



Economic and Social Council

Distr.: General
5 May 2015

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Rail Transport

Group of Experts towards Unified Railway Law

Tenth session

Geneva, 11–13 February 2015

Report of the Group of Experts towards Unified Railway Law on its tenth session

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Attendance.....	1–4	2
II. Adoption of the agenda (agenda item 1)	5	2
III. Election of Officers (agenda item 2)	6	2
IV. Mandate: Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law (agenda item 3)	7–11	2
V. Unification of international railway law with the objective of allowing rail carriage under a single legal regime (agenda item 4).....	12–51	3
VI. Identification of an appropriate management system for unified railway law based on the experience of international organizations in the field of the railway transport (agenda item 5).....	52–59	9
VII. Other Business (agenda item 6).....	60	10
VIII. Date of next session (agenda item 7).....	61	10
IX. Summary of decisions (agenda item 8)	62	10

I. Attendance

1. The Group of Experts towards Unified Railway Law held its tenth session from 11 to 13 February 2015 in Geneva.
2. The session was attended by experts from the following countries: Belgium, Finland, Georgia, Germany, Poland, Russian Federation, Switzerland, Turkey and Ukraine.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organisation for International Carriage by Rail (OTIF) and the Organization for Cooperation between Railways (OSJD). Experts from the following non-governmental organization participated: International Rail Transport Committee (CIT) and International Union of Railways (UIC).
4. At the invitation of the secretariat, experts from the following organizations and an industry group participated: CMS Cameron McKenna and the international association “Coordinating Council on Trans-Siberian Transport” (CCTT).

II. Adoption of the agenda (agenda item 1)

Documentation: ECE/TRANS/SC.2/GEURL/2015/1

5. The Group of Experts adopted the provisional agenda prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2015/1).

III. Election of Officers (agenda item 2)

6. The Group of Experts elected Mr. A. Druzhinin (Russian Federation) as Chair and Ms. S. Miettinen-Belleverguem (Finland) as Vice-Chair.

IV. Mandate: Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law (agenda item 3)

Documentation: ECE/TRANS/2013/2, ECE/EX/2014/L.30, Informal document ITC (2015) No. 18, ECE/TRANS/2015/15

7. The Group of Experts was informed by the secretariat that the Working Party on Rail Transport during its sixty-eighth session (24–26 November 2014) had taken note of the excellent work done by the Group of Experts on Unified Railway Law and thanked the experts for their commitment and dedication to this difficult task. The Working Party understood that more time is needed for finalizing the new legal instrument. It noted that in order to finalise the provisions of this instrument, three main tasks remained: (1) fine-tuning the wording substantively and settling all open issues; (2) fine-tuning the wording linguistically in three languages (English, French and Russian); and (3) reaching a decision on an appropriate management system for unified railway law.
8. The Working Party also noted the need of the Group of Experts to organize meetings between the end of the mandate of the Group of Experts – end of 2014 – and the upcoming seventy-seventh session of the Inland Transport Committee in order to avoid losing the momentum that was created. The Working Party agreed to request the Bureau of ITC to exceptionally approve – without waiting ITC approval – the extension of the mandate of the

Group of Experts for one more year. The Chair of the Inland Transport Committee, Mr. J. Kleniewski, participated at the session and agreed to bring it to the Bureau meeting for its support acknowledging the importance of the time factor for this Group of Experts.

9. The Bureau of the Inland Transport Committee, at its third meeting (27–28 November 2014), considered the extension of the mandate of the Group of Experts towards Unified Railway Law which was set to expire at the end of 2014. The Bureau decided to request the Executive Committee to extend the mandate for the Expert Group for one more year in order to avoid losing the momentum that had been created.

10. The Executive Committee at its seventy-fourth meeting (17 December 2014) approved the renewal of the mandate of the Group of Experts towards Unified Railway Law and its terms of reference (ECE/EX/2014/L.30 / Informal document ITC (2015) No. 18) until 31 December 2015.

11. The Group of Experts recalled that its mandate is based on the Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law signed during the Ministerial session of the seventy-fifth Inland Transport Committee (ECE/TRANS/2013/2). The strategy (rail map) outlined in the Joint Declaration formulated the agenda items for all the sessions of the Group of Experts and included the following main objectives for the Group:

(a) Establishment of a unified set of transparent and predictable provisions and legal rules for Euro-Asian rail transport operations in all countries concerned that would facilitate border crossing procedures, particularly for transit traffic;

(b) Analysis of existing international modal transport conventions (rail, road, air, inland water and maritime transport) and related agreements in order to identify important provisions and procedures for establishing unified railway law;

(c) Unification of international railway law with the objective to allow rail carriage under a single legal regime from the Atlantic to the Pacific;

(d) On the basis of a future material consensus on unified railway law, identification of an appropriate management system for unified railway law using the experience of international organizations in the field of railway transport OSJD, OTIF and others as well as of international organizations of other modes of transport;

(e) Support for the widest possible use of electronic document workflow and intelligent transport systems.

V. Unification of international railway law with the objective of allowing rail carriage under a single legal regime (agenda item 4)

Documentation: ECE/TRANS/SC.2/GEURL/2015/3

12. The secretariat prepared a draft (ECE/TRANS/SC.2/GEURL/2015/3) of relevant legal provisions to be included into a new international legal railway regime for consideration by the Group of Experts in accordance with the decisions of the Group made at the fifth (ECE/TRANS/SC.2/GEURL/2013/5, paras. 13–21), sixth (ECE/TRANS/SC.2/GEURL/2013/8, paras. 6–39), seventh (ECE/TRANS/SC.2/GEURL/2014/2, paras. 6–54), eighth (ECE/TRANS/SC.2/GEURL/2014/7, paras. 6–46) and ninth sessions (ECE/TRANS/SC.2/GEURL/2014/10, paras. 6–51). The draft also takes into account the considerations and proposals made at the informal meeting of the “friends of the Chair” of the Group of Experts (Geneva, 29 September 2014).

13. The experts reviewed document ECE/TRANS/SC.2/GEURL/2015/3 to reconsider the wording substantively and linguistically in three languages (English, French and Russian) as well as to set all open issues. This revision of the document was performed article by article focusing on open issues.

14. Article 1. Scope of Application

Following suggestions of the representative of OSJD the experts agreed to replace the words “as a supplement” and “supplementary” in paragraph 2 by the words “in addition” and “additional”. They also replaced the word “convention” by the word “treaty” and added the explanation “mixed transport” in brackets. The suggestion to replace the word “modes” by the word “means” was not accepted.

15. Article 2. Mandatory Law

As suggested by OSJD the second sentence of paragraph 1 was amended by the words “agreed by the parties”. The representative of Germany suggested that in paragraph 2 of this provision a reference to consignor’s liability should be made. This reference should clearly state that the sender could limit its liability. The Chair pointed out that the experts should also consider cases where monopolistic status exists. There will be risks if the sender’s liability could increase. The representative of OTIF mentioned that the proposal made by the representative of Germany on Article 2 § 2, which intends to limit the consignor’s liability, does not exist in the CIM UR. He also pointed out that such amendment would not be in accordance with the URL principles, since it is a new rule and not an interface rule between CIM/SMGS as agreed. He proposed to the secretariat that it should be clearly indicated when an amendment proposal is not in accordance with the CIM or SMGS rules in order to ensure clear understanding from all experts. The representative of Finland suggested that definitions should be prepared for each term needed. The secretariat suggested that it would take note during the discussions of different terms for which definitions should be provided and it will provide these definitions for the consideration of the experts at the next session.

16. Article 3. Provisions of public law

One linguistic change referring to the position of the word “only” was accepted by the experts.

17. Article 4. Contract of Carriage

Following several proposals made by the Chair, by Germany, CIT and OSJD the experts agreed to delete in the fourth sentence of paragraph 2 the words “or absence for other reasons or the irregularity” and at the end of the second sentence of paragraph 3 the words “or any other appropriate manner”. The experts also accepted to add the phrase “which is intended for the consignor” at the end of the third sentence of paragraph 3 in addition to the words “the original”. No decision was taken about the proposal of OSJD to replace the word “shall” in the third sentence of paragraph 2 by the word “may”. The representative of Germany pointed out that this provision is connected with Article 10 about the evidential value of the consignment note. The experts agreed with the proposal of OSJD to insert the phrase “with an electronic signature” at the end of the first sentence of paragraph 4. The experts also agreed to insert a new second sentence into paragraph 4: “The use of an electronic consignment note shall be approved by all parties involved in the carriage of goods.”

18. Article 5. Content of the consignment note

A linguistic proposal (“costs relating to carriage”) made by the secretariat on the point (n) of paragraph 1 and point (a) of paragraph 2 was accepted by the experts.

19. Article 6. Responsibility for particulars entered on the consignment note

There was a discussion regarding the “dangerous nature of the goods” mentioned in the first sentence of paragraph 2. The Chair declared that more information required for the dangerous goods. The representative of Germany explained that a definition of dangerous goods is needed. The representative of Ukraine mentioned that it is important to understand that the goods themselves are dangerous.

The different proposals of OSJD and Germany regarding “compensation” were discussed but no final decision was taken on this issue.

20. Article 7. Payment of costs

No discussion took place on the substance of this article. Changes in its title were discussed while discussing article 8. Payment of Carriage charges.

21. Article 8. Payment of carriage charges

The Chair suggested that definition of tariffs should be created. The representative of CIT suggested that the title of article 8 should be changed. The new title should mention: Payment of carriage charges which are based on tariffs. Possibly this would bring some changes to the title of article 7. The Chair and the experts agreed with the proposal from CIT. The representative of Ukraine mentioned that both consignee and consignor should know how the tariffs should be paid. The representative of Germany reacting on the comment provided by the representative of Ukraine pointed out that this would be the case in sales law but in the law under discussion focus should be given to the contract of carriage between the consignor and the carrier. The representative of Ukraine mentioned that tariffs should be calculated when the goods are accepted to be transported and not when the contract is finalized. The representative of Germany was of the view that clarification is needed on which country’s tariffs we are referring to. In addition the representative of Ukraine referring to paragraph 4 mentioned that the standard is that the carrier in the case of different gauges has to hire additional transport vehicles: consequently it has the right to request extra charges.

The Chair suggested that he will provide some further explanations to the secretariat for this article to be incorporated in the revised text for consideration and discussion by the experts at the next session of the group. With regard to paragraph 2 there was no decision made about the question whether the consignee or the consignor can make an agreement with the carrier about the payment of the carriage charges.

22. Article 9. Examination

The experts discussed the proposals of the representative of OSJD secretariat to delete the second part of the last sentence of paragraph 1 regarding the presence of two independent witnesses and to modify the first sentence of paragraph 3 because what is being mentioned there cannot be delivered by the carriers. The experts came to the conclusion that the provision provides sufficient protection to the carrier. Therefore they agreed with secretariats proposal. The representative of Finland pointed out that in the first sentence of paragraph 3 and after the word “... the goods and their packaging ...” containers should be added. The secretariat reacted by mentioning that if the containers are given by the consignor then they are part of the packaging.

23. Article 10. Evidential value of the consignment note

The experts accepted to delete the phrase “according to Article 9” in paragraph 3 because this reference is not necessary.

24. Article 11. Packing, Loading

There were no comments discussed for this article.

25. Article 12. Completion of administrative formalities

The representative of OSJD suggested that the word “any” in the second sentence of paragraph 2 should be deleted. The Chair mentioned that such a drafting and linguistic issues should be addressed at a later stage.

26. Article 13. Time of Delivery

The representative of OSJD suggested that the word “voyage” at the end of the second sentence of the article should be replaced by the word “carriage”. The experts accepted this proposal.

27. Article 14. Delivery

Following a proposal of the representative of OSJD regarding paragraph 1 the experts discussed to mention a “signature by the consignee on the consignment note” as an alternative to the word “receipt” and to regulate the case of absence of the consignment note when the delivery takes place. This was accepted as working option to be put in brackets.

28. Article 15. Right to dispose of the goods

The representative of Germany has provided two amendments for this article. The first one refers to paragraph two and the replacement of the word “is transferred” by the word “shall pass over” mentioned in the first and second sentence of the paragraph. This proposal was accepted by the experts. The second amendment proposal refers to the deletion of last part of paragraph 4 and insertion of the following wording “*has asked for delivery of the goods against a receipt and payment of all amounts due according to the contract of carriage*”. This proposal was also accepted by the experts. The experts agreed that the momentum when the right to dispose of the goods shall pass over to the consignee needs to be further discussed in connection with Article 16 at the next session of the group. Therefore the words “country/place” of destination were put in brackets.

29. Article 16. Exercise of the right to dispose of the goods

The experts discussed two amendments provided by the representative of Germany regarding paragraph 1 and 4 of the article. The representative of Germany commented that the proposed amendments protect the carrier because it would have the right to refuse instructions unless the consignment is presented to him. The secretariat commented that the proposed amendment in paragraph 1 gives flexibility whether the consignment note should be produced or not. The Chair suggested and the experts agreed that a decision could not be taken at that stage. Therefore the proposed amendments by Germany should be put in brackets and discussed at the next session of the group in connection with Article 15.

30. Article 17. Circumstances preventing carriage and delivery

Two linguistic proposals regarding the first two paragraphs of the article were accepted by the experts. Also it was indicated that reference to Article 16 § 1 should be checked by the secretariat.

31. Article 18. Consequences of circumstances preventing carriage and delivery

The representative of OSJD secretariat asked about the meaning of the words “reasonable time” and “lawful and reasonable instructions” mentioned in the first sentence of paragraph 2. The representative of Germany commented that the words “law or custom” in paragraph 5 have a very narrow connotation and better wording should be provided. The Chair suggested that the wording mentioned by OSJD and Germany should be put in brackets and a better wording should be proposed for discussion at the next session of the group.

32. Article 19. Basis of Liability

There were two amendments provided by the representative of Germany in paragraph 1 and 4 (“delay in delivery” instead of “exceeding the transit period”) which were accepted by the experts. However the representative of Switzerland suggested that this change should not be provided in the French version since as is now fully reflects the proposed change by Germany.

33. Article 20. Presumption of loss of the goods

The wording “or placed at his disposal” in paragraph one was discussed. The representative of Germany mentioned that this alternative is not foreseen in other laws of transport. The secretariat explained that this wording is for the protection of the carrier. If such a provision would not exist the consignee would have the right to refuse the goods and nevertheless might declare the goods to be lost. The Chair suggested to replace “placed at his disposal” by the words “arrived for delivery to the consignee”. The experts agreed to continue the discussion about paragraph one at the next session of the group.

34. Article 21. Compensation for loss

The representative of Germany suggested the deletion of the second sentence of paragraph 3 because this item is being regulated in Article 22 as well. After discussion the Chair suggested to add this sentence in Article 22. The Chair asked the experts to discuss also the limits of liability in paragraph 3. The representative of Germany mentioned that the limit of liability which is set in this legal regime is not breakable. Therefore the limits should be set at least at 19 S.D.R.s. Probably even that limit would not be sufficient because no automatic adaptation to inflation is foreseen as it is, on the contrary, the case in the Montreal Convention. The secretariat declared that the Montreal Convention indeed is the model for the solution in the new railway regime. The representative of CIT pointed out that the new legal regime should follow CMR and start from the point of 8,33 S.D.R.s. He stated that the competitiveness of the railways should be improved. The Chair suggested that the new legal regime should have different responsibility levels, for instance 19 S.D.R.s for IT products and gold etc. and he commented that we should not compare products and masses transported by air and by rail. The representative of Germany pointed out that the limitation of the value of the goods serves exactly what the Chair suggested. The experts agreed to continue the discussion in the next session.

35. Article 22. Unit of Account

The sentence deleted from Article 21 regarding the conversion of sums expressed in foreign currency was transferred to Article 22. The representative of OSJD provided two amendments which were accepted by the experts.

36. Article 23. Liability for wastage during carriage

There were no comments discussed on this article.

37. Article 24. Compensation for damage

There were no comments discussed on this article.

38. Article 25. Compensation for delay in delivery

There was a linguistic change provided by the representative of Germany which was accepted by the experts. .

39. Article 26. Persons for whom the carrier is liable

There were no comments discussed on this article.

40. Article 27. Other actions

The Chair asked the experts why paragraph 2 should exist in this article. He presumed a contradiction between Article 26 and Article 27 because Article 26 speaks about carrier's liability for his servants whereas Article 27 speaks about an own liability of the servants. The representative of OSJD commented that if the claim will go against a servant (e.g. against the driver) then the servant will be financially destroyed. The Chair mentioned that in Russia such a claim would be rejected by the court since the servant did not sign the contract. The representative of Germany explained that in other countries a claim against a servant is allowed according to national law. So, paragraph 2 is needed to allow the servant, if he is sued, to limit its liability as the carrier does. If such a provision does not exist then the carrier should incorporate it at its general terms and conditions. The experts agreed that an improved wording should be provided for paragraph 2 to be discussed at the next session of the group.

41. Article 28. Notice of Damage

There was a change provided by the representative of Germany in paragraph 3 ("delay in delivery") which was accepted by the experts.

42. Article 29. Claims

After discussion about several proposals made by the representative of Germany referring to paragraphs 3, 5 and 6 the experts decided to use the term "original of the consignment note" as a general rule. Regarding paragraph 7 the representative of OSJD asked what is meant by the term "applicable national law". He was told that this question is answered by the International Private Law of the respective State.

43. Article 30. Right to bring an action against the carrier

Following a proposal made by the representative of Germany the experts agreed on a clearer wording in paragraphs 1 and 2 with regard to the respective person who has the right to bring an action against the carrier.

44. Article 31. Carriers against whom an action might be brought

The representative of Germany proposed to use the term "actions **relating to** the contract of carriage" (as in Article 29 § 1 with reference to claims) instead of the term "actions **based on** the contract of carriage". This wording will be taken into the new draft.

45. Article 32. Settlement of Accounts

There were no comments discussed on this article.

46. Article 33. Right of Recourse

There were no comments discussed on this article.

47. Article 34. Procedure of recourse

The Chair and the representative of OSJD supposed that this article could go beyond the competences of this legal regime. The experts agreed that this article should be put in brackets and discussed at the next session of the group.

48. Article 35. Agreements concerning recourse

There were no comments discussed on this article.

49. The experts agreed that even though considerable work has been done so far towards the finalization of the provisions of the contract of carriage of the new legal regime, the completion of the wording, both substantively – settlement of all open issues – and linguistically in three languages (English, French and Russian) remains to be done. The

experts expressed their hope that these open issues would be finalized at the next session of the Group. Such a development would give them the right to disseminate these provisions to strategic stakeholders, the market and other interested bodies in their countries for their consideration and review. Such an approach would give the possibility to better address the needs of the market and of railway undertakings by further fine-tuning and improving the text based on feedback from the session of the Group in autumn (14–16 October 2015).

50. Some experts expressed the need to test the provisions and get feedback from the main stakeholders by organizing train demonstration runs. OSJD, CIT and the CCTC expressed their readiness to organize train demonstration runs where the provisions of the new legal instrument could be evaluated in practice. The experts requested OSJD to lead the exercise and report to the Group of Experts session in autumn (14–16 October 2015) with specific feedback and proposals that would further improve the wording of the provisions and address railway undertakings and market needs.

51. The experts requested the secretariat to develop, on the basis of the discussions held by the Group of Experts during the tenth session, a revised draft text of the new legal regime for the next session of the Group for its consideration and review.

VI. Identification of an appropriate management system for unified railway law based on the experience of international organizations in the field of the railway transport (agenda item 5)

Documentation: ECE/TRANS/SC.2/GEURL/2015/4, ECE/TRANS/SC.2/GEURL/2013/12, Informal documents SC.2/GEURL Nos. 2, 3 and 9 (2014)

52. In accordance with the strategy outlined in the Joint Declaration signed during the Ministerial session of the seventy-fifth Inland Transport Committee, an appropriate management system for unified railway law should be identified using the experience of international organizations in the field of the railway transport (OTIF, OSJD and others) as well as international organizations of other modes of transport (ECE/TRANS/2013/2, para. 2 (d)).

53. The Group of Experts recalled the preliminary discussions at its previous sessions on identifying an appropriate management system for the new legal railway regime. The Group of Experts also recalled that a decision on an appropriate management system for the unified railway law is one of the three main tasks remaining. On the basis of ECE/TRANS/SC.2/GEURL/2015/4, ECE/TRANS/SC.2/GEURL/2013/12, Informal documents SC.2/GEURL Nos. 2, 3 and 9 (2014), the Group of Experts continued discussions on management of the new legal railway regime.

54. The secretariat presented document ECE/TRANS/SC.2/GEURL/2015/4 which was prepared as a basis for expert discussions. This document sets the principles and discusses the main challenges for the management of the new legal regime. The depository, the administrative committee and the voting rights as well as the special case of Regional Economic Integration Organizations as Contracting Parties are being addressed.

55. The Chair mentioned that there are several options for the depository and administrative functions of the new legal regime. It could be the United Nations, an independent organization or even OSJD and OTIF. The representative of OSJD pointed out that they share the opinion of the Russian Railways which states that a convention could not be acceptable at this stage. They would prefer to consider an alternative solution. The work

that has been completed could be the basis of our future work towards the full unification of railway law.

56. The representative of Germany mentioned that according to German law and the law of other States, a mere model law or general terms and conditions cannot apply from the provisions of mandatory national law. To increase the competitiveness of railways, there should be a convention open for all interested States. The representative of Finland fully supported the opinion of the German delegation. She pointed out that binding law means a convention.

57. The Chair agreed with the statement made by the German delegation. He also believes that the final product should be a convention. However, he repeated that a number of steps should be finalised and undertaken before these provisions could become a convention under the auspices of the United Nations or of another independent organization. He mentioned that in the region of OSJD rail transportation is almost in every country a monopoly. He suggested that the final text should be endorsed by ITC.

58. The representative of CIT supported the proposal made by the Chair for a step by step approach. He also mentioned that CIT is ready to test and evaluate these provisions by participating in demonstration runs. The representative of CCTT repeated their readiness to organize train demonstration runs that would evaluate the provisions in real conditions.

59. The experts agreed that they should continue discussing this issue for the management of the legal regime at their next session.

VII. Other Business (agenda item 6)

60. There were no proposals under this agenda item.

VIII. Date of next session (agenda item 7)

61. The next session of the Group of Experts is scheduled to be held at the Palais des Nations in Geneva from 11 to 13 March 2015. The experts requested the secretariat to reschedule this meeting and organize the second session of the Group for this year in early summer and the third session in autumn upon availability of interpretation quotas and rooms. Such an arrangement would better facilitate the expert's preparation on open issues and would ensure more fruitful and efficient discussions.

IX. Summary of decisions (agenda item 8)

62. The Group of Experts agreed that the secretariat would prepare a short report on the outcome of the session.
