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by Rail

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Central Office for International Carriage by Rail,
Gryphenhübelweg 30, CH - 3006 Berne
Phone : + 41 31 359 10 10
Fax : + 41 31 359 10 11
E-mail : info@otif.org
Internet : www.otif.org

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Central Office Communications

Ratification of the 1999 Protocol

Austria and Slovenia

In application of Article 20 § 1 of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and of Article 3 § 2 of the Protocol of 3 June 1999 for the Modification of COTIF (1999 Protocol), Austria deposited the instrument of ratification of the 1999 Protocol with the Provisional Depositary¹ on 22 January 2004 and Slovenia did so on 10 February 2004.

At the time of the deposit of the instrument, Austria made a declaration in accordance with Article 2 (1) of the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV), Appendix A to COTIF, and in accordance with Article 2 (1) of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI), Appendix E to the version of COTIF in the Annex to this Protocol.

¹ According to Article 2 § 1 of the 1999 Protocol, OTIF performs the functions of the Depositary Government provided for in Articles 22 to 26 of COTIF 1980 from 3 June 1999 to the entry into force of this Protocol.

The 1999 Protocol and thus the new version of COTIF will come into force only after they have been ratified, accepted or approved by more than two-thirds of the Member States of OTIF, i.e. at least 27 States (Article 20 § 2 COTIF 1980). Slovenia is the 17th State to have ratified the 1999 Protocol.

COTIF

"Corridor I+" Project

3rd Meeting of the Core Team

Vilnius, 12 March 2004

The 3rd meeting so far of the Core Team, which was set up to prepare and implement the project, was held on 12 March 2004. The idea and rough definition of the project goes back to a meeting the Director General had with a Lithuanian delegation headed by Vice Transport Minister V. Ponomariovas on 18 October 2002 in Vilnius, subsequent to the OTIF training course in Pärnu/Estonia. Following initial specification and consultation with the participating States, with the agreement of the Lithuanian Ministry of Transport, which had declared its readiness to lead the project, the Central Office's official request to the Transport Ministers of the other Baltic States and of Poland and

Finland to support the project and to designate representatives in the planned Core Team was sent out at the beginning of February 2003.

The idea behind the project may be outlined briefly as follows:

"The question of developing and applying the instruments of COTIF (Uniform Rules within the regulatory scope of COTIF 1999) should be incorporated into the railway part of the programme for achieving pan-European Corridor I, with three aspects:

- consider an extended Corridor I into the OSZhD area, i.e. the SMGS/SMPS area (St. Petersburg region);
- describe specifically and demonstrate the obstacles to border crossing between the CIM/SMGS and CIV/SMPS areas of influence (from the point of view of transport law and, in relation to this, operations and technology);
- create the conditions required for through transport operations under the CIM regime along the whole (extended) Corridor."

Active participation by the Central Office on behalf of OTIF is justified by the special situation of the Baltic States and their railways, where there are not only a lot of crossover points in the area where the two systems, COTIF and OSZhD, overlap, but where they are also in a transitional region at the edge of the extended EU, which will no doubt be a more longer lasting situation. It may be assumed that the expected results will be of general benefit, aside from there being created an ideal "practice area" for cooperation between OTIF/CIM, CIV and OSZhD/SMGS, SMPS and the strategy of extending the sphere of influence of COTIF into the OSZhD area.

The first meeting of the Core Team was held in Vilnius in spring 2003 and led to the decision first to carry out an analysis of the situation with the help of three working groups in order to have the basic material available from which individual specific work items can be filtered out. However, this groundwork subsequently progressed rather haltingly, not just for linguistic reasons (since it had been decided that in principle, it was desirable for the project to be based on documentation in English), but because already, very different interest in the project is evident. Estonia and Finland soon withdrew to a wait-and-see position.

However, with regard to the Central Office's participation, there was no change. It was still interested and became even more so as a result of the OSZhD Committee's decision to become fully involved. It received further endorsement in connection with the Conference on international rail transport law held in Kiev in autumn 2003. The "Corridor I+" Project gained entry into the Kiev follow-up programme, which now needs to be implemented systematically, with broad participation.

Although a new, more specific start to prepare the material was launched at the 2nd meeting of the Core Team in September 2003, with a clear time target, further delays arose. In order really to have available a substantial basis and an initial assessment with a view to preparing the ongoing programme, the 3rd meeting of the Core Team was only finally able to meet on 12 March 2004, again without the presence of Estonia and Finland.

The timing of this 3rd meeting was ideal, in so far as changes in position had taken place in the more immediate environment surrounding the "Corridor I+" Project only a few days before: the CIT's key project for a joint CIM/SMGS consignment note, in line with the follow-up programme to the Kiev Conference, had been started. A tangible result should be available within a year. This will of course render corresponding efforts of their own in the context of the "Corridor I+" Project superfluous. Together with a delegation from the OSZhD Committee, OTIF's/the Central Office's participation in a plan for joint OTIF/OSZhD activities was firmed up in 2004. Here too, the "Corridor I+" Project was taken into account.

A wide range of material is now available. This provides a good overview of the problems and requirements, particularly in the area where the CIM/CIV and SMGS/SMPS legal systems overlap, in addition to a whole series of unresolved issues, e.g. with regard to the customs procedure at the new EU border or technical and operational interoperability in connection with the influence of Russia's wide gauge, which is relevant to the Baltic States.

The original aim of the initial phase of the project has thus been achieved. However, it emerged clearly that for the next phase, thorough checks must again be carried out on how the "Corridor I+" Project should really be defined within a setting which, as such, has equally become more clearly apparent, but which, for its part, obviously still requires some development.

In view of developments such as these and the suitably optimal positioning of the "Corridor I+" Project, the following standpoint seems to be correct for the Central Office:

- the rail section of pan-European Corridor I under the heading "Rail Baltica" will probably as a whole need to be subject to a more extensive and sustainable degree of organisation. Up to now, "Rail Baltica" has in fact been at the top of the list of priorities of the EU rail development projects worthy of support. In real terms however, the scheme is still at an early stage, with sub-projects being pursued primarily at national level.
- it is precisely in view of the fact that vital new infrastructure conditions on the Rail Baltica axis will still take years to happen that in parallel with the infrastructure project, an attempt should be made significantly to stimulate rail traffic on this axis. There are proposals on how to achieve this, derived from a similar initiative in respect of Corridor II, which essentially pursue the idea of a "one stop shop" for international traffic. The prerequisite for this would be a single responsible operator.

Initiatives along this line are of course not directly the business of the Central Office/OTIF. In its present phase, the infrastructure project must clearly be the responsibility of the States concerned, probably with the Polish-Lithuanian section as the first priority. The business of transport and the practical problems in setting up a one stop shop solution are the railways' affair, again with the Polish-Lithuanian section having priority.

Assuming the above, the "Corridor I+" Project can, with the participation of OTIF/the Central Office, concentrate on:

- the appropriate documentation and instruction for the railways in the Baltic States, which must be in a position to deal with CIM/CIV efficiently and accurately in day-to-day business;
- the provision of an English and Russian edition of CIT's products in this respect, in order to bring them as near as possible to the requirements of the users;
- best practice in border crossing/customs procedures ("streamlined procedures");

- particular hurdles, best practice with regard to technical interoperability, especially in the changeover from standard to wide gauge.

This is in the context of cooperation between OTIF and OSZhD and the Kiev follow-up programme and particularly as a complement to the CIT project for a joint CIM/SMGS consignment note.

The position outlined here must be firmed up and settled at a further meeting of the "Corridor I+" Project Core Team, where an attempt must also be made to get Estonia and Finland on board again. The conditions will then definitively be in place to carry out the individual pieces of work quite specifically and with clear responsibilities and an appropriate timescale. In so doing, it is hoped that where necessary, financial resources will also be available from the European Commission. The view of the Central Office is that the Core Team should continue to be led by Lithuania, who should also continue to provide the Secretariat. However, it should only coordinate the individual activities as far as necessary, each with specific organisation and funding, and prepare them to be of as much benefit as possible.

(Translation)

Dangerous Goods

Sub-Committee of Experts on the Transport of Dangerous Goods (UN/ECE)

24th session

Geneva, 3-10 December 2003

Experts and observers from 27 countries and 23 governmental and non-governmental organisations took part in the work of this second session of the new two year period 2003-2004.

Working methods

33 Official documents and twice as many INF. informal documents were on the agenda. This method of working is in itself open to criticism, because most of the informal documents are only published in English and also mostly very late. However, it does have the advantage of having to call less frequently on the translation service, as it would not be appropriate to have long proposals translated which might be rejected

straight off. Thus, when a country asks that an issue be placed on the agenda, it first submits an official document in which it sets out its intentions. It then later submits an informal document setting out proposals on the principles and asking for comments in the form of informal documents or verbally during the session, on the basis of which it will submit an official text proposal. This is why final decisions will only be taken at the 3rd and 4th sessions and why so few texts have been adopted at the 1st and 2nd sessions of the two year period.

Fireworks and ammonium nitrate emulsions

The ad hoc working group continued its work, but did not complete it with regard to the classification of fireworks. The next plenary session should be in a position to take a final decision with regard to emulsions.

Evaluation of the United Nations packaging requirements

As regards the question of whether a working group should be established to consider the technical and drafting questions set out, the Sub-Committee agreed that they should be discussed by a correspondence group open to all of its delegations and led by the expert from the Netherlands, but that all proposals for amendments resulting from the work of this group should be the subject of an official proposal to be submitted to the Sub-Committee. It could then decide whether these proposals should be considered in plenary or whether they should be entrusted to a working group.

As regards the proposal by the United Kingdom to simplify section 6.1.5 concerning tests for packagings and to introduce references to standard ISO 16104, several delegations considered that this standard was not completely in conformity with the existing requirements of Chapter 6.1 and that it was not therefore acceptable to refer to it. Certain of the proposed amendments would involve substantive modifications of the existing system of tests which had not been discussed by the Sub-Committee.

Other delegations said that they did not wish to have to comply with two similar but separate systems of tests for packagings, and regretted that the work of ISO duplicated that of the Sub-Committee. Better liaison between the Sub-Committee and the ISO TC 122 Technical Committee was desirable to ensure that ISO standards were completely compatible with the Model Regulations and to ensure that they complement the

requirements of the Regulations without either duplicating or contradicting them.

As regards the proposal by the United Kingdom and Germany to include the test requirements of Chapters 6.1, 6.3, 6.4, 6.5 and 6.6 in the Manual of Tests and Criteria, the representatives of UIC and ICCR said that it was preferable for users that all packaging requirements should be grouped, since it was not convenient to have to refer to different works. Other delegations considered that this would be an editing exercise which would require a great deal of work from the Sub-Committee, the secretariat and the modal organizations and wondered whether it was justified since the existing presentation of the requirements did not pose any fundamental problems.

Performance testing (vibration and puncture tests)

The experts from Spain and France presented the results of tests carried out respectively for punctures and vibration in packagings corresponding to approved United Nations design types, which showed that some packagings with UN markings did not pass the tests.

Opinions differed on these questions. For the puncture test, some delegations considered that the reduction of the minimum thickness of the walls of metal drums, in which materials or techniques were used enabling the packagings to resist the drop test, increased puncture risks. Others were of the opinion that puncture accidents were the result of incorrect handling.

It was pointed out that accidents due to packaging defects were extremely rare and that when they occurred they were more generally linked to a defect in the closure systems. In view of this, several delegations did not see any reason to make provision for additional tests.

For the vibration test, some delegations considered that the results produced showed that the tests to which the packagings had been subjected were not representative of normal conditions of carriage, since if they had been, far more problems of leakage or packaging deformation during carriage would be observed. Others were of the opinion that even if packagings were not subjected to vibration stresses or major repeated impacts when they were carried by rail or on motorways, they should nevertheless be resistant to vibrations and various repeated impacts under the conditions that might be encountered in maritime transport or on rough or badly maintained roads.

The Chairman said that he hoped that these questions would only be discussed in plenary on the basis of specific proposals for amendments to the Model Regulations. At the request of the expert from France, he invited all the experts and representatives of industry in possession of data concerning the vibration or puncture tests to communicate them in order to enable the experts concerned to establish test parameters and criteria and to prepare specific proposals.

Dangerous goods packed in limited quantities

The Sub-Committee took note of the report of the informal working group which had met in Ottawa from 22 to 24 October 2003 at the invitation of the expert from Canada.

The discussion had shown that there were still deeply different views between experts on how to ensure the harmonization of the different requirements currently applicable depending on the different transport modes, particularly with reference to the question of whether, in addition to dangerous goods which were totally exempted, three different categories of partially exempted goods should be taken into account, namely, limited quantities, excepted quantities and consumer commodities.

Some delegations considered that each of these categories corresponded to specific practical situations which could not be regulated in the same way. Others were opposed to this categorization which would complicate the regulations unnecessarily. It would be all the more difficult to apply the regulations in that the definition of each of the categories remained subject to interpretation.

After a lengthy discussion, the expert from the United Kingdom proposed that the working group should meet again early in 2004. The experts from France and Canada offered for their part to draft an official proposal on the basis of the results obtained by the working group up to that point.

The Sub-Committee preferred the option proposed by the experts from France and Canada. It suggested that they should prepare a text rapidly for distribution to all delegations for any comments, and, also as rapidly as possible, and well before the deadline for submission, prepare a proposal which would take account of these comments insofar as they were compatible with the conclusions of the working group. Each delegation would then be able, if it so wished, to submit further written comments or alternative proposals sufficiently in

time for such proposals to become the subject of official documents.

Harmonization with the globally harmonized system of classification and labelling of chemicals (GHS)

Several delegations considered that extending the scope of the Model Regulations on the Transport of Dangerous Goods to all GHS Category 4 substances, i.e. those with a flash point above 60°C and not more than 93°C, was not justified. This would imply checking the classification of a multitude of chemical products and reclassification with additional costs for the industry, when for example in Europe, the previous upper limit of 100°C had been lowered to 60°C in 1995 for reason of harmonization with the UN Recommendations, and this had entailed no safety problems. This extension of the scope was not adopted.

Central Office comment: however, in RID/ADR, an exception was made for diesel fuel, diesel oil and heating oil, light with a flash point of more than 61°C, but not more than 100°C, which are still considered as dangerous goods.

The Sub-Committee noted with concern that the OECD Working Group of National Coordinators of the Test Guidelines Programme had agreed to establish an OECD Ad Hoc Expert Group on Physical Hazard Characterization under the umbrella of the International Group of Experts on the Explosion Risks of Unstable Substances (IGUS). This implied that IGUS, instead of working as an independent group able to contribute to the work of the Sub-Committee as it did fruitfully in the past, would now have to work within the OECD intergovernmental structure in accordance with OECD rules of procedure and reporting.

Recalling that it had been agreed by the GHS Sub-Committee that any new issue concerning physical hazards should now be brought first to the attention of the GHS Sub-Committee who would refer it to the Sub-Committee on the Transport of Dangerous Goods for resolution, the Sub-Committee felt that the creation of such an ad hoc OECD group might result in unnecessary duplication of work and competences and in complications in the relationship between IGUS and the GHS and TDG Sub-Committees and the decision making process.

The Sub-Committee expressed the wish that the GHS Sub-Committee reaffirm that all matters concerning physical hazards would be referred to the Sub-Committee on the Transport of Dangerous Goods for resolution.

In the context of hazards to the aquatic environment, some delegations felt that since self-classification criteria had been introduced in the Model Regulations for hazards to the aquatic environment allowing the industry to classify pollutants of the aquatic environment in Class 9, under UN Nos. 3077 or 3082, it was not necessary to include additional provisions as proposed by the Netherlands. Some of them recognized that identification of the hazard to the aquatic environment was relevant for maritime transport but believed that this was superfluous for other modes since according to 2.0.1.2, many of the substances assigned to classes 1 to 9 are deemed, without additional labelling, as being environmentally hazardous. They noted that the application of the GHS criteria as reflected in Chapter 2.9 of the Model Regulations and the revision of labelling provisions accordingly was being discussed by IMO, and felt that the Sub-Committee should await the outcome of these discussions.

The Sub-Committee noted however that, according to IMO, the IMO Sub-Committee on Dangerous Goods, Solid Cargoes and Containers was awaiting the adoption by the UN Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals of a GHS marking for marine pollutants before making a recommendation to the IMO Maritime Safety Committee to consider adopting the same marking and deleting the present IMO marine pollutant mark.

Several delegations mentioned the practical difficulties encountered when trying to implement a self-classification system for environmentally hazardous substances. Contrary to substances likely to present other types of hazards, the release of any kind of chemical, industrial product or even foodstuff in the aquatic environment could be deemed as causing some potential damage to the environment, which implied that such products would all have to undergo costly tests before being transported. From the experience with the IMDG Code and RID/ADR they considered that it would be more practicable to work step-by-step with closed or indicative lists of substances identified as meeting the GHS criteria, which could be enlarged with testing experience.

It was also recalled that a number of substances of classes 1 to 9 had already been identified as hazardous to the aquatic environment by IMO and the European Community, and that since many countries were committed to implement the GHS criteria for storage and supply regulatory purposes new data would soon be available and it would also be possible to identify such substances under transport regulations.

Finally, the Sub-Committee decided by a majority vote that all substances hazardous to the aquatic environment, either falling under classes 1 to 8 or under Class 9 only, should be identified as such by a GHS label or mark under transport regulations. The expert from the Netherlands was invited to revise her proposal in the light of certain comments made, and to provide the Sub-Committee with a list of substances already identified as meeting the GHS criteria for hazard to the aquatic environment.

Substances toxic upon inhalation

The proposal from the United States to indicate in the transport document that the substance was toxic upon inhalation and the CTIF (representing firemen) proposal also to prescribe a separate label to this effect were not appreciated by the ministerial functionaries. Ensconced cosily in their offices and not confronted with hazards, they are hardly preoccupied with the health of the emergency service workers...

Procedure for incident reporting

The Sub-Committee took note of the incident/accident reporting procedures laid down in RID and ADR according to which certain incidents and accidents are to be reported by the carriers to the competent authorities of the country where such incidents/accidents occur. If necessary, the competent authority of the country concerned has to make a report to the secretariat conforming to a standardized format with a view to informing other Contracting Parties.

The Sub-Committee also noted that IMO had also developed reporting procedures for the implementation of accident/incident notifications required by the MARPOL and SOLAS Conventions and that reporting requirements had also been included in the ICAO Technical Instructions

Several experts recognized the usefulness of collecting accident statistics and reports at national level in order to determine safety gaps in the regulations. However, some doubts were expressed about the need for forwarding all reports to the United Nations secretariat, since this would constitute an administrative burden for competent authorities and for the secretariat itself, and since such reports were sometimes available on national websites. On the other hand, certain delegations felt that it would be difficult to draw conclusions from such reports and statistics if no mechanism was developed to bring them systematically to the attention of the Sub-Committee.

Various other views on the American chemical industry proposal were expressed, e.g. that carriers but also, when relevant, shippers should report incidents to the competent authorities; harmonized criteria for the reporting obligations should be developed; reports should be standardized; no dangerous goods should be excepted from the reporting obligation.

Other delegations felt that, with the number of existing reporting systems, it would be very difficult to develop a multimodal system in the Model Regulations. A simple note in Chapter 7.1.1 recommending that modal and national bodies should establish systems for receiving reports on major incidents would be sufficient.

Standardization of emergency procedures

The representative of CTIF indicated that he needed support from CTIF members, organizations such as UIC and CEFIC, and governments involved in the development and updating of the North American Emergency Response Guidebook for harmonizing information systems for first responders on a world wide basis.

It was recalled that the Sub-Committee had accepted to include the standardization of emergency procedures in its work programme in this biennium on the conditions that it should be based on the North American Emergency Response Guidebook, and that this work was relevant for the Sub-Committee to the extent it would imply modifications to the Model Regulations.

The representative of CTIF was invited to pursue his work in this respect together with interested experts and organizations and to submit specific proposals for consideration by the Sub-Committee.

Differences between the UN Model Regulations and modal regulations

The Sub-Committee expressed its gratitude to the representative of FIATA for the detailed comparison of the Dangerous Goods List of the Model Regulations and the various modal regulations (RID, ADR, IMDG Code, ICAO Technical Instructions and IATA Regulations).

It was noted however that the multitude of discrepancies underlined by FIATA did not imply necessarily problems of harmonization. Some of them resulted simply from a different presentation of entries of the dangerous goods lists in the various modal regulations for the purpose of user-friendliness or for taking account of specific modal transport conditions which are not relevant in multimodal transport (e.g. splitting N.O.S.

entries in RID/ADR for reflecting all possible cases of classification and RID/ADR tank conditions). Others had already been considered in the past biennium and should not exist any longer in the 2005 versions of modal regulations (e.g. those related to the physical state). Lastly, others had been introduced deliberately by the intergovernmental bodies responsible for modal regulations because of specific aspects to be addressed at modal or regional level.

The secretariat presented a paper explaining the reasons for all listed deviations and indicating where action could – or could not be taken – to solve the problems raised.

The representative of FIATA was invited to prepare a new document taking account of the explanations provided and listing the remaining problems after comparison of the 2005 versions of the modal regulations with the 13th revised edition of the Model Regulations and careful analysis of the actual significance of such discrepancies as regards harmonization.

Applications for consultative status

The expert from the United States asked what the criteria for granting consultative status were. A member of the secretariat explained that for non-governmental organizations which are not in consultative status with the Economic and Social Council, it was up to the Sub-Committee to decide whether an NGO could participate in its work, but the decision should take account of the principles laid down in Parts I and II of the Council's resolution 1996/31 of 25 July 1996.

The secretariat also explained that in accordance with paragraph 9 of resolution 1996/31, where there exist a number of organizations with similar objectives, interests and basic views in a given field, they may form a joint committee or other body authorized to carry on consultation for the group as a whole, and this practice had always been encouraged by the Sub-Committee. (Translation)

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

Geneva, 19-23 January 2004

26 ADR States, 10 governmental and non-governmental international organisations and the European

Commission took part in the work of this 75th session with Mr Franco (Portugal) as Chairman. This session was given over almost exclusively to approving the texts adopted by the RID/ADR/ADN Joint Meeting in 2003 and more particularly those concerning harmonization with the 13th revised edition of the UN Model Regulations.

1993 Protocol of amendment

11 years on, 12 of the 38 Member States have still not deposited the appropriate legal instrument so that the Protocol can enter into force!!!

Amendments resulting from the Joint Meeting

The Working Party approved almost all of these amendments and on its own behalf, took over most of the decisions of the RID Committee of Experts (see Bulletin 4/2003, pp. 71-73). However, it adopted a transitional provision for lithium batteries constructed before 1 July 2003 which had not been tested in accordance with the new provisions. In fact this was a matter of remedying an omission in the 2003 edition. For the new provisions concerning the chemical compatibility of the substances carried with the materials of packagings and IBCs, the Working Party also agreed to prescribe a transitional provision for packagings already constructed. Both these transitional provisions would be taken into account in RID. With regard to the alternative of indicating in the transport document either the date the transport document was drawn up or the date the goods were accepted for transport, partly to be in agreement with the Model Regulations and partly with Article 11 § 5 of CIM, the Working Party did not come round to RID because of the problems in respect of interpretation during checks. The status quo will therefore be maintained for RID, i.e. Article 11 § 5 of CIM will continue to apply.

Safety in road tunnels

(see Bulletin 2/2003, pp. 21-22)

The Working Party welcomed the Secretariat's proposal taking action on the mandate that had been entrusted to it at the previous session. Despite the difficulty of the task, this proposal was a faithful reflection of the conclusions of the Feldkirch informal working group (12-14 May 2003) and provided a user-friendly transposition to ADR, while opening up the prospect of restrictions other than those concerning travel through road tunnels, with a view to the harmonization and facilitation of traffic.

The representative of Switzerland said that his country was particularly concerned about the issue of the safe carriage of dangerous goods in tunnels. While appreciating the difficulty of the task undertaken by the Secretariat, and noting that the result was based on the Working Party's decisions at its last session, he reiterated his reservations concerning the conclusions of the Feldkirch informal working group and the approach recommended by OECD/PIARC. In particular, no text should be added to Chapter 1.9. In his opinion, and bearing in mind the experience of the emergency services in Switzerland, the OECD/PIARC approach, based on three principal hazards (explosion, leaks of toxic gases and fire) was too simplistic; account should be taken, for example, of the hazards of non-toxic corrosive substances, particularly their reaction with water. In addition, the assignment of dangerous goods to the OECD/PIARC groupings as recommended by the Feldkirch group did not seem sufficiently complete to him; the experiences of accidents in the Mont Blanc and St. Gotthard tunnels had shown that any combustible material, and not only flammable substances of packing groups I or II, presented a fire hazard. In the same vein, he considered that it should also be possible to restrict the access of dangerous goods packed in limited quantities to tunnels. In his opinion, each country should retain its authority in that regard.

The representative of IRU said that the existing situation, where each restriction was decided nationally or locally without any systematic decision-making logic, was not tenable and was a major and unjustified obstacle to international transport operations. She accordingly welcomed the prospects of harmonization offered by the conclusions of the Feldkirch working group and the Secretariat's proposal.

The Working Party agreed that the issue was complex and required further reflection. Another session of the working group on tunnels should be scheduled rapidly in order to consider the various documents submitted on the basis of a mandate to be defined at the next session. The representative of Switzerland offered to organize the new session, if necessary.

Programme of work

The Working Party adopted the draft programme of work for programme activity "02.7 TRANSPORT OF DANGEROUS GOODS" as prepared by the Secretariat for the period 2004-2008 for submission to the Inland Transport Committee.

It was noted that the section concerning the ad hoc meeting of experts on the follow-up to implementing the

Convention on Civil Liability for Damage caused during the Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD) came exclusively under the Committee's prerogatives; the Working Party accordingly abstained on this section.

The Working Party noted the proposal by the Government of the Netherlands, supported by the representative of Germany, to cancel the May 2004 session. It would in any case be too late to adopt amendments entering into force in 2005, and there would still be three sessions in 2004-2005 for the 2007 amendments.

Some delegations noted that this proposal had been justified at the time of drafting, but that since then several new proposals for amendments had been submitted as informal documents. In addition, some 10 official proposals had not been discussed under agenda item 5 (b) (Miscellaneous proposals) owing to lack of time at the current session. Lastly, the question of the carriage of dangerous goods in tunnels was of particular political importance. If the mandate of the informal working group on tunnels could not be discussed until November 2004, it would not be possible for the working group to meet before and there would then be a risk that the issue could not be settled for 2007.

With reference to the proposal by Belgium to decide systematically to cut back the number or the length of future meetings, several delegations considered that it would be preferable, rather than envisage any cuts systematically, to consider them on a case-by-case basis before each biennium, depending on the programme of work scheduled.

The Working Party finally decided by a large majority that the May 2004 session would be maintained, but that the last two days of the week could be devoted to work on tunnels at a subsidiary expert level once the mandate had been defined in plenary. This would make it possible to ensure increased participation by interested countries and avoid the additional costs of travel for an informal group meeting elsewhere.

Amendments for 2005

The Working Party requested the Secretariat to prepare a checklist of all the amendments it had adopted for entry into force on 1 January 2005 so that they could be made the subject of an official proposal, in accordance with the procedure of Article 14 of ADR, that the Chairman, as was customary, would be responsible for transmitting to the depositary through his Government. The notification would have to be issued on 1 July 2004

at the latest, with a reference to the scheduled date of entry into force of 1 January 2005.

The Working Party also requested the Secretariat to publish the consolidated text of ADR as amended at 1 January 2005 sufficiently in advance to prepare its effective implementation before the entry into force of the amendments in question.

(Translation)

UIC "Carriage of Dangerous Goods" Group of Experts

Barcelona, 3/4 March 2004

At this meeting, the Group received information concerning the following international meetings:

- UN Sub-Committee of Experts session (December 2003, see p. 3);
- 40th session of the RID Committee of Experts (November 2003, see Bulletin 4/2003, pp. 71-73).

In respect of this 40th session, the Group considered that with regard to the new staff training provisions, the networks must check whether the present training needs to be adapted to the new provisions. In addition, the Group considered that staff training should apply to the other parties involved, such as fillers, especially those filling tanks, because in Germany, there were guidelines issued by the German chemical industry. Such training should be envisaged in association with IRU and CEFIC.

In the context of the Working Group on standardized risk analysis, set up by the RID Committee of Experts to look at the new Chapter 1.9, "Restrictions on Carriage imposed by the Competent Authorities", the Group decided that UIC would be represented by several experts in this field (Railion Netherlands, Swiss Railways and Railion Germany). As the UIC Group of Experts was of the view that the idea of an "unacceptable risk" had not been based on actual facts, but on approximate and exaggerated hypotheses which did not reflect reality, it had taken the initiative to send the networks a questionnaire on the serious accidents that have occurred over the last few decades and that are a determining factor for risk analysis. It was on this basis that a standard could be defined, and not on hypotheses that had been used in certain States. The questionnaire would cover the most dangerous groups of substances (gases and flammable and/or toxic liquids).

With regard to the carrier's obligations in relation to the checks the departure network has to perform, the Group adopted the revised version of UIC leaflet 471-3 O, which is referred to in RID, bearing in mind the new provisions adopted by the RID Committee of Experts for the 2005 edition of RID.

(Translation)

Co-operation with International Organizations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Inland Transport Committee (ITC)

66th Session

Geneva, 17-19 February 2004

OTIF was represented at the 66th session of the Inland Transport Committee, which was held in Geneva from 17 to 19 February 2004.

Apart from holding a Round Table on Intelligent Transport Systems, the session was marked by lengthy discussions concerning the resolution on facilitating international road transport and the issuing of visas to professional lorry drivers, which were highly sensitive matters, particularly for the delegation of the Russian Federation. As a result, discussions on certain items of the agenda had to be extremely limited.

The Inland Transport Committee adopted the recommendations of the ad hoc Multidisciplinary Group of Experts on Safety in Tunnels (rail). Furthermore, the Committee noted the EU Railway Safety Directive currently before the European Parliament, and bearing in mind the importance of the Group's work for the safety of railways in the UN/ECE region, recommended that the Group should continue its work, considering such issues as various risk analysis methods as well as other relevant railway tunnel safety aspects.

With regard to rail transport, the Inland Transport Committee approved the arrangement with ECMT (see Bulletin 4/2003, p. 74). The Committee also welcomed the OSZhD initiative to advance the preparation of an international meeting on border crossing in railway transport with the widest possible participation, notably

of Governments, railway undertakings, customs, police, OSZhD, OTIF and UIC.

The Inland Transport Committee also endorsed the proposed new title and scope of work of the Working Party on Intermodal Transport and Logistics (formerly the Working Party on Combined Transport) as well as the proposed cooperative arrangements with ECMT. The Committee also decided to prolong the mandate of the ad hoc expert group on civil liability regimes for one year. It strongly endorsed the decision of the Working Party to monitor closely all activities undertaken in this field, in particular by UNCITRAL, and recommended carrying out enquiries on the appropriateness of civil liability regimes governing European transport operations.

With regard to the facilitation of border crossing, the Inland Transport Committee was informed of the approval in principle in February 2004 by the Working Party on Customs Questions affecting Transport of the final text of the draft Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes. The Committee noted that the draft Convention would be submitted for adoption by the Committee at its 67th session in February 2005. Lastly, the Committee endorsed the recommendation of the Working Party that in the interim period, the countries concerned should already make use of the facilitation measures contained in the Convention.

With regard to the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Waterway (CRTD), the Inland Transport Committee congratulated the ad hoc Meeting of Experts on the progress made, but noted that participation in the work had remained rather low (see Bulletin 4/2003, p. 74). The Committee considered that it would be premature to adopt the revised text of CRTD. However, the Member States were invited to study the new text and to conduct informal consultations, notably with those States who had expressed the most interest in the draft. The matter could be looked at again if necessary. The mandate of the ad hoc Meeting of Experts was not renewed.

(Translation)

Working Party on Intermodal Transport and Logistics

Paris, 25 March 2004

As already reported, this meeting was held jointly with a session of ECMT's working party of the same name at the OECD headquarters in Paris, in order to make appropriate use of the synergies in accordance with the decision of the two organisations. A representative of the OTIF Secretariat also attended this meeting as an observer.

The agenda included items on developments in the European Agreement on Important International Combined Transport Lines and Related Installations of 1 February 1991 (AGTC) and on the problem of the ever greater dimensions and ever increasing weight of loading units used in intermodal transport.

The Working Party decided to prolong the mandate of the *ad hoc* expert group on civil liability regimes and to continue to monitor closely the work on a draft instrument on the international carriage of goods (by sea) being carried out by UNCITRAL's Working Group III (Transport Law).

In addition, please refer to the report of the meeting of ECMT's working group of the same name.
(Translation)

European Conference of Ministers of Transport (ECMT)

Railways Group

Paris, 14 January 2004

In the light of knowledge gained in 2003, ECMT's jubilee year (see Bulletin 2/2003, p. 27/28), it was a matter of course that the Director General would attend this meeting. Not only were two subjects of particular importance for OTIF on the regular agenda, i.e. the Group's medium term programme and its future work with the UN/ECE ITC's Working Party on Rail Transport, but also an event of quite particular significance had been included, as the result of an OECD/ECMT inquiry on the reform of Russian Railways was to be presented and discussed in the presence of a high-ranking Russian delegation.

An interim report on the peer review of the reform of Russian Railways had already been made at the Group's meeting in June 2003 (see Bulletin 2/2003, p. 28). The final draft report was now available (CEMT/CS/CF/2004/1: Review of regulatory reform of Russian Railways) with Appendices providing supplementary fundamental information on the problems surrounding access to the network and experiences of reform in the Europe of the EU. To begin with, the Russian delegation gave a concise and impressive presentation on the position at the outset, the aims and concept of the reform of Russian Railways, both from the perspective of the new undertaking, "Russian Railways" RZD (Mrs. A. Belova), which has been in existence since 1 October 2003, and from the perspective of the Ministry of Transport (Mr. A. Kolik). The presentations and comments made clear the major significance the railways have for Russia (not only in the transport sector, but also to a much more far-reaching extent in the economic, social and political context). On the one hand, this requires a carefully phased, sustainably supported process, even if on the other, there is clearly a will to face the modern challenges and to achieve the pace they require.

Freight transport is of particular importance, where the aim of opening up a free-market economy, ultimately with a global perspective, is undisputed and where step by step the conditions are to be put in place to make Russian Railways fit for competition. In so doing, transparency in costs and funding and a market driven tariffs policy are the most urgent issues. Removal of an independent railway undertaking from the State administration has already been completed. However, its infrastructure remains integrated and under the controlling influence of the State, which has to ensure that the railways can retain their complex and significant role as far as possible. The separation of infrastructure and transport into independent undertakings is therefore not on the agenda for the time being. From the discussion, and from various experiences worldwide, it can nevertheless be seen that different models are possible with regard to the question of separation, and that it is not essential to follow with an ideological credo the European model of horizontal separation as being the only consequential solution for reform. The reform of Russian Railways also has the task of forming a functioning whole out of the former 17 practically independent railways, which would appear to be a task of almost heroic proportions. It is probably not wrong to compare this with the EU's task of harmonizing its Member States' systems, which have until now been strongly characterized by national features, although the problems surrounding interoperability are probably less compelling in Russia.

From the standpoint of the OECD/ECMT study, Russia is well on the way in a process which is quite obviously of great importance, not just for Russia herself, but also for the EU and the entire Eurasian region respectively. In accordance with the role and remit of OECD, the study focussed particularly on the market economy aspect of the reform. It draws three main conclusions:

- above all, the reform process must first achieve flexibility;
- the greatest attention must be paid to cost transparency;
- the process should be carried forward consistently and vigorously, as introduced.

Conclusions can also be drawn from OTIF's perspective. With its reform process, Russia should in fact gain new interest in OTIF/COTIF – COTIF 1999, of course. It seems to be the right time to take up the subject of a "made-to-measure" accession again and following the meeting, initiatives have already been taken accordingly. It should be mentioned that this concerns a central point of OTIF's strategy for the future, which is to pursue increased and formalized cooperation with OSZhD which on the one hand, will ensure a *modus vivendi* in dealing with the different systems of transport law that is suitable for current requirements, and which on the other will not in the long term neglect the aim of harmonization. Despite this however, attempts should also be made in the OSZhD area to procure new members for OTIF in order to enlarge the area where the two systems intersect and the area in which the COTIF system, particularly CIM, can be used directly.

For OTIF and for the Central Office, the ECMT Committee of Deputies' three year programme is of great interest as a whole and specifically in respect of the part of it concerning railways. It shows which issues concerning the State level multilaterally the Railways Group wishes to look at in more detail. A welcome new feature is that by means of "back to back" meetings under the same chairmanship, there will be coordination with the UN/ECE Working Party on Rail Transport. The necessary decisions have now been taken.

OTIF deems it important to be considered in the correct light, i.e. as an intergovernmental organisation at the same level as ECMT, also incidentally with a similar geographical basis, and not just as any international organisation. In the coordinated activities of the two railway groups, the role, remit and aims of OTIF can be brought in more clearly and consistently. Following the

ECMT jubilee in 2003, this standpoint was once again conveyed to the Secretary General of ECMT in a letter at the end of the year.
(Translation)

Working Party on Intermodal Transport and Logistics

Paris, 24 March 2004

In accordance with the agreement concluded between ECMT and UN/ECE on the use of synergies between each of these organisations' working groups, the meeting of the ECMT working group took place at the OECD headquarters immediately before the 40th session of UN/ECE's WP.24, "Intermodal Transport and Logistics". In many cases, the delegations at the two meetings were in fact the same. A representative of the OTIF Secretariat also attended the meeting as an observer.

In addition to discussions on ongoing activities, particularly monitoring the implementation of Resolution No. 2002/2 concerning combined transport, which was adopted in Bucharest on 30 May 2002, the agenda included items on, *inter alia*, the work programme for the three year period 2004-2006, the definition of the term "logistics" and matters of container transport security in relation to terrorist acts.

The representative of the OTIF Secretariat had the opportunity of presenting developments in connection with his Organisation, including, amongst other things, the European Community's accession to OTIF and the accession of the Ukraine, which took effect on 1 January 2004, as well as the work in connection with the Rail Protocol to the Cape Town Convention. He also reported in depth on the work on a draft instrument on the international carriage of goods (by sea) being carried out by UNCITRAL's Working Group III (Transport Law). The need for the land modes (rail, road and inland waterways) to be suitably represented in UNCITRAL's negotiations was highlighted, since the instrument being planned is also to apply to door-to-door transport operations where part of the operation is carried out by sea.

The ECMT Working Group again decided to hold its autumn 2004 session jointly with the UN/ECE's Working Party of the same name at the end of September (27-29 or 30.9) on the occasion of a seminar on multimodal transport in Kiev.

In addition, the opportunity arose for extensive contact with Government delegations and with those from the international organisations that were represented.
(Translation)

Organization for Railways Cooperation (OSZhD)

OTIF – OSZhD Meeting

*Warsaw, 17 December 2003, and
Berne, 10 March 2004*

An initial meeting between the Director General of the Central Office and the OSZhD Committee took place on 17 December 2003 in Warsaw to put the handling of the "OTIF-OSZhD Common Position" in concrete terms (see Bulletin 1/2003, p. 6 and 2/2003, p. 31). A document prepared by the OSZhD Committee, entitled "Plan for OTIF and OSZhD joint activities in 2004 (put together on the basis of the 2004 work plans of the OSZhD Commissions and proposals from OTIF)" was used as a basis. It had also to be taken into account that the Joint Declaration of the Conference on International Rail Transport Law held in Kiev on 21 and 22 October 2003 (see Bulletin 4/2003, pp. 81 to 85) calls for increased cooperation with OSZhD.

Based on the outcome of the discussion in Warsaw, another meeting was organized at OTIF's headquarters in Berne. This followed on from a meeting organized by the International Rail Transport Committee (CIT), which was also attended by two representatives of the OSZhD Committee, on the subject of a single CIM/SMGS consignment note. The basis for the CIT meeting was a mandate which is also contained in the Kiev Joint Declaration and which is included in the follow-up programme to the Conference. It had already been decided in Warsaw to set up a standing joint working group to coordinate the activities in the common interest, and the composition of the group was decided at this second meeting. Participation by representatives of OTIF was specified on the basis of the "Plan of joint activities".
(Translation)

International Rail Transport Committee (CIT)

CIT Training Courses

Each month from January to April 2004, CIT organized several training courses in order to familiarize both cadre personnel and practitioners from rail transport undertakings with the revised COTIF and the CIT documents that have been prepared in connection with it. One course in French and one in German was held for cadre personnel and two courses in each of these languages were held for practitioners.

As the representative of OTIF, Dr. Mutz gave a presentation on the Organisation, providing mainly an overall view of COTIF 1999. Extensive written papers on these presentations were made available in German, French and English to those attending the courses. It would appear that managers and employees of rail transport undertakings are only gradually becoming aware of what a significant adjustment the new COTIF will mean for the railways in most fields. Although 17 instruments of ratification have so far been deposited with the Depositary, it is still not possible to say exactly when COTIF 1999 will enter into force, but it is expected to come into force at the beginning of, or during 2005. It is hoped that the estimated date for COTIF to enter into force of 1 January 2005 will pertain.

(Translation)

Directors General of Middle East Railways (DGMO)

16th Meeting of the DGMO Group

Dammam (Saudi Arabia), 19/20 January 2004

The DGMO Group comprises the railways of Turkey, Iran, Iraq, Jordan, Syria and Saudi Arabia. The Central Office is regularly informed about the DGMO meetings, but does not usually participate. It is agreed that the Central Office will make itself available, but only if obviously necessary. The DGMO Group is an important component of UIC's "World Division" led by Mr. V.C. Sharma. According to UIC's description, it is a so-called "limited application group". The idea is to offer a special service for the railways of the Middle East (particularly with a view to UIC's efforts at harmonization and harmonizing standards, with the emphasis on infrastructure development, bilateral and multilateral) and this at a representative level where

decision-making competence can also be directly reached.

In the last two years, UIC has undertaken some significant groundwork, concerning which detailed information based partly on recently produced reports detailing the outcome was presented for the first time at a preparatory meeting in mid November 2003 in Paris:

- A database as the basis for an infrastructure master plan ("Infrastructure Atlas, Version January 2002");
- Middle East Railway Data Centre, realisation plan November 2003;
- Investigation concerning the use of the road rail as a possible suitable form of combined transport for this area.

There are some interesting aspects concerning the background and approach:

- The situation of the majority of the individual railways in the Middle East is very difficult. There is a large discrepancy between the railways in Iran and Turkey on the one hand and those in the other countries on the other. UIC therefore recommends changing from a national to a regional perspective (both with regard to infrastructure and to operations, including maintenance) in order to integrate the "smaller railways" with optimum support. The Middle East Railway Data Centre is to be an important step in this direction.
- In international passenger transport, pilgrims play an especially central role, with streams of pilgrims also coming from the Islamic States of the former USSR. The coexistence of CIV and SMPS on the lines in question is therefore of significance, unless only SMPS is generally applied. It should be recalled that Iran is a Member of both OTIF and OSZhD. Turkey is also considering membership of both organisations.
- The potential for freight traffic in international rail transport is mainly evident in connection with the region's ports and presumably therefore in container transport. This shows immediately the key position Iraq has, where there is great interest in reconstructing the railways and incorporating them again into the region's rail system.

- Other countries in the Middle East are in principle in the COTIF area. The more development of this area is discussed, with a certain overall view, the more important it is for OTIF and COTIF to be present and to try to highlight the benefit of COTIF and to adapt it to the needs of this area – particularly, in addition, in the context of Vilnius. Part of this is of course the consolidation of membership. In particular, Egypt, but also Saudi Arabia, Jordan and Libya as the connecting partner towards the Maghreb, are potential candidates for accession.

In the light of the information presented at the preparatory meeting in Paris, the decision was taken to attend the next regular DGMO meeting in Dammam in January 2004 and to make a well prepared contribution there in the context of the programme, which should primarily be given over to a review of the potential for development and suitable steps towards exploiting it.

At the meeting, it was firstly a matter of making the participants aware of OTIF; most of them had no previous knowledge about the organisation. At the end of the meeting, a considerably better understanding remained. It was possible to use the planned OTIF/UACF training course in Cairo for the Arab States as a very welcome "selling point", with the recognition that Iran and Turkey should also be included in the group of States/railways to be invited.

UIC does in fact provide groundwork and makes expert and organisational support available. For the rest though, the participating railways are themselves responsible and required to implement decisions taken. The head of one of the participating railways and his staff assume leadership of the Group by turns. For the last four years, the Group has been led by Mr. Mohammad Iyad Ghazal, Director General of Syrian Railways. At the end of the meeting, it passed to Mr. Khalid Hamad Alyahya, President of the "Saudi Railway Organization". This brings an interesting development into play: Saudi Arabia, with its own specific plans to develop its railways (mainly a new line between Ryad and Jeddah), which will open up future potential for the development of the rail network and rail transport in the region, is assuming responsibility for leadership at regional level.

At this regional level, the Group took some ambitious but very specific decisions at its 16th meeting, with clear guidelines regarding a timetable. It resulted in a programme which contains not merely declarations of intent, although the investment plans included are, by their nature, subject to a lot of uncertain factors.

Committed leadership of the DGMO Group will undoubtedly be able to make a contribution to the chances of implementing decisions. The general situation at the outset seems to be favourable, not least because transport policy in the DGMO Group area as well acknowledges a more prominent role for the railways.

Sustained support from UIC at different levels will be essential. Its new orientation with a more global outlook will help it. COTIF/OTIF too will be able to make a contribution in the longer term. The future orientation of OTIF and that of UIC match. With the EU's accession to COTIF, in line with a role of OTIF increasingly as an instrument beyond the extended EU over as wide an area as possible with uniform legal rules for international rail transport, it will be possible to improve the support OTIF provides even more. One aim, particularly in the technical field, should be to use the concentrated power of the EU institutions through the OTIF organs broadly as a "drive belt".

In the short term and with the scope the Central Office has, which for the time being is limited, attention should be focussed fully on the 2004 training course to be held together with UACF from 22 to 26 November 2004 in Cairo. Meanwhile, the experiences with Dammam have enabled us to refine the course programme, taking into account the future requirements of the region that are on the horizon. A successfully held course will allow specific next steps to be taken towards bringing the States concerned in the region which are not yet members of OTIF (Saudi Arabia, Egypt, Jordan, Libya) nearer to thinking about membership.
(Translation)

Case Law

Bundesgerichtshof (Germany)

Ruling of 26 June 2003¹

"Other amounts incurred in connection with carriage of the lost goods" within the meaning of Article 23 (4) of CMR and Article 40 § 3 of CIM only include such expenses as would also have been incurred to the same extent in carriage

according to contract and which would have contributed to the value of the goods at the place of destination, i.e. which have not been incurred as the result of loss.

Cf. Article 40 § 3 of CIM.

The facts:

The plaintiff is the insurer of M. GmbH (hereinafter referred to as the insured party), which manufactures cigarettes in Germany. She is claiming from the defendant, D. AG, under transferred and assigned law, as a result of the loss of duty unpaid cigarettes, the refunding of, inter alia, tobacco duty.

Between 1995 and 1997, the insured party sent duty unpaid cigarettes to a French consignee under the tax suspension procedure. For intra-Community consignments under tax suspension, cigarettes manufactured in Germany are brought from a tax warehouse to undertakings of authorized consignors in other Member States. The tax liability for the tobacco goods comes into being when they are accepted into the undertaking of the authorized consignor, who then becomes the person liable to pay the tax. If the tobacco goods are withdrawn from the tax suspension procedure during transport, the consignor is liable to pay the tax.

In the period between October 1995 and August 1997, cigarettes were stolen eight times during transport to France. The defendant paid part of the tobacco duty the insured party incurred thereby, for reasons of goodwill. The plaintiff reimbursed the outstanding tax to the insured party – with the exception of the excess.

The plaintiff was of the view that the defendant was also obliged, in accordance with Article 40 § 3 of CIM, to reimburse the outstanding tobacco duty incurred by the insured party as a result of the theft of the cigarettes.

The defendant opposed this.

The court of first instance found against the defendant as claimed. The court of appeal dismissed the claim in respect of the tobacco duty.

With the appeal, which the defendant applied to have dismissed, the plaintiff pursued her claim for the defendant to be ordered to reimburse the tobacco duty she had paid, in the sum of 279,889.53 DM plus 947,283 FF and a further 91,523.10 DM, including interest in each case.

¹ I ZR 206/00; first instances: Landgericht Berlin, ruling of 29 July 1999, and Kammergericht Berlin, ruling of 11 August 2000, see Bulletin 2/2001.

Grounds for the ruling:

- I. The court of appeal denied the defendant's obligation to reimburse the tobacco duties to the plaintiff imposed on the insured party by the French tax authorities as a result of the removal of the cigarettes from the tax suspension procedure. The court's grounds were as follows:

The tobacco duty was not to be reimbursed in accordance with Article 40 § 3 of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM). According to this provision, the railway had refund carriage charges, customs duties and other amounts in connection with carriage of the lost goods. Tobacco duty did not form part of the amounts incurred "in connection with carriage of the lost goods", as it had arisen as a result of the cigarettes being stolen. Tobacco duty was part of the consignor's consignment risk. The consignor could protect himself against this either by declaring a special interest in accordance with Article 46 of CIM or by concluding a special insurance policy.

In so doing, the court accepted that the development of the railways' freight liability law away from liability for the full value of the goods at the place of delivery, towards the value of the damaged or lost goods at the place of consignment meant that the objective of reducing the railway's risk of loss or damage could be acknowledged. The consignor then justifiably should have received a claim for reimbursement of those expenses that he had incurred in connection with carriage. Because the aggrieved party did not receive the full value at the place of consignment if he had to pay the carriage charges, customs and other costs himself, as these amounts decreased the value of the goods. Starting out from this position, only those customs duties, carriage charges and other amounts in connection with carriage are refundable which contributed to the goods achieving a higher value at the place of delivery. Expenses due to damage did not therefore have to be reimbursed, because – untypically – they did not increase the delivery value. However, the tobacco duty due as a result of the cigarettes being removed from the tax suspension procedure does in fact constitute costs due to damage. It does not therefore – unlike, for example, an import turnover tax, which has to be paid in every case – form part of the amounts paid "in

connection with carriage of the lost goods" within the meaning of Article 40 § 3 of CIM.

- II. This ruling holds against the charges of the appeal.

The Court of Appeal denied without legal defect a claim by the plaintiff under Article 40 § 3 of CIM in conjunction with § 67 (1) of the German Insurance Contract Act (VVG), § 398 of the German Civil Code (BGB) for reimbursement of the sums of tobacco duty the insured party incurred from the French tax authorities as a result of the removal of cigarettes from the tax suspension procedure.

1. According to Article 36 § 1 of CIM, the railway is in principle liable for loss or damage resulting from the total or partial loss of, or damage to, the goods between the time of acceptance for carriage and the time of delivery. The losses in this case occurred during this period.
2. The level of compensation to be paid in the event of loss is determined under Article 40 of CIM. According to Article 40 § 1 of CIM, in the event of total or partial loss of the goods the railway 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 normal value of goods of the same kind and quality at the time and place at which the goods were accepted for carriage. The contents of this provision therefore correspond broadly to the rules contained in Article 23 (1) and (2) of CMR.

The Court of Appeal denied refundability of the tobacco duty paid by the insured party in accordance with Article 40 § 1 of CIM, because the market price for the cigarettes removed from the tax suspension procedure did not incorporate the tax in question. This means an error in the law cannot be recognized and is also not objected to in the appeal.

3. In addition to the value of the goods, according to Article 40 § 3 of CIM, the contents of which correspond to Article 23 (4) of CMR, the railway must also refund carriage charges, customs duties and other amounts incurred in connection with carriage of the lost goods. In the literature and case law, it is contentious as to which costs fall

under the "other amounts incurred in connection with carriage of the lost goods".

- (a) It is broadly agreed that costs incurred before the carrier accepted the goods are in principle not to be refunded, because they have already been reflected in the consignment value of the goods (cf. Koller, *Transportrecht* (Transport Law), 4th edition, Art. 23 of CMR, marginal 10; *Münchener Kommentar Handelsgesetzbuch* (Munich Commentary Commercial Code)/Basedow, Art. 23 of CMR, marginal 33; *Münchener Kommentar Handelsgesetzbuch* (HGB)/Mutz, Art. 40 of CIM, marginal 8; Herber/Piper, Art. 23 of CMR, marginal 26; Helm, *Frachtrecht* (Freight law) II, CMR, 2nd edition, Art. 23, marginal 19). Thus Article 40 § 3 of CIM/Article 23 (4) of CMR only covers such costs as arise after carriage has begun and which have not yet therefore increased the value of the goods at the place where they are accepted for carriage.
- (b) With regard to the latter costs, the view is held that in accordance with Article 23 (4) of CMR and in accordance with Article 40 § 3 of CIM, as this provision has the same regulatory content as the CMR provision, they are reimbursable if they were closely related to the actual transport operation. It is immaterial as to whether the party to be compensated had paid them in view of the transport operation running according to contract or whether they would only have arisen as a result of the transport operation not running according to contract. This view, which is especially held in France, Great Britain and Denmark, but also in other countries (see evidence in the *Münchener Kommentar HGB*/Basedow, Art. 23 of CMR footnotes 138-141) is substantiated mainly by the imprecise fixing of the correlation (shall, in addition refund carriage charges, customs duties and other amounts incurred in connection with carriage of the goods...) between the costs and the transport operation (cf. *Münchener Kommentar HGB*/Basedow, Art. 23 of CMR, marginal 37).
- (c) According to another (more narrow) view, only such costs in accordance with Article 23 (4) of CMR are to be reimbursed which

would likewise have arisen in the event of carriage according to contract and which would have contributed to the value of the goods at the place of destination, i.e. which did not arise as a result of loss or damage (cf. Bundesgerichtshof ruling of 13.2.1980 – IV ZR 39/78, *Versicherungsrecht* (Insurance Law) 1980, p. 522, 523 = *Neue Juristische Wochenschrift* (NJW - New Legal Weekly) 1980, p. 2021; Oberlandesgericht, Munich, *Transportrecht* (Transport Law) 1991, p. 427, 428; Koller, reference as above, Art. 23 of CMR, marginal 10 with further evidence; Helm, reference as above, Art. 23, marginal 18; *Münchener Kommentar HGB*/Basedow, Art. 23 of CMR, marginal 38; Herber/Piper, reference as above, Art. 23, marginal 26; Piper, *Höchststrichterliche Rechtsprechung zum Speditions- und Frachtrecht* (Supreme Court Case Law on Forwarding and Freight Law), 7th edition, marginal 425).

- (d) In principle, the Senate (≈ appeals court) shares the view advocating a narrow interpretation of Article 23 (4) of CMR.

The liability rules of Article 23 (1) to (4) of CMR, like those of Article 40 § 1 to 3 of CIM distinguish between the damage caused by the loss of the goods and the consignor's/consignee's costs in connection with carriage. In accordance with Article 23 (1) and (2) of CMR, Article 40 § 1 of CIM, damage or loss is compensated by refunding the value and – according to the explicit prohibition of Article 23 (4) of CMR and Article 40 § 1 of CIM – nothing else. Above all, consequential costs, which include all charges arising as a result of loss or damage, are not reimbursed. In principle, the loading side of the operation bears the risk for this, including the risk of lost profit or lost output on the part of the consignee (cf. *Münchener Kommentar HGB*/Basedow, Art. 23 of CMR, marginal 38).

This narrow interpretation of Article 23 (4) of CMR (Art. 40 § 3 of CIM) may indeed mean there will be gaps in the payment of compensation, because according to Article 23 (1) and (2) of CMR (Art. 40 § 1 of CIM), only the commodity exchange/

market price/normal value of the lost goods will be reimbursed. However, this interpretation corresponds both to the wording and to the limited purpose of Article 23 (4) of CMR. Only "other amounts incurred in connection with carriage of the lost goods" are refundable. This wording means that these must be costs that would also have been incurred if the transport operation had been carried out according to contract (cf. Helm, reference as above, Art. 23, marginal 18; Herber/Piper, reference as above, Art. 23, marginal 28).

If the consignor of the goods lays emphasis on the carrier's liability for material consequential damages not covered by Article 23 of CMR (Art. 40 of CIM), he has the possibility – as the court of appeal correctly pointed out – in accordance with Article 26 of CMR (Art. 46 of CIM) of declaring an interest in delivery (*Münchener Kommentar HGB*/Basedow, Art. 23 of CMR, marginal 38; Herber/Piper, reference as above, Art. 23, marginal 9).

4. On the basis of this legal starting point, the court of appeal rightly assumed that the tobacco duty paid by the insured party constituted costs incurred as a result of loss, the refundability of which was not covered by Article 40 § 3 of CIM. The cigarettes carried under the tax suspension procedure (§§ 15 to 17 of the *Tabaksteuergesetz* (Tobacco Duty Act)) were put into circulation as a result of theft during transport. According to § 18, paras. 1, 3 and 4 No. 1 of the Tobacco Duty Act, the insured party thereby becomes the taxpayer. If the transport operation had proceeded according to contract, the costs in question would not have been incurred. It is therefore a matter of costs incurred by the loss itself, which in accordance with Article 40 § 3 of CIM (Art. 23 (4) of CMR) are not refundable (Herber/Piper, reference as above, Art. 23, marginal 39 concerning the payment of taxes due to loss of goods carried under the tax suspension procedure and removed from the procedure as a result of theft; also Piper, reference as above, marginal 425).

The appeal cannot be endorsed on the grounds that it was not the theft, but transport itself of the cigarettes under the tax suspension procedure

which caused liability to tax, because during transport, the goods had been latently subject to taxation. The appeal does not take sufficient account of the fact that carriage of the goods under the tax suspension procedure does not present a case of tax accrual. In the transport of tobacco goods under the procedure in accordance with §§ 15 to 17 of the Tobacco Duty Act, the tax in accordance with § 8, para. 1 No. 2 of the Tobacco Duty Act is in the first instance suspended and therefore has not yet been incurred. In this case, the cigarettes were consigned in accordance with § 16, para. 1 No. 2 of the Tobacco Duty Act, so that § 8, para. 1 No. 2 of the Tobacco Duty Act applies. In such a case, the tobacco duty does not therefore arise as a result of carriage, but as a result of the fact that the cigarettes were removed from the tax suspension procedure during transport (§ 18, para. 1 of the Tobacco Duty Act).

- III. Accordingly, the appeal with the cost consequence under § 97, para. 1 of the *Zivilprozessordnung* (Code of Civil Procedure) had to be rejected.

(Direct communication)
(Translation)

Central Office remarks:

In past years, the case law of the OTIF Member States' courts has dealt differently with the question as to whether excise duties incurred by the consignor have to be refunded in the context of compensation for loss of the goods if the goods are stolen during transport. In so doing, the courts have not always followed the aim of the legislator (see Bulletin 3/1998, 1/2001 and 2/2001).

This question has also several times been the subject of requests for information addressed to the Central Office. The opinion of the Central Office is in line with the view set out in the ruling by the German Bundesgerichtshof: as the legislator excluded from compensation the refunding of indirect damages in the event of loss of the goods (see the wording "to the exclusion of all other damages" in Article 40 § 1 of CIM), there is no question of their being refunded by means of reimbursement of the costs in connection with transport (i.e. costs not incurred as a result of loss or damage) in accordance with Article 40 § 3 of CIM.

The same principle also underlay the rules which preceded the CIM UR of 1980. However, the wording of

the provision in question was changed when it was being developed in order to express the ratio legis more clearly and to avoid any misunderstandings that might arise. A detailed analysis of the rule currently in force, together with the history of its origins, can be found in the study by Karl-Otto Konow, "The Refunding of Duties to be paid in Transit Transport as a result of the Goods being stolen" (see Bulletin 11-12/1987).

The question of compensation and refunding was also the subject of discussions during the work on revising COTIF in 1995-1999, both in the Revision Committee and in the General Assembly. In relation to the debate on a new wording (without the intention of making an amendment), it proved necessary to have another discussion on the principle of this provision. When the 5th General Assembly took a decision, it was eventually concluded that the excise duties referred to – as opposed to duties already paid – must (continue to) be excluded from the carrier's obligation to refund (see explanatory comments on Article 30 of CIM 1999, Bulletin 5/1999). This is made clear by the wording of Article 30 § 4 of CIM 1999: "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."

(Translation)

Athens Court of Appeal

Ruling of 26 February 2003

I.

The railway of destination is liable for loss of and damage to goods in accordance with CIM Article 36 § 1 in conjunction with Article 55 § 3, even if the loading in accordance with Article 20 § 2 was carried out by the consignor.

Loading by the consignor only constitutes a "special risk" which, under the conditions of Articles 36 § 3 and 37 § 2, may lead to the railway being relieved of liability.

In particular, liability of the railway is not inherently precluded by the existence of one of the risks listed in Article 36 § 3, including loading carried out by the consignor (paras. (c) and (d)).

The railway which invokes these risks as its plea must prove, in addition to the existence of the risk, that the loss or damage could be attributable to this risk, "having regard to the circumstances of a particular case".

If the railway proves these elements – the aptness of the risk to bring about the loss or damage – it shall be presumed that the loss or damage arose from this risk (Art. 37 § 2 CIM) – or in other words, that a connection exists between the risk and the loss or damage.

The above is not an absolute presumption. Consequently, the interested party may refute it by providing counter-evidence – if it is assumed that there is no causal connection.

The above-mentioned rules also apply to unloading operations carried out by the consignee (CIM Art. 36 § 3 (c) and Art. 37 § 2 paras. 1 and 2).

II.

Article 20 § 5 para. 2 of CIM, which requires that "the consignor shall indicate in the consignment note the number and description of the seals" does not prescribe any particular form for proving the number and description of the seals.

In the same way that for this information, Civil Procedure Act Article 394 § 2, which governs the burden of proof, is thus not applicable, the affixing of seals to wagons counts even less as an act in the law that is subject to the provisions concerning burden of proof.

If the consignment note does not contain information to the effect that seals have been affixed, proof that they were affixed does not constitute counter-proof for the content of the instruction.

III.

The railway of destination is itself liable if it accepted the wagons with seals affixed containing the goods, but on the basis of a second consignment note made out at the intermediate station where the train was re-formed in line with the destination of the wagons.

Cf. CIM Article 20 §§ 2 and 5, Article 36 §§ 1 and 3, Article 37 § 2 and Article 55 § 3.

The facts:

Ruling No. 1520 of the Athens Court of Appeal concerned the consignment of ten wagons containing disposable nappies from Germany (Crailsheim, Enskirchen and Göttingen) to Athens. Two consignment notes were made out for each consignment: the first consignment note from the departure point up to the border between Austria and Hungary, the second made out by the Raab-Ödenburg-Ebenfurter Railway Ltd. (GYSEV) for the journey from Sopron to Athens.

Loading was carried out by the consignor (the seller) at the factory premises. After loading, the wagon doors were sealed. When the ten wagons arrived in Athens, it was ascertained that the closures had been broken open and that goods to the value of 9,770.17 € were missing.

The Court assumed that loss of the goods had occurred as the result of theft during the journey. This meant the loss of the goods was not attributable to the special risk inherent in loading by the consignor or unloading by the consignee.

(Direct communication)
(Translation)

Ruling of 28 February 2003

I.

In accordance with CIM Article 36 § 1, the railway is liable for loss of and damage to goods between the time of acceptance of the goods for carriage and the time of delivery.

There is no relief from such liability merely as the result of the existence of one of the special

risks referred to in Article 36 § 3, including loading of the goods by the consignor ((c) and (d)).

For the benefit of the railway, Article 37 § 2 of CIM establishes the refutable presumption that the loss or damage is attributable to the special risk invoked by the railway.

Consequently, the railway is liable if the interested party can prove that the loss or damage was not attributable to the specific risk because there was no causal link between the risk and the loss or damage.

The proof that in the case in point, the specific loss is not attributable to the risk referred to above also constitutes proof – based on the seals having been affixed – that the loss is attributable to theft.

The above-mentioned rules also apply to unloading operations carried out by the consignee (CIM Art. 36 § 3 (c) and Art. 37 § 2 paras. 1 and 2).

II.

If loading is carried out (lawfully) by the consignor, the information the consignor has entered in the consignment note with regard to the mass of the goods or the number of packages does not constitute evidence against the railway.

An exception is if the railway has verified the mass or number of packages and has confirmed this in the consignment note.

If the railway has not carried out a check, the interested party may nevertheless prove the mass or number of packages by other means.

(With regard to the foregoing, see CIM Article 11 § 5, para. 1).

As established by Article 11 §§ 3 and 4 of CIM, with regard to the contents of the consignment, the consignment note is not in any case a constitutive element, but a piece of evidence.

Consequently, bringing forward evidence by other means both for the information not entered in the consignment note or entered wrongly, and for the accuracy of the information contained in the consignment note, is not precluded.

III.

The railway of destination is also liable (on the basis of Art. 35 § 2 and 55 § 3 of CIM) if two consignment notes were made out for two different sections of the journey, provided transport was performed in accordance with the relevant entry in the first consignment note with the same wagon, without the goods being accepted by the consignee and transhipped.

IV.

The railway has sole responsibility for the security of the goods during carriage.

The consignor is not obliged – and not entitled – to secure the doors of the wagon with his own locks. Consequently, he cannot be considered as jointly responsible for the loss of the goods.

V.

The consignee is entitled to submit a claim for compensation for the loss of the goods, provided he accepted the goods (Art. 54 § 3 (b) (2) of CIM).

The interested party may (also) submit a claim for compensation against the railway of destination (Art. 55 § 3 of CIM).

Cf. Article 11 §§ 3-5, Article 20 § 5, Article 35, 36 §§ 1 and 3, Article 37 § 2, Article 54 § 3 and 55 § 3 of CIM.

The facts:

Ruling No. 1693 of the Athens Court of Appeal concerned the consignment of a total of 16 wagons containing disposable nappies from Germany (Göttingen and Enskirchen) to Athens.

After loading and exact counting of the goods, the wagons were locked and sealed. Two consignment notes

were made out for each of the 16 wagons in this case as well. The consignment notes showed, inter alia, the wagon number, the number of boxes loaded, the weight in kilogrammes and in accordance with Article 20 § 5 of CIM, the number and description of the locks used on each wagon.

After the second consignment note had been made out by the Raab-Ödenburg-Ebenfurter Railway Ltd (GYSEV) in Sopron, both consignment notes, along with the relevant invoice and delivery note, accompanied the goods being carried to Athens.

In addition, all the consignment notes made out for the journey from Germany up to the border between Austria and Hungary contained a note to the effect that the goods were to be carried on to their destination in Athens without being transhipped. In the consignment notes covering the section of the journey from Germany up to the border between Austria and Hungary, the seller was entered as the consignor, whilst in those made out for the section of the journey from the border between Austria and Hungary to Athens, GYSEV was entered as the acting consignor. In fact however, the seller, who carried out the loading and locking of all the wagons, was the consignor, whilst GYSEV only carried out the formalities for continuing the transport operation and making out the consignment notes for the remaining part of the journey.

The entire transport operation was effected with the same wagons, without the goods being accepted and transhipped at the border between Austria and Hungary – in accordance with the relevant entries in the first consignment notes.

Deutsche Bahn AG, which was not involved in the loading, also did not check the number of boxes loaded, so that in accordance with Article 11 § 4 of CIM, the information in the consignment note pertaining to this only serves as evidence in support of the railway if the accuracy of this information is proved by other means.

In this case, the accuracy of the information was confirmed by witnesses, and also by the invoice, which accompanies every consignment and whose information in this respect corresponded to the information in the consignment notes.

The transport operation was performed by Deutsche Bahn AG in conjunction with the railways of Austria, Hungary, Yugoslavia (Serbia and Montenegro), Bulgaria and Greece. By accepting the goods with the consignment note at the border between Greece and Bulgaria, Hellenic Railways became legally bound by

the contract of carriage. The Court took it for granted that after the 16 wagons had been delivered in Athens between 2 February 2002 and 24 February 2002 and before they were unloaded and before the goods were accepted by the consignee, that it had been confirmed by the competent railway employees that the seals on all the wagons had been damaged and had been replaced by the other railways.

(Direct communication)
(Translation)

Miscellaneous Information

MAPS Seminar 2004

on "The Role of Rail
Transport in National Productivity"

Tunis, 25/26 March 2004

The Director General was invited by Tunisia to attend the 2004 MAPS Seminar staged jointly by UIC's World Division and the Tunisian national railway company near Tunis. MAPS stands for "Management and Policy Studies" (formerly "Rencontres pour l'échange et le partage d'expériences et de recherche", REPERES, which came into being in 1986). This is a UIC instrument intended in particular to support the interests of the railways in developing regions, e.g. in Africa.

The invitation provided some interesting perspectives in the light of closer contact between the Central Office and the Arab States and specifically in view of the OTIF training course to be held in Cairo in November 2004, which is being planned together with UACF. It also provided the opportunity to gain a more detailed insight into the activities of UIC's World Division.

Expectations were entirely met. MAPS 2004 proved to be a very effective combination of a globally oriented specialist event together with a representative regional platform made up of people in charge from politics and the rail sector.

Participants came mainly from the Arab States but also from Africa, where there is great interest in such events, not least as a result of the desire to prevent Africa from being "forgotten".

The subject of the seminar served a dual purpose: on the one hand, to clarify the role and potential of the railways and on the other, to examine in depth the problems and effective instruments for the external costs of transport, primarily with the aid of scientific analysis, calling upon prominent experts from all over the world, but without neglecting the "political" message from the standpoint of the railways.

The following briefly summarizes the outcome of the seminar:

- The railways have to find their opportunities within the scope of an overall transport policy that provides the same basic conditions, appropriate rules and coordinated investments, but with transport undertakings each seeking through their own performance an optimum role and productivity, thereby attempting to eliminate their weaknesses mainly by themselves.
- Railway does not always mean the same everywhere. Greatly differing points of departure, which also create very different opportunities for profitability, have to be taken into account. Only a very limited contribution can be expected from the internalization of the external costs of transport.
- Cost/benefit analyses are essential for infrastructure projects, although they depend significantly on the policy in operation behind them and on the time horizons given. The public/private partnership option can be of relevance, but only if achievable income can to some extent be estimated and ensured reliably right from the beginning.

From OTIF's point of view, it can be said that a seminar such as MAPS 2004 is ideally suited to assessing the globally oriented challenge for the OTIF of the future, not least in respect of the question as to what extent new topics are emerging in which COTIF and OTIF respectively could have a role to play. It was very clearly confirmed that with regard to freight transport worldwide, the only perspective that can be considered is an intermodal one, now with particular challenges in respect of safety, where the security aspect has taken on great significance. For example, one might ask the question as to what extent transport law is addressed, since increased and externally provided expensive efforts concerning security have to be integrated into the rules concerning responsibility and liability throughout the entire logistics/transport chain. With regard to the future of OTIF, it is becoming apparent that for the State

level from a global standpoint, regions with very different characteristics have to be kept in mind, which hardly allow a uniform platform in the context of OTIF, as opposed to the level of the railways with the UIC and its World Division. In this respect, Africa, where regional boundaries at State level are not so obvious, is a particularly interesting subject. OTIF's future route from a global perspective should therefore lead in the direction of a loose network, but one which is certainly capable of action, for the formalization of which various solutions could be conceived. It should be worth beginning a discussion on this subject at some point, in order at least to sound out the different states of interest and any readiness to create something unificatory. (Translation)

Book Reviews

Allégret, Marc, Taïana, Philippe, *Transport ferroviaire interne* (Inland Rail Transport), Juris-Classeur commercial, volume 615 (with update 11, 2003 up to 15 April 2003) and 616 (with update 11, 2003 up to 25 April 2003).

Volume 615 (24 pages) deals with the organisation of the railways in France. It sets out and explains provisions of a statutory and organisational nature concerning the Société Nationale des Chemins de fer Français (SNCF, National Association of French Railways), including its subsidiary companies (SNCF Group).

The comments are based primarily on the Act on reorganizing inland transport in France (LOTI, Act No. 82-1153 of 30.12.1982), Marc Allégret's comprehensive commentary of which can be found in volume 608 of the Juris-Classeur (see Bulletin 4/2002, p. 93). In this Act, the legal form of SNCF is laid down as a public (industrial and commercial) economic institution. In addition, reference is made to the Act (No. 97-135 of 13.2.1997) concerning the setting up of Réseau ferré de France (RFF, the French rail network) and to a range of other Acts and orders relating to the management bodies, statutes and functional specifications of SNCF and to public regional transport and its funding.

A lot of attention is given to SNCF's functional specifications, in which the following areas are regulated: carriage of passengers, carriage of goods, management autonomy, duty to inform customers, price setting and – together with RFF – infrastructure management. The functional specifications laid down in

1983 have been adapted several times, mainly in connection with the transposition of European Community Directive 91/440 as amended by Directive 2001/12, Directive 95/18 as amended by Directive 2001/13, and of Directive 2001/14.

In volume 616 (16 pages), the same authors deal with the contract for the carriage of goods. Under French law, the Civil Code and Commercial Code are applicable to the carriage of goods by rail. Moreover, the conditions of carriage are set out in the tariffs. The individual elements necessary for the contract of carriage to be made are analysed on the basis of the provisions of the regulations dating from the time of the Napoleonic Codification, which have only been partly amended since then. The analysis is carried out in the light of developments in legal opinions and case law, so that the situation today is understood as the result of these developments.

With regard to the parties to the contract, existing French law lays down that not only the consignor and the carrier, but also the consignee is a party to the contract right from the beginning (Act 98-69 of 6.2.1998, known as the "Gayssot law"). This introduces a direct claim by the carrier in respect of the payment of the price of carriage, including against the consignee as the joint debtor. This means that the concept of the contract of carriage as a contract in favour of third parties has been superseded.

As the subject of the commentary is inland transport, parallels with international transport (CIM, CMR) are only mentioned occasionally in the margins. The interested reader can himself formulate further considerations in the direction of, for example, whether and to what extent in respect of including the consignee a similar development trend is discernable in the provisions that apply to international rail transport. Article 18 § 3 of CIM 1999, according to which the consignee has the right of disposal from the time when the consignment note is drawn up, unless the consignor indicates to the contrary, would seem to point to this.

Both volumes are notable for their careful preparation and for their intelligent, clear and thorough presentation. They contain numerous references to literature and case law covering the period from the beginnings of rail transport up to the present.

As is customary in this series of publications, the main points of each of the subjects covered are highlighted at the beginning of each volume. This is followed by an analytical table of contents and a subject index. The text is numbered throughout in each volume. Updates on

individual items are published on additional sheets when necessary. Although volumes 615 and 616 concern inland transport, they are also recommended as a very interesting and useful source to lawyers who deal with international transport law.

(Translation)

Dengler, Michael F., *Die Haftpflichtversicherung im privaten und gewerblichen Bereich* (Third party liability insurance in the private and commercial sector), Verlag C.H. Beck, Munich 2003, ISBN 3 406 51393X, XIX, 631 pages.

This compendium on third party liability insurance was first published in 1997 and is now in its 3rd edition. Its aim is to make it easier for the reader to enter into the partly very complicated world of the law governing third party liability and third party liability insurance, or to broaden and strengthen existing basic knowledge. The author takes great care to reflect what happens in practice.

Today, it is in many cases claimed that third party liability insurance pays in every instance of third party damage. It is therefore important to set out the legal basis accordingly, i.e. the principles of the civil law order. With a wealth of practical examples of damage, the author succeeds in providing a clear presentation of the law on third party liability insurance.

To begin with, Part A sets out the basic issues concerning the types of damage, the legal basis for liability, the forms of fault and compensation and illustrates them using case studies.

Part B deals with the general conditions of third party liability, special conditions, agreements and risk descriptions, environmental third party liability insurance and the legal terms "fire liability insurance" – as a special insurance – and "agreement of renunciation of recourse". Part C provides an overview of what is included generally and specially in the cover of individual company policies, whilst Part D is given over to private third party liability insurance. Part E is addressed quite specifically to those working in insurance companies and provides advice on the best way of drawing up various insurance contracts, the cover concept and amounts to be insured.

Part F looks briefly at the "four pillars of damage processing", which in principle concern all damage claims, i.e.

- checking the cover,

- checking liability,
- checking the amount of the claim submitted and
- reviewing the possibilities for recourse.

The Appendices contain legal provisions, the general insurance conditions for third party liability insurance and various overviews to make working with this book easier. A comprehensive summary of the contents, an index of abbreviations and the literature and lastly an index of headwords are a matter of course for a Verlag C. H. Beck publication.

Dengler's compendium is aimed primarily at those working in insurance, but is of great interest for all those wishing to obtain more information on matters concerning third party liability insurance using specific examples, and it is thoroughly recommended.

(Translation)

Koller, Ingo, *Transportrecht, Kommentar zu Spedition und Gütertransport* (Transport Law, Commentary on Forwarding and Freight Transport), 5th fully revised edition, C.H. Beck, Munich 2004, XXX, 1730 pages, ISBN 3 406 51304 2.

The 5th edition of this established standard commentary on transport law has again been fully revised. The 4th edition, which appeared in 2000, had already been fundamentally revised and newly arranged to take account of the German Transport Law Reform Act, which entered into force on 1 July 1998 (review in Bulletin 2000 in French and German only). The new layout comprising Part A, German domestic transport and forwarding and Part B, transfrontier transport, has also been retained in the 5th edition.

Since the 4th edition of this standard commentary, the discussion on the interpretation of the new commercial law provisions on domestic German road, rail, air and inland waterways transport law and on multimodal transport law has got fully underway. Germany's important general conditions for forwarders and the general contractual conditions for road freight transport and logistics undertakings have also been substantially amended, which has made it necessary to revise and update the commentary. The commentary has again become appreciably more comprehensive with more than 300 extra pages. This is also largely due to the review which has now been included on the Uniform Rules concerning the Contract for International Carriage

of Goods by Rail (CIM) and the 1999 Montreal Convention for carriage by air.

The commentary on CIM had already been announced in the foreword to the 4th edition. However, the explanatory material on CIM in the new edition is based on the status of the 1990 version of CIM 1980. The reason for this is that at the time the edition was being prepared – case law and literature up to 31 July 2003 has been incorporated – the entry into force of the 1999 Vilnius Protocol version of COTIF was not imminent. Even today, it can still not be said with certainty when it will enter into force, although there are good prospects that this will happen in the course of 2005.

But the Montreal Convention signed on 28 May 1999 entered into force on 4 November 2003 and has therefore been reproduced in both German and English and briefly commented on.

The commentary on CIM, which is of particular interest to readers of this Bulletin, and which is all this review will look at more closely, essentially follows the views expressed by Mutz in the "*Münchener Kommentar zum Handelsgesetz*" (Munich Commentary on the Commercial Code). Just as an example, refer to the problem of the basically mutually indispensable nature of CIM, which Koller also subscribes to, although this view is disputed by Goltermann/Konow in Note 1 c to Article 3 of COTIF.

However, differences of opinion are rare and are not necessarily difficult to assess. In the following, these differences of opinion are dealt with in more depth:

In the Munich Commentary in margin note 2 to Article 13 of CIM, Mutz expresses the view that in addition to the consignor and consignee, the destination station must also be ascertainable in order that a contract of carriage can become legally valid. In contrast, without justifying why, Koller is of the view that in such a case, a CIM contract of carriage is effectively concluded and only an obstacle to delivery exists. On close reading, the difference of opinion is probably smaller than it might appear. In Mutz's commentary, it is said that: "at least the consignor, the destination station and the consignee must be **ascertainable**" (reviewer's emphasis). Even if the destination station as such is not expressly entered, as a rule it can be ascertained from the address of the consignee with sufficient certainty.

On Article 18 of CIM, Koller is strongly of the view in accordance with the wording of the provision that there is no liability according to Article 18 of CIM for incorrect additional particulars (Art. 13 § 2), whilst

Mutz assumes that despite the editorial difference, the legal consequences in the event of incorrect additional particulars emulate the legal consequences according to Article 57 of the EVO. Cases where the railway suffers damage by accepting incorrect particulars without fault are probably only possible as an exception. For this reason, those who drafted CIM presumably already did not include the term "incorrect" in Article 18 of CIM in the initial versions of this provision.

A further example of differences in the commentary is the view expressed by Koller in Note 3 to Article 28 of CIM, according to which the railway can invoke the right to refuse to fulfil its obligations if the consignee does not fulfil the requirements within the meaning of CIM Article 15 §§ 4 and 5 and Article 21 § 3 and Article 24 matching payment with delivery. In the Munich Commentary on the other hand, Mutz is of the view that the consignee can submit his claims arising from the contract of carriage without advance payment of the carriage charges. This follows from the concept under railway law that the assumption of debt by the consignee when presenting the consignment note relieves the consignor from his obligation to pay for the costs transferred to the consignee. This concept of "assumption" is also criticized by Basedow, the Contract of Carriage, page 330. The wording of Article 17 § 1 of CIM 1999 takes this criticism into account. According to Article 17 § 1 of CIM 1999, the carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage.

Orders not given in a form as laid down in Article 30 § 2 of CIM 1980 are null and void. According to Koller, this also applies when the railway complies with orders thus issued. In the Munich Commentary, Mutz expresses another point of view with reference to the rule in Article 30 § 3; this point of view is supported by the ruling of the Supreme Court of Vienna of 11 May 1909, published in the 1909 Bulletin, p. 441 ff., according to which the consignee of a consignment is also entitled to give orders if it has been delivered to him as the result of an invalid subsequent order by the consignor. CIM 1999 no longer contains any provisions on what form subsequent orders have to be issued in.

The last example of different opinions concerns Article 33 § 4. Koller subscribes to the legal opinion of Goltermann/Konow, according to which the interested party may also issue verbal instructions except in the cases referred to in Article 33 § 4 of CIM. However, according to Mutz in the Munich Commentary, whilst it

is true that CIM does not prescribe the written form, this can be derived from DCU No. 1 on Article 33, which in fact only regulates information provided to the consignor in writing. In CIM 1999, as mentioned above, there are no provisions concerning the form in which subsequent orders have to be issued.

As previously, Koller's commentary contains an extensive subject index and a quick overview of important headwords, which make it considerably easier to use. A new addition is an index of court decisions comprising more than 50 pages, which makes it easier to find decisions, not just in the *Bundesgerichtshof in Zivilsachen* (Federal Court for Civil Proceedings), but also in different journals, such as the *Neue juristische Wochenschrift* (NJW - New Legal Weekly), the *NJW Rechtsprechungsreport Zivilrecht* (Civil Proceedings Case Law Report), the *Zeitschrift für Versicherungsrecht* (Insurance Law Journal), the *Zeitschrift für Transportrecht* (Transport Law Journal) and the *Monatszeitschrift für Deutsches Recht* (Monthly Journal of German Law).

The commentary is aimed at lawyers, judges, transport, forwarding and road haulage undertakings and insurance companies, and should not be left out of any library on transport law.
(Translation)

SMGS Agreement concerning International Goods Transport by Rail, new edition with amendments and additions as at 1 January 2004, unofficial **German translation**, published and distributed by Logotrans, Logistik- und Transport-Consult GmbH, Vienna, 224 pages, 95 €.

As indicated on the title page, the Agreement concerning International Goods Transport by Rail (SMGS) has been in force since 1 November 1951. It was set up by the railway administrations under the auspices of the Organization for Railways Cooperation (OSZhD) for rail transport between the States with a State planned economy. Amendments are discussed and adopted annually. Since the GDR's membership lapsed as a result of the reunification of Germany, German is no longer one of OSZhD's working languages. This is why official versions of SMGS only remain now in Russian and Chinese. However, it is interesting from the point of view of the changeover between the CIM and SMGS systems of freight law that the Russo-German print of some forms, e.g. the consignment note, the request to amend the freight contract or the

ascertainment of the facts in the annexes to SMGS have still been retained.

The unofficial German translation published by Logotrans fills the gap created by the disappearance of German as a working language of OSZhD. The publisher, honorary professor Dr. Kurt Spera, director of Logotrans, is known to readers as the author of a commentary on CIM 1980 (GOF-Verlag, Vienna, 1991, see Bulletin 2/1991) and of many scientific studies, including, inter alia, a comparison of the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) with SMGS and SAT (see Bulletin 4/1993). His name guarantees that the translation of SMGS has been produced with the greatest expertise.

In 1997 and 1998, the same publisher had already issued editions of an unofficial Russian translation of SMGS (165 and 200 pages). In accordance with the development of SMGS in the period from 1999 to 2003, the new edition now obtainable represents an adapted and extended version of the text already available. Nevertheless, the amount of adaptation required as compared with the 1998 version was not small. In addition to numerous editorial adjustments, which are also reflected in this very careful translation, a couple of amendments should be mentioned which might be of interest from the point of view of CIM freight law: new provisions concerning electronic consignment notes (Art. 7 § 14), the newly introduced possibility of declaring an interest in delivery (Art. 10 § 5) and the possibility of agreeing delivery periods other than those prescribed under SMGS (Art. 14 § 7). The Annexes to SMGS (e.g. inter alia Annex 8 concerning the carriage of containers) have also been brought up to date and new Annexes, e.g. the provisions for the carriage of loaded car trains, tank swap bodies and semi-trailers (Annex 21) have been added.

Not included are Annex 2 (provisions for the carriage of dangerous goods) and Annex 14 (provisions for loading and securing goods in wagons), which also appear in a separate volume in the original version.

From a linguistic point of view, it must be noted that the German text accords with the Russian original as closely as possible, without detriment to German sentence construction or style.

In his foreword, the publisher expresses his wish to contribute towards understanding between railway specialists who deal with the COTIF/CIM system on one side and those who deal with SMGS on the other, in the hope that "the legal basis of the world's rail network,

which is significant for the future, may arrive at an effective unity that meets the logistical needs of the global exchange of goods, irrespective of national borders, different social systems and gauge widths". It only remains for us to agree.

(Translation)

Publications concernant le droit de transport et les domaines juridiques connexes ainsi que le développement technique dans le secteur ferroviaire

Bulletin des transports et de la logistique, Paris, n° 3023/2004, p. 127-129 – Contrat de transport. Pour le meilleur ... (M. Tilche)

Idem, n° 3027/2004, p. 202/203 – Lettre de voiture. Attention, chausse-trappe !; p. 205/206 – Prescription CMR. Cas pratique (M. Tilche)

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DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 21/2004, p. 3 – Gefahrgutrecht. Sicherheitsbewusstsein wird geschärft. 2001, 2003, 2005 – der Zweijahresrhythmus für Rechtsänderungen bleibt erst einmal bestehen (H. Rein)

Idem, Nr. 34/2004, S. 8 – CMR-Transporte: Österreich regelt Schadenersatz anders. Regress gegen Unterfrachtführer möglich, auch wenn selbst noch nicht gezahlt wurde (E. Boeckert)

European Transport Law, Antwerpen, No. 6/2003, p. 731-740 / 741-750 – Das neue Speditionsrecht in Russland / Fédération de Russie : nouvelle loi régissant les relations entre commissionnaires de transport et clients (S. Rogov)

Gefährliche Ladung, Hamburg, Nr. 1/2004, S. 25-28 – RID 2005 fertig I., Nr. 2/2004, S. 27/28 – RID 2005 fertig II. (J. Conrad)

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Idem, n° 7-8/2004, p. 22/23 – Convention de Montréal. Les « failles » du nouveau régime de responsabilité (E. Boecker)

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Transportrecht, Hamburg, Nr. 1/2004, S. 14-24 – Wirtschaftliche Kriterien der Haftung des Frachtführers (H. Neumann)

Idem, Nr. 2/2004, S. 56-61 – Umschlag von Gut als Beförderung im Sinne des § 407 Abs. 1 HGB? (K. Ramming); S. 72-74 – Das Dilemma bei der Vereinheitlichung des internationalen Luftverkehrsrechts (A. Gran)