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INLAND TRANSPORT COMMITTEE

Working Party on the Transport of Dangerous Goods

**Joint Meeting of the RID Safety Committee and the
Working Party on the Transport of Dangerous Goods**
(Bern, 24-28 March 2003)

SECURITY OF RAIL TRANSPORT FOR THE CARRIAGE OF DANGEROUS GOODS

Transmitted by the Central Office for International Carriage by Rail (OCTI) */

Introduction

In respect of agenda item 6, OCTI submits to the RID/ADR Joint Meeting an extract from the provisional report on discussions at the 39th session of the RID Committee of Experts (Berne, 18-21 November 2002) and the provisional views of OCTI's legal service on including in RID requirements for the security of transport operations (document OCTI/RID/CE/39/9a)).

Extract from provisional report of RID Committee of Experts

Item 9: Security of rail transport operations with dangerous goods

Documents: INF. 13 of the last Joint Meeting (United Kingdom, ST/SG/AC.10/C.3/2002/65), TRANS/WP.15/AC.1/2002/17, ST/SG/AC.10/C.3/2002/56, ST/SG/AC.10/C.3/2002/80, OCTI/RID/CE/39/9a)

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The Chairman outlined the situation as follows:

After 11 September 2001, several initiatives were launched at international level to develop new measures for the security of transport operations involving dangerous goods. At the G8 discussions in Canada, it was considered that anti-terrorist measures should also be taken into consideration for transport. Separate discussions were held on maritime and air traffic, particularly with regard to the transport of containers. The United Kingdom launched an initiative at UN level (INF. 13 for the Joint Meeting ST/SY/AC.10/C.3/2002/65). The same initiative was first made at EU level in order to draft an EU recommendation. A draft recommendation is available, but it seems that it will not be followed up, given the new proposal from the United Kingdom submitted to the UN Sub-Committee. The results of the discussion on INF. 13 at the last Joint Meeting were submitted to the UN Sub-Committee of Experts (ST/SY/AC.10/C.3/2002/80). As certain points in the United Kingdom's proposal go beyond the content of the current RID/ADR regulations, the Chairman of the RID Committee of Experts suggested at the Joint Meeting that the legal services of OCTI and UN/ECE should check whether such points can be included in these regulations.

The representative of OCTI's legal service was of the view that the United Kingdom's proposals would certainly improve security, but that it was necessary to examine what the aim and function of RID were and what the competencies of the RID Committee of Experts were. The aim of RID was to regulate transport safety, i.e. the limitation of hazards arising from dangerous goods. However, transport safety measures could serve to reduce the risk of terrorist attacks. That is why they could be regulated in RID. If it was necessary first and foremost to anticipate terrorist threats, the competence of the RID Committee of Experts would have to be considered. The simplified procedure put in place to implement the decisions of the RID Committee of Experts is not applicable in international law because the decisions of this Committee of Experts also enter into force for those States that opposed them and raised objections. The RID Committee of Experts must examine very carefully which measures come within the provisions of the regulations. The current contents of RID comprise the main guidelines. RID is a compulsory legal requirement which links the Member States directly. In the case of recommendations, each Member State can itself decide what it will implement and to what extent. There is no doubt that in the area of data protection, States will not agree to accept just anything.

The representative of the United Kingdom explained that it had not been possible to organize the planned European Commission meeting. This was why the proposal had not been followed up. In most of these proposals, the United Kingdom only acted as coordinator. The exact context was set out in documents TRANS/WP.15/2002/17, paras. 4, 11, 16 and 25 and ST/SY/AC.10/C.3/2002/56. The aim was to standardize security measures throughout Europe and the world. The United Kingdom was also able to apply them on its own. The Joint Meeting and WP.15, as well as the RID Committee of Experts, had to decide whether to take up these recommendations from the UN Model Regulations. A discussion on document

OCTI/RID/CE/39/9a) would be premature, given that they had not yet been endorsed by the UN Committee of Experts. It had been held that preventing the dangers inherent in transport also included the prevention of sabotage.

The representative of OCTI's legal service considered international harmonization to be desirable. But the dangers of an action for annulment on a national level had also to be considered.

The representative of Austria thought OCTI's warning should be taken seriously. Because of the simplified procedure, which excludes the national Parliaments, political matters should be kept apart from the RID Committee of Experts. Institutions responsible for policing or protection in the private sector would have to be integrated in good time, otherwise having this issue dealt with by a transport body would be called into question.

The representative of the Netherlands was of the view that it was not only transport security in the face of terrorism that should be considered, but also protection of the dangerous goods. It was necessary to limit oneself to the objective of protection, thus avoiding specific provisions for which the cost/benefit relationship and implementation were not clear. Security should not be improved for the transport of dangerous goods alone, but for transport in general. The problems were less easy to resolve for land transport than for maritime transport.

The representative of UIC informed the meeting that the UIC group of experts had supported the position taken by OCTI's legal service, without having discussed individual measures.

In conclusion, the representative of the United Kingdom summed up that the RID Committee of Experts was made up of Government representatives. Each delegate had to get in touch with his national authorities in order that decisions could be taken within the RID Committee of Experts. It would be preferable to regulate the protection of dangerous goods against terrorist attacks here in order to avoid other authorities taking general measures which would be contrary to RID.

On the assumption that the UN Sub-Committee of Experts would take some decisions, the Chairman thought it important that delegates should play an active part in the UN Sub-Committee of Experts decision-making process so that a result could be obtained within the UN itself which could then be taken up without any problems in RID/ADR. If this were not done, there was a risk in the end of being confronted with provisions that varied greatly between one mode of transport and the other. Germany would prepare an informal document for the UN Sub-Committee of Experts which would reflect the status of the situation after discussions within the European Commission.

Document OCTI/RID/CE/39/9a) - Provisional view on including in RID requirements for the security of transport operations

Subject to agreement with the UN/ECE legal service, a *prima vista* assessment of the proposals in document INF. 13 submitted to the September 2002 Joint Meeting has resulted in the following:

1. RID is the executive order for Article 4 (d) and Article 5 § 1 (a) of the CIM Uniform Rules, Appendix B to COTIF 1980. RID will only become a self-standing Appendix to COTIF once the 1999 Vilnius Protocol has entered into force.
2. RID lays down which dangerous goods are excluded from international carriage by rail and which requirements apply to dangerous goods that may be carried internationally. Even though, in accordance with COTIF 1999, it will be possible to apply RID without a CIM contract for carriage, the basic aim of RID remains the same: the prevention of hazards arising from dangerous goods during carriage, i.e. in connection with their change of location.
3. However, this also implies a further aim, i.e. to ensure the international carriage of dangerous goods where a transport operation in accordance with these requirements is performed. This can happen as a result of, amongst other things, the conclusion of different conditions as laid down in Article 5 § 2, according to which two or more States or two or more railways may jointly determine the conditions with which certain substances or articles not acceptable for carriage under RID are nevertheless to be accepted. States or railways may, in the same manner, make the conditions for acceptance laid down in RID less rigorous.
4. By analogy with Article 4 of ADR, the 1999 Vilnius Protocol version of RID also provides that each Member State is entitled to regulate or prohibit the international carriage of dangerous goods on its territory "**for reasons other than safety during transport**".
5. RID in accordance with COTIF 1980 and the Annex to Appendix C in accordance with the Vilnius Protocol form an integral part of the Convention. The latter provides for a simplified procedure for amending the requirements of RID. This procedure diverges considerably from the usual procedures under international law concerning the creation of rights and obligations for the Contracting States: amendments adopted by the RID Committee of Experts actually enter into force for **all** Member States unless one third of the Member States (COTIF 1980) or one quarter of the Member States (COTIF 1999) have lodged an objection within the period prescribed. This means that the amendments adopted by the RID Committee of Experts are binding on a Member State under international law, even if that Member State voted against the amendment in the Committee of Experts and has lodged an objection within the prescribed time limit against a decision that has nevertheless been taken. Such requirements in a contract under international law must, as exceptions, always be interpreted restrictively.

6. Nevertheless, the authority of the RID Committee of Experts to amend RID using the simplified procedure does not allow it to adopt amendments as it likes. What must also be taken into account are requirements concerning the contents. These requirements limit the Committee's mandate with regard to amending RID using the simplified procedure. The fact that the Committee adopts regulations that are included in RID as requirements is not sufficient in itself. When looking at how far the Committee's powers of amendment extend, the provisions contained in the Convention at the time COTIF 1980 was established and at the time the 1999 Vilnius Protocol was adopted must be considered in order to delimit those requirements that can and must typically be regulated in RID and those that cannot.
 7. The aim of the Convention must always be borne in mind in appraising the question of how far, or which conditions fall within the competence of the RID Committee of Experts. In accordance with a general principle of international law, one should proceed *bona fide* and avoid an extensive interpretation. In any case, the Committee must consider to what extent they are conditions that serve **safety during transport**, i.e., as already mentioned, the prevention of hazards associated with transport. In my view, the danger of terrorist attacks is not a hazard typical of transport, but one that can also arise in any other situation.
 8. From the above, it follows that the RID Committee of Experts cannot adopt provisions as it likes in the procedure in accordance with Article 8 § 2 and Article 21 of COTIF 1980 and Article 13 § 1 (d), Article 16 and Article 35 of COTIF 1999.
 9. The requirements contained in the working group's proposal in document INF. 13 are obviously not sufficiently determined in all cases. Overall though, they are clearly aimed at avoiding or minimizing risks arising from acts of terror, but not directly from the transport of dangerous goods. They are primarily measures that must be taken "for reasons other than safety during transport". This does not exclude individual measures proposed, which are in direct relation to "safety during transport", from being included in the list of obligations in accordance with RID. However, a careful check would need to be made to decide which individual requirements these were.
 10. **Conclusion:** Overall, probably the majority of the requirements proposed would have to be made **mandatory** for the Contracting States **in the form of another instrument of international law**.
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