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Group of Experts towards Unified Railway Law

First session

Geneva, 6 May 2011

Report of the Group of Experts on its first session

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I. Attendance

1. The Group of Experts towards unified railway law held its first session on 6 May 2011 in Geneva.

2. The session of the Group of Experts was attended by experts from the following countries: Azerbaijan; France; Iran (Islamic Republic of); Netherlands; Russian Federation; Switzerland and Turkey. Experts representing the European Union (DG MOVE) also attended.

3. Experts from the following intergovernmental and non-governmental organizations participated: Organization for Cooperation between Railways (OSJD), Intergovernmental Organization for International Carriage by Rail (OTIF), International Rail Transport Committee (CIT) and International Union of Railways (UIC).

4. Experts from the following railways and industry groups participated: Deutsche Bahn (DB), ERS Railways, French Railways (SNCF), Latvian Railways (LDZ), Turkish State Railways (TCDD) and Plaske JSC.

II. Adoption of the agenda (agenda item 1)

5. The Group of Experts adopted the agenda prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2011/1).

III. Election of officers (agenda item 2)

6. The Group of Experts elected Mr. A. Druzhinin (Russian Federation) as Chair and Ms. N. Kaygisiz (Turkey) as Vice-chair. In the absence of Mr. A. Druzhinin due to personal circumstances, the secretariat moderated the session.

IV. Mandate: UNECE Position Paper towards unified railway law for Euro-Asian land transport (agenda item 3)

7. The Group of Experts recalled the provisions of the UNECE position paper towards unified railway law for Euro-Asian land transport (ECE/TRANS/2011/3 and Corr.1) that had been adopted by the UNECE Working Party on Rail Transport (Vienna, 18–19 November 2010) (ECE/TRANS/SC.2/214, paras. 31–38) and approved by the UNECE Inland Transport Committee (ECE/TRANS/221, paras. 55–57) on 3 March 2011. The Inland Transport Committee had also decided to establish a Group of Experts and had agreed on terms of reference for its functioning (ECE/TRANS/2011/3, annex).

8. In accordance with the decisions of the Inland Transport Committee, the Group of Experts is mandated to launch work under step A. Short-term: Preparation of a Memorandum of Understanding/Resolution/Declaration (IGD EurAsia) on general terms and conditions for Euro-Asian rail transport contracts (GTC EurAsia). General terms and conditions for rail transport contracts would be prepared in parallel by experts under the auspices of OSJD and CIT and in cooperation with OTIF (ECE/TRANS/221, para. 56).

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

9. On the basis of the UNECE Position Paper, the terms of reference of the Group of Experts (ECE/TRANS/2011/3, annex) and a draft prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2011/2), the Group of Experts adopted its work plan, defining its objectives and activities, including a time schedule for implementation.

A. Objectives of work

10. The UNECE Group of Experts will prepare an Inter-Governmental Document (IGD EurAsia) as a policy framework for General Terms and Conditions for Euro-Asian rail transport contracts (GTC EurAsia), to be prepared by experts from OSJD and CIT in cooperation with OTIF.

11. IGD Eurasia would underline the political support of concerned Governments for the acceptance of GTC EurAsia. It would contain guiding principles for the correct and transparent use of international rail transport contracts in the pan-European region and along Euro-Asian transport corridors and would facilitate intermodal transport operations, including ferry services.

12. This new and innovative approach could pave the way for efficient and seamless Euro-Asian railway transport services on the basis of a single transport contract, a single consignment note and a single liability system compatible with the provisions of COTIF/CIM and SMGS as well as relevant European Union (EU) legislation and applicable national rules and regulations.

B. Activities

13. The UNECE Group of Experts will undertake the following tasks:

First session (6 May 2011)

- (a) Adoption of a work plan (objectives, activities, time schedule);
- (b) Review of work on GTC EurAsia by OSJD and CIT;
- (c) Agreement on objectives and elements of IGD EurAsia;
- (d) Designation of experts to prepare a draft IGD EurAsia.

Second session (30 September 2011)

- (a) Review of work on GTC EurAsia by OSJD and CIT;
- (b) Finalization of a draft IGD EurAsia for transmission to the UNECE Working Party on Rail Transport (SC.2).

C. Time schedule

14. The time frame envisaged for conclusion of work on IGD EurAsia is as follows:

Preparation of GTC EurAsia by OSJD and CIT: March–October 2011

Preparation of IGD EurAsia by UNECE: May–October 2011

Adoption of IGD EurAsia by the Working Party on Rail Transport: 4 November 2011

Signature/approval of IGD EurAsia by Inland Transport Committee: February/March 2012

15. The Group of Experts noted that this time schedule provided in the UNECE Position Paper was very ambitious and could only be kept if all stakeholders involved acted swiftly and constructively as well in good cooperation with each other. The Group also noted that the consideration of the draft IGD by the main stakeholders may take a considerable amount of time.

VI. Organization for Cooperation between Railways (OSJD) and International Rail Transport Committee (CIT): Joint Legal Group (agenda item 5)

16. The Group of Experts was informed about the outcome of the session of the joint OSJD-CIT Legal Group held in Paris on 26 and 27 April 2011 and noted that considerable progress had been made on bringing the CIM and SMGS liability regimes closer together. The Legal Group elaborated amendments to the common CIM-SMGS consignment note and its Manual to enable Parties to the contract of carriage to specify that special conditions of liability compatible with CIM and SMGS apply to this contract. These conditions will be contained in a new annex 10 to the CIM-SMGS Manual.

17. These amendments to the CIM/SMGS consignment note and its handbook are expected to be approved at the next session of the OSJD/CIT Steering Group (Baku, 21–22 June 2011).

18. CIT presented its preliminary proposals on the content of GTC EurAsia to be discussed further with OSJD and OTIF. A joint CIT/OSJD meeting on GTC EurAsia is tentatively scheduled for 9 June 2011. The first draft of GTC EurAsia was expected to be available by 1 July 2011. CIT also plans to hold an international conference for “clients” of GTC EurAsia at the end of 2011.

VII. Memorandum of Understanding (MoU) or similar instrument (agenda item 6)

19. On the basis of a document prepared by the secretariat, the Group of Experts considered the main elements of IDG EurAsia (ECE/TRANS/SC.2/GEURL/2011/3). The Group of Experts agreed with the proposal of the secretariat to refer, for the time being, to this document as IGD EurAsia, given some countries’ concerns with the term MoU.

20. The Group of Experts agreed that IGD EurAsia should be to the point and as concise as possible. It should focus on the concerns and responsibilities of Governments and public authorities responsible for legislation and facilitation of international railway transport between Europe and Asia. It should also take account of the needs of the economy, railway operators and shippers and provide for transparency, consistency and reliability in the conclusion and application of international rail transport contracts.

21. The Group of Experts agreed in principle on the following structure of IGD EurAsia:

- (a) Preamble;
- (b) Substantial provisions of IGD EurAsia;
- (c) Final provisions;
- (d) Acknowledgment and signatures.

A. Preamble

22. It was agreed that the preamble of IGD EurAsia should reflect the main elements of the mandate and the objectives to be achieved, stressing the intergovernmental character and public-private partnership enshrined in this approach. The preamble should underline the commitment and cooperative approach by Governments and railway companies agreeing on common objectives and legal principles for transparent and efficient rail

transport operations between Europe and Asia, with countries in the Caucasus and Central Asia and between Europe, Turkey, the Middle East and South-East Asia.

23. The Group of Expert emphasized the political nature of the IGD and the need to properly reflect this in its title and the preamble.

24. The secretariat was invited to draft provisions along these lines for review by the Group of Experts at its next session.

B. Substantial provisions of IGD EurAsia

25. The Group of Experts agreed that the body of IGD EurAsia should contain substantive provisions of Governmental concern and support for the operation of Euro-Asian rail transport on the basis of a single transport contract, a single consignment note and a single liability system compatible with the provisions of COTIF/CIM and SMGS as well as relevant EU legislation and applicable national rules and regulations. They should also underline the contractual nature of GTC EurAsia.

26. The Group of Experts reviewed three sets of provisions (policy, legal and economic/operational) for inclusion in IGD EurAsia as identified in the secretariat's document ECE/TRANS/SC.2/GEURL/2011/3, paras. 23–28. Possible alternative wording and provisions which still need to be reviewed as possibly superfluous are given in square brackets below, awaiting a final decision of the Group of Expert at its the second session.

1. Policy statements on GTC EurAsia

27. The Group of Experts agreed in principle on the following policy statements to be included in IGD EurAsia:

(a) Unified railway law: Governments stress the importance of making progress towards unified railway law in the pan-European region, on Euro-Asian transport corridors and/or at global level with a view to establishing a level playing field with other modes of transport;

(b) Significance of GTC EurAsia: Governments welcome GTC EurAsia as a model to establish contractual relations among all Parties that conclude international rail transport contracts and to facilitate international railway transport in the pan-European region and along Euro-Asian transport corridors;

(c) Declaration of commitment: Governments and public authorities responsible for rail transport [endeavour to] promote use of GTC EurAsia in their countries and declare their readiness to assist in its application;

(d) Conformity [Compatibility]: Governments declare that [, at present] GTC EurAsia is [compatible] in conformity with [does not run counter to] 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;

[(e) Geographical coverage: Governments affirm that GTC EurAsia are applicable on [cover] the whole [parts of the] railway network [open to international traffic] on the territory of their country;]

[(f) Substantive scope: Governments see no impediment to apply GTC EurAsia for all types of rail transport operations (container, block trains, full wagon loads, etc.) and for all types of cargo (dangerous and perishable goods, live animals, etc.) shipped by rail along Euro-Asian transport corridors as long as all other required mandatory rules and regulations are complied with;]

[(g) Electronic data processing: Governments encourage the introduction of electronic data processing and use of electronic transport documentation, such as the electronic CIM/SMGS consignment note, for Euro-Asia rail transport operations.]

2. Legal provisions

28. The Group of Experts felt that legal issues, listed in para. 26 of ECE/TRANS/SC.2/GEURL/3 as well as an interpretation of relevant provisions in the COTIF/CIM Convention and the SMGS Agreement should not be explicitly addressed in IGD EurAsia in line with the character of IGD EurAsia as a policy document. Rather, appropriate references should be made to the document containing GTC EurAsia and to the general issues addressed in GTC EurAsia.

29. In this context the Group of Experts discussed possible options to refer to the provisions of GTC EurAsia in the IGD EurAsia. While some experts felt that GTC EurAsia as an annex to IGD EurAsia would clearly highlight the governmental support for such model rail transport contracts majority of experts expressed preference for a simple reference to GTC EurAsia. The latter approach would show the difference between the policy and legal characters of the two documents as well as the different entities responsible for their implementation and use. It required, however, a clear statement of compatibility 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 at a specific point in time. It also might need a mechanism to guarantee such compatibility over time.

3. Economic/operational provisions

30. The Group of Expert agreed that economic and operational provisions on facilitation of Euro-Asian rail transport should be included in IGD EurAsia as proposed in ECE/TRANS/SC.2/GEURL/3, paras. 27 and 28. OTIF expressed its intention to contribute to this section of the document, based on its activities on rail transport facilitation.

31. The Group of Experts invited the secretariat to prepare draft provisions for the body of IGD EurAsia in cooperation with a small group of volunteers for consideration and review by the Group of Experts at its next session.

C. Final provisions

32. The Group of Experts felt that the application of IGD EurAsia as well as use of GTC EurAsia by the industry should be monitored. The UNECE Working Party on Rail Transport, together with OTIF, OSJD, CIT and concerned railway companies should be charged with this task and adequate procedures should be developed.

33. The UNECE Working Party should also regularly review the provisions of IGD EurAsia in light of operational experiences and prepare and adopt, if necessary, amendments and/or comments thereto.

34. The Group of Experts invited the secretariat to draft appropriate monitoring and review provisions for consideration and review by the Group of Experts at its next session.

D. Acknowledgment and signatures

35. The Group of Experts felt that, following approval of IGD EurAsia by the UNECE Working Party on Rail Transport (SC.2), the IGD EurAsia should be formalized and possibly signed in line with the propositions made in the UNECE Position Paper

(ECE/TRANS/2011/3). The Group of Experts acknowledged the important political and symbolic significance of a signing ceremony, which would draw political and media attention to this concrete step towards efficient and seamless Euro-Asian rail transport services. Such a ceremony could be held during the annual session of the UNECE Inland Transport Committee (ITC) in February/March 2012 or at another event providing for the necessary visibility and for the participation of both senior Government and industry officials.

36. The Group of Experts invited the secretariat to consult with stakeholders on such possibilities and to draft appropriate provisions for consideration by the Group of Experts at its next session.

37. With respect to the designation of the instrument, the Group of Experts considered that the best two options were a traditional mechanism of a UNECE resolution or a declaration allowing possible signatures, but not requiring a lengthy legal and parliamentary process for adoption in UNECE member States. The secretariat was invited to consult with UNECE Governments and the European Commission to formulate concrete proposals in this direction for the next session of the Group of Experts.

VIII. Latest developments in international railway law (agenda item 7)

38. The Group of Experts was informed about recent activities and plans for future work in the field of national, regional and international railway law, including:

(a) Joint OSJD-CIT Seminar on 6–7 April on the implementation of the joint CIM/SMGS consignment note on the territory of Kazakhstan for rail transit and import traffic and its extension to China and Mongolia;

(b) sixteenth session of the Project Working Group on Transport and Border Crossing (PWG-TBC) of the United Nations Special Programme for the Economies of Central Asia (SPECA) (Almaty, 20–21 April 2011);

(c) The planned accession of the EU to COTIF on 22–23 June 2011.

IX. Experiences with rail operations in the pan-European region and along Euro-Asian transport corridors (agenda item 8)

39. Due to lack of time, the Group of Experts could not exchange information on the latest experiences with rail transport operations along Euro-Asian transport corridors. This would be done at the next session in an appropriate format.

X. Other business (agenda item 9)

40. No other business was brought forward.

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

41. The next session of the Group of Experts is tentatively scheduled to be held at the Palais des Nations in Geneva on 16 September 2011. An informal preparatory session may be held on 15 September 2011. The agenda for this session would be issued in early July 2011 and, together with relevant documents, would be available at the UNECE website

(<http://live.unece.org/trans/main/sc2/sc2.html>). The deadline for the submission of official documents for this session would be 11 July 2011.

42. The next session of the UNECE Working Party on Rail Transport will be held at Geneva on 3 and 4 November 2011. The next session of the UNECE Inland Transport Committee (ITC) is planned to be held from 28 February to 1 March 2012.

XII. Summary of decisions (agenda item 11)

43. The Group of Experts agreed that the secretariat will establish a short report on the outcome of the session for circulation among participants. Comments made would be incorporated by the secretariat for adoption by the Group of Experts at its next session.
