



# General Assembly

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**United Nations Commission on  
International Trade Law**  
**Fifty-second session**  
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## Work programme

### Possible future work regarding railway consignment notes

### Proposal by the Government of the People's Republic of China

#### Note by the Secretariat

In preparation for the fifty-second session of the Commission, the Government of the People's Republic of China has submitted to the Secretariat a proposal in support of the Commission's future work regarding railway consignment notes. Both the Chinese and English versions of that proposal were submitted to the Secretariat on 14 June 2019. The proposal received by the Secretariat is reproduced in an annex to this note in the form in which it was received.



## Annex

# **Proposal by the Government of the People's Republic of China on UNCITRAL's Future Work: Solving the problems of railway consignment notes which are not of the same nature as documents of title**

## **I. Background**

1. At present, on a global scale, countries have realized that interconnection between different countries and regions through various means of transportation is an effective way to promote international economic and trade development and boost global economic growth. Among various means of transportation, railway transportation has many advantages such as shorter transportation distance, faster speed and is less affected by weather. Since many countries are connected by land, railway transportation has an enormous development potential as an important means for close economic and trade exchanges among different countries.

2. In recent years, due to continuous improvement in railway construction capabilities, international railway transportation has been developing rapidly, among which the CHINA RAILWAY Express (CR Express) has become one of the main transportation modes for Euro-Asian trade. In 2018, CR Express made 6,300 trips, with a year-on-year increase of 72 per cent, including 2,690 return trips with an increase of 111 per cent. As of now, CR Express has made more than 12,000 trips cumulatively, connecting 56 Chinese cities with 49 cities in 15 European countries. The total volume of goods transported by CR Express is growing rapidly, and the types of goods have also been constantly diversified. The development of railway transportation has provided a new and convenient channel for economic and trade exchanges among countries, contributed to global trade growth and provided new vitality into the global economy.

3. In practice, however, an international railway consignment note is only of the same function as a railway transport contract and a cargo receipt, rather than as a document of title. It cannot be used for the settlement and financing of letter of credit (L/C) as an ocean bill of lading (B/L) does, thus limiting the ability of banks and other institutions to provide financing services, and increasing the financial pressure on importers and the risk of payment collection for exporters. Specifically, as a railway consignment note is not a document of title and is required to accompany cargo, it cannot be transferred or pledged, and it is impossible for the holder to claim the right to possession and disposal of cargo by virtue of a consignment note. Due to risk management, banks are reluctant to treat a railway consignment notes as a negotiable document under L/C, leaving buyers and sellers unable to settle with financing through their railway consignment notes. Therefore, buyers have to make advance payment for goods under huge financial pressure while sellers are unable to receive payment in time. Apart from these, the non-negotiable nature of railway consignment notes makes it impossible for buyers to resell the goods in transit, which further limits the transfer of goods and efficiency of transactions. For the above reasons, the further development of inland trade was hindered to some extent.

## **II. Current Rules and Latest Practices**

4. At present, there are two major intergovernmental railway organizations. One of them is the Intergovernmental Organization for International Carriage by Rail (OTIF), with more than 50 member States mainly in Europe, North Africa and the Middle East. Its governing instrument, the Convention concerning International Carriage by Rail (COTIF 1999), is composed of the treaty text itself and its seven appendices. The Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM) (Appendix B to COTIF), expressly provides, in

article 6, paragraph 5, that “the consignment notes shall not have effect as a bill of lading”. The other organization is the Organization for Co-operation between Railways (OSJD), with membership of 29 countries mainly in Asia and Eastern Europe. Agreement on International Railway Freight Communications (SMGS) of the OSJD is composed of the treaty text, rules of procedure and six annexes. The text does not specify whether a consignment note is of the same nature as a document of title, but its article 6 stipulates that a railway consignment note shall be accompanied by the goods from the departure station to the arrival station throughout the whole course of the carriage, and article 7 provides that a stamped railway consignment note may be used to confirm the conclusion of a contract of carriage.

5. In order to harmonize the railway transport documents, the two major railway organizations formulated the CIM/SMGS Consignment Notes. However, due to various reasons, CIM/SMGS Consignment Notes have not been widely used in practice. Point 2 of the CIM/SMGS Consignment Notes Manual stipulates that the CIM/SMGS Consignment Notes are documents certifying the conclusion of the contract of carriage for international railway transportation among CIM/SMGS countries. Point 19 provides that the original(s) of the CIM/SMGS Consignment Notes shall be delivered to the consignee. The CIM/SMGS Consignment Notes still lacks the same functionality and is therefore not of the same nature as documents of title.

6. In addition, the United Nations Economic Commission for Europe (UNECE) established an expert group in 2011 to draft a unified railway law. The relevant provisions on railway consignment notes in the draft proposed by the expert group did not make substantive revisions with respect to the CIM/SMGS requirements, and the railway consignment notes are still regarded as a contract of carriage rather than a document of title.

7. Recognizing the transferable nature of multimodal transport documents under certain circumstances, the United Nations Convention on International Multimodal Transport of Goods of 1980 (not in force) and the UNCTAD/ICC Rules for Multimodal Transport Documents of 1992 and other international rules on multimodal transport apply to international carriage which includes two or more modes of transportation. Their provisions on the rights and obligations of the parties concerned, and liability for damages as well as other aspects mainly apply to maritime carriage. The characteristics of railway and other modes of transportation have not been fully taken into account.

8. Although it is provided in the Uniform Customs and Practice for Documentary Credits (UCP600) that banks can accept railway consignment notes, these notes are not of the same nature as documents of title, which therefore makes it impossible to address the issue of controlling and taking delivery of cargo by presentation. As banks are exposed to huge risks, they are basically unwilling to accept railway consignment notes to engage in L/C business in practice, therefore railway consignment notes cannot be used for the purposes of financing and settlement.

9. Certain legal instruments developed by the United Nations Commission on International Trade Law (UNCITRAL) have relevance to this issue. For instance, in the field of international transport, the United Nations Convention on the Contracts of International Carriage of Goods Wholly or Partly by Sea (the “Rotterdam Rules”) covers both negotiable and non-negotiable transport documents in connection with formality requirements and the carrier’s delivery obligations, but does not touch upon the ownership of cargo. Although applicable to door-to-door cargo transport, the Convention cannot be applied where non-maritime segment is regulated under other uniform international regimes (e.g., international railway rules). In the field of electronic commerce, the rules on the transfer of electronic documents under the UNCITRAL Model Law on Electronic Transferable Records are based on the premise that the documents are negotiable. Therefore, only after the issue of negotiability of railway consignment notes is solved can the Model Law come into play in the field of railway transport. When it comes to secured transactions, although UNCITRAL has

developed a series of legal instruments on secured transactions for financing purposes, their scopes are limited to secured financing and do not address the issue of application of railway consignment notes.

10. Chinese enterprises and their trading counterparts in other countries have explored ways to solve the problems of railway consignment notes which are not of the same nature as documents of title. They mainly use contractual agreements in which the carrier or freight forwarder issues a “bill of lading” in addition to the railway consignment notes. The “bill of lading” is used as the sole proof of delivery and the freight is controlled by the carrier or freight forwarder throughout the whole process. The consignor will use the “bill of lading” for financial settlements with the bank, such as negotiation, foreign exchange settlement and bill purchase. The consignee will obtain the “bill of lading” from the issuing bank after fulfilling its obligations and take delivery of goods from the issuer accordingly.

11. Although the method mentioned above has been applied in some transactions, the attributed function that such a contractual “bill of lading” has as a document of title is valid only to the contracting parties. As a result, not only the rights and obligations of the parties concerned are unstable, but also the “bill of lading” is largely limited in terms of negotiability and the financing security function. Also, issues such as issuer’s qualifications, conditions for issuance, the intended users, as well as the format and validity of issuance cannot be resolved through the contract. Therefore, it is imperative to provide institutional safeguards at the level of legal rules.

### **III. Conclusion**

12. By creating new rules to address trade barriers caused by the fact that a railway consignment note is not of the same nature as a document of title, trading risks and transaction costs can thus be reduced, and sustainable economic development and trade prosperity can also be promoted, which will benefit both inland countries and countries around the world. This demand may not only exist in railway transport, but also in road and air transport. Documents of title used for international trade and transport services need to be circulated and applied among different countries. Since one country’s legislation alone cannot solve this problem, the parties concerned are calling for the formulation of new international rules.

13. UNCITRAL has rich work experience in the harmonization and modernization of commercial rules in the field of international trade. Therefore, the Chinese Government recommends that UNCITRAL introduce in its work programme of solving the problems of the railway or other consignment notes which are not of the same nature as documents of title and start exploratory work on drafting a possible international instrument for this purpose. For instance, possibilities could be explored by creating rules on a unified bill of lading(B/L), which would apply to railway, road and air transport in one or more modes, so as to achieve the goal of using a single through B/L for controlling and taking delivery of cargo. Such an attributed function would enable B/L to perform settlement-financing function. Rules on issuer’s qualifications, conditions for issuance, the intended users, as well as the format and validity of issuance could also be considered. It is worth noting that such new rules are not intended to change the current substantive rules on transportation.

14. Given the wide-ranging and complex issues involved, it is recommended that the Commission authorize the Secretariat to conduct research on legal issues related to the use of railway or other consignment notes, and coordinate with other relevant organizations such as the Intergovernmental Organization for International Carriage by Rail (OTIF), the Organization for the Collaboration between Railways (OSJD), the International Rail Transport Committee (CIT), the relevant United Nation regional commissions, the International Federation of Freight Forwarders Associations (FIATA), and the International Chamber of Commerce (ICC). China is willing to provide its support to the exploratory work on this issue.