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## **Economic Commission for Europe**

### **Inland Transport Committee**

#### **Working Party on Customs Questions affecting Transport**

##### **147th session**

Geneva, 10-13 October 2017

Item 5 of the provisional agenda

##### **International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail, of 10 January 1952**

### **Draft Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail**

#### **Note by the secretariat**

#### **Introduction**

1. At its 146th session, the Working Party, inter alia, requested the secretariat to assist the drafters of the new Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail with improving the final clauses, once the institutional issues were addressed (see ECE/TRANS/WP.30/292, para. 50).

2. Although institutional aspects, such as the participation of regional economic integration organizations, the establishment of a Treaty body or the application of a dispute settlement mechanism still remain outstanding, the secretariat, in close collaboration with the United Nations Office of Legal Affairs, Treaty Section (OLA-TS), has drafted a set of standard final clauses, for consideration by the Working Party and, ultimately, to assist the drafters of the new Convention in finalizing the text of the new Convention. The proposed standard final clauses are by no means binding for the drafters, they merely serve to provide guidance to the drafters when choosing a set of final clauses. The formulation of the final clauses is based on recently concluded treaties, such as, but not limited to: (a) the Convention on the Rights of Persons with Disabilities; (b) The United Nations Convention on the Use of Electronic Communications in International Contracts; (c) The Paris Agreement on Climate Change; (d) the Minamata Convention on Mercury and (e) the Intergovernmental Agreement on Dry Ports.

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## ANNEX

### **Chapter 5 Final clauses**

#### **Article 20 Secretariat of the Convention**

The United Nations Economic Commission for Europe shall act as the secretariat of this Convention.

#### **Article 21 Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open for signature by all States at the United Nations Headquarters in New York from.....to..... (one year)
2. This Convention shall be subject to ratification, acceptance or approval by the signatory States. It shall be open for accession by any State which has not signed the Convention.
5. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

#### **Article 22 Participation of regional economic integration organizations**

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention, including the authority to make decisions binding on all of its Members in respect to those matters, may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall, in that case, have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.
2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.
3. Any reference to a "Party" or "Parties" in this Convention applies equally to a regional economic integration organization when the context so requires.

#### **Article 23 Entry into force**

1. This Convention shall enter into force three months after the date on which five States have deposited their instruments of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts, approves or accedes to this Convention after deposit of the fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force three months after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 24 Denunciation**

1. Any Party may denounce this Convention by a formal notification in writing addressed to the Depositary.
2. Denunciation shall become effective six months after the date of receipt by the Depositary of the notification of denunciation.

#### **Article 25 Termination**

If, after the entry into force of this Convention, the number of Parties is reduced to less than five for a period of twelve consecutive months, the Convention shall cease to have effect from the end of the twelve-month period in question.

#### **Article 26 Settlement of disputes**

1. Any dispute between two or more Parties concerning the interpretation or application of this Convention shall, so far as possible, be settled by negotiation between them or by other peaceful means of settlement.
2. Any dispute between two or more Parties concerning the interpretation or application of this Convention which cannot be settled by the means indicated in paragraph 1 of this Article shall, at the request of one of the Parties, be referred to an arbitration tribunal composed as follows: each party to the dispute shall appoint an arbitrator, and these arbitrators shall appoint another arbitrator, who shall be the chair. If, three months after receipt of a request, one of the Parties has failed to appoint an arbitrator or if the arbitrators have failed to elect the chair, any of the Parties may request the Secretary-General of the United Nations to appoint an arbitrator or the chair of the arbitration tribunal.
3. The decision of the arbitration tribunal established under the provisions of paragraph 2 of this Convention shall be final and binding on the parties to the dispute.
4. The arbitration tribunal shall determine its own rules of procedure.
5. The arbitration tribunal shall take its decisions by majority vote.
6. Any controversy which may arise between the parties to the dispute as regards the interpretation and execution of the award may be submitted by any of such parties for judgment to the arbitration tribunal which made the award.
7. Each party to the dispute shall individually bear the costs of its own appointed arbitrator and of its representatives in the arbitral proceedings; the costs of the chair and the remaining costs shall be borne in equal parts by the parties to the dispute.

#### ***Alternatively:***

1. *Any dispute between two or more Parties concerning the interpretation or application of this Convention shall, so far as possible, be settled by negotiation between them or by other peaceful means of settlement.*
2. *Any dispute between two or more Parties concerning the interpretation or application of this Convention which cannot be settled by the means indicated in paragraph 1 of this Article shall, at the request of one of the Parties in dispute, be referred to conciliation. The Parties in dispute shall mutually agree on the conciliator(s). If the Parties in dispute fail to agree on the choice of conciliator(s) within ninety (90) days after the request for conciliation, any of those Parties may request the Secretary-General of the United Nations to appoint a single independent conciliator to whom the dispute shall be submitted.*
3. *The recommendation of the conciliator(s) appointed in accordance with paragraph 2 of this Article, while not binding in character, shall become the basis of renewed*

*consideration by the Parties in dispute. The Parties in dispute may agree in advance to accept the recommendation of the conciliator(s) as binding.*

#### **Article 27 Reservations**

1. Any Party may, at the time of signing, ratifying, accepting, approving or acceding to this Convention, declare that it does not consider itself bound by Article 26, paragraphs 2 to 7 [or 2 and 3] of this Convention. Other Parties shall not be bound by these paragraphs in respect of any Party which has entered such a reservation.
2. Any Party, having entered a reservation as provided for in paragraph 1 of this Article, may at any time withdraw such a reservation by notifying the Depositary.
3. Apart from the reservations set out in paragraph 1 of this Article, no reservation to this Convention shall be permitted.

#### **Article 28 Procedure for amending this Convention**

1. Any Party may propose an amendment to the present Convention and submit it to the secretariat of the Convention. The secretariat of the Convention shall communicate any proposed amendments to the Parties, with a request to be notified whether they favour a conference of Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the Parties favour such a conference, the secretariat of the Convention shall convene the conference under the auspices of the United Nations Economic Commission for Europe. Any amendment adopted by a majority of two thirds of the Parties present and voting shall be communicated by the Depositary Parties for their acceptance.
2. An amendment adopted in accordance with paragraph 1 of this Article shall enter into force for all Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.
3. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.
4. Any such instrument deposited after an amendment has been accepted in accordance with the procedure in this article, but before it has entered into force, shall be deemed to apply to the Convention as amended on the date when the amendment enters into force.

#### ***Alternatively:***

1. *The Parties to the present Convention shall convene [biennially] under the auspices of the United Nations Economic Commission for Europe, to consider any amendments proposed. Any Party may also, by a notification addressed to the secretariat, request that the Parties convene a special session. The secretariat shall notify all Parties of the request and shall convene a special meeting of the Parties if not less than one third of the Parties signify their assent to the request within a period of four (4) months from the date of the notification by the secretariat.*
2. *Any Party may propose an amendment to the present Convention and transmit it to the secretariat. The text of any proposed amendment shall be circulated to all Parties by the secretariat at least forty-five (45) days before the meeting of the Parties at which it is proposed for adoption. Amendments shall be adopted by a two-thirds majority of the Parties present and voting and thereafter transmitted to the Secretary-General of the United Nations, who shall communicate it to all Parties for their acceptance.*
3. *An amendment adopted in accordance with paragraph 2 of this Article shall enter into force for all Parties on the thirtieth day after the number of instruments of acceptance*

*deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.*

*4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.*

*5. Any such instrument deposited after an amendment has been accepted in accordance with the procedure in this article, but before it has entered into force, shall be deemed to apply to the Convention as amended on the date when the amendment enters into force*

#### **Article 29 Depositary**

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

#### **Article 30 Authentic texts**

The original of this Convention, of which the English, [French] and Russian are equally authentic, shall be deposited with the Depositary.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto, have signed this Convention.

Done at\_\_ on \_\_\_in a single copy in the English, [French] and Russian languages, the [three] texts being equally authentic.

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