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Group of Experts towards Unified Railway Law

Sixteenth session

Geneva, 1-3 November 2017

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

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I. Attendance

1. The Group of Experts towards Unified Railway Law held its sixteenth session from 1 to 3 November 2017 in Geneva. The session was chaired by Mr. K. Kulesza (Poland) instead of Mr. A. Druzhinin (Russian Federation) who was unable to attend.
2. Representatives of the following countries participated: Germany, Greece, Luxembourg, Poland, Russian Federation and Turkey. Representatives of Iran (Islamic Republic of) attended under the Art. 11 of the Terms of Reference of ECE. Delegates from the ECE Trans-European Railway Project (TER) attended the session.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organization for International Carriage by Rail (OTIF) and Organization for Cooperation between Railways (OSJD). Experts from the following non-governmental organizations participated: International Federation of Freight Forwarders Associations (FIATA) and International Rail Transport Committee (CIT).
4. Experts from the following organizations participated at the invitation of the secretariat: CMS Cameron McKenna LLP, Deutsche Bahn AG (DB AG) and JSC “Russian Railways” (RZD).

II. Adoption of the agenda (agenda item 1)

Documentation: ECE/TRANS/SC.2/GEURL/2017/3

5. The Group of Experts adopted the provisional agenda.

III. Monitoring results of pilot tests (agenda item 2)

6. The Group of Experts recalled that the Inland Transport Committee’s (ITC) resolution (ECE/TRANS/2016/17) on unified railway law encouraged railway undertakings and international organizations for railways to test the draft legal provisions, whenever possible, in practice and invited the Group of Experts to monitor results of those pilot tests and prepare recommendations accordingly. The Group at its fourteenth session decided that both virtual and real tests should be used and implemented. Furthermore, it agreed that the corridors Russian Federation-Belarus-Poland-Germany and Turkmenistan-Islamic Republic of Iran-Turkey were suggested for analysis.
7. The meeting for the virtual pilot test on the corridor Russian Federation-Belarus-Poland-Germany was organized by DB AG (15-17 May 2017, Berlin). The results were presented and discussed at the last session of the Group.
8. The experts during the pilot test identified that the text in three languages needed improvements. Mr. J. Beckitt (CMS Cameron McKenna LLP) was kindly requested to review the English version and in cooperation with Mr. R. Freise, legal advisor on railway law, (Germany) to finalize it and then distribute it to Mr. P. Guryanov (RZD) and Ms. I. P. Gries (OTIF) to review and revise the Russian and French texts. Ms. Gries, Messrs. Beckitt and Guryanov did so and the Group thanked them for their valuable contribution to Group’s objectives. The experts further discussed the text in three languages during the session to clarify some open issues and finalize it.

The following changes were decided in the English text:

(a) Art. 2, Definition 15: The word “*freight*” charges was replaced by “*carriage*” charges;

(b) Art. 2, Definitions: The last sentence “*Where the context so requires words...or the neuter or vice versa*” was deleted;

(c) Art. 4, Provisions of public law: “*and/or*” were deleted twice;

(d) Art. 5, Contract of carriage:

Para. 2, subpara. 3 should start with the words: “*The loss or irregularity of the consignment note ...*”;

Para. 3: The translation of the words “accounting machine entry” in Russian language should follow the Russian version of CIM;

(e) Art. 7, Responsibility of the consignor. The words “*loss or damage*” were deleted in both paras 1 and 2. In addition, the word “*damage*” was replaced by the words “*and damages*” for both paras. 1 and 2. The word “*extend*” was replaced by the word “*extent*”;

(f) Art. 8, Payment of the costs relating to carriage. The words “*the carriage charges and*” in para. 2 were deleted;

(g) Art. 8, Consequences of circumstances preventing carriage and delivery. The words “*the carriage charges and*” should be included before “*the costs chargeable*” in para. 4;

(h) Art. 21, Compensation for loss. In para. 3 the brackets of the units of account should be removed. In addition, in para. 5 the words “*which is to be*” before the “*carried as goods*” was deleted;

(i) Art. 24, Compensation for damage. In para. 4 the words “*which is to be*” were deleted;

(j) Art. 29, Claims. In para. 3, last sentence, the words “*absence of*” were deleted (cf. Art. 5 para. 2 above);

(k) Art. 32, Settlement of accounts. The word “*carriage*” was included before charges.

9. Following the recommendation from the previous session on the performance of another pilot test along a second corridor (ECE/TRANS/SC.2/GEURL/2017/4, para. 18) the representatives of the Iranian and Turkish railways attended the meeting to discuss and analyse pilot tests along the corridors (a) Turkmenistan-Islamic Republic of Iran-Turkey and b) Turkey-Georgia-Azerbaijan.

10. Ms. F. Aydinoglu (Turkey) provided the following comments:

(a) TCDD Tasimacilik AS, is interested in the ongoing work towards the creation of the Unified Railway Law (URL);

(b) The newly started (30 October 2017) Baku-Tbilisi-Kars (BTK) railway line and the en route countries (Azerbaijan, Georgia and Turkey) should be included in the URL pilot tests exercise since there is a re-consignment point along this corridor;

(c) The draft legal provisions should address operational issues for instance problems arising while changing bogie due to different gauge and the wagon capacities for bulk cargo are not equal/the same, etc.;

(d) The following issues should be reflected:

- (i) Expansion of Art. 12 (on completion of administrative formalities) of the URL in accordance with Art. 15 of the CIM;
- (ii) Entering the additional wastage rate (e.g. 3 per cent) in the wastage rate in Art. 23 of the URL, in case of exchange of wagon for bulk cargo;
- (iii) Attachment of CIM Art. 42/1 (on ascertainment of partial loss or damage) in URL Art. 28.

11. The representative of Turkey indicated the following for the questionnaire on pilot tests items. The items were discussed further in the bilateral meetings after the session of the Group (cf. Point 13 below):

(a) Obligation statement under URL Art. 5/2 may cause a problem for long route (group can be separated). For this reason, CIM Art. 6/6 should be written instead of URL Art. 5/2. (it is deemed appropriate to use “may” instead of “shall”);

(b) If we change URL Art. 5/2, URL Art. 6/1-d,e,k,l and Art. 6/j also should be changed in accordance with CIM 6/6. (Art. 6/1-j “number of wagon” is not included in CIM consignment note, but included in accompanying document as CIT 23);

(c) Electronic consignment note is available provided that it is drawn up by electronic signature (also, changes should be made by e-signature, and common database is needed.) (URL Art. 5/4);

(d) The compulsory law applied in the countries en route for the carriage of agricultural, food, animal and forest products should be included;

(e) Art. 11 § 2 should be arranged in accordance with CIM Art. 13, but CIM Art. 13.1 should be reflected as “...loading and unloading of packages should be under control of carrier”;

(f) CIM Art. 18/5 should be attached to URL Art. 17/2. (“If the consignee has given instructions for delivery of the goods to another person, that person shall not be entitled to modify the contract of carriage.”);

(g) According to the relevant Art. of URL for liability, the person who has the right of use at the time of incident shall be responsible for the costs. However, CIM Art. 22 is more appropriate/explanatory than URL Art. 18;

(h) CIM Art. 42 should be included in the relevant Art. of URL (Art. 21, 28, 29);

(i) CIM Art. 23 would be more suitable than URL Art. 19;

(j) CIM Art. 46 (Forum) and 45/1 should be used (for Place of Jurisdiction);

(k) CIM Art. 47 (Extinction of right of action) should be used (for Limitation and expiry of claims).

12. The representatives of the Islamic Republic Iran, Mr. H. Shedati and Mr. A. Abdollahi mentioned the following about the pilot tests on the corridor Turkmenistan-Islamic Republic of Iran-Turkey:

(a) There are several re-consignment points on the Iranian territory;

(b) Trains that are coming from Turkmenistan prefer to perform the re-consignment closer to the borders with Turkey since the tariffs under the SMGS agreement are cheaper comparing to the CIM ones;

(c) They consider the possibility to have under one consignment note many wagons a big advantage, however, they believe that if a problem will occur to one wagon then this will delay the delivery of all wagons;

(d) The cost/charges for wagons is an issue in the region however it is a topic not being addressed by URL;

(e) They consider URL very important tool for their operations that would facilitate rail operations and dramatically increase railways competitiveness in the region.

13. The representatives of both railways held bilateral meetings after the session of the Group with the secretariat and the consultant of the Group, Mr. Freise to further discuss and analyse the draft legal provisions and different scenarios of operations.

IV. Preparation of the necessary documents following the draft legal provisions (agenda item 3)

14. Based on the results of the first pilot test on the corridor Germany-Poland-Belarus-Russian Federation, the experts agreed that the current common CIM/SMGS consignment note can be adapted to the requirements of URL legal provisions to perform the real pilot tests without any difficulty. Additional agreements between the parties can also be entered on this consignment note (e.g. field 7 of the CIM/SMGS consignment note). Furthermore, the draft legal provisions of the URL do not impose any new requirements for the accompanying documents. The documents currently required can therefore continue to be used (ex. wagons list, containers list, etc.).

15. At its previous session the Group requested the common CIM/SMGS consignment note group, organized by CIT and OSJD, to accomplish the task of adapting the common CIM/SMGS consignment note to URL needs. However, the common CIM/SMGS consignment note group, which held its meeting on 12-13 July 2017, found it impossible to fulfil that task due to the intense schedule of its meeting. Hence, the CIT took an initiative to adapt the consignment note to URL needs and requirements. The representative of CIT, Mr. E. Evtimov presented the amended version during the session. The experts discussed and amended the draft consignment note. Nevertheless, it was found that a number of matters should be resolved and reflected in the draft of the consignment note. However, that work should be done in cooperation between railway undertakings. Railways are aware that a URL consignment note is necessary to carry out real pilot tests under URL.

V. Possible next steps of the work on Unified Railway Law (agenda item 4)

16. The Group recalled that this session was the last one of its one plus one year mandate and it should decide and propose possible next steps of the work. All the experts agreed that the achievements of the Group so far were very impressive. The Group produced tangible results; results that when the mandate of the Group started, seemed to be really challenging if not impossible. The Group:

(a) Prepared a ministerial declaration that was signed by the ministers of transport of thirty-eight countries
(www.unece.org/fileadmin/DAM/trans/doc/2015/itc/List_of_signatories_URL_03-09-2014.pdf);

(b) Prepared and agreed the legal provisions for the contract of carriage;

(c) Optimised the legal provisions text in three ECE official languages;

- (d) Prepared a consignment note to perform real pilot tests;
- (e) Performed virtual pilot tests along three corridors.

17. All the experts agreed that ITC should extend the mandate of the Group. The work done so far should not be lost. On the contrary, all experts agreed that we should build on what has been prepared so far and produce an efficient solution that would increase railways competitiveness.

18. The experts coming from countries of the COTIF convention region were of the opinion that the terms of reference of the new mandate of the Group should include the following principles and objectives:

(a) The legal provisions already prepared by the Group are adequate to perform rail transport along Europe-Asian corridors. These legal provisions should be prepared as a convention/international treaty, signed and ratified by interesting countries and be implemented along the Europe-Asian corridors;

(b) When the market has successfully used this new convention and has become the convention for international rail transport in Europe and Asia then the experts should meet, discuss and prepare other components of this new convention that the existing conventions COTIF and SMGS already include;

(c) The mandate of the Group should be extended for other two years having as main objectives the following:

(i) Perform real pilot tests along the corridors agreed or along other corridors if proposed by governments to ensure the operational validity and effectiveness of the legal provisions prepared;

(ii) Prepare, agree and include all provisions needed to become an international treaty such as depository, administrative committee, procedures for amending the convention, voting rights, the case of regional economic integration organizations, etc.;

(iii) Discuss and prepare different options on the management and the secretariat of this new international freight treaty;

(iv) Finalize necessary documents to perform international rail transport including the consignment note of the new Convention and its manual.

19. The experts coming from countries of the SMGS agreement region including the OSJD secretariat were of the opinion that the terms of reference of the new mandate of the Group should include the following principles and objectives:

(a) The legal provisions already prepared by the Group are not adequate to perform rail transport along Europe-Asian corridors. A framework Convention on international rail freight transport should be prepared which should include the following annexes:

- (i) Contract of carriage (already prepared and agreed by the Group);
- (ii) Common provisions on Dangerous Goods;
- (iii) Common provisions on the use of Freight Wagons;
- (iv) Common provisions on rail infrastructure;
- (v) Common provisions on rolling stock.

(b) In addition, a framework convention on international rail passenger transport should be prepared including relevant articles for passenger transport such as common provisions for the use of passengers' coaches, etc.;

(c) Therefore, the mandate of the Group should be extended for at least other two years (with a horizon of four to six years) having as main objectives the following:

(i) Prepare, agree and finalize the framework international rail freight transport convention including the four annexes (dangerous goods, use of freight wagons, rail infrastructure, rolling stock);

(ii) Prepare, agree and finalize the framework international rail passenger transport convention including the relevant annexes (use of passenger coaches, etc.);

(iii) Perform real pilot tests along the corridors agreed or along other corridors if proposed by governments to ensure the operational validity and effectiveness of the legal provisions for the contract of carriage prepared;

(iv) Possibly perform real and virtual pilot tests along specific corridors in order to ensure the operational validity and effectiveness of the two framework conventions including their relevant annexes;

(v) Prepare, agree and include all provisions needed to become an international treaty such as depository, administrative committee, procedures for amending the convention, voting rights, the case of regional economic integration organizations, etc.;

(vi) Discuss and prepare different options on the management and the secretariat of the new international rail freight and passenger treaties;

(vii) Finalize necessary documents to perform international rail transport including the consignment note of the new convention and its manual.

20. Therefore, the experts agreed that:

(a) The mandate of the Group should be extended for at least other two years with new terms of reference;

(b) The terms of reference should at least include the following tasks:

(i) Performance of real pilot tests along the corridors agreed;

(ii) Preparation of the administrative legal provisions required for a convention;

(iii) Preparation of a list of options with arguments on the management/secretariat of the new convention;

(iv) Preparation of the documents required for the operations of the convention.

21. However, the experts did not agree:

(a) Whether the convention should be prepared today including only the contract of carriage or a framework convention should be negotiated that will include several annexes and it will be ready in several years from today;

(b) Whether the efforts of the Group should focus only on freight transport or should include passenger transport;

22. Therefore, the experts did not conclude on the objectives of the terms of reference of the new mandate of the Group. They requested the secretariat to provide all this information to the seventy-first session of the Working Party on Rail Transport (27-29 November 2017) in order for the governments to further discuss, negotiate and agree on the objectives of the terms of reference of the group.

VI. Other business (agenda item 5)

23. There were no proposals under this agenda item.

VII. Date of next session (agenda item 6)

24. Sessions of the Group of Expert are not foreseen to allow SC.2, at its forthcoming session on 27-29 November 2017, to consider the progress made and provide guidance on possible future activities of the Group of Experts, as appropriate, for approval by the ITC in February 2018.

VIII. Summary of decisions (agenda item 7)

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