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**Execution of the Mandate of the Group of Experts**

**OTIF Secretariat's considerations on the UNECE initiative  
on Unified Railway Law**

**Submitted by OTIF**



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
Intergovernmental Organisation for International Carriage by Rail

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**Secrétaire général  
Generalsekretär  
Secretary General**

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## **TO THE GROUP OF EXPERTS TOWARDS UNIFIED RAILWAY LAW**

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OTIF Secretariat's considerations on the UNECE initiative on Unified Railway Law

## I. INTRODUCTION

1. The OTIF Secretariat submits its considerations on the development of the Unified Railway Law to the 23<sup>rd</sup> session of the Group of Experts towards Unified Railway Law (GEURL) on 13-15 January 2021.
2. The OTIF Secretariat would point out that this document does not represent an official position of OTIF, which can only be established by OTIF's General Assembly or by other competent organs in accordance with the mandate given by the former.

## II. OTIF GENERAL ASSEMBLY MANDATE

3. The OTIF Secretariat has actively participated as an observer in the sessions of the GEURL since its first session.
4. At its 13<sup>th</sup> session in September 2018, OTIF's General Assembly considered the latest developments of the UNECE initiative on unified railway law and decided as follows:
 

*'Instructed the Secretary General to continue cooperation with UNECE on the Unified Railway Law initiative;*

*Instructed the Administrative Committee to follow up the UNECE initiative on Unified Railway Law and issue its advisory opinion on general policy issues, where feasible;*

*Instructed the Working Group of Legal Experts to follow up the UNECE initiative on Unified Railway Law and issue its advisory opinion on legal matters, where feasible;*

*Instructed the Secretary General and the Working Group of Legal Experts, in consultation with the Administrative Committee, to consider and propose solutions for appropriate OTIF involvement in the management of binding legal instruments which could take over the Draft Legal Regime on the contract of carriage of goods as developed within the framework of the UNECE initiative on Unified Railway Law;*

*Based on Articles 3 (§ 1), 4 (§ 2), 14 (§ 2, letters h), p) and q) and 43 of COTIF, acknowledged that its prior decision is necessary before participating in the development of any new international railway law whose scope and aims may conflict or overlap with the scope of COTIF and aims of OTIF;*

*Instructed the Secretary General to submit a report to the next ordinary session on the progress of work on the UNECE initiative on Unified Railway Law.'*
5. OTIF's General Assembly will consider the UNECE initiative on Unified Railway Law at its 15<sup>th</sup> session in September 2021. It should be noted that OTIF has not made any proposals with regard to its involvement in the management of Unified Railway Law, as the GEURL has never reached a consensus on its scope and objective.

## III. JOINT DECLARATION

6. On 26 February 2013, the '[Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law](#)' (Joint Declaration) was signed by [thirty-seven member countries](#) of the UNECE. Thirty-five signatories of the Joint Declaration are also members of OTIF and (or) OSJD, and two signatories (Malta and Cyprus) are not members of either organisation and do not have a railway network.
7. Without going into details, it should be noted that the GEURL has not yet reached a common understanding and interpretation of the Joint Declaration. Nevertheless, **an implied guiding principle for all the UNECE's activities should be understood as the improvement of international railway law by reducing its fragmentation.**
8. It should be noted that not all the OTIF and OSJD members signed the Joint Declaration. Moreover, neither OTIF's nor OSJD's supreme organs have ever politically endorsed it.

#### IV. FRAGMENTATION OF INTERNATIONAL LAW

9. International railway transport law is fragmented, as it is international law in general and international transport law in particular. The distinctive feature of international railway transport, as a land transport mode, in comparison with maritime and air transport, is that, in case of transit, territories of different countries have to be crossed. Consequently, the uniformity of international railway transport law is of particular importance.
10. At present, there are two comprehensive systems of international railway law: OTIF law and OSJD law. In most cases, OSJD and OTIF rules govern the same areas of railway transport, for instance contracts of carriage, use of wagons, transport of dangerous goods etc. However, not only are some specific rules different, but more importantly, certain fundamental principles differ as well, for instance the level of commercial freedom or, in general, the distribution of competences between public authorities and private actors. Furthermore, OSJD also regulates operational and technical questions which, within the OTIF area, are regulated by relevant companies or their associations.
11. Unlike many other treaties, including other transport conventions, the greatest 'internal' uniformity within OTIF and OSJD law is legally ensured, as only one version of a particular legal instrument (e.g. CIM UR, SMGS etc.), including all amendments, is applicable.
12. In other words, the CIM UR are mandatory in the states parties to the CIM UR: when their conditions are met, they are obligatory and it is not possible to derogate from them. In effect, the international conventions prevail over the provisions of national law. They are of an international public order nature, which prevails over the provisions of states' national laws and creates legal obligations between their nationals which have to be complied with and carried out. If a Member State of OTIF does not wish to apply the CIM UR, it can enter a reservation at any time in accordance with Article 42 of COTIF, according to which it will not apply the CIM UR in their entirety. Up to now, none of the OTIF Member States have entered such a reservation, so the CIM UR is the only Appendix to COTIF that applies in all OTIF's Member States. In addition, if a state party to the CIM UR disagrees with modifications to the CIM UR, whether these are decided by the General Assembly or the Revision Committee, it may declare that it does not approve these modifications. In this case, application of the CIM UR is suspended in its entirety in this state from the date these modifications enter into force. Up to now, none of the states parties to the CIM UR have made such a declaration.
13. It is obvious that harmonisation of the existing legal systems should reduce fragmentation and facilitate international traffic. The eventual unification of international railway transport law and establishment of one single international legal regime may have clear benefits compared with the two legal systems that exist at present. However, such a single regime could be developed only with the clear political commitment and participation of OSJD and OTIF and their members. Otherwise, a third international legal regime will be developed and international railway regulation will be further fragmented.
14. Any further fragmentation of international railway transport law should be avoided. It is of particular relevance to recall that each new international convention applicable to the transport of goods by sea contributed to further fragmentation.
15. At present there are three international maritime conventions in force: the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (the Hague Rules of 1924), the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Hague-Visby Rules of 1968) and the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules of 1978). Moreover, there is also the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules of 2008), which has not entered into force.
16. Without going into details, it is worth mentioning that despite positive developments, a universal and uniform liability regime for international carriage by air has not yet been achieved either. At present, there is a complex system comprised of the Convention for the

unification of certain rules for international carriage by air (the Montreal Convention of 1999) and the Warsaw System on air carriers' liability consisting of the Convention for the unification of certain rules relating to international carriage by air (the Warsaw Convention of 1929) and a number of modifying and supplementary treaties.

17. Lastly, unified railway transport law should be maintained and (or) achieved not only between Europe and Asia, but also with Africa. Therefore, it should not be forgotten that a number of Northern African countries are OTIF Member States. Moreover, it should not be forgotten that some parts of OTIF law are also applicable to national railway transport.

## V. RESULTS OF THE GEURL AND WAY FORWARD

18. As a result of a decade of work, the GEURL has prepared a draft legal regime limited to the regulation of contracts of international carriage of goods. This draft legal regime has initially been designed as an interface law with the aim of avoiding any conflict with the CIM UR and SMGS and of filling a gap in the international regulations for international carriage when neither the CIM UR nor SMGS can be applied over the entire journey. However, its scope is being reconsidered in the direction of establishing of a new legal regime to replace the CIM UR and SMGS.

19. Without prejudice to the initiative based on the Joint Declaration and taking into account the considerations presented above, the only responsible and reasonable approach is that the draft legal regime on contracts of carriage of goods should be an interface law and any conflict and overlap with the CIM UR and SMGS must be avoided. Consequently, a previous version of Article 1, 'Scope of Application', should be kept, in particular § 1:

*'§ 1 This legal regime shall apply to a contract of carriage of goods by rail,*

- 1. when the place of taking over of the goods and the place designated for delivery are situated in two different States which are Contracting Parties to this legal regime, and*
- 2. if the contract of carriage stipulates that the contract is subject to this legal regime, and*
- 3. if neither the provisions of CIM nor SMGS or bilateral or multilateral agreements between Contracting States apply to the contract covering the entire journey.'*

20. The above interface law could be put in place rapidly in the areas in which the CIM UR and SMGS are applied. If such interface law were to be successful, it would inevitably contribute to and foster the development of a single uniform railway law. Nevertheless, an interface law approach should be endorsed only on condition that there is a consensus among all the relevant stakeholders.
21. The question of the appropriate management system is topical for the successful entry into force and application of the proposed interface law, as well as to ensure that it remains compatible over time with the CIM UR and SMGS. Consequently, both OTIF and OSJD should formally be part of the management system.