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Meeting for government delegates only with the participation of the Chairs of the Committee's subsidiary bodies

Strengthening the involvement of non-ECE contracting Parties in the ITC and its subsidiary bodies: current state of affairs and ways forward

Note by the secretariat

Pursuant to the request of the Committee, the secretariat has prepared a detailed account of practices in the ITC Working Parties and Administrative Committees with corresponding analysis, as regards the participation of non-UNECE Contracting Parties in discussions and decision making processes pertaining to legal instruments that are open to accession by States not members of the UNECE. The Committee may wish to note that there are three main categories of legal instruments that currently have non-UNECE Contracting Parties: those with an Administrative Committee, those that confer certain decision making rights directly to a Working Party and those without any treaty body or assigned UN entity as a responsible body. The Committee is invited to assess the current practices and the secretariat's analysis as contained in the present document and to consider requesting the Working Parties to find the most suitable solutions for them – if they have not yet done so – and to report about it to the next Committee session in 2016. The Committee may also wish to note that the current discussion and corresponding secretariat analysis is conducted without prejudice to established rights of UNECE member-States. The present discussion seeks to demonstrate the current practices that enhance the participation on non-UNECE countries that have acceded to or have ratified (or intend to accede to) legal instruments serviced by UNECE.

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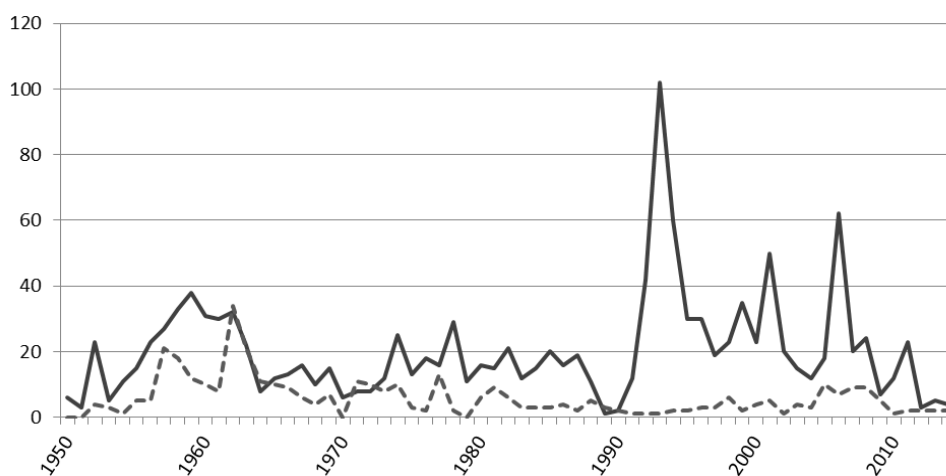


I. Introduction and Mandate

1. One of the stated objectives and expected accomplishments of the Inland Transport Committee (ITC) and its subsidiary bodies is to achieve greater geographical coverage and more effective implementation of United Nations legal instruments on transport administered by the United Nations Economic Commission for Europe (UNECE).¹ The way to achieve this is through the increase of the Contracting Parties of these instruments (ibid).

2. At the same time, Figure 1 illustrates the evolution of accessions by UNECE and non-UNECE member States to UN Transport Conventions and Agreements since 1950. The figure clearly shows that after a peak of accessions by UNECE member States during the 1990s, the pace has dropped considerably in recent years. The increase is deemed to be mainly on account of successions (former USSR and Yugoslavia). According to ECE/TRANS/2015/10, a possible explanation for this decline in the pace of new accessions by UNECE member States is that they have already become parties to the legal instruments of main importance. Keeping in mind that, on average, each UNECE member State is party to 23 legal instruments, while, on average, each non-UNECE Contracting Party is party to only 13 legal instruments, it is reasonable to consider the acceleration of the expansion of the geographical coverage of transport conventions beyond the UNECE region as a logical next step in the evolution of the legal instruments.

Figure 1
**Number of member State accessions to
 UN transport conventions and agreements per year**



Legend: Solid line: UNECE member States - Dotted line: non-UNECE member States
 Source: UNECE

3. It is within this broader context that the Chairs of the Administrative Committees of legal instruments serviced by UNECE and of the ITC subsidiary bodies together with the members of the Bureau and Government delegates attended the fourth “Meeting of the Chairs of the Committee’s subsidiary bodies” held as the restricted segment of the seventy-

¹ See Transport sub-programme’s Strategic Framework for the Period 2014-2015, Expected Accomplishment (b); and Strategic Framework for the Period 2016-2017, Expected Accomplishment (b).

sixth session of the Committee. In the course of this meeting, delegates discussed the current practices of participation of non-UNECE Contracting Parties to the international transport legal instruments in the Committee's subsidiary bodies (see Informal document ITC [2014] No. 10). In part, the objective of this discussion was to ensure that the legal instruments serviced by UNECE are attractive for accession by non-UNECE States; one of the ways to achieve this would be by making it possible for non-UNECE Contracting Parties to participate in the processes of UNECE on the matters relating to the legal instrument they are Parties to in a relatively homogenous way across the different Working Parties. In this context, it transpired that non-UNECE Contracting Parties to legal instruments serviced by UNECE, have different participation rights in the different ITC subsidiary bodies.

4. The participants were of the view that the different rules of procedures used by the Committee and its subsidiary bodies need to be further reviewed. They agreed that a flexible approach is an advantage but at the same time excessively tailored and widely diverging rules of procedures complicate the management of the transport legal instruments. In order to facilitate the discussions and the decision of the Committee, the secretariat was requested to prepare the present document, containing a detailed account of practices in the ITC, its Working Parties and Administrative Committees with corresponding analysis (see ECE/TRANS/2014/R.1, para. 20).

II. Current practices

5. The Committee may wish to recall its discussions on the forms of participation of non-UNECE Contracting Parties in ITC subsidiary bodies, as identified by the secretariat's preliminary assessment (see ECE/TRANS/2014/R.1, paras. 9–11). These are:

- (i) full members: non-UNECE member States can participate as full members, subject to further agreement by the parent Sectoral Committee (i.e. ITC);
- (ii) observers: non-UNECE member States participate in Working Parties as observers (i.e. in a consultative capacity) on any item of particular concern to them, in line with para. 11 of the UNECE Terms of Reference (ToR);
- (iii) hybrid observers: non-UNECE member States participate as observers in the corresponding Working Parties on any matter of particular concern to them, but also as full members at sessions devoted to matters relating to the legal instruments to which they are Contracting Parties, in accordance with Executive Committee (EXCOM) guidelines.

6. Further to the Committee's request, the secretariat undertook to collect and assess the current practices of the ITC subsidiary bodies. For the purposes of this analysis, the secretariat has reviewed the major UNECE legal instruments that are open to accession by States not members of the UNECE, together with the corresponding Working Parties responsible for administering these legal instruments. Pursuant to this, the secretariat examined the rules of procedure and working practices of UNECE subsidiary bodies in relation to the relevant provisions of these international legal instruments.

7. The secretariat aims to address three elements of the discussion, namely:

- (a) under what conditions non-UNECE Contracting Parties participate in each Working Party;
- (b) what are the formal procedures established in each Working Party with regard to the participation of non-UNECE Contracting Parties.

(c) The level of engagement of the organization with non-ECE Contracting Parties and any potential or real constraints in cooperating with non-ECE Contracting Parties concerning the implementation of the legal instrument.

III. Main findings

8. The secretariat collected information pertaining to eighteen (18) legal instruments across seven (7) Working Parties. Eight (8) of these legal instruments have an Administrative Committee. Two (2) of these legal instruments confer certain responsibilities to a UNECE ITC Working Party.² These responsibilities in substance resemble those of an Administrative Committee, although technically, the Working Party is not a Treaty body..

9. In the case of four (4) legal instruments dealt with by two (2) Working Parties,³ full membership status has been granted pursuant to rules of procedure adopted by these Working Parties in accordance with EXCOM guidelines. It should be noted that all four (4) of these legal instruments also have Administrative Committees.

10. In the case of three (3) legal instruments, corresponding to two (2) Working Parties,⁴ the “hybrid” participation formula is applied. In one (1) of these cases, the hybrid status is granted through the rules of procedure. In the other two (2) cases, the Working Party has developed the “hybrid” practice. In this latter case, the Working Party⁵ moved toward formally adopting new rules of procedure clearly stipulating the “hybrid formula” for all non-UNECE Contracting Parties to all of the legal instruments under its purview, including the three (3) that have an Administrative Committee.

11. This leaves seven (7) legal instruments, administered under the purview of two (2) Working Parties,⁶ that have no Administrative Committee, and that have rules of procedure that do not grant full membership or hybrid participation rights to non-UNECE Contracting Parties.

12. The table in annex I summarizes some of the information collected from Working Parties, while the analysis is presented in annex II of the present document.

13. In terms of parameters affecting the level of engagement of non-UNECE Contracting Parties, responses received stressed that no resources are provided for technical assistance and capacity building activities aimed specifically at non-UNECE countries. Furthermore, there are important financial implications for the secretariat of the wide (and increasing) participation of non-UNECE countries in UNECE legal instruments. In many instances, global legal instruments are serviced from a regional platform and within a limited UNECE budget. These factors limit the UNECE efficiency in promoting these legal instruments to other parts of the world and in conducting analytical work, capacity-building and technical assistance outside the UNECE region.

² Referring to WP.11 and WP.24

³ Referring to WP.29 and WP.11

⁴ Referring to WP.15 and WP.30

⁵ Referring to WP.30

⁶ Referring to WP.1 and SC.1

IV. Main conclusions

14. The secretariat approached its analysis from two main perspectives. The first one is that rules of procedure and working methods should in principle be compatible with the rights and obligations resulting from the legal instruments. This would be particularly important if the next wave of accessions were to come from non-UNECE Contracting Parties.

15. The second perspective is more pragmatic and stems from observing current practices in the UNECE ITC Working Parties, namely that consensus building in a preparatory stage minimizes the risk of objections to an amendment at the Depositary Notification stage; this, in turn, makes the updating of legal instruments more efficient and cost effective. More specifically, all the legal instruments that were reviewed for this document include a mechanism for objections to an amendment. In some legal instruments, the objection of one Contracting Party is enough to prevent an amendment from entering into force. In other legal instruments it is stipulated that the number of objections has to be higher than just one. In either case, current practices in several Working Parties have demonstrated a much higher degree of successful amendments in the cases where all Contracting Parties were involved in the preparatory stages (i.e. in the discussions taking place within Working Parties).

16. Pursuant to this line of reasoning, the secretariat has tentatively concluded that:

(a) Where there is an Administrative Committee or Working Party with conferred rights, the case is less complicated. Since the Convention clearly establishes a Treaty body or assigns responsibility to an existing body, all Contracting Parties participate without limitations in the decision making processes. In cases where the hybrid formula is used in the Working Party, in addition to the existence of an Administrative Committee, this is a facilitative mechanism that is in line with the provisions of the corresponding legal instruments.

(b) In the cases where full membership status has been granted at the Working Party level, in addition to the existence of an Administrative Committee, this was pursued in accordance with EXCOM guidelines. The main reason for granting this status was that it was deemed more practical, in view of the large number of amendments discussed at the Working Party level, to allow these Contracting Parties to participate in full capacity so that decisions at the level of the Administrative Committee are taken faster, without delaying the entry into force of the amendments.

(c) In the cases of legal instruments that do not have an established treaty body, nor do they include any specific mention of a Working Party or other United Nations (UN) entity as a responsible body, the UNECE bodies that had been involved in the development of the legal instruments remain interested in their updating and in maintaining their relevance. In these cases, the Working Party has developed into a discussion platform to maximize cooperation and consensus among all Contracting Parties and affected/interested stakeholders. Participation in such discussions is generally kept as wide as possible, bearing in mind that any amendment elaborated by this platform can, in the end, only be submitted by a Contracting Party for acceptance through the Depositary Notification process, and that final acceptance of such amendments remains solely the prerogative of Contracting Parties.

V. Considerations by the Committee

17. The Committee is invited to take stock of the information contained in this document, prepared by the secretariat in order to facilitate the exchange of information and best practices in its restricted session of the Committee.

18. The Committee may wish to take note that:
- (a) having an Administrative Committee for a legal instrument is considered a best practice which maximizes efficiency in administering legal instruments;
 - (b) the hybrid participation formula appears to be the dominant practice;
 - (c) in certain Working Parties the status of full membership is granted to non-UNECE Contracting Parties, which appears to have had a positive effect on the efficiency of the work relating to the legal instruments;
 - (d) in certain Working Parties dealing with legal instruments with no treaty body, no clear common practice has evolved;
 - (e) the analytical and capacity building tools and resources of the secretariat are not adequate for the promotion of UN Transport conventions to non-UNECE member States.
19. The Committee may wish to request the Working Parties to find the most suitable solutions for them – if they have not yet done so – and to report about it to the next Committee session in 2016.
20. The Committee is also invited to express its support and provide guidance for secretariat and Working Party activities aimed at assisting non-UNECE Contracting Parties with accession to and implementation of these legal instruments.

Annex I

Consolidated table of Working Party practices

<i>Working Party</i>	<i>Corresponding legal instrument(s) open to accession by non-UNECE States</i>	<i>Number on non-UNECE Contracting Parties</i>	<i>Administrative Committee</i>	<i>Status (in practice) of participation in Working Party</i>	<i>Rules of procedure</i>
Working Party on Road Transport	Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956	7 of 55	No	Non-ECE Contracting Parties may table amendment proposals for discussion	Consultative Capacity/observer
	Convention on the taxation of road vehicles engaged in international passenger transport (1956)	2 of 20	No	Non-ECE Contracting Parties may table amendment proposals for discussion	Consultative Capacity/observer
	Convention on the Taxation of road vehicles for private use in international traffic (1956)	3 of 23	No	Non-ECE Contracting Parties may table amendment proposals for discussion	Consultative Capacity/observer
Working Party on Road Traffic Safety	Convention on Road Traffic, 1949	60 of 96	No	Non-ECE Contracting Parties may table amendment proposals for discussion	Consultative Capacity/observer
	Convention on Road Traffic, 1968	27 of 73	No	As above	Consultative Capacity/observer
	Convention on Road Signs and Signals, 1968	22 of 63	No	As above	Consultative Capacity/observer
	Agreement on minimum requirements for the issue and validity of driving permits (APC), 1975	1 of 7	No	As above	Consultative Capacity/observer

<i>Working Party</i>	<i>Corresponding legal instrument(s) open to accession by non-UNECE States</i>	<i>Number on non-UNECE Contracting Parties</i>	<i>Administrative Committee</i>	<i>Status (in practice) of participation in Working Party</i>	<i>Rules of procedure</i>
Working Party on Intermodal Transport and Logistics	European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), 1991	0 of 32	WP.24 as AC per Convention Art. 14 para. 2	N/A	Consultative Capacity/observer
Working Party on the Transport of Perishable Foodstuffs	Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP), 1970	2 of 48	WP.11 as AC per Convention Art. 18 para. 1	Full members	Full members
Working Party on the Transport of Dangerous Goods	European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), 1957	2 of 48	No	Hybrid	Hybrid
World Forum for the Harmonization of Vehicle Regulations	Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and /or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, 1958	9 of 48*	Yes	Full members	Full members
	Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of Such Inspections, 1997	0 of 12	Yes	N/A	Full members
	Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and / or be used on Wheeled Vehicles, 1998	9 of 34*	Yes	Full members	Full members

<i>Working Party</i>	<i>Corresponding legal instrument(s) open to accession by non-UNECE States</i>	<i>Number on non-UNECE Contracting Parties</i>	<i>Administrative Committee</i>	<i>Status (in practice) of participation in Working Party</i>	<i>Rules of procedure</i>
Working Party on Customs Questions Affecting Transport	TIR Convention, 1975	16 of 68*	Yes	Consultative Capacity/observer	Consultative Capacity/observer
	Harmonization Convention, 1982	10 of 57*	Yes	Consultative Capacity/observer	Consultative Capacity/observer
	Convention on Customs Treatment of Pool Containers Used in International Transport, 1994	3 of 14*	Yes	Consultative Capacity/observer	Consultative Capacity/observer
	Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956	7 of 42*	No	Hybrid	Consultative Capacity/observer
	Customs Convention on the Temporary Importation of Private Road Vehicles, 1954	44 of 80*	No	Hybrid	Consultative Capacity/observer

* For the purposes of this analysis, the secretariat has counted the number of Contracting States that are not members of UNECE against the total number of Contracting Parties to each legal instrument. Where the EU is a Contracting Party, it is included in the total of Contracting Parties and marked with an asterisk. However, the EU is not a State, it is a Regional Economic Integration Organization. This analysis is limited to the distinction between UNECE member States and non-ECE States that are members of the United Nations.

Annex II

Detailed Analysis by the secretariat

I. UNECE framework

1. Unlike the treaty bodies (Administrative Committees) of some United Nations conventions serviced by UNECE, where all Contracting States irrespective of their geographical location, have full powers and voting rights, the UNECE rules of procedure (rule 4) and the UNECE ToR (point. 11) give non-UNECE member States only the observer's status when attending UNECE sessions. On the other hand, these ToR and rules of procedure do not expressly take account of the peculiar situation of international legal instruments to which non-UNECE countries are Contracting Parties. There is however a stipulation of autonomy for subsidiary bodies, insofar as their rules of procedure are concerned:

Rule 18 (last sentence) "subsidiary bodies shall be given as much autonomy as may be necessary for the effective discharge of the technical responsibilities laid upon them".

Rule 20 reads "Subsidiary Bodies shall adopt their own Rules of Procedure unless otherwise decided by the Commission".

2. As the outcome of the review of the 2005 reform of UNECE, the UNECE Commission approved harmonizing procedures and practices and requested EXCOM to ensure that all subsidiary bodies and the secretariat apply the Guidelines on Procedures and Practices as contained in annex III to document E/ECE/1468 of 2013. Article 2 of these guidelines stipulates that:

All Sectoral Committees and other subsidiary bodies may adopt their own Rules of Procedure on the basis of ECE Rules of Procedure and, where applicable, Rules of Procedure of ECOSOC, taking into account these guidelines. Otherwise it will be presumed that they are governed by the Rules of Procedure of the Commission and, where applicable, Rules of Procedure of ECOSOC and taking into account these guidelines mutatis mutandis.

3. Further to this, the guidelines for the establishment and functioning of working parties within UNECE, as approved by EXCOM at its fourth session (July 2006) (see document ECE/EX/1 attached in annex), stipulate, inter alia, that

"Working Parties are open for participation by all UNECE member States. Non-UNECE member States can participate as observers or, if agreed by the parent Sectoral Committee, as full members".

II. International Law Framework

A. Common elements identified in UNECE legal instruments

4. Generally speaking, there is no binding standardized format for treaty making. First as a matter of custom and convenience, and later through the Vienna Convention on the Law of Treaties of 1969, it has been established that all treaties should follow the same fundamental principles, while remaining exceptionally flexible as concerns formulations

and variations. For this reason, there is a wide range of similar but different provisions on various elements of all the UNECE legal instruments reviewed: Entry into force, amendment procedures, dispute settlement, notifications, reservations, just to name a few, are all elements found in every single one of the UNECE legal instruments reviewed. In most cases, however, these provisions are formulated in different ways. The present document looks at the decision-making provisions such as voting and the adoption of amendments.

5. Before looking at the differences, it is necessary to first find the common ground. The single common denominator in all legal instruments in the field of transport serviced by UNECE ITC and its subsidiary bodies is that in every case, Contracting Parties are the decision makers. That is to say that any amendment to the legal provisions is ultimately either accepted or rejected by those States that are Contracting Parties to the legal instrument in question.

6. At a second level, the Agreements start to divide into different categories. For example, there are those that are open to accession by a wide range of States and others that limit participation to UNECE member States only. The agreements that are open to accession by States not members of the UNECE are further divided into two categories, as shown in the table below:

Table 1

Types of legal instruments open to accession by non-UNECE countries

<i>Typification</i>	<i>Clause most commonly found</i>	<i>Structure</i>	<i>Examples</i>
1. Open	“All States Members of the United Nations or members of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and any other State invited by the General Assembly of the United Nations, may become Contracting Parties to this Convention”	With or without Administrative Committee	TIR Convention (1975), Harmonization Convention (1982), Vienna Conventions on Road Traffic and Road Signs and Signals (1968), Temporary Importation Convention (CPD) for private road vehicles (1954), Pool Container Convention (1994)
2. Restrictively open	“Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's Terms of Reference may become Contracting Parties to this Convention by acceding thereto after its entry into force”.	With or without Administrative Committee	1958 Vehicles' Agreement, 1997 and 1998 Vehicles' Agreement, ADR (1957), CMR(1956), AGTC (1991), ATP (1970), APC (1975), Temporary Importation Convention (CPD) for commercial road vehicles (1956)

B. Main types of decision-making provisions identified in UNECE legal instruments that are open to non-UNECE countries

7. The secretariat, in its analysis, has tried to group the main decision-making mechanisms identified in the relevant Conventions, into four types. The purpose of this exercise is to enable the extraction of the definitive obligations that ensue from each Convention, in order to then compare them to the rules of procedure that apply in each subsidiary body. The comparison will seek to identify the level of flexibility afforded to subsidiary bodies, i.e. the rules of procedure can be customized to the extent that they do not contradict the legal provisions of the corresponding legal instrument.

Table 2

Types of decision making provisions in legal instruments that are open to non-UNECE countries

<i>Typification</i>	<i>Clause most commonly found</i>	<i>Structure</i>	<i>Examples</i>
A. Direct voting clause	(i) "Each Contracting Party shall have one vote" or (ii) "Amendments shall be adopted by majority of Contracting Parties present and voting" (followed by transmittal to Secretary General for notification and acceptance) (iii) Both of the above provisions may be present in the same Convention	With or without Administrative Committee	(i) TIR Convention (1975), Harmonization Convention (1982), 1958 Vehicles' Agreement. 1997 Vehicles' Agreement (ii) AGTC (1991) (iii) Pool Container Convention (1994), TIR Convention (1975)
B. Direct or indirect consensus clause	(i) "Amendments shall be adopted by consensus of CPs present and voting" (within AC or WP before notification via SG) or (ii) "An amendment shall be deemed rejected if one CP notifies an objection" (after Depositary Notification)	With or without Administrative Committee	(i) 1998 Vehicles' Agreement (ii) TIR Convention (1975), Pool Container Convention (1994)
C. Acceptance or rejection at depositary notification stage without requirement for provisional adoption by WP	"Any CP may transmit an amendment proposal to the Secretary General for circulation to all CPs"	Without Administrative Committee	Temporary Importation Conventions (CPD) (1954 and 1956), ATP (1970), Vienna Conventions on Road Traffic and Road Signs and Signals (1968)

<i>Typification</i>	<i>Clause most commonly found</i>	<i>Structure</i>	<i>Examples</i>
D. Amendment only possible via convening a review conference	“Any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention”	Without Administrative Committee	CMR (1956)

V. Analysis

A. The case of Administrative Committees

8. Where there is an Administrative Committee, the case is almost clear cut. Since the Convention clearly establishes a Treaty body, all Contracting Parties participate without limitations in the decision making processes. At the same time, since there is the Treaty body, the status of non-UNECE Contracting Parties in the corresponding Working Party is of less concern.

9. In practice, non-UNECE Contracting Parties participating in Working Party sessions often raise their flag and state their position on matters of concern; they participate in discussions and their views are taken into consideration by full members, in the spirit of cooperation. At the time of decision, participants most often work towards consensus; however if a decision is put to the vote, while only UNECE member countries vote, the points of view of non-UNECE Contracting Parties are duly taken into account in the decision-making process. At the same time, non-UNECE Contracting Parties rest assured that there is an Administrative Committee where their concerns may be discussed again and settled if need be.

10. The most notable example of this practice is that of the Working Party on Customs Questions Affecting Transport (WP.30), where non-UNECE Contracting Parties to the TIR and Harmonization Conventions that have Administrative Committees participate formally in consultative capacity albeit with lively involvement in discussions. The other legal instruments under the purview of WP.30 that lack an Administrative Committee have been in practice administered at WP.30 using the “hybrid” participation formula. In the process of discussing the adoption of new rules of procedure, WP.30 was of the view that the “hybrid” formula fully reflects its practice and is also sufficient to meet the needs of non-UNECE Contracting Parties. As a result, WP.30 is now considering the adoption of new rules of procedure that will incorporate the “hybrid” formula, by means of an express provision.

11. The World Forum for the Harmonization of Vehicle Regulations (WP.29), has decided to further simplify its working methods by granting full membership to all non-UNECE Contracting Parties despite the existence of Administrative Committees in all three legal instruments under its purview. In the first instance this was pursued in accordance with EXCOM guidelines. The reason for this seems to have been the overwhelming majority of the time in WP.29 sessions dedicated to discussions on these legal instruments, rendering entire sessions exclusively dedicated to these legal instruments. As such, it was deemed more practical, in view of the large number of amendments, to allow these Contracting Parties to participate in full capacity in WP.29 so that decisions at the level of the Administrative Committee are taken faster, without delaying the entry into force of these amendments.

B. The case of Working Parties being assigned certain responsibilities pursuant to the provisions of the Convention

12. The European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) and the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP) each stipulate that a UNECE Working Party is to take on the role of a decision-making body. More specifically the provisions read:

AGTC, Article 14: “[...] At the request of a Contracting Party, any amendment proposed by it to this Agreement shall be considered by the Working Party on Intermodal Transport and Logistics of the United Nations Economic Commission for Europe. If the amendment is adopted by a two-thirds majority of the Contracting Parties present and voting, the amendment shall be communicated by the Secretary-General of the United Nations to all Contracting Parties for acceptance”.

ATP, Article 18: Any Contracting Party may propose one or more amendments to this Agreement. The text of any proposed amendment shall be communicated to the Secretary-General of the United Nations, who shall communicate it to all Contracting Parties and bring it to the notice of all the other States referred to in article 9, paragraph 1, of this Agreement. The Secretary-General may also propose amendments to this Agreement or to its annexes which have been transmitted to him by the Working Party on the Transport of Perishable Foodstuffs of the Inland Transport Committee of the Economic Commission for Europe.

13. In the case of AGTC, the Working Party takes on the responsibility of a treaty body, where decisions are taken by a two-thirds majority of Contracting Parties present and voting. Although currently the AGTC does not have any non-UNECE Contracting Parties, such a development is not precluded in future. In such a case, non-UNECE Contracting Parties would have full participation rights at those instances when the Working Party acts as Administrative Committee (hybrid formula).

14. In the case of ATP, Contracting Parties have two choices: either to transmit proposals directly to the Secretary General or to collectively agree on and transmit proposals via the Working Party at UNECE. In order to enable all Contracting Parties to participate in the process, the Working Party on the Transport of Perishable Foodstuffs (WP.11) has introduced, into its rules of procedure, the right of non-UNECE ATP Contracting Parties to participate in full capacity when discussions on these amendment proposals are taking place (hybrid formula).

C. The case of direct transmittal to the depositary without requirement for provisional adoption by the Working Party (without Administrative Committee)

15. Some Conventions do not have an established treaty body, nor do they include any specific mention of a Working Party or other UN entity as a responsible body. Such Conventions as the Temporary Importation Conventions (CPD) and the 1968 Vienna Conventions on road traffic and road signs and signals, only include a provision to the effect that:

“Any Contracting Party may propose one or more amendments to this Convention. The text of any proposed amendment shall be transmitted to the Secretary-General of the United Nations who shall circulate it to all Contracting Parties”.

16. Pursuant to this, these Conventions foresee the number of objections required to prevent the entry into force of the proposed amendment.

17. What is interesting about this formula is that, in the case of these particular Conventions, the UNECE bodies that had been involved in the development of the legal instruments remain interested in their updating and in maintaining their relevance. In these cases, the Working Party has developed into a discussion platform to maximize cooperation and consensus among all Contracting Parties and affected/interested stakeholders. Participation in such discussions is generally kept as wide as possible, bearing in mind that any amendment elaborated by this platform can, in the end, only be submitted by a Contracting Party for acceptance through the Depositary Notification process, and that final acceptance of such amendments remains solely the prerogative of Contracting Parties.

18. Drawing from the fact that only Contracting Parties can accept or reject amendments, pursuant to the Conventions themselves, one would logically assume that all Contracting Parties may participate in any discussions that may take place on these legal instruments.

19. Considering that the Conventions in this category do not require any form of provisional endorsement prior to their transmittal to the depositary, what, then, is the role of the Working Party?

20. Perhaps this can be answered by examining the actual practice of Working Parties. For example, a new amendment to the 1954 Temporary Importation Convention is due to enter into force in March 2015. This amendment was transmitted directly by the Ministry of Foreign Affairs of the United Arab Emirates to the UN Treaty Section in New York for notification to all Contracting Parties. This amendment proposal was not tabled, negotiated or formulated in WP.30. Conversely, under the relevant standing agenda item, the Working Party was informed of the intention of the United Arab Emirates to transmit an amendment proposal; the Working Party was also informed of the content of that proposal. The Contracting Parties that were present in the session were invited to consider accepting the amendment as and when the notification was sent to them.

21. By contrast, the Working Party on Road Traffic Safety (WP.1), which de facto administers the 1968 Vienna Conventions, applies a very different practice: Contracting Parties from all over the world may table proposals for discussion at WP.1 if they so wish or they can transmit them directly to the depositary in New York, as per the Conventions. In the latter case, and without any prior consultation with other Contracting Parties, it is highly likely that any amendment proposal would be rejected. However, if discussed within the Working Party where a large number of Contracting Parties attend and participate, there is a better opportunity to formulate an amendment that would be acceptable to all or most Contracting Parties. Since there is no requirement by the Convention to have any form of intergovernmental body preapprove an amendment proposal, then the platform is, logically, for discussion only. That is to say that the Working Party is a discussion platform to maximize cooperation and consensus, in order to minimize the risks of objections to the amendments at the later Depositary stage; it is not a decision-making platform that can determine whether or not an amendment proposal can be transmitted Contracting Parties for acceptance through the Depositary.

22. The responsibility of the Working Party on Road Traffic Safety, in accordance with its Terms of Reference, is to develop and maintain the Conventions. In practice, the only way to effectively do this without infringing on the rights of non-UNECE Contracting Parties under these legal instruments is to consider the Working Party as a forum to discuss amendments and new developments, to bring new ideas for necessary amendments and to build consensus for amendments that are subsequently transmitted by Contracting Parties to the depositary for notification to and acceptance by other Contracting Parties.

D. The rules of procedure of the Inland Transport Committee

23. The ITC follows the rules of procedure of UNECE. While technically, it is the ITC as the parent body that is ultimately responsible for the legal instruments under discussion – except for those that have an Administrative Committee - in practice the ITC has delegated that task to its subsidiary bodies, the Working Parties. From that perspective, these questions on decision making would rarely ever arise in the course of an ITC session.

Annex III

List of Agreements that are considered in the present analysis

<i>Short title</i>	<i>Official name of the Agreement/Convention</i>
CMR:	Convention on the Contract for the International Carriage of Goods by Road, (1956)
Passenger Taxation Convention:	Convention on the Taxation of Road Vehicles Engaged in International Passenger Transport, (1956)
Private Vehicle Taxation Convention:	Convention on the Taxation of Road Vehicles for Private Use in International Traffic, (1956)
1949 Convention:	Convention on Road Traffic, (1949)
1968 Vienna Conventions:	Vienna Convention on Road Signs and Signals, (1968) and Vienna Convention on Road Traffic, (1968)
APC:	Agreement on Minimum Requirements for the Issue and Validity of Driving Permits, (1975)
AGTC:	European Agreement on Important International Combined Transport Lines and Related Installations, (1991)
ATP:	Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage, (1970)
ADR:	European Agreement concerning the International Carriage of Dangerous Goods by Road, (1957)
1958 Vehicles' Agreement:	Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and /or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, (1958)
1997 Vehicles' Agreement:	Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of Such Inspections, (1997)

<i>Short title</i>	<i>Official name of the Agreement/Convention</i>
1998 Vehicles' Agreement:	Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, (1998)
TIR Convention:	Customs Convention on the International Transport of Goods under Cover of TIR Carnets, (1975)
Harmonization Convention:	International Convention on the Harmonization of Frontier Controls of Goods, (1982)
Pool Container Convention:	Convention on Customs Treatment of Pool Containers Used in International Transport, (1994)
Temporary Importation Convention, 1956:	Customs Convention on the Temporary Importation of Commercial Road Vehicles, (1956)
Temporary Importation Convention, 1954:	Customs Convention on the Temporary Importation of Private Road Vehicles, (1954)
