OTIF

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

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SUMMARY

2014 Number 3

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By **François Davenne**,
Secretary General of OTIF

2014 is coming to an end at OTIF. This year has seen the Organisation deploy its expertise in a variety of areas.

This Bulletin reflects this dynamism and diversity, as it deals with subjects as different as setting up international interests for investments in the rail sector, the definition of technical specifications for internationally exchangeable passenger coaches to replace the RIC Regulations and the harmonisation of the rules on the carriage of dangerous goods.

It is this willingness to find consistent technical and legal solutions for rail transport, whatever the complexity and specialised nature of the issues, which gives the Organisation its *raison d'être*.

I hope this Bulletin will interest readers and provide them with as much food for thought as the authors have put in to it. OTIF's real worth in 2014 has certainly been the commitment and willingness of its staff to help develop rail transport.

I should like to take this opportunity, on behalf of everyone at the Organisation, to wish readers all the best for 2015.

François Davenne

Conference in Tehran on the application of COTIF organised in conjunction with UIC, ECO and RAI

On 11 and 12 November 2014, a conference on the Convention concerning International Carriage by Rail (COTIF) was held in Tehran in the Islamic Republic of Iran.

This conference on the application of COTIF in the Middle East was organised by the Intergovernmental Organisation for International Carriage by Rail (OTIF), the Economic Cooperation Organization (ECO), the International Union of Railways in the Middle East (UIC RAME) and the Railways of the Islamic Republic of Iran (RAI).

The conference programme dealt with the international application of COTIF, the role of the various organisations involved in the harmonisation of transport law, technology, dangerous goods and various developments in rail transport in the Middle East region and on the region‘s corridors.

The COTIF conference was chaired by Mr Mohsen Pour Seyed Aghaie, the Islamic Republic of Iran‘s Deputy Minister for Transport, Roads and Urban Development and chairman of Iranian Railways (RAI). Among the participants were Mr Jean-Pierre Loubinoux, the Director-General of UIC, Mr Mohsen Esperi, Director of ECO‘s transport section and the Secretary General of OTIF, Mr François Davenne.

Other participants at the conference included departmental representatives from Afghanistan, Jordan, Turkey and Pakistan and a large number of managers and technicians from Iranian Railways.

Mr Mohsen Pour Seyed Aghaie opened the conference and welcomed those attending. He underlined the importance of this conference in encouraging cooperation between railway undertakings and helping them to meet the challenges currently facing rail transport.

Mr Loubinoux then presented UIC‘s main actions in the Middle East and UIC‘s involvement in technical harmonisation and the operational conditions for the development of international rail transport.

Representing OTIF, Mr Davenne gave an introduction to the Organisation and the COTIF Convention and highlighted its role in terms of legal and technical harmonisation and as a bridge between the markets of the Middle East and Europe. He particularly emphasised the key role of the Islamic Republic of Iran in a zone which has ambitious aims for the railways, such as the Marmaray Tunnel opened under the Bosporus.

Mrs Khorsandnia, the representative of ECO, explained her organisation‘s activities in the rail transport sector and especially its efforts to encourage container train traffic between its Member States, as well as the main construction projects for new railway lines in the region.

Mr del Olmo, the head of OTIF‘s legal service, underlined the most important points in the application of the CIV, CIM and CUV Uniform Rules and the latest developments in the law on passenger transport, freight and wagon transport and the common CIM/SMGS consignment note.

Mr Nazari, Director-General of International Affairs at RAI and Director of UIC's Middle East regional office gave a presentation on the application of the various COTIF Appendices in Iran, its neighbours and in the Middle East region, the different gauges, etc. and pointed out that this was the first time a conference on the application of COTIF had been held in Iran.

Mr Leermakers, the head of OTIF's technical service, gave a presentation on COTIF Appendices APTU and ATMF and explained their scope of application, the principles for the admission of vehicles to international traffic and the resulting questions of responsibility for the Member States and for operations and maintenance.

Lastly, Mr Conrad, the head of OTIF's dangerous goods service, underlined the importance of the RID Appendix to COTIF for the carriage of dangerous goods by rail and explained the process of harmonisation that is underway, not just for all the transport modes, but also with OSJD's SMGS Annex 2.

These technical presentations led to a number of specific questions on the implementation of these rules, which showed the level of involvement and professionalism of the experts represented and the operational nature of the questions raised.

To conclude the conference, the organisations that took part in the event drafted a joint declaration which the Secretary General of OTIF read out to all participants and which should enable OTIF to get involved in activities in the region in due course.

OTIF would like to take this opportunity once again to thank Mr Mohsen Pour Seyed Aghaie, the Islamic Republic of Iran's Deputy Minister for Transport, Roads and Urban Development and chairman of Iranian Railways (RAI), and Mr Abbas Nazari, Director-General of International Affairs at RAI and Director of UIC's Middle East regional office, and all his team, for their warm welcome and the perfect organisation of the conference.

Carlos Del Olmo

East – West Passenger Trains - Which law is applicable?
Guide to the COTIF/CIV-PRR – SMPS liability regimes

On 1 October 2014, the International Rail Transport Committee (CIT) published the trilingual guide to the COTIF/CIV-PRR – SMPS liability regimes (print version). It is a practice-oriented document. CIT organised several meetings to draft the guide, with active participation from OTIF and the European Commission (DG MOVE), together with experts from railway undertakings that apply the Agreement concerning International Passenger Traffic by Rail (SMPS) developed by the Organization for Cooperation of Railways (OSJD).

OTIF contributed to the work on drafting the comments on the provisions of the CIV Uniform Rules and in particular ensured that the text was made available in all three of OTIF's working languages, French, German and English. The editors were also able to rely on the support of experts from the European Commission's DG MOVE in connection with all issues relating to Regulation (EC) No. 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations. The support of railway experts who apply the SMPS was also very valuable.

The publication consists of two parts. Part I contains country maps from which users can see which regulations are applied where, and this part also provides an overview of the basic principles of the COTIF/CIV PRR – SMPS liability regime.

In Part II can be found for each subject the relevant provisions of the three sets of regulations: COTIF/CIV, PRR and SMPS, together with explanatory comments.
In addition to the printed version, the guide is also available on the CIT website. In the electronic version of the guide, the interactive map of east-west traffic routes will be of great interest and use. Access is also available via the OTIF website.

The publication is aimed at all those who are interested in east-west/west-east passenger trains, whether they are passengers or carriers.

The carrier's liability to passengers is understandably a sensitive issue which is strongly influenced by different legal cultures. As a result, it took several decades more, including in the history of COTIF, to achieve international harmonisation in this area than to achieve harmonisation of the liability rules for freight transport. This development is not yet at an end.

Of necessity, transport law is developing in the direction of increased user-friendliness, in other words, to the benefit of passengers. As an economically more homogeneous community compared with OTIF, the European Union can aspire to more ambitious goals in its legislation than OTIF or OSJD. For example, the loophole in the CIV liability system in terms of delays has already been closed by Regulation (EC) No. 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations. But the effects of EU legislation are becoming more widely felt and will also become so in the international carriage of passengers by rail. Perhaps this annotated comparison of the individual liability rules in CIV, PRR and SMPS will aid the development of ideas for the revision of international legislation in future.

Eva Hammerschmiedová

The Luxembourg Rail Protocol
How it will transform the rail sector?

On 22 September 2014, a seminar on the Luxembourg Protocol (often referred to as the Rail Protocol) entitled „The Luxembourg Rail Protocol – How it will transform the rail sector“ was organised in Berlin by the Rail Working Group and Germany‘s Federal Ministry of Justice and Consumer Protection.

As a reminder, OTIF‘s 7th General Assembly held on 23 and 24 November 2005 approved OTIF‘s role as secretariat to the Supervisory Authority of the International Registry that has to be set up in accordance with the Luxembourg Protocol on Matters specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment signed in Luxembourg on 23 February 2007.

OTIF is a member of the Preparatory Commission which will set up the Supervisory Authority of the International Registry once the Protocol has entered into force.

The aim of the seminar was to promote the Luxembourg Protocol and demonstrate to States the advantages it has so that they accede to it. This Protocol has not yet entered into force, but the equivalent Aircraft Protocol, which has achieved positive results in the aviation sector, has been in force since 1 March 2006 and now has 56 States Parties as well as the European Union.

Experts from the world of banking and finance, the rail industry, the European Commission‘s DG MOVE and experts on the Luxembourg Protocol took part in the seminar to present to participants their experiences with the Aircraft Protocol and the way in which rail transport could benefit.

OTIF took part in the seminar and the head of its legal service gave a presentation to the 50 participants on OTIF‘s activities in the Preparatory Commission, its support for everything that results from the Protocol and its efforts to achieve the Protocol‘s rapid entry into force.

Carlos Del Olmo

Withdrawal of declarations according to Article 42 § 1 of COTIF

Article 42 of COTIF says that any Member State may declare, at any time, that it will not apply in their entirety certain Appendices.

In an instrument dated 16 April 2014, Spain withdrew its declaration concerning Appendices CUI, APTU and ATMF with immediate effect.

According to an instrument dated 6 November 2014, France has withdrawn its declaration not to apply the ATMF Appendix with effect from 1 July 2015.

So far, **18 Member States** of OTIF which are also EU Member States have withdrawn their declarations concerning Appendices CUI, APTU and ATMF. These States are Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia and Spain. France has withdrawn its declaration concerning Appendices CUI and APTU; the withdrawal of the declaration not to apply Appendix ATMF should follow in the next few months.

The reason the declarations have been withdrawn is the agreement concluded on 23 June 2011 between the European Union and OTIF on the EU's accession to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (COTIF 1999).

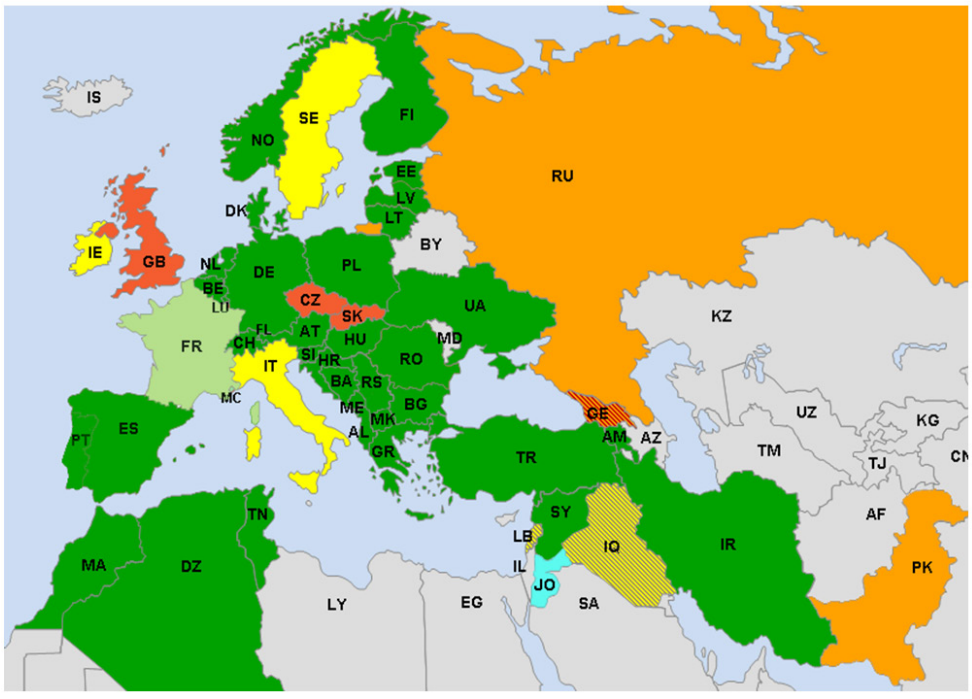
In addition, in an instrument dated 18 June 2014, Norway, a member of EFTA, withdrew its declaration concerning Appendices CUI, APTU and ATMF with immediate effect and made a declaration in accordance with Article 11 of the Agreement on the EU's accession to COTIF (precedence of the EEA Agreement over COTIF).

For a general overview of the scope of application of COTIF and the reservations, see the **following map and the summary table on the next page.**

Champ d'application géographique de la COTIF et ses appendices
Geografischer Anwendungsbereich des COTIF und dessen Anhänge
Geographical scope of COTIF and its appendices

État au 1er juillet 2014
Stand 1. Juli 2014
Situation on 1st July 2014

- Tous les appendices de la COTIF (35) / Alle Anhänge des COTIF (35) / All COTIF appendices (35)
- Sans ATMF (2) / Ohne ATMF (2) / Without ATMF (2)
- Sans CUI/APTU/ATMF (3) / Ohne CUI/APTU/ATMF (3) / Without CUI/APTU/ATMF (3)
- Sans CUV/CUI/APTU/ATMF (1) / Ohne CUV/CUI/APTU/ATMF (1) / Without CUV/CUI/APTU/ATMF (1)
- Sans CIV/RID/CUV/CUI/APTU/ATMF (2) / Ohne CIV/RID/CUV/CUI/APTU/ATMF (2) / Without CIV/RID/CUV/CUI/APTU/ATMF (2)
- COTIF 1999 pas encore ratifiée (3) / COTIF 1999 noch nicht ratifiziert (3) / COTIF 1999 not yet ratified (3)
- Suspension de la qualité de membre (2) / Ruhen der Mitgliedschaft (2) / Membership suspended (2)
- Membres associés (1) / Assoziierte Mitglieder (1) / Associate Members (1)



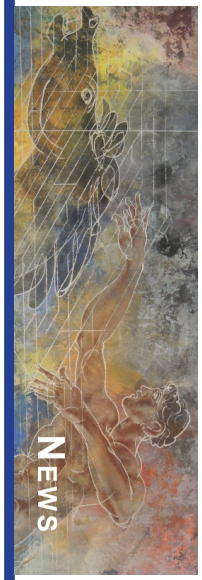
Summary of the scope of application of COTIF and its Appendices

As at
1st December 2014

		CIV	CIM	RID	CUV	CUI	APTU	ATMF	Not yet ratified	Comments
AL	Albania	✔	✔	✔	✔	✔	✔	✔		
DZ	Algeria	✔	✔	✔	✔	✔	✔	✔		
AM	Armenia	✔	✔	✔	✔	✔	✔	✔		
AT	Austria	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 1 July 2011
BE	Belgium	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 8 February 2012
BA	Bosnia and Herzegovina	✔	✔	✔	✔	✔	✔	✔		
BG	Bulgaria	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 17 December 2012
HR	Croatia	✔	✔	✔	✔	✔	✔	✔		
CZ	Czech Republic	✔	✔	✔	✔					
DK	Denmark	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 7 July 2011
EE	Estonia	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 9 August 2013
FI	Finland	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 1 July 2011
FR	France	✔	✔	✔	✔	✔	✔			Reservations against the APTU lifted with effect from 3 February 2014, against the CUI with effect from 4 March 2014 and against Appendix G with effect from 1 July 2015
GE	Georgia	✔	✔	✔						
DE	Germany	✔	✔	✔	✔	✔	✔	✔		Reservation against the CUI lifted with effect from 1 January 2012 and against the APTU/ATMF with effect from 1 January 2013
GR	Greece	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 13 Sept. 2011
HU	Hungary	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 16 February 2012
IR	Iran	✔	✔	✔	✔	✔	✔	✔		
IQ	Iraq									OTIF membership suspended
IE	Ireland								✔	
IT	Italy								✔	
LV	Latvia	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 26 April 2013
LB	Lebanon									OTIF membership suspended
FL	Liechtenstein	✔	✔	✔	✔	✔	✔	✔		
LT	Lithuania	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 10 Nov. 2011
LU	Luxembourg	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 11 January 2012
MK	FYR of Macedonia	✔	✔	✔	✔	✔	✔	✔		
MC	Monaco	✔	✔	✔	✔	✔	✔			
ME	Montenegro	✔	✔	✔	✔	✔	✔	✔		
MA	Morocco	✔	✔	✔	✔	✔	✔	✔		
NL	Netherlands	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 1 January 2012
NO	Norway	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 18 June 2014
PK	Pakistan		✔							Application on specific lines only
PL	Poland	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 1 January 2012
PT	Portugal	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 13 May 2013
RO	Romania	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 1 March 2013
RU	Russia		✔							Application on specific lines only
RS	Serbia	✔	✔	✔	✔	✔	✔	✔		
SK	Slovakia	✔	✔	✔	✔					
SI	Slovenia	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 19 October 2012
ES	Spain	✔	✔	✔	✔	✔	✔	✔		Reservations against the CUI/APTU/ATMF lifted with effect from 16 April 2014
SE	Sweden								✔	
CH	Switzerland	✔	✔	✔	✔	✔	✔	✔		
SY	Syria	✔	✔	✔	✔	✔	✔	✔		
TN	Tunisia	✔	✔	✔	✔	✔	✔	✔		
TR	Turkey	✔	✔	✔	✔	✔	✔	✔		
UA	Ukraine	✔	✔	✔	✔	✔	✔	✔		Application on specific lines only
GB	United Kingdom	✔	✔	✔	✔					
EU	European Union	✔	✔	✔	✔	✔	✔	✔		

OTIF and EU Member State

OTIF Member State only



Exchangeable passenger coaches

I. BACKGROUND AND INTRODUCTION

As the UTP LOC&PAS will take precedence over the technical provisions of RIC when it enters into force on 1.1.2015 (in accordance with APTU Art.11 § 2a), it is important that coaches meeting certain defined conditions have the same 'free circulation' as RIC coaches have had for many decades (RIC has existed since 1922).

In the scope of COTIF, the exchange of vehicles at border-crossing stations remains the only type of international passenger traffic for many of the non-EU Contracting States. For that reason the inter-vehicle interfaces are very important for OTIF.

In order to achieve this aim, two objectives have to be met:

- Unique admission objective: development of regulations including all requirements necessary for a single admission valid in all Contracting States in accordance with ATMF Article 6 § 3.
- Standardisation objective: a harmonised definition of inter-vehicle interfaces, allowing railway undertakings to couple together coaches from different origins in a train.

II. UNIQUE ADMISSION OBJECTIVE

With the adoption of the UTP LOC&PAS, which is equivalent to the forthcoming LOC&PAS TSI, from 1.1.2015 there will be an equivalent set of rules applicable to all OTIF Contacting States. This will create the basis for the application of ATMF Article 3a §§ 1 and 2 and ATMF Article 6 § 3, which set out the requirements for the admission to operation of vehicles that apply in all Contracting States.

In addition to the precondition of equivalence between the UTP and TSI and the full application of the UTP/TSI without derogations, some additional criteria have to be met to permit unique admission, in particular:

- the vehicle must not be subject to specific cases which affect compatibility with the network, and
- there should be no open points in the UTP/TSI which are related to compatibility with the infrastructure.

The ERA LOC&PAS working party on unique authorisation is analysing the closure of the open points and compatibility with the networks. In accordance with Article 3 of the Administrative Arrangements between OTIF, DG MOVE and ERA, OTIF is involved in this work.

III. STANDARDISATION OBJECTIVE

Two elements seem indispensible for exchangeable coaches: retrospective compatibility with RIC coaches and compliance with the TSIs.

Retrospective compatibility should ensure that when a new exchangeable coach is integrated into a train with traditional RIC coaches, the train should at least function as if all the coaches were traditional RIC coaches. Some TSI functions which are new compared to the RIC agreement might not work at train level, e.g. the passenger alarm and door-traction interlock.

Compliance with the TSIs would mean that each technical solution should be compatible or compliant with the TSI/UTP requirements and when a train is composed of new coaches, all TSI functions should work.

The TSIs/UTPs do not define exhaustively all inter-vehicle interfaces that would be necessary to ensure compatibility between coaches. On the one hand, there are justified reasons for this, e.g. legislation should give the railway sector the freedom to agree on the most suitable solutions for their business needs. On the other hand, some harmonisation of technical solutions would be required in order to allow for the exchange of coaches in international traffic. It is debatable whether such harmonisation would best be included in (international) legislation or in (railway industry) standards.

In any case, an inventory of requirements should be prepared, and the railway undertakings are in the best position to identify such requirements. As a result of the ERA/OTIF workshop held in Bonn on 6 February 2014, CER was sent a letter in which it was invited to provide information regarding passenger coaches with respect to the requirements. CER replied in a letter dated 25.6.2014.

IV. WG TECH AND RISC

On 10 September 2014, the standing working group technology discussed the subject and analysed the CER letter. The Chairman summarised the discussion, saying that the WG had carefully considered and discussed the Secretariat's proposal and that the need for technical requirements for interchangeable coaches was clearly demonstrated:

- for the railway sector, as expressed by CER. The representatives of several States recognised that the sector was in the best position to analyse its own requirements;
- for the non-EU Contracting States, as the exchange of coaches was for many the only way of organising international passenger traffic.

It was agreed that in coordination with UNIFE, CER should further develop the specifications which, in their views, need to be incorporated into the regulations.

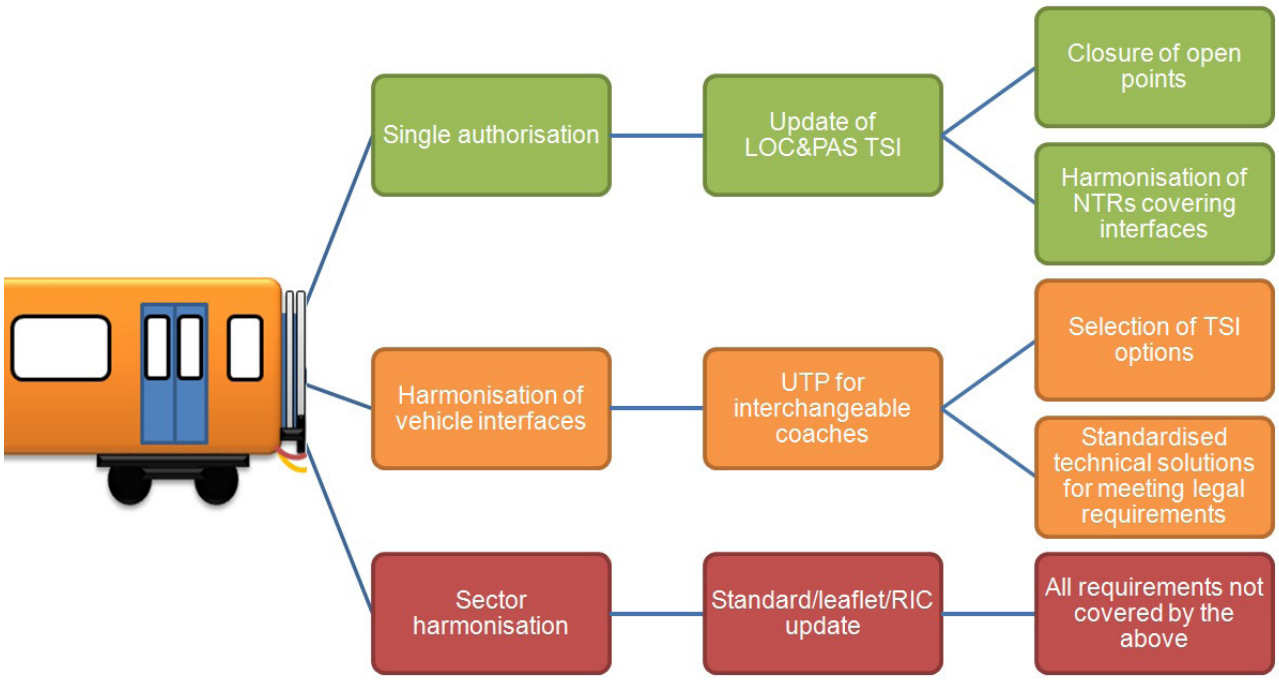
The OTIF Secretariat was invited to the EU railway interoperability and safety committee (RISC) on 6 November to present the developments on this subject to the EU Member States.

V. ROADMAP

The OTIF Secretariat has suggested developing new specifications (which could take the form of a new UTP and/or TSI or an appendix to the UTP and/or TSI), the application of which would be voluntary. . However, when applied, compliance should be checked by an assessing entity or notified body. The principle would be comparable to that of Appendix C to the UTP for freight wagons. Applying the specifications for passenger coaches would allow the coach to be designated by the applicant as exchangeable (to be indicated in the Technical File). All other types of vehicles, including coaches not designated as being exchangeable, would not be subject to the application of the new specifications.

As mentioned in point 2, ERA is working on the specifications which would enable the unique admission of passenger coaches. In parallel, the sector (e.g. led by CER and/or by UIC) should collect and define a comprehensive set of specifications required in addition to the UTP/TSI LOC&PAS. Only if these specifications are completed can WG TECH analyse these technical solutions and analyse which specifications might be included on a voluntary basis in the legal framework, and which might better be kept as sector standards (outside the legal framework). Drafting new specifications for interchangeable coaches would be carried out in accordance with the normal processes (i.e. TSI drafting coordinated by ERA, UTP drafting coordinated by WG TECH).

Bas Leermakers



45th Session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods

(Geneva, 23 June to 2 July 2014)

The 45th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods was held from 23 June to 2 July 2014 under the chairmanship of Mr Jeff Hart (United Kingdom). 22 States entitled to vote, 5 observer States and 36 non-governmental organisations were represented at the session. As all the decisions of the UN Sub-Committee of Experts have repercussions for the dangerous goods provisions of the various modes, the Intergovernmental Organisation for International Carriage by Rail (OTIF) was represented as a modal organisation, along with the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO).

This was the third session in the 2013/2014 biennium. In the context of harmonising RID/ADR/ADN with the UN Recommendations on the Transport of Dangerous Goods, OTIF will take its decisions over in the 2017 edition of RID and the UNECE will do the same for the 2017 editions of ADR and ADN.

Classification

Ammunition, smoke, containing titanium tetrachloride

Following the inclusion of n.o.s. entries for toxic by inhalation substances and the identification of substances that are toxic on inhalation by special provision 354 in the dangerous goods list, the substance UN 1838 Titanium tetrachloride was also reclassified from Class 8 into Class 6.1. However, these amendments did not affect the classification of ammunition, smoke, with or without burster, expelling charge or propelling charge of UN numbers 0015, 0016 and 0303, although according to the glossary of substances and articles of Class 1, these may contain titanium tetrachloride as a smoke-producing substance. The toxicity of this substance can only be reduced after reaction with humidity from the air. If it is damaged during transport, the substance may be released and the amount might be about 1 kg per grenade.

In special provision 204, which is assigned to these three substances, the UN Sub-Committee of Experts decided to include a provision to require marking with danger label model number 6.1 when the smoke-producing substance is toxic on inhalation in accordance with the criteria of Class 6.1.

As special provision 204 has not been taken over into RID/ADR/ADN, but its content has been indicated in additional rows in Table A of RID/ADR/ADN (to make it more user-friendly), this amendment will presumably be implemented in RID/ADR/ADN by means of an additional row in Table A of Chapter 3.2.

Polyester resin kits

Polyester resin kits are currently assigned to UN number 3269, and special provision 230, which is assigned to this UN number, explains that these kits consist of a flammable liquid base material assigned to Class 3, packing group II or III. According to information from the industry, there are now polyester resin kits that contain a flammable solid as the base product, which meets the classification criteria of Class 4.1.

The UN Sub-Committee of Experts approved the inclusion of an additional UN number for polyester resin kits consisting of a flammable solid base product, and a range of related consequential amendments.

Uranium hexafluoride

Depending on its properties, uranium hexafluoride can be assigned to the following entries in RID/ADR/ADN:

- UN 2977 RADIOACTIVE MATERIAL, URANIUM HEXAFLUORIDE, FISSILE,
- UN 2978 RADIOACTIVE MATERIAL, URANIUM HEXAFLUORIDE, non-fissile or fissile-excepted,
- UN 3507 URANIUM HEXAFLUORIDE, RADIOACTIVE MATERIAL, EXCEPTED PACKAGE, less than 0.1 kg per package, non-fissile or fissile-excepted.

This last UN number, which has been newly included in the 2015 editions of RID/ADR/ADN, is assigned special provision 369. This says that this substance is classified in Class 8 with the subsidiary risk of radioactivity. However, in addition to the risks of radioactivity and corrosiveness, the safety data sheet for uranium hexafluoride also indicates the risk of toxicity of packing group I.

Bearing in mind the principles set out in special provisions 172 and 290, the UN Sub-Committee of Experts decided to assign UN numbers 2977 and 2978 the subsidiary risk of toxicity in addition to the primary risk of radioactivity and the subsidiary risk of corrosiveness. UN 3507 was assigned the new primary risk of toxicity. The previous primary risk of corrosiveness becomes a subsidiary risk.

Packaging

Salvage pressure receptacles

New provisions for salvage pressure receptacles were included in the 2013 editions of RID/ADR/ADN. The capacity of a salvage pressure receptacle was restricted to 1000 litres. This capacity restriction resulted from a compromise in order to respond to concerns the UN Sub-Committee had expressed at that time against including such provisions.

However, as this means that damaged pressure receptacles and cylinders with a capacity of up to 1000 litres cannot be loaded into salvage pressure receptacles, this meeting again attempted to increase the maximum permissible capacity of salvage pressure receptacles, now that some experience has been gained in the use of salvage pressure receptacles.

The UN Sub-Committee of Experts decided to increase the capacity of salvage pressure receptacles to 3000 litres, but to continue to limit the total individual capacities of the damaged pressure receptacles placed into the salvage pressure receptacle to 1000 litres.

Packing instructions for gases and chemicals und pressure

Packing instructions P 200 (gases) and P 206 (chemicals under pressure) do not contain any instructions on how to calculate the filling ratio and test pressure when the liquid phase is charged with a compressed gas. In these cases, both components – the liquid phase and the compressed gas – have to be taken into consideration in the calculation of the internal pressure in the pressure receptacle. In so doing, the following individual points have to be taken into account:

- volumetric expansion of the liquid phase,
- vapour pressure at 65° C,
- pressure of the compressed gas at 65 °C in the reduced volume,
- solubility of the compressed gas in the liquid phase.

As there are no suitable standards that could be referred to, the UN Sub-Committee of Experts decided to amend packing instructions P 200 and P 206 accordingly.

ISO standards for filling

At the request of the International Organization for Standardization (ISO), references to ISO standards were included in packing instruction P 200 which deal with inspections at the time pressure receptacles are filled. The basic requirement already contained in RID/ADR in paragraph (7) (a) that filling has to be carried out by qualified staff using appropriate equipment and procedures will now also be taken over into the UN Model Regulations.

Large packagings for aerosols

At present, packing instructions P 207 and LP 02 are assigned to UN number 1950 Aerosols. Special provisions (PP 87 and L 2) apply to the carriage of waste aerosols. These require that the packagings shall have a means of retaining any free liquid that might escape during carriage, e.g. absorbent material. However, in contrast to normal packagings, large packagings must have an inner packaging that has to remain leakproof under test conditions. In the United Kingdom‘s view, for large packagings in which waste aerosols are carried, it is not necessary to require both an inner packaging and a means of retaining any free liquid that might escape (e.g. absorbent material).

The United Kingdom also noted that packagings in accordance with packing instruction P 207 have to meet the test requirements for packing group II, while according to special provision L 2 for large packagings for the carriage of waste aerosols, only the test requirements for packing group III are required. This means that for a box with a capacity of 451 litres, a drop test from a height of 0.8 meters is sufficient, whereas for a box with a capacity of 449 litres, a drop test from a height of 1.2 meters is prescribed.

For aerosols, as in the case of P 207, the UN Sub-Committee of Experts agreed to include in the regulations a separate packing instruction for large packagings which, firstly, would do away with the use of inner packagings and secondly, would require the packing group II test level. At the request of the European Aerosol Association (FEA), a transitional provision was also included to allow the continued use until the end of 2022 of large packagings which only meet the test requirements of packing group III.

UN 2813 Water-reactive solid, n.o.s.

Special provision PP 83, which applies to UN number 2813 (water-reactive solid, n.o.s.), was originally included in packing instructions P 403 and P 410 in order to permit the carriage of this substance in small quantities in inner packagings without threaded closures. The background was its use as a heating mechanism for ready meals for military personnel, campers and hikers.

Packing instructions P 403 and P 410 now require that inner packagings be hermetically closed, as a result of amendments that were made at a later stage, and this closure need not necessarily be manufactured with a threaded closure. They also allow inner packagings made of plastic with a larger mass than that prescribed in the special provision. The UN Sub-Committee of Experts therefore decided to delete special provision PP 83.

UN 1873 Perchloric acid

For UN number 1873 (Perchloric acid with more than 50% but not more than 72% acid, by mass), special provision PP 28 requires the use of inner receptacles or inner packagings made of glass. Among other things, UN 1873 is used by industries such as geochemical and semiconductor for elemental analyses. For such use, the substance must have a high level of purity which, according to information from a non-governmental organisation, cannot be ensured by packagings made of glass or metal. But fluoropolymer containers would provide a stable and chemically resistant alternative packaging, which are also resistant to embrittlement, unlike packagings made of glass.

The UN Sub-Committee of Experts adopted an amendment to special packing provision PP 28 which will now also permit plastics for parts of the packaging that come into direct contact with perchloric acid.

Halogenated monomethyldiphenylmethanes

At the 44th session of the UN Sub-Committee of Experts it was decided to extend the proper shipping names of UN numbers 3151 and 3152 to halogenated monomethyldiphenylmethanes, because these substances have similar chemical and ecotoxicological properties to polychlorinated biphenyls (PCB) or terphenyls (PCT) (see Bulletin 1/2014).

At this meeting, a consequential amendment was subsequently made to packing instruction P 906, which applies to these substances.

Hydraulic pressure testing of pressure receptacles

For pressure receptacles, 6.2.1.5.1 (g) prescribes hydraulic pressure testing in connection with the initial test and inspection, as follows: „Pressure receptacles shall withstand the test pressure without expansion greater than that allowed in the design specification."

The gas industry pointed out that it was not clear what was meant by „design specification". The wording „expansion greater than that allowed" could also give the impression that the volumetric expansion has to be measured. However, this had never been the intention. Instead, it should be possible to apply the different procedures in Europe and North America as alternatives. Whilst in Europe, it was customary in the hydraulic pressure test to hold the pressure receptacle at test pressure while inspecting visually to detect deformation, cracking and leaks, in North America the preferred method was to use the volumetric expansion test in which the pressure receptacle is immersed in water and the water displaced during the pressure test is measured.

The UN Sub-Committee of Experts decided to amend 6.2.1.5.1 (g) and, for the design and construction, to refer to the acceptance criteria set out in the technical standard or the technical code.

Marking of inner receptacles of composite IBCs

6.5.2.2.4 requires that the inner receptacles of composite IBCs must be marked with certain basic markings. These include the code for the type of IBC, the packing groups for which the design type is approved, the name or mark of the manufacturer and the date of manufacture. However, the date the inner receptacle was manufactured may differ from the date of manufacture, repair or remanufacture of the complete IBC. A new note was included to draw attention to this possibility.

Size of markings

RID/ADR/ADN 5.2.1.1 (UN number) and 6.1.3.1 (packaging code) contain provisions concerning the size of letters and numerals to be used in markings that have to be affixed to packages. Three alternatives are available, depending on the size of the package. The usual height of letters and numerals is 12 mm, but for packages with a capacity of 30 litres or less or a net mass of 30 kg or less, they may be reduced to at least 6 mm and for packagings with a capacity of 5 litres or less or a net mass of 5 kg or less, only „an appropriate size" is prescribed.

Up to now, special provisions that prescribe a particular marking for packages have not contained any information on the minimum size of the marking.

The UN Sub-Committee of Experts decided to insert a general provision before the special provisions in 3.3.1 to prescribe a minimum height for letters and numerals of 12 mm. In connection with this, it was also noted that the written information concerning the orientation of the package required in packing instruction P 137 could be replaced by a reference to the orientation arrows in 5.2.1.9.1.

Conditions of carriage

Carriage in bulk of UN No. 3170 UN No. 3170 Aluminium smelting by-products or aluminium remelting by-products

Based on a proposal submitted by Norway and Spain, a contradiction in the provisions was removed. The contradiction was that in the list of dangerous goods, code „BK 1" (carriage in sheeted bulk containers allowed) was assigned to UN 3170 Aluminium smelting by-products or aluminium remelting by-products, while 4.3.2.2 of the UN Model Regulations (RID/ADR 7.3.2.4) only allows closed, watertight bulk containers (BK 2) for all substances of Class 4.3. However, as sheeted vehicles were also used in land transport in the past without any dangerous incidents occurring, the use of sheeted bulk containers for the land transport modes will continue to be permitted by means of a note in special provision 244.

In order to improve safety in the carriage of these substances, special provision 244 will include the requirement that before loading, the temperature of the load must be reduced to ambient temperature or calcination (heating) must take place to extract the moisture. In addition, the load must be sufficiently ventilated during carriage and the ingress of water must be prevented. The aim of these measures is to prevent the formation of a flammable atmosphere as a result of the gases that are emitted in contact with water, such as methane or hydrogen.

Similarly worded provisions have already been included in the 2015 editions of RID/ADR/ADN (special provision CW 37 in 7.5.11). However, the UN Sub-Committee of Experts did not adopt the marking prescribed in RID/ADR/ADN that says that closed vehicles and containers must be opened carefully. The view on this was that such provisions should be specified separately for each mode of transport.

Prototype lithium batteries

Special provision 310, which is assigned to UN numbers 3090 and 3480, excludes production runs consisting of not more than 100 lithium cells and batteries, or pre-production prototypes, from the testing requirements of the Manual of Tests and Criteria when these prototypes are carried for testing.

As this special provision is not assigned to UN numbers 3091 and 3481, this means that this exclusion cannot be applied to lithium batteries contained in equipment. For very specialised devices which are only manufactured in low quantities and into which specially developed lithium batteries are incorporated (e.g. individually produced robots), this leads to problems, as it is not always possible to remove the batteries for carriage.

The UN Sub-Committee of Experts decided to revise special provision 310 and to cover lithium cells and batteries contained in equipment. For large items of equipment, carriage without packaging under conditions laid down by the competent authority will also be allowed.

If necessary, the UN Sub-Committee of Experts will come back to this decision again to discuss the possibility of changing the content of the special provision into a packing instruction and the need for particular information in the transport document.

Future work

Crude oil

In North America, increasing quantities of crude oil are obtained by fracking from oil sands and shale oil. As these deposits are located away from the oil pipelines, oil is increasingly being carried by normal surface transport.

As a result of the catastrophic railway accident in Lac Mégantic, Quebec, in July 2013, and a series of other serious accidents, Canada and the United States of America submitted a joint discussion document to the UN Sub-Committee of Experts in which the question was raised as to whether the existing entries for UN 1267 Crude oil are sufficient in view of the multiple variations in composition, particularly in relation to the proportion of flammable gases, or whether, in addition to the flashpoint and boiling point, the vapour pressure should also be taken into account.

Owing to the complexity of this issue, it was decided in the first instance to include it in the work programme of the UN Sub-Committee of Experts for 2015 and 2016.

Insulation of packages containing dry ice

The representative of the United States of America informed the UN Sub-Committee of Experts that research work was being carried out in the USA to assist aircraft operators in determining the maximum quantity of dry ice that can be safely carried as cargo in an aeroplane. The sublimation rate (direct transition from solid to gaseous aggregate state) of dry ice is influenced by exposure to external heat, air convection and the dimensional area of the package. By limiting the amount of CO_2 generation, the risk of asphyxiation is reduced so that, for air transport, more packages may be carried as cargo. In particular therefore, the formation of gaseous carbon dioxide can be reduced by insulating the packages.

As these findings are also of great interest to the other transport modes, the UN Sub-Committee of Experts will look at this issue in more detail in the next biennium (2015/2016).

Next meeting

The 46th session will be held from 1 to 9 December 2014 in Geneva.

Jochen Conrad

Workshop on the carriage of dangerous goods by rail

(Tunis, 23 to 25 September 2014)

A workshop on the carriage of dangerous goods by rail was held in Tunis from 23 to 25 September 2014. The workshop was part of a EuroMed transport project funded by the European Union at which OTIF was represented in order to present RID and its integration into COTIF.

The EuroMed transport project covers road, rail and urban transport and extends to Morocco, Algeria, Tunisia, Libya, Egypt, Palestine, Israel, Jordan and Lebanon. The project is focussing on reforming and adapting the regulatory framework, facilitating cross-border traffic and promoting the interoperability and safety of the land transport modes.

At the workshop, the Director General of the Tunisian Ministry of Transport, Mr Ali Fraj, presented the Tunisian rail network, which covers around 2,000 km. 450 km of the network in the north of the country is standard gauge and the rest is metre gauge (central and south). Most of the network is single track, with very tight curve radiuses allowing relatively low axle loads (16 tons on the metre gauge network).

Each year, SNCFT (Société nationale des chemins de fer tunisiens – the national Tunisian railway company) carries 6 million long-distance passengers, 40 million local passengers and 11 million tons of goods. There are 326 train journeys per day, carried out with, among others, 130 mainline locomotives, 262 passenger coaches and 3846 freight wagons.

In past years, investments have been made, particularly in order to equip heavily used lines with a second track, increase axle loads and modernise signalling and telecommunications facilities. These investments have made it possible to increase the maximum speed for passenger trains on the metre gauge network to 130 km/h.

In future, consignments of phosphate are expected to increase from 8 to 9.5 million tons per annum. 20 new locomotives and 200 wagons are to be procured for these consignments. At the same time, the track system in the Gafsa region, where phosphate is extracted, is to be renovated and extended (axle load increased to 25 tons).

A high-speed line is also being planned for the future to connect the main cities of the Maghreb (Casablanca, Algiers, Tunis and Tripoli). It is anticipated that 840 km of this high-speed line will be on the territory of Tunisia. For passenger transport, this standard gauge line will enable maximum speeds of 250 km/h, and 120 km/h for freight transport.

Jochen Conrad

RID/ADR/ADN Joint Meeting

(Geneva, 15 – 19 September 2014)

The second RID/ADR/ADN Joint Meeting of the 2014/2015 biennium was held in Geneva from 15 to 19 September 2014. 22 States, the European Commission, the Committee of the Organization for Cooperation of Railways (OSJD) and 13 non-governmental organisations were represented at this meeting.

Tanks

A working group on tanks was again set up to deal with issues relating to tanks. This group met in parallel to the plenary and was chaired by Mr Arne Bale (United Kingdom).

Standards in 6.8.2.6.1

The Table in 6.8.2.6.1 currently contains the following sub-headings:

- „For all tanks,
- For tanks with a maximum working pressure not exceeding 50 kPa ...,
- For tanks for gases of Class 2 and
- For tanks intended for the carriage of liquid petroleum products and other dangerous substances ... „.

The question arose as to whether these sub-headings are part of the regulations and whether, if there are conflicts between RID/ADR and the standards, they take precedence in accordance with 1.1.5. In some cases, these sub-headings can conflict with the scope of application of a standard. For example, the scope of application of standard EN 14432:2006, which is listed in the Table in 6.8.2.6.1, specifies that the standard is intended for the design and construction of portable tanks with a minimum working pressure of not less than 50 kPa. However, the list under the sub-heading „For all tanks“ could be misinterpreted to mean that this standard must also be applied to tanks with a working pressure not exceeding 50 kPa.

In line with the new provision included in the 2015 edition of RID/ADR, according to which the scope of application of every standard is defined by the scope clause of the standard, it was decided to delete the sub-headings. Instead, as in 6.2.4.1 of the 2015 edition of RID/ADR, which lists the standards applicable to pressure receptacles, two sub-headings were included so that a distinction can be drawn between standards applicable to the design and construction of tanks on the one hand, and standards applicable to their equipment on the other.

Special provision 658

Special provision 658 entered into force in RID/ADR 2013. For UN 1057 lighters and UN 1057 lighter refills, it prescribes carriage under simplified conditions, provided certain quantities are not exceeded. Thus the total gross mass of such packages carried in a wagon/vehicle may not exceed 100 kg.

This special provision replaced multilateral special agreements RID 5/2010 and ADR M213, which allowed similar simplified conditions.

As large containers are also used for such consignments, special provision 658 was extended to cover large containers on the basis of a proposal from Austria.

5.5.3

The last Joint Meeting was again confronted with the issue of dry ice. Reference was made to a fatal accident that had occurred in the carriage of dry ice in a private vehicle. In connection with this, several delegations had highlighted the importance of separating the driver‘s cab from the load compartment (see Bulletin 2/2014). At the last Joint Meeting, there had not been enough time to deal fully with a joint proposal submitted by Austria and Spain.

In a new document, it was pointed out that an external marking on vehicles (see 5.5.3.6.1) whose cab is not separated from the load compartment is of little use, as the driver is already in the vehicle and is therefore exposed to a risk. It was therefore proposed to include different provisions in 5.5.3.3.3 for well ventilated vehicles and for vehicles where ventilation is not possible because of their type of construction.

There would therefore be no need for a marking when packages containing a coolant or conditioner are carried in a well ventilated vehicle. A Note should specify more precisely that „well ventilated“ means there is an atmosphere where the carbon dioxide concentration is below 0.5% by volume and the oxygen concentration is above 19.5% by volume. This definition was derived from health and safety legislation.

On the other hand, marking should not be prescribed in cases where ventilation is not possible (the load compartment is insulated, refrigerated or mechanically refrigerated) or not necessary (gas exchange between the load compartment and driver‘s cab is prevented).

In their proposal, the representatives of Austria and Spain also highlighted a contradiction according to which the carriage of dry ice of UN number 1845 on its own is exempt from the provisions, whereas if dry ice is added for the purposes of cooling or conditioning, the provisions of 5.5.3 must at least be applied. In addition, for the other substances mentioned by name in 5.5.3 which may pose a risk of asphyxiation (nitrogen, refrigerated, liquid (UN 1977) or argon, refrigerated, liquid (UN 1951)), the full provisions of RID/ADR apply when they are carried as a consignment.

Following an intensive discussion, the Joint Meeting adopted the amendment to the provisions of 5.5.3 and for the carriage of UN 1845 carbon dioxide, solid (dry ice), decided to require at least that the provisions of 5.5.3 must be complied with.

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Pending issues

Most of the proposals submitted to this session could not be dealt with conclusively and will again be on the agenda of the next Joint Meeting. Among others, this concerns the following points:

- Replacing the term „fuel“ in the exemption provisions of 1.1.3.3 in order also to cover other liquid combustibles which are used to operate devices that are not internal combustion engines, such as heating devices, for example;

- The electronic processes in the examination of safety advisers, ADR vehicle drivers and ADN experts;

- Carriage of live genetically modified animals;

- Carriage of waste electrical and electronic equipment containing dangerous goods, e.g. lithium batteries. With regard to this issue, an inventory should first be made of studies and projects carried out in the EU Member States in the context of EU Directive 2012/19/EU on waste electrical and electronic equipment;

- Sample testing of overmoulded LPG cylinders instead of individual testing, and possible extension of this alternative testing to other cylinder design types;

- Pressure receptacles for paintball guns;

- Protecting the openings of top-discharge tanks against dust and other contaminants;

- Different colour markings for dip tube closures and the ventilation valve;

- Storage of the tank file in electronic form;

- Requirements to be met by fixed special receptacles and special containers for the carriage of heat energy without loading and unloading the heat storage medium.

The following issues will have to be dealt with first by the UN Sub-Committee of Experts on the Transport of Dangerous Goods and will be re-examined in the context of harmonising RID/ADR/ADN with the 19th revised edition of the UN Recommendations:

- Visibility of the approval marking of packagings in an overpack;

- Lithium batteries contained in vehicles and devices of UN numbers 3166 and 3171;

- Raising the 100 Wh limit for the packaging and labelling requirements of small lithium ion batteries exempted under RID/ADR special provision 188;

- Allowing the volumetric expansion test as an alternative to the hydraulic pressure test for pressure receptacles;

- Periodic inspection and hydraulic pressure test of individual cylinders of an MEGC with or without disassembling the cylinders.

Next session

The next Joint Meeting will be held from 23 to 27 March 2015 and will continue the discussions on the amendments for the 2017 edition of RID/ADR/ADN.

Jochen Conrad

Multimodal rail-sea transport

The advantage of uniform law

Article 1 § 3 CIV and Article 1 § 4 CIM offer the possibility of applying the CIV/CIM Uniform Rules not just to carriage by rail, but also to carriage by sea or inland waterway. This provision, which is worded similarly in Appendices A (CIV) and B (CIM) to COTIF for passenger and freight transport, offers one considerable advantage: it enables rail transport customers to conclude a single contract on the basis of a single transport document for multimodal rail-sea traffic. Otherwise, every time the journey included a sea leg, the legal regime of the transport operation would change twice, from the railway law regime to the maritime law regime (Hague Rules/Hague-Visby Rules) and back to the railway law regime. Some areas where multimodal rail-sea carriage takes place under the CIM regime are the Baltic Sea, the North Sea, the Mediterranean and the Black Sea.

The CIT‘s GTC for rail-sea transport

At the moment, this is a major topic, particularly in relation to freight transport. This possibility is motivating new Member States to accede to COTIF. Within the International Rail Transport Committee (CIT), which is an association representing the interests of carriers, the increasing interest in rail-sea transport became clear as a result of the fact that several meetings of a newly created group of experts on „multimodality“ have been dedicated to drafting „General Terms and Conditions for the Contract of International Carriage of Freight in Rail-Sea Transport“ (GTC Rail-Sea Transport) and that this issue is now to be pursued by a new CIT „Multimodality“ Committee.

The ‘‘Law’’ and „Dangerous Goods“ sections of OTIF took part in drafting the GTC Rail-Sea Transport. This is an internal CIT document which is made available to the member undertakings, but it will make it easier to apply COTIF and its Appendices B and C (RID) correctly. In the remainder of this article, the main questions concerning this issue are described from OTIF‘s perspective in connection with rail-sea freight transport only.

Legal basis and procedures for subjecting maritime transport to the CIM UR

Article 24 of COTIF provides the institutional basis for this special case of extended application of the legal regime set up for rail transport. For the purpose of supplementary carriage by sea (or inland waterway), the Secretary General keeps the „CIM list of maritime and inland waterway services“. This list creates clarity on the issue of which multimodal transport operations the CIM UR apply to.

In order to avoid conflict with maritime law, the conditions for the application of the CIM UR to maritime transport are precisely defined in Article 1 of CIM:

1. carriage on a registered line,
2. a single contract of carriage and
3. supplementary to carriage by rail.

After the expiry of a procedure described in Article 24 of COTIF and when all the conditions of Article 24 of COTIF and Article 1 § 1 and 4 of CIM are met, rail-sea movements are carried out under the CIM regime.

Maritime routes linking two Member States of COTIF can only be entered in the list of lines with the agreement of both States. In other words, both States must wish to subject rail transport including carriage by sea to the CIM regime. The agreement of both States is a *conditio sine qua non* for any registration of a ferry or other maritime service. For a Member State that is interested in registering a line, Article 24 of COTIF does not prescribe the form in which it has to document the agreement of the other State. A reference to an agreement concluded with the other Member State is considered sufficient in the Depositary‘s practice.

On the other hand, it does not matter if the shipping company has its registered office in a third State. It may be that a Member State has a line registered which is operated by an undertaking based in another Member State.

The actual procedure is as follows:

- Notification from a Member State interested in entering a service in the list, which is made in agreement with the other Member State concerned;
- The Secretary General notifies all Member States of this registration;
- Expiry of a period of one month from the Secretary General‘s notification.

Cooperation between railway and shipping companies from the legal point of view

From the foregoing it is obvious that this procedure must be preceded by certain steps. A cooperation agreement between the rail and shipping companies concerned will in most cases be the point of departure.

The question that arises here is which form this cooperation should take. In practice, two different models are used:

1. The railway company and the shipping company may perform multimodal carriage as successive carriers in accordance with Article 26 CIM. The shipping company which enters into successive carriage enters with full awareness into the legal regime for rail freight as an equal member of a chain of carriers.

2. The railway undertaking takes the lead role: not only does the actual rail transport take place under its responsibility, but also the supplementary carriage by sea. In this case the shipping company assumes the role of the rail transport undertaking's auxiliary in accordance with Article 40 CIM. While the railway undertaking is liable to the customer in accordance with CIM, in this model the shipping company can avoid being directly confronted with the legal regime for rail freight.

One model is clearly ruled out by law: the maritime carrier cannot be a substitute carrier, because the performance of carriage by rail is an essential element of the definition of „substitute carrier" (Art. 3 b) CIM). This model of cooperation cannot be countenanced even for carriage on ferries, as the actual carriage of the goods (except loading and unloading procedures on the ferry) does not take place by rail.

In practice, the railway and shipping companies will weigh up the pros and cons of each of the possible models. The multimodal nature of the transport operation is certainly more clear-cut, including for customers, if the shipping company is involved as a link in the chain of successive carriers. As a link in the chain, a shipping company, as a carrier, can play a more active role towards the customer, particularly in customer agreements, which form the basis for contracts of carriage to be concluded in the future. The special features of the sea leg, i.e. the multimodal nature of the carriage, can thus be better taken into account. In theory, this model could be more risky for the maritime carrier. But the maritime carrier will probably hardly ever be the first or last carrier against which claims arising from the contract of carriage in accordance with Article 45 CIM can be asserted. This puts the risk into proportion.

In contrast, the model whereby the shipping company assumes the role of auxiliary may be of interest to a rail carrier that wishes to offer a transport service from a single source. And for the maritime carrier, this model has the advantage that it is only liable for its part of the transport operation and only to the railway undertaking.

Special liability regime

Compared to maritime law, railway law is more strict in terms of liability: there is objective liability with only a few grounds for relief from liability. In order that this does not become a deterrent obstacle for shipping companies, the possibility exists of including an endorsement concerning a special liability regime when a line is entered in the list. The consequence of this endorsement is to broaden the carrier's grounds for relief from liability. In addition to the grounds for relief from liability available purely to rail transport in CIM, some grounds for relief from liability taken over from maritime law come into question (although – in contrast to CIM/COTIF 1980 and the Hague-Visby Rules – no longer the so-called „nautical error"). The two States whose territories are linked by the service must agree not just on the registration of the line, but also on this special liability regime in accordance with Article 38 CIM.

A look at the CIM list of maritime and inland waterway services reveals that the possibility of a special liability regime in the sense of Article 38 CIM has quite frequently been made use of. However, for each new entry in the list, the stakeholders concerned must be aware that this is not an automatic process. If a special liability regime in the sense of Article 38 CIM is required, both the Member States concerned must agree on it and it must be notified to the Secretary General.

Allowing dangerous goods to be carried in rail-sea transport

If dangerous goods are carried in multimodal rail-sea transport, the provisions of the IMDG Code (International Maritime Dangerous Goods Code) must be applied on the sea leg. Although the dangerous goods provisions for rail transport are broadly harmonised with those for maritime transport, there are various special features that have to be borne in mind.

Dangerous goods may only be carried in rail-sea transport if they meet the requirements of both the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID – Appendix C to COTIF) and of the International Maritime Dangerous Goods Code (IMDG Code). Dangerous goods not permitted for carriage on sea-going ships may not be carried.

For carriage in a transport chain including a sea leg, RID 1.1.4.2.1 allows the following derogations for the rail part of the journey:

- Packages marked and labelled in accordance with the requirements of the IMDG Code need not be marked and labelled in accordance with the requirements of RID;

- For mixed packing within a package, the requirements of the IMDG Code may be applied;

- Containers, portable tanks or tank-containers or wagons containing a full load of packages with the same dangerous substance or article marked and placarded in accordance with the requirements of the IMDG Code need not be placarded or bear an orange-coloured marking in accordance with the requirements of RID.

If one of these derogations is applied, a statement shall be included in the transport document, in capital letters, as follows:

- "CARRIAGE IN ACCORDANCE WITH RID 1.1.4.2.1".

As the IMDG Code does not contain any comparable derogations, it is recommended that for transport in a transport chain including carriage by sea, the IMDG Code requirements for marking, labelling and placarding be applied right from the start of the transport operation.

With regard to placarding in particular, the IMDG Code prescribes the following derogations for placarding:

- The placards and the markings on the transport units must be sea-water resistant;

- On the transport units, the UN numbers must be shown either on the placard underneath the picture symbol or on a rectangular orange-coloured plate directly near the placard;

- The proper shipping name must be shown on tank transport units and bulk containers;

- Transport units containing dangerous goods packed in limited quantities must bear the marking according to paragraph 3.4.5.5.4 of the IMDG Code, irrespective of the total gross mass of the packages being carried;

- Large containers and portable tanks must be placarded on both sides and both ends.

For carriage on Ro/Ro ships on the Baltic Sea, less stringent conditions may be applicable in accordance with the *Memorandum of Understanding for the Transport of Packaged Dangerous Goods on Ro/Ro Ships on the Baltic Sea (MoU)*. The MoU applies to transport between Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland and Sweden.

Eva Hammerschmiedová / Jochen Conrad

Updates to the CIV/CIM lists of railway lines, maritime and inland waterway services

CIV/CIM Lists of railway Lines:

Inclusion of the new railway lines (1520 mm gauge) „Halmeu - Dyakovo" (3,6 km) und „Dorneşti - Vadul-Siret" (18,8 km). Following this inclusion, the chapter Ukraine has been re-issued.

CIV/CIM Lists of maritime and inland waterway services:

None

See www.otif.org, under "Publications".

At a glance

For a brief overview of the geography of the maritime and inland waterway services...

for CIV Click here! @

for CIM Click here! @

Ayoub Elkaroubi

Difference between loss and damage to goods in the CIM UR

Title III of the Uniform Rules concerning the International Contract of Carriage of Goods (CIM – Appendix B to the Convention) specifies the liability regime for rail carriers.

Articles 29 to 32 of the CIM UR deal more specifically with issues relating to loss of and damage to goods.

Although the difference between the two terms loss and damage is quite clear in some legal systems, it appears that they can still cause problems for others in terms of differentiation and interpretation.

This article aims to establish didactically a distinction between the two terms so that a definitive attempt can be made to aid understanding as to whether there really is such a major difference between these two terms, and if so, what the difference is.

Absence of a formal definition

To begin with, there is no definition of „loss“ or „damage“ in Appendix B or in any other of the Appendices to COTIF. The Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV – Appendix A to the Convention), which also establish a liability regime for carriers in the event of loss or damage, do not define these two terms either.

It should be noted that the regime established in the Appendices to COTIF is mandatory law, so any clause aiming to reduce, limit or restrict the carrier‘s liability would be ineffective.

Nevertheless, Article 29 § 1 of the CIM UR concerning the presumption of loss of the goods in the carriage of contract by rail indicates that lost goods are goods which „*have not been delivered to the consignee or placed at his disposal within thirty days after the expiry of the transit periods*“.

According to this wording, any goods not delivered to the consignee within thirty days after the expiry of the transit periods are considered to be lost.

Total and partial loss

Article 30 § 1 makes a clear distinction between total and partial loss of the goods.

The effect on compensation and how it is calculated are nevertheless identical in practice: it matters little whether the goods have been totally or partially lost, because according to the principle governing the compensation due in the event of total or partial loss as set out in Article 30 § 1 of the CIM UR, „*in case of total or partial loss of the goods, the carrier must pay, to the exclusion of all other damages, compensation calculated according to the commodity exchange quotation or, if there is no such quotation, according to the current market price, or if there is neither such quotation nor such price, according to the usual value of goods of the same kind and quality on the day and at the place where the goods were taken over*“.

If the loss of the goods is total, the compensation will be calculated in accordance with the commodity exchange quotation, the market value or according to the usual value of goods of the same kind and quality on the day and at the place where the goods were taken over by the carrier, but always within the liability limits specified in Article 30 § 2, which prescribes that compensation may not exceed „*17 units of account per kilogramme of gross mass short*“.

If the goods have been lost, carriage is considered not to have taken place and the customer need not therefore pay the carriage charge, which is stipulated in Article 30 § 4: „*The carrier must, in addition, refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost except excise duties for goods carried under a procedure suspending those duties*“.

In terms of compensation, it matters little whether the goods have been totally or partially lost, because in the event of both total and partial loss, the carrier compensates the entire loss. However, the more delicate issue of compensation for partial loss could be raised.

Partial loss of the goods and damage: virtually identical concepts.

Although partial loss of the goods and damage might seem to be identical, it is clear that a distinction must be drawn between these two expressions, which, it must be said, often cause confusion, as they are very similar, especially considering the difference between total damage and partial damage, which is not a difference COTIF defines. In fact, most conventions only distinguish between total loss, partial loss, and damage, which simplifies matters somewhat.

Often, when the loss is partial, it may be that the reduction in the value of the goods does not correspond to the

cost of compensation. There is no difficulty if the goods can be quantified, e.g. in kilograms, as the carrier pays compensation based on the declared weight. Problems may arise when the goods carried cannot be quantified in kilograms and when their value depends largely on their integrity on the day of delivery, because if there has been partial loss as the result of damage, the goods lose all or part of their value. In this case, the rules concerning compensation in case of damage should be applied and compensation should be paid on the basis of the reduction in the value of the goods that have been partially lost or damaged.

Different types of damage

As for loss, a distinction can also be drawn between total damage and partial damage.

Generally, the term „damage" can be defined as the damage suffered by the goods.

In more precise terms, we can talk about damage to goods when their value is affected by damage which has an impact on their quality.

In addition, damage may be considered as deterioration of or damage to goods being carried, which prevents them from functioning in the appropriate condition.

Damage may also be total or partial. This concept does not really exist in the CIM UR, but there is a reference to the percentage of loss in value of the goods (Article 32 § 1, CIM UR).

Total damage is when the goods become useless, i.e. when they have lost 100% of their value, and partial damage is when the goods or articles being carried have only suffered a reduction in value.

All the examples and definitions of damage lead to a claim for compensation from the customer to the carrier in the framework of the CIM UR.

Although the CIM UR do not contain a formal definition of the word „damage", we can deduce one from the wording of Article 32 § 1, which says that „*in case of damage to goods, the carrier must pay compensation equivalent to the loss in value of the goods, to the exclusion of all other damages*".

For the CIM UR, any loss in value of the goods is equivalent to damage and this loss in value leads to a claim for compensation.

In the case of damage, the amount is calculated in the same way as for lost goods in accordance with Article 30 § 1 of the CIM UR, according to the commodity exchange quotation, the market value or according to the usual value of goods of the same kind and quality on the day and at the place where the goods were taken over by the carrier, but with the percentage loss in value of the goods established at the destination.

However, compensation in case of damage may not exceed the amount it would have been in case of total loss, if the entire consignment has lost value as a result of the damage, or the amount it would have been in case of loss of the part of the consignment that has lost value, if only part of the consignment has lost value as a result of the damage.

The carrier also enjoys liability limits for damage, as accorded by Article 30 § 2 of the CIM UR, and in addition to the compensation due in accordance with Article 32 § 1, he must also reimburse the customer the carriage charge and other costs (customs duties paid, etc.) in proportion to the percentage loss of value of the goods carried and delivered to the consignee (customer).

Exclusion from the limit of liability in case of intent

To conclude, like most conventions on maritime, road and air transport, the CIM UR include a clause of a general nature, which says that the limits of liability found in Article 30 § 2 „*do not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result*".

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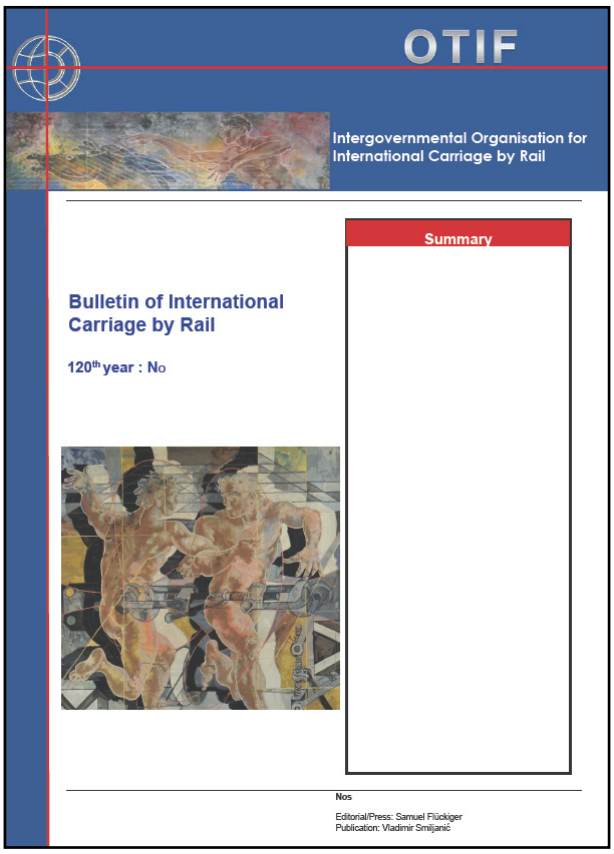

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