

IV. EXISTING LEGAL INSTRUMENTS RELATED TO THE FACILITATION OF INTERNATIONAL RAILWAY TRANSPORT

A. International Conventions and Agreements

1. OSJD agreements

There are nine agreements concluded within the framework of OSJD:

- Agreement on the International Passenger Transport by Rail (SMPS);
- Agreement on the International Goods Transport by Rail (SMGS);
- Agreement on the International Passenger Tariff (MPT);
- Agreement on the International Railway Transit Tariff (MTT);
- Agreement on the Uniform Transit Tariff (ETT);
- Agreement on Rules for the Use of Coaches in International Traffic (PPW);
- Agreement on Rules for the Use of Wagons in International Traffic (PGW);
- Agreement on the Accounting Rules in International Transport of Passengers and Goods by Rail;
- Agreement on Organizational and Operational Aspects of Combined Transportation between Europe and Asia.

The status of participation of these agreements is shown below. They are also described briefly in foregoing paragraphs.

Table 8. Status of participation of 13 ESCAP member countries OSJD agreements (as of 15 February 2012)³⁷

No.	Country	Participation								
		SMPS	SMGS	MPT	MTT	ETT	PPW	PGW	Rules of Accounting	Combined Transportation
1.	Azerbaijan	yes	yes	no	yes	yes	no	no	yes	no
2.	China	yes	yes	yes	no	yes	yes	yes	yes	yes
3.	Democratic People's Republic of Korea	yes	yes	yes	no	yes	yes	yes	yes	no
4.	Georgia	yes	yes	no	yes	yes	no	no	yes	no
5.	Iran (Islamic Republic of)	no	yes	no	no	no	yes	yes	no	no
6.	Kazakhstan	yes	yes	yes	yes	yes	yes	yes	yes	yes
7.	Kyrgyzstan	yes	yes	yes	yes	yes	yes	yes	yes	yes
8.	Mongolia	yes	yes	yes	yes	yes	yes	yes	yes	yes
9.	Russian Federation	yes	yes	yes	yes	yes	yes	yes	yes	yes
10.	Tajikistan	yes	yes	yes	yes	yes	yes	yes	yes	no
11.	Turkmenistan	yes	yes	yes	no	no	no	no	no	no
12.	Uzbekistan	yes	yes	yes	yes	yes	yes	yes	yes	yes
13.	Vietnam	yes	yes	yes	no	yes	no	no	yes	no

³⁷ Organization for cooperation between railways (OSJD), Report on the Activities of the Organization for cooperation between railways for 2012, <http://en.osjd.org/>

The major OSJD agreements are the Agreement on International Goods Transport by Rail (SMGS) and the Agreement on International Passenger Transport by Rail (SMPS).

(a) Agreement on the International Passenger Transport by Rail (SMPS)

The Agreement entered into force on 1 November 1951, and undergoes revision from time to time. There are currently 23 contracting parties to SMGS (as of 15 February 2012) out of which the ESCAP members are: Azerbaijan, China, Democratic People's Republic of Korea, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Viet Nam.

The SMPS Agreement consists of 9 chapters and 45 articles. There are also two technical appendices. Besides, there is an accompanying document entitled SMPS Manual that contains comments and explanatory notes for the application of the agreement. The main agreement consists of 8 chapters and 41 articles.

Chapter I "Basic provisions" defines the overall subject of the Agreement to establish the rules of international carriage of passengers, baggage and cargo baggage. The chapter covers the scope of application of the agreement, main terms used in the text and overall responsibilities involved into the process of international carriage of passengers by rail.

Chapter II "Carriage of passengers" describes the main transport document for passenger carriage (ticket) and its additional elements; conditions of ticket validity, categories of seats in trains and rules of changing the seat category. It also covers the provisions related to travel of children, ticket inspections, carriage of baggage and pets, defines items forbidden for carriage as hand baggage, amendment of the passenger itinerary, and sequences of train delay and cancellation.

Chapter III "Carriage of baggage" establishes baggage allowance for passengers, defines items allowed and not allowed to be carried as baggage, sets up the rules for acceptance and release of baggage by the carrier, packaging and marking, declaration of baggage value, and terms of delivery.

Chapter IV "Carriage of cargo baggage" contains rules for cargo baggage of very close nature to those applied for baggage and set out in Chapter III thereof: items allowed and not allowed to be carried as cargo baggage, rules for acceptance and release of cargo baggage by the carrier, packaging and marking, declaration of value of the cargo baggage, terms of delivery, and obstacles for carriage and release of cargo baggage.

Chapter V "Carriage charges" defines the rules on using tariffs for calculation of carriage charges and sets the procedures for payment and refund of carriage charges.

Chapter VI "Carrier liability" covers the issues of joint liability of railways, liability for harm to passenger's health or life, as well as carrier's liability in cases of delay in delivery, full or partial loss or damage of baggage/cargo baggage.

Chapter VII "Liabilities of passenger, sender and recipient of baggage or cargo baggage" defines the scope of liability of the captioned actors.

Chapter VIII "Claims" sets up the procedures for claims submission and limitation period.

Chapter IX "General provisions" refers to the obligation to comply with customs rules and regulations and applicable national legislation in the course of international passenger carriage. It also covers the status of the SMPS Manual, procedures for publishing amendment of the Agreement and Manual, and on administering the implementation of the Agreement by OSJD bodies.

Appendix 1 is entitled "Items under the monopoly of postal authorities", and Appendix 2 is the "List of the railway undertakings for claim submission and handling".

(b) Agreement on the International Goods Transport by Rail (SMGS)

The Agreement entered into force on 1 November 1951, and undergoes revision from time to time. There are currently 23 contracting parties to SMGS (as of 15 February 2012) out of which the ESCAP members are: Azerbaijan, China, Democratic People's Republic of Korea, Georgia, Iran (Islamic Republic of), Kazakhstan, Kyrgyzstan, Mongolia, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Viet Nam.

The SMGS Agreement structurally consists of the main agreement and 22 appendices. Besides, there is an accompanying document entitled SMGS Manual that contains comments and explanatory notes for the application of the agreement. The main agreement consists of 8 chapters and 41 articles.

Chapter I "Basic provisions" defines the main subject of the Agreement to establish direct international freight rail traffic between the railways of the contracting parties. The chapter also covers the scope of application of the agreement and provisions related to duties of railways to carry goods, items not allowed for carriage or allowed for carriage on special conditions and special conditions for certain types of carriage.

Chapter II "Conclusion of the contract of carriage" covers the issuing of the consignment note, acceptance of goods for carriage, calculation of goods' weight and quantity, declared value of goods, responsibility for the validity of the data in the consignment note; tariffs and calculation of carriage charges and fines; and rules for the terms of goods delivery.

Chapter III "Performance of the contract of carriage" covers the matters of payment of carriage charges, release of goods to the consignee, issuing of commercial acts and carrier's right of retention.

Chapter IV "Amendment of the contract of carriage" includes provisions on the procedure of amending of the contract of rail carriage and special provision for the cases of when obstacles to release of goods to the consignee occur.

Chapter V "Liability of Railways" establishes provisions on joint liability of railway carriers, overall principles related to limitation of carrier's liability, rules of limitation of liability in cases of shortage of goods, limitations of compensation by carriers in cases of full or partial loss, damage, and delayed delivery of goods. It also describes the rules of payment of compensation and accruing interest on the amount of compensation payable.

Chapter VI "Claims and actions" covers the procedures of submitting claims and actions, sets the limitation periods and the rules of defining jurisdiction for legal proceedings.

Chapter VII "Payments" contains the rules of payment settlement, including the cases of reimbursement of compensation paid by the railway carriers.

Chapter VIII "General provisions" covers the issues of currency for the calculation of amounts of payments, status of the SMGS Manual, procedures for amendment of the Agreement and Manual, and on administering the implementation of the Agreement by OSJD bodies.

The appendices to the SMGS Agreement, which are referred to in the relevant articles of the main body of the Agreement, cover various specific aspects of international road carriage of goods:

Appendix 1 "Items under the monopoly of postal authorities";

Appendix 2 "Rules of carriage of dangerous goods";

Appendix 3 "Rules of carriage of goods accompanied by the representatives of consignor or consignee";

Appendix 4 “Rules of carriage of perishable goods”;

Appendix 5 “Loading dimensions”;

Appendix 6 “Stickers and marks on consignments, wagons, containers and consignment notes”;

Appendix 7 “Rules of carriage of road vehicles and tractors”;

Appendix 8 “Rules of carriage of containers”;

Appendix 9 (reserved);

Appendix 10 “Rules of carriage of private and rented wagons”;

Appendix 11 “Rules of carriage of goods in transport packets”;

Appendices 12 and 13 (contain a number of templates and operating instructions for SMGS consignment note, railway memorandum bills and other transport documents accompanying goods);

Appendix 14 “Rules of stowage and fastening of goods in wagons and containers”;
Appendices 15 – 18 (contain templates of documents related to international rail carriage);

Appendix 19 (indicates official names and contacts of the railway undertakings for claim submission and handling);

Appendix 20 (provides a template of claim for delayed delivery);

Appendix 21 “Rules of carriage of combinations of road vehicles, road vehicles, trailers, semi-trailers and of demountable road vehicle bodies”; and

Appendix 22 “Handbook on CIM/SMGS Common Consignment Note”

Revisions of SMGS and SMPS

Since entering into force in 1951, both SMGS and SMPS agreements have undergone multiple regular revisions. The amendments to the agreements are being proposed, discussed and agreed by the OSJD Commission on Transport Law. The current round of SMGS revision commenced in 2005 and included, among other important updates of the SMGS Agreement, many of which were aimed at harmonization of some of its provisions with the relevant provisions of COTIF Convention (CIM), introduction of rules related to CIM/SMGS Common Consignment Note. The current efforts in the revision of SMPS agreement also pursue the target to make it more compatible to COTIF (CIV).

Draft OSJD Convention on Direct International Rail Transport

The OSJD members are also in the process of formulating planning to formulate adopt the Draft Convention on Direct International Rail Transport, which is to integrate the basic documents of the Organization and establish a comprehensive set of rules related to international railway transport, and to replace the current main agreements. The Convention is to be concluded at the level of heads of the governments of the OSJD member countries. The revised SMGS and SMPS could cease to exist as international agreements and could become appendices to the Convention.

Other OSJD agreements:

(c) Agreement on the International Passenger Tariff (MPT)

The Agreement entered into force on 1 August 1991. It consists of 8 clauses, which establish rights and obligations between the MPT member railways. Participation of railways in the MPT Agreement does not affect their relations with other railways, which are not parties to the Agreement. The IPT (MPT) Agreement does not obstruct the negotiating railways interested in conclusion of separate bilateral or multilateral agreements on application of other passenger tariffs with other railways. The International Passenger Tariff (MPT), which is established by the Agreement, sets up the procedure for forming the tariffs for the carriage of passengers. The Agreement is also supplemented by the Manual with operating instructions and comments on the practical application of the MPT.

(d) Agreement on the International Railway Transit Tariff (MTT)

(Entered into force on 1 January 1997) and

(e) Agreement on the Uniform Transit Tariff (ETT) (Entered into force on 1 July 1991)

Both agreements establish tariffs for international rail transport of goods among the contracting parties to the respective agreements.

The tariffs are used by the contracting parties for calculation of carriage charges for goods transportation in transit traffic with SMGS and CIM/SMGS consignment note. UTT is mostly used for transport operations between the countries of Europe and Asia, while MTT is applied most typically within Europe.

Both of tariffs contain maximum rates, tables of additional charges, transit distances on separate countries, codes and names of border crossing points, instructions for carriage documents. Furthermore, they contain instructions on accounting of carriage charges by transportation of some goods under special transportation conditions.

(f) Agreement on Rules for the Use of Coaches in International Traffic (PPW) and

(g) Agreement on Rules for the Use of Wagons in International Traffic (PGW)

Both agreements entered into force on 1 January 2009 and establish sets of Rules for the use of passenger coaches (PPW) and freight wagons (PGW) in international rail traffic.

Since 1 November 1951 till 31 December 1991 the Rules for the use of wagons (both for passenger and freight wagons) were the part of the Agreement on the International Goods Transport by Rail (SMGS). Since 1 January 1992 till 31 December 2008 the Agreement on the Rules for use of wagons in the international railway traffic was applied to the passenger and freight wagons. This agreement has been then divided into two agreements:

- Agreement on the Rules for use of passenger wagons in the international traffic (PPW-Agreement);
- Agreement on the Rules for use of freight wagons in the international traffic (PGW-Agreement).

(h) Agreement on the Rules of Accounting in International Transport of Passengers and Goods by Rail

Entered into force on 1 July 1997, the Agreement covers the issues of accounting between the railways which are contracting parties there to according to the Rules on Accounting in International Transport of Passengers and Goods by Rail.

The Rules are the integral part of the Agreement and are applied for accounting procedures related to transportation of passengers, baggage, cargo baggage, goods and other services within the framework of SMPS and SMGS agreements.

(i) Agreement on Organizational and Operational Aspects of Combined Transportation between Europe and Asia

Signed on 4 June 1997, the agreement defines the network of main lines for combined transportation and defines the main technical parameters of such lines. The agreement has been developed on basis of European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) and is generally similar in the subject and structure.

2. Convention concerning International Carriage by Rail

(a) Overview

The first International Convention concerning the Carriage of Goods by Rail dates from the year 1890. It created an Administrative Union as per the prevailing rules of international law with a permanent secretariat, the Central Office for International Carriage by Railway, headquartered in Berne, Switzerland. On 1 May 1985, the Convention concerning International Carriage by Rail of 9 May 1980 (COTIF) entered into force and this led to formation of the Intergovernmental Organization for International Carriage by Rail (OTIF).

After significant modifications to COTIF that were brought about by the Vilnius Protocol of 3 June 1999 (1999 Protocol), the amended convention entered into force on 1 July 2006.

(b) Objectives

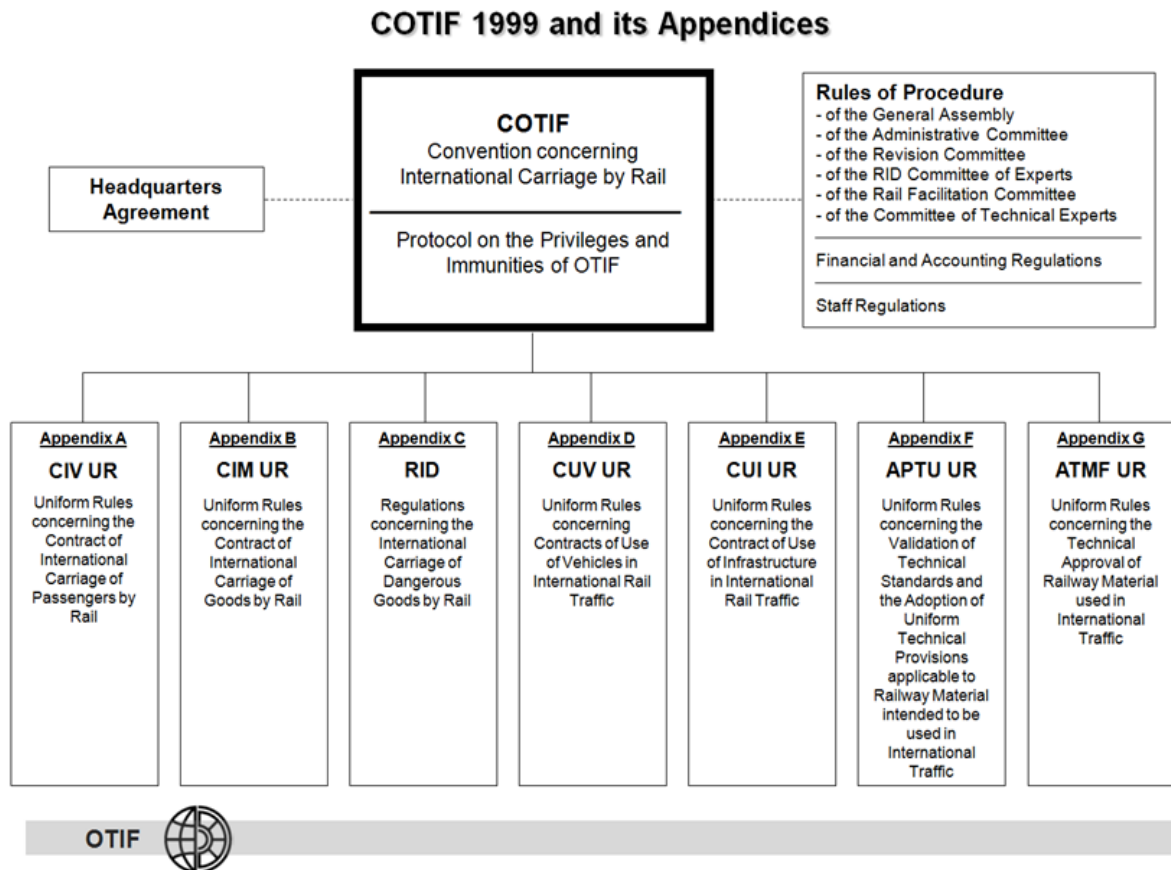
The objectives of the convention are to promote, improve and facilitate international traffic by railway.

(c) Key provisions

The convention consists of:

- Base convention that has seven subheadings containing 45 articles that cover scope, structure and functioning, finances, arbitration, modification procedure and final provisions;
- Protocol on the privileges and immunities of the Intergovernmental Organisation for International Carriage by Rail(OTIF) having 14 articles;
- Protocol of 3 June 1999 for the modification of the convention concerning International Carriage by Rail (COTIF) of 9 May 1980(Protocol 1999) having seven articles; and
- Appendices including their annexes

Figure 8. COTIF 1999 at a Glance



Uniform rules for international carriage by rail are contained in the seven Appendices to COTIF. They are briefly discussed below:

Appendix A: Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV). Some important provisions are:

- Applicable to contracts for carriage of rail passengers where the place of departure and place of destination are situated in two different member states;
- Applicable to whole of the infrastructure unless reservation at the time of accession;
- Consensual contract (no obligation); and
- International carriage being subject to single contract includes carriage by road or inland waterway as a supplement to transfrontier carriage by rail the rules shall apply.

Appendix B Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM). Some important provisions are:

- Applicable to whole of the rail infrastructure unless reservations to scope are made at accession;
- Applicable to carriage by road or inland waterway in internal traffic of a member state as a supplement to transfrontier carriage by rail
- Consensual contract (no obligation to carry); and
- Consignment Note (prima facie evidence of carriage)

Appendix C Regulation concerning the International Carriage of Dangerous Goods by Rail (RID). The regulations apply to:

- International carriage of dangerous goods by rail on territory of (RID) contracting member state;
- Carriage complementary to carriage by rail to which CIM Uniform Rules are applicable; and
- Activities referred to by the Annex to this Regulation.

Appendix D Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV). These uniform rules apply to:

- Bilateral or multilateral contracts concerning the use of railway vehicle as means of transport for carriage in accordance with CIV and CIM uniform rules; and
- Limited to questions on
 - Liability in case of loss of or damage to a vehicle
 - Limitation of actions
 - Forums for settlement of disputes

Appendix E Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI):

- Apply to any contract of use of railway infrastructure for international carriage as per CIV and CIM uniform rules;
- Applicable to when railway infrastructure is managed or used by States or by governmental institutions or organizations;
- Carrier must be able to prove that he is authorized and in compliance with the safety requirements for the use of infrastructure (safety certificate)
- Carrier must be able to cover insurance claims;
- Liability of infrastructure manager for bodily loss or damage, loss of or damage to property and pecuniary loss to the carrier during the use of infrastructure; and
- Period of limitation- three years from the day of loss or damage to the infrastructure.

Appendix F Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU):

- Lays down the procedure for validation of technical standards and the adoption of uniform technical prescriptions for railway material intended to be used in international traffic.

Appendix G Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF)

- Lay down the procedure for the admission of railway vehicles and other railway material for admission to circulation or use in international traffic.

3. International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail, 1952

(a) Overview

International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail, was signed at Geneva on 10 January 1952. This convention entered into force on 1 April 1953. There are currently 12 contracting parties to this Convention,³⁸ including one ESCAP member country (Armenia).

(b) Objective

- To facilitate the crossing of frontiers for goods carried by railway.

(c) Key provisions

- Establishment and operation of frontier stations where examinations are carried out by the two adjoining countries:
 - Joint examinations;
 - Zone established by adjoining countries; and
 - Reduced time for the Customs and other examinations to which goods crossing the frontiers, particularly in the case of fast freight; transport in international transit; perishable goods, livestock and other goods for which rapid transport is essential, goods dispatched by fast international trains, and heavy goods dispatched in train-loads;
- International transit system
 - Customs seals is subject to the right of each Customs administration;
 - Speeding up the examination of goods in international transit; and
 - Standard international Customs declaration form.
- Miscellaneous provisions

(d) Benefits

- Lower time required for goods crossing the frontiers by rail; and
- Lower border operating costs and more efficient investments in border facilities.

4. International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail, 1952

(a) Overview

International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail was signed at Geneva on 10 January 1952. This convention entered

³⁸ http://www.unece.org/trans/conventn/legalinst_46_BCF_CFGR.html

into force on 1 April 1953. There are currently 10 contracting parties to that convention³⁹, none of which are in the ESCAP region.

(b) Objective

To facilitate the crossing of frontiers for passengers and baggage carried by railway.

(c) Key provisions

- Establishment and operation of frontier stations where examinations are carried out by the two adjoining countries:
 - Joint examinations;
 - Examination zone established by adjoining countries; and
 - Exemption of immigration procedures for the officials of control authorities.
- Establishment of passenger-friendly procedures for border inspection
 - Control procedures to be carried out mostly inside the train;
 - Clear sequence of control operations established; and
 - Use of customs sealing to avoid examination of baggage and parcels.

5. The International Convention on the Harmonization of Frontier Controls of Goods, 1982 (Annex 9)

(a) Overview

The International Convention on the Harmonization of Frontier Controls of Goods, 1982, aims at facilitating border crossing in international transport of goods through harmonization and reduction of the requirements for completing formalities and the number and duration of border controls.

There are 57 contracting parties to this Convention⁴⁰, including 12 ESCAP member countries (Armenia, Azerbaijan, Georgia, Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Mongolia, Russian Federation, Tajikistan, Turkey and Uzbekistan)

The Annex 9 to the Convention is related to the Facilitation of border crossing procedures for international railway freight and entered into force for all Contracting Parties on 30 November 2011.⁴¹

(b) Objective

- To facilitate and expedite the crossing of borders for international railway freight; and
- To standardize formalities and requirements in respect of documents and procedures in all areas connected with the carriage of goods by railway.

(c) Key provisions

- Facilitating the procedures for borders crossing by officials and other persons engaged in international railway transport;

³⁹ http://www.unece.org/trans/conventn/legalinst_45_BCF_CFPBR.html

⁴⁰ http://www.unece.org/trans/conventn/legalinst_51_BCF_HFCG.html

⁴¹ <http://www.unece.org/trans/bcf/news/wp30-011011.html>

- Minimum requirements for border (interchange) stations:
 - Border (transfer) stations to be properly equipped to carry out daily and round-the-clock controls, including phytosanitary, veterinary and other controls where appropriate and adequate for the volume of traffic;
 - Equipment, facilities, information technology and communications systems must be available to enable the exchange in advance of information;
 - Sufficient qualified staff of the railway, Customs, border and other agencies must be on hand at border (transfer) stations to cope with the freight volumes involved; and
 - Ability to accept and use technical approval and inspection data.
- Controls:
 - Establish a mechanism for reciprocal recognition of control;
 - Customs controls relying on the principle of selection on the basis of risk evaluation and management;
 - Simplified controls at border (interchange) stations; and
 - Inspections of transit goods only in cases where these are warranted by the actual circumstances or risks.
- Time limits by improving the technology and equipment used.
- Simplified documentation procedures by using electronic systems.
- Use of the CIM/SMGS railway consignment note as customs document.

6. Convention on International Customs Transit Procedures for Carriage of Goods by Rail under Cover of SMGS Consignment Notes

(a) Overview

The Convention was adopted on 9 February 2006 during the 68th session of the United Nations Economic Commission for Europe Inland Transport Committee. The Convention shall be open for signature by Member States of the United Nations, which are Contracting Parties to the Agreement on International Goods Transport by Rail of 1 November 1951 (SMGS Agreement).

The Convention has not yet entered into force.

(b) Objective

- To establish an international Customs transit procedure for the carriage of goods undertaken by railway companies under cover of the SMGS consignment note.

(c) Key provisions

- Establishment of an Administrative Committee to consider the operation of the Convention, to consider any amendments proposed, and to consider measures to secure uniformity in the interpretation and application;
- Consignment Note bears a special mark (stamp) given in Annex 1;
- Explanatory Notes set out in Annex 2 describe certain recommended practices and interpret certain provisions.

7. Initiative on Unified Railway Law

In March 2011, the ECE⁴² Inland Transport Committee approved the vision and strategy laid out in a position paper entitled “Towards unified railway law in the pan-European region and on Euro-Asian transport corridors” (ECE/TRANS/2011/3 and Corr.1). It contains a step-by-step approach in three phases, starting with the preparation of a memorandum of understanding or a resolution or declaration on general terms and conditions for Euro-Asian railway transport contracts including a common consignment note, followed by model regulations for international railway transport, and concluding with an international convention on international railway transport.

Phase I was planned to start from March 2011 and end in March 2012. Its target was to prepare the general terms and conditions for Euro-Asian railway transport contracts and sign a Memorandum of Understanding, resolution, declaration or similar instrument to put them into application.

The general terms and conditions would include and address contractual elements, such as:

- (a) Liability rules (level, conditions, limitations, relief);
- (b) Documentation (paper, electronic or both);
- (c) Formal reports;
- (d) Handling of claims;
- (e) Limits of action;
- (f) Compensation between carriers; and
- (g) Further elements that might need to be developed, as required.

The Memorandum of Understanding (or similar instrument) and the general terms and conditions would be prepared and negotiated by a Group of Experts under the auspices of the ECE Working Party on Rail Transport and then adopted by the Working Party. Thereafter it would be acknowledged, signed and formalized by concerned Governments and railway undertakings possibly during the annual session of the ECE Inland Transport Committee.

The timeframe of Phase II was planned between June 2012 and 2015. Its target was to develop the global Model Regulations for international rail transport.

The Model Regulations were considered to consist of two layers:

(a) *Layer one*: Core provisions, generally applicable for international rail transport operations, including those addressed by COTIF/CIM and SMGS and in the general terms and conditions; and

(b) *Layer two*: Regional provisions, applicable for specific international rail transport lines and/or specific regions and geographical areas.

The core provisions were expected to be introduced, step-by-step, into the COTIF and SMGS conventions and agreements to further harmonize provisions in COTIF and SMGS.

New international institution was not planned in this phase. Mechanisms and procedures would be devised that ensure effective coordination and cooperation among existing international institutions.

Phase III (as of 2015) was planned to target a new convention on international rail transport. It was envisaged that the negotiations of the convention would require considerable resources. Further details about the convention were not indicated in the document.

⁴² Common members of ECE and ESCAP: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkey and Uzbekistan.

On 26 - 28 February 2013, the ECE's Ministerial Meeting on "Making the Euro-Asian Transport Network Operational", which was held in Geneva, Switzerland, adopted a Joint Declaration on the Promotion of Euro-Asian Rail Transport and Activities towards Unified Railway Law⁴³. The Joint Declaration sets a direction for unification of railway law, including⁴⁴:

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

(c) 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 the railway transport (OSJD, OTIF and others) as well as of international organizations of other modes of transport.

B. Subregional Agreements

1. ECO Transit Transport Framework Agreement (TTFA)⁴⁵

The Economic Cooperation Organisation (ECO) Transit Transport Framework Agreement (TTFA) was signed on 9 May 1998 in Almaty and entered into force on May 2006 with the ratification of 6 signatories. Currently the Agreement has been signed by Afghanistan, Azerbaijan, Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkey and Turkmenistan. All those countries have also ratified the Agreement, with the exception of Turkmenistan.

The Agreement covers provisions for transit transport by road, rail, inland waterway, multimodal, and for access to port, with the overall aim of facilitating the movement of goods, luggage and passengers, and provide facilities for transit transport. Specific provisions for rail transport are:

- Part VI, "General conditions for rail transport";
- Annex I, Prescribed transit routes; and
- Annex III, Minimum technical characteristics of railway transport

The Agreement indicates both the railway lines to be used for transit transport and the interchange stations assigned for transit services. The technical characteristics cover aspects such as gauge, number of tracks, loading gauge, distance between track centers, nominal minimum speed, axle load, minimum gradient and minimum useful siding length. The Agreement allows for the easing of minimum requirements for existing lines, as long as other contracting parties are informed. The annex to the Agreement sets maximum times for the handling of goods at the terminals and intermediate stations.

The Agreement encourages the railway administrators to conclude inter-railway agreements and other arrangements that are consistent with the Agreement. More specifically, the contracting parties can formulate rules on use of wagons, and the rules and procedures for international rail passenger and freight traffic. The Agreement specifies that all further agreements and arrangements need to keep in view relevant international agreements (such

⁴³ Regional members of ESCAP signed the declaration: Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Mongolia, Pakistan, the Russian Federation, Tajikistan, Turkey and Uzbekistan.

⁴⁴ Key elements abridged from the Joint Declaration.

⁴⁵ <http://www.ecosecretariat.org>

as the Agreement on International Carriage of Passenger and the Agreement on International Carriage of Goods), and railway cooperation frameworks such as the OSJD, and UIC.

2. Protocol 6 on Railway Border and Interchange Stations of the ASEAN Framework Agreement on Facilitation of Goods in Transit

The Protocol 6 on Railway Border and Interchange station is one of nine protocols attached to the ASEAN Framework Agreement on Facilitation of Goods in Transit (AFAFGIT) signed on 16 December 1998 in Hanoi, Vietnam.

The Protocol 6 was signed by ASEAN Transport Ministers on 16 December 2011 in Phnom Penh, Cambodia. The Protocol includes provisions for several aspects of railway operations.

It requires contracting parties to provide at assigned border and interchange stations adequate facilities and personnel for transit procedures, rolling stock inspection and other procedures, and to work to harmonize and simplify cross-border procedures where possible. Movement is also facilitated by introducing measures such as coordinated working hours and a commitment to comply with weight restrictions on the route.

It also requires the contracting parties to fix various operational arrangements, including the number and schedule of through goods trains, routes, locations for locomotive servicing, train speeds and classes of rolling stock to be used. The Protocol also sets out the principle for calculating the rates. It is agreed that the trains running to or from interchange stations will be hauled by locomotives of the contracting party on whose lines the train is travelling, and that contracting parties are responsible for making the locomotives available based on the agreed schedule.

The protocol makes institutional arrangements for rail transport by assigning the ASEAN Senior Transport Officials Meeting as the body responsible for the monitoring, review, coordination and supervision of the implementation of the protocol.

3. EurAsEC agreements, including the agreements of the Customs Union of Belarus, Kazakhstan, Russian Federation

There are more than 100 agreements and other legal instruments related to railway transport within the framework of the CIS and EurAsEC (including the Customs Union and Common Economic Space of Belarus, Kazakhstan and Russian Federation).

This publication provides information on selected agreements and other international legal instruments adopted within the framework of the EurAsEC.

(a) Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on the Establishment of the Transport Union

Signed on 22 January 1998, this agreement is of framework nature, and covers different modes of transport, including railway transport. Under the agreement, the contracting parties undertake to establish the transport union as an integrated system of national transport systems of each of the countries for joint use of transport infrastructure, more efficient use of transport and reduction of costs, seamless goods of the means of transport across the borders, and implementation of coordinated policy on transport development.

The contracting parties undertake to make efforts in unification of national legislation; development and implementation of joint programmes for transport infrastructure development of the common transport information system; coordination of controls in respect

of third-country means of transport; application of coordinated tariff policy for different means of transport; joint use of wagons and containers and coordinated policy for the development of combined transport for facilitation of border-crossing procedures; coordinated policy on weight and dimensions, and others measures.

(b) Agreement on the Access to Railway Transport Service, including the outlines of tariff policy signed on 9 December 2010

The agreement is aimed to guarantee the balance of interests of the users of the railway services of each of the contracting parties. Railways of each of the countries which are the contracting parties to the agreement should provide access to its services to users of other countries on the conditions not less favorable than for the users in their country. The agreement also establishes the main principles for tariff policy which should be applied by the contracting parties. The contracting parties also undertake to establish unified tariffs for carriage of goods on the territories of their countries. The contracting parties also undertake to apply coordinated tariff policy related to carriage of goods to or from third countries in transit through their territories.

(c) Agreement on special conditions of customs transit of goods carried by railway within the customs territory of the Customs Union

Signed on 21 May 2010, this agreement is aimed at facilitation of customs transit procedures for goods carried by railway within the Customs Union and provides that railway consignment note, as well as commercial and customs documents with necessary data can be used as a transit declaration. Electronic copy of the transit declaration should be submitted to the customs office.

4. CIS agreements

(a) Agreement on railway transport coordination authorities of the Commonwealth of Independent States

Signed on 14 February 1992, the agreement established the CIS Council for Rail Transport in order to maintain sustainable economic relationship in the field of railway transport between CIS member countries. On the basis of the agreement, the statute of the Council and its executive body, the Directorate, were adopted to define legal status, directions of work, main duties and rules of procedure.

(b) Agreement between railroad administrations of the Member States of the Commonwealth of Independent States, the Latvian Republic, the Lithuanian Republic and the Estonian Republic on special conditions of implementation of particular provisions of the Agreement on international passenger transport by rail (SMPS) (signed on 28 May 1997), and

(c) Agreement between rail administrations of the Member States of the Commonwealth of Independent States, the Latvian Republic, the Lithuanian Republic and the Estonian Republic on special conditions of implementation of particular provisions of the Agreement on the International Goods Transport by Rail (SMGS) (signed on 1 October 1997)

Both agreements have similar structure and established specific conditions of application of the Agreement on the International Passenger Transport by Rail (SMPS) and the Agreement on the International Goods Transport by Rail (SMGS) for rail carriage of respectively, passengers and goods among the CIS member countries and Estonia, Latvia and Lithuania. The agreements contain lists of, respectively, SMPS and SMGS provisions not applied for rail transport operations and provide sets of rules which are to be applied instead of non-applicable SMPS and SMGS provisions.

(d) Agreement on the cooperation of the Member States of the Commonwealth of Independent States on harmonization of taxation systems in railway transport

Signed on 10 March 2000, the parties to the Agreement undertake to establish a set of measures to harmonize the system of taxes and charges in respect of use and maintenance of railways, ownership of rolling stock and incomes of railway undertakings. The measures are to include the coordinated policy of taxation and on amounts of taxes, coordinated policy for customs duties levied in case of import of rolling stock and spare parts, and exemption of railway undertakings of value added tax on transit transportation services (carriage, freight forwarding, loading, unloading and trans loading).

(e) Tariff agreement of railway administrations (railways) of the Member States of the Commonwealth of Independent States

Signed on 17 February 1993, the parties to the Agreement undertake to apply:

- The Common CIS Tariff policy;
- The common rules for through tariff scales; and
- The common rules of accounting among the railways.

The Agreement establishes the mechanism of amending the Common Tariff Policy and arrangements for its implementation by the contracting parties at national level.

(f) Other legal instruments elaborated in the framework of CIS, in particular, rules and regulations listed below are adopted by CIS Council on railway transport

- Rules of clearing payments connected to using of freight rail cars in inter-state service (4 June 1993);
- Rules on carriage of dangerous goods by rail (5 April 1996);
- Rules of carriage of goods in specialized containers in international service on railways of the Member States of the Commonwealth of Independent States, the Latvian Republic, the Lithuanian Republic and the Estonian Republic (10 March 2000);
- Rules of goods carriage by rails in open-top rolling stock (15 February 2002);
- Regulation on international rail carriage of perishable goods in thermostatic rail cars (19 May 2007);
- Regulation on carriage of perishable goods in general-purpose containers in international rail service between the Member States of the Commonwealth of Independent States, the Latvian Republic, the Lithuanian Republic and the Estonian Republic (29 May 2008).

C. Bilateral agreements on railway transport

Countries also entered into bilateral agreements to regulate various aspect of international railway transport. The key features of the some of these agreements are discussed in the foregoing paragraphs:

1. India-Nepal Rail Services Agreement, 2004

The agreement entered into by Ministry of Railways(MOR), India and Ministry of Industry, Commerce and Supplies(MOICS), Nepal, is valid for ten years from the date of signing and thereon extendable by five years at a time unless termination notice is give by either party six months in advance.

The agreement provides for railway lines to be used, interchange station, train schedules, maintenance of railway tracks and wagons, movement of dangerous and offensive articles, running of trains and shunting activities. Further, the agreement provides for joint mechanical examination of the rolling stock by respective designated agencies of MOR and MOICS and maintenance of records of such inspection at the interchange station. Detailed description pertaining to maintenance of records at the interchange station is provided.

Only ISO specified containers loaded on flat wagons owned by Indian Railways or Container Corporation of India are permitted for interchange. Initially, the transit traffic destined for Birgunj, passing through Kolkata/Haldia ports in India, originating at countries other than India and vice versa is allowed to move between India and Nepal.

In case of accident in the Nepalese territory, the MOR will provide necessary assistance for restoration of traffic and provide material as required. However, the restoration cost will be borne by agency designated by Nepal. There is a provision for establishment of Accident Enquiry Committee to ascertain the cause of accident, assess the cost of restoration and damage due to accident. The committee will also decide on the compensation in respect of the damage payable by the respective parties.

In addition, an annexure to the agreement provides for procedure for Customs examination and clearance of containerized cargo to and from Nepal. The Annexure provides for the detailed procedure to be followed for imports and for exports.

Regarding liability, for MOR, it will be as per the provisions Railway Act 1989 and the Rules for Claims annexed to the agreement. For MOICS, the liability for relevant provisions under the agreement will be assumed by the Nepal. To cover the claims for detention charges and wagon deficiencies, the agreement provides for insurance cover/bank guarantee to be provided by agency designated by MOICS in favor of MOR to cover the cost of operations for three months.

Finally, the agreement provides for consultations and negotiations between the two Governments to resolve disputes or differences. If the dispute is not resolved, the matter may be referred to arbitration on mutual consent of the parties.

2. Agreement relating to Rail Communication between India and Pakistan- 2001

An agreement between India and Pakistan on resumption of rail communication was first entered into on 28 June 1976 for the period of three years and was extended from time to time. In 2001, the earlier agreement was reviewed. The modified agreement contains eight articles covering passenger traffic, freight traffic, mechanical, maintenance and operating arrangements, communication facilities, payment procedure, visa issues and review of the agreement. The agreement governs the traffic between Attari(India) and Wagah(Pakistan).

Article 2 covers passenger traffic and includes provisions relating to sharing of rakes, maintenance of rakes, timetable and composition of express train, stations where customs immigration and health checks will be conducted, passenger fares and luggage charges.

Article 3 details on freight traffic and provides for interchange station, use of standard wagons for interchange, freight payment to be collected by each country up to international border, working of freight train by the using railway. The article provides for maintenance of zero balance in the wagon pool as on 10th, 20th and the last day of the month failing which hire charges for the net difference between the pool balance would be payable by the debtor country and if the pool balance exceeds 50 wagons, penalty charges are levied.

The agreement provides for multiple entry visas valid for one year on reciprocal basis for railway staff working in connection with interchange of rail traffic.

3. Agreement on re-opening of Petrapole (India) - Benapole (Bangladesh) BG interchange route for movement of goods traffic and resumption of rail communication on the section, 1997

A working agreement between Government of Bangladesh and India to reopen Petrapole (India) – Benapole (Bangladesh) route was signed by the Indian Railways and the Bangladesh Railways. The agreement has nine articles. Article 2 provides for operational details for train movement that includes joint examination of trains at Benapole, timing of the freight train to be decided mutually by both railway administrations, providing information on running of train one day in advance to make necessary arrangement, restriction on type and number of wagons on the train.

The agreement provides Petrapole in India and Benapole in Bangladesh as a place for customs clearance and wagon hire charges same as on Gede-Darsana route. Multiple entry visas valid for one year for railway staff on interchange duty on reciprocal basis are also provided for in the agreement.

4. Joint Traffic Working Agreement between Malaysia-Thailand Railway, 1954 as amended in 1989

An agreement between railway organisations of Malaysia and Thailand was signed to encourage cooperation on various aspects of railway operations including:

- Working of traffic at and joint use of the two boundary stations or joint stations;
- Exchange of rolling stock;
- Payment for hire of rolling stock;
- Through traffic of passengers, live stock and goods;
- Proportional division of fares, freights and other receipts from and through traffic between two countries;
- Liability claims in respect of through traffic; and
- Other matters necessary to ensure efficient and economical working railway operations.

The agreement contains VIII parts and 50 sections:

Part I identifies joint stations of Padang Besar in the Malayan Railway and Sungei Golok in Thailand for dealing with the cross-border traffic. It provides for suitable accommodation for warehouses, offices of Customs, immigration and health at these joint stations. The agreement provides for maintenance of the joint stations and apportionment of cost of renewal and maintenance between the contracting parties.

Part II of the agreement deals with organisation of through passenger and goods traffic where in the provisions pertain to organisation of through goods traffic, rates and fares and their fixation and collection, forwarding and handing over of through traffic, transshipment, examination of rolling stock, situations under which the through traffic can be suspended are elaborated.

Part III of the agreement deals with provisions on rolling stock- hiring and hauling charges thereon, the rates of hiring to be agreed by mutual consent of the heads of two railway organisation, the agreement provides for charges for haulage of trains and of empty vehicles and further provides for maintenance of records of vehicles at joint stations. The responsibility and costs of repairs in case of damage to rolling stock is also provided.

Part IV deals with responsibility in case of loss of life, bodily harm, loss or damage to goods.

Part V deals with provisions to facilitate through traffic by provision of terminal facilities, use of common language, and passes to railway employees.

Part VII provides for settlement of accounts and the last Part deals with application of agreement that includes provisions for settlement of disputes among the railway organisations of two countries.