

Unified Railway Law – Structure and Management System

I. Mandate

At the 75th session of the Inland Transport Committee of the United Nations Economic Commission for Europe (UNECE ITC) in Geneva in February 2013, 37 countries signed the Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law. In doing so, they confirmed the political will and desire of UNECE member countries in the Eurasian space to work together on a draft unified railway law, a new law that includes all the positive and progressive segments of the two existing legal systems of the Organization for Cooperation between Railways (OSJD) and Intergovernmental Organisation for International Carriage by Rail (OTIF).

In February 2018, the UNECE ITC approved another extension of the mandate of the Group of Experts towards Unified Railway Law in accordance with the new terms of reference:

- the finalization of the documents required for international rail transport in accordance with the unified railway law, including the standard sample consignment note for the new provisions and guidelines thereto;

- the monitoring of actual test traffic on agreed corridors or other corridors conducted by the Group's rail companies if such corridors were proposed by governments in order to guarantee the operational compatibility and effectiveness of the legal provisions that have been prepared;

- drafting of a document (or system of documents) for the unified railway law, which may be adopted as a legally binding document;

- discuss other issues concerning international rail freight transport, which, if necessary, may be added to the aforementioned document:

- General provisions concerning the transport of dangerous goods;

- General provisions concerning the use of freight cars;

- General provisions concerning railway infrastructure;

- General provisions concerning rolling stock.

The document (or system of documents) must:

- take into account the draft legal provisions that have been prepared on the contract of carriage;

- include the necessary formal provisions, such as the depositories, management, secretariat, Administrative Committee, amendment procedure, and voting rights, among other things;

- the structure must be such so that it can easily be supplemented by provisions on other issues concerning international rail freight transport.

II. Background

A. Brief description of the problem

The historical presence of the two legal systems CIM and SMGS in the Eurasian space, which govern relations between parties to freight carriage contracts, despite the common nature of the activities, creates inconvenience for clientele and carriers. This is why the need arose for their convergence and unification even during the early period of the existence of the CIM and the SMGS systems. During a meeting of the UNECE back in 1956, the USSR put forward a proposal to replace the CIM and SMGS with a new Convention, while the International Rail Transport Committee (CIT) proposed shipping freight on a through consignment note, however no agreement was reached on the proposals.

In 1982, a joint OSJD/OTIF group was established to converge the SMGS/CIM positions based on an initiative from the OSJD and in agreement with the OTIF. Seventeen provisions were unified in full or in part. The further stages of action included the drafting of the Eurasian Convention (EAC) based on SMGS and CIM, the establishment of the Temporary Working Group on cooperation with the OTIF during the revision of the Convention concerning International Carriage by Rail (COTIF) in 1996, and research conducted jointly with the CIT on the feasibility of using the SMGS and CIM consignment notes as direct consignment notes. The results of this work were considered at meetings of the governing bodies of both organizations.

A number of OSJD and OTIF member countries believed that the adoption of a new (third) law would not replace the existing CIM and SMGS, and in June 1994, the decision was made at the 22nd session of the OSJD Ministerial Conference to suspend work on the EAC and use the materials that had been prepared when improving the SMGS and converging it with other legal documents. After that, the search for ways to converge the two legal systems continued for ten more years.

Within both organizations, it was concluded that both legal systems govern relations between parties to freight carriage contracts, but they differ significantly both in terms of their form as well as the content of certain provisions of transport law. Research found that the use of a through consignment note would require changes to the CIM and SMGS, and doubts were expressed about whether a unified consignment note could take into account the various interests of individual states. In light of this, the OSJD decided it would not likely be possible to unify international law in this regard. Moreover, due to the political situation and the disagreements between the West and the East at that time, the idea of creating a unified agreement or a unified consignment note did not result in success.

Despite the fact that no significant results have been achieved in harmonizing the CIM and SMGS systems in previous years, the OSJD and OTIF believe that the search for and attempts to solve problems caused by the existence of the two legal systems should continue and that this should be the prerogative of these two international organizations.

It should be noted that 191 countries have had success in applying unified standards and harmonized legal regulation concerning air transport, and all countries with access to the sea are parties to international agreements and conventions of the United Nations concerning maritime transport.

Unfortunately, due to historical and technological peculiarities, railway transport has been more conservative in the process of legal harmonization. Railway transport plays an important role in the domestic and regional transport of goods, but the potential for the development of international rail transport has yet to be fully realized. The world has changed, yet no unified legal regulation of rail transport has been created despite the great efforts that have been made at the level of international intergovernmental organizations.

The lack of a harmonized legal regime for the intercontinental transport of goods between Europe and Asia is one of the reasons why rail transport accounts for an insufficient proportion of Euro-Asian transport links.

B. Current status of the Group's work

In 2010, the Group of Experts toward Unified Railway Law was set up under the auspices of the UNECE ITC and its Working Party on Rail Transport. The group was instructed to prepare a position document, which was presented at the 73rd meeting of the UNECE ITC (ECE / TRANS / 2011/3).

In February 2013, the Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law was signed in Geneva. In doing so, the parties to the declaration confirmed the political will and desire of countries in the Eurasian space to work together on a draft unified railway law, a new law that includes all the positive and progressive segments of the two existing legal systems of the OSJD and the OTIF.

Subsequently, the Group of Experts drafted legal provisions for the carriage of goods in international rail traffic by the end of 2017 taking into account the provisions of COTIF/CIM 1999 and SMGS 2015.

In February 2018, the UNECE ITC approved a new mandate for the Expert Group. Despite the decision to continue work in this regard, there is no consensus today on the final configuration of the unified railway law. The parties continued discussions on this issue within the framework of the Group of Experts in 2018 and 2019.

In 2018–2019, the Group considered a draft consignment note for test traffic based on the draft legal provisions that had been developed. The Group also discussed issues related to the organization of test traffic (virtual and real).

The Group of Experts also discussed possible options for a system to manage the new law and issues that should be encompassed in a document or a system of documents governing the unified law.

The final configuration of the unified railway law was discussed in detail at the sessions. Despite the lengthy discussions, the members of the Expert Group to date have failed to reach a consensus on this issue.

III. Structure of the unified railway law

The structure of the unified railway law will be presented in this section based on the approach that has been consistently proposed by the Russian Federation from 2014 to 2019 during meetings of the Group of Experts on the creation of the unified railway law.

Goal: the transportation of goods and passengers in the Eurasian space on unified legal conditions. The creation of a unified system of law to replace the existing legal regimes.

1. Preparation of a single convention (or a system of agreements):

Scope, conceptual framework, and subjects of legal relations.

- a. General provisions concerning freight carriage contracts in international railway transport service;
- b. General provisions concerning passenger carriage contracts in international railway transport service;
- c. General provisions concerning the transport of dangerous goods in international railway transport service;
- d. General provisions concerning the use of freight cars in international railway transport service;
- e. General provisions concerning the use of passenger cars in international railway transport service;
- f. General provisions concerning railway infrastructure;
- g. General provisions concerning railway rolling stock.

2. Preparation of all administrative provisions concerning, in particular, the depositary, administrative committee, amendment procedures, voting rights, and the issue of regional economic integration organizations, among other things.

IV. Position of the Russian Federation:

The draft legal provisions prepared by the Group of Experts, which exclusively contains the provisions of the freight carriage contract in international railway transport service, cannot be considered a unified law since, as member states (OTIF) have suggested, the current CIM and SMGS systems will remain in force after it potentially takes effect. A unified CIM/SMGS consignment note developed jointly by the OSJD and CIT has been used since 2006, which significantly harmonizes the CIM and SMGS provisions.

- In this regard, we adhere to an integrated approach as regards work on the creation of a unified railway law. The provisions that have been prepared on the new legal regime for Euro-Asian rail freight traffic can only be considered as one of the many

components of the unified railway law (one of the annexes to the Convention) or as a first step towards its creation, but not as a separate intergovernmental agreement.

- Most of the provisions of the document are consistent with the CIM in which a number of the standards have been changed as optional. In order to find a compromise between the two systems of law, certain important rules have been made as reference rules, i.e. they result in the need to refer to established practice or national legislation.

- The regulation of certain fundamental issues has been harmonized with the approach of OTIF member countries, which differs from the technical conditions of the transportation activities of major railway companies in such countries as Russia, China, and Kazakhstan.

- The preparation of the consignment note and accompanying documents to the draft legal provisions for the carriage of goods as part of the OSJD Commission on Transport Law is not feasible in 2019 since the group has not agreed on a fundamental approach to creating a unified railway law.

- There is no consensus on approaches to creating a unified railway law.

Management of the unified railway law and the further vision of work on its adoption

Proposal: taking into account the tremendous experience gained by the two specialized international organizations, the OSJD and OTIF, in drafting international railway law, we propose that the secretariats create a temporary working group to come up with options concerning the management of the unified railway law.

The UNECE should be the depositary for the future unified legal regime. In addition, the option of creating a specialized UN agency that is analogous to sea and air transport (International Maritime Organization and International Civil Aviation Organization) may also be considered.