
ECONOMIC COMMISSION FOR EUROPE

Informal document WP.30 No. 6 (2011)

INLAND TRANSPORT COMMITTEE

31 May 2011

Working Party on Customs Questions affecting Transport

ENGLISH ONLY

128th session

Geneva, 7–10 June 2011

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**

Note by the secretariat

Below, the secretariat reproduces, for information of the Working Party, a copy of a letter sent to the Ministry of Foreign Affairs of Albania, conveying the text of a Draft Protocol, introducing amendment clauses to the 1952 Convention, seeking consent prior to the official distribution of the Protocol by the Secretary-General of the United Nations. The same letter has been sent to the Ministers of Foreign Affairs of: Austria, Belgium, France, Italy, Luxembourg, Netherlands, Norway, Portugal and Switzerland. For more background information on the issue, please refer to ECE/TRANS/WP.30/254, paras 17 and 18.

ANNEX



UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

The Executive Secretary

Under-Secretary-General

Ref: ECE/TRANS/273/2011/L

18 May 2011

Excellency,

I am writing to you with regard to the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail, of 10 January 1952 (hereafter referred to as: "1952 Rail Convention"), of which your country is a Contracting Party.

The 1952 Rail Convention entered into force on 1 April 1953 and has, at present, the following 10 States as Contracting Parties to the Convention: Albania, Austria, Belgium, France, Italy, Luxembourg, Netherlands, Norway, Portugal and Switzerland.

The objective of the 1952 Rail Convention is to facilitate the crossing of borders for passengers carried by rail. 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 implementation of police and Customs controls while trains are in motion and sets up the appropriate procedures to do so. The Convention establishes procedures, whenever the controls cannot be satisfactorily performed while the trains are in motion, for the organization of joint controls to be performed at a station close to the frontier and designated by agreement between the adjacent countries. The Convention also provides for transit procedures.

His Excellency
Mr. Edmund Haxhinasto
Minister for Foreign Affairs
of the Republic of Albania
Tirana



In accordance with its 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.

However, the Convention does not contain provisions for amendments other than the aforementioned standard international Customs declaration form. As a consequence, the Convention has remained unchanged since 1953, rendering it unable to profit from developments in the field of railway transport and, thus, diminishing its ability to continue to serve as an important international legal instrument.

In general, in the absence of amendment clauses, 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."

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 2008, at the joint proposal of the Organization for Collaboration of Railways (OSJD) and the Intergovernmental Organisation for International Carriage by Rail (OTIF), the United Nations Economic Commission for Europe's Working Party on Customs Questions affecting Transport (WP.30), which monitors the application of various legal instruments in the field of border crossing, such as the 1952 Rail Convention, discussed an initiative to launch a new International Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport. However, after lengthy and extensive discussions over the period 2008–2010, the Working Party reached the consensus decision that, rather than trying to develop a new legal instrument, it would be preferable to use the existing 1952 Rail Convention and try to amend it from within with the aim to turn it into a full-fledged legal instrument, meeting the challenges and requirements of the twenty-first century railway transport sector.



As a next step, in order to find a way out of the fact that the 1952 Rail Convention does not contain amendment provisions, the Working Party on Customs Questions affecting Transport (WP.30), with the consent of the Contracting Parties to the 1952 Rail Convention participating in its work (European Union countries, Norway and Switzerland), concluded that the best way forward would be the adoption by the Contracting Parties to the 1952 Rail Convention of an additional Protocol, that will introduce amendment clauses to the said Convention. The Protocol will only enter into force in case the Secretary-General of the United Nations in his capacity as depositary does not receive any objection to the Protocol within a certain time limit from its date of circulation (in this case: six months). The text of the Protocol in English and French, as agreed by WP.30 at its 127th session on 4 February 2011 (ECE/TRANS/WP.30/254/paragraph 17), is attached for your reference (English and French).

In order to avoid any complication in the formal acceptance procedure, I would be grateful if you could already now consult with the competent bodies within your national administration and provide me with your tentative approval of the text of the Protocol by 31 July 2011.

After receiving a sufficient number of positive replies from the 10 Contracting Parties to the 1952 Rail Convention, I will request the Secretary-General of the United Nations, in his capacity as depositary of the 1952 Rail Convention, to issue a Depositary Notification. I then count on your country's commitment to undertake all required national actions to officially accept the Protocol. In accepting the text, your country will assist in maximizing the use of existing legal instruments and in avoiding the development of new and partly overlapping legal instruments.

Please accept, Excellency, the assurances of my highest consideration.


Ján Kubiš

Annex enclosed

