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Group of Experts towards Unified Railway Law

Fifth session

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Report of the Group of Experts towards Unified Railway Law on its fifth session

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I. Attendance

1. The Group of Experts towards unified railway law held its fifth session on 4 and 5 July 2013 in Geneva.
2. The session of the Group of Experts was attended by experts from the following countries: Azerbaijan, Belgium, Czech Republic, Finland, Germany, Kazakhstan, Latvia, Lithuania, Poland, Russian Federation, Switzerland, Turkey and Ukraine. An expert of the European Union (DG MOVE) also attended.
3. Experts from the following intergovernmental organizations participated: Organization for Cooperation between Railways (OSJD) and Intergovernmental Organisation for International Carriage by Rail (OTIF). Experts from the following non-governmental organizations participated: Coordinating Council of Trans-Siberian Transportation (CCTT), Community of European Railway and Infrastructure Companies (CER), International Rail Transport Committee (CIT) and International Union of Railways (UIC).
4. At the invitation of the secretariat, experts from the following organizations and industry groups participated: CMS Cameron McKenna, Deutsche Bahn (DB) and Plaske JSC.

II. Adoption of the agenda (agenda item 1)

Documentation: ECE/TRANS/SC.2/GEURL/2013/1

5. The Group of Experts adopted the provisional agenda prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2013/1).

III. Election of officers (agenda item 2)

6. The Group of Experts re-elected Mr. A. Druzhinin (Russian Federation) as Chair and Ms. N. Kaygisiz (Turkey) as Vice-Chair.

IV. Mandate: Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law (agenda item 3)

Documentation: ECE/TRANS/2013/2

7. The Group of Experts recalled that during the Ministerial session of the seventy-fifth Inland Transport Committee, thirty-seven (37) European and Asian countries signed the Joint Declaration and expressed their willingness to further develop and promote Euro-Asian rail transport and activities towards unified railway law (ECE/TRANS/2013/2). The Joint Declaration outlines two parallel processes to achieve these objectives:

(a) Governments from ECE and ESCAP regions, under the auspices of the UNECE Group of Experts towards the Unified Railway Law and the Working Party on Rail Transport (SC.2), will prepare the legal framework for rail transport from the Atlantic to the Pacific, with rules equivalent to those for road, air and maritime transport (Geneva Rules);

(b) Interested railway enterprises, international railway organizations and other stakeholders (incl. shippers, freight forwarders, etc.) will prepare general terms and

conditions for Euro-Asian rail transport contracts based on the existing COTIF/CIM and SMGS provisions (GTC EurAsia).

8. The representatives of CIT informed the Group of Experts about the latest developments on the preparation of GTC EurAsia and were invited to report on further progress at the session of the Group of Experts in December 2013.

9. The Group of Experts recalled the strategy (rail map) outlined in the Joint Declaration to establish legal conditions for rail transport from the Atlantic to the Pacific equivalent with those existing for competing modes, such as those for road, air and maritime transport that included the following elements:

(a) Establishment of a unified set of transparent and predictable provisions and legal rules for Euro-Asian rail transport operations in all countries concerned that would facilitate border crossing procedures, particularly for transit traffic;

(b) Analysis of existing international modal transport conventions (rail, road, air, inland water and maritime transport) and related agreements in order to identify provisions and procedures important for the establishment of unified railway law;

(c) Unification of international railway law with the objective to allow rail carriage under a single legal regime from the Atlantic to the Pacific;

(d) On the basis of a future material consensus on unified railway law, identification of an appropriate management system for unified railway law using the experience of international organizations in the field of railway transport (OSJD, OTIF and others) as well as of international organizations of other modes of transport;

(e) Support for the widest possible use of electronic document workflow and intelligent transport systems.

V. UNECE Group of Experts: Administrative arrangements (agenda item 4)

Documentation: ECE/TRANS/2013/9, ECE/TRANS/SC.2/GEURL/2013/2

10. On the basis of the Joint Declaration and its terms of reference adopted by the Inland Transport Committee on 28 February 2013 (ECE/TRANS/2013/9), the Group of Experts considered a draft work plan prepared by the secretariat defining objectives and activities and including a tentative time schedule for implementation of these tasks before the end of 2014 (ECE/TRANS/SC.2/GEURL/2013/2).

11. Given the complexity of the tasks to be undertaken within a very short time-frame and following consideration of agenda items 5–8 of its present session, the Group of Experts felt that the following activities should be undertaken in preparation of its forthcoming session:

(a) The UNECE secretariat, assisted by Governmental, intergovernmental (OSJD, OTIF) and industry experts, should prepare an overview of existing international transport conventions (rail, road, air, inland water and maritime transport). This would allow identifying good practices in the application of these conventions as well as elements and mechanisms of relevance for the establishment of a unified railway regime.

(b) The UNECE secretariat, assisted by Governmental, intergovernmental (OTIF, OSJD) and industry experts, should prepare a comparison of those legal provisions of CIM and SMGS that are relevant for Euro-Asian rail freight transport. This study should also provide a brief evaluation of such provisions and provide, as appropriate, first elements

and a possible wording of legal provisions that could be included into a legal instrument for Euro-Asian rail freight transport.

(c) The UNECE secretariat, in cooperation with OTIF and OSJD as well as other relevant international organizations, such as ICAO and IMO, should prepare a synopsis of the management systems of existing international modal transport conventions and agreements for review by the Group of Experts.

12. With these modifications to Section B of ECE/TRANS/SC.2/GEURL/2013/2, the Group of Experts adopted its work plan for 2013–2014.

VI. Establishment of a unified set of transparent and predictable provisions and legal rules for Euro-Asian rail transport operations – What is needed? (agenda item 5)

Documentation: ECE/TRANS/SC.2/GEURL/2013/3

13. In accordance with the Joint Declaration, the Group of Experts considered and discussed the main problems and issues to be addressed by a unified set of provisions and legal rules for Euro-Asian rail transport operations. It noted that the legal rules governing international road, sea and air transport as enshrined in international treaties (CMR, Hague-Visby, Montreal, etc.) should guide its work and be used as benchmarks.

14. The Group of Experts agreed to prepare the legal provisions covering international carriage of goods by rail focusing on the contract of carriage in particular on rights and obligations of the parties to the contract of carriage, documentation, liability, assertion of claims and relationship among carriers. It was understood that further details such as technical specifications, rail infrastructure, rolling stock as well as security and safety should be decided on the basis of the analysis of CIM and SMGS to be prepared by the UNECE secretariat.

15. The Group of Experts understood that border crossing facilitation, customs issues, the international transport of specific cargoes or loading units as well as access to rail markets was either already addressed by other international legal instruments or subject to national or regional rules and regulations and, thus, outside the scope of its work.

16. The geographical scope of unified rail transport rules should encompass primarily the ECE region as well as interested countries, such as China and Mongolia. Therefore, the involvement of these countries as well that of the UNESCAP secretariat in the legal work of the Group of Experts was highly desirable and should be facilitated by the secretariat.

VII. Analysis of existing international modal transport conventions (rail, road, air, inland water and maritime transport) and related agreements – What exists at present, what is addressed and how is it done? (agenda item 6)

Documentation: ECE/TRANS/SC.2/GEURL/2013/4

17. On the basis of an outline provided by the secretariat, the Group of Experts reviewed existing international arrangements and legal instruments covering all modes of transport with a view to identifying elements and mechanisms as well as best practices that could be of relevance for the establishment of a unified railway regime (ECE/TRANS/SC.2/GEURL/2013/4).

18. The Group of Experts felt that the document was a good basis for identifying issues for consideration and inclusion into a unified railway regime and agreed on the following:

(a) Experts would provide feedback on the correctness and completeness of the information provided in the secretariat document;

(b) Experts would identify and present at the next session of the Group of Experts, best practices as well as elements and mechanisms used in other international conventions/agreements that could be utilized in the preparation of an unified railway regime;

(c) If available before the next session, the secretariat would consolidate this information in the form of a background document for review by the Group of Experts (see paragraph 11 (a) above).

VIII. Unification of international railway law with the objective to allow rail carriage under a single legal regime – What needs to be covered and how? (agenda item 7)

19. Based on the above considerations, the Group of Experts had an exchange of views on possible key elements and regulations to be included or addressed in a unified international legal regime for rail freight transport operations that would not establish a further layer of international legislation, but provide legal transparency and certainty for Euro-Asian rail freight operations.

20. The Group of Experts agreed that, as a first step, the UNECE secretariat should prepare a comparison of relevant legal provisions of CIM and SMGS in the following seven fields (listed without prioritization):

(a) Scope of application;

(b) Contract of carriage (conclusion and performance);

(c) Liability;

(d) Assertion of claims;

(e) Relationship between rail carriers;

(f) Recourse of action (infrastructure, rolling stock, technical specifications, safety and security, etc.);

(g) Other relevant provisions (electronic data interchange, reservations, disputes, entry into force, transition period, etc.)

21. This comparison should also provide a brief evaluation of the relevant legal provisions and provide, as appropriate, first elements and a possible wording of legal provisions that could be included into a legal instrument for Euro-Asian rail freight transport (see paragraph 11 (b) above).

IX. Identification of an appropriate management system for unified railway law using the experience of international organizations in the field of railway transport – How to operate a global railway regime? (agenda item 8)

22. The Group of Experts agreed that the establishment of an appropriate management system for unified railway law was of high importance for its efficient operation. However, as specified in the Joint Declaration, such discussions should await consensus among experts on the material (substantive) provisions and mechanisms of a unified international legal regime for international carriage of goods by rail.

23. In view of the above, the Group of Experts asked the secretariat to prepare for its next session, a preliminary analysis of pertinent management issues enshrined in other transport conventions/agreements addressing at least the following issues (see also paragraph 11 (c) above):

- (a) Depository functions (custody, certified copies, notifications, etc.);
- (b) Administrative functions (amendments, interpretation, monitoring, etc.);
- (c) Secretariat support functions.

X. Other Business (agenda item 9)

24. There were no proposals under this agenda item.

XI. Date of next session(s) (agenda item 10)

25. The next session of the Group of Experts is scheduled to be held from 2 to 3 December 2013 at the Palais des Nations in Geneva. A provisional agenda will be circulated by the UNECE secretariat and will be available on the relevant UNECE website¹ as of 15 September 2013.

XII. Summary of decisions (agenda item 11)

26. The Group of Experts agreed that the secretariat would prepare a short report on the outcome of the session.

¹ www.unece.org/fileadmin/DAM/trans/doc/2013/sc2/ECE-TRANS-SC2-GEURL-2013-06e_r.pdf.