



Economic Commission for Europe**Inland Transport Committee****Seventy-sixth session**

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Item 4 (e) of the provisional agenda

Strategic questions of a sectoral nature: Rail transport**Unified Railway Law****Note by the secretariat***Summary*

This note provides a brief review of the work undertaken in 2013 by UNECE towards unified railway law. It describes the analytical work on the analysis of existing international modal transport conventions (rail, road, air, inland water and maritime transport) to identify adequate provisions and procedures for a unified set of transparent and predictable provisions and legal rules applicable to Euro-Asian rail transport operations. The note also summarizes the legal concepts under discussions in the Group of Experts towards Unified Railway Law and describes the steps envisaged towards a unique legal regime for efficient and seamless Euro-Asian rail transport.

I. Mandate

1. On the occasion of the seventy-fifth jubilee session of the Inland Transport Committee, 37 Transport Ministers and other high-level representatives signed on 26 February 2013 a Joint Declaration that could pave the way towards negotiation of a unified railway law (URL) making rail freight transport between Asia and Europe and later in the whole world easier, faster and cheaper. The Declaration aims at contributing to the establishment of unified legal conditions for Euro-Asian rail transport, equivalent to those existing for other transport modes, such as road, air, inland waterways and maritime transport.

2. The Declaration sets out a strategy comprising two parallel processes:

(a) Interested railway enterprises, international railway organizations and other stakeholders (incl. shippers, freight forwarders, etc.) have been invited to prepare general

terms and conditions for Euro-Asian rail transport contracts based on existing Convention concerning International Carriage by Rail (COTIF) / Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) and Agreement on International Railway Freight Transport (SMGS) provisions (GTC EurAsia).

- Work on a draft proposal for GTC EurAsia is well under way within the International Rail Transport Committee (CIT) and other international organizations. GTC EurAsia would facilitate Euro-Asian rail transport of goods and containers as it would be based on the present provisions of COTIF/CIM and SMGS as well as on respective national law.

(b) Governments from the ECE and ESCAP regions, under the auspices of the Group of Experts towards Unified Railway Law and the Working Party on Rail Transport (SC.2), should prepare legal provisions for rail transport operations in all countries concerned.

II. Strategy and progress made towards unified railway law

3. The Group of Experts held its fifth and sixth sessions on 4–5 July and 2–3 December 2013. Considerable work has been done to analyse in detail existing international modal transport conventions in order to identify adequate provisions and procedures for a unified set of transparent and predictable provisions and legal rules applicable to international rail transport.

4. Given the complexity of the tasks to be undertaken within a very short time-frame, the Group of Experts agreed, at its fifth session, on the following work plan and accompanying activities:

(a) The UNECE secretariat, assisted by Governmental, intergovernmental (the Organization for Cooperation between Railways (OSJD), the Intergovernmental Organisation for International Carriage by Rail (OTIF)) and industry experts, should prepare an overview of existing international transport conventions (rail, road, air, inland water and maritime transport) and good practices in the application of these conventions as well as elements and mechanisms of relevance for the establishment of a unified railway regime.

(b) The UNECE secretariat, assisted by Governmental, intergovernmental (OTIF, OSJD) and industry experts, should prepare a comparison of those legal provisions of CIM and SMGS that are relevant for Euro-Asian rail freight transport. This study should also provide a brief evaluation of such provisions and provide, as appropriate, first elements and a possible wording of legal provisions that could be included into a legal instrument for Euro-Asian rail freight transport.

(c) The UNECE secretariat, in cooperation with OTIF and OSJD as well as other relevant international organizations, such as ICAO and IMO, should prepare a synopsis of the management systems of existing international modal transport conventions and agreements for review by the Group of Experts.

5. Based on a thorough analysis of existing international modal transport conventions, prepared by the secretariat and reviewed at its fifth session (4–5 July 2013), the Group of Experts at its sixth session (2–3 December 2013) started an exchange of views on the basic concept of a possible new legal railway instrument that would provide legal transparency and certainty for Euro-Asian rail transport operations.

III. The legal concept under discussion

6. There seems to be consensus among experts that the establishment of an overall (third) layer of international railway law, in addition to COTIF/CIM and SMGS, should be avoided, not least to avoid conflict of conventions. Similarly, the creation of a new international railway regime replacing COTIF/CIM and SMGS in their entirety would be complex and would require considerable time due to long transition periods for entry into force and for denunciation of COTIF/CIM and SMGS.

7. Therefore, the secretariat presented an alternative concept for an international legal railway regime that, while leaving the present two regimes untouched, would fill the gap left by COTIF/CIM and SMGS for use of a single rail transport contract, a single consignment note and a single liability system for Euro-Asian rail transport. This regime would allow rail transport from the Atlantic to the Pacific on the same legal basis as is today only possible for air transport.

8. Such a new international railway regime would be based on relevant provisions of COTIF/CIM and on the latest draft of the new SMGS, including appropriate EDI procedures. Such an approach, using familiar and well-proven legal provisions, standards and procedures, should ensure smooth and effective implementation of the new legal railway regime in those countries that accede to it.

9. This concept for a new legal railway regime would be based on the following main features:

(a) The new legal railway regime would be applicable only for international rail transport of goods that extend beyond the scope of application of the present COTIF/CIM or SMGS regime.

Examples:

- International rail transport between the People's Republic of China and the Russian Federation would remain governed by the SMGS regime. Also rail transport of goods between Germany and Turkey would remain under the COTIF/CIM regime.
- Rail transport of goods between China or the Russian Federation and Germany could also continue to use, as of today, a mix of national, COTIF/CIM and SMGS laws under the condition that two separate contracts of carriage would be concluded: One relating to the carriage of goods within the States parties to SMGS, another one relating to the carriage of goods within the States parties to COTIF/CIM. This will however entail re-consignment procedures at the borders between the COTIF/CIM and SMGS regimes.
- The new legal railway regime could facilitate international rail transport of goods and containers between the People's Republic of China or the Russian Federation and Germany without any re-consignment at the borders of the COTIF/CIM and SMGS regimes on the basis of a single contract of carriage. Similarly, rail transport between Europe and Turkey to the Middle East or to Pakistan and India could, in the future, be carried out with the new legal railway regime.

(b) The new legal railway regime would only apply if the parties to the rail transport contract, i.e. the consignor and the railway enterprise concluding the contract of carriage so decide and agree that the new legal railway regime should apply (opting-in). Thus, application of the new legal railway regime by the rail industry would be voluntary. However, once the parties to the transport contract agree to apply the new railway regime and mark this in the transport contract, its provisions become mandatory.

- Railway enterprises and consignors would thus free to decide whether they would want to continue to apply for Euro-Asian rail transport and beyond a specific national law or whether they would wish to apply the uniform and transparent facilities of the new international railway regime.

10. The Group of Experts agreed that, as a first step, legal provisions should be prepared focusing on the contract of carriage between consignors/consignees and railway companies (carriers) as well as on the relationship between the various rail carriers. In a second step, specific international rail related issues could possibly be annexed or referred to in the new railway regime covering important issues for international rail transport, such as technical specifications for and exchange of rolling stock as well as use of rail infrastructure.

11. Existing national and international public law covering the transport of dangerous goods, customs regulations, access to rail transport markets, protection of animals or relevant applicable national security and safety rules and procedures should not be covered by the new legal railway regime. Similarly, tariffs and similar provisions of an operational nature may not be addressed in the new legal rail regime and could possibly be covered in separate instruments and applied by countries that need such international regulations.

12. The new legal railway regime will be based on a single consignment note that should be made out, as appropriate and to the extent possible, in an electronic format. The present common CIM/SMGS consignment note, an aggregation of the different legal requirements of COTIF/CIM and SMGS, might be used as a basis.

13. It was also agreed that the new railway regime should only address the transport of goods. Carriage of passengers by rail will be considered at a later stage.

14. In line with the provisions of the Joint Declaration, identification of an appropriate management system for unified railway law will be taken up on the basis of a future material consensus on the substantive provisions of a new legal railway regime. However, at the request of the Group of Experts, the secretariat, together with OSJD and OTIF, has already compiled an overview of present management systems of international legal instruments for road (CMR), rail (COTIF/CIM, SMGS), inland water (Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI)), air (Montreal-Warsaw conventions) and maritime (Hague-Visby Rules) transport. This clearly showed the different approaches taken by participating Governments in operating such international laws.

IV. Guidance by the Committee

15. The Committee may wish to take note of the activities of the Group of Experts towards Unified Railway Law under the chairmanship of Mr. A. Druzhinin (Russian Federation) and Vice-chair Ms. N. Kaygisiz (Turkey). It may also wish to comment on progress made during the past year and provide guidance on the way forward.

16. In line with its mandate and terms of reference, the Group of Experts plans to hold three meetings in 2014 (3–4 April 2014; 10–11 July 2014 and 30–31 October 2014) and will conclude its work by transmitting a progress report to the sixty-eighth session of SC.2 (24–26 November 2014).

V. Recent official documentation prepared by and for the Group of Experts

17. All documents, including also informal documentation, are available at www.unece.org/trans/main/sc2/sc2.html. Some of the most recent substantive documents prepared by OSJD, OTIF and the secretariat are given below:

- (a) Joint Declaration: ECE/TRANS/2013/2
 - (b) Reports of the Group of Experts:
 - 5th session ECE/TRANS/SC.2/GEURL/2013/5
 - 6th session ECE/TRANS/SC.2/GEURL/2013/8
 - (c) Working documents:
 - Establishment of a unified set of transparent and predictable provisions and legal rules for Euro-Asian rail transport operations (UNECE secretariat): ECE/TRANS/SC.2/GEURL/2013/3
 - Analysis of existing international modal transport conventions (rail, road, air, inland water and maritime transport) and related agreements (UNECE secretariat): ECE/TRANS/SC.2/GEURL/2013/4
 - Unification of international railway law with the objective to allow rail carriage under a single legal regime: Comparison of relevant legal provisions in CIM and SMGS (UNECE secretariat): ECE/TRANS/SC.2/GEURL/2013/9
 - Analysis and proposal on the general framework of uniform Euro-Asian law for the transport of goods by rail (OTIF): ECE/TRANS/SC.2/GEURL/2013/10
 - Comparative analysis of the draft revised text of SMGS and CIM (OSJD): ECE/TRANS/SC.2/GEURL/2013/11
 - Identification of an appropriate management system for unified railway law using the experience of international organizations in the field of the railway transport: Identification of an appropriate management system for unified railway law (UNECE secretariat): ECE/TRANS/SC.2/GEURL/2013/12
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