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Convention on Road Traffic (1968)

Automated driving

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Submitted by the WP.1 Chair

This document, submitted by the WP.1 Chair, presents various considerations related to amending the 1949 and 1968 Conventions on Road Traffic (Geneva and Vienna Conventions).

1. The process of amending an international treaty is an extremely complex and time consuming procedure. As far as road traffic is concerned, the two Geneva (1949) and Vienna (1968) Conventions – classified as open treaties (which means that accession to them is possible at any moment in time) – deal with all the issues of road traffic aspects which were deemed to be of utmost relevance at the time of the editing and signing.
2. The detailed procedure for making any amendments is embedded in each of the Conventions and mirrors the main rules which apply to international treaties. These rules seek to preserve and safeguard the original text from alteration or modification unless Contracting Parties have been notified of any amending proposals, and unless they have expressed their consensus.
3. Some treaties, such as the 1949 Geneva Convention, have an even more complex procedure, and incorporate a very high threshold which needs to be reached before any amendments can enter into force. At the time, this procedure was quite deliberately incorporated into United Nations treaties in order to thwart changes and modifications unless the desire to make amendments was virtually almost by unanimous consent.
4. In this context, while the recent WP.1 amendment to article 8 to the 1968 Vienna Convention has completed its diplomatic path and entered into force in March 2016, the parallel “twin” amendment of Article 8 to the 1949 Geneva Convention has not been successful. This is precisely because of the minimum (very high) threshold required for making amendments to the treaty, which has largely been missed.
5. As a unique Intergovernmental body dealing with road safety at global level, and having in its mandate three treaties (namely the two above mentioned Conventions on Road Traffic and the Convention on Road Signs and Signals), WP.1 is now called upon to determine how to manage the unbalanced legal situation, whereby the two Conventions on Road Traffic now have non- equivalent provisions in Article 8. This particularly affects several countries which are Contracting Parties only to Geneva Convention.
6. For those countries which are Contracting Parties to both Conventions, in fact, there would be no need to insist upon them updating the 1949 Treaty. This is because the subsequent Treaty deals with the same subject and it is therefore considered to be the prevailing one according to the legal provisions which state the temporal succession of the Treaties¹. Nevertheless, both Conventions fall within WP.1 mandate and the need for a clear defined approach is of paramount importance. Actually, the need for a common approach is even more relevant and necessary bearing in mind that within the next decade technological advances are likely to advance vehicles from their already highly automated mode to one which can provide fully autonomous driving.
7. Despite the best endeavours of WP.1 and more specifically of the Informal Expert Group on Automated Driving, concerns have been raised that, continuing with the quest to amend the 1949 Convention in the light of the now novel Article 8 of the 1968 Convention, and continuing with the updating process, could be very time - consuming and also produce an uncertain outcome.

¹ 1969 Vienna Convention on the Law of the Treaties, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

8. Academic studies² and related literature suggest the opportunity of adopting an interpretative approach to the Conventions so far as the role of the driver is concerned, and also the human interaction with the automated (stages 3-4) and autonomous vehicle.

9. These studies could undoubtedly provide an excellent theoretical basis for the investigation of what really needs to be the subject of rules under a new legal approach; and, also, what could perhaps be left behind, since it does not really contribute any more in the context of a “digital realm of road transport”. It may indeed be relevant to explore the role and responsibility, which will eventually still remain with the human driver; and correspondingly, eventually re-shape the new role as “vehicle operator”. If this were to be the new situation for the current vehicle “driver” the full set of provisions for holding a driving license would need to follow this significant shift, and to be modified accordingly. Last but not least, for consideration would be the dilemma of legal liability (as between the manufacturer, owner, operator) and the importance of framing the chain of responsibility in a clear, shared, approach. All of these issues would clearly need to be considered.

10. Therefore, it would still be a priority for WP.1 to focus on the importance of delivering defined key principles and offers fundamental guidelines on all the key subjects (e.g. role of the driver, liability). These are the principles which are nowadays incorporated anyway within the Convention. In the alternative, if we were to adopt a regulatory standstill which instead relied on Contracting Parties applying a “domestic Interpretation” to the Conventions, the outcome may well not be as rewarding as it may appear. Whilst apparently offering the attractiveness of simplicity and less administrative effort, such an approach would be likely generate legal uncertainty; and, it would certainly be counterproductive in the context of overlapping international *modus operandi*.

11. Hence, returning to the quest for finding a feasible solution to the current apparent impasse, it has to be said that the complexity of amending Treaties (within a considerable passage of time hampering the efficacy of the envisaged legal guidance) is not something affecting only our Traffic Conventions. On the contrary, the need for the Conventions to be flexible and able to cater for the global economic regional shifting and societal challenges has prompted international actors to work on alternative parallel legal tools, which are seen as ancillary to the main diplomatic documents (so called Soft Law approach)³.

12. A good example can be the Montreal Protocol which serves as an adjunct to the 1985 Vienna Ozone Convention, and is regarded as a prototype for an evolving new form of international cooperation. This Protocol provides a sort of binding –non binding voluntary agreement, and is therefore a very constructive, flexible, legal instrument.

13. One of the main reasons for implement “ Agreement”, “Decision”, “Recommendations”, and “Protocol” , is that their law-creating and law updating structure empowers the capacity and expertise of international organization entities. This procedure of making law within a common, over-arching international framework offers a flexible tool enabling the interested countries to obtain a consolidated agreement on a specific subject.

14. The co-operative and solid relationship between a Convention and the related protocol (or agreement), can help to shape an international regulatory regime which sets uniform obligations and principles for the contracting parties to the protocol (agreement). At the same time, such a process precludes the prospect of differing or contradictory legal

² [http://cyberlaw.stanford.edu/files/publication/files/2012-Smith-Automated Vehicles AreProbably Legal in The US_0.pdf](http://cyberlaw.stanford.edu/files/publication/files/2012-Smith-Automated%20Vehicles%20AreProbably%20Legal%20in%20The%20US_0.pdf)

³ http://www.minnesotalawreview.org/wp-content/uploads/2011/08/ShafferPollack_MLR.pdf

interpretation. In case of a Protocol dealing with the Automated/autonomous driving, it is clear that the eventual ancillary protocol should serve both the 1949 and the 1968 Conventions, because those treaties set the basis on which supplementary protocols are built. Accordingly, it is not possible to become party of a protocol unless the country concerned is already (or is due to become) a contracting party to the originating Convention.
