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### Inland Transport Committee

#### Working Party on Rail Transport

##### Group of Experts towards Unified Railway Law

##### Third session

Geneva, 2–3 July 2012

## Report of the Group of Experts on its third session

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### I. Attendance

1. The Group of Experts towards unified railway law held its third session on 2 and 3 July 2012 in Geneva.

2. The session of the Group of Experts was attended by experts from the following countries: Belgium; Czech Republic; France; Germany; Hungary, Netherlands, Russian Federation, Switzerland and Turkey. An expert 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) and International Rail Transport Committee (CIT).
4. Experts from the following railways and industry groups participated: Deutsche Bahn (DB), French Railways (SNCF), Mongolian Railways (Vlaanbaatar JSC), Russian Railways (RZD), Turkish State Railways (TCDD) and Plaske JSC.
5. Mrs. Eva Molnar, Director of the UNECE Transport Division, opened the session. She welcomed the increasing participation of UNECE member States and railways and informed the group that the UNECE secretariat was actively pursuing awareness-raising activities and consultations on unified railway law both within and outside the United Nations system. She expressed appreciation for the active participation of experts and urged them to agree on concrete recommendations for consideration at the forthcoming sixty-sixth session of the Working Party on Rail Transport (SC.2).

## **II. Chair**

6. In accordance with the decision of the first session of the Group of Experts (ECE/TRANS/SC.2/GEURL/2011/4, para. 6) Mr. A. Druzhinin (Russian Federation) chaired the meeting.

## **III. Adoption of the agenda (agenda item 1)**

7. The Group of Experts considered the agenda prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2012/1). The representative from the European Union suggested changing the title of agenda item 3 from “Negotiation on the Intergovernmental document” to “Discussion on the Joint Declaration”.
8. The representative from OSJD proposed deleting agenda item 4 “Review of work on General Terms and Conditions for Euro-Asian transport contracts (GTC EurAsia)”, as it seems to be premature to hold substantive discussion on GTC EurAsia. The representative of OSJD reported on the results of the XL session of the OSJD Ministers conference held in Baku, Republic of Azerbaijan, on 5–8 June 2012, where the Ministers took note of the ongoing work of the UNECE “towards the unified railway law in the pan-European region and Eurasia transport corridors” as well as agreed on the continued participation of a representative of the OSJD Committee in the Group of Experts on the unified railway law. The Ministers also appealed to the OSJD member-countries to more actively participate in the work toward the development of the unified railway law. In addition, the representative of OSJD read a letter sent by Kazakhstan Railways – which was distributed during the session – where experts of Kazakhstan Railways mention that the UNECE Group of Experts should first of all focus on the preparation of a declaration on the development of Euro – Asian rail transport, rather than on provisions of GTC EurAsia. The letter also expressed the position that it is premature to carry out activities within the framework of UNECE on the unified railway law.
9. The Group of Experts recalled that agenda item 4 was in line with the UNECE position paper towards unified railway law for Euro-Asian transport corridors

(ECE/TRANS/2011/3) (hereafter, the Position Paper) adopted by the Inland Transport Committee, as well as with the work plan of the Group of Experts adopted at its first session (ECE/TRANS/SC.2/GEURL/2011/2). The Group of Experts agreed to consider the state of the work on GTC EurAsia under agenda item 4.

10. The Group of Experts, thus, adopted the agenda as contained in document ECE/TRANS/SC.2/GEURL/2012/1 with the following modification:

Rename agenda item 3 to read: “Discussion on the Joint Declaration”.

#### **IV. Adoption of the report of the second session (agenda item 2)**

11. The Group of Experts adopted the report of its second session, as contained in document ECE/TRANS/SC.2/GEURL/2011/9, subject to the following corrections:

(a) Corrections requested by the Russia Federation: in para. 20 of the report in the parenthesis to include SMPS between SMGS and OSJD and to delete the last phrase of the same para starting with “specifically, participating States were to.....” and ending with “... Euro-Asian rail transport operations”.

(b) Corrections requested by the OTIF secretariat: in the French version of the report only, in para 14 (a) to replace the phrase “...et que la Convention était entrée en vigueur pour l’Union européenne le 1<sup>er</sup> Juillet 2001” with the phrase “et que l’accord d’adhésion était entrée en vigueur le 1<sup>er</sup> Juillet 2011 ” and in para. 14 (c) to replace the phrase “que le Comité de facilitation...” with the phrase “Que la Commission de la facilitation ferroviaire”.

(c) Corrections requested by Turkey: in para. 16 replace the “the expert of Turkey” with the phrase “the expert of TCDD” and also at the same para. to replace the last phrase starting with “of the South East region ...” until the end with the phrase “ ... members of the freight group of SERG (South Eastern European Railways Group of IJIC)”.

#### **V. Discussion on the Joint Declaration (agenda item 3, as amended)**

12. On the basis of a secretariat draft document (ECE/TRANS/SC.2/GEURL/2011/2) the group of experts reviewed the preamble and the substantive provisions of a joint declaration for adoption by Ministers of Transport interested in Euro-Asian rail transport including an Annex with policy principles for the application of GTC EurAsia. The secretariat draft was based on the decisions taken at the Group of Experts first and second sessions (ECE/TRANS/SC.2/GEURL/2011/4 and 9) and took account of the considerations and proposals made at the informal meeting of friends of chairman of the UNECE Working Party on Rail Transport (Geneva, 2 March 2011).

13. Annex I of this report contains the draft of the Joint Declaration in accordance with the discussions, comments and decisions taken at the present session of the Group of Experts. Text in squared brackets contains alternative wording yet to be considered.

## **VI. Review of work on General Terms and Conditions for Euro-Asian transport contracts (GTC EurAsia) (agenda item 4)**

14. Annex II of this report contains the draft Policy Principles for Application of General Terms and Conditions for Euro-Asian transport contracts, as reviewed at the present session of the Group of Experts.

15. The Group of Experts noted that no progress had been made on GTC EurAsia, as railway experts under the auspices of OSJD and CIT have not yet be able to consider initial proposals made in this respect.

## **VII. Other business (agenda item 5)**

16. No other business was brought forward.

## **IX. Date of next session(s) (agenda item 6)**

17. The date for the next meeting of the Group of Experts towards unified railway law is as follows:

19 October 2012	Fourth session of the Group of Experts towards unified railway law
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## **X. Summary of decisions (agenda item 7)**

18. 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.

## Annex I

### **Draft Joint Declaration [on the promotion of Euro-Asian rail transport and activities including steps towards unified railway law]**

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

*Meeting* in Geneva on February 2013 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 a crucial as well as 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 business,

*Aware* that Euro-Asian railways business 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, the CIS, the Euro-Asian Customs Union, the World Customs Organization and other 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 effective rail transport operations and efficient railways business,

[*Aware* of the challenges posed by rail transport safety and security and *taking account* of the technical differences that should not become barriers to the development of Euro Asian rail transport];

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

*Recognizing* that further steps should be taken to facilitate the conclusion of Euro-Asian rail transport contracts compatible with existing national legislation and 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 endeavour to jointly develop and strengthen cooperation in the area of Euro-Asian rail transport.
2. Ministers strive to pursue the following strategy (rail map) to establish legal conditions for railways equivalent with those existing for competing modes such as road and maritime transport:
  - (a) Establishment of a unified set of transparent and predictable provisions for Euro-Asian rail transport operations in all countries concerned that would eventually facilitate border crossing procedures, particularly for transit traffic;
  - (b) Unification of international railway law with the objective to allow rail carriage under a single regime from the Atlantic to the Pacific;
  - (c) Analysis of existing international modal transport (road, rail, air, maritime, inland navigation) and related agreements in order to identify provisions and procedures important for the establishment of unified railway law;
  - (d) Identification of an appropriate management system for a unified railway law including depositary, administrative and secretariat functions, based on best practices in international transport law;
  - (e) Development of legal rules applicable for [the unified railway law] and related issues;
  - (f) Support for the widest possible use of electronic document workflow and intelligent transport systems;
3. Ministers examine the need to elaborate their position on appropriate institutional structures, using the experience of international organizations, such as OSJD, OTIF and other railway organizations.
4. Ministers invite interested railway enterprises, other stakeholders and international railway organizations to pursue, on the basis of the UNECE Position Paper towards unified railway law for Euro-Asian land transport (ECE/TRANS/2011/3), work on non-mandatory [model] rules for Euro-Asian rail transport contracts (GTC EurAsia) in line with the policy principles agreed upon by the UNECE Working Party on Rail Transport (SC.2) (ECE/TRANS/SC.2/2012/...) [in the annex to this Declaration]. The UNECE secretariat is invited to provide its good offices to facilitate such endeavours. Progress achieved should be reported [annually] to the UNECE Working Party on Rail Transport (SC.2).
5. Ministers welcome the work undertaken and progress made by UNECE towards unified railway law and invite UNECE to pursue [strengthen] its activities in this field [with

a view to making rapid progress towards unified railway law], in particular on [the six (6) strategic priorities] contained in paragraph 2.

6. Ministers agree that further development and progress in the application of this Joint Declaration should be monitored at regular intervals [annually] 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.]

## Annex II

### **Policy Principles for Application of the General Terms and Conditions for Euro-Asian Rail Transport Contracts (GTC EurAsia)**

[NOTE: These policy principles refer to operative paragraph 4 above and they could either be annexed to the Joint Declaration or contained in a separate document to be adopted (agreed) by the UNECE Working Party on Rail Transport (SC.2)].

#### **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 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 in Euro Asian traffic.

GTC EurAsia may be used for some types of rail freight transport operations and some types of cargo shipped by rail without prejudice to the applicable required mandatory rules and regulations.

#### **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 to contract of carriage.

#### **Principle 4: Content of GTC EurAsia**

GTC EurAsia will contain provisions that provide for the following contractual elements in Euro Asia traffic:

- (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 could, when possible or applicable, encourage the application of GTC EurAsia and will promote, if appropriate, 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].

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