to the goods” contained in § 434 para. 1 HGB supports the interpreta-

tion that this provision rules out non-contractual liability of the carrier for consequential damage resulting from this. The emphasis of this provision, as can be seen clearly from the explanatory report to the ministerial bill on § 434 HGB (BT-Drucks. 13/8445, p. 69 et seq.), is on the words “for the non-contractual action owing to loss of or damage to the goods” (cf. Thume, *r+s* 2006, p. 89, 92 with further evidence in footnote 22).

The wording of § 425 para. 1 HGB also does little to contradict the interpretation that compensation for consequential damage can also not be claimed on the basis of non-contractual requirements (for another opinion, see Heuer in *Transportrecht* 2005, p. 70/71). The defendant’s appeal rejoinder correctly points out that the question of the duty to provide compensation for consequential damage to goods is still left open in § 425 HGB as evidenced by the ministerial bill for the transport law reform act (cf. BT-Drucks. 13/8445, p. 59 right-hand column para. 4, p. 65 left-hand column para. 1) and it is only § 429 HGB that says in effect that there is no liability in this respect.

(c) In order to justify its view that the limitation of liability in §§ 425 to 432 and 434 HGB does not rule out liability for consequential damage, the appeal refers unsuccessfully to the provision in § 433 HGB. This provision governs the carrier’s liability owing to a breach of contractual obligations connected with performing the transport of the goods for damage not resulting from loss of or damage to the goods or from exceeding the transit period. There is no inference from § 433 HGB to § 434 para. 1 HGB, as considered necessary by the appeal, because the legislator has consciously excluded the damage referred to in § 433 HGB from the scope of § 434 para. 1 HGB (cf. explanatory report to the ministerial bill for the transport law reform act, BT-Drucks. 13/8445, p. 69 left-hand column para. 4 and p. 70 left-hand column para. 4).

(d) In the event of a wilful or reckless action or omission on the part of the carrier, and in the knowledge that damage is likely to

³ In the scope of application of CIM, Article 41 of CIM serves this purpose.

occur, the general view is that the carrier's unlimited liability then extends, in accordance with § 435 HGB, to compensation for consequential damage (cf. Koller op. cit. § 435 HGB marginal 19; Gass in Eben-roth/Boujong/Joost, HGB, § 435 marginal 10). As correctly noted by the court of appeal, this would not apply if in accordance with the liability rule in question in §§ 425 et seq. HGB, compensation of indirect damage were not only excluded in those cases where a less important breach of the duty to exercise care came into consideration, but if this were not even the object of this rule on liability.

- (e) To support its standpoint, the appeal also unavailingly invokes the provision in Article 28, para. 1 CMR. The counter argument to the appeal of the party intervening in the action (No. 2) correctly points out in this respect that the legislator of the transport law reform act has indeed taken the rules of CMR as the basis, but he has certainly not taken them over unamended.
2. The court of appeal correctly qualified the full devaluation of the 17,300 kg of contaminated apple juice concentrate, which was caused by the reprocessing into apple spritzer, as the result of a voluntary act on the part of the party intervening in the action (No. 4) using the goods that were delivered and thus as consequential damage not requiring to be compensated by the defendant, as set out in paragraph 1 above. Contrary to the opinion of the appeal, the damage that occurred to the apple juice concentrate as a result of being mixed with the remains of the previous load did not already exist in the form of an "infection" that already completely removed all value of the concentrate. Rather, the damage was limited to the contamination of the concentrate, which it was possible to remove at a cost of 0.28 €/kg. The complete devaluation of the delivered goods that occurred as a result of the reprocessing then constituted, as a result of its being contaminated, equivalent and proximately causal consequential damage. However, this was due substantially to the decision of the party intervening in the action (No. 4) to process the delivered goods into apple spritzer.
 3. Finally, there are no serious concerns from the point of view of appeal law underlying the court of appeal's calculation of the compensation claim subrogated to the plaintiff.
 - (a) In this regard, the court of appeal – in the same way as the Landgericht at the starting point – took as its basis the rule in § 429 para. 2, first and second sentence HGB. In so doing, the court assumed that the contamination of the apple juice concentrate with the coconut oil at the place where the goods were taken over in N. had (also) led to a reduction in value of the goods corresponding to the processing costs, which, in view of the assumption that exists in this respect in accordance with § 429, para. 2, second sentence HGB and the discretion of the trier of fact to make an estimate in accordance with § 287 para. 1 of the *Zivilprozessordnung* – ZPO (Code of Civil Procedure), is legally unobjectionable. In addition, the court of appeal correctly saw that the transport costs necessary in order to eliminate the damage increased the damage that had occurred to the goods being carried.
 - (b) The appeal court's ruling that in this respect for the 3,850 kg of apple juice concentrate that was contaminated by the residue that was still in the tubes being pumped back, half the costs of transporting the unprocessed apple juice concentrate, totalling 7,700 kg, should be earmarked in the calculation, does not evince a legal fault to the detriment of the plaintiff. Here it should be remembered in particular that the place where the goods were delivered was probably considerably further away from the place where the goods were processed than the place where the defendant accepted the goods for carriage; accordingly, the court of appeal in its calculation has assumed carriage charges that are too high rather than too low.
 - (c) The court of appeal did not earmark any further cost amount for the – notional – transport of the 17,300 kg of apple juice concentrate. The appeal would in any case then be justified in this respect owing to the onus of presentation on the part of the plaintiff in accordance with § 429 para. 2, second sentence HGB, if the court had disregarded a submission made by the plaintiff in relation to such costs or had

breached a judicial duty to draw attention to this matter, and if this had been objected to. However, no procedural objection to this effect was lodged.

- III. In the end, the plaintiff's appeal is unjustified. It is therefore to be dismissed with the costs resulting from § 97 para. 1, § 101 para. 1 ZPO.

(Original text under: www.bundesgerichtshof.de; published in: *Transportrecht*, Hamburg, volume 11/12-2006, pp. 454-457).

(Translation)

Book Reviews

Alléret Marc, Taïana Philippe, *Transport ferroviaire interne* (Inland Rail Transport), LexisNexis Juris-Classeur Transport, volume 621 (4,2007 – up to 31.03.2007)

In volume 621, the authors analyse in detail matters relating on the one hand to the obligations of SNCF and of the person entitled when drawing up and carrying out the contract of carriage of goods and on the other, matters relating to this contract in (French) domestic law.

The volume contains four parts preceded by key points, an analytical summary and an alphabetical index. As usual, the legal authority, case law and considerations useful in practice find their rightful place.

Although the volume is given over to domestic law, the parallels and comparisons with the CIM UR are especially numerous owing to the fact that in 2005, the reform of Fret SNCF's general sales and transport conditions consisted in adopting CIM contractually to govern French domestic transport (see also Bulletin 1/2007, p. 13).

It is interesting to note that from now on, the international consignment note that was brought into force on 1 July 2006 is common to transport under CIM and to French domestic transport.

This publication is once again characterised by the depth and relevance of its analysis and its reliability and comprehensiveness. It is co-authored by one of the best national and international legal experts in rail transport law. All these qualities make it an essential working tool for legal professionals.

(Translation)

Koller, Ingo, *Transportrecht, Kommentar zu Spedition, Gütertransport und Lagergeschäft* (Transport Law, Commentary on Forwarding, Freight Transport and the Storage Business), 6th fully revised edition, C.H. Beck, Munich 2007, 2062 pages, ISBN 978 3 406 56224 2.

The well-known commentary on transport law, the previous editions of which have also been reviewed in this Bulletin (5th edition see Bulletin 1/2004, p. 24-26) has again been fully revised. The reason for this revision was mainly the fact that since the last edition, the new version of COTIF and hence the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM 1999, in 2006) and the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI, in 2005) have entered into force.

In contrast to the previous edition, the provisions of the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air (in force since 4.11.2003) that concern the carriage of goods are the subject of an in-depth commentary. The commentaries on the German Commercial Code, the Convention on the Contract for the International Carriage of Goods by Road (CMR) and the General German Conditions for Forwarders (ADSp) have been completely revised and extended, taking into account the lively case law and literature that has been published since 2004.

The commentary is now divided into three sections: in addition to Part A, German domestic transport and forwarding and Part B, transfrontier transport, a new Part C concerning the storage business has been added.

Readers of this Bulletin might be particularly interested in the commentary on the 1999 CIM. There are no substantial differences of interpretation of individual provisions as compared with the Explanatory Report on the CIM¹. In fact, in the part of the commentary dealing with CIM, the reader will find a valuable analysis and numerous additional details that go into more depth than the Explanatory Report and the explanatory statement on the ministerial bill (legislative proposal in the ratification procedure in Germany), to which the author refers in various places, i.e. an explanation in the light of the background history.

In contrast to the Explanatory Report, in which the term "obligation to carry" is used in the sense of the obligation to enter into a contract, which is in line with

¹ See http://www.otif.org/pdf_external/e/p_publ/rpex99-ru-cim-e.pdf

what was meant in the previous versions of CIM², this term is used in the commentary to indicate the contractual obligation to carry the goods.

The only view expressed that cannot be supported is that States that have not ratified, accepted or approved COTIF 1999 and hence CIM 1999 do not come within the category of “Member States”. “Member States” means the Member States of COTIF. Member States that have not ratified COTIF 1999 are still Member States of the Organisation (OTIF) and of the Convention (COTIF). Only the application of CIM is suspended in traffic with and between these States (see Art. 20 § 3 of COTIF 1980). With regard to institutional questions, COTIF 1980 still applies to these Member States.³ Nevertheless, in relation to Article 1 § 2 of CIM, it would be better to give the words “of which at least one is a Member State” a broad interpretation: what is possible in the case of a non Member State would also have to be allowed for a Member State that has not ratified COTIF 1999 (the argument being *a maiori ad minus*). According to this, the application of CIM can also be agreed according to this Article for carriage between a Member State of COTIF 1999 and a Member State of COTIF 1980. So in fact one actually arrives at the same practical result as a user who adopts Koller’s view concerning the term “Member State of CIM”.

Koller not only highlights the differences as compared with 1990 Protocol version of CIM 1980, he also mentions the parallels and differences as compared with the CMR. This provides useful information for interpreting the rules.

In relation to Article 1 § 2 of CIM – this new provision, the practical implementation of which is eagerly anticipated – Koller makes clear that

- the validity of the CIM (choice of law) must be agreed without modifications and
- without the agreement, mandatory national law or SMGS would be applicable. The parties may nevertheless agree to apply CIM.

With regard to Article 1 § 3 of CIM (inclusion in the CIM contract of carriage of transport by road or inland waterway in internal traffic), Koller supports a

restrictive interpretation – with reference to the parallels to the provisions of the Conventions applicable to air transport (Art. 18, para. 3 of the Warsaw Convention and Art. 18, para. 4 of the Montreal Convention). According to this interpretation, “supplement” only means auxiliary transport that is carried out anywhere where the railway cannot reach by rail the place where the goods are handed over for transport or the place of delivery.

In various places, the author points out gaps in the regulations that are to be closed by having recourse to national law (e.g. lack of a subsidiary rule in the event that the parties cannot agree on who has to make out the consignment note; no rule on the liability of the consignor for information missing from the consignment note – in contrast to liability for existing incorrect or incomplete information; the concept of damage in the event of incorrect use of the documents attached to the consignment note).

In order to obtain an overview of the scope of application of CIM (Member States that have ratified COTIF 1999, Member States that have entered a reservation on the scope of application), it is of course recommended that the OTIF website be consulted⁴, rather than the commentary.

The value of the commentary is that it helps each user to find convincing arguments for a wide variety of questions that might arise in connection with transport law.

A comprehensive subject index makes it easier to use the commentary. An index of rulings makes it possible quickly to find rulings handed down by German and Austrian courts (Higher Regional Courts, Federal Court of Justice/Austrian Supreme Court of Justice) as well as some rulings of the European Court of Justice, each with information on the specialist journal in which the rulings were published.

The commentary is aimed at judges, lawyers, transport and forwarding undertakings and insurance companies and should not be left out of any library on transport law.

(Translation)

2 See Explanatory Report on the CIM UR, General Points, paras. 24-27

3 See Bulletin 4/2005, p. 46-50, 7th General Assembly, Final document, Annex 2 “Legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time”.

4 www.otif.org, under Publications

Last but least

A marriage of convenience

Against the background of the celebration of 50 years of ADR (see p. 65 and p. 76), it should be remembered that when the RID/ADR Joint Meeting was set up at the beginning of the 1970s, this was no “love match”, but rather a marriage of convenience. The fact was that governments no longer wanted the same experts to attend different meetings dealing with the same subject. At the time, the subject was the revision of the requirements for tanks.

At a Joint Meeting in Berne in 1990, the meeting chairman announced that he had understood for the first time what the abbreviation ADR stood for. On his way to the meeting, he had noticed that the rubbish bins of the City of Berne had written on them “Abfälle”, “Déchets” and “Rifiuti”, i.e. the three letters “ADR”, meaning rubbish in three of the four national languages of Switzerland.

Tit for tat. A delegate who deals with ADR recently suggested to us in an e-mail that we should look up the French translation of the English word “RID” (as in “get rid of”)! The logical conclusion is that the RID and ADR experts specialise in rubbish. However, saying that these experts only produce rubbish is perhaps a step too far... Instead, we have confirmation that the RID/ADR Joint Meeting was the product of a marriage of convenience, even if sometimes, either the “railwaymen” were resistant (which makes a change from being on strike) to the process of restructuring in particular, or else the “truckers” were resistant to the obligations of those involved in transport or to the risk calculation guidelines.

(Translation)