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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

Amendment procedure

Note by the secretariat¹

I. Mandate and background

1. At its 117th session, the Working Party on Customs Questions affecting Transport (WP.30) was informed by the Organization for Cooperation between Railways (OSJD) and the Intergovernmental Organization for International Carriage by Rail (OTIF) about progress made in preparing a new Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport. The Working Party invited both proponents of the new Convention to continue discussions aiming at consolidating document ECE/TRANS/WP.30/2007/12 and Informal document No. 15 (2007) for discussions and possible adoption at the January 2008 session of the Working Party on Customs Questions affecting Transport (WP.30). The deadline for submission of the revised consolidated draft proposal was early November 2007.

2. The Working Party was informed about and discussed a number of possible difficulties related to the subject of the new proposed Convention in the context of the existing International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail of 1952 (ECE/TRANS/WP.30/234, paras. 15 and 16).

3. At its 118th and 119th sessions, the Working Party considered document ECE/TRANS/WP.30/2007/12/Rev.1, containing consolidated proposals by OSJD and OTIF for a new International Convention to Facilitate the Crossing of Frontiers in International

¹ The present document has been submitted after the official document deadline due to resource constraints.

Railway Passenger Transport. The Working Party further recalled its discussions related to the adoption of a new proposed Convention in the context of the existing International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail of 1952. The Russian Federation reported positive progress in its analysis of the possibility of acceding to the 1952 Convention. OSJD informed that other countries had expressed a principle interest to accede to the 1952 Convention. The Working Party also took note of document ECE/TRANS/WP.30/2008/7, prepared by the secretariat, containing background information on the 1952 Convention and the list of Contracting Parties (Albania, Austria, Belgium, France, Italy, Luxembourg, Netherlands, Norway, Portugal and Switzerland). In particular, the Working Party noted that, due to the absence of specific amendment provisions in the 1952 Convention, the provisions of Article 40 of the Vienna Convention on the Law of Treaties applied. The Working Party requested the secretariat, through the Inland Transport Committee (ITC), to seek confirmation from the existing Contracting Parties to the 1952 Convention that they would positively consider proposals to further amend the Convention, once more countries have acceded to it, and to inform the Working Party accordingly (ECE/TRANS/WP.30/238, para. 14 and ECE/TRANS/WP.30/240, para. 14).

4. At its 122nd session, the Working Party was informed that the ITC, at its February 2009 meeting, had invited the governments of countries that are Contracting Parties to the 1952 Convention, to confirm that they would positively consider proposals to amend this Convention, as proposed by OSJD and OTIF, once more countries have acceded to it (ECE/TRANS/206, para. 60). The secretariat was requested, in due course, to forward this invitation to the Contracting Parties of the 1952 Convention and solicit their views (ECE/TRANS/WP.30/244, para. 19).

5. At its 123rd session, the Working Party recalled the decision of ITC to conduct a survey of the countries that are Contracting Parties to the 1952 Convention (ECE/TRANS/206, para. 60), to find out if they would positively consider proposals to amend this Convention. Given the absence of specific amendment provisions in the 1952 Convention, the Working Party felt that it would be more appropriate to seek confirmation that these countries would agree to the introduction of a standard amendment clause, which, if accepted, would become a tool for any further amendments to the 1952 Convention (ECE/TRANS/WP.30/246, para. 18).

6. At its 124th session, having recalled its earlier considerations (ECE/TRANS/WP.30/246, para. 18), the Working Party noted that the secretariat, in close liaison with the United Nations Treaty Section, had considered that the introduction of a standard amendment clause in the 1952 Convention could be done by means of an additional protocol which must be signed by all Contracting Parties to the Convention. The secretariat would prepare a draft proposal for the next WP.30 session (ECE/TRANS/WP.30/248, para. 15).

7. Against this background, the Working Party may wish to consider this document, prepared by the secretariat and containing a summary description of the 1952 Convention as well as proposals with regard to the formulation of an additional protocol thereto.

II. International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail, of 10 January 1952²

A. Objective

8. The objective of the Convention is to facilitate the crossing of borders for passengers carried by rail.

B. Key provisions

9. The Convention lays down procedures for control of the entry and exit of passengers and their baggage by competent authorities of two adjoining countries linked by a railway line carrying a considerable volume of passengers crossing the frontier. The Convention favours the carrying out of the police and Customs controls while trains are in motion and sets up the appropriate procedures to do so. However, the Convention also establishes the procedures, wherever the controls cannot be satisfactorily performed while the trains are in motion, for the organization of joint controls being performed in a joint station close to the frontier and designated by agreement between the adjacent countries. The Convention also provides for transit procedures.

C. Benefits

10. By providing for more efficient border controls of passengers and their luggage carried by rail, the Convention facilitates international rail transport of passengers, reducing travel time of and inconveniences to travellers as well as the investment of competent authorities on control stations.

D. Entry into force

11. The Convention entered into force on 1 April 1953 in accordance with Article 14.

E. Contracting Parties

12. At 1 April 2010 the following 10 States were Contracting Parties to the Convention: Albania, Austria, Belgium, France, Italy, Luxembourg, Netherlands, Norway, Portugal and Switzerland.

F. How to become a Contracting Party

13. In accordance with Article 12, the Convention is open for accession to any country participating in the work of the United Nations Economic Commission for Europe.

² For the text of the Convention, please consult the UNECE website (Legal instruments in the field of transport, No. 45) at: <<http://www.unece.org/trans/conventn/passraile.pdf>>.

G. Optional and mandatory declarations

14. Although the Convention does not contain any specific provision to that extent, any Contracting Party may, at the time of depositing its instrument of accession and, if required, ratification, or at any other time, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for the international relations of which it is responsible.

H. Amendment procedure

15. In accordance with Article 16, Contracting Parties can submit proposals for modifications to the standard international Customs declaration form in the Annex to the Convention. Proposals should be submitted to the Secretary-General of the United Nations, who shall communicate the text thereof to all signatory or acceding countries. The Convention does not contain provisions with regard to other amendments.

J. Reservations

16. The Convention does not contain any provision relating to the deposition of reservations.

K. Denunciation and termination

17. The Convention may be denounced by means of six month's notice given to the Secretary-General of the United Nations (Article 13). The Convention shall terminate if, at any time, the number of Contracting Parties thereto is less than three.

III. Considerations for amendment of the Convention

18. As mentioned in paragraph 15 above, the Convention does not contain provisions for amendment of its provisions other than the standard international Customs declaration form in the Annex to the Convention. In the absence of such provisions, Article 40 of the Vienna Convention on the Law of Treaties applies, which stipulates that:

(a) "any proposal to amend a multilateral treaty as between all the parties must be notified to all the Contracting States, each one of which shall have the right to take part in:

- (i) the decision as to the action to be taken in regard to such proposal; and
- (ii) the negotiation and conclusion of any agreement for the amendment of the treaty.

(b) Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

(c) The amending agreement does not bind any State already a party to the treaty which does not become party to the amending agreement."

19. Thus, although technically the Vienna Convention offers Contracting Parties to a treaty the possibility to amend a treaty even in the absence of an amendment clause, the procedure to be followed, by means of an agreement, is complex and requires the consent to be bound in the usual fashion by depositing instruments of ratification, accession, etc. In

addition, it might result in the establishment of two different legal systems for the same treaty, one without and one with an amendment clause.

20. In order to find a way out, Contracting Parties may resort to the conclusion of a Protocol, which only enters into force in case within a certain time limit from its date of circulation to all of them (in this case: six months), no objections to the Protocol have been received by the depositary. The text of the draft Protocol is contained in the annex to this document.

Annex

Protocol amending the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail of 10 January 1952

The Contracting Parties to the Convention,

Noting that the Convention does not contain provisions regarding its amendment,

Recalling that Article 39 of the Vienna Convention on the Law of Treaties provides that a treaty may be amended by agreement between the Parties,

Desiring to amend the Convention to include procedures for its amendment,

HEREBY AGREE as follows

Article 1

Amendment of the Convention

1. Without prejudice to its Article 16, the text of the Convention may be amended by the procedure specified in this Article.
2. Amendments may be proposed by any Party.
3. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall communicate the text thereof to all Parties for acceptance.
4. The amendment shall be deemed to be adopted and shall come into force nine (9) months from the date of the communication provided for in the preceding paragraph, unless before expiry of a period of six (6) months following that notification, at least one-third of the countries which are Party to the Convention have notified the Secretary-General of the United Nations of their objection to the amendment. For purposes of its determination, the one-third percentage shall be calculated based upon the number of countries which are Party to the Convention at the time that the Secretary-General communicates the proposed amendment to the Parties for acceptance.

[Alternatively, a wording could be used, which provides for a so-called “opt-out mechanism”, allowing Parties not to be bound by any amendment. Such alternative wording could read:

“4. The amendment shall be deemed to be adopted and shall come into force nine (9) months from the date of the communication provided for in the preceding paragraph, unless before expiry of a period of six (6) months following that notification, at least one-third of the countries which are Party to the Convention have notified the Secretary-General of the United Nations of their objection to the amendment. For purposes of its determination, the one-third percentage shall be calculated based upon the number of countries which are Party to the Convention at the time that the Secretary-General communicates the proposed amendment to the Parties for acceptance. In the absence thereof, the amendment shall enter into force with respect to all Parties, except those, which declare that they do not accept the amendment.

5. Any Party that has declared that it does object to an amendment adopted in accordance with paragraph 4 of the present Article may at any time thereafter deposit an instrument of acceptance of such amendment with the Secretary-General of the United

Nations. The amendment shall enter into force for that State six (6) months after the date of deposit of the said instrument.”]

Article 2

Final clauses

1. The Secretary-General of the United Nations shall notify all Parties of the text of this Protocol. If within a period of six (6) months from the notification by the Secretary-General, no Party to the Convention objects to it, the Protocol will be considered accepted and will enter into force automatically for all Parties.

2. If a country deposits an instrument of ratification or accession with respect to the Convention while the procedures laid down in paragraph 1 of the present Article are in progress, no additional time shall be provided to that country to object to the Protocol. The Protocol will enter into force for such country six (6) months after the date of the notification of the Protocol by the Secretary-General, but not before the Convention enters into force for such country, in which case the Protocol will enter into force for that country on the same date as the Convention.

3. Following the entry into force of this Protocol, any country that deposits an instrument of ratification or accession to the Convention shall also be automatically bound by this Protocol. The Protocol shall enter into force for such a country on the same date as the Convention.

4. The provisions of this Protocol and the Convention shall be interpreted and applied together as a single instrument.

5. This Protocol shall be deposited with the Secretary-General of the United Nations as depositary of the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail of 10 January 1952.

Done in Geneva this _____ date _____ of _____ year _____ ,

in a single original in the English and French languages, each text being equally authentic.
