

International Railway Transport: Overcoming Legal and Practical Challenges

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Abstract: Under the background of the rapid development of the international railway transport system and the continuous promotion of the facility connectivity of the "The Belt and Road Initiative", there is a higher demand for the international treaty, the formulation of domestic laws and the convergence of practices related to international railway transport. Starting from the differences in international railway transport mechanisms, this paper summarizes the difficulties of transport practice convergence and legal convergence. Taking the China-Europe Railway Express as a representative case, this paper reveals the key points that hinder efficient and coherent transport. On the basis of studying the difficulties in the development of transport coordination mechanism, it focuses on the reform of railway waybill, with the goal of eliminating differences, and promotes the modernization and efficient development of international railway transport.

Keywords: institutional obstacles, China-Europe express, railway waybill, Unification of international railway transport rules

1. Introduction

Since its origins in Europe in the 19th century, the international rail transport system has evolved into a critical infrastructure for global connectivity. This development process not only reflects the iteration of technological innovation and industrial revolution, but also reflects the institutional evolution of the international law system in the field of transport standardization. On April 26, 2024, China formally submitted an application to join the Intergovernmental Organization for International Rail Transport (OTIF) and become an associate member of the organization. However, despite the significant growth of freight volume on Eurasian railways over the past few years, institutional barriers still significantly limit transport efficiency: gaps in mutual recognition of technical standards, transit clearance procedures taking longer on average than maritime shipping, and this fragmented governance framework starkly contrasts with the demand for a robust transport mechanism across Eurasia. In this regard, it is imperative to focus on both domestic and international legal dimensions to address "multi-layered institutional discrepancies" and "establish collaborative mechanisms."

2. Differences in international railway transport mechanisms

2.1. Practical articulation dilemma

Due to varying historical development trajectories and levels among nations, significant disparities in legal systems and technological capabilities have led to numerous challenges in the seamless integration of international railway transport. First, different countries and regions have different track gauges. China, most of Europe and countries such as Ethiopia and Djibouti in Africa use the standard gauge of 1435 mm standard gauge, while Russia uses the gauge of 1520 mm standard gauge, and countries such as India and Pakistan have a larger gauge than the standard. The difference in gauge not only affects the size of the train and the weight of the cargo transported, but also increases the cost of changing the rail and restricts the transportation efficiency.

Secondly, the customs laws of the countries along the route and the international Convention on the Carriage of Goods by Rail have inconsistent provisions on declaration and customs clearance rules, resulting in lower efficiency of international rail transport and increasing the difficulty of international multimodal transport. For example, the European Union's Customs Advance Manifest Rule (ICS2) requires all goods entering EU ports to submit advance manifest information before arrival, while the Eurasian Economic Union also has advance notification provisions, and there are differences between the two sets of rules. In addition, countries are at different levels of economic and technological development, and if they want to achieve a unified transport mechanism, they need to help each other, build and share. Finally, the above differences lead to a significant increase in the cost of railway transportation, with the cost of international freight train transportation about twice or more than that of sea transportation. The increase in transport costs reduces the attractiveness of rail transport, requiring more attention to factors such as material and construction costs, rail changes, customs clearance, extreme weather, and insufficient supply.

2.2. Difficulties in the implementation of international regulations

On the Eurasian continent, there are two parallel sets of rules, namely the "International Railway Cargo Joint Transportation Agreement" (Official Acronym: CMIC) and "Convention Concerning International Carriage of Goods by Rail (Official Acronym: CIM)". Comparing China's Railway Law and its related judicial interpretations with the above two sets of rules, there are many differences. First of all, in China's domestic railway transportation, waybill is the core document of cargo transportation, including the waybill number, cargo ticket number, consignor, consignee and other detailed information, which is divided into two parts: cargo waybill and cargo receipt. The waybill is delivered with the goods to the arrival station, and the consignee takes delivery of the goods with the receipt of the goods. However, compared with the international rules, the function of the domestic waybill is more limited. The CMIC and CIM None of them confer property rights effect to rail waybills. The waybill merely serves as evidence of the contract of carriage and does not possess the rights-credential function similar to ocean bills of lading. "In international railway transport, delivery is based on identity proof, and the waybill holder cannot control the goods. This mode of "recognizing the person but not the document" limits the legal effect of the waybill. Secondly, in terms of transportation liability, China's Railway Law clearly stipulates that railway transport enterprises need to assume compensation liability for the loss and damage of goods during the period from carriage to delivery. For personal damage, railway enterprises are also responsible, but if the guardian or the victim is at fault, the liability can be reduced accordingly. International rules are different. The CMIC requires participating railways to bear joint and several liability in international combined transport to ensure the safe transport of goods and documents. The CIM adopts the principle of no-fault liability, which further strengthens the responsibility of the carrier. Finally, in terms of compensation standards,

China has passed the Civil Code, Railway Law and other laws to specify the division of liability and compensation standards in different situations. The CIM sets the limitation of the carrier's liability, while the CMIC does not set the limit, requiring the carrier to compensate according to the actual loss of the goods. This difference reflects the non-uniformity of international rail transport rules and highlights the need to harmonize transport liability and compensation standards on a global scale. In general, there are significant differences between domestic and international railway transport rules in terms of waybill effectiveness, liability division and compensation standards. It is necessary to promote the unification and improvement of rules through institutional innovation and international cooperation to improve the efficiency and reliability of railway transport.

International level In order to resolve the differences between the two legal systems, the Organization for Railway Cooperation and the Intergovernmental Organization for International Railway Transport have also established a joint working group to jointly prepare a unified transport document "Uniform Consignment Note for International Rail Transport (CIM/SMGS)". However, the popularization and application of the unified waybill is not ideal. Its application is not flexible enough, there are rigid provisions of advance forecast, and the prerequisite of use needs to obtain the consensus of the railway of the transit country and the destination country. At the same time, the unified waybill does not involve the connection between railway transport and other modes of combined transport, which has become an obstacle for cargo owners to preferentially choose the unified waybill [1].

In general, the unified waybill and the legal system of the parties have not solved the two most essential problems in the international railway waybill: first, the rules are not uniform, and the shipper and the carrier still need to apply different rules and exchange the bill; Second, the waybill itself lacks the property right attribute and can not play the financing function, which restricts the choice of transportation mode of import enterprises and affects the development of international trade [2].

3. Difficulties faced by China-Europe railway express

3.1. Validity of bill of lading

In international trade, the China-Europe express bill of lading, especially the multimodal bill of lading, has become a key document of real right, deeply embedded in the international logistics and financial transaction chain, and plays an important role in financing and settlement. On April 6, 2017, China's first China-Europe freight train multimodal bill of lading was issued by the China Railway Express (Chengdu-Europe Express), which adopted the multimodal bill of lading as the real right pledge, solved the problem of the real right of railway transport documents, and promoted the application of "one single system" in international railway logistics [3].

The effectiveness of the transport document in the China-Europe express originates from its practical application in international trade. With the rapid development of China-Europe freight trains, importers and exporters hope to have a transport document similar to the bill of lading in ocean shipping, which can be used as a proof of rights for financing and settlement. As a result, freight forwarders began to issue Railway bill of lading / multimodal transport bill of lading?Multimodal/Combined Transport Through Bill of Lading and contract for its document of rights function. In a 2019 case where Sinotrans, a logistics finance company, and INSA Auto signed the Railway Bill of Lading Auto Import Business Cooperation Agreement, it was stipulated that INSA would import vehicles from overseas using railway bills of lading as both payment settlement documents and delivery instruments under the transaction terms. When Fuqi Company presented the railway bills of lading to claim the cargo after its arrival via China-Europe Railway Express, Sinotrans refused delivery [4]. The court determined that railway bills of lading constitute the issuer's commitment to deliver goods to bona fide holders, granting the bearer entitlement to cargo delivery,

thereby affirming their document of title status. This judicial precedent has further established the legal standing and operative function of China-Europe Railway Express bills of lading in commercial practice.

Although the railway bill of lading has been given a certain property right attribute in practice, the legal validity of the bill of lading of the China-Europe freight train still faces challenges. First of all, its legal status has not been clearly confirmed in international conventions. For example, neither the International Cargo Association nor the International Cargo Convention gives the function of a railway waybill as a document of title, which limits the scope and legal effect of the bill of lading in cross-border transport. Secondly, the legal recognition of bills of lading in different countries is inconsistent, which further increases the legal risk of cross-border transport.

3.2. Liability for loss of goods

At present, the compensation standards for the loss of goods on China-Europe freight trains are not uniform, and there are big differences in the compensation standards of different countries and different transport sections. The division of responsibilities is complex, involving consignors, carriers, transporters and other subjects, and once the goods are lost, it is difficult to quickly identify the responsibility. At the same time, the insurance and insurance provisions after the loss of goods are not perfect, resulting in compensation is difficult to implement.

For example, in Germany, the compensation for the loss of goods is relatively comprehensive, covering the value of the goods, transportation costs and possible indirect losses. The compensation standard is influenced by German domestic law and international transport conventions. The amount of compensation for lost goods in Russia is usually determined according to the value of the goods, the transportation cost and the agreement in the contract. At the same time, it may involve currency exchange and other issues, which are affected by the domestic law of Russia and the agreement on international railway through transport.

The further development of economic and trade cooperation between China and countries along the "Belt and Road" requires a unified compensation mechanism at the international level. There are still application barriers in the judicial practice of individual countries, which cannot avoid the uncertainty in the application of domestic laws of various countries.

In the context of the Belt and Road Initiative, China has further deepened its railway transport cooperation with countries along the routes through the important practice of China-Europe Express trains. Driven by globalization, the China-Europe railway Express has achieved leapfrog development in recent years, but there are still multiple obstacles in its operation, which is more representative of the difficulties of international railway transport.

4. The development and construction of the unified mechanism

4.1. Development of regulations on railway waybills

When constructing the unified rules of international railway, it is imperative to give the property property to the bill of lading of international railway through transport [5]. This can not only conform to the current development trend of international trade financing, but also meet the new needs of the system in the field of international railway combined transport, so that the international railway combined transport bill of lading has three legal attributes: proof of contract of carriage, cargo receipt and delivery certificate [6]. Although the recognition of railway bill of lading in China has taken an important step, it is only the tip of the iceberg, and it has not completely opened up the way for railway transport documents to be widely recognized as rights documents in countries along the Central Asia and Central Europe railway trains. It may be advisable to promote legislative coordination between the CIM and the CMIC frameworks, drawing on the Rotterdam Rules as a

reference model to revise their normative force and binding applicability provisions, allowing the parties to agree on some model clauses of the two transport rules and some functional provisions of the waybill. For example, the statement "waybill does not have the force of bill of lading" could be changed to "unless otherwise agreed by the parties, the waybill does not have the force of bill of lading", and its document flow mechanism could be modified so that the original railway waybill flows physically separately from the goods [7]. The two Conventions should consider updating the cargo control mechanism, or giving the parties the right to independently agree on the changed cargo control mechanism, so as to ensure that the right of control of the goods is not exercised by multiple parties at the same time, and the transfer of the waybill can represent the corresponding transfer of the right of control, and maintain the legal order in the process of transportation and the legitimate rights and interests of the parties.

4.2. Strengthen cooperation with international organizations

Strengthening cooperation with intergovernmental organizations on international railway transport, promoting the establishment of unified international railway transport standards, and working with countries along the Belt and Road to formulate international railway transport rules under the Belt and Road Initiative are practical ways of international cooperation [8]. Specifically, due to the differences in the liability and compensation standards of different modes of transport, it is necessary to clarify the principles of unified compensation standards and information sharing in the combined transport laws and regulations, so as to facilitate customer claims. In particular, procedural requirements, such as claim documents, claim timeliness, claim methods, etc., should be clear, specific and operable [9]. The International Railway Organization should actively promote the establishment of a unified compensation mechanism adapted to the characteristics of multimodal transport, and work closely with other international organizations in the field of transport, such as the International Maritime Organization and the International Air Transport Association, to jointly develop a set of compensation standards and procedural rules that can cross the boundary of different modes of transport. In addition, it should advocate the establishment of a rapid response mechanism to ensure that in the event of cargo loss or damage, compensation procedures can be quickly initiated and the legitimate rights and interests of customers can be effectively protected.

As an influential and responsible major player in international relations, China should actively speak out in international organizations and contribute Chinese wisdom. At the same time, as a major country in railway technology and railway transportation, China can also take the "going out" of technology, standards and policies as a starting point, strengthen the participation of international organizations in the field of railway, and play an active role in the mutual promotion of international cooperation and domestic development in the field of railway [10].

5. Conclusion

Trains Racing Forward, Connecting the Globe. Under the influence of various policies related to the Belt and Road Initiative and the international situation, international overland trade has been booming, putting a higher demand on the efficiency of railway transport. Countries need to closely follow and promote the reform of the CMIC and the CIM mechanism in their domestic legislation to make them harmonize with each other. In judicial practice, a unified mechanism should be chosen as the orientation. At the same time, in the future, it is necessary to further base on the wave of science, apply high-tech and big data to transport scheduling and data sharing, promote the interconnection and mutual sharing of international transport information, and then more effectively eliminate the mechanism differences. On the basis of the unified mechanism, the efficient operation of international transport will help the development of economic globalization enter a new stage.

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