



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

4/2010

118th Year • October - December

*This
is the last
edition of the
OTIF Bulletin
you will receive
in the format
with which you
are familiar.*

Since 1893, the Organisation's traditional Bulletin has developed into a real set of archives; a collection of volumes in which OTIF's activities in general and the various steps in the procedures for adopting legal texts were documented and the texts ultimately adopted were published. This concept is the optimised legacy of a time in which the flow of specialist information relied exclusively on the written press. These days, the printed press is a useful addition to other communication media, such as the internet and so-called e-papers, whose success and cost effectiveness depends increasingly on high circulations and ultimately on a genuinely interested readership.

As the Bulletin is no commercial magazine and is not a platform for the full-time professional focus of the authors, the editor believes it is now time to realign the Bulletin in such a way as to take account of the media scenarios and production processes that have now developed. In addition, we no longer wish to sell you the information that can also be obtained from the Organisation's website, even if it is brought together in a practical and manageable format. So in future, the Bulletin will concentrate on announcements relevant to OTIF in the sense of an official gazette and will only be published electronically. For the time being, there will still be 4 editions per calendar year. Subscription costs will no longer apply.

I should like to ask you, the readers, to send the editor a relevant e-mail address where the Bulletin can be sent in future. We would of course welcome any criticisms and suggestions on the new format of the Bulletin.

Kind regards

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Summary

Official communications from the Secretariat of OTIF

Accession to COTIF
Armenia, p. 89

Lists of lines 1999
CIM List of railway lines
Ukraine, p. 89

CIM List of maritime and inland waterway services
Russia, Germany, p. 89

Work of OTIF'S General Organs

Administrative Committee
114th Session – Berne, 24/25.11.2010 – p. 90

Legal Matters concerning COTIF

CIT/OSJD project to make CIM/SMGS law interoperable, p. 90

Publications and interesting links, p. 91

Transport of Dangerous Goods

Working Party on the Transport of Dangerous Goods (WP.15, UNECE)
89th Session – Geneva, 26-28.10.2010 – p. 91

RID Committee of Experts
49th Session – Luxembourg, 2-4.11.2010 – p. 93

Rail Facilitation

Inaufural meeting of the Rail Facilitation Committee
1st meeting – Berne, 16.11.2010 – p. 95

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UN/ECE)
Working Party on Intermodal Transport and Logistics
53rd Session – Geneva, 4/5.10.2010 – p. 96
Working Party on Rail Transport
64th Session – Vienna, 18/19.11.2010 – p.96

Case Law

Hof van Beroep te Antwerpen - Ruling of 15 June 2009 - Sealed container – Loss of the goods (CMR), p. 97

Cour de Cassation (France) – Ruling of 16 November 2010 – Damage to cars loaded on wagons caused by a hailstorm (national law), p. 98

Book Reviews

Kunz, Wolfgang (editor), Eisenbahnrecht (Railway Law): Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements 27th supplement (August 2010) and 28th supplement (November 2010), p. 98

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Official communications from the Secretariat of OTIF

Accession to COTIF

Armenia

On 30.12.2010, the Government of Armenia made an application for accession to COTIF. The application contains no reservation. As Depositary of the Convention, the Secretary General brought the application for accession to the attention of the Governments of the OTIF Member States in a circular dated 11.01.2011.

Unless five Member States of OTIF lodge objections, the application for accession will be deemed to be accepted as legally binding three months after this notification, i.e. on 11.04.2011. The accession will then take effect on the first day of the third month following the Secretary General's notification to the Member States that the application for accession has been accepted as legally binding.

Lists of lines 1999

CIM List of railway lines

(published on 1st July 2006)

Secretary General circular No. 6, 1st December 2010

Chapter "Ukraine"

Following the inclusion of the new railway line "Illichivsk ferry terminal – Illichivsk portside station (Illichivsk-Paromna)", the chapter Ukraine has been re-issued (See COTIF 1999, Art. 24 §§ 2-5).

CIM List of maritime and inland waterway services

(published on 1st July 2006)

Secretary General circular No. 7, 1st December 2010

Chapters "Russia" and "Germany"

Following the inclusion of the new shipping company Anship LLC instead of the Baltic Shipping Co Ltd, the chapters Russia and Germany have been re-issued (See COTIF 1999, Art. 24 §§ 1, 3-5).

Work of OTIF'S General Organs

Administrative Committee

114th Session

Berne, 24/25 November 2010

For its 114th session, the Administrative Committee met in Berne on 24/25.11.2010 under the chairmanship of Mr Petr Stejskal (Czech Republic).

The Administrative Committee approved the work programme for 2011/2012 and the OTIF budgets for 2011 and 2012.

It also noted the Organisation's financial situation, which is very satisfactory, as the Member States have paid 97.32% of the contributions for 2009.

With regard to the EU's accession to COTIF, the Committee encouraged the Secretary General to initial the draft agreement – unilaterally amended by the EU – within one month from the date of adoption of its decision.

If the Secretary General has not initialled the draft agreement by the end of this period, the Committee, based on Article 14 § 3 of COTIF, instructed the Secretary General to make the necessary preparations to convene an extraordinary General Assembly in order to decide OTIF's position in relation to the EU accession to COTIF. This General Assembly will take place no later than six months from the date of adoption of the Committee's decision¹.

The 115th session of the Committee will be held on 11/12.05.2011 in Berne.

Legal Matters concerning COTIF

CIT/OSJD project to make CIM/SMGS law interoperable

OTIF contributes to the CIT/OSJD project to make CIM/SMGS law interoperable by taking part in the CIM/SMGS Legal Group, Steering Group and Co-ordination Group.

At the meeting of the Legal Group in Vilnius on 27/28.04.2010, a presentation given by a representative of OTIF considered the possibility of drawing on the legal construction of “sub-contracted carrier/substitute carrier” in CIM/SMGS transport operations, in order to offer customers “one stop” transport services and to avoid the customer's being confronted with two systems governing liability (CIM and SMGS) in the event of loss or damage. The idea underlying this approach was that in a transport operation going beyond the area in which the CIM UR must be applied, an SMGS railway could carry the goods on its part of the journey as a substitute carrier. In order to do this, the parties would have to conclude a CIM contract of carriage in accordance with Article 1 § 2 of CIM. However, as neither the current nor the latest version of the revised SMGS contain any rules on sub-contracting carriage, the work heading in this direction was put on hold for the time being.

The Legal Group decided to continue to take as a basis the model of successive carriers, and concentrated more on the project to achieve harmonised provisions for liability, both in the customer-carrier relationship and the carrier-carrier relationship. At its meeting in Warsaw on 07/08.09.2010, the Group examined draft “special liability provisions” submitted by a small working group. The draft envisages that these special liability provisions, which are more beneficial to customers, can be agreed by the parties to the contract of carriage by means of an entry in the CIM/SMGS consignment note. The Legal Group followed the request by the representative of OTIF not to include in these special liability provisions any provisions that deal only with the relationship between carriers, as the special provisions will form part of the substance of the contract to be concluded with the customer. This would have to be dealt with in a separate document, without overloading the already complicated rules with which the customer must become familiar.

Next year, the Legal Group's further work will be based on the decisions taken by the Steering Group in this respect, which met in Vienna on 23.06.2010 and in Berlin on 26.11.2010 (for information on the meeting in Vienna, see Bulletin 2/2010, p. 24). At the Steering Group's meeting in Berlin, a representative of UNECE introduced the strategy for Unified Railway Law adopted by the Working Party on Rail Transport (SC.2). As a first step, work is to be carried out in parallel on specific rules for a single, through contract of carriage for the carriage of goods by rail between Europe and Asia (General/Special conditions of carriage) and on a

¹ The extraordinary session of the General Assembly has been convened in Berne on 22/23.06.2011.

political recommendation (a Memorandum of Understanding or a similar document) acceptable to the global community of States. Like OSJD and CIT, OTIF will contribute to this work.

At the meeting of the Co-ordination Group (Berlin, 25.11.2010), there was good news in that major progress was announced on extending use of the CIM/SMGS consignment note. At present, more than 50% of CIM/SMGS traffic is carried out with the CIM/SMGS consignment note. Further take-up is anticipated, especially as Russia and Mongolia have recently opened their networks to the CIM/SMGS consignment note. Kazakhstan announced that by the end of 2010, it would enter certain traffic (all transit routes and major transport axes for imports) in the list of traffic axes annexed to the "CIM/SMGS Consignment Note Manual". According to a declaration by a representative from China, during 2010 China intends to let the CIM/SMGS consignment note be used on routes via three border stations (Alashankou-Dostyk between China and Kazakhstan, Erlyan-Zaminuud between China and Mongolia and Anzuli-Zabaikalsk between China and Russia).

The representatives of the Ukraine reported that conclusion of a treaty between the Ukraine and Turkey on a new ferry route between Illichivsk (Ukraine) and Derince (Turkey) was imminent. In order that traffic can take place on this ferry route using the CIM regime, the Ukraine will also enter the relevant part of the railway infrastructure (6.7 km of railway line between the Illichivsk ferry terminal and Illichivsk portside station) in the CIM list of railway lines. The ferry service will also be entered in the CIM list of maritime and inland waterway services.

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3334/2010, p. 556/557 – Transport des personnes. Nouvelles perspectives (congrès de l'IDIT le 17.09.2010) (B. Colette)

Idem, n° 3335/2010, p. 570 – Codification. Ici et ailleurs (Jacques Putzeys sur le Code belge de transport)

Idem, n° 3336/2010, p. 586/587 – Pesage/comptage. Obligations réciproques (M. Tilche)

Idem, n° 3345/2010, p. 727/728 – Ferroviaire Voyageurs. Le retard de trop (B. Colette) ; Accises. Quid en maritime ? (M. Tilche)

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT)¹, éditions/Ausgaben/editions 5/2010, 6/2010

Internationales Verkehrswesen, Hamburg, Nr. 10/2010, S. 23/24 – Vulkanasche und Rechte der Fluggäste (W. Müller-Rostin)

Transportrecht, Hamburg, Nr. 10/2010, S. 370-376 – Options in contracts of carriage (V. Ulfbeck)

Zeitschrift für Europäisches Privatrecht, München, 4/2010, S. 830-860 – „Zum Vorteile des Verkehrsnutzers“ – Zwanzig Jahre EU-Passagierrecht im Spannungsfeld zwischen international governance und europäischen Nutzungsrechten (J. Karsten, A. Seidenspinner)

Transport of Dangerous Goods

Working Party on the Transport of Dangerous Goods (WP.15, UNECE)

89th Session

Geneva, 26 - 28 October 2010

The 89th session of WP.15 was held from 26 - 28.10.2010 in Geneva and was chaired by Mr J. A. Franco (Portugal). Representatives from 25 States took part.

Training of vehicle drivers involved in the carriage of dangerous goods by sea

The provisions of section 1.3.1 of the IMDG Code regarding the training of shore-based personnel engaged in the transport of dangerous goods by sea had led to problems in certain ports because some competent authorities required drivers of road vehicles to have extra IMDG training in addition to that mentioned in ADR.

In an informal document, Sweden asked WP.15 for its opinion on whether it would make sense to refer to section 1.3.1 of the IMDG Code in ADR in order to ensure that drivers travelling on a ro-ro ship are also

¹ see <http://www.cit-rail.org>

trained in accordance with the provisions of the IMDG Code.

In the discussion it was noted that ADR also specified in 1.3.2.2 and 8.2.2.3.2 (l) that, in multimodal transport, drivers should be made aware of the requirements concerning other transport modes. Moreover, the training covered by section 1.3.1 of the IMDG Code and Chapter 1.3 of ADR did not require certification by a competent authority, whereas in accordance with 8.2.2.8, drivers of ADR vehicles were required to have a training certificate. For these reasons, WP.15 was of the view that driver training according to ADR was sufficient to comply with the requirements of section 1.3.1 of the IMDG Code.

Interpretation of ADR 5.4.1.1.1 (g)

The representative of Finland asked whether the requirement under 5.4.1.1.1 (g) for the transport document to contain the name and the address of the consignor should be understood as referring to the name and address of the actual consignor, i.e., at the place where the package was consigned for transport, or whether it could be understood as meaning the name and address of the company headquarters.

In the discussion it was noted that according to the definition of consignor in 1.2.1, both were possible and that when there was a contract of carriage, it was the consignor's name and address as stipulated by the law (for example CMR) applicable to the contract of carriage that would be required. It was recalled that the entity defined as the consignor has to take the responsibilities defined for the consignor in Chapter 1.4.

Classification of motor spirit with bioethanol

In another informal document, the representative of Finland asked whether motor spirit containing ethanol up to 10% should be assigned to UN 1993 FLAMMABLE LIQUID, N.O.S. or to UN 1203 MOTOR SPIRIT.

WP.15's view was that it should be assigned to UN 1203, as this entry best described the product. Several delegations emphasised that the entry gave further details of the characteristics of the product, which was important for determining the measures to be taken in an emergency.

Another proposal from Finland related to 5.3.2.1.3, which allows simplified rules on the orange-coloured marking for multi-compartment tank-vehicles carrying fuels of UN numbers 1202, 1203, 1223 or aviation fuel

of UN number 1268 or 1863. Instead of a specific marking on the sides of each tank compartment, in this case only an orange-coloured plate with the hazard identification number and the UN number of the most hazardous substance being carried needs to be affixed to the front and rear of the tank-vehicle.

This proposal to include UN 3475 ETHANOL AND GASOLINE MIXTURE, with more than 10% ethanol, in 5.3.2.1.3 was not supported by WP.15 because it considered that the presence of ethanol in the mixture meant that it was necessary to affix a specific orange-coloured plate in order to give the emergency services information on the properties of the mixture.

Marking of transport units containing dangerous goods packed in limited quantities

3.4.10 (a) of ADR 2009 and 3.4.13 (a) of ADR 2011 prescribe that transport units carrying packages in limited quantities must be marked at the front and at the rear with the limited quantity mark, except when an orange-coloured plate marking is already displayed.

At the last session of WP.15, the representative of Switzerland raised the question of whether transport units carrying only dangerous goods packed in limited quantities may also bear orange-coloured plates instead of the marking foreseen for limited quantities (see Bulletin 2/2010, p. 39).

WP.15 did not adopt Switzerland's proposal to prescribe in 3.4.13 (a) of ADR 2011 that instead of the marking for limited quantities, transport units with a maximum permissible mass exceeding 12 tonnes carrying more than 8 tonnes of packages with dangerous goods in limited quantities should generally bear orange-coloured plates. An orange-coloured plate marking could be misinterpreted by the emergency services and roadside inspectors, because if such plates were affixed, this could be taken to mean that all the provisions of ADR apply.

WP.15 also rejected Switzerland's accompanying proposal to provide a transport document for the carriage of limited quantities so that the inspection authorities could establish the conditions under which transport was being performed.

Fire extinguishers

At the 87th session of WP.15 (Geneva, 02 - 06.11.2009), it was established on the basis of an informal document submitted by Poland that the minimum capacity for fire extinguishers set out in 8.1.4.1 (b) applied irrespective

of the number of fire extinguishers on the transport unit and included, in particular, the fire extinguisher capacity specified in 8.1.4.1 (a) for fighting a fire in the engine or cab. However, WP.15 was of the view that the current wording of 8.1.4.1 could be misinterpreted and should therefore be revised on the basis of an amendment proposal (see Bulletin 4/2009, p. 51).

The representative of Switzerland had prepared such a proposal, but he withdrew it in favour of a joint proposal by the United Kingdom and Sweden. The latter proposal suggested that the provisions of 8.1.4.1 be replaced by a table, thus making them easier to read. The decision was postponed to the next session so that it could be checked whether this proposal might have any unforeseen effects on the capacities of individual fire extinguishers.

Next session

The next session of WP.15 will be held in Geneva from 02-06.05.2011.

RID Committee of Experts

49th Session

Luxembourg, 2-4 November 2010

The 49th session of the RID Committee of Experts was held in Luxembourg and was chaired by Helmut Rein (Germany). 18 of the 42 Member States of OTIF entitled to vote were represented.

Explanatory Report on Appendix C to COTIF

In the past, the Secretariat prepared explanatory reports on the various Appendices to COTIF. These reports are deemed to be “supplementary means of interpretation” within the meaning of Article 32 on the 1969 Vienna Convention on the Law of Treaties. The Explanatory Report on Appendix C (RID) had to be revised following various amendments adopted by the RID Committee of Experts. The Secretariat had taken this opportunity to review all the explanatory reports so that they could be brought up to date. The RID Committee of Experts approved this revised version with some amendments.

Measures taken by the Italian authorities following the accident in Viareggio (Italy)

This item had already been on the agenda at the previous session of the RID Committee of Experts’ working group on tank and vehicle technology (Berne, 18/19.05.2010). However, it could not be discussed then because Italy was not represented at that meeting (see Bulletin 2/2010, p. 42).

With the help of a meeting room document distributed at the beginning of the meeting, the representative of Italy explained that general investigations carried out after the accident in Viareggio had revealed that in the carriage of dangerous goods, the leak-tightness of the means of containment was not always guaranteed. To improve this situation and to make sure that the provisions of RID were observed, one particular measure had been to introduce a checklist to ensure the traceability of the checks. When introducing this checklist, care had been taken not to prescribe any checks above and beyond those already required in RID. He emphasised that these checklists were only prescribed in domestic traffic; in international traffic to Italy, they were replaced by visual inspections at the border.

Some States and non-governmental organisations questioned whether the manner in which these new measures had been implemented was in accordance with the provisions of RID Chapter 1.9 and the provisions of Directive 2008/68/EC which, among other things, require that the Member States be notified via the Secretariat of OTIF or the European Commission. If this had been done, it would also have been of advantage to the Italian approach to strengthening checks, because the other Member States would also have been able to broaden their own control activities to remedy any safety problems that might exist. The meeting particularly considered that attaching a checklist to the transport document was a new obligation, which had not been prescribed in RID up to now.

The representative of Italy was asked to submit a final accident report or, if necessary, an interim report on the rail accident in Viareggio to the RID Committee of Experts or to the working group on tank and vehicle technology, so that they could discuss the consequences of the accident in terms of dangerous goods law and in the light of current considerations surrounding derailment detectors, and if necessary, derive measures.

The representative of Italy was also asked to provide the RID Committee of Experts with formal justification for the national provision to attach a checklist to the

transport document and if necessary, to submit a proposal to amend RID.

As section 1.8.1 did not make administrative controls mandatory on whether the provisions for the carriage of dangerous goods had been observed, it should be examined whether a control directive similar to the one for road transport should be developed. The European Commission should also give this consideration in the Dangerous Goods Regulatory Committee. Consideration should also be given to whether the checks prescribed for the carrier, which are currently only "representative checks" (see RID 1.4.2.2.1), should be systematised as in road transport.

Placarding of swap-bodies

In a document, the representative of Sweden noted that in connection with the acceptance of the marking provisions of ADR in piggyback transport, there were now different requirements for placarding in rail transport. While a swap-body containing packages carried in combined transport must bear placards, the same swap-body carried on a trailer in piggyback transport need only bear a blank orange-coloured marking.

Looking back to the past, the chairman explained that with regard to the placarding of swap-bodies, there had been different views in WP.15 and the RID Committee of Experts. While the RID Committee of Experts had always been of the view that a swap-body, which is considered as a container in accordance with the definition in 1.2.1, should be marked like a container, in WP.15 the road transport associations had succeeded in implementing simplified marking for swap-bodies. However, according to the Note to ADR 5.3.1.2, these simplified conditions did not apply to swap-bodies carried in combined road/rail transport and according to the Note to ADR 5.3.1.3, did not apply to carrying vehicles on which swap-bodies were carried in combined road/rail transport. He pointed out that amending the marking provisions in RID for swap-bodies would again lead to a difference from the marking provisions for containers.

While some delegations did not consider it necessary again to align the marking provisions of RID with ADR and requested justification in terms of safety, other delegations were of the view that a blank orange-coloured marking might also generally be sufficient in rail transport, as the information from the placards was already available by other means, including the obligation to provide the infrastructure manager with information.

Together with representatives of other interested States, the representative of Sweden was asked to submit a text proposal to the next session of the RID Committee of Experts. The proposal should take into account the overall system of RID 5.3.1, in conjunction with the Notes to ADR 5.3.1.2 and 5.3.1.3. Besides the option of generally allowing blank orange-coloured markings on swap-bodies, another option that could be proposed would be to permit blank orange-coloured markings for swap-bodies carried on trailers in piggyback transport, and subsequently to align the ADR Notes referred to.

RID 5.4.1.2.2 (d)

The representative of UIC asked the RID Committee of Experts to verify whether the provision in 5.4.1.2.2 (d) (information in the transport document on the earliest time at which the safety valves of tank-wagons carrying refrigerated liquefied gases will open) was fundamentally necessary and, if it were, whether it must also be applied to the carriage of empty, uncleaned tank-wagons, portable tanks and tank-containers.

The discussion revealed that the aim of the rule was to ensure that the gas remained inside the tank throughout the entire transport operation, and that deleting the entry would not provide a solution. It should instead be considered whether the international system applicable to portable tanks had advantages compared with making an entry in the transport document; this system requires that a reference holding time in accordance with 6.7.4.2.8 and an actual holding time in accordance with 4.2.3.7 be determined, and that these times be indicated on the tank.

The representative of UIC was asked to prepare a new proposal for the Joint Meeting's tank working group explaining the discussion in the RID Committee of Experts and considering in more detail how the technical causes of premature discharge (e.g. defective insulation) might be remedied.

Design type approvals for tank-wagons

In his discussion paper, the representative of UIP referred to problems that arise particularly for tank-wagons as a result of the time limit for design type approvals or of their being withdrawn following amendments to technical provisions. The result of this time limit or withdrawal could be that after expiry or withdrawal of the design type approval, the tank-wagon may still be operated under any transitional provisions without being modified, but for reconstructions, which are carried out more frequently because of changing customer requirements in the tank-wagon sector, a

completely new approval is required for the tank-wagon. Up to now, reconstructions had been possible on the basis of additions to the open-ended design type approvals.

The second problem described in UIP's discussion paper dealt with the fact that there are currently no separate design type approvals for individual parts of a tank, only a single design type approval for the whole tank and its equipment. This could cause difficulties when various parts were changed.

As it was not possible to discuss the document in depth owing to its having been submitted late, and as this would have to be discussed in the RID/ADR/ADN Joint Meeting because of the possible consequences for tank-vehicles and tank-containers, the representative of UIP was asked to submit his proposal to the tank working group of the next Joint Meeting as an official document.

1.6.3.37 prescribes that existing design type approvals must be checked by the end of December 2012 and brought into line with the provisions of 1.8.7.2.4 or 6.8.2.3.3, so this problem needed to be resolved urgently. Until then, the representative of UIP asked the Member States to deal with this matter pragmatically.

Information from the European Railway Agency (ERA)

Derailments

The representative of ERA reported that in the context of the studies on the detection of derailments, the contractor, Det Norske Veritas (DNV), was now collating the safety measures implemented by various railway undertakings and infrastructure managers to prevent derailments or to mitigate the effects of a derailment. Information on all the products available on the market was also being gathered.

The chairman reminded the meeting that the decision to introduce derailment detectors had been postponed at the request of the European Commission and that the European Commission would have to enable the RID Committee of Experts to take a decision by November 2011 so that it could be taken into account in the 2013 edition of RID. He emphasised that it was important that DNV also obtain information from those who had dealt extensively with issues surrounding derailment detection in the past (e.g. Knorr-Bremse, UIC railway undertakings and those who used derailment detectors on a voluntary basis (SBB, Wascosa)). Accident investigations should also be encompassed (e.g. the derailment of a train with tank-wagons containing chlorine on

28.02.2005 in Ledsgård (Sweden), the rail accident in Viareggio).

The representative of ERA was asked to present the interim results of the study at the next meeting of the working group on tank and vehicle technology planned for October 2011.

Entities in Charge of Maintenance

The representative of ERA informed the RID Committee of Experts about a system of certification that was being planned for Entities in Charge of Maintenance of freight wagons and about a draft European Regulation in this area.

As a result of the discussion, the representative of ERA was asked to provide the next session of the RID Committee of Experts with brief information on whether the certification system would entail any consequences for undertakings that maintain tank-wagons on the basis of RID. If this were the case, a rule would have to be included in RID. By introducing quality assurance systems, quality requirements could be set up for the tanks of tank-wagons that were similar to those that already apply to packagings, IBCs and pressure receptacles.

Next session

The 50th session of the RID Committee of Experts will be held from 21 – 25.11.2011 in Sweden.

Rail Facilitation

Inaugural meeting of the Rail Facilitation Committee

OTIF in Berne sets the standard

Berne, 16 November 2011

On 16.11.2010, the Rail Facilitation Committee was convened for the first time.

At the inaugural meeting of the Rail Facilitation Committee, the Member States of OTIF set the seal on a new course of action.

The Committee agreed with the OTIF Secretariat in terms of:

- the conceptual orientation of the future work

- the analysis of the initial situation underlying the chosen approach
- the work programme proposed for 2010 – 2012.

Unlike other international organisations, the work of the Committee will not be based on a collation of information from the Member States of OTIF, but on preliminary work by the Secretariat. In a further 4 meetings up to autumn 2012, the Committee will propose to the OTIF General Assembly a specific instrument for action with the help of a catalogue of measures.

The aim is to mitigate or completely remove the universally deplored time-consuming obstacles to Eurasian rail traffic connections.

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Working Party on Intermodal Transport and Logistics

53rd Session

Geneva, 4/5 October 2010

The Working Party on Intermodal Transport and Logistics (WP.24) held its 53rd session in Geneva on 4/5.10.2010. The meeting was chaired by Mr Viardot (France) and the deputy chairman was Mr Maillard (Belgium).

In accordance with the decision taken in 2009 on WP.24's activities and operation in future (see Bulletin 4/2009, p. 58), a discussion on the following theme was organised for the session: “**Opportunities and challenges for intermodal transport by inland waterways**”. This discussion was moderated by Mr Boris Kluge (Director of the “Promoting Center for Intermodal Transport”/“Studiengesellschaft für den kombinierten Verkehr e.V.” (SGKV)).

On the basis of the presentations¹ that were given, particularly on the Port of Duisburg and the Seine-Nord-

Europe canal, and two background documents prepared by SGKV and an informal UNECE expert group, WP.24 considered the role of intermodal transport using inland waterways and discussed measures to increase its attractiveness and competitiveness further, as well as its complementarities with road and rail transport as part of seamless door-to-door transport systems.

Among the other items on the agenda of this session of WP.24, OTIF has a particular interest in the issue of the **reconciliation and harmonisation of civil liability regimes**. The discussion again focussed on the new **Rotterdam Rules**. During the discussion, some delegations doubted the fact that the Rotterdam Rules provided all the guarantees of compatibility and complementarity with existing legal instruments for other modes of transport (CMR, CIM, CMNI). WP.24 therefore decided to invite an informal group of experts (volunteers) to prepare a note on the scope of application and the practical consequences of the Rotterdam Rules for pan-European land and intermodal transport operations, excluding maritime transport.

To conclude, WP.24 decided to strengthen synergies with other UNECE Working Parties, particularly the Working Party on Rail Transport (SC.2). In 2011, it will meet back-to-back with SC.2 to examine joint areas of interest, such as the role of terminals.

Working Party on Rail Transport

64th Session

Vienna, 18/19 November 2010

At the invitation of the Austrian government and the Organization for Security and Co-operation in Europe (OSCE), the Working Party on Rail Transport (SC.2) met in Vienna on 18/19.11.2010 for its 64th session, which was chaired by Mr Kulesza (Poland). The Vice-Chairman was Mr Groot (Netherlands).

In addition to a representative of OTIF, delegates from 20 States and representatives from the European Commission, the TER project, OSJD, CIT and UIC attended this session.

¹ see <http://www.unece.org/trans/wp24/wp24-presentations/24presentations.html>

Among other matters, SC.2 dealt with the following questions that are regularly included on its agenda: European Agreement on main international railway lines (AGC), TER project, Euro-Asian transport corridors and facilitation of international rail transport.

The Chairman of the Task Force on **rail security** informed SC.2 about follow-up activities relating to the recommendations¹ made on this matter at the 63rd session (see Bulletin 4/2009, p. 57). SC.2 decided to review current activities and future work on this subject following the conclusion of the UNECE Inland Transport Security Discussion Forum to be held on 31 January 2011 in Geneva.

With regard to the **facilitation of international rail transport**, SC.2 mainly took note of the activities undertaken in other bodies, including recent developments in connection with the new Annex 9 to the 1982 Convention on the Harmonization of Frontier Controls of Goods (see Bulletin 2/2010, p. 46), progress on the draft common CIM/SMGS consignment note and the holding of the inaugural meeting of OTIF's Rail Facilitation Committee.

With a few minor amendments, SC.2 adopted the position paper² on the **unification of railway law** prepared by the informal Group of Experts set up for this purpose at the 63rd session (see Bulletin 4/2009, p. 58). It goes without saying that OTIF has taken a very active part in the work of this informal Group of Experts, which met three times in 2010. Bearing in mind the complexity of this issue, particularly at the legal and institutional levels, and the disparity between the existing legal regimes, whether national, regional or international in the pan-European region and along Euro-Asian transport corridors, it is planned to progress step by step towards harmonisation or unification of rail transport law. Three main steps are proposed to achieve this:

- in the short term, an instrument such as a Memorandum of Understanding/resolution/declaration on general terms and conditions for Euro-Asian rail transport contracts;
- in the medium term, Model Regulations for international rail transport;

- in the long term, a Convention on international rail transport.

SC.2 decided to transmit this position paper to the Inland Transport Committee, which will meet at the beginning of March 2011, so that the work planned in the first step can be launched quickly. At a later stage, SC.2 will review the work planned in the medium and long term in the light of the results obtained at the end of the first step. The Inland Transport Committee will decide on implementing the medium and long term steps once the first step has been completed.

SC.2 invited the Inland Transport Committee to approve the position paper as well as the establishment of a Group of Experts in which OTIF, CIT and OSJD will take part, and they will work in parallel to prepare general terms and conditions for Euro-Asian rail transport contracts.

At its next session, SC.2 will review the activities and the draft MoU or similar instrument to be prepared by the Group of Experts as well as the underlying contractual general terms and conditions with a view to its opening for signature at the session of the Inland Transport Committee in 2012.

Case Law

Hof van Beroep te Antwerpen

Ruling of 15 June 2009¹

The carrier who claims relief from liability as a result of loss (theft) cannot justify his claim by declaring that he was not informed of the precise nature of the goods loaded in a sealed container.

See Article 17 para. 2 of CMR²

(From: European Transport Law No. 2-2010, p. 199/200 - Text of the ruling in Dutch. Headnote has been editorially improved.)

¹ see <http://www.unece.org/trans/doc/2009/sc2/ECE-TRANS-SC2-63-inf01e.pdf>

² see <http://www.unece.org/trans/doc/2011/itc/ECE-TRANS-2011-03e.pdf>

¹ No. 2008/AR/1352

² Article 23 § 2 of CIM contains a similar provision.

Cour de Cassation (France)

Ruling of 16 November 2010¹

Being responsible for damage suffered by cars loaded on wagons stabled for several days, the carrier cannot invoke the agreement limiting compensation for external damage to 50%.²

By not providing protection for the vehicles for several days, even though the weather forecasts suggested that violent storms should be expected, the rail carrier committed gross negligence.

See Article 133-1 of the French Commercial Code (*Code de commerce français*).

(Extract from: Bulletin des transports et de la logistique, Paris, No. 3343/2010, p. 705).

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, 27th supplement (August 2010) and 28th supplement (November 2010).

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 (most recently, see Bulletin 2/2010, p. 50). 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, although it also contains provisions of European and international law.

The 27th supplement mostly updates national German laws and regulations relating to the rail sector, including the General Railway Act (AEG), the Regulation on the Carriage of Dangerous Goods by Road, Rail and Inland Waterways (GGVSEB) and the Rail Traffic Act (EVO). The new versions of the AEG and the EVO take account of Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations. So the user can look up, for example, how the scope of application of the EC Regulation on the one hand, and that of the AEG and EVO on the other, are defined.

In the new version of the Regulation on the Carriage of Dangerous Goods by Road, Rail and (now) Inland Waterways (June 2009), the responsibilities of the various authorities in terms of dangerous goods transport, and the obligations of persons involved in the carriage of dangerous goods (consignor, carrier, consignee, loader, packer, filler etc.) are clearly defined and are also clearly highlighted in a new systematic layout (in contrast to the November 2006 version). The 28th supplement contains the version of this Regulation amended in August 2010.

The part dealing with "European Law" contains the consolidated version of the Council Directive on the development of the Community's railways (91/440/EEC as amended by Directive 2007/58/EC of the European Parliament and of the Council).

The 28th supplement is confined to updating the part on German law.

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.

1 Previous court: Cour d'Appel de Versailles, ruling of 02.07.2009, see Bulletin 1/2010, p. 17 et seq.

2 In international transport, an agreement in which the carrier limits its liability for compensation to 50% of the external damage would have to be judged in the light of Article 5 of CIM: in relation to cases in which the carrier would otherwise be relieved from liability in accordance with Article 23 § 2 of CIM (e.g. because of unavoidable circumstances) or in which the presumption according to Article 23 § 3 of CIM (e.g. damage arising as a result of a particular hazard, such as carriage in open wagons) is not rebutted, the agreement would be considered as permissible in favour of the customer (extension of liability). In relation to cases in which the damage occurring during the period of liability is neither attributable to a cause in accordance with Article 23 § 2, nor in accordance with Article 23 § 3 of CIM, the agreement would be considered invalid and null and void in accordance with Article 5 of CIM, as such an agreement limits the carrier's liability.