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**Economic Commission for Europe****Inland Transport Committee****Working Party on Rail Transport****Group of Experts towards Unified Railway Law****Twentieth session**

Geneva, 9–11 July 2019

Item 2 (c) of the provisional agenda

**Scope of URL and its conversion into a legally-binding instrument****Unified railway law – structure and management system****Transmitted by the Government of the Russian Federation\*\* \*\*****I. Mandate**

1. At the seventy-fifth session of the Inland Transport Committee in Geneva in February 2013, 37 countries signed the Joint Declaration on the Promotion of Euro-Asian Rail Transport and Activities towards Unified Railway Law. ECE member countries from the Eurasian area thus affirmed their political commitment and desire to work together on a draft unified railway law – a new law that embodies all the positive and forward-looking aspects of the current legal systems of OSJD and OTIF.

2. In February 2018, the Committee approved a further extension of the mandate of the Group of Experts towards Unified Railway Law in accordance with the new terms of reference:

- 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
- 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
- Draft a document (or set of documents) on unified railway law which could be adopted as a legally-binding instrument
- Discuss other relevant issues related to international rail freight transport with a view to adding, where appropriate, provisions to the above-mentioned document:

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\* This document was submitted late due to delayed inputs from other sources.

\*\* The present document contains the text submitted to the secretariat, reproduced without any changes.



- General provisions on the transport of dangerous goods
  - General provisions on the use of freight wagons
  - General provisions on rail infrastructure;
  - General provisions on rolling stock
3. The document (or set of documents) is to:
- Take into account the draft legal provisions on the contract of carriage already prepared
  - Include the necessary formal provisions such as the depository, management, secretariat, administrative committee, procedures for amendments, voting rights, etc.
  - Be structured in such a way as to allow for new provisions concerning international rail freight transport to be easily added to it

## **II. Background**

### **A. Brief description of the problem**

4. The long-standing presence in the Eurasian area of two legal systems governing relations between the parties to a contract of carriage of goods, CIM and SMG, causes inconvenience for the clients and the carriers despite the common nature of the operations. Therefore, there was a need to align and standardize CIM and SMG already from the outset. Back in 1956, although the USSR proposed that CIM and SMGS be replaced with a new agreement while the International Rail Transport Committee (CIT) proposed that transport be carried out by way of a through consignment note, no agreement was reached on the proposals.

5. In 1982, at the initiative of OSJD and in coordination with OTIF, a joint OSJD-OTIF group was set up to align the provisions of SMGS and CIM. A total 17 provisions were fully or partially harmonized. Subsequent steps included the preparation of a draft Eurasian convention on the basis of SMGS, the establishment of an OSJD temporary working group on cooperation with OTIF in 1996 during the revision of COTIF and the joint study with CIT of the feasibility of using SMGS and CIM consignment notes as direct consignment notes. The results of this work were considered at the meetings of the governing bodies of both organizations.

6. A number of OSJD and OTIF country members considered that the adoption of a new, or third, law would not replace the current CIM or SMGS and it was decided at the twenty-second session of the OSJD Ministerial Meeting in June 1994 to cease work on the Eurasian convention and use the material that had been collected to improve and align SMGS with other legal instruments. Efforts to find ways of aligning the two legal systems continued for another 10 years thereafter.

7. Both organizations concluded that the two legal systems govern relations between the parties to the contract for the carriage of goods but the systems differ significantly when it comes to the form and content of the specific provisions of transport law. Studies showed that the use of a through consignment note would require changes to CIM and SMGS and doubts were raised as to whether a common consignment note could take account of the different interests of individual States. Accordingly, OSJD considered it unlikely that international law in this area could be standardized. Furthermore, owing to the political situation and the differences that existed between East and West at the time, the idea of a common agreement or common consignment note proved unsuccessful.

8. Despite the fact that efforts to harmonize CIM and SMGS in previous years have produced no significant results, OSJD and OTIF believe that they should continue to seek ways of resolving the problems associated with the presence of two legal systems and that this should be a matter for both international organizations to decide.

9. It should be noted that 191 countries in the world manage to apply common standards and harmonized regulations in the field of air transport and the parties to international agreements and conventions of the United Nations in the field of maritime transport are all, without exception, States with access to the sea.

10. Unfortunately, the particular historical and technological features of rail transport have meant that the approach to legal harmonization has been more conservative. It plays an important role in domestic and regional freight transport, but the potential for the development of international rail transport has not yet been fully realized. The world has changed yet there is still no common legal framework for rail transport, notwithstanding the great efforts made by international intergovernmental organizations.

11. The lack of a harmonized legal system for intercontinental carriage of goods between Europe and Asia is one of the reasons why the share of rail transport in Eurasian transport links is not high enough.

## **B. Current status of the Group's work**

12. In 2010, the Group of Experts towards Unified Railway Law was established under the auspices of the Inland Transport Committee and its Working Party on Rail Transport. It was requested to prepare a position paper, which was presented to the Committee at its seventy-third session (ECE/TRANS/2011/3).

13. A Joint Declaration on the Promotion of Euro-Asian Rail Transport and Activities towards Unified Railway Law was signed in Geneva in February 2013. Member countries from the Eurasian area thus affirmed their political commitment and desire to work together on a draft unified railway law – a new law that embodies all the positive and forward-looking aspects of the current legal systems of OSJD and OTIF.

14. Subsequently, by the end of 2017, the Group of Experts had drafted legal provisions on the carriage of goods by international rail links, taking into account the provisions of COTIF (1999) and SMGS (2015).

15. In February 2018, the Inland Transport Committee approved a new mandate for the Group of Experts. Despite the decision taken to continue work in this area, to date, there is still no consensus on the final configuration of the unified railway law. Parties continued discussions on this issue in the Group of Experts in 2018 and 2019.

16. At its meetings in 2018–2019, the Group considered a draft consignment note for test transport operations on the basis of the draft legal provisions that had been developed. The Group also discussed issues relating to the organization of test transport operations (virtual and real).

17. It also considered possible options for a management system under a new law and issues that are to be covered in the document or set of documents regulating unified law.

18. The issue of the final configuration of the unified railway law was considered in detail at the meetings. Notwithstanding the lengthy discussions, to date, the Group of Experts have not reached a consensus on this issue.

## **III. Structure of the unified railway law**

19. The structure of the unified railway law will be presented in this section, based on an approach consistently proposed by the Russian Federation from 2014 to 2019 during the meetings of the Group of Experts towards Unified Railway Law.

**Goal:** the transport of goods and passengers in the Eurasian area under the same legal conditions; the establishment of a single legal system to replace the existing legal system.

### **1. Preparation of a single convention (or set of agreements):**

Scope of application, conceptual framework, juridical persons;

- (a) General provisions on the contract for the carriage of goods in international freight traffic;
- (b) General provisions on the contract for the carriage of passengers in international rail transport;
- (c) General provisions on the contract for the carriage of dangerous goods in international freight traffic;
- (d) General provisions on the use of freight wagons in international rail transport;
- (e) General provisions on the use of passenger wagons in international rail transport;
- (f) General provisions on rail infrastructure;
- (g) General provisions on rolling stock.

**2. Preparation of all administrative provisions** concerning in particular the depository, administrative committee, procedures for introducing amendments, voting rights, regional economic integration organizations and other matters.

#### **IV. Position of the Russian Federation**

20. The draft legal provisions prepared by the Group of Experts, which set out only the standards for the contract on carriage of goods in international rail traffic, cannot be considered as a unified law, since, as OTIF member countries suggest, the current CIM and SMGS regimes will remain in force should the draft take effect. Furthermore, the common CIM/SMGS consignment note developed jointly by OSJD and CIT has already been in use since 2006, ensuring to a large extent the harmonization of the CIM and SMGS provisions.

- In this regard, we are maintaining a comprehensive approach to efforts to establish a unified railway law. The draft provisions of the new legal regime for Euro-Asian rail freight transport can only be considered as one of the many elements of unified railway law (one of the annexes to the convention) or as a first step towards its establishment, but not as a separate intergovernmental agreement.
- Most of the provisions of the document correspond to CIM, a number of which have been changed to discretionary standards. In order to reach a compromise between the two systems of law, some important provisions have been made directory provisions, i.e. giving rise to the need to refer to established practice or national legislation.
- The regulation of some fundamental issues is close to the approach of country members of OTIF, which is different from specifications for transport operations of the major railway companies in such countries as Russia, China and Kazakhstan.
- It would not be appropriate to prepare a consignment note and supporting documents for the draft legal provisions for the carriage of goods within the framework of the OSJD Commission on Transport Law in 2019, since no policy approach to the establishment of a unified railway law has been agreed upon by the Group.
- There is no consensus on approaches to the establishment of a unified railway law.

##### **Management of a unified railway law and vision for its adoption**

21. **Proposal:** given the vast experience gained by the two specialized international organizations OSJD and OTIF in developing international railway law, request the secretariat to establish a temporary working group to provide options relating to the management of a unified railway law.

22. ECE should be the depository of any future common legal regime. Another option to consider could be the establishment of a specialized agency of the United Nations along the same lines as those for air and water modes of transport (IMO and ICAO).