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Report of the Friends of the Chair of the Group of Experts towards Unified Railway Law



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Working Party on Rail Transport

Friends of the Chair

Group of Experts towards Unified Railway Law

Geneva, 29 January 2018

Report of the Friends of the Chair of the Group of Experts towards Unified Railway Law

I. Attendance

1. The Group of Experts towards Unified Railway Law held its Friends of the Chair meeting on 29 January 2018 in Geneva.
2. The session was attended by experts from the following countries: France, Germany, Greece, Luxembourg and the Russian Federation. Representatives from the European Commission and the European Railway Agency also attended the meeting.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organisation for International Carriage by Rail (OTIF). Experts from the following non-governmental organization participated: International Rail Transport Committee (CIT).
4. At the invitation of the secretariat, experts from the following organizations participated: CMS Cameron McKenna LLP, Deutsche Bahn AG.

II. Mandate

Documentation: ECE/TRANS/SC.2/228

5. During the seventy-first session of the Working Party on Rail Transport (SC.2) the Working Party decided that the mandate of the Group of Experts should be extended for another two years. However, the Working Party did not reach an agreement on the Terms of Reference (ToR) of the new mandate of the Group since three options were proposed.
6. The Working Party decided that a formal document should be prepared and submitted to the next ITC session that will include all these three options as ToR for the extension of the Group of Experts mandate otherwise, there would be no possibility to discuss and decide an extension of the mandate of the Group. The Working Party requested the secretariat to

organize an extraordinary “friends of the chair” meeting (ECE/TRANS/SC.2/228, paras 31-32) well before the meeting of ITC in February in order for the experts to have another opportunity to discuss and eventually prepare a common proposal on the ToR of the Group since ITC is not a forum for discussing and negotiating such documents.

7. The meeting was chaired by the Chair of the Group Mr. A. Druzhinin (Russian Federation).

III. Conclusions and Recommendations

Documentation: ECE/TRANS/2018/13

8. In order to implement the decision of the Working Party on Rail Transport the secretariat prepared document ECE/TRANS/2018/13 which spells out the three options under discussion in more detail.

9. The Group noted that a lot of concrete work with tangible results has been prepared and produced in the past years that should not be lost. The Group managed to prepare a Joint Declaration signed by 37 Ministers of Transport; managed to prepare and agree the draft legal provisions for the contract of carriage; optimized the text of the draft legal provisions in three languages; prepared an ITC resolution as well as monitored virtual pilot tests of those draft legal provisions. The Group agreed that the new mandate should lead the work of the Group one step further towards the realization of the Unified Railway Law.

10. The Experts considered the three options for the extension of the mandate of the Group as set out in document ECE/TRANS/2018/13.

11. The Group noted that actually, only one virtual pilot test was realized during the previous mandate of the Group. This test covered the Corridor Russian Federation – Belarus – Poland – Germany and produced some very good recommendations. However, Belarus did not participate in this pilot test. Furthermore, Turkey and Islamic Republic of Iran participated at the last session of the Group and expressed their interest to perform virtual pilot tests along the corridors Turkmenistan – Iran – Turkey as well as Turkey – Georgia – Azerbaijan. However, their presence during the last session focused more on learning about the new draft legal provisions rather than presenting the results of their virtual pilot tests. Furthermore, real pilot tests were foreseen during the previous mandate of the Group that actually were not realized. Therefore, the Group decided that the new mandate should definitely include the realization of real pilot tests along the already proposed corridors in order to evaluate the draft legal provisions in practice. They decided that these real pilot tests will not be just one and there should be as many as needed in order to cover all different kinds of packaging of the freight, e.g. containers, bulk cargo, etc.

12. The European Commission (EC) commented that the priority of the next mandate of the group should be to complete the unfinished tasks foreseen under the previous mandate, namely the testing and validation of the draft Legal Provisions prepared for contract of carriage of goods when neither the provisions of CIM nor SMGS apply ("interface law"). To this end, the EC proposed that the new ToR could require the group to define 'framework conditions' for the performance of real pilot tests in order to allow for a series of tests to be conducted effectively and in a comparable manner.

13. The EC advised that further development of the URL initiative should follow a step-by-step process, using a realistic and pragmatic approach, with due regard to the limited resources available for this line of work and the actual needs of the industry.

14. As regards the formalisation of the draft Legal Provisions, the EC therefore proposed the case where they could be annexed to the existing CIM and SMGS rules based e.g. on a

UN Model Regulation, associated with an appropriate management system to ensure the timely and coordinated maintenance of the rules by OTIF and OSJD. Alternatively, the EC could support Option 2 which refers to the preparation of the agreed draft legal provisions as a new convention. However, the Commission would like to combine Option 1 and Option 2. The EC also mentioned that the example of RID could be followed.

15. The representative of OTIF stated that without prejudice to the right of States to take a decision on the preparation of a comprehensive framework convention on international rail freight transport (option 3), the relevant procedures of the other organisations have to be respected. In particular, OTIF Member States undertook to concentrate their international cooperation in the railway field, in principle, within the framework of the Organisation (COTIF Article 3). A decision by the OTIF General Assembly (two thirds majority) is required in order to transfer the attributions of OTIF or for the dissolution of OTIF.

16. The Group also recalled its mandate coming from the Joint Declaration on Euro-Asian Rail Transport and Activities towards Unified Railway Law, signed at the ECE Ministerial Meeting “Making the Euro-Asian Transport Network Operational” on 26 February 2013, which requests for “unification of international railway law with the objective to allow rail carriage under a single legal regime from the Atlantic to the Pacific”.

17. The representatives from Russian Federation stated that the two years mandate of the Group should include the preparation of the following:

(a) Preparation of a comprehensive framework convention on international rail freight transport including its annexes on:

- (i) Common provisions on dangerous goods;
- (ii) Common provisions on the use of freight wagons;
- (iii) Common provisions on rail infrastructure;
- (iv) Common provisions on rolling stock;

18. The representative of Germany supported a step-by-step approach which should consist of awareness-raising, performing real pilot tests, finalizing the necessary documents and legal work. The legal work should focus on transforming the provisions already agreed into a document which could be adopted as a legally binding instrument. To that end, the usual formal provisions (depository, management, etc.) should be developed. This approach, effectively a combination of Options 1 and 2, would allow to deliver results in a foreseeable timeframe. By contrast, a comprehensive convention (Option 3) would pose a number of difficulties. In particular, given the attendance of Expert Group meetings, it seemed uncertain whether a sufficient number of states were ready to support such an ambitious project which had the potential to replace the existing legal framework (COTIF and OSJD).

19. The experts after having discussions on the three options regarding the new mandate of the Group decided on the following ToR that constitute the main conclusions of the Friends of the Chair meeting.

(a) Monitor the finalization of necessary documents in order to perform international rail transport under the unified railway law including a standard model for the consignment note for the new provisions and its manual;

(b) Monitor the performance of a substantial number of real pilot tests to be carried out by the railway companies involved in the Group along the corridors agreed and along other corridors if proposed by governments in order to ensure the operational validity and effectiveness of the legal provisions prepared;

(c) Draft a document (or systems of documents) on Unified Railway Law which could be adopted as a legally binding instrument; the document (or systems of documents) shall:

(i) **[take into account]/[consider as basis]** the draft legal provisions on the contract of carriage already prepared;

(ii) include the necessary formal provisions such as depository, management, secretariat, administrative committee, procedures for amending the convention, voting rights, etc.;

(iii) be structured in a way which allows to easily supplement it with provisions on other issues related to international rail freight transport where the Group considers it appropriate to do so;

(d) Discuss other relevant issues related to international rail freight transport with a view to adding, where appropriate, provisions to the document referred to at (c); these issues may include:

(i) Common Provisions on dangerous goods;

(ii) Common provisions on the use of freight wagons;

(iii) Common provisions on rail infrastructure;

(iv) Common provisions on rolling stock.

17. Following the above-mentioned conclusions and recommendations, the experts requested the secretariat to prepare a revised version of document ECE/TRANS/2018/13 in three languages including the ToR as set out at para 16 in order to be discussed during the ITC session in February.

IV. Date of next session

18. The next session of the Group of Experts upon approval of its new mandate by the ITC and the EXCOM is scheduled to be held from 6 to 8 June 2018 at the Palais des Nations in Geneva.
