



Intergovernmental Organisation
for International Carriage
by Rail

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by Rail

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Official Communications from the Secretariat of OTIF

Ratification of the 1999 Protocol

Greece

On 2 June 2008, Greece deposited its instrument of ratification concerning the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1999 Protocol). The 1999 Protocol version of COTIF (COTIF 1999) entered into force for Greece on the day on which the instrument of ratification was deposited. Before that date, Greece applied the CIV and CIM Uniform Rules de facto (see Bulletin 2/2006, p. 20).

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

¹ See http://www.otif.org/html/e/pub_cotif_03_06_1999.php - OTIF - Publications – Convention – COTIF (3.6.1999) – Depository (Secretary General) (Art. 36 of COTIF) – State of signatures, ratifications, acceptances, approvals, accessions and entry into force

thereof², are published on this website under “Publications”.

Work of OTIF'S General Organs

Administrative Committee

109th session

Berne, 21/22 May 2008

For its 109th session, the Administrative Committee met in Berne on 21 and 22 May 2008 under the chairmanship of the permanent representative of Spain to OTIF, Ambassador Fernando Riquelme Lidón.

Discussions at the Committee focussed mainly on the financial outcome for 2007. The Committee approved the 2007 Financial Management Report. In connection with this, it should be noted that for the first time, the Member States' contributions were calculated in accordance with Article 26 of COTIF 1999 and in accordance with the decisions of the 8th General Assembly on financial matters linked to the entry into force of the Vilnius Protocol (see Bulletin 3/2006, p. 33 et seq.).

² See http://www.otif.org/html/e/pub_cotif_03_06_1999.php - OTIF - Publications – Convention – COTIF (3.6.1999) – Declarations and reservations

As the outcome of the 2007 financial year was a surplus of SFr. 350,204.01, the Committee decided to use most of this amount, i.e. SFr. 350,000.-, to reduce the Member States' definitive contributions for 2007, and the remaining amount was credited to the reserve fund. On the basis of the approved accounts, the Committee set the definitive contributions for 2007 at SFr. 2,770,023.-.

The Committee noted the general financial situation of OTIF and the current situation with regard to investments and judged them to be satisfactory.

The Committee also approved the 2007 Annual Report.

The Committee also discussed the following matters: the procedure for designating delegates of the Committee, the development of the Organisation's investments and the course for the future with regard to the reserve fund (see Bulletin 4/2007, p. 60), the call for applications for the post of Secretary General, the state of progress in the negotiations between the European Commission and OTIF concerning the accession of the European Community to COTIF and the progress of work resulting from the Luxembourg Diplomatic Conference (Rail Protocol) and more particularly the setting up of the Registry of international interests in railway rolling stock (see p. 21).

The 110th session of the Administrative Committee will be held on 12 and 13 November 2008, probably in Berne.

(Translation)

Legal Matters concerning COTIF

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3220/2008, p. 261/262 – Transport routier. Avant la prise en charge (M. Tilche)

Idem, n° 3224/2008, p. 326-328 – Instructions de l'expéditeur. Devoirs et sanctions (M. Tilche)

Idem, n° 3226/2008, p. 358/359 – Manquants. Comment indemniser?; Faute lourde. Le prix de l'incurie (M. Tilche); Vol. Circonstances inévitables (Jurisprudence CMR avec observations)

CITINFO (Comité international des transports ferroviaires, CIT) <http://www.cit-rail.org>, Publications,

éditions 3, 4 et 5; Veröffentlichungen, Ausgaben 3, 4 und 5; Publications, Editions 3, 4 and 5

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 58-59/2008, S. 14 – Haftungsfälle bei Luftfracht. Nicht immer empfehlen sich die ADSp als alleinige Geschäftsgrundlage (P. Ettrich)

Idem, Nr. 68/2008, Beilage Luftfracht, S. 3 – Wie sich der Schadenersatz reduzieren lässt. Wenn sich Spediteur auf die Haftungsbegrenzung nach dem Montrealer Übereinkommen beruft, kann er kräftig sparen (E. Boecker)

Internationale Transport Zeitschrift (ITZ)/ Journal pour le transport international (JTI) / International Transport Journal (ITJ), Basel, n° 15-16/2008, S. 27 – Aus der Transportrechtspraxis. Ein Foto ist nicht Beweis genug (vorbehaltlos unterzeichneter CMR-Frachtbrief) (Spedlogswiss)

Transportrecht, Hamburg, Nr. 5/2008, S. 177-186 – Entwicklungen im Internationalen Privat- und Prozessrecht für Transportverträge in Abkommen und speziellen EG-Verordnungen (P. Mankowski); S. 201-205 – Der Frachtführer: Wie Gott in Frankreich. Der Durchgriffsanspruch des französischen Frachtführers auf Zahlung der Fracht [action directe en paiement du transporteur] (A. Gruber)

Transport of Dangerous Goods

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

84th Session

Geneva, 5-8 May 2008

24 Governments and 10 governmental or non-governmental international organisations, including the European Commission, took part in the work of the 84th session chaired by Mr J. Franco (Portugal).

Multimodal issues

Following the example of the RID Committee of Experts, the Working Party **finalised the 2009 edition of ADR** (see p. 20).

Multidisciplinary Group of Experts on Inland Transport Security

The Working Party noted the report of this Group and the Inland Transport Committee's request to evaluate the implementation of Chapter 1.10 of ADR with the help of the other international organisations concerned. It was recalled that the subject of security was kept on the agenda for all sessions of the Working Party. It was noted that a study was being carried out within the European Commission to evaluate the implementation and the adequacy of the security provisions for the three land transport modes and that the report showing the results of this study could be finalised during October. The chairman announced his intention to send the ADR Contracting Parties that were not members of the European Union an evaluation questionnaire similar to that used by the European Commission for its study. The chairman also announced that as far as possible, he would prepare a report on the situation to the Multidisciplinary Group of Experts; however, the Working Party was of the view that it would be unrealistic to expect detailed conclusions by December on actual implementation in all the ADR Contracting Parties.

Guidelines for the calculation of risks

The Working Party thanked the representative of Germany for his work on adapting for road transport the Guidelines adopted by the RID Committee of Experts for the calculation of risks in the transport of dangerous goods by rail. The document that had been prepared had the advantage of providing the competent authorities with a tool to establish and justify traffic restrictions applicable on their territory. The proposal to add a non-binding reference in ADR to these Guidelines for the calculations of risks was adopted. As the Working Party wished to give itself some time to study the contents of these general Guidelines in detail, it was decided to keep this reference in square brackets. The representative of Germany asked those delegations who so wished to send him their comments on the contents of this document quickly so that if necessary, a revised version could be submitted to the next session.

Code of good practice for stowage and handling

The Working Party confirmed the inclusion of a non-binding reference in ADR to this European Commission code, as adopted at the previous session. In reply to a question from the Russian Federation, the representative of the European Commission said the code was being translated into all the official languages of the European Union and that it would also be translated into Russian.

Draft European Directive

The Working Party noted that the draft directive of the Council of the European Union and of the European Parliament, known as the "amalgamated" directive on the inland transport of dangerous goods (applicable to all land transport modes) could be finally adopted in June 2008 and be transposed on 30 June 2009, subject to the approval of the European Parliament at its second reading.

Information concerning the UN/ECE website

Based on information that would be sent in by the delegations, the Working Party invited the Secretariat to show on its website the e-mail addresses where the competent authorities could be contacted, and links to the various language versions of ADR that might be available online, or any information on how these versions can be obtained.

Sixteenth Economic and Environmental Forum of the Organization for Security and Co-operation in Europe (OSCE)

The Secretariat informed the Working Party that at the sixteenth Forum (Prague, 12-21 May 2008), it would present a report on the transport of dangerous goods and the international Regulations that applied. This report was accompanied by proposals for projects aimed at encouraging the alignment of national regulations with ADR, evaluating implementation of the Agreement and facilitating the accession of new countries.

ADN

The Working Party noted the entry into force of the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) on 29 February 2008.

Provisions specific to ADR

CMR

It was emphasised that the Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) adopted by the Inland Transport Committee could have consequences for the work in the UN Sub-Committee of Experts on the Transport of Dangerous Goods with regard to the use of electronic data interchange (EDI) and, as a result, on the provisions relating to documentation in ADR.

Status of the ADR Agreement

The Working Party noted Moldova's accession to the 1993 Amendment Protocol and Greece's acceptance of the Protocol, which brought the number of Contracting States to this Protocol to thirty. The representative of Germany said his government had deposited the appropriate legal instrument for the ratification of the Protocol. The Working Party wished the other eleven States that were Contracting Parties to ADR (Azerbaijan, Belarus, Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Kazakhstan, Malta, Morocco, Montenegro, Serbia, Ukraine) to take the necessary measures to ratify or to accede to the Protocol so that it could enter into force.

Mobile Explosives Manufacturing Units (MEMU)

The Working Party adopted these new provisions on the use, construction, equipment and marking of tanks, bulk containers and special compartments for explosives for these mobile units.
(Translation)

RID Committee of Experts Working Group on the Exchange of Experiences for Recognized Experts

3rd Meeting

Berne, 13 May 2008

29 Experts from 11 Member States, and UIP, took part in this 3rd meeting held at the headquarters of OTIF. The meeting was chaired by Mr Stefan Dernbach (Germany). The aim of the meeting has been described in Bulletin 3/2006, p. 45. The RID Committee of Experts noted the results obtained (see p. 21). A detailed report¹ can be found on our website.
(Translation)

RID Committee of Experts Working Group on Tank and Vehicle Technology

9th Session

Berne, 14/15 May 2008

The following States took part in the discussions at this session, which was held at the headquarters of OTIF:

Belgium, Croatia, Czech Republic, France, Germany, Netherlands, Spain, Sweden, Switzerland and the United Kingdom. The European Commission and the European Railway Agency (ERA) were also represented. The International Union of Railways (UIC) and the International Union of Private Wagons (UIP) also participated. The meeting was chaired by Mr Reiner Kogelheide (UIP/Germany).

Minimum distance of 300 mm between the headstock plane and the tank – inclusion of a provision from UIC leaflet 573

Belgium proposed to incorporate this provision into RID, as prescribed in UIC leaflet 573. Up to now, this provision has not been included in the Technical Specifications for Interoperability (TSI) or in RID.

At the 44th session of the RID Committee of Experts, the representative of the United Kingdom had raised the objection 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. Belgium had taken this into account by proposing the alternative application of the measures set out in special provision TE 25.

The representative of the United Kingdom proposed a different wording. On the one hand, this would take account of the fact that tank-wagons in the United Kingdom to which special provision TE 25 can be applied already have a minimum distance of 300 mm and on the other hand, for other tank-wagons – as has been usual in the United Kingdom up to now – the text would enable protection against the overriding of buffers to be used.

There was a consensus in the working group concerning the incorporation of the provision from the UIC leaflet. However, it was not possible to reach agreement on the form in which the alternative should be included in RID:

- should the alternative be restricted to the United Kingdom or should the alternative be valid for all the cases of a restricted loading gauge listed in the Technical Specifications for Interoperability (TSI) on Conventional Railway Infrastructure?

¹ www.otif.org/html/e/rid_CExp_RID_rapport2008.php

- must this special case be dealt with in RID or could it be dealt with by a derogation from the EU Framework Directive?

The representative of the United Kingdom submitted new wording, which was provisionally adopted in square brackets. The representatives of the United Kingdom and the European Railway Agency were asked to check before the next meeting whether this national derogation could be included in RID.

Drip leaks

The representative of Germany summarised the progress of the research project being carried out by the German Petroleum Industry Association. The main cause of defects in tightness/drip leaks was residual amounts of substances in the filling and discharge system, in conjunction with closure devices that were not fully closed. He explained that once the research project had been concluded, Germany would submit specific proposals for amendments. Various participants welcomed the research project and the meeting hoped that the amendments to the requirements would solve the problem of drip leaks.

Evaluation of the letters and research reports sent by the Association of American Railroads (AAR)

The working group noted a press release concerning the measures planned in the USA to improve safety and to reduce the speed of rail tank-wagons carrying substances toxic upon inhalation.

Reducing leaks

Germany explained that certain fittings that cannot be completely emptied because they have bends in them are no longer allowed in Germany. The Chairman added that in this regard, the meeting should await the results of the German research project.

Tank and tank end protection

The Chairman said that accident investigations had shown that side impacts had not caused a degree of damage that was comparable to that caused by the overriding of buffers and that for this reason, the side protection referred to in the AAR document had not been followed up.

Operating practices

It was recalled that following up the subjects of speed restrictions and bypassing built-up areas had been ruled

out, because a rule on this cannot be included in RID and must therefore be dealt with at national level. However, it was also observed that in future, certain questions could also be dealt with at international level once telematics solutions became available (e.g. hot box detection using telematics instead of fixed detectors).

Reports on incidents in the carriage of dangerous goods in accordance with section 1.8.5 of RID

The representative of Sweden presented the results of the investigation into an accident that had occurred in 2005 in Ledsgård, about which he had already informed the working group.

The cause of the accident was the incorrect position of the brake lever on the tank-wagons (“EMPTY” instead of “LADEN”). This accident had again highlighted the fact that there are no effective barriers to prevent the movement of a train with insufficient braking power.

The results of the accident investigation had shown that the energy absorption of the protective shields fitted to the tank-wagons was relatively low and that higher values could be achieved by the method of attachment of the shield (e.g. screwing it on instead of welding it on).

In addition, with regard to buffers that were on a curved section of track at the time of the impact, it was noted that overriding of the buffers occurred before the energy absorption element of the buffers was able to respond. In these cases, the tank shield and the tank would have to have absorbed even more energy.

The following points in particular were brought up in the discussion:

- As the problem of braking was not specific to dangerous goods, ERA should be asked to seek a solution for all rail transport.
- The purpose of the protective shield is not to absorb energy, but to protect the tank from the puncturing effect of the buffers. This was why protective shields covering the whole of the tank end were sometimes used. Nevertheless, the question of attaching the tank shields better should be examined on the basis of a technical document.
- As the accident report had shown that if they functioned correctly, the energy absorption elements on all buffers should have been able to absorb 70% of the total energy of the impact at

39 km/h, a check should be carried out to see how the slipping off of buffers and hence the reduction of the effectiveness of energy absorption elements could be prevented.

Tank-wagon handbook

The representative of Germany proposed that an archive be set up on OTIF's website. All participants could contribute their knowledge to this archive.

Monitoring the main brake pipe/air-brake check

The Chairman reminded the meeting that the RID Committee of Experts had asked the representative of ERA to check whether the question of monitoring the main brake pipe could be followed up by his Agency in relation to all rail transport.

The representative of ERA explained that the Agency was currently examining the issue of the end of train device, although initially, this would be from the point of view of recognising the train from behind (end of train signal). He assured the meeting that monitoring the main brake pipe would also be looked at in this context, but could not guarantee that this aspect would be dealt with in the interim report that was anticipated at the end of 2008.

The Chairman of the RID Committee of Experts again recalled that various accident assessments had shown that brake problems had led to serious accidents. This fact should result in an amendment to the TSI. Should the need for this not be recognised by ERA, the RID Committee of Experts would be compelled to continue its work on finding a solution for the dangerous goods sector. He wished to ensure that the RID Committee of Experts would have the opportunity of examining ERA's interim report before the final report was published. He would also make this wish known at the meeting of the European Commission's Interoperability Committee.

Proposals for the 2009 edition of RID

The representative of Belgium proposed to require that information also be provided on the tank-wagon to say whether the next inspection to be carried out was an intermediate inspection, which, according to an amendment already adopted for the 2009 edition of RID, may be carried out up to three months after the prescribed deadline. This would make matters easier for railway inspection staff, who would otherwise have to climb up onto the wagon platform to be able to check the information on the tank plate.

The majority of the working group was in favour of the modified proposal submitted by the representative of Belgium. Following this decision, some delegations were of the view that there was no hurry to implement this and that it would be sufficient if this were to enter into force on 1 January 2011.

Mechanical strength of tank-wagons

The representative of UIP said that the wording of 6.8.2.1.2 concerning the mechanical strength test to be carried out on tank-wagons led to problems of interpretation. He explained that the original test programme according to ORE RP 17 had now been incorporated into standard EN 12663, which also allowed calculation using the Finite Element Method (FEM) in place of tests. He wished to hear the meeting's views on whether the wording should be amended in order to avoid the possibility of differing interpretations.

The working group asked the representative of UIP to prepare a text for the next session specifying the standards according to which the mechanical strength has to be demonstrated. The standard quoted would then have to be checked to see whether the requirements it contains are sufficient.

(Translation)

Committee of Experts on the Transport of Dangerous Goods

45th Session

Berne, 16 May 2008

16 Member States (quorum) and the European Commission, CIT, UIC, UIP and ERA (European Railway Agency) took part in the work of this special session held at the headquarters of OTIF. The meeting was chaired by Mr H. Rein (Germany).

This short session was dedicated to **finalising the 2009 edition of RID** following the latest decisions of the RID/ADR/ADN Joint Meeting in March 2008, which covered matters pending, especially standards. Numerous additional texts and editorial and substantive amendments were also adopted. The RID Committee of Experts also aligned itself with the latest decisions taken by the recent WP.15 for ADR, particularly the decision to submit to the UN Sub-Committee of Experts the question of the differences between the amendments adopted by IAEA and those adopted for the UN Model Regulations with regard to radioactive material.

In the context of **piggyback transport**, the Committee of Experts adopted the Secretariat's proposal to dispense with the instructions in writing for drivers as an attachment to the transport document, following WP.15's adoption of a new concept for instructions in writing, which in future only prescribes a standard model for all dangerous goods. The representative of UIC welcomed this decision, as attachments to the transport document were a major obstacle in the CIT/UIC "electronic consignment note" project. He said he would provide information on this project at the next meeting. The Chairman suggested that the new concept of the instructions in writing should be introduced into RID in order to provide the locomotive driver with a standard set of instructions and thus to replace national rules. Germany would submit a proposal on this.

With regard to the **exchange of experiences** for tank inspection experts (meeting of 13 May 2008, Berne), the Chairman said that he wished more experts to attend. He requested the Member States to disseminate the results of the exchange of experiences at national level. The representative of the United Kingdom pointed out that some of the documents submitted to the exchange of experiences did not come under its field of responsibility and that this should be taken into account better in future.

With regard to **working together with the European Union's Interoperability Committee**, the Chairman explained that in his capacity as Chairman of the RID Committee of Experts, he had taken part in the last meeting of the European Commission's Interoperability Committee and had given a presentation on the law governing the carriage of dangerous goods and its correlation to other fields of law. He was certain that there would be better co-operation in future. However, he said he would like the Interoperability Committee also to check whether its work was of relevance to the dangerous goods area and forward relevant information to the RID Committee of Experts. The representative of the European Commission confirmed that the co-operation outlined by the Chairman would work in future.

(Translation)

Other Legal Matters

Rail Protocol

Preparatory Commission

2nd Session

Rome, 8-10 April 2008

The Preparatory Commission (PrepCom) to establish the International Registry for railway rolling stock according to the Luxembourg Protocol (see Bulletin 2/2007, p. 18 et seq.) held its second session on 8-10 April 2008 at the headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome. The meeting was jointly chaired by Sweden and the United States of America.

As a member of the Commission, the deputy Secretary General attended the session on behalf of OTIF.

The main task before this session of the Commission was to carry out a final check of the offers received in response to the call for tenders for the project to set up and run the International Registry and to award the project. The project was awarded to CHAMP Cargo-systems S.A., which is based in Luxembourg.

The next step will be to start negotiations on the contract between the Supervisory Authority and the prospective Registrar on setting up and running the Registry. In addition to the relevant provisions of the Cape Town Convention and the Luxembourg Protocol, the Registry regulations, which still need to be developed further, and a code of practice for customers using the Registry will form the basis of this contract.

For the negotiations on the contract, a negotiating team comprised of both chairmen of the PrepCom and a representative from OTIF and UNIDROIT respectively has been appointed. Relevant experts will be brought in to the negotiations to advise on specific issues, such as liability and insurance.

The next session of the PrepCom (in Berne) will be held close to the time the contract is concluded and when it is established that the Registry is fully operational. Provided the conditions for the entry into force of the Protocol are also met in the meantime (ratification etc. by four States, confirmation of full operational status), the Registry could be up and running in 2009.

(Translation)

Co-operation with International Organisations and Associations

International Transport Forum

First Meeting

Leipzig, 28/29 May 2008

The Secretary General attended the first International Transport Forum. This cannot formally be considered as an international organisation, nor, owing to the matters it negotiates or its pragmatic aims, can it be seen as a direct successor organ to the former ECMT (European Conference of Ministers of Transport), but because of its particular form of appearances and input by the Ministers, the ECMT Member States see it as a replacement for the previous format.

On both days, the more than 900 participants from all 51 Member States of the International Transport Forum dealt with the core topic of “Transport and Energy: The Challenge of Climate Change”. The proceedings were split into two parts; on the first day, it was mainly representatives of the industry and associations who spoke, and on the second day, after the important political opening event, it was mainly the heads of state, regional and local governments who discussed issues. With the exception of a few individual cases, the talks took the form of panel discussions, where questions could also be asked and contributions made from each of the plenaries.

The high point of the main political event referred to above at midday on 29 May was the speech given by the German Federal Chancellor, Dr Angela Merkel, the talks given by the Executive Secretary of the UN Framework Convention on Climate Change, Yvo de Boer and by the representative of the 2007 Nobel Peace Prize winner, the Intergovernmental Panel on Climate Change (IPCC), Dr Rajendra Pachauri.

It came as no surprise that the top political decision-makers as well as participants in the panel discussions turned the spotlight clearly on the transport sector’s role as a catalyst and accelerator of climate change. According to them, the expected increase in transport-related greenhouse gas emissions in industrialised countries is to be 30.5% compared with the base year 1990. This is the biggest emissions increase in comparison with other greenhouse gas emitting sectors. By 2030, the International Energy Agency is even expecting an increase of 80% in transport-related

emissions globally. On top of this – in the opinion of the Executive Secretary of the UN Framework Convention on Climate Change, for example – all the current transport trends are diametrically opposed to the objectives demanded by the scientific community to reduce greenhouse gas emissions caused by transport activities. For industrialised countries, this would mean achieving a reduction in national emissions of 25-40% compared with 1990 levels by 2020. In view of this and in the absence of resolute countermeasures, many speakers were of the view that cost-effective reductions in greenhouse gases would only be achieved if the transport sector were to be incorporated into the existing emissions trading system. Angela Merkel also supported emissions trading in the transport sector and placed particular emphasis on the need to take maritime transport into account.

In the face of these unequivocal statements, it came as no surprise that a lot of the contributions described successful efforts to reduce greenhouse gas emissions. As a result, it became clear that in taking account of the effects obtained, but also in view of public acceptance, the effects on gross domestic product and the mobility of goods and persons, there are obviously enough examples of so-called “best practice” that would only need to be taken into account elsewhere in order to achieve the corresponding positive effects. In order to give an example of this – admittedly a particularly drastic one – it should be pointed out that local public transport in the city of New York alone emits 20 tons of CO₂ per inhabitant per year, while the equivalent figure for Stockholm is 3.5 tons.

Representatives from the teaching and research sector were particularly decided in their view that the State has a direct influence on the impact from road transport and at the same time, on the promotion of rail transport, while so-called “soft measures” to influence the range of services and demand generate considerably fewer effects. Many of the politicians, e.g. the Swiss Minister of Transport, Moritz Leuenberger, also supported regulation instead of “incentivisation” (financial incentives) and emphasised the importance of forward-looking urban planning, e.g. by bringing peoples’ places of work and residence nearer.

The Ministers adopted a set of key messages¹. However, on the initiative of the USA, Australia and other States, some tough commitments and demands that had been included in the draft prepared by the Secretariat of the

¹ www.internationaltransportforum.org

International Transport Forum, headed by Secretary General, Jack Short, were dropped before acceptance.

The next meeting of the International Transport Forum on the subject of “Transport and Globalisation” will again be held in Leipzig from 27 to 29 May 2009. The Ministers decided in fact that for the time being, Leipzig would be the permanent venue for these congresses. (Translation)

At a glance

Rail gauges

It is said that God created the world in one week because he had no problems with “Packard compatibility”. The following is a good example of the constraints placed upon the engineers who came after Him:

Why is the standard distance between two rails on Canadian railways 4 feet 8½ inches (1,435 mm)? Because the Canadian railways were built using the same model as the railways of the United States in order to make it easier to carry goods from one country to the other.

In which case, the second question is why were the railways of the United States built with a gauge of 4 feet 8½ inches? Because they were built the same as in Britain, by expatriate British engineers, who thought it would be a good idea as this would allow British locomotives to be used on American railways.

So let’s rephrase the question: why did the British build their railways like that? Because the first railway lines were in fact built by the same engineers who built the tramways, and this gauge was then used for tramways.

So why did they use this gauge for the tramways? Because the first people who built the tramways were the same people who built carts and they used the same methods and tools.

OK, but why was the gap between the wheels on carts 4 feet 8½ inches? Because all over Europe and in Britain, the roads already had ruts this far apart and a different width would have caused the cart axles to break when travelling on these routes.

And why did the roads have ruts of this width? The first major roads in Europe were built by the Roman Empire to speed up movements of the Roman legions.

Yes, but why did the Romans maintain this width? Because the first carts or chariots were Roman war chariots. They were pulled by two horses. These horses galloped side by side and had to have sufficient space between them not to get in each other’s way. In order to make the chariots more stable, the wheels had to avoid running over the horses’ hoof prints but could not be too wide apart and protrude too far from the sides of the chariot, as this might have caused an accident when two chariots passed each other.

Thus the width between the rails on Canada’s railways (4 feet 8½ inches) is explained by the fact that 2000 years before, on another continent, the Roman chariots were built on the basis of the dimensions of the average hindquarters of war horses!

There is an interesting follow-up to this story: when we look at the American space shuttle on its launch pad, we can see the two additional tanks attached to the main tank. The company that makes these tanks is based in UTAH ... The engineers who designed them wanted to make them a bit wider, but these tanks had to be moved by train to the launch site. The railway line between the factory and Cape Canaveral runs through a tunnel under the Rocky Mountains. The additional tanks had to be able to pass through this tunnel. The tunnel is slightly wider than the railway line and the railway line is about the same width as two horses’ backsides ...

Conclusion:

When building the American space shuttle, which may be considered as one of the most sophisticated means of transport on the planet, the engineers had to respect the constraint placed upon them by a 2000 year old design, which was the width of two horses’ backsides side by side!

History of the Railways, Canadian version
(Translation)

Case Law

Cour de Cassation (France)

Ruling of 13 March 2008¹

The elements of the circumstances that have been established – place where the victim fell onto the railway line coinciding with a cross marked on a plan found in his bag and throwing his luggage onto the railway line beforehand, which contradicts an accident hypothesis – constitute serious, precise and corroborative presumptions of a deliberate act, from which it can be concluded that the passenger’s fall was the result of behaviour not in conformity with the normal conduct of passengers.

Cf. Article 26 § 2 (b) of CIV 1980.²

On the sole ground:

Given that Mr X..., travelling on board a train going from Barcelona to Berne via Avignon and Geneva, was discovered seriously injured on the railway line on 7 May 1997; that the national Swiss accident insurance fund (SUVA) sought reimbursement of the sums paid to its insurance holder from SNCF; that, in a ruling dated 9 February 2001, the court acceded to the request as it considered that no fault on the part of the victim had been demonstrated;

Given that SUVA complained about the ruling (Aix-en-Provence, 30 June 2004) to dismiss its claim against SNCF for payment of a sum equivalent to the social security benefits paid to its insurance holder, with regard to the ground:

Firstly, by completely relieving SNCF from its liability, without investigating whether Mr X’s behaviour had exhibited the characteristics of *force majeure*, particularly bearing in mind the fact that the accident could have been avoided if SNCF had set up an appropriate system to prevent the doors from opening while the train was moving, the court of appeal deprived

its decision of a legal basis in relation to Article 26 of Appendix A, “Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail” of the Berne Convention of 9 May 1980 concerning International Carriage by Rail;

Secondly, by not investigating whether, irrespective of Mr X’s behaviour, SNCF was not at fault itself as a result of not fitting the train with a system preventing the doors from opening while the train was in motion and whether this fault did not contribute to the injury, the court of appeal deprived its decision of a legal basis in relation to Article 26 of Appendix A, “Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail” of the Berne Convention of 9 May 1980 concerning International Carriage by Rail;

But given that, according to Article 26 of Appendix A, “Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail” of the Berne Convention of 9 May 1980 concerning International Carriage by Rail, “the railway shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other bodily or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles...”, but that “the railway shall be relieved of this liability wholly or partly, to the extent that the accident is due to the passenger’s fault or to behaviour on his part not in conformity with the normal conduct of passengers”; that the court of appeal, which noted that the place where the victim fell coincided with a cross on a plan found in his bag and that throwing his luggage onto the railway line beforehand contradicted an accident hypothesis, was able to judge that the elements of the circumstances constituted serious, precise and corroborative presumptions of a deliberate act, and that the court was able to conclude that Mr X’s fall was the result of behaviour not in conformity with the normal conduct of passengers; that for these reasons alone, the court of appeal legally justified its decision.

On these grounds rejects the appeal.

...

(Published on: <http://www.courdecassation.fr>, under “Jurisprudence, publications, documentation, Actualité jurisprudence, arrêt du 13 mars 2008, numéro 05-11.800”)

(Translation)

¹ Ruling No. 162

² According to Article 26 § 2 (b) of CIV 1999, “behaviour on the part of the passenger not in conformity with the normal conduct of passengers” is no longer a reason for relief from liability; with regard to this case, the question that would be asked is whether the accident was the fault of the passenger. Cf. also the case law published in Bulletin 4/2001 (French and German only) and Bulletin 4/2005, p. 77.

Cour de Cassation (France)

Ruling of 13 March 2008¹

The passenger who tried to board the moving train was at fault; however, this fault was not the sole cause of the accident, which occurred at a time when there was no system either to prevent the doors from opening while the train was moving, to see and monitor the whole platform and train, or to provide an audible warning before the train departed; the presence on the platform of a sufficient number of staff or a camera system allowing the whole of the train to be monitored would have prevented the accident from occurring. The carrier, liable without fault towards a passenger, cannot partially relieve itself from liability.²

Cf. Article 1147 of the French Civil Code.³

On the sole ground of the main appeal:

In view of Article 1147 of the Civil Code;

Given that on 26 September 1999, Mrs Y..., a passenger on the train from Marseilles to Toul alighted at the platform in Avignon station; given that as she fell under the train while attempting to re-board the coach in a hurry while it was beginning to move off, she had her leg amputated above the knee; given that she brought an action against SNCF for compensation of the injury;

Given that in ordering the carrier to pay compensation at the level of half the loss sustained, the trial judges deemed that the intervention of the victim, who was at fault by attempting to board the train which was moving at the time, in contravention of the provisions of Article 74 of the decree of 22 March 1942 concerning the railway police, did not exhibit the characteristics of *force majeure* and was not the sole cause of the accident, during which there was no system to prevent the doors from opening while the train was moving, to see and monitor the whole platform and train, or to

provide an audible warning before the train departed and that the presence on the platform of a sufficient number of staff or a camera system allowing the whole of the train to be monitored would have prevented the accident from occurring;

Given that by ruling thus, when the carrier which is liable without fault towards a passenger cannot partially relieve itself and given that the fault of the victim, provided it exhibits the characteristics of *force majeure*, can only ever entail total relief, the court of appeal contravened the above-mentioned text;

On these grounds and without the need to rule on the incidental appeal:

Quashes all the provisions of the ruling handed down on 30 March 2004, between the parties, by the Aix-en-Provence court of appeal; consequently returns the case and the parties to the situation in which they found themselves before the said ruling and, to remedy the situation, refers the parties back to the Aix-en-Provence court of appeal with a different bench;

(Published on website: <http://www.courdecassation.fr> under "Jurisprudence, publications, documentation, Actualité jurisprudence, arrêt du 13 mars 2008, numéro 05-12.551")

(Translation)

Book Reviews

Kunz, Wolfgang (editor), *Eisenbahnrecht* (Railway Law): Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements, Nomos Publishing, Baden-Baden, ISBN 3-7890-3536-X, 22nd supplement, status as at 1 March 2008.

The base volume appeared in 1994 (see Bulletin 1/1995). The ongoing provision of supplements means that in addition to the necessary updating, the texts and commentaries are made more complete step by step (most recently, see Bulletin 3/2007, p. 56). In addition to the editor, around 20 other authors have worked in partnership.

The collection is in four volumes and covers all areas of the law that applies to the rail sector. The biggest part of the collection is made up of national German laws and other regulations. The first two volumes contain regulations that apply to the whole of Germany, while

1 Ruling No.163

2 Cf. however the case law published in Bulletin 3/2006, p. 50 (shared liability on a quasi-tortious basis). If this had been a case of international transport under the CIV regime, one would logically have expected here, within the meaning of the introduction of the paragraph and the introduction to Article 26 § 2 (b), that the carrier can to some extent (a rather small extent), but certainly not completely, relieve himself from liability.

3 Cf. Article 26 § 2 (b) of CIV

the third volume sets out regulations that apply to the individual Federal Lander. The fourth volume contains general conditions for various services in the rail sector and the laws and other regulations that are not specific to the railways (labour law, administrative procedures, etc.), but which are applied in the rail sector. Whilst “European Law” has a section to itself in volume III, the “international law” category forms a section in volume IV. Each volume contains an alphabetical summary of the laws, regulations and other provisions and table of contents covering the whole collection. The 22nd supplement also adds an index.

The 22nd supplement (520 pages) deals mainly with the section on “German Law” and takes into account amendments to the legal texts that have been made since the last supplement was published. With regard to the commentaries, Kunz’s explanatory notes on the Act concerning the “Merging and Restructuring of the Federal Railways” (1993, last amended in October 2006) have been revised and expanded. Köhlwetter’s explanatory notes on the Federation’s “Railway Transport Administration” Act (1993, last amended in April 2007) have also been updated.

The “International Law” section in volume IV contains COTIF. Following the editor’s initial explanatory notes on Appendices F (APTU) and G (ATMF) (see Bulletin 1/2006, p. 16), a short text with explanatory notes on Appendix C (RID) has now been added. These notes are based mainly on the related explanatory report published by OTIF and do not take into account some of the developments that have taken place in the meantime. These include, for example, the amendment of Chapter VII of the SOLAS Convention, which entered into force in 2004 and which made the IMDG Code mandatory for the most part, the entry into force of ADN on 29 February 2008 and the soon to be expected entry into force of a Directive to replace Directive 96/49/EC on the inland transport of dangerous goods. In view of the comprehensive regulations for empty, uncleaned means of containment, the reference to a lacuna in RID is no longer valid. It would be helpful to add a note to Article 5 § 1 (a) to say that these provisions are contained in RID under “Carriage as Express Goods”.

The systematic “Railway Law” collection is a practical aid to the work of railway specialists. The well thought-out separation into different headings helps the user find the information he requires quickly and reliably so that despite the flood of information, he can easily retain an overview.

(Translation)

Last but not least

Humour, irony and the bizarre in international meetings on the transport of dangerous goods

Despite all the seriousness in these meetings, humour and irony are not absent, and neither is the bizarre. Thus in his role as Zorro, who lets nothing pass, the spoilsport referred to very recently in this column is increasingly becoming the object of dismay for delegates at the UN Sub-Committee of Experts, ever since one of the chairmen of this Sub-Committee had to declare that unfortunately, he had to agree that the spoilsport was correct for the second time that day! And the formulae used include “this is a bad start to the day ...” or “I can’t be on form today ...” or “against all my expectations ...”, or even “I can’t say I’m happy about it, but ...”. The Zorro in question also no longer hesitates in saying to his detractors “I’m certainly not happy about it, but I will have to support this proposal”. He even told the representative of the Bahamas, a former chairman of the Sub-Committee and the first person to put the cat among the pigeons, that he was astonished that such problems could arise on the beaches in the Bahamas. These episodes ended up contaminating the RID/ADR/ADN Joint Meeting as well.

When voting, it is not unusual to see a dozen delegations waiting for the representative of a large and influential country to raise his card to approve or reject a proposal before they do the same. So it is sometimes difficult to get a reasonable proposal through and easy to get an unreasonable one through. In these circumstances, one might quite rightly wonder whether they are unable to give an opinion as they do not know what the proposal is about, owing perhaps to the absence of competent experts in their delegations, or whether, quite simply, they have not read or have not had time to read the documents.

In the discussions, it is almost always the same delegations who take the floor, sometimes even several times in order to reply to other speakers, such that when the discussions go on at length, the chairman feels obliged to bring some order to the proceedings by only giving the floor to those delegations that have not yet spoken, unless those who are apt to monopolise the microphone have something new to say. Perhaps there should be a time limit on each speaker, as in the televised political debates. We could perhaps return to a method used in former days by the American Indians, where in the tribe’s democratic meetings – not sure

whether it was the Sioux or the Iroquois – the chief allowed anyone to speak, provided they stood on one leg; when the speaker felt the need to stand on both feet again, he had to stop talking and sit back down. It is difficult to estimate how much time would be saved, but the five day meetings could perhaps be wound up by Wednesday evening. An attempt might be worthwhile.

A word to the wise is enough!
(Translation)