



Bulletin



OTIF

Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

Unified railway law to connect Europe, Asia and Africa



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Pictures by

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UIC

European Union Agency for Railways

(Source: Joint Meeting informal document INF.16

(Source: OTIF/RID/RC/2018/4)

(Source: OTIF/RID/RC/2018/4)



The Revision Committee of 24 February gave the Secretariat a solid basis to continue its work. For example, the Uniform Rules concerning the safe operation of trains in international traffic (EST) will start to be developed and will enable OTIF to explore subjects that are fundamental to the development of international rail transport. The progressive structuring of the trade in goods around a railway backbone is vital in order to promote a sustainable solution to the growing trade between Europe and Asia.

Africa is also developing initiatives to improve the current rail system, which is largely a legacy of the colonial era. Rail networks are being set up to link the various economic hubs and support the endogenous economic development of the continent.

In this context, COTIF can provide the software to make these physical in-

vestments consistent and flexible. To achieve this, we will have to rely more heavily on our Member States. Firstly, we will need all their expertise to establish a concept of interoperability beyond the European Union. Secondly, the question of the application of OTIF's technical and legal rules will become increasingly important as their operational nature strengthens.

The Secretariat will then undertake to design a system to observe and assess such application. Not only must we be sure that what we are doing is of use to our Member States and is suited to their requirements, but we must also, perhaps primarily, listen to what their requirements and ideas are. We will therefore be arranging a series of bilateral visits to obtain a clear view of these issues, which we will report on in future editions of the Bulletin.

François Davenne

THE BIGGER PICTURE

Having left the Secretariat of OTIF at the end of April, I will now be turning to some new challenges. I have spent the last three and a half years broadening my horizons as an engineer in the area of technical interoperability. During this period I was on secondment from the Federal Railway Authority in Germany. I was given this opportunity of gaining some experience in an international environment by the Federal Republic of Germany on the basis of the guidelines for the secondment of federal employees.

The Secretariat has three working languages: German, French and English. For me as a German speaker, this provided a good incentive to follow the work in the other two languages and to see how documents are managed or how colleagues with different languages work together.

The work of the OTIF Secretariat is based on the “Convention concerning International Carriage by Rail” and its Appendices. The Convention (COTIF) is applied in Europe, the Maghreb

and the Near and Middle East. Most of OTIF’s Contracting States apply all the COTIF Appendices. These are the RID and the CIV, CIM, CUV, CUI, APTU and ATMF Uniform Rules. The Secretariat is organised according to this structure, as are the competences and responsibilities in each of the Contracting States.

If the Convention or its Appendices need to be amended, the appropriate revision procedure is initiated, depending on the type and scope of the amendments to be made. This constitutes the real core activity:

- Monitoring developments in the railway sector
- Development, communication, co-ordination
- Final inclusion in the Convention or its Appendices.

It is often several years before amendments enter into force.

I was able to learn and be involved



with these processes at OTIF and return with this experience in order to do something new.

Margarethe Koschmider

WELCOME TO OTIF

Ms Maria Price joined the Secretariat of OTIF on 1 May 2018 as an expert in the technical interoperability department to replace Ms Margarethe Koschmider.

Ms Price has for 15 years held several posts with a strong international, European and strategic dimension in the rail transport sector. In particular, she has worked for the International Union of Wagon Keepers (UIP) and the European Association of Rail Infrastructure Managers (EIM) and

gained a great deal of experience in those roles.

Ms Price has a PhD from Oxford University on the subject of European transport networks and is fluent in English, French, German, Russian and Spanish. Her mother tongue is Bulgarian

Ms Price will also carry out some cross-cutting tasks in which she will be able to apply her knowledge of the European institutions and her legal skills. The Secretariat of OTIF wishes her a warm welcome.



ITF CONFERENCE ON GLOBAL TRANSPORT SECURITY AND SAFETY

As part of the International Transport Forum (ITF) of the Organisation for Economic Co-operation and Development (OCDE), the Ministry of Transport of the Republic of Latvia organised a conference on global transport security and safety in Riga. The Secretary General of OTIF, Mr Davenne, was invited by the Ministry and gave a talk during the session entitled “Innovations and Digital Solutions for Safety

of Passengers and Fleet”.

The discussions focussed on new technologies as a tool to improve risk management and bring about “Vision Zero” to achieve road traffic with no deaths or serious injuries. For its part, rail transport already has a level of safety well beyond that of road transport. The Secretary General presented the philosophy behind the EST Appendix on the safe operation of trains.

This appendix offers the prospect of using new technologies to interconnect national networks more easily, while improving safety.

The Secretary General of OTIF thanked the International Transport Forum and Latvia for their invitation.

PARTNERSHIP BETWEEN INTERNATIONAL ORGANISATIONS

OECD organised two days in Geneva to develop partnership between international organisations. 45 partner organisations were invited and OTIF was present. The head of the legal department, Mr Aleksandr Kuzmenko, took part on 12 and 13 April 2018.

The aim of this event is to encourage

collective action between international organisations in order to improve the quality of international rules and make them more effective, irrespective of their scope of application.

For example, working groups would provide the opportunity to discuss progress and new developments in standardisation and examine ongoing cases.

These two days were very instructive because a number of practices have already been discussed by the international organisations.

26th SESSION OF THE REVISION COMMITTEE: DECISIONS

The 26th session of the Revision Committee took place in Berne on 27 - 28 February 2018. There was broad support for the work undertaken by the Secretariat and the Member States in the last few years to prepare the modifications to COTIF.

The Committee considered and took decisions on a variety of issues to develop OTIF's legal regime, thus further facilitating international carriage by rail. [Bulletin 2017/4, p. 8-10].

Partial revision of the base Convention: amendment of the procedure for revising COTIF Appendices

The Revision Committee expressed clear support for an amendment to the existing revision procedure. The new procedure will bring legal certainty and expedite the entry into force of modifications to Appendices adopted by the General Assembly. As a general rule, modifications will enter into force 36 months after their notification by the Secretary General. At its 13th session, the General Assembly will take a decision on amending the procedure for revising the Appendices to COTIF. [Bulletin 2016/2, p. 10-13 and 2017/3, p. 13-17].

Partial revision of the CIM UR

The Revision Committee considered

the progress of work on customs issues and the digitalisation of freight transport documents and endorsed continuation of the work still required.

Partial revision of the CUI UR

The Revision Committee expressed clear support for an amendment to the CUI UR aimed at clarifying the scope of application of these uniform rules. According to the revised scope, the CUI UR will apply to any contract of use of railway infrastructure in a Member State in international railway traffic for the purposes of international carriage within the meaning of the CIV Uniform Rules and the CIM Uniform Rules. At its 13th session, the General Assembly will take a decision on amending the CUI UR. [Bulletin 2015/3, p. 27-29 and 2016/3, p. 16-17].

Partial revision of the APTU UR

The Revision Committee adopted modifications to the APTU UR in order to ensure continued harmonisation with EU law. In particular, the new points require future Uniform Technical Prescriptions to define requirements that

will be applicable if existing subsystems are renewed or upgraded and to define the parameters subsystem to be checked by the railway undertaking to ensure compatibility between vehicles and the routes on which they are to be operated. The amendments will enter into force on 1 March 2019 unless one quarter of the Member States formulate an objection before 20 July 2018.

Partial revision of the ATMF UR

The Revision Committee adopted modifications to the ATMF UR in order to ensure continued harmonisation with EU law. The modifications are necessary in order to harmonise some terminology with new EU provisions and to take into account some procedural changes within the EU, particularly the fact that the EU Agency for Railways will be competent to issue vehicle authorisations. The amendments will enter into force on 1 March 2019 unless one quarter of the Member States formulate an objection before 20 July 2018.



Draft new Appendix H to COTIF

The Revision Committee expressed support for the creation of a new Appendix H to COTIF concerning the safe operation of trains in international traffic, which, in accordance with tradition, will be named the EST UR according to the French acronym for the safe operation of trains (exploitation en sécurité des trains). The EST UR will provide a common framework for the safety certification of railway undertakings, require that railway undertakings and infrastructure managers establish their safety management

systems and require states to establish certification and supervision authorities. At its 13th session, the General Assembly will take a decision on the adoption of the EST UR and the amendments necessary to enshrine it in the base Convention. [See article page 9]

Working Group of Legal Experts

The Revision Committee supported setting up the working group. The discussions confirmed the need for

this working group and that now is the right time to establish it. [Bulletin 2018/1, p. 22-23].

International railway network access conditions

The Revision Committee mandated the Secretary General to continue the work on developing a non-binding legal framework on railway network access conditions.

*Aleksandr Kuzmenko,
Bas Leermakers*

NEWS | COMMUNICATING AND DISSEMINATING

THE EUMEDRAIL PROJECT AND COTIF GIVE LEBANESE RAILWAYS NEW IMPETUS

On the initiative and at the invitation of the Lebanese Ministry of Public Works and Transport, a high-level meeting was held in Beirut on 22 March 2018. The following participated: the European Union Agency for Railways (ERA), the Lebanese Ministry of Public Works, represented by the Minister himself, Mr Youssef Fenianos, the Lebanese Railway and Public Transport Authority (RPTA) and OTIF, represented by the Secretary General, Mr François Davenne and accompanied by the head of the legal department, Mr Aleksandr Kuzmenko.

The EUMedRail project in Lebanon for 2018-2020 was very well received, particularly in terms of promoting the railway line between Tripoli and Beirut. The project is perceived as an excellent international means of support to contribute to the implementation of railway projects.

The Secretary General of OTIF underlined the importance of Lebanon in the Middle East and offered to host somebody from the Ministry to undertake an internship at the OTIF Secretariat in order to resume cooperation. Lebanon became a member of OTIF

in 1980, the year in which the CIM Convention was first applied. On 1 December 1983, Lebanon ratified COTIF 1980. In 1997, Lebanon wished to suspend its membership of the Organisation. Lebanon recently expressed the wish to end this suspension and resume its membership of OTIF and ratify COTIF 1999. This meeting was an opportunity for Lebanon to confirm this.

The Secretary General welcomed this meeting and would particularly like to thank the Minister, Mr Youssef Fenianos, for his welcome.



MIDDLE EAST RAIL 2018 AND COOPERATION WITH THE GCC

The Secretary General of OTIF, Mr Davenne, was invited to speak at “Middle East Rail 2018”, a major event organised in Dubai by Terrapinn, in partnership with the Government of the United Arab Emirates.

On 13 March 2018, he gave a presentation on the Convention concerning International Carriage by Rail (COTIF), describing it as an effective legal framework capable of integrating different regional models. He explained that the diversity of OTIF Member States was evidence that COTIF ensures the coexistence of different railway systems. In addition, harmonised technical interoperability that takes account of the different systems is emerging in COTIF, particularly with the new EST Appendix on the safe operation of trains.

Later in the morning, he took part in

the round table discussion on interoperability and interregional integration, alongside Mr Montazeri, the Director General of Tehran's Urban and Suburban Railway Company, Mr Borghini, Executive Director of the Shift2Rail Joint Undertaking, Mr Citroën, Director General of UNIFE and Mr Fitch, Head of Unit at the European Commission. The panel was chaired by Mr Rosen, Chairman of the Rail Working Group.

“Middle East Rail 2018” also provided an opportunity to continue strengthening working relations with the Gulf Cooperation Council (GCC). In 2014, a Memorandum of Understanding (MoU) was signed between OTIF and the GCC and numerous discussions and meetings have taken place at regular intervals since then. Recently, the European Union Agency for Railways (ERA) signed an MoU with the GCC.

On 12 March 2018, a high-level meeting was organised between the GCC,

OTIF and ERA. Among others, the meeting was attended by Keir Fitch, the head of the rail safety and interoperability unit at DG Mobility and Transport, Josef Doppelbauer, the Executive Director of ERA, Nada M. Abou al-Samh, the head of the GCC Railways Unit, and Khalid al-Olayan, GCC's Director of Transport. The railway companies of the GCC states were also represented.

The meeting was very positive and productive. GCC explained that it was working on common operating rules. By agreement with CIT, GCC were given some examples of model contracts and the Secretary General proposed that OTIF and CIT work together to look at adapting the COTIF regime to the particular framework of GCC.

UNIFORM RULES CONCERNING THE SAFE OPERATION OF TRAINS IN INTERNATIONAL TRAFFIC (EST)

While COTIF traditionally deals mainly with international railway traffic that is based on the exchange of vehicles at border stations, it may also develop further to support interoperability in terms of complete trains crossing borders. This type of operation has the potential to improve the efficiency of rail transport hugely by reducing transit times and costs as a result of limiting the number of stops and organisational interfaces. For this purpose a new Appendix H to COTIF will be proposed for adoption by the 13th General Assembly. On 28 February 2018, the Revision Committee adopted a proposal for a new Appendix H to COTIF. The proposal will be subject to decision by the General Assembly on 25 and 26 September 2018. This article reviews the background, practical use and substance of the proposed new Appendix.

Aims of the new Appendix

The purpose of the new appendix is to provide general principles and responsibilities for the cross-border operation of trains for states that already fully apply APTU and ATMF. Since its inception, ATMF has dealt with the procedure for the admission of railway vehicles to international traffic, including which rules are applicable to these vehicles and the responsibilities for correctly using and maintaining these vehicles. The new appendix will build on this by setting out uniform rules concern-

ing the safe operation of trains which are composed of vehicles admitted to international traffic in accordance with ATMF. The new appendix can help states to organise their railway systems so that railway undertakings can operate trains across their borders and run trains on the networks of multiple neighbouring states. In terms of principles and responsibilities, the new appendix will regulate the operational and safety provisions concerning, in particular, railway undertakings and infrastructure managers, in order to ensure that trains are operated safely, including the certification and supervision of railway undertakings.

The draft provisions are based on and are intended to be compatible with the provisions applicable to the rail system of the European Union.

Basic concept of the proposals

Safety certification

Each state applying the new appendix should establish a safety certification authority with responsibility for the certification of railway undertakings and should notify the Secretary General accordingly. It should be independent from railway undertakings and infrastructure managers. For states which are also members of the European Union the safety certification authority will be the EU Agency for Railways. Although safety certification authorities should cooperate to reduce the burden for railway undertakings seeking safety certification in several states, they can only issue certificates valid on the territory for which they are responsible.

When applying the new appendix, each state retains full control over which railway undertakings are permitted to operate on its territory. Railway undertakings will have to obtain a safety certificate valid for each state in which they operate trains. To this end each state decides whether or not it issues a safety certificate to a particular railway undertaking, or whether or not to recognise a safety certificate issued in another state.

COTIF: CONVENTION CONCERNING INTERNATIONAL CARRIAGE BY RAIL

APPENDIX A CIV Uniform Rules The contracts of carriage of passengers

APPENDIX B CIM Uniform Rules The contract of carriage of freight

APPENDIX C RID Regulation The carriage of dangerous good

APPENDIX D CUV Uniform Rules Contracts of use of vehicles

APPENDIX E CUI Uniform Rules The contract of use of infrastructure

APPENDIX F APTU Uniform Rules Validation of Technical

APPENDIX G ATMF Uniform Rules Technical admission of railway

APPENDIX H EST Uniform Rules Safe operation of trains

Safety certification should be based on harmonised provisions, as far as they exist. Future annexes on the process of safety certification, Common Safety Methods (CSM) concerning safety management system requirements and monitoring should provide such harmonised provisions. It is anticipated that these annexes will be drafted in the period between adoption of the new appendix and its entry into force. The requirements for obtaining a safety certificate will be harmonised as much as possible; however, the annexes will not describe exhaustively all the conditions which a state may require a railway undertaking to meet before it is issued with a safety certificate. Nevertheless, states should not impose requirements which are incompatible with the new appendix and its annexes.

EST rules will be compatible with the provisions of European Union law concerning the safety of the rail system. Consequently, EU Member States or other states which apply relevant EU legislation as a result of their international agreements with the European Union, do not in principle have to take

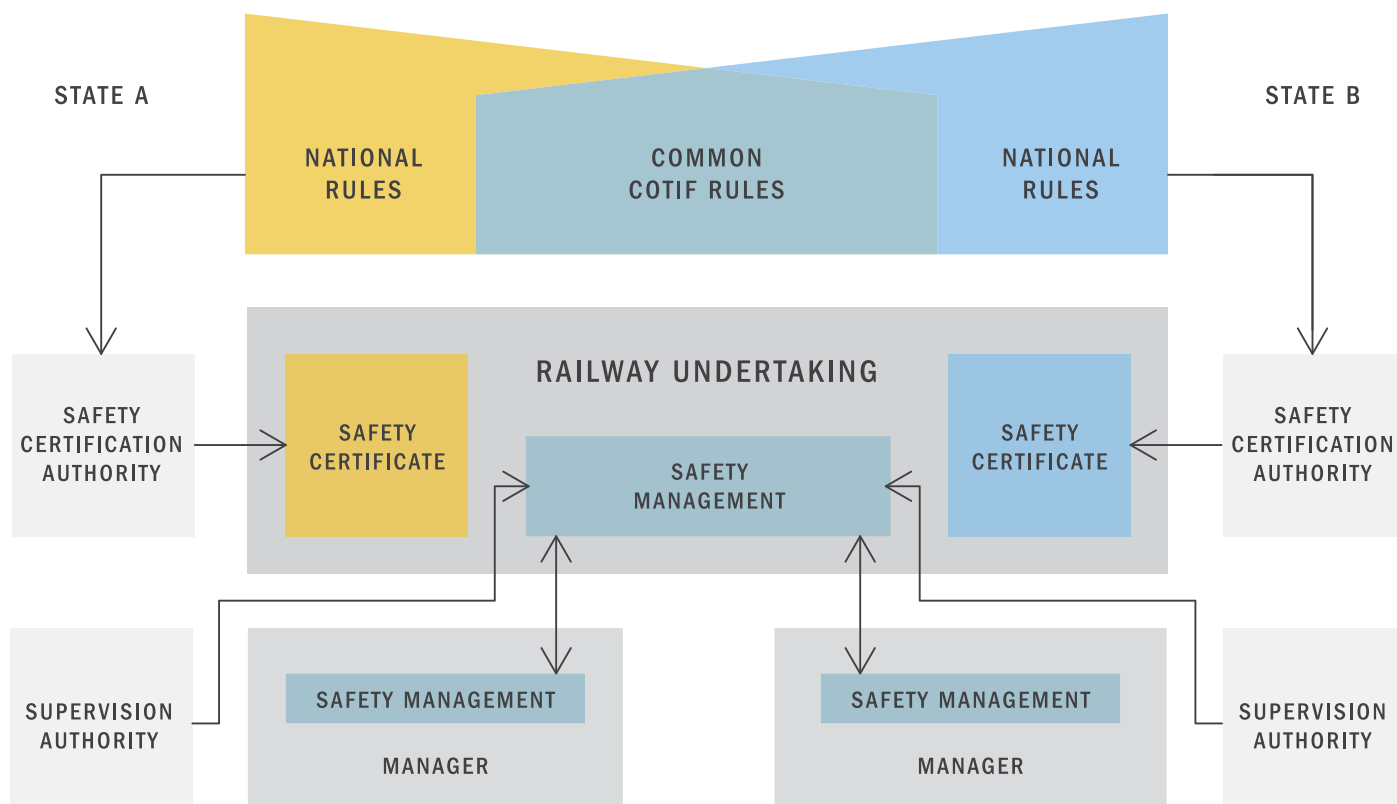
additional implementing measures. Where feasible, the terminology and concepts have been chosen to mirror the provisions defined in EU law, so that the gradual transposition and consecutive development of e.g. common safety methods on safety management system requirements (replacing the former common safety methods on certification), monitoring and supervision is possible.

Managing the safe operation of trains

By applying the new appendix, states should ensure that infrastructure managers are able to cooperate in international traffic with different (foreign) railway undertakings. Railway undertakings and infrastructure managers will have shared responsibility for the safe operation of trains. For this reason each railway undertaking and infrastructure manager should implement its safety management system (SMS). Harmonised provisions concerning the elements of the SMS will be developed in the form of annexes to the new appendix.

Railway undertakings should operate trains only within the scope of their certificate, which could, for example, be limited to certain lines or types of traffic. The operational actors (railway undertaking and infrastructure manager) should each implement the rules correctly, including the establishment of their safety management system and the monitoring of its correct application and cooperate to ensure safety. A future annex on Common Safety Methods for monitoring should include such provisions.

Each state will have a duty to supervise the SMS of railway undertakings for which it has issued a safety certificate. Supervision should be based on harmonised provisions, as far as they exist. A future annex on Common Safety Methods for supervision should include such provisions. The Supervision Authority must provide all relevant information to the Safety Certification Authority and the two authorities must cooperate.



Development

The subject of interoperability was presented to and discussed by the Committee of Technical Experts in 2016. It supported the general principle and asked the standing working group technology to develop the concept further.

A new Appendix H was drafted and first reviewed by the Committee of Technical Experts on 13 and 14 June 2017 and subsequently submitted to the 26th Revision Committee. In accordance with Article 17 § 1 b) of COTIF, the Revision Committee considered the addition of a new Appendix H and requested the Secretary General to submit it to the 13th General Assembly for decision.

After adoption by the General Assembly the new appendix will only enter into force twelve months after at least two-thirds of the Member States have approved the decision (see Article 34 of COTIF for the exact requirements). History has shown that such approval may take several years (e.g. COTIF 1999 entered into force in 2006). Due to the particular importance of this topic for the future of international rail transport, the Secretariat will do its best to shorten this period by providing the Member States with any help and information they might require.

The time between adoption and entry into force could be used to draft the

annexes to the new appendix. These annexes will contain the detailed provisions to be applied e.g. by the authorities, railway undertakings and the infrastructure managers.

As a minimum the annexes should cover:

- a) A Common Safety Method for safety management system requirements to be applied by Safety Certification Authorities when issuing Safety Certificates and by railway undertakings and infrastructure managers when developing, implementing, maintaining and improving their safety management systems;
- b) A Common Safety Method on monitoring to be applied by railway undertakings, infrastructure managers and entities in charge of maintenance;
- c) The necessary links to the Common Safety Method on risk evaluation and assessment to be applied by the railway undertakings, infrastructure managers and entities in charge of maintenance when making any technical, operational or organisational change to the railway system;
- d) A Common Safety Method on supervision to be applied by Supervision Authorities when supervising railway undertakings. It would depend on the provisions in force

in the states concerned whether these provisions should be applied to the supervision of infrastructure managers.

The competence for the development of annexes will be attributed to the Committee of Technical Experts. Annexes can only be adopted and enter into force after the new appendix has entered into force.

Concluding remarks

The new appendix and its annexes will harmonise an efficient and modern approach to safety, so that the proliferation of different, incompatible approaches to safety is avoided. Wide application of the new appendix will have the potential to improve the efficiency of international railway traffic significantly and will bolster its competitiveness compared to other modes.

The actual cross-border operation of trains relies not only on the 'technical and safety' elements as set out in the new appendix, but also on the possibilities and conditions for railway undertakings to have access to the rail network of a state. These provisions, referred to as access conditions, are not part of the scope of the new appendix.

Bas Leermakers



15th SESSION OF THE RID COMMITTEE OF EXPERTS' WORKING GROUP ON TANK AND VEHICLE TECHNOLOGY

As a consequence of the discussions at the 8th session of the RID Committee of Experts' standing working group (Utrecht, 20 to 24 November 2018), the Secretariat convened a meeting of the working group on tank and vehicle technology in order to discuss the consequences for RID that might arise as a result of the extra-large tank-containers developed by the German chemical company BASF and the Belgian tank-container manufacturer van Hool (see Bulletin 1/2018, page 17).

The basis of the discussion was a comparison of the provisions applicable to tank-wagons and tank-containers respectively. All the provisions that differed were discussed, firstly with regard to the tank wall thickness and secondly, the requirements in terms of the vehicle.

Wall thickness

When mild steel is used, the minimum wall thickness for the tanks of both tank-wagons and tank-containers is 6 mm. In order to calculate the minimum wall thickness when a metal other than mild steel is used, the same formula is used for both types of tank. However, irrespective of the result obtained by using this formula, the tanks of tank-wagons may not have a wall thickness of less than 4.5 mm and the tanks of tank-containers may not have a wall thickness of less than 3 mm.

Several delegations raised the question of whether this difference was still justifiable in view of the almost equal capacities of a bogie tank-wagon and an extra-large tank-container. Reference was made to the political dimension of this problem. If smaller wall thicknesses were to be accepted for extra-large tank-containers, this could lead to tank-wagon operators also wanting a further reduction in the wall thickness. Political discussions on the acceptability of dangerous goods transport operations could flare up again if the wall thickness were reduced and, on the basis of risk analyses, might lead to dangerous goods

being prohibited from carriage on certain routes.

The representative of the chemical industry replied that in relation to the quantities carried, there was no difference to two conventional tank-containers carried on one carrying wagon. He warned that if the wall thickness of tank-containers were increased, this might have a detrimental effect on intermodal transport and lead to a massive modal shift to road transport. He also pointed out that specifying minimum wall thicknesses when using better quality steels could curb technical developments, which also contribute to improving safety.

The working group decided to refer to the RID/ADR/ADN Joint Meeting's tank working group the question of whether the provisions relating to the possibility of reducing the wall thickness for extra-large tank-containers should be restricted. This group should also look at whether the steels approved for the construction of tanks should be augmented by other high quality steels and whether it was still justifiable to specify a minimum wall thickness that may not be reduced in any circumstances.

Minimum distance between the headstock plane and the shell

The minimum distance between the headstock plane and the most protruding point at the shell extremity on tank-wagons must be 300 mm. This is to ensure a safe distance if the buffers override. There is no equiva-

lent provision for carrying wagons for tank-containers. This is aggravated by the fact that on tank-containers, the discharge devices are fitted to the ends, so in the event of the buffers overriding, they are directly in the danger zone.

In contrast, RID contains a provision according to which, during carriage, tank-containers must be loaded on the wagon in such a way as to be adequately protected by the fittings of the wagon or of the tank-container itself against lateral and longitudinal impact and against overturning. It was not clear to what extent these measures had been taken into account for the extra-large tank-containers.

Fixings for welded elements

On tank-wagons, the attachments of equipment which is welded on must be made in such a way that the shell is prevented from being ruptured as a result of stresses caused by an accident. There is no equivalent provision for tank-containers. However, the chemical industry and the manufacturer of the extra-large tank-containers confirmed that equipment fitted to the tank wall is avoided. The fittings themselves were recessed into the tank. In addition, no fixed ladders were used, only mounting points.

Pressure resistance of closures

The manhole closures of tank-wagons must have a certain pressure resistance in order to avoid leaks from

the closures as the result of surge movements by the load. According to the manufacturer, the extra-large tank-containers also complied with this provision.

The working group was of the view that for this point, the provisions for tank-wagons and tank-containers should be harmonised, and submitted these questions to the Joint Meeting's tank working group as well.

Inspection intervals

RID prescribes different intervals for periodic inspections (8 years for the tanks of tank-wagons/5 years for the tanks of tank-containers) and for intermediate inspections (4 years/2½ years). The chemical industry pointed out the correlation between the inspection intervals and the smaller wall thickness prescribed for tank-containers. As a result of the shorter inspection intervals, any reduction of the wall thickness due to corrosion could be detected earlier than in tank-wagons.

Inscribing the date of the next inspection on the tank

The date of the next periodic inspection and next intermediate inspection must be inscribed on tank-wagons. This is not required for tank-containers. In addition, inscriptions that are required for both tank-wagons and tank-containers must be shown on both sides of tank-wagons, but only on one side in the case of tank-containers. The aim of this provision is to avoid having to climb over to the other side of the tank-wagon to read the inscriptions.

The working group considered it useful to provide the date of the next periodic inspection for tank-containers as well. It asked the Joint Meeting's tank working group to deal with this issue in conjunction with a United Kingdom proposal to include the model for tank plates in RID/ADR. In the process, it should also be checked whether the

information required should appear on both sides, at least for extra-large tank-containers.

Energy absorption elements and protection against overriding

Tank-wagons for the carriage of certain dangerous liquids and gases must be fitted with energy absorption elements and devices to protect against the overriding of buffers or to limit the damage caused by the overriding of buffers.

If these provisions were carried over for carrying wagons for extra-large tank-containers, this would mean that carrying wagons in container transport could no longer be deployed flexibly for all transport operations, thus making planning more difficult. In order to ensure that carrying wagons could continue to be used flexibly, stricter requirements would have to be made for the tank-containers in order to achieve an equivalent level of safety.

It was also pointed out that there were technical difficulties concerning crash-buffers. The activation value of these buffers is approximately equivalent to a collision test at an acceleration of more than 6 g. At such an acceleration, it is not certain that the tank-containers would remain on the carrying wagons, as the fixing pins for all tank-containers are only designed for 3 g.

The chemical industry did not dispute the need for these substance-specific technical requirements for the vehicle, but pointed out that they would also have to be prescribed for carrying wagons for conventional 20 foot or 26 foot tank-containers, as the quantity of dangerous goods being carried per carrying wagon was comparable.

The working group agreed that for carrying wagons for extra-large tank-containers, measures that were at least equivalent would have to be implemented. The new Joint Coordinating Group of Experts in the car-

riage of dangerous goods and railway technology, whose task would be to reformulate the technical vehicle requirements currently contained in RID as protective aims, should take into account the problems for carrying wagons in its work. This Coordinating Group would also have the task of ascertaining whether it would be better to implement measures to achieve the defined protective aim on the tank or on the vehicle, in order to ensure that rail transport is not placed at a disadvantage. As tank-containers are, in principle, multimodal transport units, additional requirements for tank-containers are limited. This meant that measures that were ruled out because of the multimodal deployment of tank-containers would have to be taken into account in the requirements for carrying wagons.

Fixing pins

Carrying wagons used to carry extra-large tank-containers are fitted with fixing pins made of high-strength materials.

The working group agreed that special markings should be provided for carrying wagons. These markings should indicate whether the wagons are fitted with strengthened fixing pins. This would have to be taken into account in the relevant EN standards, UIC leaflets and TSIs. An addition to the wagon classification code could simplify the planning arrangements for such wagons. The wagon marking should also indicate whether it is suitable for hump shunting when laden or only when unladen.

Analysis of the risks resulting from the increased use of extra-large tank-containers

In view of the fact that the use of extra-large tank-containers imposes particular requirements on the carrying wagons, the representative of the European Union Agency for Railways (ERA) pointed out that this could be considered as a significant change

within the meaning of the Common Safety Method on Risk Evaluation and Assessment (CSM).

The chemical industry emphasised that the extra-large tank-containers and carrying wagons had valid approv-

als and had been used successfully for more than two years. However, it said it was prepared to produce a voluntary risk analysis in the framework of the CSM. In the process, the extra-large tank-containers would be compared with intermodal transport

and conventional tank-wagon transport.

The working group underlined the importance of this risk analysis for the further work and to avoid local transport prohibitions.

Jochen Conrad

RID/ADR/ADN JOINT MEETING (BERNE, 12 - 16 MARCH 2018)

The first RID/ADR/ADN Joint Meeting of the 2018/2019 biennium was held in Berne from 12 to 16 March 2018. 21 States, the European Union, the Committee of the Organization for Cooperation of Railways (OSJD) and 12 non-governmental organisations were represented at this meeting.

Tanks

Electronically signed and transmitted tank inspection certificates

In view of the significant developments in procedures for producing and transmitting electronic documents and signatures, the tank working group dealt with the issue of the acceptability of such procedures in connection with the approval and inspection of tanks.

It was noted that not all electronic signatures have the same level of security and that they must be sufficiently trustworthy to satisfy the requirements of ISO standard 17020 concerning the traceability of inspection personnel.

The tank working group referred to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures, which aims to facilitate the use of electronic signatures by establishing technical reliability criteria for equivalence between electronic and handwritten signatures.

Reference was also made to article 46 of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, which states that “an electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form”. The same applies to an electronic signature (article 25) or an electronic seal (article 35).

In view of these explanations, the tank working group had no objection to the production and transmission of electronically signed tank inspection certificates.

Interpretation

Derogations and additions to danger labels and placards

5.2.2.2.1, 5.2.2.2.1.3 and 5.2.2.2.1.5 allow the following derogations compared with the danger label models described in 5.2.2.2.2:

Although this was the first Joint Meeting of the 2018/2019 biennium, most of the decisions still concerned the 2019 edition of RID/ADR/ADN, which WP.15 and the RID Committee of Experts will still have to adopt finally in May 2018. A working group on tanks was again set up to deal with the numerous documents relating to tanks. This group met in parallel to the plenary and was chaired by Mr Arne Bale (United Kingdom).

- Models required for other modes of transport, with minor variations which do not affect the obvious meaning of the label, are also acceptable;
- Except for label model No. 9A, the labels may include text such as the UN number or words describing the hazard (e.g. "flammable");
- On labels other than those for material of Class 7, the optional insertion of any text in the space below the

symbol must be confined to particulars indicating the nature of the risk and precautions to be taken in handling.

In practice, placards are also encountered with the corresponding additional details permitted for danger labels.

With regard to the configuration of placards, 5.3.1.7.1 does refer to the provisions of 5.2.2.2 applicable to danger labels, but is silent in terms of derogations that would allow text or the UN number to be shown on placards.

The Joint Meeting adopted a proposal from the International Union of Railways (UIC) to allow the derogations applicable to danger labels for placards as well.

New proposals

Marking of wagons and containers loaded with limited quantities

Wagons and containers containing limited quantities of dangerous goods together with fully regulated dangerous goods have to bear the relevant placards for the latter goods, but do not have to bear the mark for limited

quantities. This means that a wagon or container that is mostly loaded with limited quantities, but also contains some fully regulated dangerous goods, must only display the hazard for the fully regulated goods. For example, a wagon or container loaded with 28,000 litres of ethanol in plastic jerricans of 5 litres each and with 60 kg of an environmentally hazardous substance in a drum only has to bear placards of model No. 9 (miscellaneous dangerous substances and articles). However, if a wagon or container is only carrying 50 litres of ethanol in plastic jerricans of 10 litres each, placards of model No. 3 (flammable liquids) must be displayed.

Sweden was of the view that in the event of an accident, the current provisions for the marking of wagons and containers loaded with limited quantities might be misleading for the emergency services, because the actual hazard would not necessarily be reflected. As a result, Sweden proposed to prescribe the limited quantity marking (LQ) for wagons and containers carrying more than 8 tonnes of dangerous goods in limited quantities together with other fully regulated dangerous goods.

The Joint Meeting pointed out that

for dangerous goods carried in limited quantities, a lower hazard during carriage could be assumed. In addition, affixing the LQ mark would not improve safety, as the mark did not give any indication of the nature of the hazard of the goods being carried. Moreover, the same argument could be used to question the utility of the orange-coloured plate. With regard to this though, it was noted that when the orange-coloured plate was required, the information about the nature of the goods being carried had to be included in the transport document, whereas this was not the case for dangerous goods carried in limited quantities.

Some delegations supported Sweden's proposal, as they believed that it would improve safety. Even if the LQ mark did not reflect the nature of the hazard, it would alert the emergency services to the presence of dangerous goods carried in significant amounts under the "limited quantities" provisions.

After a lengthy discussion, the Joint Meeting did not agree with Sweden's proposal. Sweden said it would return to this issue with a revised proposal.



Examples of placards with additional details

New hazard identification number 836

The Joint Meeting dealt with a proposal from Spain to include a new hazard identification number 836 in the list in 5.3.2.3.2. Spain argued that hazard identification numbers 368 (flammable liquid, toxic, corrosive) and 638 (toxic substance, flammable, corrosive) already exist, but there is no hazard identification number for corrosive substances that are also flammable and toxic.

In the discussion, the limits of the existing system for allocating hazard identification numbers were pointed out, one of which is that the number of digits in the hazard identification number was limited to three. This caused problems for substances with three hazardous properties where one of these properties was particularly distinctive, which was indicated by duplicating the relevant digit.

The Joint Meeting's view on Spain's proposal was divided. Some delegations welcomed the proposal and pointed out that the inconsistent allocation of hazard identification numbers was also evident for other entries. This would justify a fundamental review of the principles for allocating hazard identification numbers. Other delegations were concerned that changing the current system, which had been in place for a long time and was well known by the emergency services, might have unforeseen consequences. However, they were of the view that it should be possible to examine well-founded proposals for amendments to individual entries on a case by case basis.

The Joint Meeting pointed out that the information provided by the hazard identification number should not be considered on a stand-alone basis, but in conjunction with that provided by other elements, such as the placards. However, as orange-coloured plates (unlike placards) must be designed so that the hazard identification number and the UN number remain legible after 15 minutes engulfment in fire, only the orange-coloured plate can provide

hazard information in the event of a fire.

Delegations that noticed an inconsistency in the allocation of hazard identification numbers to other entries should notify the representative of Spain so that these cases could be taken into account in a revised document from Spain for the next Joint Meeting. The Joint Meeting would then decide whether a fundamental review of the principles for allocating hazard identification numbers is necessary.

Accident and risk management

Improvement of reporting systems for occurrences in the inland transport of dangerous goods

The European Union Agency for Railways (ERA) presented to the Joint Meeting a list of parameters to be used in the harmonised risk estimation method for all three land transport modes. The Joint Meeting also noted a proposal from ERA for the development of a "Railway Common Occurrence Reporting (COR) System". ERA explained that despite the fact that work on the COR system had been started at the express wish of the European railway sector, it would be beneficial to coordinate this project with the Joint Meeting's work so as to achieve harmonised requirements for all three land transport modes. The best way to do this would be to revise RID/ADR/ADN 1.8.5 concerning notifications of occurrences involving dangerous goods. If there were no coordination, ERA would have to develop its own system for the European railway sector, which may or may not be fully aligned with the provisions of 1.8.5.

Opinions on the risk estimation parameters listed by ERA were divided. Several delegations pointed out that the primary statistics on some parameters in the list (e.g. type and quantity of dangerous goods carried, types of vehicles used, etc.) were not always available at national level. In addition, experience had shown that it was difficult to collect additional data after

an accident or incident. Some delegations would welcome the revision of 1.8.5, as they hoped that this would improve reporting and the availability of data. On the other hand, other delegations were satisfied with the current reporting system according to 1.8.5 and saw no need to take action.

The Joint Meeting decided that, as a first step, the implementation of the current provisions of 1.8.5 in different countries should be examined and the various types of data and statistics currently available at national and regional level should be explored. As there was some support for France's proposal to set up an informal working group, France was asked to submit an official proposal to the next session, with the draft terms of reference.

Any other business

Filling of LPG cylinders by private individuals or enterprises for their own supply

For many years, private individuals have been able to buy refillable LPG cylinders. One of their uses is for caravans. Cylinders which are permanently fitted to a caravan or motorhome and which are approved together with the vehicle are considered as vehicle equipment. However, there are also portable LPG cylinders that are not permanently fitted to a vehicle. Particularly light cylinders, such as aluminium cylinders and composite cylinders, are also used for hot air balloons, boating and heating, and for drying or melting purposes on construction sites.



Filling of a fixed LPG cylinder



Small aluminium cylinder
(Source: OTIF/RID/RC/2018/4)

Switzerland asked the Joint Meeting whether the provisions of RID/ADR/ADN allowed LPG cylinders to be filled at gas filling stations or other filling stations by private individuals or enterprises for their own supply. Switzerland also wished to know whether the provisions of packing instruction P 200 have to be complied with in view of the exemption under 1.1.3.1 (a).

After a lengthy discussion, the Joint Meeting was of the view that the exemption under 1.1.3.1 (a) could not be taken into account in this case.

This exemption only applied to dangerous goods carried by private individuals, on condition that the goods were packed for retail sale and measures had been taken to prevent leakage of the contents. When private individuals fill LPG cylinders themselves, the liquefied gas is not sold in a means of containment packed for retail sale. In addition, some delegations were of the view that the exemption in 1.1.3.1 (a) only applies to the carriage of dangerous goods, not to filling, and that the provisions of packing instruction P 200 must be complied with in any case. However, it was almost impossible for private individuals to comply

with the provisions of packing instruction P 200.

The Joint Meeting noted that there was nothing to prevent national competent authorities from allowing the self-filling of LPG cylinders at national level. This would have to be done in accordance with specific provisions in other legislation addressing non-transport issues (e.g. safety of use).

Lastly, the Joint Meeting pointed out that if a proposal were developed to extend the applicability of the exemption in 1.1.3.1 (a), it should include the precise technical conditions guaranteeing the same level of safety as those provided if packing instruction P 200 is applied.



Composite cylinder

Tributes

As they would soon be retiring, Mr Klaas Tiemersma (Netherlands) and Mr John Mairs (United Kingdom) were taking part in the Joint Meeting for the last time. Both are recognised dangerous goods experts who have been delegates for many years. The Joint Meeting thanked them for their dedication and active involvement in the work and wished them a long and happy retirement.

*Katarina Guricová
Jochen Conrad*

THE LUXEMBOURG RAIL PROTOCOL. AN ESSENTIAL ELEMENT OF INTERNATIONAL TRANSPORT BY RAIL

With increasing cross-border rail traffic, encouraged by the development of the Belt and Road Initiative, and more private financing of rolling stock, particularly in the freight area, issues concerning legal claims to title to rolling stock are becoming more critical in the absence of international rules. Fortunately, there is a solution on the way: the Luxembourg Rail Protocol, which provides the first ever detailed legal framework to protect owners and financiers of rolling stock as it moves across jurisdictional boundaries



A piece of the jigsaw is missing. International transportation of goods and people by rail is expanding. At the same time, liberalisation is taking place in the rail sector, as diverse operators and users enter the rail market. Inevitably, there must be rules for the operation of railway equipment across national boundaries. In Europe, the EU is not just legislating for a Single European Rail Area but is also, through the European Union Agency for Railways (ERA), gradually taking over responsibility for the admission of rolling stock. OSJD and OTIF administer international treaties regulating the transport of goods and passengers and the admission of vehicles on the international rail network. OTIF's CUV gives a legal basis to a multilateral agreement dealing with the use of rolling stock by parties that are not owners. But at the moment, issues concerning title to and security interests in the rolling stock actually moving goods and people across borders are covered by solely by national law.

As long as all the operators were state entities the implications of this lacuna were not so significant. Rolling stock was largely owned either directly or indirectly by the state, and even if rail equipment was financed by third parties, the financing was underwritten by the state or a state agency. Accordingly, any disputes on ownership of rolling stock could be covered at either intergovernmental level or through agreements between state-owned enterprises. But this is now changing. The 4th EU Rail Package, creating the Single European Rail Area, with open access for both freight and passenger services, has set Europe on a course towards liberalisation of the rail market. Other rail markets around the world are moving in the same direction. In two recent studies commissioned by the Rail Working Group, consultants Roland Berger identified that there is a direct correlation between liberalisation and the need for private capital. The reports also showed that there is a clear trend whereby the private sector is gradually financing more procurements by both state and private operators.

More cross-border operations and more investment

With rail strategies focused on developing regional, cross-border networks, and increasing passenger numbers and freight moving across jurisdictional boundaries, the need for settled law in this area has become acute. Projects such as the Belt and Road Initiative promise sig-

nificant growth in rail traffic between Europe and Asia, thus raising difficult questions in relation to title interests in rolling stock crossing borders. A recent Roland Berger survey for the UIC predicts compound annual growth of 15%+ on these "silk routes", which will mean not just a higher number of locomotives and wagons crossing borders, but rising demand for new wagons and more private finance. Moreover, if these developments make variable gauge rolling stock economically viable, this will exacerbate the problem with freight wagons moving from Western Europe to the Chinese pacific coast without the need for transshipment.

All this will require significant ongoing investment in rolling stock. State-owned operators are looking for third-party debt without state underwriting, where the recourse of the lenders is to the rolling stock. Private operators do not necessarily have sufficient capital to carry all the costs of procuring railway equipment. They will borrow money from banks secured on railway equipment, or they will lease rolling stock from specialist lessors or even from other operators, often publicly owned, looking to monetise excess rolling stock or as part of franchises or joint ventures with the private sector.

In each case the creditor needs to be clear that it has the right to repossess the asset financed in the event of debtor insolvency, default, or simply at the end of the financing. Even when operators finance their equipment through equity, they need to be

secure that their ownership interests in the locomotives and wagons cannot be overridden, as a matter of national law, when it is operating in a jurisdiction other than their home state. This is particularly problematic since there are no public national rail registries for registering title security interests in rail equipment, and there is no common unique system for identifying rolling stock. In addition, even if a repossessing creditor knows where its assets are (which is often not the case), it has to depend on local court procedures to recover the equipment, which can take years, and there is no system whereby a state will assist with the redelivery of the equipment repossessed in a case of debtor insolvency.

If these potential conflict of law issues cannot be resolved to ensure that the transnational movement of rolling stock does not undermine the ownership and security interests of operators and financiers, it will place severe constraints on private finance for procurement of new rolling stock at a time when this is most urgently needed. At worst the credit simply will not be available. At best, when funds are available, financing rates will stay high if the debtor is a poor credit risk, since risk and reward go together, in turn potentially adversely impacting the competitiveness of public and private rail operators and creating a financial disincentive for new potential entrants into the rail market.

A new solution to a growing problem

To modify the old saying, "cometh the hour, cometh the treaty". The Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment (the Luxembourg Rail Protocol) is a ground-breaking global treaty on the recognition and prioritisation of security interests held by creditors on railway equipment. It will create a new type of global security interest (the "international interest") for the benefit of creditors either taking a pledge of rolling stock

as part of a financing, or leasing railway rolling stock under a lease, and it will also apply to a vendor's rights under a conditional sale (where title is retained).

The Protocol will apply to leases and security created on a broad range of rail equipment: any vehicle that is "movable on a fixed railway track or directly on, above or below a guideway". So the benefits of the Protocol will apply not just to freight and passenger locomotives and wagons, but also to trams and metro/subway trains, people movers at airports, and gantries and cranes running on rails at ports.

Although the Protocol does not apply to sales and is not intended to be a record of ownership, only of security interests created over rolling stock, there is a separate provision in the Protocol for notices of sale (Article XVII). This will permit vendors to register sales at the international registry, thereby giving notice of the transaction even though neither the vendor nor the purchaser acquire rights under the Protocol. However, virtually all contracts for sale of rolling stock will qualify as conditional sale agreements, so the contract of sale will create an international interest that will be registrable (and extinguished once the sale takes place).

Critically, the Luxembourg Rail Protocol will apply when the debtor has its principal place of business in a ratifying state. This must be the case, since it has to be clear that the creditor rights apply regardless of where the rolling stock is physically at any point in time. However, it is acknowledged that it may be difficult for a creditor to exercise its rights in relation to the financed equipment if, at the time, the rolling stock is located in a state that has not yet ratified the Protocol. This exposure for creditors should only be temporary, and eliminated as more states ratify the Protocol. It demonstrates the need for states to act regionally in adopting the Protocol. Moreover, registration of an international interest may

have a legal impact in non-ratifying states under domestic law, and there is also evidence from the operation of the parallel Aircraft Protocol to the Cape Town Convention that creditors are registering security interests in the international registry even when the debtor is located in a non-ratifying state (or in the case of the Aircraft Protocol, the aircraft is registered in a non-ratifying state) because the benefit of the registry is to give public notice of ownership or security interests. This will be particularly relevant in the rail sector due to the absence of national registries showing such interests.

Rights of repossession

The Luxembourg Rail Protocol grants holders of international interests in rolling stock clear rights as creditors, including rights of repossession on debtor default or insolvency, the overriding concern of every secured creditor.

Article 8 of the Cape Town Convention, as modified by Article VII of the Protocol, sets out detailed rules on the rights of the creditor on a debtor default. Essentially, unless a contracting state has by declaration required that a court is to be involved, the creditor may, if this is provided for in the finance agreement, take possession of the asset on the occurrence of a default and sell or grant a new lease over it.

But there is an important constraint on the creditor's exercise of its repossession rights where there is a strong public policy reason to block this. It was acknowledged by the drafters of the Protocol that there could be situations where the loss to the community resulting from repossession of rolling stock could be significantly in excess of the gain to the creditor in effecting such repossession. The classic case would be commuter rail transport, where the failure of many thousands to get to work in the morning could create economic chaos and major losses to the economy as a whole.

The Protocol therefore contains what is known as the “Public Service Exemption”, under Article XXV of the Protocol. This allows a contracting state to continue to apply existing law that precludes, suspends, or governs the repossession remedies in relation to “railway rolling stock habitually used for the purpose of providing a service of public importance”. This type of equipment has to be identified in a declaration, and for the period while repossession is blocked, the government or other party that has taken over possession must preserve and maintain the railway rolling stock until it is redelivered to the creditor, and must also pay compensation to the creditor, which will be the higher of the amount required by local law or the market lease rental.

Theoretically a state may also make a second declaration stating that it will not pay compensation if this is not required under local law. But this is most unlikely, since any published intention to block a creditor’s repossession on a debtor’s default, with no compensation to the creditor, would inevitably mean that no creditor would be prepared to take the risk of lending on the category of rolling stock concerned. What is also important to note here is that such a modification of creditor rights can only be made by reference to a specific class of railway equipment that is habitually used to provide a service of public importance. The exclusion of repossession rights cannot be made by reference to the mission of the rolling stock. Creditors have to be clear which types of equipment are covered by such a declaration.

Another delicate area confronted by the Protocol is where the creditor looks to repossess the financed equipment due to a debtor insolvency. Article IX of the Protocol gives the ratifying state four options. It can either remain with existing law or make a declaration that it will apply one of three different alternatives. Alternative A is a strong pro-creditor provision that allows creditor repossession without the need for a court

order. Alternative B, by contrast, is very favourable to the debtor, such that a court order is necessary before a repossession can take place. Although this may be a tempting option for some states wishing to protect local operators, the outcome of selecting this option would be to significantly reduce the availability of private capital – since ultimately, the creditor’s position would be too weak. A third option is a modified version of Alternative A, where repossession may be blocked by a court - but only if the creditor is given the benefit of its bargain during the period when repossession is blocked. This third position (Alternative C) may be more suitable in states where there are constitutional restraints on self-help repossession. As and when there is repossession, the contracting state in which the debtor is located has a duty (assuming it has made the requisite declaration) under Article X to “co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article IX”.

The registration system

International interests will be registered in a new international registry located in Luxembourg, which will be searchable by the public through the internet 24/7. Unless the parties agree otherwise, the priorities of the international interests will be dictated by the time of registration. In other words, earlier registrations will have priority against later registrations. If the international interest is assigned, it will retain its priority. There are specific provisions in the Protocol for what are known as “pre-existing interests”, security interests created before the Protocol entered into force in the state where the debtor is located. So the priorities of the previous interest will be protected for a given number of years, depending on the period nominated by a contracting state, although a better solution would be for the parties to execute additional documents, to ensure not just the priorities of the security in-

terest but also that the other creditor rights under the Protocol will apply.

All this necessarily requires that all rolling stock covered by the Protocol is uniquely identifiable; that once allocated, the identification number cannot be duplicated or recycled; and that the item of rolling stock concerned will never change its number. This means that the number for the Protocol will run alongside, and not replace, the (immatriculation) running number allocated to rolling stock.

Technically, the Protocol permits three types of identifiers: a unique identifier stipulated by the international registry, a manufacturer’s serial number, or a national or regional numbering system stipulated by a contracting state. In each case, the number must be demonstrably unique. In fact, the only practical solution will be the number issued by the international registry. Not only will this ensure consistency, it also avoids the immense complications, and therefore costs of running a registry operating up to three different types of identifiers that may themselves be different (for example, one manufacturer’s identification system may be alphanumeric, others simply numeric, and there may be different systems for different types of rolling stock).

The identifier issued by the registry is known as the URVIS (Unique Rail Vehicle Identification System) number. This 20-digit number will be allocated by the registrar to a specific item of rolling stock and will be permanently fixed to the item. It will include RFID chips and other systems that use GPS or other technology to track the equipment in real time. Once allocated, the number will never be recycled or duplicated. The system will be the same regardless of the asset type and guaranteed to be unique, not just at the time of allocation but also on an ongoing basis.

The registrar of the international registry has already been appointed (Regulis SA, a subsidiary of SITA) and

the registry will be regulated by an intergovernmental Supervisory Authority, formally constituted as the Protocol enters into force. OTIF will play an important role as the secretariat to the Supervisory Authority, and will be assisted by a committee of experts. The first set of regulations and operational procedures will be issued as the Protocol enters into force.

When will it start?

The Luxembourg Rail Protocol requires ratification by four states and confirmation by OTIF, as the secretariat, that the international registry is operational. It is expected to enter into force in ratifying states during 2019. By the end of May 2018, it had been ratified by the European Union (in respect of its competences), Gabon and Luxembourg; Sweden is due to ratify very shortly. It has also been signed by France, Germany, Italy, Mozambique, Switzerland and the United Kingdom – which are all moving towards ratification. Many other countries are also working actively on the adoption of the Protocol.

This is a tried and trusted system. The Cape Town Convention and the Aircraft Protocol have now been adopted by 71 states, for which adoption of the Luxembourg Rail Protocol should be very straightforward. The corresponding international registry for Aircraft, in Dublin, has been operating smoothly since 2006, registering over 850,000 international interests in aircraft with an estimated value of over USD500 billion. The designated registrar for the international registry in Luxembourg is an affiliate of the registrar in Dublin.

When it comes into force, the Protocol will make it easier and cheaper for the private sector to finance railway rolling stock. According to a recent survey prepared for the Rail Working Group by the economic consultancy Oxera, the Protocol will deliver direct micro-economic benefits of EUR19.4 billion to 20 selected states in Europe. A second study, covering

many states in the ex-USSR “1520” region, will be published shortly and will demonstrate benefits in this area that are just short of EUR14 billion. This does not even try to quantify the macro-economic benefits.

Reconciling the Luxembourg Rail Protocol with local law

As with any international treaty designed to harmonise applicable legal rules, the Protocol will modify national law in some states, and have the effect of improving the position of creditors.

In some states, the change to insolvency law may be a problem and may need to be adopted over a period of time, perhaps as part of a general insolvency law reform.

Another issue will be the tension between local laws on asset security, particularly when there is a local personal property registry, and a security system that could be at odds with the rules in the Protocol. Some states may need to work this through, although the end result, the overriding position of the rules in the Protocol, cannot be avoided.

Since the unique numbering system will operate in parallel with the immatriculation numbers, this need not be an obvious conflict. Governments, manufacturers and operators can use this as an opportunity to consolidate the way they identify rolling stock, which they need to regulate anyway, by reference to the URVIS numbering system. Moreover, the creation of a single identification system that applies to all types of rolling stock will be a major step forward for many governments, making it easier for them to adopt a common system to regulate and control all types of rolling stock. It will help in many areas, not just facilitating the tracking of all types of rolling stock, but also opening the way to customised maintenance programmes and more efficient insurance protocols.

A more relaxed area is the issue of party autonomy in relation to the choice of law applicable to any security agreement or lease. Assuming that the declaration is made by the relevant contracting states, Article VI empowers the parties to decide the law applicable to the agreement creating the security. This is a helpful provision in that it is regardless of the location of the debtor, which will make it easier to create standardised finance agreements and at the same time exclude obvious conflict of law risks.

Completed jigsaw

The Luxembourg Rail Protocol coming into force will be an essential element of the new international rail regime, becoming part of a uniform rail law that ensures not just regulation of the goods carried by rolling stock across borders and the admissibility and operation of rolling stock, but that title claims on the rolling stock itself are adequately protected in a common system, removing one more barrier to seamless cross-border operation of the railways. And the Protocol delivers even more. It creates a mechanism by which new rolling stock can be procured and brought into the system using private finance at a reasonable price. This will liberate operators from the need to obtain state finance or state guarantees for rolling stock procurement (and relieve governments of the burden) as they work to transform international rail transport of passengers and freight into a competitive, cost-effective and environmentally sustainable service for the logistics community and the traveling public. States should move quickly to adopt the Protocol and to put the last piece of the jigsaw in place.

*Howard Rosen
Chairman of the Rail Working Group*

CALENDAR OF OTIF'S MEETINGS IN 2018

DATE	EVENT	ORG	LOCATION
11 - 12 September	34 th session of the standing working group WG TECH		Berne - Switzerland
11 - 12 September	Working group on checklists for the filling and emptying of tank-wagons for liquids		Netherlands
17 - 21 September	RID/ADR/ADN Joint Meeting	UNECE	Geneva - Switzerland
25 - 26 September	13 th General Assembly		Berne - Switzerland

EVENTS WITH OTIF PARTICIPATION IN 2018

DATE	EVENT	ORG	LOCATION
25 June - 3 July	UN Sub-Committee of Experts on the Transport of Dangerous Goods	UNITED NATIONS	Geneva - Switzerland
26 - 28 June	Global Rail Freight Conference (GRFC)	UIC	Genova - Italy
27 - 28 June	Working Group CIM	CIT	Berne - Switzerland
28 - 29 June	Railway Interoperability and Safety Committee (RISC)	European Commission	Brussels - Belgium
4 July	Lecture- European Training Centre for Railways (ETCR)	Collège de Bruges, European Union Agency for Railways	Bruges - Belgium
4 - 5 July	CIM/SMGS Group of Experts	CIT	Berne - Switzerland
27 - 31 August	Group of Experts on Annex 2 to SMGS "Provisions for the Carriage of Dangerous Goods"	OSJD	Zhenzhou - China
25 September	IAA – Symposium « Gefahrguttag »	Bundesministerium für Verkehr und digitale Infrastruktur (Verband der Automobilindustrie (VDA))	Hannover - Germany

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