



**Economic and Social
Council**

Distr.
GENERAL

TRANS/SC.2/2001/1/Add.1
1 February 2001

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Rail Transport

**HARMONIZATION OF CONDITIONS OF DIFFERENT
LEGAL RAIL TRANSPORT SYSTEMS**

Transmitted by the Organization for Cooperation between Railways (OSZhD)

1. The Committee of the Organization for Cooperation between Railways (OSZhD) has examined the report of the ECE Inland Transport Committee Working Party on Rail Transport on its fifty-fourth session, held in Geneva from 2 to 5 October 2000.
2. The Working Party requested OSZhD and the Intergovernmental Organization for International Carriage by Rail (OTIF) to report on efforts to harmonize the CIM/CIV and SMGS/SMPS legal systems.
3. There are currently two separate legal systems regulating the international carriage of goods by rail in Europe, Asia and North Africa:
 - The Uniform Rules Concerning the Contract for International Carriage of Goods by Rail (CIM), annex B to the Convention concerning International Carriage by Rail (COTIF);
 - The Agreement on International Goods Transport by Rail (SMGS).

4. The COTIF Convention came into force on 1 January 1893; the 40 States parties have a total area of some 10.8 million km² and approximately 270,000 km of track.
5. SMGS came into force on 1 November 1951. The 22 Asian and European States which are currently parties to the Agreement have a total area of more than 35.9 million km² and over 240,000 km of track.
6. The two different systems developed owing to complex political, economic, technical, legal, and other problems.
7. Both systems regulate the relations between their respective parties in respect of carriage of goods, but they differ significantly both in the form and the content of individual provisions of transport law, which in many cases creates problems for clients and carriers alike.
8. Accordingly, not long after both CIM and SMGS were operative a need was felt to harmonize and standardize the two systems, and a number of international organizations and individual States took certain steps in this direction. At the eleventh session of ECE, in 1956, a proposal was made to unify international railway law and replace CIM and SMGS with a new Convention. The International Rail Transport Committee (CIT) proposed that a through consignment note should be used for the carriage of goods between parties to CIM and SMGS.
9. Investigation indicated that the use of a through consignment note would necessitate amendments to CIM and SMGS, and doubts were raised as to whether a standard consignment note would accommodate the disparate interests of the individual States involved. Consequently, OSZhD considered it unlikely that international railway law could be standardized. Moreover, owing to the political situation and the frictions in East-West relations at the time, the idea of establishing a standard agreement or consignment note proved abortive.
10. In 1982, OSZhD took the initiative and resumed negotiations with OTIF. This resulted in the formation of a joint group to harmonize and standardize the provisions of SMGS and CIM. A total of 10 joint meetings of experts were held in the period 1983-1987 and 17 provisions were completely or partially standardized. Appropriate changes were made to SMGS and CIM, but this is clearly insufficient.
11. To pave the way for a future transition to standard rules of international railway law, in 1991 OSZhD embarked on the elaboration of a draft European-Asian Convention based on the provisions of

SMGS and CIM. However, a number of OSZhD member countries and some international organizations (OTIF) considered the adoption of a new (third) corpus of law, in addition to the existing CIM and SMGS, to be unacceptable, and at the twenty-second session of the OSZhD Ministerial Meeting in June 1994 it was resolved to halt work on the European-Asian Convention and use the accumulated material to improve SMGS and align it with other legal documents.

12. Cooperation between OSZhD and OTIF is now entering a new phase. Pursuant to an understanding signed in 1991, a joint meeting of experts on harmonizing the existing agreements was held in May 1995. OTIF provided information on efforts to comprehensively revise COTIF and expressed its intention to cooperate in the harmonization of SMGS and CIM.

13. In order to perform this task, an Interim Working Group was formed in 1996 under the auspices of the OSZhD Second Commission. The Interim Working Group drew up a list of issues for joint consideration. At the second joint meeting of OSZhD and OTIF representatives held in Vilnius in May 1996, it was confirmed that the scope of SMGS and CIM would not change significantly in the foreseeable future and the two systems of transport law would continue to exist in parallel for some time to come. The elaboration of a new draft CIM means that prospects for harmonization are receding even further.

14. Accordingly, at the twenty-seventh session of the OSZhD Ministerial Meeting (Astana, June 1999), it was decided to concentrate on further refining SMGS, continue efforts to resolve problems in the practical operation of railways stemming from discrepancies in the existing regulations under the two systems, and put to good use available experience of legal regulation, especially between Europe and Asia.

15. With regard to the carriage of goods, a number of new annexes to SMGS which are of great practical importance have recently been elaborated and adopted:

- Regulations on carriage by privately-owned wagons and wagons leased out by the railway;
- Regulations on the carriage of automotive equipment;
- a procedure for completing an SMGS consignment note for the carriage of goods that can subsequently be reformatted for use under the other system of transport law, and vice versa.

16. The task of preparing regulations on carriage by road trains, swap bodies, and trailers, and the technical specifications for the stowing and coupling thereof, has been completed. A guide to the application of the rules on the carriage of dangerous goods has been prepared and adopted (annex 2 to

SMGS).

17. In addition to the measures listed above, joint efforts have been made by OSZhD and CIT to study the possibilities for using the CIM consignment note as a through consignment note in traffic with countries that use SMGS, and vice versa.
18. To this end, an OSZhD/CIT Joint Working Group was formed in early 1998 comprising experts from the railways of Belarus, Latvia, Poland, the Russian Federation, Ukraine, the OSZhD Committee, Hungary, Germany, the CIT secretariat, the Central Office for International Railway Transport (OCTI), and the International Union of Railways (UIC).
19. Attention has recently been paid to a number of conflicts that might arise under the existing legal systems (CIM/SMGS) and suggestions have been made as to how to deal with them. A comparison of specimen consignment notes has been undertaken, focusing on the number and purpose of the entries and their content, and the different requirements of SMGS and CIM with regard to consignment notes have been identified. Consideration has been given to a range of matters, for example the language that should be used when completing forms, the flagging of dangerous goods, and compliance with customs requirements.
20. At the meeting of the OSZhD Second Commission in October 1998, it was recognized that despite the similarity of many of the entries in the SMGS and CIM consignment notes, their use as through shipping documents would necessitate changes to transport law; other problems such as complaints, delivery times, and customs issues also seem hard to resolve. Several delegations therefore proposed the option of devising a standard model consignment note that would meet the requirements of both SMGS and CIM. This proposal has not yet been endorsed by CIT.
21. Meanwhile, the CIT General Assembly decided that, in view of the time required to resolve problems arising in connection with the use of SMGS and CIM consignment notes as through shipping documents, new procedures should be formulated which drew on the existing experience of applying the Germany-Belarus/Russia international rail freight tariff agreement (GBRT) regarding carriage conditions (January 1998) and other tariffs and treaties.
22. The representatives of OSZhD noted that it would be premature to take GBRT as a starting point, since carriage using this tariff had only just begun, was purely regional in scope, and envisaged the use of a simplified version of the CIM consignment note.

23. In view of this difference of opinions, it was decided to defer consideration of this issue and study the application of the GBRT tariff in practice, while at the same time not ruling out the proposals made by the representatives of OSZhD to introduce a standard model consignment note. It was also noted that the efforts of the Joint Working Group were very important for identifying ways to resolve conflicts and remove obstacles at border crossings in international rail freight traffic.

24. The prevailing view in the international community is that it would be highly desirable to standardize or at least harmonize (align) the two legal systems for the carriage of goods. The various attempts to achieve this goal during the past 40 years have so far failed to yield the desired result.

25. As to the harmonization of CIV and SMGS, neither OTIF nor OSZhD has addressed this issue recently.

26. Nevertheless, the opinion is that continuing efforts should be made to identify and apply solutions to problems caused by the existence of two legal systems. This is essentially a problem for OTIF and OSZhD and should be the prerogative of these two organizations. To some extent they will be helped by the recent agreement that the Director General of OCTI and the Chairman of the OSZhD Committee should meet, and by the general willingness to cooperate.
