



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

1/2009

117th Year • January - March

Summary

Legal matters concerning COTIF

Publications and interesting links, p. 1

Transport of Dangerous Goods

RID/ADR/ADN Joint Meeting

Geneva, 23-26.3.2009, p. 2

Publications and interesting links, p. 5

Subjects in the Technical/Approval Field

Committee of Technical Experts

3rd session – Berne, 11/12.2.2009 – p. 5

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Inland Transport Committee (ITC) – Geneva, 24-26.2.2009 – p. 7
Working Party on Customs Questions affecting Transport (WP.30) – Geneva, 2-6.2.2009 – p. 7
Working Party on Intermodal Transport and Logistics – Geneva, 19/20.3.2009 – p. 8
Multidisciplinary Group of Experts on Inland Transport Security – Geneva, 15/16.1.2009 – p. 8

Other Activities

JERID

International Rail Freight Conference on Transport between Asia and Europe – Prague, 4/5.3.2009 – p. 9

United Nations Economic Commission for Europe (UNECE), International Transport Forum, World Bank

Seminar on Strategies for Overcoming Border Crossing Obstacles – Paris, 5/6.3.2009 – p. 11

Case Law

Bundesgerichtshof (Germany) – Ruling of 14.2.2008 – Term “contract of carriage” (CMR), p. 12

Last but not least

Echoes of the RID/ADR/ADN Joint Meeting, p. 12

**Annual subscription to the Bulletin : SFr. 48,-
Orders are to be sent to :**

Intergovernmental Organisation
for International Carriage by Rail (OTIF)
Gryphenhübeliweg 30, CH - 3006 Berne
Phone : + 41 31 359 10 10
Fax : + 41 31 359 10 11
E-mail : info@otif.org
Internet : www.otif.org

1/2009

117th year – January - March

Bulletin of International Carriage by Rail

Quarterly publication of the OTIF

In case of reproduction of essays and texts translated by the Secretariat of OTIF, full acknowledgment of author, publisher and source must be given. The opinions expressed in essays are those of the authors.

Legal Matters concerning COTIF

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3263/2009, p. 167 – Conditions générales. Attention, zone rouge ! (M. Tilche)

Idem, n° 3264/2009, p. 186 – Lettre de voiture électronique. Quelle valeur ? (M. Tilche)

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT) <http://www.cit-rail.org>, éditions/Ausgaben/editions 1/2009, 2/2009

European Transport Law / Droit européen des transports / Europäisches Transportrecht, Antwerpen, No. 2/2009, p. 143-149 – Quantum Corporation Inc. V. Plane Trucking Ltd. Revisited by German supreme court: Considerations on the German High Court's decision of 17 July 2008 [CMR case law]¹ (P. Laurijssen)

Institut für Mobilitätsforschung, Berlin, Studie "Ost-West-Güterverkehre 2030": www.ifmo.de

Transportrecht, Hamburg, Nr. 3/2009, S. 103-109 – Normenkonflikte zwischen den EG-Verordnungen Brüssel I, Rom I und Rom II und transportrechtlichen Rechtsinstrumenten (R. Wagner); S. 109-117 - Aktuelle transportrechtliche Probleme in Österreich (H. Jesser-Huß)

Uniform Law Review/Revue de droit uniforme, Rome, Unidroit, N° 2009-1/2, p. 390-323 – The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – A General Overview/ Convention des Nations Unies sur le contrat de transport international de marchandises effectué entièrement ou partiellement par mer – Un aperçu général (K. Lannan)

¹ Decision of the Bundesgerichtshof I ZR 181/05: Unless provided otherwise in national law, the direct application of the CMR provisions is restricted in principle to cross-border unimodal road transport contracts.

Transport of Dangerous Goods

RID/ADR/ADN Joint Meeting

Geneva, 23-26 March 2009

The RID/ADR/ADN Joint Meeting was held in Geneva from 23 to 26 March 2009 to continue the work on the 2011 edition of the dangerous goods regulations for European land transport. 22 States, the European Commission and the Committee of the Organization for Cooperation between Railways (OSJD) and 16 non-governmental organisations were represented at this meeting.

Standards

EN 15507:2008

Although standard EN 15507:2008 (Packaging – Transport packaging for dangerous goods – Comparative material testing of polyethylene grades) only describes procedures that are in line with the procedures in RID/ADR that are described for compatibility testing, various States saw practical difficulties in applying the standard. Before this standard was referred to in RID/ADR, an informal working group should meet at the invitation of the European Plastics Converters Association (EuPC) to resolve the problems of application.

Problems concerning references to standards

In an informal document, the International Union of Private Wagons (UIP) pointed out that applying standards referred to in RID/ADR can lead to problems, as they also partly contain sections that are not relevant to safety or sub-references to other standards.

Recalling the procedure that was adopted for references to standards, the meeting was again reminded that these problems must be dealt with by the working group on standards before a reference was included and the reference should exclude those parts of a standard that might cause problems.

Harmonisation with the UN Model Regulations on the Transport of Dangerous Goods

Special Provision 274

As a result of previous discussions at the Joint Meeting and an informal working group, it had already been decided in March 2008 to amend RID/ADR/ADN with

regard to the assignment of special provision 274 (adding the technical name to the proper shipping name in the transport document) and to delete this special provision in relation to various substances. At the same time however, the Joint Meeting thought that it was justifiable to keep the special provision for 81 substances and that the UN Model Regulations should be aligned with RID/ADR/ADN.

In the meantime, the UN Sub-Committee of Experts has now decided to assign special provision 274 to these substances. However, three UN numbers for medicines will not be included (UN 1851, UN 3248 and UN 3249) in order to take account of concerns concerning the disclosure of controlled medical substances, the identification of which during transport could lead to practical and logistical problems, including theft and unauthorised use and distribution. The Joint Meeting accordingly decided also to delete the reference to special provision 274 for these three UN numbers, so full harmonisation has now been achieved in this area.

Worldwide multimodal harmonisation

At its 34th session, the UN Sub-Committee of Experts on the Transport of Dangerous Goods, considering a document submitted by 14 non-governmental organisations, agreed that additional efforts had to be made to improve the harmonisation of regulations on the transport of dangerous goods at worldwide level, since there were still divergences that impeded international and multimodal transport operations.

The international organisations concerned were invited to provide feedback to the UN Sub-Committee of Experts, by drawing attention to requirements in their international instruments that deviated from the UN Model Regulations and explaining why such deviations had been introduced (see Bulletin 4/2008, p. 44).

It was recalled that in accordance with its terms of reference the Joint Meeting systematically reviews any amendment to the UN Model Regulations so as to reflect it in RID/ADR/ADN. In some instances, however, such amendments are not detailed enough to be incorporated into legislation, as was the case for certain provisions relating to Class 6.2 and, in that event, the Joint Meeting provided feedback to the UN Sub-Committee. The Joint Meeting generally considers that RID, ADR and ADN are well harmonised with the UN Model Regulations and that the existing variations are well justified in the European land transport context without constituting an obstacle to international multimodal transport.

However, some delegations considered that there are variations in form, for example in Part 2 relating to classification, which oblige countries to make a separate translation of the regulations for each mode of transport; this could be avoided if there were agreement on a single text for the parts of the regulations that apply to all modes of transport.

The Joint Meeting agreed that harmonisation should not be an end in itself and should not lead to provisions that had existed for many years in European land transport being given up (e.g. tank provisions in Chapter 6.8). Various delegates thought it would be better to take up individual problems and resolve them step by step, as in the case of special provision 274 (see above).

The Joint Meeting welcomed a table prepared by the United Kingdom showing the differences between RID/ADR/ADN, the IMDG Code, the ICAO Technical Instructions and national US provisions. However, the meeting also wished the comparison to show the provisions of the UN Model Regulations and where appropriate, national derogations in States linked to Europe by land.

New proposals for amendments to RID/ADR/ADN

Issues pending from the 44th session of the RID Committee of Experts

As standard EN 14025:2008 also applies to gas tanks, the Joint Meeting decided that in the table of standards in 6.8.2.6, for this standard there should be a reference to 6.8.3.1 as well as to 6.8.2.1.

In contrast to the Joint Meeting, the RID Committee of Experts decided in connection with the introduction of new marking provisions for means of transport carrying dangerous goods packed in limited quantities to specify who has to affix the marking. It was considered necessary to specify this because Chapter 3.4, unlike Chapter 3.5, does not contain any information on which provisions of RID/ADR/ADN have to be applied despite the exemption.

The Joint Meeting was of the view that the specification adopted by the RID Committee of Experts was not necessary for ADR, as this marking has to be affixed by the carrier or the loader, depending on whether the means of transport is a vehicle or a container.

With regard to specifying the provisions that have to be taken into account when applying the exemption in Chapter 3.4, the Joint Meeting decided to await specific proposals for amendments. However, some delegates

were of the view that in so doing, the provisions of Part 2 concerning classification did not have to be mentioned explicitly, as determining the applicable LQ code presupposes the application of Part 2.

Indication of environmentally hazardous substances in the transport document

As the carrier has an obligation in connection with the correct marking of the means of transport, the representative of Sweden thought it necessary that the transport document should indicate whether the substance being carried was environmentally hazardous. A large majority agreed that this information was necessary.

In connection with the UIC's proposal to include the marking for environmentally hazardous substances in the list of danger labels in 5.2.2.2 and to indicate this new danger label model for all substances with an environmentally hazardous subsidiary risk in column 5 of Table A, it was recalled that the UN Sub-Committee of Experts had rejected a list of environmentally hazardous substances because for the UN Model Regulations, in contrast to the IMDG Code and RID/ADR/ADN, it had been decided only to assign "environmentally hazardous" to UN Nos. 3077 and 3082 as the main hazard, but not to the other substances of classes 1 to 9 as a subsidiary hazard.

Use of pressure receptacles for the carriage of chlorosilanes

The representative of the European Chemical Industry Council (CEFIC) pointed out that in the new packing instruction for chlorosilanes (P 010), which has been in force since 1 January 2009, pressure receptacles had been forgotten as a permitted type of packaging. While 4.1.3.6.1 allows the general use of pressure receptacles for the carriage of liquids and solids, 4.1.3.7 prescribes that they must be authorised in the applicable packing instruction.

The representative of CEFIC informed the Joint Meeting that he would submit a proposal to the UN Sub-Committee of Experts to correct packing instruction P 010, and recommended that a multilateral agreement be initiated before 1 July 2009 in order to allow chlorosilanes to continue to be carried in pressure receptacles until the correction came into effect. Chlorosilanes are very dangerous substances used in an ultrapure form by the electronics industry, among others. Pressure receptacles are the safest packagings in which to carry them and the filling and emptying

processes in clean room manufacturing in the electronics industry are adapted to such packagings.

Reports of informal working groups

Period of validity of design type approvals and transitional provisions for standards

The Joint Meeting adopted an extensive proposal submitted by an informal working group, the aim of which was to limit the period of validity of design type approvals for pressure receptacles of Chapter 6.2 and for tanks, battery-wagons/battery-vehicles and MEGCs of Chapter 6.8 to ten years, or else to extend them if the agency that issued the design type approval ascertains that the design type approval is still in conformity with the requirements when the ten years have expired. It should also be up to the agency issuing the design type approval to withdraw the design type approval if, within the period of validity, requirements are amended that lead to the design type approval no longer being in conformity with the requirements. The tables of standards in 6.2.4 and 6.8.2.6 would be amended so that it is clear from them when a standard may be used for issuing or extending a design type approval and when an existing design type approval issued on the basis of a standard that has since been superseded must be withdrawn for safety reasons.

The working group established that these new provisions could also apply to other means of containment, but this should only be checked at a second stage.

The representative of Belgium would submit a proposal to the next Joint Meeting to deal with the general continued use of means of containment built before the expiry or withdrawal of a design type approval.

Obligations of the unloader

As it had not been possible at the Joint Meeting in March 2008 to adopt a new proposal from Spain to lay down the unloader's obligations, an informal working group was instructed to define the possible obligations of the undertaking carrying out the unloading and to clarify the roles of each of the participants (see Bulletin 1/2008, p. 7).

The definition of unloader drafted by the working group, the new obligations of the unloader and the adapted obligations of the consignee were adopted by the Joint Meeting by a majority. However, the text drafted by the working group will be submitted to the next Joint Meeting again for a second reading.

At the same time, consideration could be given to including a general note in Chapter 1.4 to say that a specified legal person may take on the role and obligations of several participants, clarifying the existing definitions of loader and filler and reviewing the obligations of participants when emptying IBCs.

Miscellaneous

Application for observer status

The European Safety Advisor Association's (ESAA) application for accreditation to the Joint Meeting as a non-governmental organisation could not be granted for the time being, as the information on its legal status and evidence of its representativeness, which is usually required, has not yet been submitted.

Interpretation of RID/ADR/ADN

General transitional provision in 1.6.1.1

The representative of Sweden requested clarification from the Joint Meeting on whether the general transitional provision for a consignment permits the simultaneous application of parts of the old and parts of the new edition of RID/ADR or whether the old or new edition has to be applied in its entirety.

WP.15 had already given its view on this question for ADR when changing to the new structure, and against the background that amendments to the provisions can affect various participants, had recommended flexible handling.

The Joint Meeting endorsed this interpretation and was of the view that for a consignment during the six month transitional period, the mixed application of provisions from the previous and from the new edition of RID and ADR should be permitted, provided these provisions are not dependent on each other. So for example, a consignor should be able to consign his goods in accordance with the old provisions without this preventing the carrier from applying the new provisions that apply to him, provided safety is not compromised.

Tribute to Jean-Daniel Dénervaud

The Joint Meeting said goodbye to Mr Jean-Daniel Dénervaud, who, as a secretary of the Intergovernmental Organisation for International Carriage by Rail (OTIF), had been actively involved in the successful work of the RID/ADR/ADN Joint Meeting over several decades. The Joint Meeting wished him a happy and healthy retirement.

Next meeting

The next Joint Meeting will be held from 8 to 11 September 2009 in Berne and from 14-18 September 2009 in Geneva. The main focus of the work at this meeting will be harmonisation of RID/ADR/ADN with the 16th revised edition of the UN Model Regulations, which will be prepared by an ad hoc working group in May 2009.

(Translation)

Publications and interesting links

Gefährliche Ladung, Hamburg, Nr. 2/2008, S. 36-39 – Termini tecnici (I.) – 43. Tagung des RID-Fachausschusses (Zagreb, 19. bis 23. November 2007) (J. Conrad)

Idem, Hamburg, Nr. 3/2008, S. 44-47 – Der lange Weg zum ADN (K. Ridder)

Idem, Hamburg, Nr. 3/2008, S. 48-51 – Termini tecnici (II.) – 43. Tagung des RID-Fachausschusses (Zagreb, 19. bis 23. November 2007) (J. Conrad)

Idem, Hamburg, Nr. 4/2008, S. 36-38 – Maschinenlesbare Kesselwagen (C. Staude)

Idem, Hamburg, Nr. 6/2008, S. 22-23 – Telematik gewinnt an Land (T. Rieckenberg)

Idem, Hamburg, Nr. 6/2008, S. 33 – Notifizierung für 2009 – 45. Tagung des RID-Fachausschusses (Bern, 16. Mai 2008) (J. Conrad)

Idem, Hamburg, Nr. 6/2008, S. 34-35 – Aufgeschoben, nicht aufgehoben – Gemeinsame RID/ADR/ADN-Tagung (Bern, 25. bis 28. März 2008) (J. Conrad)

Idem, Hamburg, Nr. 10/2008, S. 22-24 – Gezielte Entgleisung (D. Luther)

Idem, Hamburg, Nr. 11/2008, S. 49-51 – Gemeinsame Ziele für 2011 – Gemeinsame RID/ADR/ADN-Tagung (Genf, 15. bis 18. September 2008) (J. Conrad)

Idem, Hamburg, Nr. 12/2008, S. 42-43 – Arbeit in kleiner Runde – 44. Tagung des RID-Fachausschusses (Hamburg, 21. bis 23. Oktober 2008) (J. Conrad)

Der Gefahrgut-Beauftragte, Hamburg, Nr. 6/2008, S. 1-3 – RID/ADR/ADN – Knappe Mehrheit reicht nicht (J. Conrad)

Idem, Hamburg, Nr. 9/2008, S. 5 – RID/ADR 2009 – Änderungen 2009 (J. Conrad)

Idem, Hamburg, Nr. 10/2008, S. 1-5 – RID/ADR 2009, Teil 1 – Wenig Änderungen (J. Conrad)

Idem, Hamburg, Nr. 11/2008, S. 1-5 – RID/ADR 2009, Teile 2 und 3 (J. Conrad)

Idem, Hamburg, Nr. 12/2008, S. 1-3 – Feuerwerk – Falsche Klassen (U. Fuchs)

Idem, Hamburg, Nr. 12/2008, S. 9-10 – RID/ADR 2009, Teil 3, Kapitel 3.3 – Lithium-Batterien & Co. (J. Conrad)

Idem, Hamburg, Nr. 1/2009, S. 6-7 – RID/ADR 2009, Kapitel 4 – Neue Verpackungsvorschriften (J. Conrad)

Idem, Hamburg, Nr. 2/2009, S. 11-12 – RID/ADR 2009, Teil 5 – Vorschriften für den Versand (J. Conrad)

Subjects in the Technical/Approval Field**Committee of Technical Experts**

3rd session

Berne, 11/12 February 2009

Break-through in the revision of APTU and ATMF

Four years of intensive work in the so-called “Schweinsberg-group” has resulted in proposals to amend these two technical Appendices to COTIF in order to make them compatible with the current regulations of the European Community (EC). The proposals (in English only) were presented to the Committee of Technical Experts in February 2009, where the Member States expressed satisfaction that the mandate from the General Assembly had now been fulfilled. With a few amendments, the Committee agreed to submit the proposals to the OTIF Revision Committee in June 2009 for final adoption.

The adopted revised APTU and ATMF may enter into force 12 months after they have been notified to the Member States.

National Vehicle Registers (NVR)

The Committee of Technical Experts adopted a document instructing each non-EC OTIF Member State (except Norway and Liechtenstein, which also apply EC law) to set up a NVR to contain the approval data of all new, renewed and upgraded railway vehicles to be approved in the State. When the NVR is operational, no vehicles may be placed into service before they have been properly registered in the NVR. Among other information, the register will contain information on the keeper and the entity in charge of the maintenance of the vehicle. The regulations entered into force on 1 August 2009 and the NVRs must be operational 12 months after this date, at the latest. Existing vehicles must be included in the NVR 24 months after they enter into force, at the latest.

The adopted document introducing the NVRs, with detailed specifications identical to the EC specifications for NVRs in the Community, and containing definitions of the data elements to be included, their format, access rights, restrictions and whether an element is obligatory or optional can be found on the OTIF website¹.

The NVRs will later be connected via the internet to the search engine located at the European Railway Agency (Valenciennes) to form a complete database with information on all European railway vehicles, with the exception of vehicles carrying the 8 digit vehicle number (Russian standard).

APTU Annexes

The Committee of Technical Experts adopted the following four APTU Annexes containing general requirements: “Essential requirements”, “Subsystems” (definitions and list), “Technical file” and “Assessing entity – qualifications and independence”. These OTIF regulations are identical to the corresponding EC regulations; they entered into force on 1 August 2009 and can be found on the OTIF website².

VKM regulations (Vehicle keeper markings)

The Committee of Technical Experts adopted a minor amendment to the Rules for Registration of a VKM in point 3.1.6 to say: “The National Authorities, the Agency or OTIF may refuse the registration of a requested VKM if the letter combination might lead to confusion or deception. In this case a justified decision shall be issued”. The new wording entered into force on 1 April 2009.

Memorandum of Understanding (MoU) on certification of Entities in Charge of Maintenance (ECM)

The Committee of Technical Experts was informed that the Secretariat had obtained the possibility for the non-EC OTIF Member States to sign up to a MoU which has already been signed by 10 EC Member States. The MoU has numerous annexes forming the complete specification for the assessment and certification of ECMs. If signed, and if the specifications and rules are followed, the certificates will be mutually and unconditionally recognised by the authorities and railway undertakings in the States that have signed the MoU. The Secretariat strongly recommended that the non-EC OTIF Member States, especially those which have significant rail freight traffic with EC Member States, should sign the MoU. The EC Safety Directive makes railway undertakings (RUs) responsible for ensuring that trains are safe, including “foreign” wagons that are in their train compositions. The MoU and the certification will reduce the risk for private wagon keepers using a certified ECM of having their wagons stopped and thoroughly tested by each RU that takes over the wagon for (continuous) transport; the risk of such delays would soon put an end to the business of keepers offering freight transport by rail.

A short presentation of the MoU can be found on the OTIF website³. The whole text of the MoU with all the Annexes can be downloaded from the OTIF website⁴.

1 http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/06_tech_zulass/05_notification_09/A_94-20_1_2009_e_NVR_Decision_-_ADOPTED_.pdf

2 <http://www.otif.org/en/technology/notifizierung.html>

3 http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/06_tech_zulass/01_CTE_03/CTE3_INF_7_e.pdf

4 http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/06_tech_zulass/01_CTE_03/A_93-02_1_2008_rev1_e_MoU.pdf

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Inland Transport Committee (ITC)

71st Session

Geneva, 24-26 February 2009

As usual, OTIF took part, at least for part of the time, in the annual session of the UN/ECE Inland Transport Committee held from 24 to 26 February 2009.

This year, the discussion on the policy-oriented issues (see Bulletin 1/2008, p. 7) focussed on the “Impact of globalization on transport, logistics and trade”. More than 300 people took part in the Conference dealing with this subject organised jointly by the ITC and the UN/ECE Committee on Trade. The Secretary General represented OTIF in this discussion. The conclusions from the Conference will form the UN/ECE’s contribution to the work of the 2009 International Transport Forum, the subject of which will be “Transport for a global economy: challenges and opportunities in the downturn”.

With regard to questions relating to the work of the Committee in general, various items of particular interest to OTIF were included on the agenda: transport and security and facilitation of border crossing in international rail transport.

The Committee approved the report submitted by the Chairman of the Multidisciplinary **Inland Transport Security** Expert Group, which held its final session on 15 and 16 January 2009 (see p. 8). The latter proposed a double approach to the issue within UN/ECE: firstly to continue the process that has been started and systematically to include the issue of security on the agenda of the ITC’s subsidiary organs (vertical approach) and secondly to entrust the role of coordinating what happens within these subsidiary organs to the Multidisciplinary Group (horizontal approach). The Committee agreed that the Multidisciplinary Group would be reactivated every year with a view to discussing issues addressed by the subsidiary organs of ITC and to act as a platform for the exchange of good practice. The ITC also decided to include this issue on the agenda of its next session.

With regard to the facilitation of **border crossing in international rail transport**, the Committee welcomed the endorsement of the draft Annex 9 to the 1982 Convention on the harmonization of controls of goods by the Working Party on Customs Questions affecting Transport (WP.30) at its session in February 2009. This draft would shortly be submitted to the Administrative Committee dealing with the Convention for adoption. The Committee highlighted the importance of coordination at national level among all the governmental authorities concerned, with a view to adopting the draft Annex 9. With regard to the draft new Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport, the Committee asked the Contracting Parties to the existing Convention of 1952 to confirm if they would consider positively amendments to the Convention as proposed by OTIF and OSJD, once more countries have acceded to the Convention (see Bulletin 1/2008, p. 8).

With reference to rail transport, the Committee welcomed the decisions taken by the Working Party on Rail Transport to organise a workshop in 2009 on the transport by rail of passengers with reduced mobility and to establish an informal task force to address **security issues in the rail sector** (see Bulletin 4/2008, p. 48).

(Translation)

Working Party on Customs Questions affecting Transport (WP.30)

121st Session

Geneva, 2-6 February 2009

OTIF was represented on the first two days of this session of the Working Party.

On the first day of the meeting, which dealt with reports on activities of other UN/ECE bodies and other organisations, both within and outside the United Nations, there was a lengthy discussion on whether the TIR Convention was the most suitable instrument for implementing the World Customs Organization’s (WCO) so-called “SAFE Framework of Standards” to make them binding and uniform at international level. This Framework contains guidelines for customs authorities and commerce, firstly with the aim of introducing and improving appropriate security systems to protect all trade and transport systems for the international supply chain and secondly, to bring these into line with the maintenance of functioning trade and

transport. From the railways' point of view, the TIR Convention, with its basic strategic policy aimed at road transport, does not seem ideally suited for this purpose.

On the second day of the meeting, the draft prepared jointly by OSJD and OTIF of a new Annex 9, "Facilitation of Railway Border Crossing Operations", to the 1982 International Convention on the Harmonization of Frontier Controls of Goods ("Harmonization Convention") was discussed and adopted with an addition requested by the EC and subject to some editorial modifications, particularly in the French text. In order that the text could be implemented as soon as possible, the Working Party agreed that the Administrative Committee responsible for this (AC.3) should, if possible, meet right after the 122nd session of WP.30 (15 – 19.6.2009), or at the latest in conjunction with its 123rd session (28.9 – 2.10.2009).
(Translation)

Working Party on Intermodal Transport and Logistics

51st Session

Geneva, 19/20 March 2009

The Working Party on Intermodal Transport and Logistics (WP.24) held its 51st session in Geneva on 19 and 20 March 2009. The meeting was chaired by Mr Viardot (France) and the deputy chairman was Mr Maillard (Belgium).

The Chairman noted the following at the outset: the **global crisis** was having an impact not only on the transport sector and other economic sectors, but also on institutions. Only about ten of the 56 Member Countries of the UN/ECE were represented at this session and about the same number of international organisations and associations, including OTIF.

Therefore, and with a view to improving further cooperation among and functioning of the Inland Transport Committee's subsidiary bodies, a virtual group of volunteers would prepare a road map on the activities of WP.24 and its modalities of work for the years to come. WP.24 would consider this road map at its next session in October 2009.

WP.24 also noted that traffic volumes in intermodal transport in Europe had decreased by around 1% in 2008 (compared to 2007) and had dramatically decreased in the second half of 2008 and in the first two

months of 2009. WP.24 therefore decided to put in place a virtual group of experts to analyse the impact of the current financial and economic crisis on intermodal transport. This virtual group would report to WP.24 in October 2009.

Among the other items on the agenda of WP.24, OTIF has a particular interest in the following two items: border crossing facilitation procedures relating to intermodal transport in a pan-European context and harmonisation of civil liability regimes in intermodal transport.

With regard to the **facilitation of border crossing**, WP.24 noted in particular the progress of the CIM/SMGS consignment note project presented by CIT (see Bulletin 4/2008, p. 40).

In contrast, the Working Party had a lively discussion on the issue of the **reconciliation and harmonisation of civil liability regimes**, particularly on the new **Rotterdam Rules**, in other words on the new UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea, as adopted by the United Nations General Assembly on 11 December 2008 (see Bulletin 3/2008, p. 33 and Bulletin 1/2008, p. 8). This new Convention will be opened for signature on 23 September 2009 at Rotterdam. It will enter into force once at least 20 countries have ratified or acceded to it.

WP.24 felt that this new Convention did not seem to address the specific requirements of intermodal land transport services in Europe. It therefore decided to revert to this issue at its October 2009 session, with a view to identifying the possible impact and added value of this Convention for intermodal transport in Europe in close cooperation with the European Commission (DG TREN).
(Translation)

Multidisciplinary Group of Experts on Inland Transport Security

5th Session

Geneva, 15/16 January 2009

At this session of the Group of Experts, OTIF was represented by the deputy Secretary General. A seminar on the first day of the conference looked at the agenda items dealing with "Prevention: research and innovation" and "Resilience: critical infrastructure

protection and business continuity planning”, and a number of projects and activities were presented, including:

- INSECTT: Intermodal Security on Combined Transport Terminals (UIRR), recommendations on the aims of security, risk analysis, security planning and training in combined road-rail transport;
- COUNTERACT: Cluster of User Networks in Transport and Energy relating to Anti-Terrorist Activities (UITP, UIRR et al.), framework for targeted studies in the field of energy, passenger and goods transport, e.g. official documents to be used when people are appointed, security zones in urban areas for goods with a high risk potential, indices for the attractiveness of certain locations to terrorists, exchange of information between LEAs (Law Enforcement Authorities) and the transport industry;
- GISE: Globally Integrated Security Environment (University of New Hampshire, USA), various studies, among other things to secure the silk route;
- BMSC: Border Management Staff College (OSCE), a training centre for current and future managerial staff of authorities dealing with border security;
- ESRIF: European Security Research and Innovation Forum (European Commission, DG ENTR), acting under the EC’s 7th Framework Programme for research (FP7), numerous projects, including in the area of inland transport security;
- TAPA: Transported Asset Protection Association, worldwide industry self-help organisation in the area of valuable products;
- EOS: European Organisation for Security, organisation of private suppliers and users of products and solutions in the security area;
- CBRA: Cross-border Research Association (University of Lausanne), collaboration in numerous studies, including in the area of supply chain security;
- CSP: Customs Security Programme (European Commission, DG TAXUD), implementation of

the WCO’s programmes in the field of security, particularly into binding legal instruments, the latest example being Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

The Group of Experts went on to examine feedback from the various UN/ECE services on their activities and standpoints with regard to the field of security, although the contribution from SC.1 (road transport) is still outstanding. In this context, it was mentioned that the corresponding unit for rail transport (SC.2) had set up its own security task force, in which OTIF will also take part, and that WP.24 (intermodal transport) was giving consideration to a questionnaire on the subject of “security at transshipment facilities”.

After consulting the meeting participants, the final report of the Group of Experts will be submitted to the Inland Transport Committee, with the proposal to reconvene the Group in about a year to examine further progress.

(Translation)

Other Activities

JERID

International Rail Freight Conference on Transport between Asia and Europe

Prague, 4/5 March 2009

The deputy Secretary General took part in the Conference, which was organised by JERID, a company specialising in logistics advice, IT systems and other services for national and international rail freight transport, together with UIC, OSJD and IBS.

In his presentation, he emphasised among other things the significance of certain extensions of the territorial scope of application of COTIF and its Appendices to rail transport between Asia and Europe. In extending the geographical scope, a step by step approach would seem appropriate, in which individual routes, e.g. in the Ukraine or when Russia’s planned accession takes place, are made subject to COTIF in order to avoid the difficulties that might be caused by an abrupt changeover from the legal system used up to now and to make the changeover easier. Russia’s example of

making one maritime route and the subsequent railway line subject to CIM and CIV could also be considered in future by the countries bordering the Caspian Sea. Major border terminals, such as Brest in Belarus, and their feeder lines could likewise be made subject to CIM. For traffic subject to COTIF from third countries moving into the territory of the EC countries, full compatibility with EC law is ensured by means of the measures planned (text adaptations, authentic interpretation). The accession of non EC Member States to OTIF will ensure that their interests are covered by participating in the development process of new TSIs, having a voice in OTIF bodies, special meetings for non EC Member States and cooperation with other international organisations, among other things.

Only a selection can be given below from the plethora of information that was available from the very full programme, which consisted of contributions in the form of 38 presentations by 35 speakers:

- China wants to counter the financial crisis with, amongst others, an investment programme to build further railway infrastructure of more than 10,000 km in 2009 and likewise in 2010. However, the main beneficiaries of this are to be domestic passenger transport and, in freight traffic, the carriage of coal and the carriage by rail of other resources obtained from development programmes. Other construction work to expand the network which was already planned beforehand, e.g. the double-track Urumchi – Dostyk line, should not be affected though.
- A consortium of forwarding companies from China, Mongolia, Russia, Poland, the Czech Republic and Germany is making efforts to strengthen the route via Mongolia (Erenhot-Erlian/Dzaminuud crossing point) in competition with routes from China via the TransSib (Manzhouli/Zabaikalsk crossing point, where there is a new container terminal) and from Kazakhstan (Alashankou/Dostyk crossing point). Mongolian Railways' International Freight Forwarding Center is working towards the same goal.
- The connecting line from North Korea to the TransSib will be pushed ahead with the planned construction of the line from Najin (NK) to Chasan (RU).
- Intensification of the line via Kazakhstan is benefiting from the fact that a production facility for locomotives with an annual output of 600 vehicles is situated in Astana. The railway lines towards Europe from Uzbekistan, the Kyrgyz Republic and Tajikistan also go via Kazakhstan.
- The attractiveness and intensification of the routes over the Caspian Sea by means of rail ferries, e.g. from Aktau (KZ) and Turkmenbashi (TM) to Baku (AZ) is being hindered by the high prices of ferry transport.
- The representative of the Coordination Council of Transsiberian Transport (CCTT) countered the allegation that costs on the rail route via Russia had increased considerably because of increases in the cargo rate to compensate for the loss in value of the Rouble and because of increased additional costs, e.g. for security measures, by saying that there had been improvements in the services provided, e.g. special 80 foot long flat wagons suitable for carrying two 40 foot containers, and the fact that the tariffs for transit in private wagons and of containers in whole trainloads of containers had not seen any increase in 2009 compared with 2008. Only for wagons owned by RZD had there been an increase of 20%.
- Revenue from all the traffic between Asia and Europe could be increased if, in addition to exclusive trains for individual major customers, e.g. the electronics branch, more “public” trains, available to more, less significant customers, were also run.
- The railways' share of the total revenue from freight between Asia and Europe is around 1%. Once the consequences of the financial crisis have been overcome, an increase to around 5% would seem realistic, especially as the total volume of trade between Asia and Europe is now more than between Asia and North America. However, the demand for transport from Asia towards Europe is currently seven times the demand for transport from Europe towards Asia. As the Asian sea ports are no longer overloaded and the cargo rates for carriage by sea have fallen drastically (the sea-rail transport price ratio is around 1:5), the market for much of the rail traffic on these routes is threatening to collapse. Other advantages of rail routes, such as the duration of the journey (roughly half as long), the avoidance of changing, extreme climate zones and the higher potential load capacity for containers are therefore no longer of any consequence.

- However, attention should not be focussed solely on rail traffic between Asia and Europe; there is an emerging tendency for increased potential in internal Asian transport and in particular between China and Russia, which is also of use to European undertakings.
- From the transport industry's point of view, the co-existence of the two systems of freight law, CIM and SMGS, is also an obstacle to expanding rail transport between Asia and Europe, although other elements, such as the change of track gauge, difficult customs procedures, outdated wagons and the uncoordinated pricing policy between carriers are more significant.
- The perspectives with regard to extending broad gauge lines to the west, specifically from the Ukraine to Vienna via Slovakia, were rated very differently. While railway representatives from the Czech Republic and Slovakia referred to unfinished feasibility studies and preferred to outline construction plans for transition stations, such as Čierna nad Tisou and Mat'ovce, the representative of CCTT in particular assumed a politically secured execution of the project.
- For Belterminal, a transshipment area near the border between Poland and Belarus at Brest, which has been 90% owned by OKD Doprava since the end of 2008, the second largest rail carrier in the Czech Republic, there are a lot of construction plans that could lead to considerable improvements and increases in rail freight traffic from east to west on the routes concerned.
- IT solutions, such as the INTEGRAIL research database, were put forward as further measures to improve regional and national technical railway systems that exist inside and outside the EC, with a view to improving performance, safety and optimising the use of resources. These should be able to answer the question, for example, as to whether certain locomotives belonging to a RTU are compatible with a particular railway infrastructure by networking the information systems and by making data available on a reciprocal basis.

(Translation)

**United Nations Economic
Commission for Europe (UNECE),
International Transport Forum, World Bank**

Seminar on Strategies
for Overcoming Border Crossing Obstacles

Paris, 5/6 March 2009

On the above dates, the World Bank, the United Nations Economic Commission for Europe and the International Transport Forum, the successor organisation to the former European Conference of Ministers of Transport (ECMT), organised a seminar on issues concerning the facilitation of border crossing in the transport sector. The event was intended and organised as preparation for the second annual meeting of the International Transport Forum, which was held in Leipzig from 26 to 29 May 2009.

Almost 100 experts from governments, international organisations and companies took part in the seminar. More than 30 presentations were given.

The main reason the Secretary General took part in this seminar was because within OTIF, this subject will in future assume considerably greater significance. This is because the Rail Facilitation Committee set up under COTIF 1999 will be starting its work in 2010. Against the background of the global financial and economic crisis, efforts in the rail sector must also be aimed above all at pursuing measures to facilitate trade and transport that will bring maximum success in terms of growth in trade and transport using simple administrative and small financial means. On the basis of the excellent organisation of the event by the International Transport Forum, the seminar, which was characterised primarily by the high level of the participants' professional competence, but also by their clearly realistic approach and great openness in addressing the problems, made surprisingly obvious the central role that facilitation in border crossing must assume for the benefit of all transport modes. According to World Trade Organization (WTO) research, investing 1 dollar in such facilitation measures leads directly or indirectly to an increase of 1,500 dollars in the volume of trade. In relation to administrative procedures at borders, it has been shown that even without, or with very minor financial support, radical improvements can be achieved. One example of this is the opportunity of replacing mutual "competition" between various authorities working at the border to achieve the greatest possible control success rate or extent of income

achieved for the State with coordinated cooperation, the aim being a customer-focused approach.

It is also clear that the trend that exists at many borders in Eurasia towards the highest number of individual checks must be replaced by a system in which, if there is less risk that border crossing requirements might be violated by a consignment, the consignment should be dealt with differently and as speedily as possible based on realistic risk assessments.

It was particularly noticeable that participants from various representatives of the transport sector not only spoke with frank openness about the problem area of “corruption at borders”, but also gave this area priority relevance for measures to improve the situation.

The final document of the seminar¹ sets out the very interesting results of the seminar, which can be recommended to every reader of the Bulletin. It is also particularly satisfying that it was possible to include a short section in the final document dealing with special issues in connection with the facilitation of border crossing that only concern rail transport.
(Translation)

Case Law

Bundesgerichtshof (Germany)

Ruling of 14 February 2008²

The notion of contract of carriage in the sense of Article 1 CMR is autonomous and stands free of notions of national law. Forwarding against a fixed price falls under application of CMR without express provision by national law.

Cf. Article 1 CMR³

¹ <http://www.internationaltransportforum.org/Proceedings/Border2009/index.html>

² I ZR 183/05; lower courts: Landgericht Köln, Oberlandesgericht Köln

³ The same would apply within the scope of application of the CIM UR, i.e. that fixed price forwarder is equivalent to the carrier and is subject to the law on the carriage of freight. See also the case law (Austria) published in Bulletin 1/2003 (p. 10-12). In the ruling by the German Bundesgerichtshof, there are references to case law of other CMR contracting states concerning the term “contract of carriage” within the meaning of Article 1, para. 1 of CMR. According to this case law, legal practice in England and Belgium considers the own account “forwarder” who is not accountable as the “carrier”, while the view in France is that the “commissionnaire

(From: European Transport Law /Droit européen des transports / Europäisches Transportrecht No. 6/2008, p. 747 ; this guideline ruling has also been published on the internet, see www.bundesgerichtshof.de)

Last but not least

Echoes of the RID/ADR/ADN Joint Meeting

During the discussion on the Rules of Procedure the Joint Meeting has adopted for itself, our resident spoilsport (the saga continues) intervened on the question of the quorum and the voting rules (see Bulletin 3/2008, p. 37). He recalled that at the UN Sub-Committee of Experts, the voting rules are very flexible. Thus it was that in the morning, a proposal submitted by a rich and influential country had been rejected by a small majority, and in the afternoon, the representative of this country asked for another vote on this proposal, as he had been able to convince several delegates of the validity of his proposal during the lunch break. Our spoilsport was sorry he had not been invited to participate, along with the other delegates, in this persuasive meeting – instead he had eaten a good meal in the excellent restaurant on the 7th floor of the Palais des Nations. However, he did specify that even just to discuss the matter, he would have required at least one bottle of *grand cru* wine.

He also regretted that the more influential countries had never made a general attempt to put his resistance to the test, because he likes to eat well, and it is well known that the flesh is weak, so he could not guarantee that his resistance would not weaken, especially if, after the good meal, he were served a great 1940s Armagnac. Your reporter fears that the life and soul of the party and meeting comedian will therefore never know the extent of his resistance to temptation...

(Translation)

de transport” is in no way subject to CMR. Opinion in the Netherlands is divided.