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Working Party on Rail Transport

Group of Experts towards Unified Railway Law

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Item 3 of the provisional agenda

Negotiation on the Intergovernmental document

Preparation of a Joint Declaration on the promotion of Euro-Asian rail transport and activities including steps towards unified railway law

Note by the secretariat

I. Mandate

1. This document contains a first draft of the Joint Declaration on the promotion of Euro-Asian rail transport and activities including steps towards unified railway law prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2012/2) in accordance with the decisions made at the group of expert's first (ECE/TRANS/SC.2/GEURL/2011/4, paras. 19–37) and second sessions (ECE/TRANS/SC.2/GEURL/2011/9, paras. 19–29). The secretariat draft also takes into account the considerations and proposals made at the informal meeting of the “friends of the Chairman” of the UNECE Working Party on Rail Transport (Geneva, 2 March 2012).

2. The Group of Experts may wish to consider and finalize the present draft Joint Declaration and forward it for further examination and approval to the UNECE Working Party on Rail Transport (SC.2) at its session to be held on 8 and 9 November 2012. The alternative wordings or the parts of the text, provided by some experts are presented in square brackets for consideration by the Group of Experts.

II. Draft Joint Declaration on the promotion of Euro-Asian rail transport and activities including steps towards unified railway law

We, Ministers of Transport interested in Euro Asian rail transport:

Meeting in ... on ... under the auspices of the United Nations Economic Commission for Europe (UNECE),

Recognizing the potential for efficient and seamless Euro-Asian rail transport operations demanded by economic globalization and by ever increasing trade within the Euro Asia area,

Noting the progress of important rail infrastructure projects along Euro-Asian land transport links,

Noting also that railways have an alternative and complementary role to play mainly because containerized transport between Europe and Asia will continue to grow while seaports on both continents as well as port hinterland transport links are increasingly congested,

Convinced that long distance Euro-Asian rail transport operations of goods and passengers may significantly increase, if fast, reliable and seamless rail and intermodal transport services are developed along the Euro-Asian links,

Aware that globalization, railways reform and opening of transport markets provide railways with new options to reach out to transcontinental traffic and to turn Euro-Asian transport market opportunities into rail business,

Convinced that in order to make rapid progress towards that goal, Governments, with the assistance of international organizations should cooperate and commit to a set of common objectives, legal principles and operational rules to provide support to railways and allow business to develop and take provision of measures that will facilitate the administration and operations,

Aware that Euro-Asian rail transport operations involve and transit many countries, all members of UNECE and UNESCAP, with different national railway systems and structures as well as different legal regimes governing international rail transport, i.e. Convention concerning International Transport by Rail (COTIF) Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM), Agreement on International Railway Freight Transport (SMGS), the relevant acquis of European Union law, CIS, Customs Union, and other regional Governmental organizations.

Bearing in mind the progress achieved by the other transport modes in harmonizing and simplifying their legal framework, making it imperative to ensure comparable business conditions among these modes and rail transport,

Conscious that different legal regimes along Euro-Asian rail transport links increase cost, reduce competitiveness and impede the development of efficient rail transport operations,

Welcoming progress made through the joint activities of OSJD, OTIF and CIT in establishing and using the common CIM/SMGS consignment note, including the related electronic documents, the CIM/SMGS wagon and container note and the CIM/SMGS commercial act,

Recognizing however that further steps should be taken to ensure the efficient negotiation and conclusion of Euro-Asian rail transport contracts compatible with existing

legislation of the States of the Euro Asian region and of the COTIF/CIM and SMGS regimes,

Acknowledging that in the light of existing differences in political systems and economic conditions applicable to rail operations along Euro-Asian rail transport links, the establishment of appropriate institutional and management structures — ensuring a balance of interests for Governments and railway enterprises — is an important issue in the elaboration of a unified transport law for Euro-Asian rail transport.

Declare the following

1. Ministers having signed the present Joint Declaration (hereafter, the Parties) endeavour to jointly develop and strengthen cooperation in the area of Euro-Asian rail transport.

2. The Parties strive to pursue the following strategy (rail map) to establish comparable legal conditions among competing modes on Euro-Asian transport links and to exploit the potential of long-distance rail transport along the Euro-Asian links and between adjacent countries: [*Delete “comparable” and “among competing modes on Euro Asian transport links”*]

(a) Establishment of transparent, predictable and harmonized [unified] provisions for Euro-Asian rail transport operations in all countries concerned that do also away with complicated border crossing procedures, particularly for transit traffic;

(b) Harmonization or unification of international railway law with the [long-term] objective to allow rail carriage under a single regime from the Atlantic to the Pacific. In order to do so, the Parties endorse and support the strategy and three-step-approach laid down in the UNECE Position Paper towards unified railway law in the pan-European region and on Euro-Asian transport links; [*Delete last phrase: “in order to do so ... Euro – Asian transport links”*];

(c) Definition of the system of international agreements required for establishment of unified transport law;

(d) Definition of a management system of the unified rail transport law in the framework of one or several organizations and a decision-taking system in such organizations;

(e) Definition of terms of transport;

(f) Elaboration of unified principles for electronic document workflow and intelligent transport systems;

(g) Cooperation in the field of transport safety and security;

(h) Cooperation in the field of formulation of uniform technical policy with regard to transportation; [further elaboration of points (c) to (h) made by Russian Federation is provided in Annex II in original text in Russian language].

3. The Parties concur to elaborate their position on appropriate institutional structures, using the experience of international organizations, such as OSJD, OTIF and EC/ERA, the experience of railway organizations as well as the established decision-making processes in international organizations dealing with other modes of transport (road, inland water, air and maritime transport).

4. Application of this joint Declaration shall be monitored at regular intervals by the UNECE Working Party on Rail Transport (SC.2) under the authority of the UNECE Inland Transport Committee. The Working Party on Rail Transport (SC.2) may propose amendments to the Declaration for review and adoption by its Parties.

5. In particular and in accordance with the UNECE Position Paper, the Parties recommend and support use by railway undertakings and their customers of the General Terms and Conditions for Euro-Asian Rail Transport Contracts (GTC EurAsia) (developed by the railway industry and experts from OSJD, OTIF and CIT and adopted by the UNECE Working Party on Rail Transport) in line with the policy principles contained in Annex I to this Declaration. [*Delete “in particular and in accordance with the UNECE Position Paper” and “recommend and support” and incorporate “the Parties believe it is possible to”*].

Annexes

Annex I

Policy Principles for Application of the General Terms and Conditions for Euro-Asian Rail Transport Contracts (GTC EurAsia) [*Comments made by OTIF are provided in Annex III*]

Principle 1: Objective of GTC EurAsia

The objective of GTC EurAsia is to facilitate international railway transport by establishing uniform contractual relationship between railway undertakings and their customers. By doing so they will contribute towards [harmonization of the railway law] [establishment of a unified legal framework] and increased legal security in the pan-European region and on Euro-Asian rail transport links and/or at global level for the purpose of levelling the playing field between all modes of transport.

Principle 2: Scope of GTC EurAsia

GTC EurAsia will constitute a model for establishing contractual relations among all parties that conclude rail transport contracts under both the COTIF/CIM and SMGS regimes.

Principle 3: Contractual Nature of GTC EurAsia

The application of GTC EurAsia into contracts of carriage shall be optional and only when there is mutual agreement by the parties.

Principle 4: Content of GTC EurAsia

GTC EurAsia will contain provisions that provide for the following contractual elements under the COTIF/CIM Convention and the SMGS Agreement:

- (a) Single contract of carriage;
- (b) Single consignment note;
- (c) Single liability regime.

Principle 5: Endorsement of GTC EurAsia

Public authorities responsible for rail transport will assist in the application of GTC EurAsia and will promote their use in their countries.

Principle 6: Conformity [Compatibility] of GTC EurAsia

GTC EurAsia is based on and is in line with the relevant provisions of the COTIF/CIM Convention and the SMGS Agreement, the relevant legislation applicable in the European Union and the national rules and regulations as of date of signature of this document.

Upon entry into force of modifications to the COTIF/CIM Convention and the SMGS Agreement, to the relevant legislation applicable in the European Union and to the mandatory national rules and regulations, GTC EurAsia will be amended accordingly, as required.

Principle 7: Geographical Coverage of GTC EurAsia

GTC EurAsia will be applicable on the entire railway network [open to international traffic] on the territory of the following countries: ..., ..., ...,

[Principle 8: Scope of application of GTC EurAsia

GTC EurAsia will apply for all types of rail freight transport operations and types of cargo shipped by rail without prejudice to the applicable required mandatory rules and regulations.]

Annex II

[Original text in Russian]

Comments and explanations provided by the Russian Federation regarding points (c) to (h) of the Joint Declaration.

Arguments in favour of the proposals made by the Russian Federation for the draft Declaration on unified railway law (policy document)

This text has been drawn up taking into account the agreements reached at the meeting of experts held in Geneva on 2 March 2012, where the Russian Federation undertook to submit detailed arguments in favour of its proposals for the draft Declaration on a unified railway law.

The proposals address part 2 of the Declaration. It is proposed to cast the text as follows:

“2. The Parties have agreed on a strategic approach to establish equal regulatory conditions among competing modes of transport and to exploit the potential of long-distance rail transport on Euro-Asian land links, and also between adjacent States, for the establishment of a unified railway law:

- (a) ...
- (b) ...
- (c) Definition of the system of international agreements required for establishment of unified transport law;
- (d) Definition of a management system of the unified rail transport law in the framework of one or several organizations and a decision-taking system in such organizations;
- (e) Terms of transport;
- (f) Elaboration of unified principles for electronic document workflow and intelligent transport systems;
- (g) Cooperation in the field of transport safety and security;
- (h) Cooperation in the field of formulation of uniform technical policy with regard to transportation.”

The preamble does not diverge significantly (apart from editorial changes) from the version prepared by the secretariat. It is the Russian proposals for subparagraphs (a) to (f) that are of primary importance and that require detailed explanation.

Before addressing the specific subparagraphs, we should like once again to list a series of problems with the existing rail transport regulation system that must be taken into consideration when establishing a unified transport law.

1. The level of competition within rail transport varies from country to country. Competition is high among carriers in the countries of the European Union, while in the countries of the Commonwealth of Independent States (CIS) and South-East Asia, rail transport is a monopoly.
2. Accordingly, the form of regulation of rail transport differs. In countries with high levels of competition, the main form of regulation is contract law, and conditions of carriage and tables of rates, etc. are set by agreement. The carriers' self-regulatory body,

the International Rail Transport Committee (CIT), is highly developed. On the other hand, in countries with monopolies, the main means of regulation is not by contract, but through mandatory standards directly applied by the Government (for obvious reasons, as the monopoly makes it possible to impose on the contracting parties conditions recognized as unattractive); the law establishes the rights and duties of the carriers and their clients to the extreme, with minimum opportunity for relations by contract.

3. The carriers are of different types. In the countries of the European Union and a number of CIS countries, railway companies are private enterprises, while in some countries they are State-owned, with their activities carried out by State enterprises. In some countries, the railways are even part of the Ministry of Transport.

4. Rail transport is of varying importance in the national economies. In the transport systems of a number of countries the rail system is important but not crucial, as alternative modes (primarily road transport) have been developed. At the same time, in some countries (such as the Russian Federation) there is no alternative means of delivery of goods and passengers in certain regions.

5. The psychology of rail transport is yet another factor, albeit not so visible as the rest, but just as important. Various countries have different traditions of railway operation. As rail transport is a rather conservative sector, the introduction of any innovation outside traditional work patterns takes some time, and it does not always have the desired effect. This applies not only to the railways themselves, but also to their clientele and to regulatory bodies.

The factors referred to above must be taken into account when formulating a strategy for a unified railway law. We therefore fully support a plan that commences with a Declaration being drawn up as a policy document, reflecting the will of States to have a unified railway law for the Euro-Asian area. The representative of the European Union quite rightly stated at the meeting held in Geneva on 2 March 2012 that the Declaration must not be a law or contain specific legal standards. At the same time, in our opinion, it should set out guidelines within which the parties can find mutually acceptable solutions. We believe the proposals made by the Russian Federation in subparagraphs (a) to (f) tackle a number of issues whose resolution will clear the way for a full-fledged system of railway law.

Detailed arguments supporting our proposals can be found below.

Subparagraph (a), "Definition of the system of international agreements required for establishment of unified railway law".

The starting point for any international transport law is the corresponding international agreements. Either one international agreement (a convention) may be concluded, or several, forming a system of law. We think it is necessary to take into consideration the positive experiences of international legal systems existing for other modes of transport. For example, there are a number of international agreements in civil aviation (the Chicago Convention, the Montreal Convention, the Cape Town Convention, etc.).

The decision about the best choice for a legal system should be taken once the range of issues to be regulated specifically by the international legal agreement (or agreements) has been specified. As mentioned earlier (in paragraph 1), different countries have different levels of State interference in rail transport. As a result, for certain countries a number of issues can be resolved only at the level of international law.

There are different possibilities for the establishment of a legal system. For example, it is possible to have a system with a framework convention defining the general creation and operation of a unified railway law, with "special" questions resolved by specific

international agreements. Such a legal structure exists, for example, for road transport, where there is a general TIR Convention, while the transport of perishable foodstuffs is regulated by a separate agreement.

The choice of legal system depends to a great extent on the choice of organizational system for decision-making within the system itself. For example, the application in practice of SMGS (an international agreement) has shown that the timely introduction of amendments required as transport technology develops is a sticking point. Each amendment formally requires appropriate ratification under the domestic law of the participant countries, which rules out any timely decision-making. We believe one possibility is to follow the experience of civil aviation, where there is a framework convention (the Chicago Convention) and questions that arise are dealt with when the International Civil Aviation Organization (ICAO) issues standards and applicable practices not requiring ratification. In this case we may wish (in any event, initially) to consider a single, general convention setting out the principles for decision-making on specific international rail transport issues.

We believe the question of which system of law is best cannot be resolved at the stage when the Declaration is being adopted. At the same time, including this question in the Declaration as an issue to be resolved will make it possible to carry out the necessary study and analysis, with the involvement in the discussion of experts from all the interested countries, and also from international organizations and railways.

Subparagraph (b), "Definition of a management system of the unified rail transport law in the framework of one or several organizations and a decision-taking system in such organizations".

This question is heavily interrelated with subparagraph (a), but because of its importance in the functioning of a unified railway law, it calls for the adoption of separate measures.

The existing structures for managing transport law, the OSJD and OTIF committees, are organizationally structured in different ways and take decisions at different levels. Both committees have a dual-level management system, where in principle the first level is an organization composed of State bodies and the second level is an organization of railway enterprises (in the COTIF framework, OTIF and CIT; in OSJD, the Conference of Ministers and the committee of directors-general). In contrast with the COTIF system, under the OSJD system the railway carriers' organization (the committee of directors-general) is not a separate structure; it is organizationally part of OSJD. Accordingly, the levels of decision-making are not the same either. For example, in the COTIF system, decisions regarding conditions of carriage are taken by the railway companies' organization (CIT), while in the OSJD system the railway companies' structure, the committee of directors-general, can only recommend the appropriate texts for adoption. It is the structure comprising State bodies, the Conference of Ministers, that adopts them.

These differences are to a great extent attributable to the factors described in paragraphs 1 to 4, above. A decision now has to be made as to which system will serve as a basis for the management system of a unified railway law. In addition, we must study how management systems work in other modes of transport (aviation, maritime navigation and road transport) in order to select the best possible system.

There are various possibilities for establishing management systems for a unified railway law. One possibility that can be discussed is the creation of a system with several management levels, for instance with the creation of a single committee, along with two or more regional organizations (including, possibly, on the basis of the OTIF and OSJD committees), with the more important questions being decided at an annual conference of the single committee. Similar decision-making arrangements could be organized for carriers' organizations.

Subparagraph (c), “Terms of transport”.

This question should be included in the Declaration because of the differences listed in paragraphs 1 to 5, above. In a number of countries, the domestic law requires that the terms of transport should be approved by the State (or by an international agreement to which the State is a party). The terms (or rules) of carriage are an extremely important part of a unified railway law, as a single legal regime is being proposed to cover the work of carriers in all the countries in the Euro-Asian area.

What is more, the fact that there are differences between modes of transport makes it necessary to draw up unified terms of carriage. There are now modes of transport for which the legal terms and applicable technology are similar (for instance, transport of containers). However, for a number of modes, specialized technologies — and consequently the legal regimes for carriage — differ substantially or are lacking in one system or another. (As an example of a “non-standard situation”, SMGS allows the transport in a single wagon of up to 8 camels or 80 goats, while CIM, of course, has no corresponding provisions). The proposed unification of legal standards will require taking all forms of transport into account, including those that are local in nature (the above example can hardly be expected to be relevant in the European Union, but in Central Asia it certainly is).

Various systems for decision-making concerning terms (or rules) of carriage are possible, taking into account the clarifications under subparagraph (a), above. For example, the general requirements (or provisions) applicable to transport agreements can be established in an international agreement, with provision made for the possibility of adopting concrete standards for each type of transport in standards issued by a unified railway law committee. At the same time, the need to draw up unified terms (or rules) of carriage should itself be mentioned in the Declaration.

Subparagraph (d), “Elaboration of unified principles for electronic document workflow and intelligent transport systems”.

We do not consider the inclusion of this point in the Declaration to be important in principle, as it is not directly related to the establishment of a unified railway law. At the same time, the increasing computerization of rail transport and the widespread use of the electronic invoice and databases inevitably make it necessary to formulate an agreed-upon policy in this field. In some cases, for instance, legal instruments may offer the possibility of electronic invoicing in rail transport, but the use of such invoices is directly dependent on the technologies and software employed. Computerization of transport requires corresponding expenditure by carriers (and in some cases by States as well). The legal standards and question of how to apply them will depend on the level of computerization and technical development of the railways.

In addition, solutions must be agreed upon for applicable data exchange protocols, for the development and maintenance of transport databases and databases on wagons and rolling stock certification and deployment and for the real-time provision of information on infrastructure carrying capacities, etc. Information exchange issues cannot be fully resolved without the adoption of unified rules in these areas. We think such rules for interaction among carriers can also be an integral part of a unified railway law.

Subparagraph (e), “Cooperation in the field of transport safety and security”.

In accordance with the decisions taken at the meeting held in Geneva on 2 March 2012, it was agreed to delete this paragraph from the draft Declaration.

Subparagraph (f), “Cooperation in the field of formulation of uniform technical policy with regard to transportation”.

The inclusion of this subparagraph in the Declaration will require further discussion. When we included it in our proposals we were working on the assumption that issues in transport law are often inextricably linked with the use of specific transport technologies. In the absence of agreed-upon technical solutions, differences in infrastructure (the 1,520 mm and 1,435 mm gauges and related limitations, such as for dimensions) may make it impossible to implement the standards of a unified railway law, in some cases even threatening the safety of carriage (for example, an oversized load originating in Uzbekistan on a track with a 1,520 mm gauge and established in accordance with the unified railway law will not be able to continue its journey in an area with a 1,435 mm gauge, as its dimensions will not correspond to those of the gauge). Additionally, some rules (for instance for securing and placing cargoes in wagons and containers) and rules of carriage requiring the use of a number of technical solutions (carriage of dangerous, perishable or oversized cargoes, etc.) — an integral part of railway law — cannot be adopted without drawing up agreed technical solutions.

The positions described above are, we believe, extremely important in the establishment of a full-fledged, unified railway law. A policy document such as the Declaration will provide a genuine impetus for the development of rail transport in the Euro-Asian area. We understand that the majority of the problems addressed above cannot be solved overnight and will require serious consultations to draw up agreed solutions. For this reason, we propose that they should be designated in the draft Declaration as strategic approaches or tasks that are to be resolved as the unified railway law is being established. For our part, we are prepared to discuss any proposals.

Annex III

Comments provided by OTIF regarding the Policy Principles for Application of the General Terms and Conditions for Euro-Asian Rail Transport Contracts (GTC EurAsia) (Annex I)

Original text

Proposals

Principle 1: Objective of GTC EurAsia

The objective of GTC EurAsia is to facilitate international railway transport by establishing uniform contractual relationship between the railway undertakings and their customers. By doing so they will contribute towards [harmonization of the railway law] [establishment of the unified legal framework] and increased legal security in the pan-European region and on Euro-Asian links and/or at global level for the purpose of levelling the playing field between all modes of transport.

Principle 2: Scope of GTC EurAsia

GTC EurAsia will constitute a model for establishing contractual relations among all parties that conclude rail transport contracts under the COTIF/CIM and SMGS regimes.

Principle 4: Content of GTC EurAsia

GTC EurAsia will contain provisions that provide for the following contractual elements under the COTIF/CIM Convention and the SMGS Agreement:

- (a) Single contract of carriage;
- (b) Single consignment note;
- (c) Single liability regime.

Principle 6: Conformity [Compatibility] of GTC EurAsia

GTC EurAsia is based on and is in line with relevant provisions of the COTIF/CIM Convention and the SMGS Agreement, relevant legislation applicable in the European Union and applicable national rules and regulations as of date of signature of this document.

Principle 1: Objective of GTC EurAsia

The objective of GTC EurAsia is to facilitate international railway transport by establishing uniform contractual relationship between the railway undertakings and their customers. By doing so they will contribute towards ~~[harmonization of the railway law]~~ ~~[establishment of the a unified legal framework]~~ and increased legal security in the pan-European region and on Euro-Asian links and/or at global level for the purpose of levelling the playing field between all modes of transport.

Principle 2: Scope of GTC EurAsia

GTC EurAsia will constitute a model for establishing contractual relations among all parties that conclude rail transport contracts ~~under the COTIF/CIM and SMGS regimes~~ *in Eurasian traffic*.

Principle 4: Content of GTC EurAsia

GTC EurAsia will contain provisions that provide for the following contractual elements ~~under the COTIF/CIM Convention and the SMGS Agreement~~:

- (a) Single contract of carriage;
- (b) Single consignment note;
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Principle 6: Conformity [Compatibility] of GTC EurAsia

GTC EurAsia is based on and is in line with relevant provisions of the COTIF/CIM Convention and the SMGS Agreement, relevant legislation applicable in the European Union and applicable national rules and regulations as of date of signature of this document.

<i>Original text</i>	<i>Proposals</i>
<p>Upon entry into force of modifications to the COTIF/CIM Convention and the SMGS Agreement, to the relevant legislation applicable in the European Union and to mandatory national rules and regulations, GTC EurAsia will be amended accordingly, as required.</p>	To be deleted
<p>Principle 7: Geographical Coverage of GTC EurAsia</p> <p>GTC EurAsia will be applicable on the entire railway network [open to international traffic] on the territory of the following countries: ..., ...,</p>	To be deleted
<p>[Principle 8: Scope of application of GTC EurAsia</p> <p>GTC EurAsia will apply for all types of rail transport operations and types of cargo shipped by rail as long as required mandatory rules and regulations are complied with.]</p>	To be deleted