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Economic Commission for Europe**Inland Transport Committee****Seventy-sixth session**

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Item 4 (e) of the provisional agenda

Strategic questions of a sectoral nature: Rail transport**Proposal made by Russian Federation on the development of
a new convention on the facilitation of crossing of frontiers
for passengers and baggage carried by rail****Note by the secretariat***Summary*

The present document contains an historical review on efforts made by the secretariat to amend the existing International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail which was signed at Geneva, on 10 January 1952 and a proposal submitted by the Government of Russian Federation on developing a new convention on the facilitation of crossing of frontiers for passengers and baggage carried by rail.

The document is submitted to ITC for seeking guidance and approval of establishing of an Expert Group.

I. Introduction

1. During the 135th session of Working Party on Customs Questions affecting Transport (WP.30) (ECE/TRANS/WP.30/270, para. 16) and the sixty-seventh session of Working Party on Rail Transport (SC.2) (ECE/TRANS/SC.2/220, para. 90–91) the Russian Federation and the Organization for Cooperation between Railways (OSJD) presented their proposal on developing a new convention on the facilitation of crossing of frontiers for passengers and baggage carried by rail. This proposal seems to be supported by many other countries.

2. The current document outlines the history of this initiative and asks for guidance from the Inland Transport Committee.

II. Historical review

3. The facilitation of passengers and their baggage travelling by rail and crossing the crossings is currently being addressed in the ECE region by the International Convention to facilitate the crossing of frontiers for passengers and baggage carried by rail which was signed at Geneva, on 10 January 1952. The Convention covers the following issues:

- (a) Establishment and operation of frontier stations where examinations are carried out by the two adjoining countries;
- (b) Police and customs examination while the train is in motion;
- (c) International transport under customs control of baggage and parcels carried by international passenger trains;
- (d) Control facilities.

4. The following countries have, so far, acceded to the Convention of 1952: Albania, Austria, Belgium, France, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden¹ and Switzerland. The last one was Albania in 2004 and the one before Albania was Switzerland in 1957.

5. During the sixty-eighth session of the Committee (7–9 February 2006), the representatives of Belarus, Netherlands, Switzerland, Russian Federation, Ukraine, OSJD and the Intergovernmental Organisation for International Carriage by Rail (OTIF) emphasized the importance of developing the appropriate international legal instrument that would facilitate border crossing in international freight and passenger transport. In this context, the Committee encouraged all efforts aimed at facilitating rail border crossing, and called involved parties to speed up work on the final elaboration of new legal instruments for freight and passenger rail border crossing procedures (ECE/TRANS/166, para. 82). The Committee stressed the importance of close cooperation between WP. 30 and SC.2 in elaborating a new Annex 9 to the International Convention on the Harmonization of Frontier Controls of Goods and a new Convention to facilitate the crossing of frontiers in international railway passenger traffic. To this end, it proposed a joint meeting of WP.30 and SC.2. The Committee further reiterated its support for the organization of an International Conference on Facilitation of Railway Border Crossing with the participation of representatives of all involved national authorities, OSJD, OTIF and other interested international organizations. The Committee underlined that the effectiveness of the Conference would be significantly increased if it is thoroughly prepared and if the two new legal instruments could be adopted by the relevant subsidiary bodies of the Committee beforehand (ECE/TRANS/166, paras. 82–83).

6. During the sixty-ninth session of the Committee (6–8 February 2007), it supported the preparatory work carried out so far and invited involved countries, OSJD and other international organizations to finalize proposals of the two new legal documents (Annex 9 to the International Convention on the Harmonization of Frontier Controls of Goods and the new Convention to facilitate the crossing of frontiers in international railway passenger traffic) (ECE/TRANS/192, para. 76).

¹ Signature only.

7. In the next session of the Committee (19–21 February 2008) and with regard to the drafting of a new Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport, the Committee noted the difficulties in amending the existing International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail of 1952 and invited SC.2 and WP.30 to work together to find an appropriate solution (ECE/TRANS/200, para. 65).

8. The Committee during its seventy-first session (24–26 February 2009) recalled the consolidated proposals by OSJD and OTIF for a new International Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport (ECE/TRANS/WP.30/2007/12/Rev.1) as well as the reported difficulties in relation to the amendment to the existing International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail of 1952 (ECE/TRANS/200, para. 65). 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 could be used, subject to consent of all Contracting Parties. To this end, WP.30 requested the secretariat, through the Committee, to seek confirmation from the existing Contracting Parties to the 1952 Convention. The Committee asked the Governments of countries that are Contracting Parties to the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail of 1952, to confirm if they will consider positively proposals to amend the Convention as proposed by OSJD and OTIF. It was also of the opinion that Governments must first accede and then initiate the amendment (ECE/TRANS/206, paras. 62–64).

9. WP.30 at its 124th session (2–5 February 2010), 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).

10. At its 125th session (25–28 May 2010) the WP.30 discussed the document ECE/TRANS/WP.30/2010/9, prepared by the secretariat, containing proposals for an additional protocol to the 1952 Convention which would introduce provisions to amend the said Convention. The Working Party agreed to the proposed text with the exception of the so-called "opt-out" clause, allowing any Party opposing an amendment, to not be bound by it upon its entry into force, as this could create different legal regimes under a single treaty. WP.30 requested the secretariat to submit the text of the draft protocol as an official document in the three official United Nations Economic Commission for Europe (UNECE) languages for discussion and, possibly, endorsement at its next session (ECE/TRANS/WP.30/250, para. 12).

11. At its 127th session (1–4 February 2011), WP.30 considered and agreed on the document ECE/TRANS/WP.30/2010/10 with amendments, containing the final draft of a Protocol to the 1952 Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail in the three official UNECE languages, prepared by the secretariat. The Working Party requested the secretariat to convey the draft Protocol together with an introductory letter to the competent authorities of the ten Contracting Parties to the 1952 Convention to seek their consent prior to official distribution of the Protocol by the Secretary-General of the United Nations (ECE/TRANS/WP.30/254, paras. 17–18).

12. The WP.30 at its 129th session (4–7 October 2011) took note of replies received by the secretariat on a draft text of Protocol. Although not conclusive, the Working Party agreed that, on the basis of the replies received, it seemed premature to assume that the Protocol in its current wording was acceptable for a sufficient number of Parties in order to request the Secretary-General of the United Nations to issue a depositary notification,

officially informing Parties of the text of the Protocol. In order to seek a solution on how to continue discussing the issue, the Working Party requested the secretariat to contact OSJD and OTIF, informing them of the status quo which has been attained, viz. that Contracting Parties to the 1952 Rail Convention seem to agree to the principle that the Convention should be extended to include specific amendment clauses, but cannot agree on the exact format before having obtained, from interested parties such as OSJD and OTIF, more information on exactly which kind of substantial proposals would contribute to bringing the Convention in line with twenty-first century rail transport (ECE/TRANS/WP.30/258, para. 12).

13. The representative of OSJD informed WP.30 during its 130th session that his organization was soliciting views of OSJD member States on this issue. At the same time, OSJD doubted that it would be feasible to amend the outdated text of the 1952 Convention by means of signing an additional protocol (ECE/TRANS/WP.30/260, para. 20).

14. The Working Party 30 at its 134th session noted that OSJD member States supported the idea of drafting a new convention in this field, rather than acceding to the outdated 1952 Convention. The representative of the Russian Federation put forward various arguments supporting the urgent need for a new convention, in particular, the rapid development of the international high-speed train network. Before embarking on a time- and resource-consuming process of drafting a new convention, WP.30 decided to verify if the competent authorities were indeed, interested in developing a new legal instrument. Countries were invited to inform the secretariat accordingly (ECE/TRANS/WP.30/268, para. 26).

15. At the 135th session of WP.30, the Russian Federation and OSJD - with the support of several other governments (among them Belarus, Bulgaria, Latvia, Kazakhstan, Poland, Republic of Moldova) - presented a number of arguments in favour of drafting a new convention in this field, rather than acceding to the outdated 1952 Convention. The initiative was considered of particular interest in light of the rapid development of the international high-speed train network which requires the introduction of new EDI technologies and other innovative solutions to ensure fast border crossing procedures. WP.30 felt that there seemed to be a demand for a new Convention and invited SC.2, at its forthcoming session on 23–25 October 2013, to express its position on this matter as well. The Working Party also noted the readiness of several governments, OSJD and OTIF to create a taskforce or a group of experts to prepare a first draft of a new Convention for further consideration by WP.30 and SC.2. (ECE/TRANS/WP.30/270, para. 16).

16. At its sixty-seventh session, SC.2 took note of the request of Russian Federation and OSJD on the development of a new convention to facilitate the crossing of frontiers for passengers and baggage carried by rail. The Working Party requested the secretariat to prepare an official document for the next ITC session outlining comments received for guidance.

III. Views of the Russian Federation and OSJD

17. During the above WP.30 and SC.2 sessions, the Russian Federation and OSJD pointed out that the existing 1952 Convention does not reflect the changes in the transport sector that have taken place in recent years as a result of the reform of the railways, the development of express and high-speed trains, the introduction of new technologies in transport. In addition, it does not take into account the different specialties and parameters in railway systems that exist within the ECE region. Therefore, the preparation of a new Convention in this area is warranted.

18. According to the Ministry of Transport of the Russian Federation, a new Convention may provide the following provisions:

- (a) carrying out joint monitoring;
- (b) introduction of simplified procedures for the conduct of monitoring operations in passenger trains;
- (c) border and customs control in trains while travelling with the use of new technology;
- (d) organization of non-stop operation of passenger trains; reduction of time for all types of control operations at border stations; reduction of time during stops by eliminating the time of control operations;
- (e) development of high-speed communication with the control procedures during technological operations while changing tracks or conducting joint control by neighboring countries;
- (f) use of modern information technology in the transport of passengers;
- (g) application of simplified procedures for the entry (and exit from) to the territory of a neighboring country for locomotive and train crews.

IV. Considerations of the Inland Transport Committee

19. ITC is invited to take note of the above considerations by WP.30 and SC.2 and to consider the arguments put forward by the Russian Federation and OSJD in favour of drafting a new convention to facilitate the crossing of frontiers for passengers and baggage carried by rail. The Committee is invited to support the preparation of a new legal instrument, and to agree on the establishment of a Group of Experts to undertake this work and endorse its draft Terms of Reference, as laid down in the Annex. The ITC decision and the Terms of Reference will then be submitted to the UNECE Executive Committee for approval.

Annex

Terms of Reference of the Group of Experts on Facilitation of the Crossing of Borders for Passengers and Baggage carried by Rail

1. The Group of Experts (GE) on Facilitation the Crossing of Frontiers for Passengers and Baggage carried by Rail will provide an open international discussion platform for developing proposals with a view to increasing the efficiency of border crossing for passengers and baggage carried by rail, by bringing together specialists from the public and private sectors as well as academia.
2. The Group of Experts, based on existing resources of the secretariat, and possibly with additional financial support provided by participating countries and in close collaboration with other international organizations, in particular OSJD and OTIF, will specifically:
 - (a) Take stock of the current situation with regard to rail border crossing for passengers and baggage in the Eurasian region, with a view to identifying obstacles for fluidity and facilitation of international rail transport;
 - (b) Collect examples of best practice in this area from the UNECE region and beyond;
 - (c) If required, conduct surveys of the public and private sectors to obtain the missing information;
 - (d) Identify the key elements which should be addressed in order to increase the efficiency of border crossing for passengers and baggage carried by rail;
 - (e) Make an inventory of international legal instruments in force containing provisions to facilitate crossing of frontiers for passengers and baggage carried by rail, assess their efficiency and identify the gaps;
 - (f) Prepare in a coordinated manner recommendations on amendments to existing legal instruments aimed at improving the efficiency of rail border crossing for passengers and baggage;
 - (g) If appropriate, prepare a draft of a new international legal instrument in this field and submit it to Working Party on Customs Questions affecting Transport (WP.30) as well as to the Working Party on Rail Transport (SC.2) for consideration and comments. Based on the comments received, modify the original proposals and resubmit them to WP.30 and SC.2. Repeat this exercise, if necessary, and submit the final draft to the Inland Transport Committee for adoption.
3. Membership to the Group of Experts will be open to government appointed officials and experts from UNECE and non-UNECE member States. It will also be open to representatives of international organizations, non-governmental organizations, academia as well as to representatives of the private sector. Representatives participating in the Group of Experts are expected to be experts having knowledge about Customs, border crossing facilitation and/or rail transport.
4. The Group of Experts is expected to start its work in June 2014, pending the approval by the Executive Committee, and terminate by June 2016 with the submission of a full report of its accomplishments, including recommendations and the final draft of a new legal instrument, if any, to the Inland Transport Committee.

5. The Group of Experts will be assisted in its work by the UNECE secretariat and will report on its current activities to the Working Party on Customs Questions affecting Transport (WP.30) as well as to the Working Party on Rail Transport (SC.2). The sessions of the Group of Experts will be conducted in Geneva, preferably in conjunction with sessions of WP.30 or SC.2.
