



A Review of International Legal Instruments

Facilitation of Transport and Trade in Africa

Second Edition

Jean Grosdidier de Matons

TREATIES

CONVENTIONS

PROTOCOLS

DECISIONS

DIRECTIVES



SSATP
Africa Transport
Policy Program

A Review of International Legal Instruments

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March 2014



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Foreword

Facilitating trade flows between countries in the same subregion requires not only an adequate transport infrastructure, but also competitive and reliable transport services. However, both requirements can be met effectively only to the extent allowed by the legal framework governing their operations.

Similarly, better regional economic integration is achieved not only by the harmonization of national policies, but also, and perhaps to a greater extent, by the preparation, ratification and implementation of multilateral legal instruments, from the subregion to the continent and to the international level-. Those instruments provide the framework needed to underpin the sustainable development of trade flows, themselves harbingers of economic growth and employment generation.

Africa clearly illustrates this situation. Its subregions are working hard from East to West to establish institutional and economic ties, foster trade and stimulate economic growth. The existence in Africa of 16 landlocked countries further strengthens the need to codify the rules governing the exchanges between coastal and landlocked States, so that the latter can benefit from facilitated access to external markets.

Thus, although many efforts are being made to promote regional integration on the continent, the attention has also to focus on the legal instruments in force in Africa to facilitate transport and trade flows between countries and regions. The first edition of this compendium was released by the SSATP in 2004. 121 instruments were then reviewed. This new edition has now 147 instruments annexed to the compendium. A large number of other international legal instruments are also described in the text but not annexed. In addition, it frequently mentions pieces of national legislation derived from the international instruments, thereby ensuring that they actually translate in practice the decisions and principles endorsed by the various subregional economic communities.

Three major reasons motivated this update and an expansion of its scope. First, African countries are increasingly cooperating, especially in the area of corridors, to achieve full connectivity, mobility and accessibility. To that end, they are concluding new agreements and conventions. Second, this new edition has been extended to the whole of the African continent, including the Maghreb, which was not in the previous

inventory. Third, air transport and associated agreements and conventions were added at the request of countries. Indeed, the future of air transport in Africa is bright. It is likely that it becomes an affordable mode of transport to reach remote areas.

We hope that the compendium of legal instruments will be useful to our members to assess the benefits of harmonization at pan-African level as main factor boosting regional integration.

On our side we commend the publication and will definitely make the best use of the legal review in our endeavor to improve regional integration of Africa.



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Abbreviations and Acronyms

AALCO	Asian African Legal Consultative Organization
ACAC	Arab Council of Civil Aviation
ACP	Africa, Caribbean, and the Pacific
AEC	African Economic Community
AFCAC	African Civil Aviation Commission
AFRAA	African Airlines Association
AGIRS	African Group on International Road Safety
AHSG	Authority of Heads of State and Governments
ALCO	Abidjan-Lagos Corridor Organization
AMU	Arab Maghreb Union
ATA	<i>admission temporaire</i> /temporary admission
AU	African Union
BAG	Banjul Accord Group
BCEAO	<i>Banque centrale des États de l'Afrique de l'Ouest</i> (Central Bank of West African States)
BDEAC	<i>Banque de développement des États de l'Afrique centrale</i> (Development Bank of Central African States)
BEAC	<i>Banque des États de l'Afrique centrale</i> (Bank of Central African States)
BOAD	<i>Banque ouest africaine de développement</i> (West African Development Bank)
CCTFA	Central Corridor Transit Transport Facilitation Agency
CASSOA	Civil Aviation Safety and Security Oversight Agency
CEAO	<i>Communauté économique de l'Afrique de l'Ouest</i> (Economic Community of West Africa)
CEMAC	Economic and Monetary Community of Central Africa
CEP	Committee of Eminent Persons
CEPGL	<i>Communauté économique des pays des Grands Lacs</i> (Economic Community of the Great Lakes Countries)
CET	common external tariff
CICOS	<i>Commission internationale du Bassin Congo-Oubangui-Sangha</i> (International Commission of Congo-Oubangui-Sangha Basin)
CIETRMD	<i>Convention inter-États de transport routier de marchandises diverses</i> (Inter-State Convention of the Transport of General Cargo by Road)

CIF	cost, insurance, freight
CIMA	<i>Conférence interafricaine des marchés d'assurance</i> (Inter-African Conference on Insurance Markets)
CMR	Contract for the International Carriage of Goods by Road
COMESA	Common Market for Eastern and Southern Africa
COTIF	<i>Convention relative aux transports internationaux ferroviaires</i> (Convention concerning International Carriage by Rail)
CSC	Container Safety Convention
CTD	combined transport document
CTO	combined transport operator
DCC	Dar es Salaam Corridor Committee
DJI	Documents juridiques internationaux (Montreal)
DRC	Democratic Republic of the Congo
EAC	East African Community
ECAC	European Civil Aviation Conference
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EEC	European Economic Community
EPA	economic partnership agreement
EU	European Union
FLS	Front Line States
FOB	free on board
GATT	General Agreement on Tariffs and Trade
IATA	International Air Transport Association
ICA	Infrastructure Consortium for Africa
ICAO	International Civil Aviation Organization
ICC	International Chamber of Commerce
ICT	information communication technology
IGAD	Intergovernmental Authority on Development
IMO	International Maritime Organization
LVBC	Lake Victoria Basin Commission
MASA	Multilateral Air Services Agreement
MCLI	Maputo Corridor Logistics Initiative
MDC	Maputo Development Corridor
MoU	memorandum of understanding
MOWCA	Maritime Organization of West and Central Africa
MTD	multimodal transport document
MTO	multimodal transport operator

NCC	National Corridor Committee
NCTA	Northern Corridor Transit Agreement
NCTTA	Northern Corridor Transit & Transport Agreement
NCTT-CA	Northern Corridor Transit Transport Coordination Authority
NEPAD	New Partnership for Africa's Development
NPCA	NEPAD Planning and Coordinating Agency
OAU	Organization of African Unity
OERS	<i>Organisation des États riverains du fleuve Sénégal</i> (Senegal River Riparian States Organization)
OHADA	Organization for Harmonization of Business Law in Africa
OMAO	<i>Organisation maritime de l'Afrique de l'Ouest et du Centre</i> (Maritime Organization for West and Central Africa)
OMVS	<i>Organisation pour la mise en valeur du fleuve Sénégal</i> (Senegal River Basin Development Authority)
OTIF	<i>Organisation intergouvernementale pour les transports internationaux ferroviaires</i> (Intergovernmental Organization for International Carriage by Rail)
PDCT-AC	<i>Plan directeur consensuel des transport en Afrique centrale</i> (Agreed Transport Master Plan in Central Africa)
PIDA	Programme for Infrastructure Development in Africa
PMAESA	Port Management Association of Eastern and Southern Africa
PTA	preferential trade area
PMAWCA	Ports Management Association of West and Central Africa
REC	regional economic community
SACU	Southern African Customs Union
SAD	Single Administrative Document
SADC	Southern African Development Community
SARP	standards and recognized practices
SDR	special drawing right
TIPAC	Interstate Transit of the Central African Countries
TIR	<i>Transports Internationaux Routiers</i> (International Road Transport)
TKCMC	Trans-Kalahari Corridor Management Committee
TTFA	Central Corridor Transit Transport Facilitation Agency
UCOMAR	<i>Unité continentale de Coordination des actions des Organisations régionales de Coopération maritime et portuaire</i> (OAU) (Continental Unit for Maritime Transport)
UDEAC	Economic and Customs Union of Central Africa

UEAC	<i>Union économique de l'Afrique centrale</i> (Economic Community of Central Africa)
UEMOA	<i>Union économique et monétaire d'Afrique de l'Ouest</i> (West African Economic and Monetary Union)
UN	United Nations
UNCITRAL	United Nations Convention on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference for Trade and Development
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
WAEMU	West African Economic and Monetary Union
WCO	World Customs Organization
WTO	World Trade Organization

I. Basic Legal Issues Related to International Instruments

A. DEFINITIONS¹

1. **International agreements.** The following basic definitions apply to all legal instruments described in this review:
 - An international agreement is a written instrument between two or more sovereign or independent public law entities such as States or international organizations. It is intended to create rights and obligations between the Parties and is governed by international law.
 - Such instruments are designated as treaties, conventions, agreements, or as protocols, covenants, compacts, exchange of notes, memoranda of understanding, agreed minutes, letters, also known as *accords en forme simplifiée* or agreements under simplified format. In what follows, and except in specific cases, the word *treaty* is a generic term designating any treaty, agreement, convention, or other international instrument.
 - Treaties may be bilateral or multilateral. Bilateral treaties are contracts in which two parties balance their claims on a specific matter. A multilateral treaty, usually titled convention, sets rules of law to be observed by all parties to the treaty, in their joint or individual interest. A contract in form, it is substantially akin to a law.
 - A treaty, even after it has become part of the law of the land after ratification and even when, as a convention, it borrows from the nature of a law, remains a contract and must be interpreted as such. Enforcement of its terms and conditions by a government agency is more than the implementation of domestic law provisions; it is a contribution to international relations. A treaty has therefore an impact on the nation's and state's reputation as partners in such relations.

2. **Ratification.** Ratification is the procedure, possibly set forth by a country's Constitution, by which a treaty is incorporated in the domestic law of one of the Parties to it. Agreements under simplified format are usually ratified by the executive branch, whereas major treaties and conventions are ratified by the legislature. In the United Kingdom, under a non-written Constitution, politically important treaties modifying domestic law or having a financial impact are ratified by Parliament. The constitutions of Anglophone African States do not formulate rules in that respect. Constitutional practice varies from one State to another. It is likely that legislatures have jurisdiction, but it may be distributed between the executive and the legislative branches, according to the importance of the Treaty. In France, the 1958 Constitution stipulates that ratification is by a law or a presidential decree; it indicates which treaty should be ratified by law. One criterion is whether it has a financial impact. If so, a law is needed since the French Parliament is "master of the purse" (see Article 53 of the 1958 Constitution). The same wording is found in many constitutions of Francophone and African States. Others provide for ratification by presidential decree, rendered after agreement is given by the legislature (e.g. Democratic Republic of the Congo—see Article 179 of the Constitution). Finally, in some States such as Equatorial Guinea and the Central African Republic jurisdiction for ratification is left to the President, whatever the treaty. In the United States, executive agreements are quasi-treaties that do not require ratification by the Senate under Article II of the Constitution.
3. **Registration.** All treaties, conventions, and other international agreements entered into must, according to Article 102 of the United Nations (UN) Charter, be registered with and published by the Secretariat of the United Nations. Non-published treaties remain valid between signatories but may not be invoked before any UN organ. Treaties are numbered in the order of registration in the volumes of the UN Treaty Series (<http://treaties.un.org/>).
4. **Identification and localization of instruments.** At the start of this exercise, it appeared that the existing international and inter-regional legal instruments were quite well known. However, there are many more instruments, conventions, memoranda of understanding, etc. than originally believed. Many of them have not been filed in the UN Treaty Series, but with the African Union (AU)—the successor of the Organization of African Unity (OAU)—which makes them more difficult to locate. Filing of instruments in either system sometimes encounters delays. Many instruments may well be dormant or ig-

nored, while others are obsolete or overlap. It is important to note that at the time of issuing this review,

- Some bilateral instruments, either executed for the implementation of international or inter-regional instruments or executed independently of these instruments, remained unidentified and unanalyzed.
- Domestic laws, regulations, and circulars have to be identified and compared with the multilateral and bilateral instruments with which they may or may not conform.

5. **Issues.** Four basic issues are related to the following:

- The conditions of enforceability of a treaty or other international instrument in the territory and in the legal regime of a State party to such an instrument
- The ranking of legal norms (treaties and domestic law)
- Whether treaties, agreements, and other international instruments are actually enforced
- Whether treaties and other agreements deal with issues of public law (Customs facilitation, traffic police, safety, etc.) or whether they aim to modernize and streamline private law, commercial practice, and procedures (carriage contracts, insurance, etc.), and as a consequence
- Whether they are oriented toward public administration by public agents or toward the association of the community of traders and carriers for viable and sustainable development of the transport system.

These issues are detailed in the sections that follow.

B. ENFORCEABILITY²

a. *International enforceability*

6. Signatories. Treaties only bind signatories. Where a State, not a party, accepts its provisions and desires to become a party thereto, it does so by acceding to the treaty, which may be before or after the treaty comes into force.³

b. *Territorial enforceability*

7. **General.** Ratification makes a treaty enforceable between signatories. Whether newly created States resulting from the breakup of other States (e.g., Yugoslavia and the Soviet Union) or colonial territories reaching independence are bound by treaties entered into before their creation has been the subject of considerable debate.⁴ Different solutions have been proposed or implemented for different categories of treaties. Treaties that include financial obligations have been especially prone to controversy.

8. **Basic principles and the clean slate doctrine.** The current general principle and practice are that, unless there is a formal denunciation, earlier treaties remain in effect. Sometimes, succession is automatic (except when there is a formal declaration to the contrary), and sometimes a formal declaration of adherence is needed for the treaty to apply such as in many African States. Significant examples are the five East African States (Burundi, Kenya, Malawi, Tanzania, and Uganda) that pleaded the so-called clean slate or Nyerere doctrine.⁵ Under this doctrine, these States could not be bound by any treaty signed and ratified prior to independence, even if such treaties were ratified in their name by the colonial power in charge. Whether the instrument was bilateral or multilateral was irrelevant. These States were free to adhere or not to treaties and conventions of their own choice, in all sovereignty, only after they had obtained independence. When Tanzania, on November 16, 1962, adhered through a Declaration of Succession to the 1924 Brussels Convention on certain rules applicable to carriage of cargo by sea under bills of lading, the Tanzanian Government made it clear to the Kingdom of Belgium as depository of the Convention that the words “Declaration of Succession” were purely formal and did not mean that Tanzania recognized inheriting the Convention from Her Majesty’s (British) Government despite the fact that it had extended its own ratification to Tanganyika (this was later known as the Nyerere doctrine). Accession to the 1924 Brussels Convention was a sovereign decision, without a precedent, by the Republic of Tanzania.

9. **Doctrine of succession.** Under this doctrine, States succeed to treaties concluded in their name by another power. However, to be enforceable in the newly independent State, the treaty must have been specifically enforceable when the future State was under foreign control. The case of colonies was complex. In some systems, they had no juridical personality separate from that of the colonizing State. In others, they were fully incorporated, but they may

have not been juridical entities of international law. Certainly, territories under the League of Nations mandate or United Nations trusteeship should have been considered as international law entities. Protectorates, whose governments concluded protectorate treaties, certainly were. Past and consequently present enforceability by succession necessitated a specific proclamation of extension of the Treaty to such a colony or territory, which occurred for a large number of British possessions. Conversely, France tended to issue specific denial of enforceability for its colonies. But it did associate protectorates (Morocco, Tunisia)⁶ and States under mandate (Lebanon) with the ratification of some multilateral conventions (e.g., 1923 Geneva Convention and Statute on the International Regime of Maritime Ports). The Spanish and Portuguese practices seem to have been mixed.

10. **Denunciation and obsolescence.** A treaty, like any agreement or contract, can be denounced. The denunciation can take place when a new treaty on the same subject and whose provisions cannot be reconciled with the provisions of the former treaty has been entered into. For example, the 1885 Berlin convention on the regime of the River Niger expired *de facto* when the 1964 Niamey Convention between Chad, Mali, Niger, and Nigeria came into effect (see Annex VII-35 of this review).

c. *Enforceability under common law regimes*

11. **English law.**⁷ Under English law doctrine and practice, treaties are not self-executing.⁸ They cannot operate by themselves within the State; they require the passage of an enabling statute. Governments or Heads of State may retain the right to sign and perhaps to ratify treaties. However, ratification is in many States the privilege of the legislature. Jurisdiction is divided between the legislative and executive branches, depending on the importance of the instrument. The executive branch can create obligations by signing and ratifying, but only the legislature can decide how the obligation borne with the Treaty is to be performed. In the United Kingdom, for example, an act of Parliament is needed before a treaty can become part of English law. For a treaty to become effective, three successive steps are necessary: signature, ratification, and statute. The record of court decisions indicates that the process is similar in Australia and Canada. And it is likely to be the approach in Anglophone Africa.

12. **U.S. law.**⁹ U.S. law makes a distinction between self-executing and non-self-executing treaties. The former are able to operate automatically, and the latter require enabling acts of municipal legislation before they can function in the country and be accepted by courts. Whether a treaty belongs in one category or the other is left to the interpretation of the courts based on its political content. For example, because of its political content the UN Charter has not been judged to be a self-executing treaty.

d. *Enforceability under civil law regimes*¹⁰

13. **French law.** Under French law, international instruments are valid and applicable as soon as they are ratified and published. Ratification and publication are therefore successive and necessary steps to complete the enabling procedure. Indeed, the courts are strict on the need for publication, including of agreements under simplified format—*accords en forme simplifiée* such as exchange of letters. According to the 1958 French Constitution, ratification is either by an act of parliament or by decree. One criterion for ratification by the legislature is whether the treaty raises issues of public finance since the power of the purse rests with the Parliament. The text of the Treaty is attached verbatim to the text of the act or decree of ratification (the treaty is *de facto* self-executing). Both are then published in the government gazette (*Journal Officiel*). Meanwhile, a rule of reciprocity applies: the treaty is enforceable only if ratified and enforced by the other Contracting Party.

14. **Francophone African States.** Francophone States in Africa follow the civil law model. Treaties are attached to the law or decree of ratification. Both are published in the Government gazette (*Journal Officiel*). The constitutions of a few States such as Rwanda and Burundi (1998, Article 168) or Madagascar (1992, Article 82-VIII) specify that, if the provisions of a treaty are contrary to the Constitution, it cannot be ratified before the Constitution has been modified.

e. *Conclusion*

15. **Enforceability versus enforcement.** The signing of a treaty or an agreement is only a first step toward performing the obligations created by that treaty or agreement. The instrument must be published locally, distributed to the relevant agencies, and its enforcement monitored. A number of treaties solemnly concluded never came in effect as governments had second thoughts and used

delaying or other procedures to escape their obligations. A State may sign a treaty as a gesture of political significance and then delay its ratification indefinitely. Such circumstances apply to some of the treaties and agreements reviewed here. Moreover, when a treaty is formulated in general terms and thus detailed domestic statutes are necessary for its effective enforcement, especially regulations issued by decree and for the guidance of the civil service, failure to issue these statutes renders the treaty ineffective, even if duly ratified, proclaimed, or published. Significantly, the following legal issues have been identified as major legal obstacles to economic integration in Africa:¹¹

- Ratification and implementation of instruments
- Derogation from national sovereignty of Member States
- Diversity and variations of constitutional laws, especially their interaction with public international law
- Dissimilarities and divergence between municipal laws, with local legislation ignoring duly ratified conventions and treaties
- Lack of fully developed and mainly accepted legal principles regulating, for example, contractual liability and liability in tort
- Lack of rules on the conflict of laws
- Poorly equipped courts of law

A more detailed review would be needed to establish whether such problems affect the enforcement of transit and other transport agreements in Africa.

C. RANKING OF NORMS¹²

Whether international instruments prevail over domestic legislation is the second basic issue.

a. *Ranking of norms in common law*

16. **English law and the incorporation doctrine.**¹³ The rule is that international law is part of the law of the land—that is, international law (e.g., treaties) has no *a priori* preeminence. When reviewing statutes in the light of a treaty, English law makes a distinction between statutes that are intended to bring a treaty

or agreement into effect and other statutes. Where the provisions of a statute implementing a treaty are capable of more than one meaning, and if one interpretation is compatible with the terms of the Treaty while others are not, the legislation under review will be construed in a way that avoids a conflict with the international law that is the treaty. But where the words of an existing statute are unambiguous, there is no choice but to apply them irrespective of any conflict with international agreements. The treaty, while incorporated in municipal law (the incorporation doctrine) does not automatically prevail. This is likely to be the rule in Anglophone Africa.

Because of the well-established incorporation doctrine, references to duties under international law are therefore few in the constitutions of the Anglophone states south of the Sahara. Article 40 of the Constitution of Ghana states:

“In its dealings with other nations, the Government shall . . . (c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means; (d) adhere to the principles enshrined in or as the case may be, the aims and ideals of i) the Charter of the United Nations; ii) the Charter of the Organisation of African Unity; iii) the Commonwealth; iv) the Treaty of the Economic Community of West African States; and v) any other international organisation of which Ghana is a member.”

This is a broad statement of policy rather than a specific rule of law that courts may use for guidance in interpreting statutes and treaties. A similar policy statement can be found in Article 14 of the 1975 Constitution of Angola—a civil law country—whereby the State considers itself bound by the principles of the UN Charter and the OAU Charter. Article 144 of the Constitution of Namibia refers to international law, but it places domestic law above international law and agreements, meaning that at any moment the Parliament could free Namibia from a binding obligation. The article stipulates: “Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the laws of Namibia.”

Treaties may be specific as to their rank among legal instruments. For example, Article XVI, 4, of the 1994 Agreement Establishing the World Trade Organization (see chapter II of this review) states: “Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.”

This stipulation refers to the standard trade agreements annexed to the main World Trade Organization Agreement.

17. **U.S. law and the Last in Time doctrine.**¹⁴ U.S. law is even stricter. Early efforts in U.S. constitutional history to make treaties paramount to acts of legislation did not prevail. Treaties and acts of legislation are on the same footing, and in any case the U.S. Constitution prevails domestically as the supreme law of the land, even if it places the United States in violation of international law at the international level. In case of direct conflict between a self-executing treaty and a legislative act or statute of Congress, the last in time prevails (the Last in Time doctrine). At any moment, then, the position of a foreign party to a treaty with the United States, when exposed to the Last in Time doctrine, may be very weak.

b. *Ranking of norms under civil law*

18. **Treaties as paramount in civil law.** Civil law States, whose legal tradition has a strong influence on non-Anglophone African countries, tend to consider international law as paramount to domestic law. According to the 1958 French Constitution:

- Treaties ratified and published operate as laws within the domestic system.
- The provisions of a particular treaty are superior to those of domestic laws, but only if this situation also applies to the other party or parties to the treaty (rule of reciprocity).

The French courts may also declare a statute inapplicable if it conflicts with an earlier treaty—a totally different approach from that taken by the Last in Time doctrine. In fact, then, the courts can prohibit the legislature from issuing a statute that would contradict a treaty. The Basic Law of the Federal Republic of Germany goes further by stating that the general rules of public international law are an integral part of federal law, which goes beyond treaties and includes custom, a major source of international law. Treaties take precedence over laws and directly create rights and duties for the inhabitants of the German territory. In other words, treaties are self-executing.

19. **African States.** Most constitutions of Francophone African States follow the civil law model, using the following wording:¹⁵

“Treaties and agreements ratified or approved in accordance with statutes on the matter, as soon as they are published, shall have an authority

superior to that of laws, contingent upon the application by the other party, for such agreement or treaty.”

This rule is set forth in the Constitutions of Benin (1990, Article 147), Burkina Faso (1991, Article 151), Cameroon (1996, Article 46),¹⁶ the Central African Republic (1994, Article 69), Chad (1996, Article 222), Côte d’Ivoire (2000, Article 88), Guinea (1990, Articles 77 to 79), Mali (1992, Article 116), Mauritania (1990, Article 88), Niger (1996, Article 121) and Senegal (2001, Article 98). Yet it is missing in the Constitutions of the Congo (1992), Gabon (1994) or Madagascar (1991), and in civil law States such as Cabo Verde, São Tomé and Príncipe, and Guinea-Bissau.

20. **Example.** The influence of the civil law doctrine of paramount ranking of treaties is well illustrated by the instruments concerning the West African Economic and Monetary Union (WAEMU). The 1994 Dakar WAEMU Convention between eight Francophone States stipulates a comprehensive regime, clearly owing much to the European Union system:

“Instruments resulting from the Union or issued by the Union take precedence over any past, present or future national legislation. Partner States shall take all necessary measures to eliminate contradictions or overlapping of prior instruments, commitments or conventions entered into or acceded at, with third parties.” (Article 14)

“Regulations issued by WAEMU are directly enforceable in Partner States.” (Article 43)

In addition:

“Directives indicate which results ought to be obtained and as such, are binding obligations for Partner States.”

“The implementation of WAEMU decisions by Partner States is compulsory.”

In WAEMU, only recommendations and opinions are not directly enforceable. All instruments are to be issued with motives. Writs of execution are issued and enforceable in accordance with the domestic rules of civil procedure.

D. PUBLIC LAW VERSUS PRIVATE LAW

21. **Importance of public law.** Many of treaties or conventions reviewed here seem to be instruments oriented toward the performance of government regulatory functions. They deal with issues of public law. In all the institutions described,

it is clear that authorities and government staff are everywhere and in charge. There is hardly any mention of transport professionals, chambers of commerce, consultative procedures, etc. Five exceptions are, however, significant:

- WAEMU officially gives chambers of commerce a role, reflecting the French legal setup. Such a setup considers chambers of commerce to be official entities, representatives of traders who are assigned tasks and missions of public interest such as port and airport management concessions, bonded warehouses, training, etc.
- The Walvis Bay Corridor is essentially a private project in which professionals and operators are organizing a public service of opening two corridors to the hinterland.
- The treaty establishing the Organization for the Harmonization of Business Law in Africa (OHADA), deals with the modernization of business law and law of transport and addresses the problems of the carrier and its clients.
- The Southern African Development Community Treaty provides for private sector representation in the road authorities to be established.
- The 1999 Agreement establishing a uniform river regime and creating the International Commission for the Congo-Oubangui-Sangha provides for the representation of carriers on its Management Committee.

22. Lesser importance given to private law. In many instruments, except third-party insurance schemes, very little attention seems to be paid to the transport operation and to the carrier itself. In fact, they seem to be strangers to the process. Significantly, no State appeared eager to ratify the UN Convention on International Multimodal Transport of Goods. Incoterms¹⁷ and their use are never mentioned. The legal regime of waybills is obscure. How litigation is settled between carriers and shippers and consignees is not known. The shortage of financial resources limits access to law reports and legal periodicals, and impoverished courts of law lack the information needed to adjust their jurisprudence to changing laws and legal doctrines. The information gap is a permanent concern of judges and the bar. Whether the recourse to law courts or arbitration is frequent is unknown.

E. PRESENTATION

23. The **position** of African States in various conventions is described in the rest of this review. Conventions fall into three groups:
- Worldwide conventions, either setting rules of general policy or specific to a transport mode
 - Regional instruments that are valid or projected to be valid in the whole of the African continent
 - Subregional instruments, conventions, and treaties specific to Africa.

Each section or subsection summarizes the stipulations of the convention under discussion and indicates the status of ratification or adhesion. Whether the instrument described is attached as an annex to this review is indicated.

II. Worldwide Conventions

24. **History.** Facilitation and the freedom of movement of vessels, vehicles, and goods are not new. The centuries-old movement for such freedom, inaugurated by Grotius for the sea in the early seventeenth century, developed especially after the creation of the League of Nations in the early 1920s in reaction to the nineteenth century protectionism of many nations. The international and regional conventions presently in effect or recently concluded are therefore not innovations. They are the follow-up, updating, and extension of a movement toward a worldwide free trade system that is now nearly 100 years old.

25. **Presentation.** This chapter presents the worldwide conventions that African countries have used as a basis for drafting their own regional and subregional instruments. Section A deals with the 1947 General Agreement on Tariffs and Trade (GATT) and the 1994 World Trade Organization Agreement. Section B addresses the issue of transit rights. Although it begins by describing the 1921 Barcelona Convention and Statute on Freedom of Transit, it is centered on the 1965 New York Convention on Transit Trade of Landlocked Countries. It refers as well to various maritime conventions that include provisions on facilitation. Section C focuses on Customs conventions, starting with the 1950 Brussels Convention. It includes a number of technical conventions on the Customs regimes of trucks, cars in transit, palletes, and containers, among other things. Section D deals with maritime conventions, notably the liability of sea carriers and related conventions. It includes the important 1965 London Convention on the Facilitation of International Maritime Traffic. Section E identifies rail transport conventions, which seem to play a limited role in Africa. Section F introduces the 1921 Barcelona Convention and Statute on Freedom of Transit, which applies to the navigable waterways of international concern. Section G reports on conventions on road transport. These conventions deal with issues of public law, such as road traffic or road signals, and issues of private law, such as relations between carriers and their clients. In that respect, it introduces the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR). Section H gives information on conventions and rules on multimodal transport, including the 2008 New

York Convention on the matter. It includes presentation of the International Chamber of Commerce Rules for Combined Transport Document, 1975 and 1992. Finally, section I identifies the main conventions on air transport, especially the 1944 Chicago Convention.

A. GENERAL AGREEMENT ON TARIFFS AND TRADE

26. **General.** Signed in 1947 by the industrial States, the General Agreement on Tariffs and Trade was the basis for the development of free trade and the general, systematic reduction of Customs duties that followed its ratification. This agreement was ratified or adhered to by all African States. There was therefore no issue of enforceability.¹⁸ The agreement was later broadened and completed by international negotiations known as the Kennedy Round, Uruguay Round, and Tokyo Round, among others. The objectives of these Rounds were to further open international trade and, in particular, to reduce or eliminate Customs and administrative restrictions to trade and extend enforcement of the most favored nation clause, while providing for some derogations and protective measures when necessary. After the Uruguay Round (1986-94) in which 153 Member States participated, including many developing countries, the World Trade Organization was created. However, the 1947 GATT remained applicable, completed by the provisions of the 1994 GATT.

The text of GATT, filed as No. 814 with the UN Secretariat (reference 35 UN Treaty Series 194), appears in **Annex II-1** of this review. The Agreement Establishing the World Trade Organization, dated April 15, 1994, appears in **Annex II-2**. It was registered with the UN Secretariat as No. I-814.

27. **World Trade Organization (WTO).** The World Trade Organization was established for the development and monitoring of free trade in an open market economy. It is intended to provide “the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments” pertinent to free trade. Most of the African States became members between 1995 and 1997, with the exception of Cabo Verde, which became a member in 2008. The following African countries are WTO members: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, the Central African Republic, Chad, Democratic Republic of the Congo, Côte d’Ivoire, Djibouti, Arab Republic of Egypt,

Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe. Algeria, the Comoros, Equatorial Guinea, Ethiopia, Liberia, Libya, São Tomé and Príncipe, the Seychelles, and Sudan are observers at the WTO. With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

28. **Overview of the WTO.** This wide adherence probably stems from the expansion of the activities pursued by the WTO as opposed to GATT, but also from the need of the developing countries to open up to the new world trade game and benefit from the aid that could be available to develop their infrastructures, especially in transport and trade facilitation. The WTO agreement covers a wide range of activities involved in trade, thereby adapting the 50 years of GATT organization to the requirements of the modern world. The WTO covers trade in goods, but also in services (including financial services), inventions, intellectual property, and telecommunications. In 2001 the WTO added to its work program, at the request of developing countries, agriculture, trade facilitation, and the environment.
29. **Institutions of the WTO.** The highest body of the WTO is the Ministerial Conference, which meets once every two years. The General Council, just below the Ministerial Conference, is composed of ambassadors or other members of Governments. It meets several times a year at the WTO headquarters in Geneva. At the third level are committees and the Council for Trade in Goods, Council for Trade in Services, and Council for Trade-Related Aspects of Intellectual Property Rights, which report to the General Council. A variety of specialized working groups and parties work on specific subjects, such as regional trade agreements and technical barriers to trade. Many international institutions—such as the International Monetary Fund, the World Bank, the Food and Agriculture Organization, the African Union, and the Economic Community of West African States (ECOWAS)—are granted observer status (a new development since the GATT days), which enables them to follow discussions of direct interest to their members.
30. **Developments post-1995.** In 2001 at the meeting of the Fourth Ministerial Conference in Doha, the WTO Goods Council was asked to carry out a specific program to review, clarify, and improve some articles of GATT, as well as to

identify trade facilitation needs, especially for the developing and least-developed countries. Many countries supported the idea of creating new binding rules on transparency, due process, simplification, and nondiscrimination regarding the cross-border movement, release, and clearance of goods, in conformity with the GATT rules. However, developing countries may be reluctant to support new rules as they are not ready to make new commitments and because some of them have limited resources and technical knowledge. African countries are willing to modernize their transit and transport facilitation policies, but they wish to do so through their regional or subregional integration organizations. For this purpose, the WTO has developed a technical assistance and support program for developing countries, especially in Africa.

On December 6, 2013 in their meeting in Bali, the members of the World Trade Organization issued a draft Agreement on Trade Facilitation. According to the Agreement, members should publish all legislation, regulation and information relating to facilitation of foreign trade in a non-discriminatory manner for the benefit of traders and other interested parties. Internet is to be used for that purpose. Inquiry points should be established to answer questions by traders and other interested parties. Advanced ruling should be issued to traders when necessary. Administrative appeal of decision relating to trade and customs should be permitted and impartiality, non-discrimination and transparency should be the rule. Fees should be published. All operations of clearance and delivery of goods should be facilitated and electronic procedures widely used. Agencies in charge of border control should cooperate and coordinate their action. Movement of goods and transit of cargo should be facilitated. Single windows should be established. All regulations should be maintained only when necessary and should be discarded when circumstances make them no longer justified. The WTO shall establish a committee on trade facilitation to follow up the implementation of the agreement. Each member shall establish a similar national committee on trade facilitation.

Special and differential treatment provisions for developing country members and least developed countries shall facilitate the implementation of the provisions of the agreement in these countries, with the objective to develop their implementing capacity. The Agreement remains to be registered and ratified by member governments. It is not therefore attached as an annex to this review. However, it can be viewed under the WTO website.

B. RIGHTS OF TRANSIT AND LANDLOCKED COUNTRIES

a. *1921 Barcelona Convention and Statute on Freedom of Transit*¹⁹

31. **History.** Freedom of transit is essential for landlocked countries. A landlocked country has no seacoast and therefore relies on one or more neighboring States for access to the sea. The 1921 Barcelona Convention is based on the principle that *transit is a service to be rendered to others in the international interest, not a privilege to be the source of undue and excessive benefits, if not straight abuse of a controlling position (position dominante)*. As a follow-up to Article 23(e) of the Covenant of the League of Nations, this Convention was important for its States, many of them being landlocked. It was necessary to obtain from coastal States some recognition of the right of landlocked States to have access to the sea. This right was once included in the 1815 Act of Vienna on the regime of the Rhine and in other nineteenth-century conventions on international rivers. One of the objectives of the 1921 Convention was therefore to provide a mean of enforcing the right of free transit without prejudice to the rights of sovereignty of transit States over the routes available for transit.
32. **Enforceability.** The 1921 Convention is still in force with 42 parties who largely were members of the League of Nations in 1921.²⁰ Hong Kong SAR, not a member in 1921, signed and ratified the Convention in 1997. The United Kingdom ratified for its colonies and protectorates except South Africa, which as a dominion had the right to sign separately. Former British colonies and protectorates in Africa may therefore be bound by the Convention, unless the clean slate or the Nyerere doctrine is invoked. Nigeria, which is not a landlocked country, ratified the Convention in 1967, but Rwanda (1965), Lesotho (1973), Swaziland (1969), and Zimbabwe (1998) formally acceded to it after their independence. It is possible that these landlocked States saw accession as a way of reinforcing their position in their relations with coastal States. Significantly, the preamble to the 1985 Northern Corridor Transit Agreement between Kenya and the landlocked States of Burundi, Rwanda, Uganda and Democratic Republic of the Congo makes express reference to it. Other colonial powers did not automatically ratify it for their colonial possessions. It is therefore not enforceable by all African States. But, even for those, it is an important document as it sets forth the basic principles of any transit policy, especially the transit policies that will be developed and implemented for the benefit of landlocked States.

33. Provisions. The main provisions of the Statute are as follows:

- *Definition of transit (Article 1).* Transit is defined as the passage of persons, goods, means of transport, etc. through a territory that is only a portion of a complete journey beginning and terminating beyond the frontier of the state across whose territory the transit takes place. As noted in the next paragraph, this is in fact a very narrow definition.
- *Sovereignty (Article 2).* This article recognizes the freedom of sovereign governments to make transit arrangements within their territories.
- *Facilitation (Article 2).* Measures taken by Contracting States for regulating and forwarding traffic shall facilitate free transit.
- *Equal treatment (Article 2).* No distinction shall be made based on the nationality of persons, flag of vessel, etc., or any circumstance related to the origin of goods or of means of transport.
- *Dues and tariffs (Articles 3 and 4).* Traffic in transit shall not be subject to any special dues. Dues should be levied only to defray the expenses of supervision and administration. Tariffs shall be reasonable in both their rates and methods of application. They shall be fixed in order to facilitate international traffic. No charges, facilities, or restrictions shall depend, directly or indirectly, on the nationality or ownership of the means of transportation.

The 1921 Barcelona Convention and Statute on Freedom of Transit (reference 7 League of Nations Treaty Series 11) appears in **Annex II-3** of this review.

- 34. Definition of right of transit.** For transit, GATT borrowed from the principles of, and at times reproduced verbatim, the provisions of the 1921 Barcelona Convention and Statute on Freedom of Transit. Article V of GATT deals with the transit of vessels, land vehicles, and cargoes. It defines traffic in transit as traffic whose passage across a territory “is only a portion of a complete journey beginning and terminating beyond the frontier of the country where the passage takes place.” For landlocked countries in Africa, this is a very restrictive definition. If “journey” means the total trip from, say, Antwerp to Niamey through Abidjan, then the truck journey between Abidjan and the Mali frontier is transit. But if the truck journey originating in Abidjan is considered separately, then that fraction of the journey taking place in Côte d’Ivoire is not transit. In other words, the truck loading cargo in Abidjan for Bamako is not

in transit in Côte d'Ivoire, but only in journeying across Burkina Faso. Technically, GATT rules do not apply. And yet the cargo interests in Bamako believe that transit takes place in Côte d'Ivoire as well as in Burkina; after all, under Côte d'Ivoire Customs statutes the goods loaded on the truck are in transit since their final destination is outside Côte d'Ivoire. The definition of transit adopted by GATT and in the 1921 Barcelona Convention did not satisfy the needs of landlocked countries. Encouraged by the United Nations Conference on Trade and Development (UNCTAD), they lobbied for a conference and a convention that would recognize without ambiguity their right of access to the sea. This resulted in the 1965 New York Convention on Transit Trade of Landlocked Countries.

35. **Exercise of right of transit—fairness.** After stating that no distinction shall be made in transit based on the flag of vessels, the place of origin or destination, or the ownership of goods and means of transport, GATT Article V-2 stipulates that “there shall be freedom of transit through the territory of each Contracting Party, via the routes most convenient for international transit, for traffic in transit to or from the territory of Contracting Parties.” Article V-3 states that “such traffic . . . shall not be subject to any unnecessary delays or restrictions and shall be exempt from Customs duties and from . . . all other charges imposed in respect of transit, except charges for transportation or . . . administrative expenses.” Such charges must be reasonable and in relation to the actual administrative costs of service rendered.
36. **Exercise of right of transit—equal treatment.** Charges should be applied equally: each Contracting Party shall accord to traffic in transit to or from the territory of any other Contracting Party no less favorable treatment than the treatment accorded to traffic in transit to and from any third country. The same rule of equal treatment applies to goods and products in transit. Despite the fact that the paragraph of Article V on equal treatment mentions only products (i.e., goods) and not vehicles, it is generally understood that it also applies to trucks and other means of land transport. A State may prohibit or limit traffic of certain heavy vehicles for valid reasons (e.g., night or weekend traffic), provided the restriction is applicable to trucks of all national origins.
37. **Evaluation.** As for facilitation, GATT is incomplete. Its definition of transit is narrow; no reference is made to the specific needs of landlocked countries. It admits a basic right to transit, which can be invoked. A bilateral agreement is necessary for its exercise, and GATT sets forth some of its conditions, such as

the rule of equal treatment, itself derived from the principle of equality between States. But GATT is not self-executing; if no agreement is passed, the basic right of transit is void. This being said, GATT is not ignored. Significantly, Article 77[b] of the Treaty for the WAEMU makes specific reference to it and to the rights and obligations deriving from it. Furthermore, in Article 41 of the 2000 Cotonou Agreement between the European Union (EU) and the African, Caribbean, and Pacific (ACP) States, the Parties reaffirmed their respective commitment to the provisions of GATT. By contrast, WTO trade facilitation-related Article V, which underscores the need “to allow transit traffic to move via the most convenient route; exempt it from Customs or transit duties, and ensure that it is free from delays or restrictions” was for the first time articulated in August 2005 in a common platform of the landlocked developing countries in the WTO negotiations. The goal was to clarify and improve the relevant aspects of terms such as the “most convenient route” as applied to landlocked countries. Later, in December 2005, the Landlocked Developing Countries Ministerial Declaration at the Sixth WTO Ministerial Conference in Hong Kong SAR urged WTO members to address the special problems encountered by the landlocked countries.²¹

b. *Transit trade of landlocked countries—1958 Geneva Convention on the High Seas and 1965 New York Convention on Transit Trade of Landlocked Countries*

38. **Natural right or privilege?**²² The issue of the right of access of landlocked States under international law deserves some consideration and developments. Whether customary international law permits a landlocked State to have access to the sea has generated considerable academic debate among lawyers. For some authors, it is a natural right, for others, only a privilege that has to be authorized by a special treaty. The right, if not natural, seems to have been created or recognized by the General Agreement on Tariffs and Trade. Three other treaties are significant in *how* this right can be exercised:

- 1921 Barcelona Convention and Statute on Freedom of Transit
- 1958 Geneva Convention on the High Seas
- 1965 New York Convention on Transit Trade of Landlocked Countries.

The 1958 and 1965 Conventions are reviewed here. The 1982 United Nations Convention on the Law of the Sea also deals with the issue. It generally considers the right

of landlocked States to participate in exploitation of the surplus of the living resources of the exclusive economic zones of coastal States—a subject not reviewed here.

- 39. 1958 Geneva Convention on the High Seas—general.** ²³ Article 3 of the 1958 Geneva Convention on the High Seas stipulates that States having no seacoast should have free access to the sea, by common agreement with states situated between the sea and such landlocked State. Due consideration would be given to the rights of the coastal State or state of transit. The wording is quite restrictive. The convention was ratified by Burkina Faso (1965), the Central African Republic (1962), Kenya (1969), Lesotho (1973), Madagascar (1962), Malawi (1965), Mauritius (1970), Nigeria (1961), Senegal (1961), Sierra Leone (1962), South Africa (1963), Swaziland (1970), and Uganda (1964). It was signed but not ratified by Ghana (1958), Liberia (1958), and Tunisia (1958). A fair number of African coastal States have therefore not recognized the rights of the landlocked States through this Convention. Conversely, some landlocked States have not seized the opportunity offered here to see their right of access to the sea given recognition.

The relevant extracts of the 1958 Geneva Convention on the High Seas, filed as No. 6465 with the UN Secretariat (reference 450 UN Treaty Series 82) appear in **Annex II-4** of this review.

- 40. Provisions.** Article 3 of the Convention sets forth, explicitly or implicitly, a number of principles on transit and facilitation:
- States having no seacoast have a right to enjoy the freedom of the seas on equal terms with coastal States. Therefore, “they should have free access to the sea.”
 - To this end, access to the sea shall be provided “by common agreement... in conformity with existing international conventions, on a basis of reciprocity.”
 - In ports of the coastal State, equal treatment should be granted to vessels flying the flag of the landlocked State.
 - States situated between the coastal State and the State having no access to the coast shall settle by agreement with the latter all matters related to the right of transit and equal treatment in ports.

41. **Evaluation.** The Convention on the High Seas was probably clumsy in stating that sea access is “free,” as this could be construed as meaning that no charge may be levied for access to the coast. “Unimpaired” would have been more accurate. More important, the wording of the Convention raises the same issues as those of GATT. Quite clearly, it stipulates that the right of access can only result from a bilateral agreement between the concerned States. The Convention has no direct effect or imperative force. It creates an obligation to negotiate and execute an agreement (“access...shall be provided...by...agreement”), but no deadline is set for an agreement to be concluded, or any sanction if no agreement is concluded. The Convention was not norm creating.
42. **1965 New York Convention on Transit Trade of Landlocked Countries.** The Convention was concluded in New York on July 8, 1965, together with the Final Act of the United Nations Conference on the subject. In force since June 9, 1967, the Convention was ratified or acceded to by Burkina Faso (1987), Burundi (1968), the Central African Republic (1989), Chad (1967), Lesotho (1969), Malawi (1966), Mali (1967), Niger (1966), Nigeria (1966), Rwanda (1968), Senegal (1985), Swaziland (1969), and Zambia (1966). Cameroon, Sudan, and Uganda signed it in 1965 but did not ratify. There is therefore an issue of enforceability. Clearly, a number of coastal States may have elected to leave the matter to bilateral agreements rather than recognize a fundamental right of landlocked States through a multilateral convention. However, the 1994 Maritime Transport Charter contains commitments by all signatory states on the rights of landlocked States of the region. A State not bound by the 1965 New York Convention may be bound by the Maritime Transport Charter, which was not, however, filed with the UN Secretariat and apparently is not self-enforcing.
43. **Provisions of the 1965 New York Convention.** This Convention went a step further than earlier instruments by recognizing in its preamble that “the transit trade of landlocked countries, comprising one fifth of the nations of the world, is of the utmost importance to economic co-operation and expansion of international trade” and stipulating in its Principle IV that in order to promote fully the economic development of the landlocked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit, in such a manner that they have free access to regional and International trade in all circumstances and for every type of goods. Goods in transit should not be subject to any customs duty. Means of transport in transit should not be

subject to special taxes or charges higher than those levied for the use of means of transport of the transit country.

Principle III of the Convention stipulates that States having no sea coast should have free access to the sea, based on common agreement with the transit State, which would grant ships flying the flag of the landlocked State treatment equal to that accorded to their own ships or to the ships of any other State as regards access to sea ports and the use of such ports. This formulation is less than originally requested by a group of landlocked States from all continents (including Mali and Zambia) that wanted right of access to be not dependent on bilateral agreements with coastal States; they would have preferred a self-enforcing instrument. The Organization of African Unity (OAU) itself stated in a declaration prior to the opening of negotiations on the treaty that “African States endorse the right of access to and from the sea by landlocked countries.” Still, Nigeria, a coastal State, insisted on the need for bilateral or regional conventions setting forth the conditions for exercise of such a right. Again, and despite the principle formulated by GATT, there was a failure to recognize the right of access as a basic and self-executing right of landlocked States.

44. Incomplete ratification or accession. Significantly, all African countries that ratified the Convention on Transit Trade to Landlocked Countries or acceded to it were landlocked except Senegal and Nigeria. Despite their formal commitments in favor of landlocked countries in regional and subregional treaties and protocols, all the other coastal States ignored the 1965 New York Convention, again perhaps because they wanted to draw the maximum from bilateral agreements without recognizing the basic rights and adhering to the principles formulated in the Convention. This stance may indicate suspicion toward multilateral worldwide treaties and a preference for regional agreements. Also significant, in 1968 Chad and the Central African Republic, both landlocked, denounced the 1964 Brazzaville Treaty on the Economic and Customs Union of Central Africa since no agreement could be obtained on compensation from the coastal States for limitations suffered by the landlocked countries of the subregion. Over the years, the situation has improved; regional and subregional instruments reflect acceptance of the special rights of landlocked States. For example, Article 378 of the CEMAC (Central African Economic and Monetary Community) Shipping Code expressly refers to specific agreements to be executed between landlocked and coastal States in accordance with the 1965 New York Convention on the Transit Trade of Landlocked States. Finally, non-ratifying States of the Convention are parties to the 2000 Cotonou

Agreement, which acknowledges the limitations suffered by the landlocked States and their right to specific corrective measures. Thus coastal States are not bound by one convention, but bound by the other.

45. **Rights of transit States.** Principle V in the preamble of the 1965 New York Convention states that transit States have the right to take all necessary measures to ensure that the exercise by landlocked countries of the rights and facilities provided by the Convention *do not infringe on their legitimate interests*. It has been pointed out that it is, however, silent on the question of who is entitled to determine, and using which criteria, the existence and nature of such legitimate interests.

The 1965 New York Convention on Transit Trade of Landlocked Countries, filed as No. 8641 with the UN Secretariat (reference 597 UN Treaty Series 3), appears in **Annex II-5** of this review.

46. **United Nations Convention on the Law of the Sea (also known as the Montego Bay Convention).** This UN Convention defines the rights and responsibilities of nations in their use of the oceans. It replaced the four treaties ratified in 1958 after the first Conference on the Law of the Seas held in Geneva in 1956. The Convention came into force in 1994.
47. As of November 2013, 166 countries and the European Union have joined the Convention, including most African countries. Many have joined with reservations about several of its provisions. The following landlocked African countries signed or ratified the Convention: (1) ratified: Botswana (1990), Burkina Faso (2005), Chad (2009), Lesotho (2007), Malawi (2010), Mali (1985), Uganda (1990), Zambia (1983), and Zimbabwe (1993); (2) signed but did not ratify: Burundi (1982), Central African Republic (1984), Ethiopia (1982), Niger and Rwanda (1982), and Swaziland (1984). Almost all the coastal and island countries ratified the Convention: Algeria (1996), Angola (1990), Benin (1997), Cameroon (1985), Cabo Verde (1987), the Comoros (1994), Democratic Republic of the Congo (1989), Congo (2008), Côte d'Ivoire (1984), Djibouti (1991), Egypt (1983), Equatorial Guinea (1997), Gabon (1998), The Gambia (1984), Ghana (1983), Guinea (1985), Guinea-Bissau (1986), Kenya (1989), Liberia (2008), Madagascar (2001), Mauritania (1996), Mauritius (1994), Morocco (2007), Mozambique (1997), Namibia (1983), Nigeria (1986), São Tomé and Príncipe (1987), Senegal (1984), the Seychelles (1991), Sierra Leone (1994), Somalia (1989), South Africa (1997), Sudan (1985), Togo

(1985), Tanzania (1985), and Tunisia (1985). Libya signed in 1984 but did not ratify the Convention.

- 48. Specific provisions.** This Convention devotes an entire chapter to landlocked States. Part X of the Convention deals with the right of access of landlocked States to and from the sea and freedom of transit.

Article 125 states:

Landlocked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention, including those relating to the freedom of the high seas and the common heritage of mankind. To this end, landlocked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

The terms and modalities for exercising freedom of transit shall be agreed between the landlocked States and transit States concerned through bilateral, subregional or regional agreements.

Article 127 (2) on Customs duties, taxes and other charges goes further and establishes the principle of equality: “Means of transport in transit and other facilities provided for and used by landlocked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.”

The formulation of Article 125 (1) and (2) looks similar to that of the 1965 New York Convention. However, it goes further as it establishes the right of access to the sea as a natural right. The emphasis on exercising this natural right through bilateral or regional agreements only encourages the Parties to acknowledge the existence of this right through cooperation and initiates the development of regional integration tools. Going back to 1965, the rules related to regional or subregional laws were not well developed. In 1982, the Sub-Saharan African countries were more comfortable with each other and had confidence in their respective capacities to create and manage regional organizations. For this purpose, the landlocked States in Africa are all members of regional or subregional organizations or Regional Economic Communities.

The formulation of Article 127 (2) goes beyond what was offered by the 1965 New York Convention on Transit Trade of Landlocked Countries. The principle of equality between the landlocked State and the transit State is affirmed. This affirmation is totally in line with the international trend of treating all countries fairly to promote the rule of law and justice.

49. **Evaluation.** This Convention has been ratified by almost all African countries, whether landlocked or coastal. The reason is probably the tendency of the Convention to erect the right of access as a natural right without infringing on the right of the coastal State to participate in the implementation of the exercise of this right. This Convention has reached a compromise by satisfying all the concerned parties. The reason for its large adhesion can also be found in the opportunity for members to resolve disputes before the International Court of Justice. It can be viewed as a guarantee, especially for landlocked States, that those States will see their right protected by a neutral and objective tribunal. Indeed, the provisions of Article 287 (1) (b) give the Parties to the Convention the possibility of opting for the International Court to resolve their dispute.

The Convention appears in **Annex II-6** of this review.

50. **Almaty Programme of Action.** The “Almaty Programme of Action: Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries” was adopted in 2003. The overarching goal of the Almaty Programme of Action is to forge partnerships to overcome the specific problems of the landlocked developing countries that result from their lack of territorial access to the sea and their remoteness and isolation from world markets. That situation has contributed to their relative poverty, substantially inflating transportation costs and lowering their effective participation in international trade.
51. **Objective.** The objective of the Programme is to establish a new global framework for developing efficient transit transport systems in landlocked and transit developing countries, taking into account the interests of both categories of countries. The Program aims to (1) secure access to and from the sea by all means of transport; (2) reduce costs and improve services as to increase the competitiveness of countries’ exports; (3) reduce the delivered costs of imports; (4) address problems of delays and uncertainties in trade routes; (5) develop adequate national networks; (6) reduce loss, damage, and deterioration en route; (7) open the way for export expansion; and (8) improve the safety of road transport and the security of people along corridors.
52. **Evaluation.** The transport and transit facilitation issues of landlocked countries have become one of the main focuses of international organizations. A

comprehensive 10-year review of the implementation of the Almaty Programme of Action is planned for 2014. A series of preparatory meetings are preceding this review, and the general conclusion is that significant achievements have been made in meeting the targets of the initial program, but that much remains to be done to connect landlocked countries to global markets. It is likely that the Programme of Action will be continued after 2014, perhaps in an updated form that will reflect the developments to date.

The Almaty Programme of Action appears in **Annex II-7** of this review.

C. CUSTOMS CONVENTIONS

- 53. History.** The Convention Establishing a Customs Cooperation Council was concluded in Brussels on December 15, 1950, by 13 European States, together with a protocol on the Study Group for the European Customs Union. The Convention was opened for accession by any State as of April 1955. As of November 2013, 179 States had acceded to the Convention. The Customs Cooperation Council is now known as the World Customs Organization. The African States members are Algeria (1983), Angola (1990), Benin (1998), Botswana (1978), Burkina Faso (1966), Burundi (1964), Cameroon (1965), Cabo Verde (1992), Central African Republic (1986), Chad (2005), Côte d'Ivoire (1963), Democratic Republic of the Congo (1972), Djibouti (2008), Egypt (1983), Eritrea (1995), Ethiopia (1973), Gabon (1965), Ghana (1968), Guinea (1991), Guinea-Bissau (2010), Kenya (1965), Lesotho (1978), Liberia (1975), Libya (1983), Madagascar (1964), Malawi (1966), Mali (1987), Mauritania (1979), Mauritius (1973), Morocco (1998), Mozambique (1987), Namibia (1992), Niger (1981), Nigeria (1963), Congo (1975), Rwanda (1964), Sao Tome & Principe (2009), Senegal (1976), Seychelles (2000), Sierra Leone (1975), Somalia (2012), South Africa (1964), South Sudan (2012), Sudan (1998), Swaziland (1981), Tanzania (1964), The Comoros (1993), The Gambia (1987), Togo (1995), Tunisia (1998), Uganda (1964), Zambia (1978), Zimbabwe (1981).
- 54.** The 1950 Brussels Convention establishing the Customs Cooperation Council was registered as No. 2052 by the UN Secretariat. It was published in the UN Treaty Series (vol. 171, no. 305). The protocol related to the Study Group is registered as No. 2111 and is also in the UN Treaty Series (vol. 160, no. 267).

55. **Objectives.** The objectives of the Convention are (1) to secure the highest degree of harmony and uniformity in Customs systems; (2) to study the problems inherent to the development and improvement of Customs techniques and legislation; and (3) to develop cooperation in Customs matters.
56. **Provisions.** The Convention creates a Customs Cooperation Council in Brussels (Article I); all signatories or States acceding to the Convention are members. Each State has one representative on the Council (Article II), which has the following main functions (Article III):
- To study all matters related to Customs cooperation
 - To examine the technical aspects of and economic factors related to Customs systems and operations
 - To prepare draft Customs conventions
 - To make recommendations to governments to ensure a uniform interpretation of Customs conventions
 - To issue and circulate information on regulations and procedures.
57. **Organization (Article VI).** The Council elects its chairperson and vice-chair for a one-year term. The Council has a Nomenclature Committee, Valuation Committee, Permanent Technical Committee, and General Secretary (Article IX). The Council establishes with the United Nations and any of its organs or agencies relations that best ensure collaboration in the achievement of their respective tasks. It also establishes relations with nongovernmental organizations interested in matters within its competence. An annex to the Convention sets forth provisions on the Council's legal statute, privileges, and immunities.

The text appears in **Annex II-8** of this review.

- a. *1923 Geneva Convention and 1973 Kyoto Convention on the Simplification and Harmonization of Customs Procedures*
58. **1923 Geneva Convention.** In its effort to pursue significant international cooperation over the decade of the 1920s, the League of Nations, based on Article 23 of its charter on the fair treatment of international trade, prepared and proposed a first convention on the simplification of Customs procedures. The Convention was concluded in Geneva on November 8, 1923. This Convention

is still in existence as it has been acceded to by Niger (1966), a State that has not yet ratified the 1973 Kyoto Convention, which superseded the 1923 Geneva Convention.

The 1923 Geneva Convention based the Customs regime on fairness (Article 2). But for its authors, fairness went beyond procedures and facilitation. The Convention was a first instrument for the opening of international trade, long before GATT, the Uruguay Round, and other international agreements on the subject. Its Article 3 therefore deplored the obstacles to international trade represented by prohibitions and restrictions; these should be reduced to as few as possible with a regime of import licenses, if necessary, as flexible as possible. Measures should be taken (Article 7) so that Customs legislation, regulations, and procedures are not enforced arbitrarily. Despite its interest in the history of facilitation, the 1923 Convention is a residual document, and thus its text is not annexed to this review.²⁴

59. **1973 Kyoto Convention on the Simplification and Harmonization of Customs Procedures.** This Convention entered into force in September 1974. As of June 30, 2012, the African Parties to it were Burundi (1974), Cameroon (1977), Côte d'Ivoire (1978), The Gambia (1974), and Malawi (1993).
60. **Scope.** The Convention was drafted under the auspices of the World Customs Organization formerly the Customs Cooperation Council). However, the word *procedures* as used in the Convention should not be interpreted narrowly as applying only to Customs formalities. It means all processes of foreign trade. Significantly, although the English text uses the word *procedures*, the French text uses the word *régime*, implying that the objective of simplification and harmonization is located well beyond the limited domain of procedures.
61. **Structure and contents.** The Convention proposes definitions of Customs terms, standards, and recommended practices. It is drafted in very broad terms. Standards and recommended practices are described in annexes to the Convention. Parties to it must accept, with or without reservations, at least one annex and implement its provisions. They may accept one and not the others, or refrain from enforcing a procedure recommended in one, provided that they formulate the necessary reservation(s) at the time of ratifying the annex. States should notify the World Customs Organization of the differences between their national legislation and the provisions of the annexes to be adopted. Such communication encourages the Contracting Parties to modify their legislation to bring it in line with the provisions of the annexes; it also

provides the Secretariat of the WCO with the necessary information on Customs practices and procedures in the State. Facilities granted under the Convention are a minimum; States are free to grant more favorable conditions.

The 1973 Kyoto Convention was filed as No. 13561 with the UN Secretariat (reference 950 UN Treaty Series 269).

62. Revision. The revised version of the Kyoto Convention was adopted in 1999²⁵ and entered into force on February 3, 2006. The Protocol of Amendment to the Convention on the Simplification and Harmonization of Customs Procedures is registered with the UN Secretariat as No. A-13561. The revised Kyoto Convention appears in **Annex II-9** of this review. It elaborates several key governing principles, chief among them the following:

- Transparency and predictability of Customs actions
- Standardization and simplification of the goods declaration and supporting documents
- Simplified procedures for authorized persons
- Maximum use of information technology
- Minimum necessary Customs control to ensure compliance
- Use of risk management and audit-based controls
- Coordinated interventions with other border agencies
- Partnership with the trade

The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. The revised Convention contains new and obligatory rules for its application, which all Contracting Parties must accept without reservation. The African States that are Contracting Parties are Algeria (1999), Botswana (2006), Egypt (2008), Kenya (2010), Lesotho (2000), Madagascar (2007), Mali (2010), Mauritius (2008), Morocco (2000), Namibia (2006), Nigeria (2012), Rwanda (2011), Senegal (2006), South Africa (2004), Sudan (2009), Uganda (2002), Zambia (2006), and Zimbabwe (2003). The Democratic Republic of the Congo signed the Convention in 2000 but did not ratify it. Although the ratification situation is rather good, the 25 annexes and chapters to the Convention—paramount for its proper implementation, have been meagerly

accepted by the Parties, with the notable exceptions of Algeria (24 annexes), Egypt (all 25), Madagascar (23), Mauritius (19), Uganda (all 25), and Zimbabwe (all 25).

b. *1982 Geneva International Convention on the Harmonization of Frontier Control of Goods*

- 63. General.** This Convention is a useful complement to the Kyoto Convention. It was concluded on October 21, 1982, and, unhappily for the facilitation of trade in Africa, has been ratified only by South Africa (1987), Lesotho (1988), Liberia (2005), Tunisia (2009), and Morocco (2012). The other Parties are mainly European States.²⁶ Its aim is to reduce “the requirements for completing formalities as well as the number and duration of controls, in particular by national and international co-ordination of control procedures and of their methods of application”²⁷.
- 64. Sources of harmonization (Articles 4 to 9).** Harmonization of control and procedures is ensured by (1) a sufficient number of qualified personnel consistent with traffic requirements; (2) adequate equipment and facilities; and (3) official instructions to Customs officers. Opening and controlling hours should be harmonized between adjacent countries, and information shall be exchanged. The Contracting Parties shall endeavor to use documents aligned with the United Nations Layout Key. Documents produced by any appropriate technical process shall be accepted, provided they are legible, understandable, and comply with official regulations.
- 65. Goods in transit (Article 10).** The Contracting Parties shall whenever possible provide simple and speedy treatment of goods in transit, especially for those traveling under cover of an international transit procedure, limiting inspections to cases in which they are warranted by the actual circumstances or risks. The situation of landlocked countries shall especially be taken in consideration. The transit of goods in containers or other load units affording adequate security shall be facilitated to the utmost.
- 66. Annexes.** Nine annexes to the Convention deal with implementation:
- *Annex 1.* Harmonization of Customs controls and other controls
 - *Annex 2.* Medico-sanitary inspections, with special provisions for goods in transit

- *Annex 3.* Veterinary inspections, with special provisions for goods in transit
- *Annex 4.* Phytosanitary inspections
- *Annex 5.* Control of compliance with technical standards
- *Annex 6.* Quality control
- *Annex 7.* Rules of procedure of the Administrative Committee to be established for amending the Convention if needed
- *Annex 8.* Facilitation of border crossing procedures for international road transport (introducing a mutually recognized International Technical Inspection Certificate and International Vehicle Weight Certificate)
- *Annex 9.* Facilitation of border crossing procedures for international rail freight (allowing the use of a joint CIM/SMGS railway consignment note, which at the same time could be a Customs document instead of the other shipping documents)

The 1982 Geneva International Convention on the Harmonization of Frontier Control of Goods, filed as No. 23583 with the UN Secretariat (reference 1409 UN Treaty Series 3), appears in **Annex II-10** of this review.

c. *1977 Nairobi Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences*

67. Scope and structure. This Convention is a follow-up to the 1950 Brussels Convention establishing the Customs Cooperation Council and organizing Customs cooperation. Its objectives are to establish effective cooperation between the Customs entities of States in order to prevent and repress Customs offenses detrimental to the interests of trade and the economic and financial interests of States. The Convention is composed of the main text and 10 annexes, which are integral part of the Convention. Each annex describes an area of cooperation and assistance:

- Assistance by a Customs administration on its own initiative
- Assistance in the assessment of dues and taxes
- Assistance related to controls and inquiries
- Appearance of Customs officials at a court abroad
- Presence of Customs officials in the territory of another party
- Pooling of information

- Participation in investigation abroad
- Assistance related to surveillance
- Assistance in action against smuggling drugs
- Assistance in action against smuggling works of art

No reservation on the Convention is accepted, but Contracting Parties may either accept all annexes or select one or more, and decline the others. This approach may hamper cooperation, but it eliminates or reduces the chances of conflicts of laws or frontier incidents. Niger, for example, accepted six annexes out of 10; it did not accept assistance related to surveillance.

- 68. Enforceability.** The Convention came into force on May 21, 1980. It was ratified or acceded to by Algeria (1988), Côte d'Ivoire (1983), Kenya (1983), Malawi (1978), Mauritius (1985), Morocco (1980), Niger (1989), Nigeria (1984), Senegal (1992), the Seychelles (2012), South Africa (1993), Swaziland (2000), Togo (1991), Tunisia (1983), Uganda (1989), Zambia (1984), and Zimbabwe (1982). The inadequate rate of ratification in West Africa has been partially offset by the signing of the 1982 Cotonou Convention for Mutual Administrative Assistance in Customs Matters (see **Annex VII-28** of this review).
- 69. Provisions.** While setting forth the rule of cooperation between Customs agencies, the Convention seems anxious to prevent any abuse. The main provisions of the Convention are the following:
- The Customs administration of a Party to the Convention may request mutual assistance in the course of any investigation or in connection with any administrative or judicial proceedings, within the limits of its competence. On this point, the Convention may reflect a concern that a Customs administration may be tempted to either invade the turf of other agencies or act *ultra vires*, thereby infringing on legitimate public or private interests, the individual rights of citizens or foreigners, or others.
 - Mutual assistance does not extend to the arrest of persons or to the collection of duties, fines, or other monies.
 - Any intelligence, document, and other information communicated or obtained under the Convention may be used only for the purposes specified in the Convention. All communications will pass directly between the interested Customs departments.

- The capacity of assistance is to be reciprocal. If the Customs department of a Contracting Party requests assistance that it could not give if it were asked to do so, it must inform the other party, who may or may not provide the requested assistance.

The 1977 Nairobi Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences was filed as No. 19805 with the UN Secretariat (reference 1226 UN Treaty Series 143) and appears in **Annex II-11** of this review.

d. *1972 Geneva Customs Convention on Containers and related conventions*

70. Scope and objectives. Three conventions are considered:

- The 1972 Customs Convention on Containers , concluded in Geneva on December 2, 1972 under the auspices of the United Nations/International Maritime Organization. Its objective is to permit the fast, easy movement of containers and their temporary admission to countries open to international trade. This Convention superseded the first Customs Convention on Containers, dated May 28, 1956.
- The 1994 (January 21) Convention on Customs Treatment of Pool Containers Used in International Transport, concluded under the auspices of UNECE. Its objectives are also to facilitate the Customs treatment of that category of containers.
- The 1960 (October 6) Customs Convention on the Temporary Importation of Packings, concluded under the auspices of the World Customs Organization with a similar objective and similar provisions.

71. Enforceability. The status of enforceability is diverse and complex:

- The 1972 Customs Convention on Containers was ratified by Algeria (1978), Burundi (1998), Liberia (2005), Morocco (1990), and Tunisia (2009). Kenya, Malawi, Uganda, and The Gambia acceded to the earlier and now obsolete 1956 Customs Convention on Containers.
- The following African countries ratified the 1962 Convention on the Temporary Importation of Packings: Algeria (1988), the Central African Republic (1962), Egypt (1963), Kenya (1983), Lesotho (1982), South Africa (1973), Uganda (1970), and Zimbabwe (1987).

- The 1994 Convention on Customs Treatment of Pool Containers Used in International Transport was signed by Uganda (1994) but not ratified; Liberia ratified the Convention in 2005. The Convention has been in force since 1998, mainly in European countries.

The number of African States that ratified the conventions just listed is not significant. However, Annex III to Protocol No. 3 attached to the Northern Corridor Transit & Transport Agreement (NCTTA) of 2007 between Burundi, Democratic Republic of the Congo, Kenya, Rwanda, and Uganda stipulates that the Parties to the Agreement undertake to accept transport units (containers) approved in accordance with the 1972 Customs Convention on Containers and its predecessor of 1956. The result is that, for the Corridor, all the countries are bound by the NCTTA, whereas for the rest of their territories Kenya and Uganda are bound by the 1956 Convention and Burundi is bound by the 1972 Convention.

The 1956 Geneva Customs Convention on Containers is filed as No. 4834 with the UN Secretariat (reference 338 UN Treaty Series 103) and appears in **Annex II-12** of this review.

The 1972 Geneva Customs Convention on Containers is filed as No. 14449 with the UN Secretariat (reference 988 UN Treaty Series 43) and appears in **Annex II-13** of this review.

The 1960 Brussels Convention on the Temporary Importation of Packings, filed as No. 6861 with the UN Secretariat (reference 473 UN Treaty Series 131), appears in **Annex II-14** of this review.

The 1994 Convention on Customs Treatment of Pool Containers Used in International Transport was filed as No. 34301 and is published in the UN Treaty Series (vol. 2000, no. 289).

72. Containers. The annexes to the 1972 Customs Convention on Containers set forth in detail the technical characteristics of containers and of their markings. According to the Convention:

- Each Contracting Party shall grant temporary admission to containers, whether empty or loaded, for a period of up to three months, which may be extended.
- Containers may be re-exported through any competent Customs office, even if that office is different from the office of temporary admission.

- Containers under temporary admission may be used one single time for domestic traffic.
 - To qualify for approval for goods transport under Customs seal, containers must comply with regulations set out as an annex to the Convention. However, containers approved by a Contracting Party for transport under Customs seal and meeting the conditions set forth in the regulations shall be accepted by the other Contracting Parties for any system of international carriage involving sealing of containers. Contracting Parties shall avoid delaying traffic when defects found in a container are of minor importance and do not involve any risk of smuggling.
73. **Application to Africa.** African countries should be encouraged to request accession to this Convention. Significantly, the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975 (TIR stands for *Transports Internationaux Routiers* or International Road Transport) stipulates that containers approved for the transport of goods under the 1972 convention shall be considered as complying with the provisions of the 1975 TIR Convention.
74. **Pallets and packings.** These two Conventions contain similar provisions. Pallets and packings may be imported temporarily for three to six months, provided they are re-exported. Specific provisions apply to pallets and packings destroyed or damaged during their temporary period of importation.
- e. *Customs conventions dealing with the temporary importation of goods*
75. These instruments are as follows:
- The main and central instrument in this respect is the 1961 Customs Convention on the ATA Carnet for Temporary Admission of Goods, reviewed in this section. The three other instruments listed here were drawn along the same lines. They are not analyzed in detail here.
 - The Customs Convention on the Temporary Importation of Professional Equipment (Brussels, June 8, 1961) had been, as of July 2006, ratified by Algeria, the Central African Republic, Egypt, Kenya, Lesotho, Madagascar, Niger, South Africa, Tunisia, Uganda, and Zimbabwe (filed with UN Secretariat as No. 6862; UN Treaty Series, vol. 473, no. 153).

- The Customs Convention on the Temporary Admission of Scientific Equipment (Brussels, June 11, 1968) was ratified as of July 2006 by Benin, Chad, Cameroon, Gabon, Ghana, Kenya, Lesotho, Mali, Niger, Nigeria, Senegal, South Africa, Uganda, and Zimbabwe (filed with UN Secretariat as No. 5667; UN Treaty Series, vol. 690, no. 97).
 - The Customs Convention on the Temporary Admission of Pedagogic Material (Brussels, June 8, 1970) was ratified as of July 2006 by Cameroon, Lesotho, Mali, Niger, Rwanda, Senegal, Somalia, South Africa, Uganda, Togo, and Zimbabwe (filed with UN Secretariat as No. 11650; UN Treaty Series, vol. 817, no. 313).
- 76. ATA Convention.** The Customs Convention on the ATA Carnet for Temporary Admission of Goods was signed in Brussels on December 6, 1961. According to UN records, it was ratified or acceded to by Algeria (1973), Côte d'Ivoire (1962), Egypt (1968), Lesotho (1983), Mauritius (1982), Morocco (1996), Niger (1978), Nigeria (1973), Senegal (1977), South Africa (1975), and Tunisia (1971). The ATA Convention was filed with the UN Secretariat as No. 6864 and appears in the UN Treaty Series (vol. 473, no. 219).
- 77. Provisions.** The ATA (temporary admission) system of temporary admission of goods is based on a system of guarantee of payment for Customs dues by agreed-on professional associations such as chambers of commerce. These associations issue ATA carnets valid for a maximum of one year that describe the goods for temporary admission and indicate their value. The recourse to carnets is strictly reserved for goods in transit to be re-exported. Goods intended for processing or repair shall not be imported under ATA carnets (Article 3). In the case of noncompliance with conditions of temporary admission or transit, the association issuing the carnet pays the import dues and any other sum that may be payable but limited to 10 percent of the Customs dues (Article 5). Importers are jointly and severally liable for payment (same). It is up to the association issuing the carnets to provide evidence of the re-export of goods (Article 6). As protection against possible abuses, the Convention stipulates that the service of carnets at Customs offices shall not be subject to the payment of charges “for Customs attendance...during the normal hours of business” (Article 10).

The Convention is not annexed to this review.

D. MARITIME CONVENTIONS

78. **Scope.** Maritime conventions are numerous and fall into two categories: public law or private law.

79. **Public law conventions.** The High Seas Convention (Geneva, 1958), setting forth the basic principles of freedom of the seas and coastal States' control of the waters adjacent to their shores, opens the way. A first subcategory then deals with the safety of ships and shipping. Examples are the 1955 London Convention on Load Lines and the 1910 Brussels Convention on Unification of Rules of Law with Respect to Collisions between Vessels. A second subcategory deals with conservation and environment, such as the 1969 Convention on Intervention in High Seas in Case of Accidental Pollution or the 1954 Convention for the Prevention of Maritime Pollution (MARPOL). Among these conventions two are of special interest in terms of facilitation.

- 1923 Geneva Convention and Statute on the International Regime of Maritime Ports
- 1965 London Convention on Facilitation of International Maritime Traffic.

80. **Private law conventions.** The second category deals with the commercial aspects of shipping, like (1) liability for sea carriage (Brussels/Visby and Hamburg Rules) and (2) shipowner's liability. Instruments in these categories have an indirect relationship with facilitation since adherence to their rules develops uniformity of commercial practice, makes shippers and carriers feel safer, and therefore have an impact on freight rates and insurance premiums. These conventions and their status of ratification or accession are reviewed briefly:

- 1924 Brussels Convention on the unification of certain rules of law relating to bills of lading (later amended as Visby Rules)
- 1978 (Hamburg Rules) Convention on the Carriage of Goods by Sea
- 1991 Vienna Convention on the Liability of Terminal Operators
- Conventions on the unification of rules relating to the limitation of liability of owners of seagoing vessels.

- a. *1923 Geneva Convention and Statute on the International Regime of Maritime Ports*
81. **General.** This Convention is one of those from the years 1921–29 by which, after the signing of the Treaty of Versailles, the League of Nations engaged in an effort to encourage States to open their economies and cooperate in an overall facilitation of international trade. It is well in line with the 1921 Barcelona Convention and Statute on Freedom of Transit. The Convention is binding to not only governments and their port authorities but also all concessionaires and terminals “of any kind.” It is clearly a norm-creating and self-executing instrument.
82. **Enforceability.** This Convention was adhered to by the United Kingdom on September 2, 1925, for Cameroon (as British Mandate of Cameroon), The Gambia, Ghana (as Gold Coast), Kenya, Mauritius, Nigeria, Sierra Leone, Somaliland, Tanganyika, and Zanzibar. By contrast, France specifically excluded from its adhesion (December 1, 1924) all of its colonies, protectorates, and other dependencies. As a result, the Convention was acceded to by Burkina Faso (1966), Côte d’Ivoire (1966), and Madagascar (1967) after their independence, as well as by Mauritius (1969), Morocco (1972), Nigeria (1967), and Zimbabwe (1998).
83. **Issue.** Whether foreign vessels have a basic right of access to a port is the subject of dispute in international law.²⁸ International custom does not recognize such a right. English law does, however, and the Dangerous Vessels Act of 1995 in the United Kingdom gives port authorities the powers needed to prohibit the entry of such vessels. French law submits any entry to authorization issued by the sole harbormaster, and the courts grant that official total freedom of appreciation. The problem has become more acute, however, with the risk of pollution of port waters, and there is a trend toward prohibition rather than recognition of the right to entry. But in all legal systems any refusal of entry must be justified by a valid reason.
84. **The Convention.** It does not stipulate explicitly an automatic right of entry, but it does set forth a rule of equal treatment between national and foreign vessels for “freedom of entry, utilization and the complete use of port facilities.” There is therefore the implicit recognition of a right to entry, which may be restricted “for reasons of good administration” provided the principle of equal treatment is safeguarded.

The regime is therefore as follows:

- *Definition (Article 1)*. A maritime port is a port normally frequented by seagoing vessels and used for foreign trade.
- *Equal treatment of vessels (Article 2)*. Equal treatment of all vessels, either national or foreign, in ports of the States Party to the Convention in berthing, loading and unloading, port dues, rates and services in general.
- *Publication of tariffs (Article 4)*. All schedules of port dues and charges should be published before being applicable.
- *Equal treatment in dues (Articles 5 to 7)*. Equal treatment of all cargoes in Customs and other duties and rates whatever the flag of the vessel on which such cargoes are imported or exported. Exception to the rule based on special economic or other conditions shall not be used as a means of discriminating unfairly.
- *Pilotage and towage (Article 11)*. Each State may organize port towage and pilotage services as it considers fit, subject to conditions of equal treatment.

The Convention admits the right of and the need for local port authorities to limit and restrict port access in exceptional circumstances, provided the measures taken are applied equally to all vessels and goods without unjustified discrimination based on flag of vessel, origin or destination of cargo, etc. The Convention does not apply to coastal traffic and to fishing vessels and their catches.

85. Application to goods carried by rail. The provisions of Article 6 of the Convention are of special interest. They apply the provisions of Articles 4 and 20 to 22 of the 1923 Geneva Convention and Statute on the International Regime of Railways to parties, whether or not the State Party to the Convention on the regime of ports is a Party to the Convention on railways. None of the Franco-phone States is a Party to the 1923 Geneva Railways Convention. However, they are bound by some of its articles through the *renvoi* operated in the Convention on ports. In Article 6, State Parties agree to abstain from any discrimination in railway operations against other States. In Articles 20 and 21, they commit to avoiding any abuse and any hostile discrimination in the area of railway tariffs. Article 22 extends application of the provisions of the preceding articles to cargo stored into ports. However, the 1923 Geneva Ports Convention makes no reference to carriage by road trucks, which indicates the domi-

nation of railways in land transport when the Convention was signed. As a result, goods carried by rail are protected, and others are not.

- 86. Enforcement.** Whether this Convention is actually enforced is uncertain. Indeed, it is suspected that African States are not aware of their obligations under the Convention, or are not eager to enforce it because they tend to grant special regimes, more favorable, to their vessels in their ports. Significantly, the Parties to the 2000 Cotonou Agreement—among them 30 African States, 15 of which are coastal—committed themselves to grant to vessels of any other party a treatment no less favorable than that accorded to their own ships with respect to access to ports, use of infrastructure, as well as related fees or charges, Customs facilities, and the assignment of berths and terminals. These provisions were unnecessary for the State Party to the 1923 Geneva Ports Convention. They are obliged to extend equal treatment to all vessels, whether flying the flag of a State Party to the 2000 Cotonou Agreement or not. Also and at an earlier stage, the basic principles of the 1965 New York Convention on Transit Trade of Landlocked Countries mentions the rights to be granted in ports of coastal States to vessels flying the flag of a landlocked State. These rights were in fact already granted by the 1923 Geneva Ports Convention, and the States Parties to that Convention were bound by its provisions. All vessels, whether or not they were flying the flag of a State party to the 2000 Cotonou Agreement, were entitled to equal treatment.

The Convention and Statute on the International Regime of Maritime Ports was filed with the League of Nations as No. 1379 (reference 58 League of Nations Treaty Series 285). The text appears in **Annex II-15** of this review.

b. *London Convention on Facilitation of International Maritime Traffic*

- 87. Objective.** The Convention aims at facilitating maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements, and procedures related to the arrival, stay or departure of ships engaged in international trade.
- 88. Enforceability.** This Convention was concluded under the auspices of the International Maritime Organization (IMO). There were 114 Contracting States as of April 30, 2010. To date, it was ratified or acceded to by Algeria, Benin, Burundi, Cameroon, Cabo Verde, Congo, Côte d'Ivoire, Egypt, Gabon,

The Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Madagascar, Mali, Mauritius, Nigeria, Senegal, the Seychelles, Sierra Leone, Tanzania, Tunisia, and Zambia. The CEMAC Shipping Code contains an explicit reference to This Convention.

89. Scope and structure. The Convention was adopted to prevent unnecessary delays in maritime traffic, to develop cooperation between governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. The objective is to prohibit the harassment of vessel captains, crews, passengers, and shipping agents through the use of excessive formalities in ports. The Convention reduces to a minimum the number and types of documents requested from a ship's captain. An annex to the Convention lists the eight documents that, unless special and exceptional circumstances justify additional requests, should allow port and other authorities to perform their regulatory duties in dealing with a vessel. The format of the Convention is similar to the one of the 1973 Kyoto Convention on the Simplification and Harmonization of Customs Procedures. The annex contains implementation details on "Standards" and the "Recommended Practices" for formalities:

- The Convention defines *standards* as the internationally agreed-on measures necessary and practicable to facilitate international maritime traffic.
- *Recommended practices* are those measures that permit the application of what is *desirable*. For example, simplified procedures should be applicable to passengers from cruise ships visiting the country. Port offices should be open for standard working hours, and no additional charge should be enforced when government staff has to work overtime. The International Maritime Organization has also developed eight standardized forms covering the arrival and departure of goods and passengers and is promoting the use of electronic data interchange to relay these forms between ship and port offices. The 2005 amendment to the Convention added the following non-exhaustive provisions: (1) recommended that authorities use pre-arrival and pre-departure information to facilitate the processing of information to expedite the release of cargo and persons; (2) encouraged the electronic transmission of information. This provision suggests that all Members modernize their ports and offices with information technology features.

The Convention on Facilitation of the International Maritime Traffic, known as the FAL Convention, is filed as No. 8564 with the UN Secretariat (reference 591 UN

Treaty Series 265) and appears in **Annex II-16** of this review. Several amendments have been made to the original convention to modernize it, thereby enhancing the facilitation of international maritime traffic. The most recent amendment was in July 2005, and was entered into force in November 2006 (see **Annex II-17** of this review).

c. *1924 Brussels Convention for the Unification of Certain Rules of Law Relating to Bills of Lading*

90. General. This instrument is about sea carrier liability. The original Convention, signed in Brussels in 1924, was modified in 1968 by a protocol setting forth the so-called Visby Rules, which increased the limits of liability and widened the scope of the Convention.²⁹

91. Enforceability. The 1924 Brussels Convention was ratified or adhered to by Algeria, Angola, Cameroon, Cabo Verde, Côte d'Ivoire, Democratic Republic of the Congo (as Zaire), Egypt (which denounced the Convention in 1997), The Gambia, Ghana, Guinea-Bissau, Kenya, Madagascar, Mauritius, Mozambique, Nigeria, São Tomé & Príncipe, Senegal, the Seychelles, Sierra Leone, Somalia, and Tanzania. Egypt is the only African country that ratified the 1968 protocol (Visby Rules), with a reservation on Article 8. The Convention has been denounced by Denmark, Finland, Italy, the Netherlands, Norway, Sweden, and the United Kingdom as a result of a movement developed for the elaboration of a new convention, the Hamburg Rules, which are reviewed shortly. Besides, a number of States, such as France in Europe and the Economic Community of Central African States (ECCAS) in Africa have imposed recourse to their domestic legislation for any transport to and from their respective ports—a source of conflicts of law between parties to the maritime carriage contract. The Congo and Cameroon, for example, are both signatories of the 1924 Brussels Convention and members of ECCAS, whose Shipping Code, issued in 2001, sets forth rules different from those of the 1924 Brussels Convention. There is ground here for a conflict of laws.

92. Scope. The Convention stipulates rules on sea carrier liability, from the time of loading to the time of discharging, when carriage is under a bill of lading, including bills of lading issued under a charter party. It is therefore the standard source of rules of law on the sea carriage of general cargo. It does not apply to deck transport and to charter parties themselves without bills of lading. Also, it does not cover land operations before and after ship loading and unload-

ing, even if cargo is in the hands of the sea carrier. It is therefore not applicable to terminal operations, even if these are under the carrier's control. Other liability regimes then apply. The Convention applies when the bill of lading has been issued in a State that is Party to the Convention, when carriage starts in a Contracting State, and when the bill of lading specifically refers to the Convention (*paramount clause*). Although the 1924 Brussels Convention, within the narrow limits of its enforceability, is generally applicable to international traffic between industrialized countries and African countries, it may not apply in cases of intra-African trade. Altogether, the liability regime under the Brussels rules, with the burden of proof of the carrier's fault falling on the shipper or cargo consignee, has been viewed by cargo interests, especially in developing countries, as too favorable to carriers and to their agents, who are also covered by the limits of liability stipulated in the Convention.

The text of the 1924 Brussels Convention is attached as an Annex II-18 to this review.

d. *1978 (Hamburg Rules) Convention on the Carriage of Goods by Sea*³⁰

- 93. Enforceability.** The so-called Hamburg Rules, adopted on March 31, 1978, have been in force since November 1, 1992. The Convention stipulating the rules was neither signed nor ratified by most maritime States. The following African States ratified or acceded to the Convention: Botswana, Burkina Faso, Burundi, Cameroon, Democratic Republic of the Congo, Egypt, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Morocco, Nigeria, Senegal, Sierra Leone, Tanzania, Tunisia, Uganda, and Zambia. It is therefore enforceable for carriage between these States and under their law.
- 94. Attractiveness.** The limited attractiveness of the Hamburg Rules is illustrated by the failure of the signature and ratification process of the draft 1980 Convention on Multimodal Transport of Goods. This draft Convention used the Hamburg Rules as a basis for its liability regime and was therefore not acceptable to those States that did not accept the Hamburg Rules. The 2001 Shipping Code of CEMAC incorporates the Hamburg Rules and makes specific reference to the Hamburg Convention.
- 95. Scope.** The United Nations Conference on Trade and Development (UNCTAD) prepared the Hamburg Rules in response to developing countries' pursuit of an instrument more favorable to cargo interests than the 1924 Brus-

sels Convention. These rules are also said to have been inspired by the 1966 French Maritime Transport Act, which updated the Commercial Code in a way more protective of cargo interests. Under French law, enforcement of the new provisions is compulsory (*d'ordre public*); no paramount clause contrary to its provisions in a bill of lading or carriage contract is valid. The Convention has been described as a package embracing the whole transport operation:

- The Convention applies to all transport of goods by sea, under bill of lading or not, on deck or in holds.
- The period of liability of the carrier is no longer limited from tackle to tackle, but extends to the whole period during which the goods are under its custody.
- There is a presumption of liability against the carrier; the burden of proof is reversed—carrier must demonstrate its due diligence.
- The list of exonerating circumstances and cases is limited.

96. **Evaluation.** There is little chance that the shipping world will accept the Hamburg Rules and that the Convention will be ratified by the maritime nations. Significantly, despite its own domestic statutes protective of shippers the French Government, after passing the 81-348 (April 15, 1981) Act authorizing ratification, never ratified. A study would be necessary to identify the types of sea carriage contracts used between the industrialized world and Africa and evaluate their impact on transport costs and facilitation.

The text of the Hamburg Rules is not attached as an annex to this review.

- e. *1991 Vienna Convention on the Liability of Terminal Operators in International Trade*

97. **History.** The package deal approach used to elaborate the Hamburg Rules led the United Nations to prepare a Convention on the Liability of Terminal Operators of Transport Terminals in International Trade. It was concluded in Vienna on April 19, 1991. Like the Hamburg Rules, it is oriented toward eliminating legal obstacles to the interests of shippers and consignees of cargo from developing countries. The Convention is aimed at establishing uniform rules on liability for loss, damage, delivery delays, etc. for goods while they are in the charge of operators of transport and are not covered by the laws of carriage arising from conventions applicable to the various modes of transport. The

1991 Vienna Convention has not yet entered into force, and there are few prospects that it will collect the necessary number of ratifications or acceptances. Its provisions may be of interest in drafting a regional or subregional convention on the subject; however, no African State has seemed anxious to submit its own terminal operators—many of them government-owned—to the discipline imposed by the Convention. No African convention or regulation was therefore developed or issued. Egypt and Gabon are the only African countries to have ratified the Convention as of July 2013.

98. Provisions. The main provisions of the Convention are as follows:

- *Definition of operator (Article 1).* The operator of a transport terminal is defined as a person who, in the course of its business, takes in charge goods involved in international carriage in order to perform transport-related services in relation to these goods in an area under its control.
- *Applicability (Article 2).* The rules are applicable when the transport-related services are performed by an operator whose place of business is located in a State party to the convention or when the transport-related services are governed by the law of a Party State.
- *Onus of proof (Article 5).* The operator is to issue a receipt of goods and is presumed to have received them in good condition unless he proves otherwise. In case of damage, delay, etc. during the performance of services, the operator is presumed liable unless he proves that damage, delay, etc. is not attributable to his action or negligence.
- *Limitation of liability (Articles 6 to 9).* The operator may limit his liability. Right of limitation of liability is not granted when loss, damage, delay, etc. originates in an act of omission of the operator himself or one of his servants or agents.
- *Convention as a compulsory instrument (Article 13).* Any stipulation in a contract concluded by an operator for the purpose of terminal operations is null and void if it derogates, directly or indirectly, from the provisions of the Convention.

The Convention on the Liability of Operators of Transport Terminals in International Trade appears in **Annex II-19** of this review.

- f. *Convention for the Unification of Rules Relating to the Limitation of the Liability of Owners of Sea-Going Vessels (Brussels, 10 October 1957)*
99. **History.** Since 1885, conflicts between English law and continental law have led to a series of conferences and draft instruments on rules on limiting the liability of ship-owners. The first Convention dealing with this subject concluded in 1924 is no longer in effect. It was replaced on October 10, 1957, by a Convention ratified by Congo, Ghana, Madagascar, and Mauritius. This Convention permitted the vessel owner to limit his liability for damages, including the death of a passenger and damages to cargo, provided there was no fault on his part or his agent. This Convention was replaced by yet another convention (reference 1412 UN Treaty Series 73) in 1976, reviewed hereafter.
100. **1976 London Convention on Limitations of Liability for Maritime Claims.** Signed on November 10, 1976 in London, this Convention sets forth the rules applicable to a ship-owner's liability. It defines and enumerates the cases in which a liability limitation applies, which include not only losses to passengers and cargo, but also delays in carriage. A simple fault no longer prohibits recourse to limitation of liability; it must be proved that the fault is deliberate or inexcusable. The Convention also stipulates that liability ceilings are set in special drawing rights (SDRs).
101. **Enforceability.** Benin was one of the first 12 States to ratify the Convention, which became effective between signatories in 1996. Sierra Leone ratified in 2002. On February 2004, the Protocol of 1996 to amend the Convention entered into force. However, for Central Africa the provisions of the Convention are incorporated in CEMAC 2001 Shipping Code (Title V at Articles 100 to 113) and are therefore enforceable in the CEMAC States and for its traffic.
102. **1961 Brussels Convention on Carriage of Passengers by Sea.** Signed on April 29, 1961, this Convention was ratified or acceded to by Algeria, Congo, Democratic Republic of the Congo, Liberia, Madagascar, Morocco, and Tunisia. Articles 419 to 426 of the CEMAC Merchant Shipping Code are a transcript of the provisions of the 1961 Brussels Convention, which makes it de facto enforceable in and by CEMAC States. The Convention, which applies only to passengers and not to luggage, stipulates a contractual due diligence obligation for the carrier. It is up to the passenger to provide evidence of the carrier's lack of due diligence, except when damage is caused by fire, explosion, grounding,

wreck, or other total losses. The Convention also provides for a ceiling in monetary damages.

- 103. 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (modified by a Protocol of 1976).** This Convention has been in effect since 1987. It stipulates that a carrier is liable if damage is suffered on board the vessel or in the case of negligence. Negligence is presumed if there is a fire, grounding, or a collision. The ceilings for carrier liability are set higher than in the 1961 Brussels Convention. The only African States that ratified this Convention are Egypt, Equatorial Guinea, Liberia, Libya, Malawi, and Nigeria. An additional protocol was issued in 2002, thereby improving the guarantees offered to passengers, especially about a carrier's liability and compulsory insurance. No African state ratified the protocol. The European Union ratified the protocol on behalf of all of its Member States and then issued a European Regulation to be implemented and enforced by all these States since the protocol is not self-enforcing. This procedure might be an example to be followed by regional and subregional organizations, provided, of course, that individual States agree to release their treaty-related powers to the organization.
- 104. 1974 UNCTAD Code of Conduct for Liner Conference.** This UN Convention was initiated by the United Nations Commission on Trade and Development (UNCTAD), which strongly supported its adoption by developing countries. The opinion was that conferences of sea carriers were "closed shops", providing little information to shippers, not accepting membership of carriers from developing countries, and arbitrarily fixing their transport tariffs. The objective was therefore, in a spirit of cooperation, that conferences be open to all carriers. Information should be widely provided to shippers. In addition, shippers themselves and governments should have the capacity to intervene in the system. Shippers' councils should specially be established to support the interest of shippers and control the distribution of traffic between carrier members of the Conference. Other provisions are the following:
- According to Article 2 of the code, traffic is to be distributed equally between shipping lines of the country of origin and the country of destination. Third-party countries will be allocated traffic not allocated to those shipping lines; this is formulated as the 40/40/20 rule.
 - Decision-making procedures will be based on principles of equality between Conference Members (Article 3). Rules of conduct will be drafted and enforced, with penalties in case of breach or disregard of these rules

(Articles 4 and 5). All conference agreements will be made available upon request to interested Governments (Article 6).

- Loyalty agreements will be concluded with shippers. These agreements will, among other things, set freight tariffs applicable to the loyal shippers. They will also set the other rights and obligations of the Parties (Article 7).
- All tariffs shall be made available to shippers and other interested parties (Article 9).
- Freight rates will be “as low as possible” while permitting a “reasonable profit” for ship-owners. Promotional and other rates for specific goods shall take into consideration the interests of the developing and land-locked countries (Article 12). No unfair difference will be applied to shippers similarly situated.
- The conference will inform shippers of any proposed increase in a tariff 150 days prior to the proposed date of enforcement of the new tariff. Consultations will be held, and in case of disagreement the matter will be submitted to conciliation (Article 14).
- Shippers may propose promotional freight rates for nontraditional exports. These rates are valid for 12 months. They should not create “substantial competitive distortions in the export of a similar produce from another country served by the conference” (Article 15).

The 1974 Code of Conduct for Liner Conferences is registered as No. 22830 with the UN Secretariat (1334 UN Treaty Series 15) and appears in **Annex II-20** of this review.

E. RAIL TRANSPORT CONVENTIONS

- 105. The 1923 Geneva Convention and Statute on the International Regime of Railways.** Railways have played a major role in the development of international cooperation in the area of transport and facilitation. Because they had a monopoly as long-distance carriers in the nineteenth century, the railways lent themselves easily to abuses of dominant positions. The first Convention on the international regime of railways, the 1890 Bern Convention, stemmed in part from the abuses of German railways enforcing tariffs detrimental to the Austrian port of Trieste and the Dutch port of Rotterdam, but artificially attract-

ing traffic to Bremen and Hamburg.³¹ The 1890 Convention was amended by the 1923 Convention.

- 106. Enforceability.** The 1923 Geneva Convention is, like the 1923 Geneva Convention and Statute on the International Regime of Maritime Ports, significant among conventions concluded after the Treaty of Versailles. Like all successive conventions on rail transport, it did not penetrate Africa, except through its ratification by the United Kingdom in 1925 for most of its possessions or protectorates: Cameroon under British mandate, The Gambia, Gold Coast (today, Ghana), Nigeria, Northern and Southern Rhodesia (today, Zimbabwe), Nyasaland (today, Malawi), Sierra Leone, and Tanganyika (today, Tanzania). The Convention is certainly well alive, as it was formally adhered to by Malawi and Zimbabwe in 1969 and 1989, respectively. Tanzania, by enforcing the clean slate doctrine, does not consider itself bound by it.
- 107. Provisions.** Provisions of the Statute fall in two categories: (1) commitments of Contracting Parties regarding the development and facilitation of international traffic and (2) rules of law on relations between railways and their users.

The main facilitation provisions are as follows:

- *Articles 1 to 3.* Existing lines of the different national networks should be connected. Common frontier stations should be established whenever possible. The State in whose territory these stations will be located should offer every assistance to railway staff of the other State.
- *Articles 4 to 7.* Freedom of operation is the rule, but it should be exercised without impairing international traffic. Unfair discrimination directed against the other Contracting State is prohibited.
- *Article 8.* Customs, police, and immigration formalities should be regulated so as not to be a hindrance for international traffic.
- *Articles 9 to 13.* The Contracting Parties should enter into agreements to facilitate the exchange and reciprocal use of rolling stock.

Among the provisions of special interest in the relations between railways and their clients is the commitment to use, whenever possible, a through-carriage contract covering an entire journey and to develop the greatest possible measure of uniformity in the conditions of execution of such a through contract.

The 1923 Convention and Statute on the International Regime of Railways were filed in the League of Nations (reference 75 League of Nations Treaty Series 55) and appears in **Annex II-21** of this review.

- 108. 1980 Bern Convention on International Carriage by Rail.** The 1923 Geneva Convention has since been replaced by other conventions and protocols dated February 7, 1970, and filed with the UN Secretariat as No. 16900 (reference 1100 UN Treaty Series 164), which were themselves modified in 1973, 1977, and 1980. No African State is party to the 1970 Conventions and Protocols. Finally, on May 9, 1980, a new Convention on international carriage by rail (*Convention relative aux transports internationaux ferroviaires*, COTIF) was concluded in Bern.³² The Convention (1) defines the role and jurisdiction of the Intergovernmental Organization for International Carriage by Rail (OTIF) and of its General Secretariat, and (2) sets forth the standards applicable to international rail transport, or Uniform Rules. These Uniform Rules are to be enforced in all international rail transport of goods under a direct consignment note for a carriage operation using at least two railway networks belonging to COTIF member countries. Signatories to the Convention agree on the railway lines to which the Uniform Rules apply. On the other lines, the law of the State where the carriage contract was concluded applies. Algeria, Morocco, and Tunisia are the only African members of OTIF and Contracting Parties to the 1980 Convention. But if projects in connection with African railways networks develop, governments may revise their positions and seek to accede to the 1980 Convention.³³ In the same vein but concluded under the auspices of the United Nations Economic Commission for Europe (UNECE) is the Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes, adopted in Geneva on February 9, 2006. It is not yet in force.

F. CONVENTIONS ON RIVER TRANSPORT

- 109. 1921 Barcelona Convention and Statute on the Regime of Navigable Waterways of International Concerns.**³⁴ The United Kingdom ratified in 1922, for the British Empire with the exception of the Dominions (South Africa), the April 20, 1921, Barcelona Convention and Statute on the Regime of Navigable Waterways of International Concern. As a result, and subject to the clean slate doctrine, some African States are Parties to the Convention they inherited.

110. Provisions. Like all conventions of the League of Nations period, this Convention rests on principles of freedom of movement, equal treatment between States, and minimum charges.

- *Free navigation (Article 3).* Vessels flying the flag of a Contracting State have free passage on these parts of navigable waterways under the sovereignty of another Contracting State.
- *Equal treatment (Articles 4 and 5).* Property and flags of the Contracting States are to be treated “on a footing of perfect equality.” No distinction shall be made between the nationals and flags of non-riparian States. The exception to the rule is for traffic between one port under the sovereignty of a Contracting State and another of its ports, or reservation of traffic between two riparian States to vessels and operators of these States.
- *Dues (Article 7).* No dues shall be levied “other than dues [for] payment of services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterways.”
- *Transit (Article 8).* Transit shall be governed by the rules of the Statute of Barcelona on Freedom of Transit.
- *Equal treatment on Customs, dues, or other duties (Article 9).* Customs duties should not be higher “than those levied on the other Customs frontiers of the State interested.”
- *Costs to be shared (Article 10).* Costs of upkeep shall be shared, and riparian States cannot refuse to carry out the necessary improvements to the waterways if another State offers to pay the cost of the works and a fair share of the cost of the upkeep.

The Convention and Statute on the Regime of Navigable Waterways of International Concern (reference 7 League of Nations Treaty Series 35) appears in **Annex II-22** of this review.

G. CONVENTIONS ON ROAD TRANSPORT

111. History. Carriage by road developed considerably during the last century and has expanded enormously since the end of World War II. In industrialized countries, subject to the importance of bulk tonnage, usually carried by rail, road transport carries from 55 to 98 percent of all goods transported. With the

development of international transport, the need arose for a uniform body of rules. These rules are either of public law, such as traffic, signs, vehicles, and Customs procedures, or of private law, dealing with carriage, insurance, and other contracts.

112. Presentation. These matters and the conventions on these subjects are reviewed here in the following order:

- Traffic and vehicles, with the objective of safety and harmonization of standards between states and jurisdictions. Pertinent here are the Geneva and Vienna Conventions on road traffic and road signs and signals.
- The regulation of Customs aspects affecting transport. Here the Customs Convention on the International Transport of Goods under Cover of TIR Carnets is of special interest.
- The regime applicable to commercial road vehicles temporarily imported or used in international transport.
- The carriage contract itself, establishing the liabilities of the carrier. The Convention on the Contract for the International Carriage of Goods by Road (CMR), provides a good model. It has an impact on subregional conventions and codes.

a. *1949 Geneva Convention on Road Traffic and 1968 Vienna Convention on Road Signs and Signals*

113. 1949 Geneva Convention on Road Traffic. The first Convention was concluded in Geneva on September 19, 1949, following the UN Conference on Road and Motor Transport. It entered into force in 1952. As of May 2010, in Africa it was adhered to or ratified by Algeria (1963), Benin (1961), Botswana (1967), Burkina Faso (2009), the Central African Republic (1962), Congo (1962), Côte d'Ivoire (1961), Democratic Republic of the Congo (1961), Ghana (1959), Egypt (1957), Lesotho (1973), Madagascar (1962), Malawi (1965), Mali (1962), Morocco (1956), Namibia (1993), Niger (1961), Rwanda (1964), Senegal (1962), Sierra Leone (1962), South Africa (1952), Togo (1962), Tunisia (1957), Uganda (1965), and Zimbabwe (1998).

The 1949 Geneva Convention was filed as No. 1671 with the UN Secretariat (reference 125 UN Treaty Series 22), and appears in **Annex II-23** of this review.

- 114. Protocol on Road Signs and Signals.** A protocol on road signs and signals was adopted at the same time as the convention. It came into force on December 20, 1953. Burkina Faso (2009), Niger (1968), Rwanda (1964), Senegal (1962), Tunisia (1957), and Uganda (1965) are Contracting Parties to this Protocol.

The **Protocol on Road Signs and Signals** was filed with the Convention as No. 1671 with the UN Secretariat (reference 182 UN Treaty Series 224). The text is attached as **Annex II-24** of this review.

- 115. International traffic objectives and scope of the 1949 Geneva Convention.** The objective of the Convention was to promote the development of international road traffic by establishing uniform rules for it. According to Chapter I of the Convention, the basic applicable principles were as follows:

- While reserving its jurisdiction over the use of its own roads, each Contracting State agreed to the use of its roads for international traffic under the conditions set out in the Convention.
- International traffic is traffic by vehicles owned by nonresidents, not registered in the State, and temporarily imported. No Contracting State would be required to extend the benefits of the provisions of the Convention to any vehicle or to any driver having remained in its territory for more than one year.
- Measures that the Contracting States may agree to with a view toward facilitating international road traffic by simplifying Customs, police, health, or other requirements would be regarded as in conformity with the object of the Convention.
- A bond or other form of security guaranteeing payment of import duties or other taxes may be required by any Contracting State, but the State shall accept for that purpose the guarantee issued by an organization established in its own territory and issuing a valid Customs pass.
- The Convention is not self-enforcing, and it is up to the Contracting States to take the appropriate measures for the observance of the rules set in it.

- 116. Other provisions.** Other provisions of the Convention and of its annexes are rules of the road applicable to international traffic and the format of documents such as driving permits or licenses.

- 117. 1968 Vienna Convention on Road Traffic.** A second Convention was concluded on November 8, 1968, in Vienna and came into force in 1977. It was the final act of the 1968 UN Conference on Road Traffic, attended by Government delegations, seven intergovernmental organizations, and 19 nongovernmental organizations. No specific African organization attended the conference.
- 118. Status.** The 1968 Vienna Convention was signed, ratified, or adhered to as of June 2013 by the Central African Republic (1988), Côte d’Ivoire (1985), Democratic Republic of the Congo (1977), Ghana (signature only, 1969), Kenya (2009), Liberia (2005), Morocco (1982), Niger (1985), Senegal (1972), the Seychelles (1977), South Africa (1977), Tunisia (2004), and Zimbabwe (1981).
- 119. Summary of applicable legal regime.** As a result of the small and uneven number of ratifications or adhesions to the two Conventions, three regimes are applicable to road traffic in Africa:
- The 1949 Convention regime in the States that ratified the 1949 Geneva Convention but did not ratify the 1968 Vienna Convention.
 - The 1968 Vienna Convention on Road Traffic in the countries whose Governments ratified the Convention. All of these States, except the Seychelles, had ratified or adhered to the 1949 Convention.
 - The States that ratified neither the 1949 nor the 1968 Conventions enforce the domestic legislation or are bound by the provisions of regional or subregional instruments on the subject, such as CEMAC’s Road Traffic Code covering Cameroon, the Central African Republic, Chad, Congo, Equatorial Guinea, and Gabon. Whether these regional or domestic instruments are in line with the provisions of the 1949 and 1968 Conventions has yet to be explored.
- 120. Objectives and scope of the 1968 Vienna Convention.** This Convention proposes “to facilitate international road traffic and increase road safety through the adoption of uniform traffic rules.” At the same time, the Convention is an effective facilitation tool by means of its provisions on mutual recognition and admission in international traffic of vehicles and drivers in possession of certificates issued in conformity with the Convention. The definition of vehicles in international traffic is similar to that used in the 1949 Convention.

121. Provisions. The main provisions of the Convention are:

- *Chapter I.* This chapter sets forth general provisions. The Convention is not self-enforcing. In accordance with Article 3, the Contracting Parties are to take all appropriate measures to ensure that the rules of the road in their territories conform “in substance” to the provisions of the Convention. Contracting Parties shall be bound to admit to their territories in international traffic motor vehicles and drivers that fulfill the conditions laid down in the instrument.
- *Chapter II.* This chapter stipulates a number of rules related to signs and signals, drivers, position of the carriage, overtaking, passing of traffic, speed and distance between vehicles, change of direction, standing and parking, flocks and herds, pedestrians, loading and unloading of vehicles, etc.
- *Chapter III.* This chapter sets forth the conditions for the admission of motor vehicles and trailers to international traffic. The driver of the vehicle shall carry a valid national certificate bearing at least the particulars listed in the convention. Vehicles shall bear the identification marks as described in the annexes of the Convention.
- *Chapter IV.* This chapter sets forth the rules applicable to drivers and driving permits. Any domestic or international permit conforming to the provisions of the convention and of its annexes shall be recognized and accepted by the Contracting Parties. Permits may be suspended or withdrawn for a breach of regulation rendering the holder of the permit liable under domestic legislation to forfeiture of permit.
- *Chapter V.* Provisions of this chapter deal with cycles and mopeds.

The 1968 Vienna Convention was filed with the UN Secretariat as No. 15705 (reference 1091 UN Treaty Series 3), and appears in **Annex II-25** of this review.

122. Annexes to the 1968 Vienna Convention on Road Traffic. Seven annexes are attached to this Convention and are an integral part of it:

- *Annex 1.* Exceptions to the obligation to admit motor vehicles and trailers in international traffic. Contracting Parties may refuse to admit to their territories overweight or over-dimensioned vehicles and other (listed) vehicles whose technical characteristics are not satisfactory.

- *Annex 2.* Registration number and plate of motor vehicles and trailers in international traffic.
- *Annex 3.* Distinguishing signs of vehicles and trailers in international traffic.
- *Annex 4.* Identification marks of vehicles and trailers in international traffic.
- *Annex 5.* Technical conditions concerning vehicles and trailers. This very detailed set of standards, characteristics, and equipment, which, once complied with, should allow the acceptance of vehicles by the Contracting Parties on their territories.
- *Annex 6.* Domestic driving permit. Rules and format of permit.
- *Annex 7.* International driving permit.

123. 1968 Vienna Convention on Road Signs and Signals. On November 8, 1968, the Convention on Road Signs and Signals was also concluded in Vienna; it was intended to replace the 1949 Protocol. The Convention was ratified or adhered to as of June 2013 by the Central African Republic (1988), Côte d'Ivoire (1985), Democratic Republic of the Congo (1977), Ghana (signature only, 1969), Liberia (2005), Morocco (1982), Nigeria (2011), Senegal (1972), the Seychelles (1977), and Tunisia (2004).

Like the Convention on road traffic, the small number of ratifications resulted in three regimes in two categories of countries: those enforcing the 1968 Convention, and those enforcing neither or enforcing the subregional rules on signs and signals.

The 1968 Vienna Convention on Signs and Signals was filed with the UN Secretariat as No. 16743 (reference 1091 UN Treaty Series 3). The text as appears in **Annex II-26** of this review.

124. 1958 Geneva Agreement on Uniform Technical Prescriptions. An Agreement on the adoption of uniform technical prescriptions for wheeled vehicle equipment and parts that can be fitted or used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions was concluded in Geneva on March 20, 1958. It came into force on June 20, 1959. The Agreement was filed with the UN Secretariat as No. 1789 (reference 335 UN Treaty Series 215). It was followed by the issuance of 110 regulations on standards of mechanical and other equipment for wheeled vehicles. The name of the instrument was changed on August 18, 1994, to Agreement Concerning the Adoption of Uniform Conditions of Approval and

Reciprocal Recognition of Approval for Motor Vehicles and Parts, which reduced the scope of the instrument. In Sub-Saharan Africa, only South Africa ratified the agreement (2001), with the reservation that it would not be bound by 78 (enumerated) of the regulations annexed to the Agreement or issued for its enforcement. On June 25, 1998, the 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 was concluded in Geneva. It entered into force in 2000. South Africa is the only African country that has ratified the Agreement.

The Agreement on Technical Prescriptions was filed with the UN Secretariat as No. 1789 (reference 335 UN Treaty Series 215). The text is not attached as an annex to this review.

b. *1975 Geneva Customs Convention on the International Transport of Goods under Cover of TIR Carnets*

125. Objective. The objective of the TIR Convention has been to both improve transport operations and simplify and harmonize administrative formalities in the field of international transport, particularly at frontiers. Its objective is definitively facilitation.

126. Enforceability. The Convention has been enforced since 1960 and amended several times. Largely enforced in Europe, the Maghreb, and the Middle East, including Iran, and ratified in North America, even in Chile, Republic of Korea, and Indonesia, it has remained almost foreign to Africa and as of June 2013, only Algeria (1989), Liberia (2005), Morocco (1983), and Tunisia (1977) have ratified the Agreement. However, its principles have not been ignored as, like the 1956 Convention on the Contract for the International Carriage of Goods by Road, it has been used as a model for subregional instruments establishing transit regimes. For example, Annex III to Protocol No. 3 attached to the Northern Corridor Transit & Transport Agreement (NCTTA) between Burundi, Democratic Republic of the Congo, Kenya, Rwanda, and Uganda states that the Parties to the Agreement undertake to accept transport units approved in accordance with the 1956 Convention.

127. Provisions. The main provisions of the Convention are as follows.

- Goods carried under the TIR procedures in sealed road vehicles are not as a general rule submitted to examination by Customs offices en route. But they may be inspected when an irregularity is suspected. Customs authorities shall not require vehicles to be escorted at the carrier's expense on the territory of their country.
- Contracting Parties authorize agreed-on professional associations to issue TIR carnets. These associations guarantee they will pay the Customs duties and taxes, including penalty interest in case of irregularities. For the purpose of identifying the goods on which duties are paid, details of these goods are entered in the TIR carnet. Customs authorities discharge TIR carnets after conclusion of the transport operation. Discharge is equivalent to clearance, and Customs authorities cannot claim taxes and dues after discharge.
- Irregularities render the offender liable to penalties of the country where the offense was committed. In case of doubt, the offense is deemed to have been committed in the country where it was detected. Any person guilty of irregularities may be in the future excluded from the operation of the Convention.

Details of procedures appear in the annexes to the Convention.

The TIR Convention was filed as No. 16510 with the UN Secretariat (reference 1679 UN Treaty Series 89) and appears as **Annex II-27** of this review.

c. *Customs Conventions on the Import of Land Transport Equipment*

The three conventions of interest were unevenly ratified or adhered to by some of the Sub-Saharan States.

- 128. 1954 New York Customs Convention on the Temporary Importation of Private Road Vehicles.** This Convention entered into force on December 15, 1957. It was ratified or acceded to as of June 2013 by Algeria (1963), Central African Republic (1962), Egypt (1957), Ghana (1958), Liberia (2005), Mali (1974), Mauritius (1969), Morocco (1957), Nigeria (1961), Rwanda (1964), Senegal (1972), Sierra Leone (1962), Sudan (2003), Tanzania (1962), Tunisia (1974), and Uganda (1965).

129. Provisions. The main provisions of the 1954 New York Convention are:

- *Articles 2 to 5.* Contracting States shall grant temporary admission without payment of import duties and taxes, free of import prohibitions and restrictions, subject to re-exportation, to vehicles of non-residents and utilized for private use on the occasion of a temporary visit.
- *Articles 6 to 11.* Authorized associations may be granted the right to issue temporary importation papers (*carnets de passage en douane*), whose validity shall not exceed a year. Only non-residents can drive the vehicles.
- *Articles 12 to 19.* Regarding vehicles that need to be re-exported, badly damaged ones may not be re-exported, but, as the Customs authorities will decide, they may be (1) subjected to import duties, (2) abandoned to the treasury, or (3) destroyed under Customs supervision.

The 1954 New York Customs Convention on the Temporary Importation of Private Road Vehicles was filed with the UN Secretariat as No. 4101 (reference 176 UN Treaty Series 192) and appears in **Annex II-28** of this review.

130. 1956 Geneva Customs Convention on the Temporary Importation of Commercial Road Vehicles. This Convention was concluded in Geneva on May 18, 1956, and was acceded to by Sierra Leone in 1962 and Algeria in 1963. The Convention refers specifically to the 1954 New York Convention with the intention to apply similar provisions to the temporary importation of commercial vehicles. It provides that commercial vehicles shall be granted temporary admission without payment of import duties and taxes, subject to their re-exportation. Each Contracting Party may authorize associations, such as those affiliated with an international organization, to issue the temporary importation papers necessary for the enforcement of the Convention. Vehicles damaged beyond repair need not be re-exported, but duties and import taxes shall be paid and the vehicles destroyed or abandoned to the domestic treasury.

The Customs Convention on the Temporary Importation of Commercial Road Vehicles was filed with the UN Secretariat as No. 4721 (reference 327 UN Treaty Series 123) and appears in **Annex II-29** of this review.

131. 1956 Geneva Convention on the Taxation of Road Vehicles Engaged in International Goods Transport. The only Sub-Saharan State to have acceded to this Convention is Ghana (1962). The Convention stipulates the exemption from

taxes of vehicles imported in the territory of a Contracting Party in the course of international goods transport.

This Convention on the Taxation of Road Vehicles engaged in International Goods Transport was filed with the UN Secretariat as No. 6292 (reference 339 UN Treaty Series 3). The text appears in **Annex II-30** of this review.

d. *1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR, Contrat [de transport] de marchandises par la route)*³⁵

132. Presentation of the CMR. The CMR aim is “to elaborate uniform conditions of contract for international road transport of goods.” It is typically an international transport instrument and does not apply to domestic transport. The Convention originated in the joint efforts, starting in 1948, of the International Institute for the Unification of Private Law (UNIDROIT), International Road Transport Union (Geneva), International Chamber of Commerce (Paris), and other professional institutions. The United Nations Economic Commission for Europe (UNECE) then associated itself with the work, and an international convention was drafted. According to Article 42 of the Convention, it is open for signature and accession by country members of the UNECE and countries admitted to the commission in a consultative capacity under paragraph 8 of the commission’s Terms of Reference. In fact (and this point was raised by a number of States when they ratified the Convention), it is a sovereign right of a State to accede or not to an international convention. The CMR was signed in Geneva on May 19, 1956. No Sub-Saharan countries ratified the original Convention; however, Morocco and Tunisia did so. A Protocol to the Convention dated July 5, 1978, entered into force in December 1980, setting the special drawing right as the account unit for a carrier’s liability. An additional Protocol allowing the use of an electronic consignment note was signed in Geneva on May 27, 2008, and entered into force on June 5, 2011.

133. Success of the CMR. The Convention as an international transport framework has been so successful that it governs an increasing number of contracts for the carriage of goods by road to the Middle East and North Africa. This success is certainly a consequence of its origin as a document elaborated by the profession. Unlike the conventions related to the international carriage of goods by rail, which affect only a limited number of national railways, the

CMR is used by thousands of international truck operators. As a result, interpretation of the Convention by national courts has tended to be uniform—a powerful tool for the unification of law. The CMR was used as a model for drafting the 1996 Libreville Road Transport Convention (*Convention inter-États de transports routier de marchandises diverses*) of the Customs and Economic Union of Central Africa (UDEAC)—see **Annex IV-2** of this review. The 1996 UDEAC Convention reproduces verbatim the main provisions of the CMR and makes their enforcement compulsory. The CMR seems also to have been used as a model for the 2003 OHADA Uniform Act Relative to the Contracts for Road Transport of Goods.

The Convention on the Contract for the International Carriage of Goods by Road (CMR) was filed with the UN Secretariat as No. 5742 (reference 399 UN Treaty Series 189). The text appears in **Annex II-31** of this review.

134. Provisions of the CMR. The main provisions of the CMR Convention are:

- *Scope (Article 1)*. The Convention covers any international carriage of goods by single and successive carriers when at least one of the two countries of origin and destination is party to the convention. It does not apply to multimodal transport if the goods leave the road vehicle.
- *Government agencies (Article 1)*. The Convention also applies when carriage is conducted by States or governmental organizations or institutions.
- *Exclusivity (Article 1)*. No contract provision different and adverse to the CMR is valid in any carriage contract under the CMR.
- *Consignment note (Articles 4 to 7)*. Goods travel under a consignment note established under a format set by the CMR. The consignment note is evidence of the carriage contract. Recourse to the format is compulsory, but the absence of a consignment note does not make the carriage contract invalid. The consignment note gives evidence against the carrier.
- *Duties of shipper and carrier (Articles 8 to 16)*. The shipper is responsible for specifying the particulars of the goods to be carried and for a number of statements. The carrier is responsible for checking the accuracy of statements whenever possible. Reservations thereof are mentioned on the consignment note. Documentation for Customs purposes is the responsibility of the sender. The shipper may dispose of the goods by issuing instructions to the carrier on the location of the delivery, the delivery to a

- consignee other than the original consignee. All expenses pursuant to changes in instructions, requests for instructions are charged to the shipper.
- *Liability (Articles 17 to 29)*. The carrier is *prima facie* liable for damages, and the Convention details the grounds on which a carrier may be relieved of its liability. The burden of proof that loss, damage or delay was due to one of listed causes rests with the carrier. The shipper is liable for any damage caused by inadequate information given to the carrier.
 - *Venue and jurisdiction (Articles 30 and seq.)*. The CMR specifies which courts have jurisdiction for hearing cases between carriers and shippers in order to prevent any abusive clause giving jurisdiction only to courts selected for that purpose by one of the Parties to the carriage contract. However, although the carrier and the shipper are parties to the CMR, the receiver or consignee of cargo is not. The clause is inoperative in this respect. In Francophone States that have retained Articles 14 and 15 of the French Civil Code, any citizen may select to see his or her case judged by a local court when he or she is a defendant or counterclaimant. Despite that, the CMR is an international agreement superseding municipal law. Courts tend to consider Articles 14 and 15 of the Civil Code as paramount. They therefore prevail.

H. CONVENTIONS AND RULES ON MULTIMODAL TRANSPORT

a. *1980 Geneva Convention on International Multimodal Transport*

- 135. Definitions.** Multimodal or combined³⁶ transport entails two or more different modes of transport, such as rail and road, or road, sea, and road. The 1980 Convention offers rules on transport between one country where the goods are loaded and taken in charge by a multimodal transport operator (MTO) appointed for delivery to another country.³⁷
- 136. History.** As early as 1975, rules for combined transport were set forth by the International Chamber of Commerce (ICC). They were based, among other things, on the traditional rules of sea carrier liability (1924 Brussels Convention and Visby Rules). The 1980 TMI Convention reviewed here aimed, in cooperation with UNCTAD, to replace these privately issued rules and formulate new rules applicable to this type of carriage.

- 137. Elaboration.** The Convention was prepared during two conferences on the subject that met in Geneva in November 1979 and May 1980. Many representatives of professional bodies from the transport industry joined representatives of Governments. The long preamble to the Convention sets forth the concerns of the Parties to its elaboration: (1) desirability to facilitate international trade and concern for the problems of transit countries; (2) need for equitable rules of liability for multimodal transport operators; (3) need to take into consideration the special problems of developing countries; and (4) need to facilitate Customs procedures. The basic principles of the Convention are:
- Establish a fair balance of interests between developed and developing countries, with an equitable distribution of activities in international multimodal transport between these two groups.
 - Hold consultations between the multimodal transport operator, shippers, shippers' organizations, and appropriate national authorities on the terms and conditions of service before and after the introduction of any new technology in the multimodal transport of goods.
- 138. A package approach.** The principles set forth indicate that the proponents of the convention may have elected to go beyond the strict operational approach of the earlier international instruments. The approach seems to reflect the doctrine of the New International Economic Order of the 1970s and 1980s, with a flavor of state control over multimodal operations. Besides, the principle that there should be consultations before the introduction of new transport technologies is not realistic. On this basis, consultation between governments would have been necessary to move from sail to steam, a major technological change of the past. Altogether, the policy approach adopted here may have been one of the factors in the reluctance of the industrialized States to sign and ratify the Convention. A more neutral convention might have been more successful.
- 139. Enforceability.** The Convention is not yet in force because of an insufficient number of signatures and ratifications. Article 36 of this Convention requires the signatures of 30 States before it enters into force. As of March 2014, it was signed, ratified, accepted, or approved by eleven States on different continents. In Africa, it was acceded to by Burundi (1998), Liberia (2005), Malawi (1984), Morocco (1993), Rwanda (1987), Senegal (1984), and Zambia (1991).³⁸ In view of its inspiration, the reluctance of developing countries to ratify it appears to demonstrate that there was little consensus on the principles on which

the instrument was drafted. The States of the Customs and Economic Union of Central Africa (UDEAC) drafted and issued their own convention on multimodal transport, whose enforceability is limited to trade between these States or any outside State, shipper, or carrier that may accept its provisions. Equally, the Northern Corridor Transit & Transport Agreement (NCTTA) in East Africa makes reference to the multimodal Convention, although it is not in force.

The 1980 UN Convention on International Multimodal Transport of Goods appears in Annex II-32 of this review.

140. **Lack of legal safety.** The Geneva Convention, like the CMR Convention, is norm creating. When adopted and ratified by the States party to the transport operation, it is mandatory and governs any multimodal carriage contract. However, it does not affect the right of each State to regulate and control at the national level multimodal transport operations and operators, including the right to take measures related to consultation, especially before the introduction of new technologies. The multimodal transport operator, on the other hand, has to comply with all of its provisions. The consequence is that operators derive no legal safety from the Convention. They are bound by its provisions, but the State Party retains considerable freedom of action. This, again, may explain the reluctance to sign and ratify.
141. **Liability regime and other provisions.** The liability regime is set by the Hamburg Rules, yet to be accepted by most trading countries, especially maritime ones. The onus for producing evidence that the multimodal transport operator or its agents are not guilty of fault or negligence and have taken all the necessary measures that could be reasonably required is on the operator. There are monetary ceilings on liability, but they are not applicable in cases of gross negligence. Other provisions of the Convention on International Multimodal Transport set forth the format of consignments or bills of lading, statutes of limitation, jurisdiction, etc., and a number of those provisions are similar to those contained in the CMR.
- b. *2008 New York Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea or the “Rotterdam Rules”³⁹*
142. **Overview.** This Convention was signed in New York on December 2008. It was intended to create a modern and uniform law on the international car-

riage of goods. It provides a legal framework that takes into account recent technological and commercial developments that have occurred in maritime transport. The Convention is not limited to tackling port-to-port movements, but also extends to multimodal contracts of carriage where there is a sea leg contemplated under the contract of carriage. To become a binding international law, it has to be signed and ratified by at least 20 UN Member States. Thus far, 24 States have signed, but only two have ratified the Convention. Among the African countries, the following signed in 2009: Cameroon, Congo, Gabon, Ghana, Guinea, Madagascar, Mali, Niger, Nigeria, Senegal, and Togo. The Democratic Republic of the Congo signed in September 2010. Togo ratified the Convention on July 17, 2012. The Convention provides that upon its entry into force for a country, that country should denounce all conventions governing the Hague-Visby Rules as well as the Hamburg Rules, as the Convention does not come into effect without such denouncements.

- 143. Provisions and scope of application.** The Convention provides shippers and carriers with binding and balanced rules to support the operation of maritime contracts of carriage that may involve several modes of transports. Chapter 2, Article 5 lists the following requirements that apply to the Convention: (1) the place of receipt and of delivery are in different States; (2) the port of loading and the port of discharge of the same sea carriage are in different States; and (3) any one of the mentioned places is located in a Contracting State. The provisions of the Convention apply irrespective of the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, and any other interested parties. The Convention is not applicable to the following contracts in liner transportation: charter parties and other contracts for the use of a ship or of any space. Chapter 3 deals with electronic commerce: the Convention states that an “electronic record” of a contract of carriage or other information in electronic form has the same effect as a “transport document” or its paper equivalent such as a bill of lading. Most important, it innovates in extending the obligations and liabilities of the carrier (Chapter 5). First, the obligation to deliver is expressed and not implied, and the due diligence obligation is not restricted to the period before and at the beginning of the voyage, but it continues throughout the voyage. Second, the carrier’s liability for loss, damage, or delays is more extensive than that under the Hague-Visby Rules regime because of the combination of the loss of the nautical fault exception and the extension of the obligation to exercise due diligence to make the ship seaworthy throughout the voyage. And, finally, it also introduces (in Chapter 5, Article

19) the concept of a “maritime performing party,” who are subcontractors. Such a party is subject to the same liabilities and responsibilities as the carrier but essentially only while it has custody of the cargo. The carrier remains liable for the performance of the entire carriage contract.

- 144. Possible impact on African transit and transport facilitation.** The impact of this Convention could be positive if African States modernize their infrastructure and address the capacity-building issues. Modern technological tools will have to be installed, and roads, ports, trains, and airports will need to be upgraded. Human resources will have to be enhanced by means of training and education. However, this Convention is widely criticized by professional carriers, who are well organized. Many obstacles still must be overcome before its entry into force.

This Convention is not attached to this review since it has not been ratified by a relevant number of African States.

c. *1975 and 1992 International Chamber of Commerce Rules for Combined Transport Document*

- 145. History.** The failure of the adoption of the International Multimodal Transport Convention created the risk of too much diversity in multimodal carriage contracts. But, as noted earlier, as early as 1975 the International Chamber of Commerce (ICC) in Paris had issued, on the basis of work by the International Maritime Committee, a major professional body, rules for drafting a standard combined transport document. The liability regime proposed was flexible, and the Parties to the carriage contract had some freedom in drafting their document.⁴⁰ The ICC replaced the successive documents (consignment notes, bills of lading, etc.) that are traditionally used in point to point transport by a single start to finish transport document. This combined transport document (CTD) may be issued by the provider of transport or by an arranger or commissioner for the provision of all or part of the transport by others. In any case, the person issuing the CTD acts as principal for the shipper and is responsible for the performance of the transport operation. He is therefore liable for damage, loss, or delay occurring during any phase of the transport operation. Like the rules governing the Incoterms and the Incoterms themselves,⁴¹ the ICC is a brilliant example of the capacity of a profession to establish universally accepted rules of law without the intervention of Govern-

ments and their agents. UNCTAD, while waiting for possible ratification and enforcement of the TMI Convention, approached the ICC for a modernization of the 1975 rules on the basis of applicable liability rules and due account being taken of acquired experience. This resulted in the 1992 UNCTAD/ICC⁴² Rules for Combined Transport Document.

146. Details of rules. The main rules governing the combined transport document and referring to the Hague-Visby Rules are the following:

- *Rule 1.* The rules apply only when incorporated into a contract of carriage, regardless of whether there is a multimodal transport document (MTD). By referring to the rules, parties agree that these rules would supersede anything that has been stated to the contrary. Derogations to the rules are thus void, except when they increase the responsibility and obligations of the carrier.
- *Rule 2.*⁴³ A multimodal transport document may be issued as a negotiable or a nonnegotiable document, either to order or to the bearer. It may be issued as a paper or as an electronic document.
- *Rules 4 and 5.* By issuing the document, a multimodal transport operator, undertakes to perform the transport or to have it performed and accepts responsibility and assumes liability for his acts and the acts of his agents and servants.
- *Rules 6 and 7.* The operator may limit his liability, except in the case of a personal act or omission, acting with intent to cause damage and with knowledge that damage would probably result (Hague-Visby Rules).
- *Rule 13.* These rules may take effect only to the extent that they are not contrary to the provisions of mandatory laws or provisions of international conventions that cannot be departed from by private contract (*d'ordre public*).

Multimodal transport documents similar to the UNCTAD/ICC rules exist. Examples are the Negotiable FIATA Multimodal Transport Bill of Lading or the Negotiable Combined Transport Document issued by the Baltic and International Maritime Conference (BIMCO).

The UNCTAD/ICC Rules for Combined Transport Document appear in Annex II-33 of this review.

I. CONVENTIONS ON AIR TRANSPORT

The increasing role of air transport in Africa makes it necessary to review the international conventions relating to air transport.

a. *1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air*

147. Objectives. The Convention applies to all international carriage of persons, luggage, or goods performed by commercial aircraft.

148. Main provisions. These provisions are stated in chapter 2 of the Convention. The passenger and luggage tickets are documents of carriage; as such, they must provide the particulars mentioned in the Convention. For the carriage of goods, an air consignment note is handed to the air carrier by the consignor, and it must contain the following particulars mentioned in Article 8 such as the date and place of its execution and the place of departure and destination. Chapter 3 provides the carrier liability rules. The carrier is liable for death or wounding of the passenger if the act took place onboard the aircraft or in the course of any of the operations of embarking or disembarking (Article 17). The carrier is liable for damage of goods if it occurred during the carriage by air or when the goods are under the control of the carrier (Article 18). The following articles limit the carrier liability to a fixed amount for damage to a person or to goods.

149. Evaluation. The Warsaw Convention established an air carrier's strict liability for passengers. The carrier can be exonerated only if it proves that the damages suffered were beyond its control. Damages suffered by goods are also limited to the amount declared during the carriage, unless the real value of the goods was clearly mentioned. The Warsaw Convention has set the law on modern carrier liability, which is applicable today. All African countries ratified the Warsaw Convention.

The Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air appears in **Annex II-34** of this review.

b. *The International Air Transport Association (IATA)*

- 150. General.** The International Air Transport Association (IATA) was set up in 1945 in Havana (Cuba) It is the trade association for the world's airlines, representing some 240 airlines from 113 countries (or 84 percent of total air traffic) including 29 African airlines. Based both in Geneva (Executive Office) and Montreal (Head Office), the IATA organs are the Permanent Executive Committee and the Annual General Assembly.
- 151. Mission.** Its mission is to represent, lead, and serve the airline industry. More specifically, the organization strives to improve understanding of the air transport industry among decision makers and increase awareness of the benefits that aviation brings to national and global economies. Since its creation IATA developed global commercial standards upon which the air transport industry is built. Most and above all, IATA helped airlines to operate safely, securely, efficiently, and economically under clearly defined rules.

IATA has launched, in partnership with ICAO, the IATA Operational Safety Audit (IOSA) program, an internationally recognized and accepted evaluation system designed to assess the operational management and control systems of an airline. It is a must for any airline to gain IOSA certification in order to remain an IATA member and the *sine qua non* condition to avoid being included in the "black list".

At the African level, IATA has been contributing financially to the implementation of the IOSA programme and the AFI Safety Enhancement Team (ASET Project) with a view to enhancing the air transport safety level.

c. *1944 Convention on International Civil Aviation (Chicago Convention)*

- 152. Historical background.** The Convention on International Civil Aviation, known as the Chicago Convention, was concluded on December 7, 1944, and came into effect on April 4, 1947. The Convention has been revised several times: in 1959, 1963, 1969, 1975, 1980, 1997, 2000, and 2006.
- 153. Main provisions.** In general, the Convention establishes rules of airspace, aircraft registration, and safety and details the rights of the signatories relevant to air travel. The Convention exempts air fuels from tax. Article 1 stipulates the complete and exclusive sovereignty of each State over the airspace above its territory. Article 29 defines the duties of the pilot in command and the docu-

ments required to fly. Article 33 stipulates the recognition of certificates and licenses. Articles 5, 6, 10, 12, and 13 regulate nonscheduled flights over a State's territory, air services, landing at Customs airports, and entry and clearance regulations. The Convention defines the so-called freedoms under which commercial air traffic is organized.

The First Freedom is the right to fly over a country without landing. The Second Freedom is the right to land for non-commercial purposes. The Third Freedom is the right to disembark passengers and freight from the state under whose flag the aircraft is registered. The Fourth Freedom is the right to pick up passengers and freight for a destination in the state under whose flag the aircraft is registered. And the Fifth Freedom is the right to disembark or to pick up passengers and freight from and to any Contracting State. The content and interpretation of the Fifth Freedom concept has been a source of considerable difficulties.

As a result of the Chicago Convention, air traffic is much more regulated than sea traffic, which is based on the sixteenth-century doctrines of the freedom of the seas developed by Grotius.

- 154. Institutional arrangements.** The Chicago Convention established the International Civil Aviation Organization (ICAO), which is a specialized agency of the United Nations. Its main responsibilities are (1) the codification of rules and techniques pertaining to international air navigation; (2) the planning and development of international air transport; and (3) the promotion of safety issues and orderly growth. More specifically, ICAO adopts standards and recommended practices on air navigation and its infrastructure, flight inspection, prevention of unlawful interference, and facilitation of border crossing procedures for international civil aviation. Finally, the Convention defines the protocols for air accident investigations to be followed by transport safety authorities in Member States.
- 155. Evaluation.** The Chicago Convention is a successful convention because it has led to the development of many other institutions since it came into existence. The International Air Transport Association (IATA), for example, is an international trade group of airlines whose mission is to represent, lead, and serve the airline industry. IATA represents more than 200 airlines that make up 93 percent of scheduled international air traffic, and it is present in more than 150 countries.

The text of the 1944 Chicago Convention on International Civil Aviation appears in Annex II-35 of this review.

d. *1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air*

- 156. Historical background.** The 1999 Montreal Convention was adopted by the International Civil Aviation Organization (ICAO) Member States in 1999. It replaces and modernizes important provisions of the 1929 Warsaw Convention previously amended by the 1955 Hague Protocol regarding compensation for the victims of air accidents, notably by introducing a two-tier liability system and by facilitating the recovery of proven damages without the need for lengthy, time-consuming litigation. The Convention establishes uniformity and predictability of rules relevant to the international carriage of passengers, baggage, and cargo. The African signatories are Benin, Botswana, Cameroon, Cabo Verde, Egypt, The Gambia, Kenya, Madagascar, Mali, Morocco, Namibia, Nigeria, South Africa, and Tanzania.
- 157. Main provisions.** The 1999 Montreal Convention establishes carriers' strict liability for proven damages. An airline may avoid liability only by proving that the accident that caused the injury or death was not due to its negligence or was the fault of a third party. The Montreal Convention also amended the Warsaw jurisdictional provisions as it allows victims or their families to sue foreign carriers in their principal residence. The Convention requires air carriers to subscribe to liability insurance. It also increased the maximum liability of airlines for lost baggage to a fixed amount, whereas in the Warsaw Convention the amount was based on the weight of the baggage.
- 158. Evaluation.** The Convention establishes uniformity and predictability of the rules on the international carriage of passengers, luggage, and cargo. The liability limits are set in special drawing rights (SDRs). From the perspective of the African signatories, the Convention is less successful than the Chicago Convention. Fewer African States signed the Montreal Convention, and many reasons could be cited to justify their reluctance: (1) the little likelihood that African nationals would start a litigation procedure; (2) distrust of the legal system and the effectiveness of the Convention in securing payment of damages to victims (African nationals may be reluctant to trust their own judicial system because the rule of law is not always applied effectively; and (3) lack of

financial and human resources to commence litigation to claim compensation. On the positive side, several conventions have been established since 1999 (although they are not yet in force yet) on the protection of passengers in air traffic. One example is the Convention on Compensation for Damage Caused by Aircraft to Third Parties, concluded in Montreal on May 2, 2009. As of December 2009, among the 10 signatories, 7 are African countries: Congo, Côte d'Ivoire, Ghana, Nigeria, South Africa, Uganda, and Zambia.

The text of the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage appears in **Annex II-36** of this review. The text of the 2009 Montreal Convention on Compensation for Damage Caused by Aircraft to Third Parties appears in **Annex II-37**.

e. *The 2001 Cape Town Convention on International Interests in Mobile Equipment and Protocol on Aeronautic Mobile Equipment*

- 159.** The Cape Town Convention on International Interests in Mobile Equipment is an international treaty intended to standardize transactions involving mobile property. The treaty sets international standards for registration of contracts of sale (including dedicated registration agencies), security interests (liens), leases and conditional sales contracts, and various legal remedies for default in financing agreements, including repossession and the effect of bankruptcy laws. The treaty has three protocols, each of them specific to a type of mobile equipment: aircraft Equipment (aircraft and aircraft engines; signed in 2001), railway equipment (signed in 2007) and space assets (signed in 2012). As of February 2014, the Convention was ratified by 59 States as well as the European Union. The aircraft Protocol (officially: Protocol to the Convention on International Interests in Mobile Equipment on matters specific to aircraft equipment) was signed in 2001 and is the only protocol entered into force. It applies to aircraft which can carry at least eight people or 2750 kilograms of cargo, aircraft engines with thrust exceeding 1,750 pounds-force (7,800 N) or 550 horsepower (410 kW), and helicopters carrying 5 or more passengers. The International Registry of Mobile Assets established to record international property interests in the aircraft equipment covered by the treaty is located in Ireland. Mediation cases for leasing disputes are to be heard in the High Court of Ireland. As of March 2012, the Protocol has 46 Contracting Parties including 11 African States.

The texts of the Cape Town Convention on International Interests in Mobile Equipment and its Protocols are not attached to this review.

f. *The 2010 Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*

160. The Beijing September 10, 2010, Convention on the Suppression of Unlawful Acts relating to International Civil Aviation aiming at promoting the safety and security of persons and property was concluded to respond to new types of threats jeopardizing air transport. Among the 25 signatories, eight are African States: Chad, The Gambia, Mali, Nigeria, Senegal, Cameroon, Zambia, and Uganda. This Convention has not yet been ratified.

The text of the Beijing Convention appears in Annex II-38.

g. *2011 Ninth Edition on Safeguarding International Civil Aviation against Acts of Unlawful Interference (Annex 17 to the Convention on International Civil Aviation)*

161. **Objectives.** According to Article 38 of this instrument, the practices recommended are to be applied by all ICAO Member States. The Contracting States are required to notify the Organization of any differences between their national regulations and practices and the international standards contained in this Annex. In Chapter 1, the text provides definitions of what qualifies as “unlawful interference.” The main objective of the text in Chapter 2 is to ensure the safety of the crew, passengers, personnel on the ground, and public in general in all matters regarding civil aviation. The text also recommends facilitation of international cooperation, asking Member States to be diligent in providing additional safety measures if required by another Member State.
162. **Institutional arrangements.** Each Contracting Party is asked to (1) establish a national civil aviation security program in compliance with the international standards defined by the recommended practices, and (2) create a national authority responsible for the development, implementation, and maintenance of the national civil aviation security program. ICAO must be notified by the Contracting Party of the existence of that national authority.
163. **Provisions.** This instrument includes mainly preventive security measures: (1) measures to prevent unauthorized entry to airside areas; (2) appropriate aircraft security checks; (3) screening of passengers and their cabin baggage prior

to boarding an aircraft; (4) hold baggage protected from interference until departure of the aircraft; (5) cargo, mail, and other goods protected from interference before boarding an aircraft; (6) special categories of passengers such as law enforcement officers or passengers subject to judicial or administrative proceedings clearly controlled; and (7) information and communication technologies regarding civil aviation well protected.

- 164. Evaluation.** The air transport carriers of countries in Sub-Saharan Africa not complying with these rules are blacklisted. In practice, many national authorities responsible for the civil aviation security are unable to fulfill their commitments because their personnel are not well trained in security and safety matters; there is no transparency in hiring these personnel, and no consistent budget for their operations.

The 2011 Ninth Edition on Safeguarding International Civil Aviation against Acts of Unlawful Interference appears in **Annex II-39** of this review.

III. Regional Instruments

165. **Presentation.** At the regional (Africa) level, the following sets of instruments of cooperation can be identified:

- The instruments related to the Organization of African Unity (OAU), which include the OAU Charter, the African Declaration of 1973 (Abidjan and Addis Ababa), the 1979 Monrovia Declaration, Lagos Plan of Action of 1980, and the African Maritime Charter. The OAU became the African Union (AU) in 2002. These instruments are reviewed in section B. The AU has developed specific programs on transport: the New Partnership for Africa's development (NEPAD) and the Programme for Infrastructure Development in Africa (PIDA). Both are reviewed in section A.
- The African Economic Community established by the Treaty of Abuja in 1991 (reviewed in section B).
- Treaty for Harmonizing Business Law, concluded in Port Louis, Mauritius on October 17, 1993. Because of differences in legal traditions, this treaty is special mainly to Francophone countries, it is a major tool of cooperation and modernization, and, consequently, it is worthy of review here. The Treaty is especially important as it deals with private law issues in a free market approach. Many other instruments are strongly inspired by a tradition of state control or seem anxious to ensure government control of economic life and economic operators. This treaty is reviewed in section C.
- Treaty Establishing an Integrated Organization for Insurance in African States, concluded in Yaoundé, Cameroon, on July 10, 1992 (reviewed in section D).
- Treaty Creating the Arab Maghreb Union (AMU), concluded in 1989 (reviewed in section E).
- Treaty Creating the Community of Sahel-Saharan States (CEN-SAD), established on February 4, 1998 (reviewed in section F).
- ACP-EU Partnership Agreement⁴⁴ (reviewed in section G).
- Yamoussoukro Decision on air transport (reviewed in section H).
- African Civil Aviation Commission (reviewed in section I).

A. ORGANIZATION OF AFRICAN UNITY⁴⁵

a. 1963 Organization of African Unity Charter

- 166.** The Organization of African Unity (OAU) Charter was adopted at Addis Ababa, Ethiopia, on May 25, 1963. The Charter states that the reinforcement of African unity and solidarity shall be obtained, among other ways, through the coordination and harmonization of general policies, especially on transport and communications (Article 2-2(b)). The Constitutive Act of the African Union was adopted in 2000 in Lomé, Togo, at the OAU Summit and submitted for signature and ratification. To become effective, the Act had to be ratified by two-thirds of OAU Member Countries. In March 2001, this requirement was fulfilled, and in early July 2002 the OAU became the African Union (AU).⁴⁶ Article 14 (e) of the Constitutive Act established specialized technical committee on transport, communications, and tourism. The AU Committee on Transport played a key role in drafting the African Maritime Transport Charter, adopted in 2009.⁴⁷ The Charter is analyzed in detail in section B.

The OAU Charter appears in **Annex III-1** of this review. The Constitutive Act of the African Union appears in **Annex III-2**.

b. 1973 Addis Ababa Declaration on Cooperation, Development, and Economic Independence

- 167.** The Ministerial Conference on commerce, development, and monetary problems took place in Abidjan, Côte d'Ivoire, on May 9-13, 1973. It was followed by the 21st Ordinary Session of the Council of Ministers of the Organization for African Unity in Addis Ababa, Ethiopia, on May 17-23, 1973. Both meetings led to the adoption on May 23, 1973, of the Addis Ababa Declaration on Cooperation, Development, and Economic Independence. The Declaration identified the following objectives in the area of infrastructure and transport:
- Developing infrastructure as the "fundamental basis of development"
 - As a priority, connecting road networks, especially for access to the sea and to the benefit of landlocked countries
 - Eliminating obstacles to traffic by simplifying Customs and police procedures and harmonizing legislation

- Establishing African consortia of shipping lines
- Taking joint positions on the matter of level of freight rates⁴⁸
- Developing shippers' councils
- Reinforcing cooperation between airlines, exchanging traffic rights, developing joint action on the selection of aircraft types, maintenance, and training

The relevant sections (A 3 and B 1 and 2) of the Declaration appear in Annex III-3 of this review.

c. *1979 Monrovia Declaration*

- 168.** At the 33rd Ordinary Session of the OAU's Council of Ministers, which met in Monrovia on July 9-20, 1979, the Council issued the Monrovia Declaration on the main principles and measures needed to reach domestic self-sufficiency, with the objective of attaining a new international economic order. In the Declaration, the Council committed itself to implementing completely the program of the UN Transport Decade in Africa.⁴⁹

The Monrovia Declaration is not attached as an annex to this review.

d. *1980 Lagos Plan of Action and Final Act*

- 169.** The Lagos Plan of Action and Final Act were issued after the Lagos OAU meeting on April 28-29, 1980. The Plan was directed at the implementation of the resolutions formulated in the Monrovia Declaration.⁵⁰ It stated the will to establish before 2000 an African Common Market, followed by the establishment of an African Economic Community. Pending this, it assigned the objective to *reinforce effectively sectoral integration in transport* contributing to the creation of the Economic Community of Central African States (ECCAS).

The Lagos Plan of Action and Final Act are not attached to this review.

e. *Transport Programs Developed by the African Union*

- 170.** **Infrastructure Consortium for Africa (ICA).** ICA was launched at the G8 Gleanneagles Summit in 2005 to encourage investments in infrastructure in

Africa, including, of course, transport infrastructure. The Consortium aims at developing public-private partnerships and seeks new sources of financing. ICA membership includes the G8 countries, the World Bank Group, the African Development Bank, the European Commission, the European Investment Bank, and the Development Bank of Southern Africa. The African Development Bank hosts the ICA Secretariat.⁵¹

171. **New Partnership for Africa's Development (NEPAD).** The AU adopted NEPAD, a dynamic economic program of action to promote the integration process within the African Union, during its 37th Summit. NEPAD has gained legal status by Decision Assembly/AU/Dec.191 (X) of the 18th Heads of State and Government Implementation Committee (HSGIC) and the 10th African Union Summit of January/February 2008, which agreed to proceed with the integration of NEPAD into the structures and processes of the African Union.⁵² The Program is important and seems holistic as it has identified six priority themes. This new development program seeks to eradicate poverty through the implementation of these priority themes, among which transport and trade facilitation are crucial. NEPAD is divided into five zones: north, south, east, west, and center. The details of this new development platform are not analyzed here as it is a program developed within the African Union.
172. **Programme for Infrastructure Development in Africa (PIDA).** PIDA was officially launched in Kampala, Uganda, in July 2010 by the African Union Commission. It is therefore a regional program grouping energy, transport, water, and information communication technology (ICT). For the purpose of this review, only the transport aspect is analyzed.
173. **Objectives.** The Program will (1) enable Africa to build a common market by improving access to regional and continental infrastructure networks; (2) accelerate growth by facilitating the continent integration in the world economy; (3) increase intra-African trade by making possible the formation of large competitive markets in the place of small, isolated, inefficient ones; and (4) improve living standards.
174. **Components.** Three criteria are important to the choice of projects: (1) eligibility and regional integration, (2) feasibility and readiness, and (3) development impacts. The main projects are energy and transport, which represent 95 percent of the total cost of the program. Transport projects include connectiv-

ity, corridor modernization, ports and railway modernization, and air transport modernization.

- 175. Institutional arrangements.** The AU Assembly decides among the project and program proposals submitted. The NEPAD Planning and Coordinating Agency (NPCA) (1) facilitates and coordinates the implementation of the continental and regional priority programs and projects; (2) organizes a donor coordination meeting with Regional Economic Communities (RECs), the African Development Bank (AfDB), development partners, and prospective private sector investors for the funding and financing of PIDA projects; (3) signs a Memorandum of Understanding with the Regional Economic Communities (RECs) for each PIDA project under implementation; and (4) produces consolidated ad hoc and annual reports on the status of implementation of PIDA and its priority projects. The RECs and countries are responsible for direct implementation of PIDA priority projects with the facilitation of the NPCA and the technical support of specialized agencies.
- 176. Evaluation.** To be efficient, this continental policy must be included into national policies and programs and be consistently implemented; the Program must also be enforced. PIDA supports the goals of the African Union's Abuja Treaty. PIDA has learned lessons from Asia, Europe, and South America. It establishes priorities for a large-scale, complex Program. It also conducts an in-depth analysis of the needs and gaps in the short, medium, and long term as the program is organized for the short, medium, and long term (from 2020 through 2040). Short-term implementation is included in the Priority Action Plan (PAP) of PIDA. This Program has been discussed with the RECs, the corridors management institutions, lake and river basin organizations, specialized agencies, sector ministers, and other relevant development stakeholders.

B. AFRICAN ECONOMIC COMMUNITY⁵³

- 177. 1991 Treaty of Abuja.** The Treaty of Abuja (Nigeria), concluded on June 3, 1991, established the African Economic Community (AEC) with OAU as depository. The treaty entered into force in 1994 when ratified by the required two-thirds of OAU Members. There are 53 Parties to the Treaty, all African countries. Morocco is not a party, probably because the Sahrawi Arab Democratic Republic is a Party. The Treaty establishes the AEC as an integral part of

the OAU, with an Assembly of Heads of State and Governments, a Council of Ministers, a Pan African Parliament, an Economic and Social Council, a General Secretariat (of the OAU), and specialized technical committees.

- 178. Objectives.** The main objectives of the African Economic Community are:
- To promote economic, social, and cultural development, as well as the integration of African economies
 - To establish on a continental scale a framework for the development, mobilization, and utilization of Africa's human and material resources
 - To promote cooperation
 - To coordinate policies to foster the gradual establishment of the AEC
- 179. Policies.** The main policies and measures in the area of trade and transport to be taken to attain these objectives are as follows:
- Strengthen subregional⁵⁴ communities
 - Harmonize policies
 - Promote and strengthen joint investment programs
 - Liberalize inter-regional trade by abolishing duties and nontariff barriers
 - Adopt a common trade policy and a common external tariff
 - Establish an African common market
 - Remove obstacles to the movement of persons, goods, and services, with special measures for landlocked countries
- 180. Timetable.** The timetable can be summarized as follows:
- Within five years, the existing (sub)Regional Economic Communities shall be strengthened, and additional (sub)communities shall be established where they do not yet exist.
 - Within eight years, tariff and nontariff barriers, Customs duties, and internal taxes should be stabilized and studies conducted for the gradual removal of tariff and nontariff barriers.
 - Within 10 years, a free trade area would be established in each (sub)regional economic community.

- Within two years,⁵⁵ tariff and nontariff systems should be harmonized with a view toward establishing a Customs union.
- Within four years, the African Common Market should be established with harmonization of fiscal, financial, and monetary policies.
- Within five years, the Common Market should be consolidated regarding residence and movement of goods and services and a monetary union, an African central bank, and an African currency should be established.

According to Article 88 of the AEC Treaty, the continental Community shall be constituted through the activities of five Regional Economic Communities: North Africa, West Africa, Central Africa, East Africa, and Southern Africa.

The 1991 Abuja Treaty Establishing the African Economic Community appears in **Annex III-4** of this review. The treaty cannot be traced in the treaties filed with the UN Secretariat. It does not appear in the UN Treaty Series, but is available in *International Law Materials* (30 ILM 1241 (1991)) and the *African Journal of International and Comparative Law* (3 AJICL 792).

a. *Protocol on the Relations between the African Union and the Regional Economic Communities*

181. History. The Protocol on the Relations between the African Union and the Regional Economic Communities was concluded in Addis Ababa, Ethiopia, on January 27, 2008, between the African Union and (i) the Economic Community of West African States (ECOWAS); (ii) the Common Market for Eastern and Southern Africa (COMESA); (iii) the Economic Community of Central African States (ECCAS); (iv) the Southern African Development Community (SADC); (v) the Intergovernmental Authority for Development; (vi) the Community of Sahel-Saharan States (CEN-SAD); and (vii) the Eastern African Community (EAC). To date, the Arab Maghreb Union (AMU) did not sign the Protocol.

The 2008 Protocol replaces an earlier protocol signed on February 25, 1988 between the African Economic Community and (i) the Intergovernmental Authority for Development (IGAD); (ii) the Economic Community of West African States (ECOWAS); (iii) the Southern African Development Community (SADC); (iv) the

Common Market for Eastern and Southern Africa (COMESA); and (v) the Arab Maghreb Union (AMU).

The text of the 2008 Protocol is attached as **Annex III-5** to this review. The Protocol does not appear in the UN Treaty Series.

- 182. African Union's policy.** The Protocol aims at formalizing, consolidating and promoting closer cooperation among Regional Economic Communities and between them and the African Union through the coordination and harmonization of their policies, measures, programs and activities in all fields and sectors. Its goal is also to establish a coordination framework for the activities of the RECs. They will coordinate their policies and programs with those of the African Union, will exchange information and experiences. They will promote inter-regional projects and support each other in their respective integration endeavors. Relations with the Union will be reinforced.
- 183. Specific undertakings.** The tone of the Protocol clearly indicates that the performance of the RECs under the preceding 1998 Protocol did not permit to reach the objectives and action coordination. As a result, the new text stipulated specific undertakings. First, the RECs must review their treaties to establish an organic link with the Union and align their programs, policies and strategies with those of the Union. Second, they must prepare for their eventual absorption in the African Common Market. The parties specifically undertake to coordinate and harmonize their activities, policies and programs. The Union specifically undertakes to strengthen the RECs.
- 184. Institutions.** To implement the provisions of the Protocol, two committees were established (Articles 6 to 10):

 - *Coordination Committee.* The Coordination Committee comprises the chief executives, the Executive Secretary of the United Nations Economic Commission for Africa (UNECA), the President of the African Development Bank (AfDB) and the chief executives of the financial institutions of the Union. The Committee is responsible for providing policy orientation, implementing the coordination and harmonization of policies, monitoring and keeping under constant review the progress made by the RECs.
 - *Committee of Secretariat Officials.* This Committee is composed of representatives of the chief executives of the RECs, of the Executive

Secretary of UNECA, of the African Development Bank, and the chief executives of the financial institutions of the Union. It meets twice a year, prepares all documents to be approved by the Committee, conducts follow up and prepares reviews and budget documents. Its decisions are forwarded to the Executive Council as recommendations in matters related to the integration of Africa.

- 185. Benchmarks.** The Protocol summarizes the duties and prerogatives of the African Union regarding the RECs. The African Union Commission shall in consultation with the RECs, determine the progress of regional economic integration, and thereafter design appropriate programs to accelerate the integration process. Benchmarks are defined for progress of integration and programs in consultation with the RECs following strictly the provisions of the African Union Treaty. Time limits are set for the progress towards the objectives of the African Union. These objectives are to set a common market, free trade, a Customs union, harmonization of tariff and non-tariff systems.
- 186. Transport.** In the matter of transport, Partner States agree to
- Promote integration of infrastructure and develop transport coordination to increase productivity and efficiency
 - Harmonize and standardize legislation and regulations
 - Promote transport coordination, the development of local transport industries and local transport equipment industries, and encourage the use of local material and human resources
 - Reorganize and standardize railway networks in view of their interconnection in a Pan-African Network
 - Restructure the road transport sector for the purpose of establishing interstate links
 - Harmonize maritime transport policies
 - Harmonize air transport policies and flight schedules
 - In general, to coordinate and harmonize transport policies to eliminate nonphysical barriers to the free movement of goods, services, and persons
- 187. Evaluation.** The African Economic Community was envisioned as being created in six stages: (1) create regional blocs where they did not exist; (2) strength-

en intra-REC integration and harmonization; (3) establish a free trade area and a Customs union in each regional bloc; (4) establish a continent-wide Customs union; (5) establish a continent-wide African common market; and (6) establish a continent-wide economic and monetary union. Among these objectives, the first has been completed, and the second, third, and fourth are in progress. This is why it was preferable to carry-on the present evaluation based on the review of the subregional conventions. It is important to retain the AEC because, after the entry into force of the Treaty of Abuja, the OAU was operating on the basis of two legal instruments. For this reason, the OAU was officially referred to as the OAU/AEC. These complementary instruments were the foundation of the 200 Constitutive Act of African Union.

b. *African Maritime Transport Charter*

- 188. General and references.** The Third Conference of African Ministers of Maritime Transport held in Addis Ababa, Ethiopia, on December 13–15, 1993, adopted the African Charter on Maritime Transport to provide the framework for cooperation among African States and between African and non-African countries. In its Resolution CM/Res. 1520 (LX), the Council of Ministers of the OAU stressed the importance of and endorsed the charter, which was issued on July 26, 1994. It is open for signature by Partner States at the General Secretariat of the AU. The preamble of the Charter refers to the OAU Treaty, the UN Convention on a Code of Conduct for Liner Conferences, and the 1965 New York Convention on Transit Trade of Landlocked Countries, although not all African States ratified the 1965 New York Convention.
- 189. Issues and policy decisions.** The preamble of the African Maritime Transport Charter states that shipping conferences are making arbitrary decisions in the area of freight rate increases and that the interested African States need to take advantage of the favorable provisions of the April 6, 1974, UNCTAD Code of Conduct on the 40/40/20 basis, which is described shortly. As a consequence, these States agree to make a number of policy decisions in the areas of maritime affairs, development of shipping companies, ports, landlocked countries, and training.
- 190. Objectives.** The objectives of the Charter are as follows:
- To define and implement harmonized shipping policies

- To encourage the development of African fleets and regional and subregional shipping lines
- To promote cooperation between the Partner States (Chapters I and II)

The Charter is an implementation and formulation of the policies set broadly in the 1973 Addis Ababa Declaration for maritime transport. It was to come into force 30 days after the deposit of the instruments of ratification by two-thirds of the Partner States (Chapter IX), but a provisional entry into force was to take place after ratification by 20 Partner States.

- 191. Institutions (Chapter III).** To ensure effective coordination of maritime and port development policies, activities, and programs of integration, the OAU is to establish in its General Secretariat a continental unit for the coordination of activities of regional cooperation organizations in shipping and port operations in Africa (Continental Unit for Marine Transport, UCOMAR). Similar units are to be established in each subregion. Furthermore, national shippers' councils are to be strengthened, together with port committees and other institutions, with a view toward bringing these agencies together in subregional specialized cooperation institutions. The charter also encourages the Member States to establish at the national, subnational, and regional levels committees on the facilitation, harmonization, and simplification of administrative and Customs procedures.⁵⁶ Chapter VII of this review reveals that this goal was met, at least in legal terms, in West and Central Africa.⁵⁷
- 192. Cooperation in maritime transport (Chapters IV and VII).** Cooperation among African shipping lines is to be strengthened with the development of consortia, pool agreements, and joint services. Traffic should be reallocated in each subregion and a harmonized system of cargo sharing developed. Multimodal transport joint ventures should be created within the framework of the 1980 UN Convention on International Multimodal Transport of Goods. A harmonized legal framework should promote and guarantee the stability of maritime transport joint ventures. Cooperation is also to be developed in the areas of ship repair, training, and electronic data interchange (EDI). Member States should update and harmonize their legislation.
- 193. Cooperation in the area of assistance to shippers (Chapter V).** Shippers organizations are to be encouraged. Effective consolidation of cargo at the national, subnational, and regional levels should be developed to obtain well-

adapted shipping services at a lower cost. Facilitation and harmonization of Customs procedures should be developed.

194. **Ports (Chapter VI).** Port management should be autonomous. Harmonized port tariff and statistics systems along the lines of the UNCTAD models should be encouraged.
195. **Landlocked countries (Chapter VII).** Transit Partner States agree to grant facilities and benefits to landlocked States and to apply nondiscriminatory administrative, fiscal, and Customs measures. They agree to coordinate their policies of acquisition and uses of land, river, air and maritime transport, and ports. They are encouraged to enter into bilateral and multilateral conventions on transit and to ratify those in force.
196. **Evaluation.** The Charter is to finally enter into force once 30 days have passed after deposit of the instruments of ratification, acceptance, or approval of two-thirds of Member States. As of May 2010, of the 53 Member States, 37 had signed and 12 had ratified and deposited the instruments of ratification. The two-thirds (35) of countries needed to enter into force is thus far from reached. Only four of the 12 countries that have ratified the Charter are landlocked: Lesotho (1999), Mali (2000), Niger (2007), and Uganda (2008).⁵⁸ This is a sign that Sub-Saharan countries have a long way to go and that they should take responsibility for their actions and have strong political will, the lack of which hinders the continent's legal development. The lack of success with this charter led the African Union to hold a Conference of Ministers Responsible for Maritime Transport in 2009 in Durban, South Africa. It led in turn to the adoption of a new African Maritime Transport Charter.

The 1994 African Maritime Transport Charter appears in **Annex III-6** of this review. The instrument was not filed with the UN Secretariat and does not appear in the UN Treaty Series.

c. *2009 African Maritime Transport Charter*

197. **General overview.** The Second Session of the Africa Union Conference of Ministers Responsible for Maritime Transport was held in South Africa in October 2009. Representatives of the 36 Member States, Regional Economic Communities, European Union, and African and international organizations took part in the Conference. This meeting was provoked by the compelling

safety issues faced by the continent's maritime transport, which were about to be an obstacle to countries' economic development.⁵⁹ For example, in East Africa maritime transport contributes to about 95 percent of the total international trade. The regulation of this industry was therefore an urgent issue for the whole continent. As a result, an African Maritime Transport Charter and African Union Maritime Transport Plan of Action were adopted. One of the most important features of this Conference was the call by the Ministers to the African Union Commission to establish a mechanism to monitor implementation of the Charter in order to expedite its enforcement and inclusion in national legislation.⁶⁰ Chapters V, VI, VII, X, and XI are the most important chapters as they deal with (1) cooperation between landlocked and transit States; (2) multimodal transport and port development; and (3) information and communications technologies and facilitation. The preamble encourages (1) ratification by the States of the 1994 adopted Charter; (2) participation by the landlocked States in the consultative organs established in transit ports to ensure the smooth flow of goods and the competitiveness of port services as well as transport corridors; and (3) application of the most favorable port tariffs for the goods coming from or to a landlocked State.

- 198. Evaluation.** The 2009 African Maritime Transport Charter is a revised version of the 1994 Maritime Transport Charter in its objectives. The new Charter seeks to (1) adopt a continental policy and strategic framework by updating the 1994 charter; (2) review the implementation of the 2007 Abuja Declaration and Action Plan on Maritime Transport in Africa; and (3) coordinate the African position on the 2008 Convention on International Carriage of Goods Partially or Wholly by Sea of the United Nations Commission on International Trade Law (UNCITRAL). The 2009 charter was adopted during a conference entitled "Creating a Safe, Secure and Clean Maritime Transport Industry in Africa." This new Charter not only encompasses trade, transit, and transport facilitation in the region, but deals with the safety and environmental issues in maritime transport. The provisions of the 1994 Charter are reinforced, especially the multimodal transport aspects and the cooperation between landlocked and coastal States. The newest provisions are those related to information communication technologies (ICT), a clean environment, and security and safety issues.

It is too soon to evaluate the 2009 Charter. However, the African Union has lowered the number of ratifications required for the Charter to enter into force. Due to public

awareness of the safety and environmental issues and the international pressure on the African States, it can be affirmed that this Charter will be ratified and implemented faster than the previous one. However, practical measures must be taken in the field by local governments since, for example, the ports and inland waterways must be modernized to comply with the ICT aspects of the Charter, and roads must be rehabilitated to enable an effective transit and transport facilitation of goods and people. But these measures can only be carried out by exerting strong political will, which for the Sub-Saharan African Governments is a challenge.

The 2009 African Maritime Transport Charter appears in **Annex III-7** of this review.

C. TREATY ON THE HARMONIZATION OF BUSINESS LAW IN AFRICA⁶¹

199. History. The Treaty on the Harmonization of Business Law in Africa (OHADA) was concluded in Port Louis, Mauritius, on October 17, 1993. It entered into force on January 1, 1998, between Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. The adhesion of the Democratic Republic of the Congo is almost complete because the law related to its adhesion was on its way to passage in 2010.⁶² Senegal is the depository. In addition, Madagascar aligned all of its commercial code with OHADA standards. In October 2008, the Heads of States of OHADA's members met in Quebec, Canada. The objectives of the meeting were threefold: (1) amend the original treaty; (2) end the transitional measures defined by the "N'Djamena's Arrangements"; and (3) provide an independent financing scheme for OHADA. The Treaty was then modified by the Treaty of Quebec and approved and signed in October 2008.⁶³ As for the transport sector, there were no substantial changes. As noted, the main modifications were related to the formal aspects of enabling OHADA's institutions to be more effective. For the purpose of this review, the amendments will not be analyzed in detail as they do not affect the transport topic in its essence.⁶⁴

200. Civil law and OHADA. All countries associated with the OHADA Treaty are civil law countries. Extension of OHADA beyond the range of civil law countries would have involved an in-depth review of the existing statutes and practices of the various common law states to arrive at a set of rules acceptable to all states of the region. On February 2008, the former Chair of the Nigerian

Bar Association in an address in Accra, Ghana, reiterated an invitation to Anglophone countries to join OHADA to facilitate the harmonization of business law, which is key to attracting foreign direct investment.⁶⁵

201. Institutions. Enforcement of the Treaty is entrusted to OHADA through its following institutions:

- *Council of Ministers.* The Council is composed of the Ministers in charge of justice and those in charge of finance.
- *Permanent Secretariat.* The Permanent Secretariat is in charge of the *École régionale supérieure de la magistrature* for the training of future judges and magistrates.
- *Joint Court of Justice and Arbitration.* The court is composed of seven judges elected by the Council of Ministers from a list proposed by the Partner States (two candidates per State).

The Treaty stipulates that OHADA being an international institution enjoys diplomatic immunity.

202. Objectives. The Treaty has the following objectives:

- To develop a framework of business law that is "harmonized, simple, modern and well-adapted" (preamble) in order to facilitate business and ensure the security of transactions.
- To develop arbitration as a standard technique for solving contractual issues and litigation.

203. Provisions. A summary of the provisions of the Treaty follows:

- *Common rules.* Business law includes all rules regarding companies, debt, bankruptcy, arbitration, labor law, accounting, sales, transport, and any other item the Council of Ministers decides to include. All these matters should be covered by rules common to all Parties.
- *Uniform Acts.* Uniform Acts are prepared by the Secretariat in consultation with Governments. Once a uniform act is adopted by the Council of Ministers, a government must update its legislation to introduce the Uniform Act within 90 days of its adoption. A Uniform Act supersedes any past, present, or future domestic provision contrary to it. Interpretation of the act is within the jurisdiction of the Joint Court of Justice and

Arbitration. To date, eight Uniform Acts have been issued on commercial law (1997), corporations and consortia (1997), sureties (1997),⁶⁶ procedures for recovery and measures of execution (1998), procedures for bankruptcy (1998), arbitration (1999), accounting standards (2000), and road carriage contracts (2003).

- *Arbitration.* Arbitration is encouraged. Arbiters are designated by the Joint Court of Justice and Arbitration, which does not conduct arbitration itself, but reviews decisions before they are issued. It does not, however, propose changes to the decision and only delivers an exequatur decision.⁶⁷

The 1993 OHADA Treaty on Harmonization of Business Law in Africa appears in Annex III-8 of this review.⁶⁸ The Treaty could not be traced in the instruments filed with the UN Secretariat, and it does not appear in the UN Treaty Series.

a. *OHADA Uniform Act Relative to the Contracts on Road Transport*

204. History. The OHADA Uniform Act Relative to the Contracts on Road Transport of Goods was issued on March 22, 2003. It was to be enforceable on January 1, 2004. As of June 2010, no case law related to the Uniform Act had been identified.⁶⁹ The 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) was apparently used as a model, subject to some differences and additional provisions due to, among other things, the incorporation in the Uniform Act of rules resulting from judge-made law.⁷⁰ Altogether, the Uniform Act⁷¹ is more detailed and precise than the CMR.

205. Differences with the CMR. The main differences between the 2003 Uniform Act and the CMR are as follows:

- No mention is made that the Uniform Act applies to carriage by governmental agencies or institutions (Article 1).
- Definitions are given of the main terminology. Noticeable is the definition of a written document, which includes documents issued by e-mail (Article 2).
- The carriage contract is in effect as soon as the Parties agree on carriage against payment (Article 3).

- Whether the consignment note is missing or irregular is without impact on the carriage contract (Article 4). This is a judge-made rule resulting from court decisions on the enforcement of the CMR, which OHADA makes statutory.
- Conditions regarding packing, description of cargo, hazardous cargoes, etc. are stricter for the shipper (Article 7) than in the CMR.
- The liability regime is more favorable to the carrier (Article 17) because its due diligence is easier to demonstrate.

206. Risks of conflicts of law. As already mentioned, legal instruments, as they multiply, tend to overlap. The 2003 Uniform Act is an example. If, as stipulated in the OHADA Treaty, the Uniform Act is reissued in each Member State as domestic legislation, it will become the law of the land. Cameroon, the Central African Republic, Chad, Congo, Equatorial Guinea, and Gabon, which are members of OHADA, are also members of the Economic and Customs Union of Central Africa (UDEAC), which has been replaced by the Economic and Monetary Community of Central Africa (CEMAC). And yet Act No. 3 issued by UDEAC in 1996 as a legal framework for the interstate road transport of general cargo is still in effect. OHADA has no authority to cancel it. If the UDEAC Act issued by the UDEAC Heads of State is to be rated as an international instrument (a point that needs clarification), it may well in court supersede OHADA's Uniform Acts because these will be issued as domestic legislation.

207. Evaluation.⁷² Lawyers consider OHADA's impact to be quite positive. Not only is a modern, market-oriented legal system introduced, but also business operators, magistrates, and the bar feel more secure. A body of law is being built, with an easy access thanks to wide distribution, and inter-African Francophone court jurisprudence is widely distributed through OHADA's website,⁷³ There are, however, reservations on two points:

- The transfer of jurisdiction for commercial law from parliaments and governments to the OHADA structure; and
- OHADA's Uniform Acts are typically civil law legislation and may not be easy to adjust to the conditions in common law countries. OHADA, however, shows a direction that other subregional or regional institutions should follow. Significantly, there are now requests for unification of trading laws in Anglophone Africa because differences in legislation and interpretation of the law are an obstacle to foreign trade.⁷⁴

The text of the *Acte uniforme relatif aux contrats de transport de marchandises par route* appears in Annex III-9 of this review.

D. TREATY CREATING AN INTEGRATED ORGANIZATION FOR INSURANCE⁷⁵

208. The *Treaty Creating an Integrating Organization for Insurance in African States* was concluded in Yaoundé, Cameroon, on July 10, 1992. It came into effect on February 15, 1995. Signatories are Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Congo, the Comoros, Côte d'Ivoire, Gabon, Equatorial Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. Signatories of the OHADA Treaty have not apparently acceded to this Treaty.

209. Objectives and formulation. The 1992 Yaoundé Treaty results from action by the Inter-African Conference of Insurance Markets (*Conférence interafricaine des marchés d'assurance*, CIMA), composed of officials and insurers from Sub-Saharan civil law countries. Its objectives are formulated in the preamble and in Article 1.

The preamble sets forth the objective to establish African unity by harmonizing national insurance markets, thereby continuing the efforts begun with the cooperation conventions on the regulation of insurance companies and operations concluded in Paris on July 27, 1962, and November 27, 1973.

Article 1 sets forth the following objectives:

- Reinforce national markets through a better use of resources
- Transform local (national) markets in a vast inter-regional market with common rules and regulations
- Continue the nationalization of local markets, with local reinvestments of reserves of insurance companies
- Harmonize and unify laws and regulations
- Improve protection of clients and victims of insurance companies

The Insurance Code (CIMA Code) is annexed to the Treaty. According to Article 3, "it defines the one and only insurance legislation."

- 210. Institutions.** The Yaoundé Treaty sets forth the following institutions:
- *Council of Ministers (Articles 6 to 15).* The Council is formed by the Ministers in charge of insurance in each Contracting State. It meets twice a year. It is responsible for attaining the objectives of the Treaty. It defines the insurance policy and controls the implementation of the joint insurance legislation in Member States.
 - *Regional Regulatory Commission (Articles 16 to 30).* The Commission is in charge of regulating insurance companies. It ensures overall control and contributes to the organization of local insurance markets. It formulates an opinion on the licensing of insurance companies, the license being delivered—or denied—by the minister in accordance with the Commission’s opinion. When the Commission is aware of breaches of regulations, it may apply sanctions up to suspension or revocation of the managers of an insurance company, cancellation of license, or transfer of portfolio to another insurer. The Regional Regulatory Commission has been substantially modified by the Decision of the Council of Ministers of April 2, 2008. However, the changes made do not affect the purpose of this review.⁷⁶
 - *General Secretary (Articles 31 to 49).* The Secretary prepares, conducts, and supervises the implementation of decisions of the Council. He or she may conduct inquiries in insurance companies. The secretary also produces an annual review. This official is appointed by the council for five years and performs his or her duties in full independence.
- 211. Legal arrangements for implementation.** In exercising its jurisdiction, the Inter-African Conference of Insurance Markets issues regulations and decisions; it also formulates recommendations and opinions. All these must be issued with motives:
- *Articles 39 to 43.* Regulations, which formulate general rules and decisions applying to individual cases, have a direct and imperative effect. Recommendations and opinions have no direct effect.
 - *Articles 44 to 47.* Governments take the necessary measures to implement regulations and decisions; they abstain from any measure that may be an obstacle to implementation. The council may notify a government about companies that have not performed in compliance with the Treaty and of the need to take the necessary measures for the performance of its duties. Local courts must enforce the provisions of the Treaty. Whatever provi-

sions of municipal law are contrary to them and future legislation must be in line with the Treaty.

- *Articles 48 and 49.* The validity of regulations, decisions, and other acts issued or decided by the Inter-African Conference of Insurance Markets can be disputed only in front of the council and within two months after issuance or notification. The council rules on the interpretation of the Treaty and of municipal court decisions that may be an obstacle to the uniform enforcement of the law of the conference. Interpretation by the council has the force of law for all agencies and courts. The provisions of Articles 48 and 49 may be a source of problems at the constitutional level, for they clearly impinge on judicial independence.

- 212. Financial and other provisions.** The Council of Ministers is financed by the contributions of Member States from taxes on insurance companies and other fees and levies (Articles 50 to 57). The Inter-African Conference of Insurance Markets is incorporated. Along with its institutions, it benefits from all immunities granted to international organizations (Articles 58 to 68).⁷⁷

The text of the Treaty appears in **Annex III-10** of this review. The Treaty was apparently not filed with the UN Secretariat and is not listed in the UN Treaty Series.

a. *CIMA Code*

- 213. History.**⁷⁸ The 1992 Yaoundé Insurance Treaty was intended to replace the French Act on Insurance of July 13, 1930, passed to discipline the insurance industry and eliminate the abuses being carried out by companies in their relations with clients before insurance was regulated. The 1930 Act was generally enforceable in Francophone Africa before independence. It was modified over the years in France, but African statutes did not follow suit, and the system became obsolete. The 1992 Yaoundé Insurance Treaty therefore updates the provisions of the 1930 French Insurance Act with the same objective of establishing and maintaining a fair and sound insurance market.

- 214. Provisions of the CIMA Code.** Since its entry into force on January 15, 1995, the CIMA Code has been modified several times. The last update was April 2, 2008. The main provisions of the Code are as follows:

- The Code is applicable to road transport but not to maritime or river transport. Recent information indicates that it is not yet applicable to rail

transport, despite requests to that effect from African railway companies. In the first chapter of Title I of the new Code, Article 1 states: "Titles I, II and II of the present book are only applicable to earthbound insurances, excluding therefore maritime insurances, river insurances."⁷⁹ There is no indication in the CIMA Code that the notion of earthbound may include railway transport. As a whole, the new Code does not dramatically change in its substance the scope of the risk covered, and there is no trace of any existing case law to lead to an edifying analysis.

- The CIMA Code is imperative. Based on the modified 1930 French Act, (1) it reinforces the insurer's right to sincere information from the policyholder on risks, and especially the policyholder must answer precise questions from the insurers as formulated in standard questionnaires (Article 12); (2) it reinforces the policyholder's right to information on tariffs and conditions, prohibiting "fine print" contracts (Article 7); and (3) it lists the clauses that should be in any case stipulated in the insurance contract (Article 8) such as delays in payment of damages due to the policyholder.

E. TREATY CREATING THE ARAB MAGHREB UNION

215. The Treaty Creating the Arab Maghreb Union (AMU) was concluded in Marrakech, Morocco, on February 17, 1989. Signatories are Algeria, Libya, Mauritania, Morocco, and Tunisia. The Treaty came into effect on July 1, 1989, and was registered in the UN Treaty Series as No. I-26844.
216. **Objectives and missions.** In its objectives and missions, the Treaty stipulates in its Article 2 the freedom of movement of persons, services, merchandise, and floating assets. Establishing over the long term a Maghreb economic union between the Member States will require implementing two steps: (1) creating a free zone of exchange with the creation of a nontariff area and (2) establishing a Customs union and a common market.
217. **Major Institutions.** The major institutions are as follows:
- *Council of the Presidency.* This body is composed of Heads of State. It is the supreme organ of the AMU. The council has the ability to make decisions unanimously. The presidency, which lasts six months, rotates among the Member States.

- *Council of Prime Ministers*. The council meets whenever necessary. The Council of Ministers of Foreign Affairs prepares the session of the Council of the Presidency and reviews the proposals of the Follow-up Comity and the specialized ministry commissions.
- *The Council of Ministers of Foreign Affairs* prepares the session of the Council of the Presidency and reviews the proposals of the Follow-up Comity and the specialized ministry commissions.
- *Follow-up Comity*. This body, made up of one member per Member State, is responsible for following up on AMU affairs. It submits its works to the Council of Ministers of Foreign Affairs.
- *Four specialized ministerial commissions*. The commissions are created by the Council of the Presidency. One ministerial commission is devoted to basic infrastructure and is responsible for the following sectors: equipment, public works, housing, urban, transport, telecommunications, and hydraulic.

218. Other institutions. The General Secretary created by the Council of the Presidency is responsible for the secretarial tasks of the Council of the Presidency, the Council of Ministers of Foreign Affairs, the Follow-up Committee, and the specialized ministerial commissions. The Consultative Council (whose members are chosen by each Member State's parliament) gives an opinion on each project undertaken by the Council of the Presidency and also provides recommendations to the Council of the Presidency. The judiciary body is composed with two judges per country. It is responsible for solving the conflicts arising from interpretations of the Treaty and the different agreements concluded within the AMU. The *Banque maghrébine d'investissement et de commerce extérieur* is responsible for promoting the free movement of goods and assets within the AMU and strengthening the investments.

219. Specific provisions related to transport and transit facilitation. The following agreements are related to transport and transit facilitation:

- Maritime Cooperation Agreement, concluded in Libya on March 10, 1991, and revised at Syrte, Libya, in July 2009
- Agreement on the Road and Transit Transport of Passengers and Goods, concluded in Alger on July 23, 1990, and revised in Syrte in July 2009

- Agreement on land transport of dangerous products, concluded in Syrte, Libya, in July 2009
- Agreement on the mutual recognition of driving licenses in the Member States, concluded in Nouakchott, Mauritania, on November 11, 1992

220. Evaluation. Progress toward establishing a Maghreb common market has been slow, despite the cultural unity. Most of the obstacles to regional integration are political, especially between the two largest members, Morocco and Algeria. The obstacles to integration also stem from the differing economic structures of the member countries. Morocco and Tunisia are more liberal market-oriented, whereas the economies of Algeria and Libya are more centrally controlled. Most of the agreements were concluded in the 1990s. Thus for more than two decades, no major agreements on transit and transport facilitation have been signed. In July 2009, there was some activity on agreements that have been revised.

The Treaty appears in **Annex III-11** of this review.

F. TREATY CREATING THE COMMUNITY OF SAHEL-SAHARAN STATES

221. The Treaty Creating the Community of Sahel-Saharan States (CEN-SAD) was concluded on February 4, 1998, following the Conference of Leaders of States held in Tripoli, Libya. It was signed by Burkina Faso, Chad, Libya, Mali, Niger, and Sudan (the founders). As of March 31, 2011, there were 28 Member States: Burkina Faso, Chad, Libya, Mali, Niger, Sudan, as well as, chronologically, the Central African Republic (1999), Eritrea (1999), Djibouti (2000), The Gambia (2000), Senegal (2000), Egypt (2001), Morocco (2001), Nigeria (2001), Somalia (2001), Tunisia (2001), Benin (2002), Togo (2002), Côte d'Ivoire (2004), Guinea-Bissau (2004), Liberia (2004), Ghana (2005), Sierra Leone (2005), the Comoros (2007), Guinea (2007), Kenya (2008), Mauritania (2008), and São Tomé and Príncipe (2008).

222. Objectives. The objectives of the Treaty are to establish an economic union; remove all restrictions hampering integration of these countries by adopting the necessary measures to ensure the free movement of the persons, capital, and interests of nationals of Member States; ensure the right of establishment, ownership, and exercise of economic activity, as well as free trade and the

movement of goods, commodities, and services originating from the signatory countries; and increase land, air, and maritime transport and communications among Member States by implementing common projects.

223. Institutions. The institutions established by the Treaty are as follows:

- *Conference of Heads of State.* The conference is composed of the Community Heads of State. The supreme organ of policy and decision making, the conference meets once a year in an ordinary session. It can meet in an extraordinary session at the request of a Member State.
- *Executive Council.* The Council is responsible for preparing the programs of integration and implementing decisions of the Conference of Heads of State. It is composed of Ministers in charge of external cooperation, economy, finance and planning, the interior, and the public security portfolio. It meets every six months in ordinary session.
- *General Secretariat.* This body is the administrative and executive organ of CEN-SAD, responsible for the daily operation of the Community. The General Secretariat is composed of the Secretary General, Assistant Secretary General, Office of the Secretary General, Administrative and Financial Affairs Directorate, Complementarity and Integration Directorate, and Research and Legal Affairs Directorate.
- *African Bank for Development and Trade.* The Bank carries out activities relevant to CEN-SAD development projects within the framework of the Convention and the statutes.
- *Economic, Social and Cultural Council (ESCC).* The Council is an advisory body composed of 10 members designated by each member country and mandated to assist the organs of the Community in the design and preparation of the development, policies, plans, and programs of an economic, social, and cultural nature of the Members.

The Treaty appears in **Annex III-12** of this review.

a. *Specific agreements relevant to transit and transport facilitation*

224. Cooperation Agreement in Maritime Transport between the Members of the Community of Sahel-Saharan States (CEN-SAD). This Agreement was concluded on June 1, 2006. Its objectives are to (1) organize the maritime rela-

tions between Member States; (2) ensure better coordination of the bilateral and multilateral maritime traffic; (3) prevent all obstacles to the development of maritime transport between Member States; (4) coordinate the efforts aimed at preventing illegal activities such as piracy and terrorism; (5) facilitate the port transport of cargo in transit from the coastal Member States to the landlocked Member States; (6) develop technical cooperation in training personnel; and (7) assist and develop information sharing. The Agreement is applicable to maritime transport between the Member States. Article 5 of the Agreement promotes cooperation among ship-owners to share the maritime traffic within the countries. Article 6 of the Agreement promotes the equal treatment of ships in the ports of Member States.

- 225. Convention of Cooperation in Transit and Road Transport between States Members of the Community of Sahel-Saharan States (CEN-SAD).** This Convention was concluded on June 2, 2005. Article 2 of the Convention defines its scope. Title II of the Convention is related to interstate road transport. It applies to travelers' road transport and the transport of goods within the territories of Member States. Title II sets forth the requirements of this type of transport by regulating the vehicle itself, its technical aspects, the number of passengers authorized to travel, and the duty to have a valid transport insurance policy. Title III addresses interstate transit by road. It establishes interstate road transit to facilitate the Customs clearance of goods. Articles 23 to 46 regulate the transit operation from the State of departure to the State of destination, including the passage to the transit State. Articles 49 and 50 mention expressly the right of landlocked Member States to receive equal treatment for their ships, goods, and travelers.
- 226. Evaluation.** All CEN-SAD countries already belong to existing Regional Economic Communities. The objectives of the Convention overlap with those of the other REC trade and integration blocs. CEN-SAD, as other RECs, will implement the transport and integration projects launched by the Programme for Infrastructure Development in Africa (PIDA) led by the African Union Commission, NEPAD Secretariat, and the African Development Bank.

G. ACP-EU PARTNERSHIP AGREEMENT

227. Background information. The ACP-EU Partnership Agreement between the African, Caribbean, and Pacific (ACP) States and the European Union (EU) was concluded on June 23, 2000, in Cotonou, Benin. Thirty-five African countries are associated with the EU through this agreement, of which 15 are landlocked (see list in Article 2 of Annex VI to the Agreement).

A first revision of the 2000 Cotonou Agreement was concluded in February 2005.⁸⁰ The revised Agreement entered into force on July 1, 2008. The new Agreement liberalized trade to be compatible with the World Trade Organization. As for transit and transport, the first revision focused on several points, among which facilitation of cooperation between ACP States and other developing countries was key. The revised Cotonou Agreement allows regional groups of ACP countries to negotiate economic partnership agreements (EPAs) with the EU. A second revision of the Cotonou Agreement was signed on March 19, 2010, to take into account the growing importance of regional integration among the ACP countries.⁸¹

228. Provisions related to transport and regional integration. The following articles are relevant to transit and transport:

- *Article 84.* Special attention shall be paid to transport and communication infrastructure.
- *Article 87.* Specific provisions and measures shall be established to support landlocked ACP States in their efforts to overcome their difficulties and the obstacles hampering their development.
- *Article 41.* The Parties reiterate their commitment to the GATS (GATT).
- *Article 42.* Maritime transport is the *only* transport mode specifically mentioned in the Agreement. It is seen as the main mode of transport facilitating international trade. The text stipulates its liberalization and free access to the market. It also stipulates equal treatment of ships in the ports of the States party to the Agreement, which confirms the provisions of the 1923 Geneva Convention and Statute on the International Regime of Maritime Ports.
- *Article 20 (aa).* ACP-EC cooperation strategies at the regional level shall aim at fostering regional cooperation and integration.

- *Article 28(2)b.* Economic development and cooperation shall be enhanced through the build-up of larger markets; the free movement of persons, goods, services, capital, labor, and technologies among ACP countries; the accelerated diversification of the economies of ACP States; the promotion and expansion of trade among ACP States and with third countries; and the gradual integration of ACP States into the world economy.
- *Article 28 (2)c.* The management of sustainable development challenges with a transnational dimension should be promoted through, among other things, coordination and harmonization of regional and subregional cooperation policies.
- *Article 29(2)f.* Cooperation shall be pursued in the area of regional economic integration, support, and infrastructure, particularly transport and communications and services.
- *Article 36.* The Parties reiterate their commitment to the WTO.

229. Evaluation. Scholars have raised the question of whether the Cotonou Agreement was a mere change of rhetoric or a change of substance.⁸² The Agreement focuses on being compatible with the provisions of the 1994 Agreement Establishing the World Trade Organization by granting equal treatment to countries in the area of commerce.⁸³ This was not so with the 1982 Lomé Convention Relating to Interstate Road Transit of Goods, in which trade was based mostly on non-reciprocity, granting enormous advantages to the countries belonging to the African, Caribbean, Pacific group with access to the markets of the European Union. The Agreement also encourages Sub-Saharan African countries to engage in more trade with regional neighbors and to increase the volume of trade among themselves. However, several issues that hinder transport, transit, and trade facilitation in the region are identified: lack of viable transport linking the countries within the subregions; lack of basic infrastructure in general, lack of political will, abundance of political rivalries, lack of sincerity and political commitment, and continuing political instability. As a result, transport, transit, and trade facilitation in the region is very low,⁸⁴ and the completion of regional integration seems very remote. Structural adjustment policies are required to create real transport facilitation, and for this purpose the respective governments should create binding rules for transport facilitation as well as an accountability system to be more effective.⁸⁵

A copy of the ACP-EU Partnership Agreement appears in **Annex III-13** of this review. This Agreement does not appear to have been filed with the UN Secretariat.

H. YAMOUSSOUKRO DECISION

- 230. Historical background.** On October 17, 1988, the ministers of transport of 40 African States met in Yamoussoukro, Côte d'Ivoire, and concluded a new African air transport policy. The policy focused on airline cooperation and integration within a time frame of eight years. The meeting also reinforced the idea that the air transport sector in Africa needed to be liberalized. This is known as the Yamoussoukro Declaration. The African ministers of transport met again in Mauritius in 1994 and agreed to facilitate the granting to African carriers of the Third, Fourth, and Fifth Freedoms listed in the 1944 Convention on International Civil Aviation.
- 231. History.** The Yamoussoukro Decision came into existence on November 13–14, 1999, when the Ministers of transport met in Yamoussoukro, Côte d'Ivoire, to discuss the liberalization of air services. The Yamoussoukro Decision was formally adopted during the Assembly of Heads of State held in Lomé, Togo, on July 10–12, 2000, and it came into force on August 12, 2000.
- 232. Objective.** Article 2 of the Decision states that its main objective is to gradually liberalize scheduled and non-scheduled intra-African air transport services.
- 233. Main provisions.** The Decision grants to the States party to the Decision the free exercise of the First, Second, Third, Fourth, and Fifth Freedoms on scheduled and non-scheduled passenger and freight services performed by an eligible airline. Article 4 liberalizes tariffs for international air services. An increase in tariffs may be filed with the competent authorities only 30 working days before it comes into force. Article 5 states that no member country shall unilaterally limit the volume of traffic, the type of aircraft to be operated, and the number of flights per week, provided that environmental, safety, and technical considerations are taken into account. Articles 6 and 7 outline the procedure for designating and authorizing an airline and the rules for fair competition.
- 234. Institutional arrangements.** Article 9 establishes a monitoring body whose main responsibilities are the supervision, follow-up, and implementation of the Decision. The monitoring body assists the Subcommittee on Air

Transport, composed of the African Ministers of transport, in following up on implementation of the Decision. This body includes representatives of the United Nations Economic Commission for Africa (UNECA), African Union, African Civil Aviation Commission (AFCAC), and African Airlines Association (AFRAA).

Article 9 also refers to the creation of an African air transport executing agency. Its main responsibilities are the supervision and management of Africa's liberalized air transport industry to ensure successful implementation of the Yamoussoukro Decision. The Third African Union Conference of Ministers responsible for air transport held in Addis Ababa on 7-11 May 2007 decided to assign to AFCAC the functions of the Executing Agency of the Yamoussoukro Decision. The AFCAC Constitution was revised on 16 December 2009 to take into account the new mandate.

235. Strengths of the Yamoussoukro Decision.. Focusing on safety and security, the Decision requires airlines operating in Member States to meet the standards defined by ICAO. The Decision promotes mutual recognition of air operating certificates, certificates of airworthiness, certificates of competency, and personnel licenses, provided that the requirements for issuing those documents conform with the minimum standards set by ICAO. Little progress has been made toward establishing the official institutions, but operational implementation has moved forward with greater freedom to negotiate bilateral agreements throughout the continent, although implementation is uneven. For example, routes and aircraft sizes are better adapted to the market, and viable carriers are expanding. The greatest progress has been made in West Africa, where the Banjul Accord Group Agreement was signed on January 24, 2009, by Cabo Verde, The Gambia, Ghana, Guinea, Liberia, Nigeria, and Sierra Leone. According to this instrument, the Signatory States must harmonize their policies and procedures in civil aviation.

The principles of the Yamoussoukro Decision have been agreed upon, with the result that 43 percent of flights are operating under the Fifth and Seventh Freedoms. The West African Economic and Monetary Union (WAEMU) composed of Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo have fully implemented the Yamoussoukro Decision. As a result, all freedoms, including cabotage, have been granted, tariffs have been liberalized, and 44 percent of flights are operating under the Fifth and Seventh Freedoms. By contrast, only 6 percent of flights are operating under the Fifth and Seventh Freedoms in the Southern African Devel-

opment Community (SADC), even though civil aviation policy includes gradual liberalization of air services within the Community.

- 236. Weaknesses of the Yamoussoukro Decision.** A number of factors underlie the delay in implementation of the Yamoussoukro Decision. The first is the difficulty in complying with ICAO's safety and security standards or recommended practices. The second is the absence of leadership by the African Union—a platform for continental economic integration. The third is the difficulty encountered by the African Union in delegating to the Regional Economic Communities the responsibility for establishing fair competition rules in the air transport sector. And the fourth is the lack of resources needed to hire a core team of experts and lawyers to put in place fair competition rules that will protect smaller African carriers and the ultimate consumer against price dumping and discriminatory practices by larger companies. It has been noted, however, that too many local African air carriers are not considered safe enough and as such are blacklisted in Europe and elsewhere.

The Yamoussoukro Decision appears in **Annex III-14** of this review.

I. THE AFRICAN CIVIL AVIATION COMMISSION

- 237.** The African Civil Aviation Commission (AFCAC) was set up on January 17, 1969 in Addis Ababa (Ethiopia). It is an advisory body whose membership stands at 44 African States. AFCAC became an OAU specialized agency following an agreement signed in Addis Ababa on May 11, 1978.

AFCAC is also one of four ICAO regional commissions, the other three being the European Civil Aviation Conference (ECAC), the Arab Council of Civil Aviation (ACAC) and the Latin American Civil Aviation Commission (LACAC).

AFCAC was entrusted by the African Union with the powers of the Executing Agency of the Yamoussoukro Decision in 2007.

IV. Subregional Instruments: Central Africa

238. A private law approach. Central Africa has made considerable efforts to unify commercial and transport law. Its conventions are of special interest because they codify the practice applicable to the relations between shippers and carriers that come under private (commercial) law. Many of the other conventions address the public administration of transport corridors, police, Customs procedures, etc.—all matters of public law.
239. Inventory of subregional instruments. In Central Africa, the following main subregional instruments are enforceable:
- *Treaty of Brazzaville*. Dated December 8, 1964, this Treaty established the Customs and Economic Union of Central Africa or UDEAC, signed by Cameroon, Chad, the Central African Republic, Congo and Gabon.⁸⁶ UDEAC succeeded the Equatorial Customs Union created in 1959 (this Treaty is not reviewed here as it is outdated and obsolete). UDEAC was replaced by the Economic and Monetary Community of Central African States or CEMAC in 1998.
 - *Treaty of N'Djamena*. This Treaty established CEMAC on March 16, 1994. The Parties to CEMAC were the same as those to UDEAC and Equatorial Customs Union.
 - *Treaty of Libreville*. Concluded in Libreville, Gabon, on October 19, 1983, this treaty established the Economic Community of Central African States or ECCAS) It has a broader reach than UDEAC and includes, in addition to the UDEAC and CEMAC Partner States, Angola, Burundi, Democratic Republic of the Congo, Rwanda, and São Tomé & Príncipe.
 - *Treaty of Gisenyi*. Concluded on September 20, 1976, this Treaty established the Economic Community of the Great Lakes Countries or CEPGL. It was signed by Burundi, Rwanda, and Zaire (now Democratic Republic of the Congo). Central African States are also party to the Maritime Transport Charter for West and Central Africa, a subject dealt with in the section on West Africa.

- *Brazzaville Agreement Establishing a Uniform Regime Applicable to Rivers.* This Agreement created the International Commission for the Congo-Oubangui-Sangha River Basin (CICOS). The Agreement was signed on November 6, 1999, and ratified or accepted from March to July 2003 by the states party to it: Cameroon, the Central African Republic, Democratic Republic of the Congo and Congo.

Central African States are also party to the Maritime Transport Charter for West and Central Africa, a subject dealt with in the section on West Africa.

The memberships of organizations in Central Africa are shown in table 1.

Table 1 Memberships of Subregional Organizations, Central Africa

	UDEAC & CEMAC	ECCAS	CEPGL	OHADA	CICOS
Angola		x			
Burundi		x	x		
Cameroon	x	x		x	x
Central African Republic	x	x		x	x
Chad	x	x		x	
Dem. Rep. of the Congo		x	x	x	x
Congo	x	x			x
Equatorial Guinea	x	x		x	
Gabon	x	x		x	
Rwanda		x	x		
São Tomé		x			

Source: SSATP

Note: UDEAC = Economic and Customs Union of Central Africa; CEMAC Economic and Monetary Community of Central Africa; ECCAS = Economic Community of Central African States; CEPGL = Economic Community of the Great Lakes Countries; OHADA = Organization for Harmonization of Business Law in Africa; CICOS = International Commission for the Congo-Oubangui-Sangha River Basin.

A. CUSTOMS AND ECONOMIC UNION OF CENTRAL AFRICA⁸⁷

- 240. General⁸⁸.** The Treaty of Brazzaville creating a Customs and Economic Union of Central Africa was signed on December 8, 1964, by Cameroon, Central African Republic, Chad, Congo, and Gabon. Equatorial Guinea joined in 1983.

241. Institutions. The Treaty of Brazzaville established the following institutions:

- *Council of Heads of State.* This is the supreme agency of the institution. Decisions of the Heads of State must be unanimous. The council determines and coordinates the Customs and economic policies of the Partner States (Articles 7 and 8).
- *Executive Committee.* This committee is composed of two representatives per Member State; one is the minister of finance and the other the minister in charge of economic development or their representatives.
- *General Secretariat.*

UDEAC was replaced in 1994 by CEMAC, but a number of UDEAC covenants, agreements or regulations are still in place under their original UDEAC qualification.

The Treaty creating a Customs and Economic Union of Central Africa appears in **Annex IV-1** of this review. The treaty does not appear to have been filed with the UN Secretariat and could not be located in the UN Treaty Series.

242. Infrastructure and transport. Partner States agreed to foster integration of infrastructure; to harmonize and standardize facilities and equipment; and to promote transport coordination.

To reach these objectives, the Partner States will communicate their transport development projects to the General Secretariat as well as their documentation and regulations. The General Secretariat will prepare the transport plan and transport projects to be submitted for approval to the Executive Committee and to the Council of Heads of State.

Although the 2001 CEMAC Merchant Shipping Code has now replaced the 1994 UDEAC Merchant Shipping Code, two major UDEAC sets of rules are still in effect: the 1996 Interstate Convention on Road Transport of General Cargo and the Interstate Convention on Multimodal Cargo Transport.⁸⁹

a. *Interstate Convention on Road Transport of General Cargo*

243. General. On July 5, 1996, the Council of Heads of State of UDEAC agreed on the legal framework of road transport of general cargo in the subregion (Act 4/96-UDEAC-611-CE-31). This framework gave birth to *the Convention inter-*

États des transports routiers de marchandises diverses known as the General Cargo Road Convention or GC Road. The preamble of the Convention insists on the desire to set forth the format and legal regime of the transportation documents and the carriers' liability regime. This wording was taken from the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) and based on the 1890 Bern Convention on International Railway Transport (modified). The plans of the 1996 General Cargo Road Convention and the 1956 Geneva Convention are the same. However, the clauses in the CMR Convention that deal with multimodal transport are missing from the General Cargo Road Convention as the UDEAC Heads of State agreed on a separate convention on such transport.

244. **Applicability.** There is no statement in the Convention that it is but supplementary. Apparently, the Parties to the transport contract are free to execute a contract different from that resulting from the Convention, or to use some of the clauses of the Convention and discard others. It has been ruled by a French appeals court that recourse to the CMR or part of it was the choice and will of the Parties "whom the law leaves free to stipulate the clauses of their contractual relations in the matter of transport."⁹⁰ However, an important restriction derives from Article 51, which states that any stipulation derogatory to the provisions of the General Cargo Road Convention would be void. Again, the wording is that of Article 41 of the CMR Convention.
245. **Salient points.** The salient points of the Interstate Convention on Road Transport of General Cargo follow:
- *General (Chapter I).* The General Cargo Road Convention is applicable to all general international cargo involving a payment when either the country of departure or the country where delivery takes place are parties to the Convention whatever the nationality or domicile of the carrier. The Convention is also applicable when transport is conducted by government or international governmental or non-governmental organizations.
 - *Waybill (Chapter II).* Transport takes place under a waybill of four copies (three in the CMR Convention) as evidence of the transport contract. Whether the absence of a waybill makes the contract void or whether it makes the Convention not applicable is not clear. The waybill format is detailed in the General Cargo Road Convention and is compulsory.

- *Liability (Chapter III)*. The carrier is liable except in "circumstances that it could not avoid and to the consequences of which it could not escape"—that is, basically, force majeure.⁹¹ Cases of exoneration of liability are enumerated (Article 17) and the onus of proof is on the carrier (Article 20).
- *Claims and litigation (Chapter IV)*. There are statutes of limitation for delays in reservations, claims, and litigation. In case of arbitration, arbitrators are bound by the stipulations of the Convention.

The Interstate Convention on Road Transport of General Cargo appears in **Annex IV-2** of this review. This Convention does not appear to have been filed with the UN Secretariat and cannot be traced in the UN Treaty Series.

b. *Convention on Interstate Multimodal Cargo Transport*

- 246. General.** International multimodal transport takes place when, under the coverage of a single document, goods are transported from one country to another through different modes of transport. On July 5, 1996, UDEAC's Council of Heads of State agreed on the legal framework of multimodal transport in the subregion. The framework took the form of the *Convention inter-États de transport multimodal de marchandises* (Act 4/96-UDEAC-611-CE-31). The 1980 United Nations Convention on International Multimodal Transport of Goods did not come into force as it was not ratified by a sufficient number of countries. UDEAC's initiative therefore filled a gap in international law and provides its Central Africa member countries with a clear and undisputable framework for multimodal transport operations, the provisions of which were in fact borrowed from the non-ratified international convention.
- 247. TIPAC procedures.** Besides, the UDEAC Multimodal Convention is associated with enforcement of the International Transit in Central Africa (TIPAC) regime. TIPAC is a Customs regime for international transit, with the objectives of simplifying Customs procedures at origin and destination as well as during transit, and assigning liability for Customs duties to the carrier involved in a specific transit operation. Transit is on a fixed itinerary. Cargo in transit is covered by a TIPAC booklet describing the freight transported and used for Customs and other controls. The Regional Guarantee Fund issues the booklets, provides the necessary financial resources for guaranteeing payment of Customs dues, and settles any litigation.

248. Provisions. The content of the UDEAC Multimodal Convention is as follows:

- *Preamble.* The preamble states that the Partner States consider that "liability of the multimodal carrier is based on a presumption of faulty act and negligence." In fact, the liability regime of the multimodal carrier copied the regime applicable to the sea carriers per the Hamburg Rules in force since 1992 among the limited number of states that ratified them. In case of damage, the burden of proof falls on the carrier.
- *Articles 2 to 4 and 29.* Recourse to the UDEAC Multimodal Convention is compulsory; it applies automatically, without restriction, when acceptance and⁹² delivery of cargo takes place in one of the party states. There is no room for a clause discharging all or part of the carrier's liability. Article 29 of the UDEAC Multimodal Convention is taken verbatim from Article 29 of the French law, specifically voiding any clause seeking directly or indirectly to free the carrier from its responsibility or to place the onus of evidence on any other party than the carrier. This is a paramount clause. Still, domestic law remains applicable to other transport regulations such as safety, licensing, security, insurance, etc.
- *Chapter II.* A multimodal waybill (*document de transport multimodal* or DTM) is signed by the carrier and may be negotiable. The format and content of the waybill are in accordance with the provisions of the Convention. The DTM is transferable. It specifically mentions that any clause contrary to the stipulations of the UDEAC Multimodal Convention is void (Article 29).
- *Chapter III.* The carrier is presumed liable for damages or delays in delivery unless it provides evidence that it, its employees, and agents "took all the necessary measures that could reasonably be required for the avoidance of the [damage or delay] and its consequences" (Article 16). This is an obligation of due diligence. A ceiling of liability is set, and such a ceiling is applicable in misfeasance or nonfeasance liability (Article 21).
- *Annex.* The annex to the UDEAC Multimodal Convention deals with the enforcement of TIPAC in multimodal transport in the subregion. Provisions are standard:
 - No physical check of cargo unless necessary
 - No special procedure except standard TIPAC procedures
 - No import and export Customs dues

Dues may be charges or fees for financing health and security services, but charges and fees should be limited to the amount needed to cover the costs of such services

The text of the *Convention inter-États de transport multimodal de marchandises en UDEAC* appears in **Annex IV-3** of this review. This Convention does not appear to have been filed with the UN Secretariat and cannot be traced in the UN Treaty Series.

c. *Interstate Regulation on Licensing of Road Carriers*

249. General. On July 5, 1996, UDEAC's Council of Heads of State agreed on the legal framework for licensing road carriers in the subregion (Act 5/96-UDEAC-611-CE-31). All road carriers, either for transport for own account or for professional transport, need to be licensed and to adhere to the third-party liability insurance guarantee system (TIPAC). Licenses are given by the ministries of transport of each Member State for a duration of five years and for a specific road network or specific itineraries.

The *Conditions d'exercice de la profession de transporteur routier inter-États de marchandises diverses* (Licensing Conditions) appear in **Annex IV-4** of this review.

250. Evaluation.⁹³ One of the obstacles to the integration process in the subregion is the lack of a monitoring and evaluation system to assess implementation of the laws enacted by the subregional institutions.⁹⁴ As of July 2010, there were no clear indications that those laws are implemented in the member countries of the Central African organizations. In the CEMAC action programs for 2005 and 2006, the Transports Program was limited to popularizing the different laws in the countries.⁹⁵ In both action programs, the agreed-on plan on transport in Central Africa refers to the Monitoring Operational Committee.⁹⁶ However, this Committee does not appear to play an efficient role because transport laws enacted within the Community are not fully incorporated into municipal laws.

B. ECONOMIC AND MONETARY COMMUNITY OF CENTRAL AFRICA

251. General⁹⁷. The Economic and Monetary Community of Central Africa or CEMAC instruments are as follows:

- Treaty establishing the Economic and Monetary Community of Central Africa. This Treaty was concluded in N'Djamena, Chad, on February 6, 1998, with an addition related to the institutional and legal system of the Community. It was slightly revised in Yaoundé, Cameroon, in June 25, 2008, to create the Community Parliament. The revised version appears in **Annex IV-5** of this review.
- *Convention régissant l'Union économique de l'Afrique centrale (UEAC)*
- *Convention régissant l'Union monétaire de l'Afrique centrale (UMAC)*
- *Convention régissant la Cour de justice de la CEMAC*
- *Convention régissant le Parlement Communautaire*. This Convention was adopted on January 28, 2004. The Community Parliament has its headquarters in Malabo, Equatorial Guinea, and was launched in April 2010.

252. Policy. Whereas UDEAC was based on cooperation between Partner States, CEMAC pursues an approach of integration. Its main policy objectives, not formulated in the instruments but only in separate declarations of intent, are the following:

- Reinforce the competitiveness of the economic and financial activities of the countries of CEMAC by harmonizing the legal framework (investment code, competition, regulation, etc.).
- Coordinate economic and budgetary policies to ensure coherence with the common monetary policy.
- Establish a common market, with total freedom of establishment, immigration, and free movement of goods and services.
- Coordinate sectorial policies, including trade and transport policies.
- Promote freedom of movement, residence, and establishment.

253. Institutions. Compared with UDEAC, the number of CEMAC institutions is much larger. There are eight executive branch institutions: Conference of

Heads of State, Council of Ministers, Commission of the CEMAC (which by means of an addition to the treaty carried out in N'Djamena, Chad, in April 25, 2007, replaced the Executive Secretariat), Ministerial Committee, Inter-State Committee, Central Bank, Banking Commission, and Development Financing Institution.⁹⁸ In addition, the treaty establishes the Central African States Development Bank. Legislative and judicial institutions are the Community Parliament and the Supreme Court, which includes the *Cour des comptes* (Court of Auditors).

254. **CEMAC codes and regulations.** Very soon after its creation, CEMAC issued the following new regulations and codes to replace those issued by UDEAC: the River Navigation Code (*Code de la navigation intérieure*) and Hazardous Cargo Regulations (*Règlement de transport des marchandises dangereuses*) in 1999; the Civil Aviation Code (*Code de l'aviation civile*) in 2000;⁹⁹ and the Merchant Shipping Code (*Code communautaire de la marine marchande*) and Road Traffic Code (*Code de la route*) in 2001. To date, the two UDEAC conventions on road transport and intermodal transport are still in effect.

As noted, the text of the *Traité instituant la Communauté économique et monétaire d'Afrique centrale* (CEMAC) appears in **Annex IV-5** of this review. This treaty does not appear to have been filed with the UN Secretariat and cannot be traced in the UN Treaty Series.

a. *River Navigation Code*

255. The River Navigation Code was issued on December 17, 1999, as CEMAC/RDC (Democratic Republic of the Congo) Regulation 14/99/CEMAC-036-CM-03.¹⁰⁰ The code is mainly oriented toward the safety issues of river navigation, with some approaches to management issues. Ten titles cover rules applicable to channels and rivers, riverboats, health, police, the environment, captains, and crews. The 31 annexes give details on markings, signals, forms, etc. Pending the issuance of a *Code de la navigation intérieure* CEMAC/RDC set of rules on transport operations in river shipping, one annex deals with the limitations of liability of river carriers. In the main text, there are provisions on sureties and mortgages. But there are no provisions on carriage contracts for intermodal or multimodal transport and other commercial aspects of river transport. There is no provision as well on the international regime of rivers in CEMAC and on the rights and duties of Member States.

The text of the *Code de la navigation intérieure* (CEMAC) is attached as **Annex IV-6** of this review.

b. *Road Transport of Hazardous Cargo*

256. Hazardous cargo regulations. On June 25, 1999, CEMAC's Council of Ministers issued a regulation on the carriage of hazardous cargo enforceable in all CEMAC States.

The text of the Road Transport of Hazardous Cargo can be found in **Annex IV-7** of this review.

c. *Merchant Shipping Code*¹⁰¹

257. General. The CEMAC Merchant Shipping Code was issued in Bangui, Central African Republic, on August 3, 2001, as Regulation 03/01 UEAC 088-CM-06.¹⁰² It replaced the UDEAC Merchant Shipping Code issued as Act No. 6/94-UDEAC-594-CE-30 on December 22, 1994. The code rules on the following:

- Applicability of the law to vessels
- Ship safety, classification, salvage, and wrecks
- Marine environment and pollution
- Seamen
- Maritime transport, including charter parties, bills of lading, and other carriage contracts
- Shipping and forwarding agents, consignees of cargo, pilots, and stevedoring companies
- Court and other procedures related to shipping.

258. References to international conventions. The Merchant Shipping Code makes reference to and follows the rules set forth by international conventions, even when CEMAC Member States did not ratify them. Vessel documentation to be handed over at arrival in port (Article 10) is in accordance with the 1965 London Convention with specific reference to it. Landlocked States may be members of boards of directors for ports in coastal States (Article 14), in line with the 1965 New York Convention. They may practice fishing in the exclusive

economic zone (Article 18) in line and with reference to the 1982 United Nations Convention on the Law of the Sea. The liability regime of ship owners (Articles 100 to 113) is similar and makes reference to the 1976 London Convention on maritime claims. Finally, the legal regime of the sea carriage contract is that of the 1978 Hamburg Rules. According to Article 396 of the Code, these rules are applicable to any carriage by sea to and from CEMAC countries. But things may be not that simple, and conflicts of laws are likely. The Code, incidentally, does not state that the provision is paramount and compulsory (*d'ordre public*) and whether Parties to the sea carriage contract may agree on a different liability regime. Altogether, the Code appears to reflect the views of the International Maritime Organization (IMO) on points that are still very much in dispute in the maritime community and still open to discussion or may be left to contract provisions rather than be frozen in statutes.¹⁰³

- 259. Maritime transport policy.** The approach to shipping is regulatory rather than market-oriented. Article 375 sets forth that the overall organization of maritime transport and measures of regional cooperation are defined by national authorities within the framework of the general policy adopted by the regional and subregional authorities. Article 376 states that “maritime traffic is distributed in accordance with the 1974 Code of Conduct of Liner Conferences and that freight rates are negotiated according to the provisions of such Code.” “Such Code” is applicable to all traffic rights of the member countries (Article 312)—see **Annex II-20** of this review. But the provisions on reserved traffic are less constraining than those of UDEAC Code. The latter (Articles 370 to 373 of the UDEAC Code) reserved traffic between UDEAC ports, towage in UDEAC waters, transit, and interline cargo to UDEAC flag vessels. The CEMAC Code (Article 5) simply reserves to CEMAC flag vessels domestic coastal shipping and subregional coastal shipping. However, *subregional* remains undefined; whether it extends beyond CEMAC frontiers is uncertain.
- 260. Enforceability.** The CEMAC Merchant Shipping Code needed not to be filed in the UN Treaty Series as it was issued as a regulation and not as a negotiated instrument. Still, it resulted from a negotiation and probably impinges on international law. It may raise issues of interpretation and enforceability. For example, the provision in Article 396 that rules issued by the Code, and those regarding carriage contracts, shall be applicable to all cargoes to and from CEMAC Member States may conflict with similar provisions in foreign laws. Whether the code is supplementary or imperative on this important point is

uncertain. The Heads of State adopted Recommendation No. 01/04-UEAC-010 E-CM-12 relevant to the establishment of an ad hoc commission to revise the Merchant Shipping Code.

The text in French of the relevant chapters (*Organisation des transports maritimes*) of the Code appears in **Annex IV-8** of this review.

d. *Road Traffic Code*

261. The Road Traffic Code was issued in Bangui as Regulation 04/01 UEAC 089-CM-06 on August 2, 2001. Enforceable in all CEMAC States, it supersedes any earlier domestic provision, particularly the 1989 UDEAC Road Traffic Code. Regulations apply to the following:

- Driving permits
- Weight, dimensions, and other vehicle characteristics
- Traffic
- Signals

Nine annexes are attached, with details of marks and signals.

The text of the *Code communautaire de la route* appears in **Annex IV-9** of this review.

e. *Other CEMAC legal instruments since 2004 relevant to transport and transit facilitation*

The following instruments are relevant to the freedom of movement.

262. **Regulation No. 05/03-CEMAC-111-CM09** adopting facilities granted to travelers. The facilities granted are administrative measures that allow travelers to speed up the Customs procedures and the police formalities at their arrival and departure. The regulation establishes a system of a double circuit, green or red—a simplified Customs system for travelers at the frontiers. The green circuit allows the traveler without commercial goods to be exempt from Customs control. The red circuit requires the traveler with commercial merchandise to fulfill all the formalities required by Customs. Section 2 of the regulation briefly describes the merchandise subject to regulation.

- 263. Recommendation No. 01/05-UEAC-070 U-CM-13**, related to freedom of movement of people in CEMAC, and its additional Act No. 08/CEMAC-CCE-SE. Article 1 of the additional Act establishes the freedom of movement of people within CEMAC, provided that a valid national identity card or passport is produced and the visit in another Member State does not exceed three months.
- 264. Regulation No. 14/06-UEAC-160-CM-14** (March 11, 2006) adopting a program on the regional facilitation of transport and transit in CEMAC. The objectives of the program are to (1) create a coordinating committee for its implementation; (2) coordinate and evaluate the program implementation; (3) harmonize the laws between the Member States; (4) facilitate transit; and (5) implement a pilot project in the Douala-N'Djamena and Douala-Bangui corridors. The time frame to implement this program was set from March 2006 through December 2008.
- 265. Components of the pilot project on the Ndjamen-Douala-Bangui-Douala corridors.** The pilot project is divided in two sections: actions and objectives. The main actions are to (1) create an observatory to monitor operation of the corridors; (2) introduce a legal regime for interstate transit; (3) improve border crossings; and (4) strengthen capacity building at the border crossings. The main objectives are to (1) on a regular basis and in a neutral manner, identify, analyze, and publish the facts, practices, irregularities, and improper behaviors observed on the interstate major roads in the transport of persons and merchandise; (2) arrange for an interstate transit regime (TIPAC); (3) facilitate border passage; (4) put in place mechanisms for freight monitoring; (5) strengthen intermodal interfaces (ports, railways); (6) improve merchandise safety; (7) identify needs (safety, facilitation, interface between information technology systems, rest areas for trucks coming from landlocked countries); and (8) improve the social impact of projects.
- 266. Evaluation of the pilot project.** The facilitation component of the pilot project is its weakest point. The following activities need improvement and strengthening: communications between stakeholders, especially within the port community, including the interface between various information and communication technologies; the transit regime and border crossing through cargo tracking and improved border post constructions; port safety and security; and the CEMAC Customs union and national Customs. Stronger support is needed as well for transport facilitation institutions and better coordination

and management of the project's activities. Finally, the irritating problem of unlawful checkpoints on roads and rivers needs to be solved. These checkpoints represent a financial cost for road users, and they harm the reputations of local governments.

- 267.** **Decision No. 10/06-UEAC-160-CM-14** related to the establishment of a Management Committee for interstate cross-border corridors in Central Africa. This Decision was made on March 10, 2006, by CEMAC's Council of Ministers. Three main provisions are relevant to the transport and transit facilitation. First, the objectives of the Committee are to encourage commercial activities along the corridors, facilitate partnerships among nationals of the Member States, encourage reduction of the costs associated with freight transport, and implement best practices in Customs transit. Second, the Committee is composed of representatives of the departments of road transport, departments of Customs, professional organizations of road carriers, transit companies, and the CEMAC Commission. Finally, the Committee's responsibility is to monitor the activities related to the competitiveness of corridors, identify the obstacles to traffic flow, and provide solutions to improve or eliminate those issues.
- 268.** **Decision No. 12/06-UEAC-160-CM-14** establishing a Coordinating and Monitoring Committee to follow implementation of the regional program on transport and transit facilitation in CEMAC. This Decision was adopted on March 10, 2006. The main objectives are to coordinate and monitor implementation of the program components, which are to (1) update the road program; (2) prepare and implement the facilitation program within the subregion; (3) implement the pilot project in the Douala-N'Djamena and Douala-Bangui corridors; (4) implement interventions in the port's area and accompanying measures; (5) assess the harmonization between national and regional programs; (6) secure monitoring of maintenance on the interstate road network; (7) identify the obstacles to the implementation of projects and propose solutions to accelerate their implementation; and (8) assess progress made in the program's implementation. The Coordinating and Monitoring Committee is composed of the CEMAC Commission, which chairs the committee, and other members: four representatives of Member States nominated by the department in charge of public works, the department financing road maintenance, and the department of road transport and Customs; one representative of the transit carriers trade unions of Member States; and three representatives

of CEMAC of which two are from the department of transport and telecommunications and one from the department of the common market. The Secretariat of the Coordinating Committee is assured by the CEMAC department of transport and telecommunications. The Coordinating Committee may also call on any expertise that is useful in fulfilling its purpose.

- 269. Decision No. 99/07-UEAC-070 U+042-CM-16** establishing a Committee of Monitoring and Evaluation in the area of freedom of movement of people. This Decision was adopted on December 18, 2007. The Committee is composed of the Heads of cross-border police and immigration, civil society, national departments in charge of regional integration, and the CEMAC Commission. Representatives of CEEAC and EAC participate as observers. The conclusions of the Committee are transmitted to the CEMAC Commission, which follows up with Member States and the Council of Ministers.
- 270. Decision No. 10/07-UEAC-160-CM-15** establishing a mixed coordinating Technical Committee for implementation of the program on transport and transit facilitation funded by the African Development Fund, the concessional window of the African Development Bank group. The Committee is responsible for monitoring all activities related to the implementation of the transit and transport facilitation financed by the African Development Fund in the Douala-Bangui and Douala-N'Djamena corridors. The Committee is also responsible for coordinating and following up on the different components of the program. It may also examine and give its opinion on all its technical aspects, identify the obstacles to its implementation, and propose solutions to accelerate its implementation. The Committee is composed of the directors of national roads, land transport, and Customs of the States that are beneficiaries of the program or their designated representatives. Coordination of the project activities is ensured by the Commission of CEMAC.
- 271. Regulation No. 07/10-UEAC-205-CM-21** establishing the regulation on the legal regime of the Community transit and the mechanism of a single security or guarantee.¹⁰⁴ The guarantee of the merchandise in transit is required to secure the payment of the debt that may arise from its transit. As for the main provisions of the regulation, Appendix 1, Chapter IV, describes the rights and obligations of the Parties; Article 10 states the steps to be taken to constitute the guarantee; Article 12 establishes the mutual recognition of all the legal documents presented for the transit; and Annex 1, Article 1, stipulates that this regulation covers the goods that transit throughout the Community with a fi-

nal destination outside the CEMAC region. The text states that this regime allows the movement of non-Community goods from one border to the other to be exempted from import taxation. Article 7 requires national Customs authorities to assist one another from an administrative standpoint.

272. **Regulation No. 09/10-UEAC-205-CM-21** establishing a Transit Committee. The main provisions of this Regulation are Articles 2 and 5. Article 2 describes the composition of the Committee: two representatives of each Member State. Article 5 enumerates the duties of the Committee, which are (1) to ensure the effective implementation of transit rules; (2) to act as an arbitrator when conflict arises; (3) to propose recommendations and provide technical advice on the transit and guarantee procedures; and (4) to update at least once a year a list of merchandise that is at risk. The recommendations and advice of the Committee are submitted to the Council of Ministers for its approval.

The following instruments are relevant to Customs.

273. **Regulation No. 08/10-UEAC-205-CM-21** establishing modification of the Customs code relevant to Community transit. The following articles were modified. Article 155 (4) of Chapter II which is related to the movement of goods through a non-Community Member State or by sea, states that the foreign goods with a final destination to Member States are subject to import taxes and duties through a guarantee system.¹⁰⁵ Chapter III on transit modifies the definition of what is called “transit.” According to the modified provision, transit is “the movement of goods under Customs with a final destination or a point of departure from one existing custom territory.” The other articles (162 to 173) have also slightly modified the transit regime within CEMAC.
274. **Regulation No. 10/10-UEAC-206-CM-21** establishing regional harmonization of Customs data. This regulation adopts a harmonized declaration form within the Community.

The following instruments are relevant to conflicts of laws.

275. **Recommendation No. 01/10-UEAC-208-CM-21** related to the problem of conflicts of laws between OHADA instruments and CEMAC laws. The Council of Ministers recommended the systematic cooperation and involvement of CEMAC institutions in the OHADA lawmaking process.

f. *Air transport in CEMAC*

276. **Regulation No. 06/07-UEAC-082-CM-15** establishing the air carrier liability regime in case of breach of rules of boarding procedures of passengers in the airports of Member States. Article 2 of the regulation defines the scope of the instrument, which applies in three cases: (1) refusal by an airplane company to allow on board passengers validly booked; (2) unreasonable delay; and (3) cancellation of flight. The regulation also defines compensation measures in case of damages suffered by a passenger at any Member State's airport, regardless the passenger's nationality or destination. The compensation modalities are enumerated in Articles 5 to 9. For instance, in the case of refusal to embark a passenger, the airline company must reimburse the total amount of the ticket, or change the itinerary to accommodate the passenger's destination, or change the travel date at the discretion of the passenger. Article 9 specifies other types of compensation that the carrier may offer to accommodate the passenger: free lodging, free food, and payment for telecommunication to the country of destination. Article 10 of the regulation, however, stipulates that such accommodations cannot prevent a passenger from later bringing a contractual or civil liability action against the carrier.
277. **Regulation No. 6/10-UAC-204-CM-21** related to air transport safety within Member States, adopted on October 28, 2010. Article 2 of the regulation states that Member States agree to act in conformity with the following international conventions: the Convention of Tokyo signed on September 14, 1963, on offenses and certain acts committed on board aircraft; the Hague Convention of December 16, 1970, for the suppression of the unlawful seizure of aircraft; the Montreal Convention signed on September 23, 1971, for the suppression of unlawful acts against the safety of civil aviation; the Montreal Convention of February 24, 1988;¹⁰⁶ Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation; and the Montreal Convention of March 1, 1991, on plastic explosives.¹⁰⁷ Although most of the CEMAC countries agree on implementing these conventions within their territory, the Central African Republic, Chad and Congo still need to ratify two of them.
278. The following instruments are cited for information only: Decision No. 15/05-UEAC-163-CM-13 on the implementation of the COSCAP Project, a program directed at air transport safety and maintenance of aircraft navigability; Decision No. 13/05-UEAC-066-CM-13 establishing the Air Transport Community Company; Decision No. 03/08-UEAC-066-CM-17 establishing a Steering

Committee for the launching of an air transport company in CEMAC; Additional Act No. 15/07-CEMAC-162-CCE-08 establishing a Supervision Agency on Air Transport Safety in Central Africa; Directive No. 01/07-UEAC-082-CM-15 establishing the procurement rules in stopover services assistance in Member State airports; Directive No. 02/07-UEAC-082-CM-15 establishing a legal framework on time slots in Member States' airports; Regulation No. 06/10-UEAC-204-CM-21 establishing the agreement related to the security of civil aviation of CEMAC Member States; Decision No. 08/10-UEAC-066-CM-21 establishing shareholding and distribution of capital of the CEMAC company Air CEMAC; and Regulation No. 01/10-UEAC-066-CM-SE establishing a tax and Customs regime specific to the Air CEMAC.

- 279. Evaluation.** In 2005 CEMAC Conference of Heads of State ordered an audit to highlight the reasons for CEMAC inefficiency.¹⁰⁸ Institutional weaknesses were among the reasons cited for CEMAC non-performance. Indeed, CEMAC bodies lacked the funds to implement their missions. Many laws have been enacted since 2004, but they have still not been implemented. However, there appears to be a strong political will from the Member States to implement those laws for better and truer regional integration. The effectiveness of this implementation will depend partly on harmonization of the Customs procedures and information technology throughout the Community. Capacity building of Customs officers should also be a priority.

C. ECONOMIC COMMUNITY OF CENTRAL AFRICAN STATES

- 280. Treaty Establishing the Economic Community of Central African States (ECCAS)** . ECCAS was created by this Treaty on October 18, 1983, in Libreville, Gabon. Members are Burundi, Cameroon, the Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, São Tomé & Príncipe and Rwanda which left in 2007. Angola became a full member in 1999. Burundi and Rwanda are also members of the Common Market for Eastern and Southern Africa (COMESA). Gabon is the depositary. The preamble of the Convention makes express reference to the OAU Charter, the 1973 Declaration on Cooperation and Development Independence, the Monrovia Declaration, and the Lagos Plan of Action and Final Act. Chapter IV (Trade Liberalization), Chapter V (Residence), and Chapter IX (Infrastructure and Transport) are reviewed shortly. The wording of the

ECCAS Treaty borrows much from the French text of the OAU Charter, frequently verbatim.

- 281. Annexes.** The ECCAS Treaty includes as annexes nine Protocols, which are an integral part of the Treaty:
- *Annex I.* Rules of origin for products traded between Partner States
 - *Annex II.* Nontariff hindrance to trade
 - *Annex III.* Export of goods within the Community
 - *Annex IV.* Transit and transit facilities
 - *Annex V.* Customs cooperation between Partner States
 - *Annex VI.* Compensation fund for loss of revenue
 - *Annex VII.* Freedom of movement
 - *Annex VIII.* Clearinghouse
 - *Annex IX.* Cooperation in agricultural development

The Treaty appears in **Annex IV-10** of this review, together with the annexes, with the exceptions of Annexes IV and VII which are reviewed here and are attached as separate annexes. The ECCAS Treaty does not appear to have been filed with the UN Secretariat. It cannot be traced in the UN Treaty Series but is reproduced in *International Legal Materials* (23 ILM 945 (1984)).

a. *Trade liberalization*

- 282. Phasing of Customs Union according to the ECCAS Treaty (Articles 27 and seq.).** The objective is the step-by-step creation of a Customs Union between Partner States in three basic stages.
- *Phase 1.* Freeze *imposed* on categories and levels of Customs duties, with a joint review of Customs issues by the ECCAS Secretariat
 - *Phase 2.* Phased reduction and elimination of Customs duties and elimination of quotas, restrictions, and other obstacles to interstate commerce
 - *Phase 3.* Creation of a Community Customs tariff and elaboration of a Community Customs list of goods, procedures, and regulations.

- 283. Fairness in trade (Articles 32 and seq.).** The Partner States agree that in a Member State domestic taxes (e.g., value added tax or VAT) will be the same for goods produced locally and goods produced in other Partner States. No discrimination, direct or indirect, will be acceptable. However, if because of dumping or any other reason there is a serious imbalance in the trade of one Member State with another Member State, the Council of Ministers of the Community will be informed and corrective measures will be proposed to the Conference of Heads of State. If balance of payment problems result even though the Member State experiencing such problems has taken all the necessary corrective measures, quantitative restrictions may be imposed, with a prompt report to the Council of Ministers. Customs regulations and procedures are to be harmonized.
- 284. Most favored nation treatment (Article 35).** Partner States should grant one another, in intra-Community trade, most favored nation treatment. In no case shall tariff concessions granted to a non-Member State be more favorable than those applicable pursuant to the ECCAS Treaty.
- 285. Transit policy (Article 36).** Freedom of transit through their territories is granted to all Partner States.

b. *Freedom of movement and right of establishment*

- 286. Article 40 and Annex VII.** According to this annex to the ECCAS Treaty, nationals of the Partner States are considered citizens of ECCAS. Partner States agree to simplify procedures and to facilitate their residence inside the Community. Provisions on the subject are developed in Annex VII to the Treaty (Protocol Relating to the Freedom of Movement and Right of Establishment of Nationals of Member States within the Economic Community of Central African States).

The main provisions of the protocol are as follows:

- *Freedom of movement (Article 3).* Freedom of movement is granted to nationals holding a valid passport and health certificates. Tourists may stay up to three months but are not authorized to work. Businessmen must hold a certificate from their national chamber of commerce. Workers are free to accept employment offered in a Member State.

- *Right of establishment (Article 4)*. Right of establishment is granted to nationals of Partner States. It does not include political rights. Liberal professions may be exercised, but in accordance with the legislation of each country.

The Protocol Relating to the Freedom of Movement and Right of Establishment of Nationals of Member States within the Economic Community of Central African States appears in **Annex IV-11** of this review.

c. *Infrastructure and transport*

287. In the matter of infrastructure and transport, ECCAS (Libreville Treaty) is more ambitious than UDEAC (Brazzaville Treaty) and its program more comprehensive. Partner States agree to do the following:

- Promote integration of infrastructure and develop transport coordination in order to increase productivity and efficiency.
- Harmonize and standardize legislation and regulations.
- Promote transport coordination, the development of local transport industries, and local transport equipment industries.
- Reorganize railway networks in view of their interconnection.
- Develop subregional joint shipping lines, river transport companies, and airlines.

d. *Transit and transit facilities*

288. As indicated earlier, transit and transit facilities are the subject of Annex IV of the ECCAS Treaty. This Protocol was probably inspired by the provisions of the 1975 Geneva Convention on the International Transport of Goods under Cover of TIR Carnets, which was not ratified by Sub-Saharan African States (notable exception: Liberia).¹⁰⁹

The ECCAS Protocol on Transport and Transit Facilities appears in **Annex IV-12** of this review.

289. **General provisions and scope of application (Articles 2 to 5)**. The fundamental rules of the Protocol on transport and transit are as follows.

- Economic Partner States will grant freedom of transit through their territories to cargoes and vehicles bound for other Partner States or Third-Party States, subject to prohibition for reasons of public safety or another enumerated cause.
 - No import or export duties shall be levied on transit traffic.
 - Transit and warehousing procedures shall be simplified to lessen the burden on landlocked countries.
 - There will be no discrimination on rates and tariffs; Partner States will grant transit trade the same treatment and facilities granted to their own traffic.
 - The transit regime shall be applicable to the carriage of bonded goods (in means of transport approved by Customs) by licensed operators and under a surety.
- 290. Bonds and sureties (Articles 6 to 8).** Bonds and sureties shall be issued by the Partner States, banks, or approved institutions. All transit goods and means of transport shall be covered by and shall travel under cover of TIR (ECCAS) carnets. Each Member State shall, subject to such conditions as it may deem necessary, authorize a carrier or its agent to prepare a TIR (ECCAS) carnet in accordance with rules set forth in the Protocol. Carnets shall be checked by Customs officers en route. Goods covered by carnets and bonds and carried in Customs-sealed means of transport shall be exempt from the payment of Customs duties and shall not be examined by Customs officers.
- 291. Customs control (Article 9).** Unless irregularities are suspected, the Customs officers en route within the Partner States shall respect the seals affixed by the Customs authorities of other Partner States, but they may affix any additional seal of their own. They may also either require the mean of transport to be escorted through the territory of the country or require examination of the means of transport and of the goods. Goods destroyed by *force majeure* shall be exempted from paying Customs duties, provided evidence is furnished of such destruction.
- 292. Obligations of Partner States (Article 10).** Partner States will undertake to facilitate the transfer to the other Partner States of the funds necessary for the payment of premiums or other charges and penalties incurred by the holder of a carnet. Other obligations result from the duty of each Member State to en-

force the Protocol in good faith. The Protocol also states that Partner States shall cooperate in the establishment of a multinational coastal shipping line, the Trans-African Highway project, a joint freight booking center, and other inter-Africa transport projects.

- e. *Monitoring and implementing committee on transport*
- 293.** To better coordinate transport programs and actions, the ECCAS Heads of State issued in January, 27, 2004, Decision No. 16/ECCAS/CCEG/XI/04—Agreed Transport Master Plan in Central Africa¹¹⁰ (*Plan Directeur Consensuel des Transports en Afrique Centrale*, PDCT-AC)—to enable access to landlocked States and market places. By Decision No. 17/CEEAC/CCEG/XI/04, the Conference also put in place a Monitoring and Implementing Committee of the Agreed Transport Master Plan of Transports in Central Africa.¹¹¹ The Committee will (1) promote the programs and projects of the Transport Master Plan to the traditional and non-traditional stakeholders in order to raise funds; (2) put in place innovative financing techniques; and (3) organize meetings with stakeholders and the NEPAD Implementing Regional Coordination in Central Africa. To date, more than 50 transport and transit projects have been identified, of which 25 are underway.
- 294. Evaluation.** The PDCT-AC encompasses NEPAD transport projects for Central Africa, including roads, railways, air and maritime transport. The plan is supported by the Central African banks. Although the Committee responsible for its implementation has remained dormant since June 2010, the Governments have decided to resurrect it in order to deal with the many challenges the region is facing in terms of integration and economic development when compared with the relative advances being made by its West African counterparts. A meeting of ministers of transport was held in September 2008 in Kinshasa, Democratic Republic of the Congo, to elaborate on the 2008-15 action plan for safe and secure air transport in Central Africa. The plan was adopted on October 24, 2009 (Decision No. 20/CEEAC/CCEG/XIV/09). On October 25, 2010, the Ministers of transport validated the 2008-15 action plan, renewed their commitment, and required the granting of the Fifth Freedom of Air Transport within the States of the Community.

f. *Recent various bilateral agreements on transport signed under the umbrella of a subregional community*

295. The Protocol Agreement between the Democratic Republic of the Congo and Congo on the Construction of the Bridge Road-Rail between Brazzaville and Kinshasa and the Extension of the Rail-Road from Kinshasa to Ilebo was signed in Kinshasa on June 24, 2009. The main objectives of the Agreement are to (1) increase the speed and reliability of the travel modes between Brazzaville and Kinshasa; (2) favor the creation of multimodal services to improve river transport to the Atlantic coast; and (3) facilitate connections between landlocked countries in Central Africa. Articles 5 and 6 create a Committee to take charge of implementing the protocol. The Committee is composed of five representatives of each Member State, representatives of stakeholders, the General Secretary of ECCAS, and the Commission of CEMAC.

The text of the Protocol Agreement on the Construction of the Bridge Road-Rail between Brazzaville and Kinshasa and the Extension of Rail-Road Kinshasa-Ilebo appears in **Annex IV-13** of this review.

296. The Cooperation Protocol between ECCAS and ECOWAS on the Transport and Transit Facilitation Programme along the Trans-national Corridor of Bamenda-Enungu (Cameroon and Nigeria) was signed on December 11, 2008. The main objective of this agreement is to harmonize the transport and transit facilitation program along the transnational corridor. A pilot steering committee has been put in place to implement and supervise the project (Article 3). A joint Technical Committee has been set up to ensure the management and monitoring of the project, to resolve problems linked to the project, and to ensure good implementation of the project components in the two countries.

The Cooperation Protocol appears in **Annex IV-14** of this review.

297. Other agreements or memoranda of understanding signed under ECCAS are between the Congo and Gabon on the Brazzaville-Libreville road and between Congo and Cameroon on the Brazzaville-Yaoundé road.

g. *Air transport in ECCAS*

298. **Background information.** Since 2008, ECCAS has taken the lead in improving air transport in the Central Africa subregion. Because of the dysfunction in

road transport, air transport assumed the lead in trade and movements of people in Central Africa. ECCAS adopted an action plan covering the years 2008–15 to improve air transport services in the subregion. After an initial assessment, it was agreed to pursue the approved action plan.¹¹² However, air transport services did not satisfy users' needs because the services were irregular, the costs were among the highest worldwide, the rate of accidents was higher as well, and the liberalization advocated by the Yamoussoukro Decision was taking a long time to be effective. In response, the transport Ministers from the subregion organized a meeting in Kinshasa on October 24, 2009, and agreed on the following objectives: (1) put in place a policy framework that will create an institutional legal framework on air transport; (2) improve the services provided; (3) reduce the costs; (4) implement the Yamoussoukro Decision on liberalization of the air transport market; and (5) guarantee the security and safety of civil aviation.

299. The action plan was confirmed on October 24, 2009, by a Declaration of ECCAS Heads of State on the improvement on air transport in Central Africa and ratified by Decision No. 20/CEEAC/CCEG/XIV/09. A series of decisions made since the Declaration are analyzed here. The most important of the seven decisions made since the action plan and adopted in 2012 are also analyzed in the following sections. The action plan, declaration, and decisions cited in this section can be found in the legal publication of the Community.¹¹³
- h. *Decision No. 16/CEEAC/CCEG/XV/12 regarding the duties of an air transport carrier in ECCAS States*
300. **General provisions.** The general provisions in Article 1 define the various specific terms cited in the text. For example, a *license* is an administrative authorization given to an enterprise by the aeronautic authority to implement for a fee air transport of passengers, cargo, or mail. *Certificate of air carrier* is a document delivered to an enterprise by the competent authority of a Member State certifying that the beneficiary has the professional and management capacities to operate airplanes safely in order to conduct the air transport activities included thereof. An *air transport enterprise* (as in Article 96 of the 1944 Chicago Convention on International Civil Aviation) is any enterprise of air transport offering or operating a regular or non-regular air service. An *enterprise plan* is a detailed description of the commercial activities provided during the time related to, especially the progress made by, the market and the in-

vestments that the enterprise intends to accomplish, as well as the financial and economic impacts of its activities. An *air carrier* is an enterprise that possesses a valid license. And the *work of the air carrier* is an air transport activity during which an airplane is used for specialized services such as agriculture, construction, photography, topography, observation and monitoring, research and rescue, and air advertisement.

301. **Scope of the provisions.** As stated in Article 3 of the Decision, anyone seeking to obtain a license to become an air carrier must comply with the cumulative requirements of Article 4. The headquarters must be located in the Member State delivering the license; the main activity must be air transport, exclusively or in combination with another commercial activity, including operations or repair and maintenance of airplanes; and the Member State or its citizens must own the majority of company shares. The Member State or its citizens must effectively control the company. The services provided must have as a starting point and an arrival point at one or several airports of a Member State, and its technical, operational, and management personnel must be composed mainly of citizens of Member States. Finally, the company must be capable of proving at any time to the aeronautic authority that delivered the license that it is fulfilling the requirements of Article 4.

302. **Obligations of the air carrier.** The licensed company must be able to prove to the aeronautic authority its capacity to meet for a period of 24 months its present and potential obligations and to meet for a period of three months the fees and operations expenses deriving from its activities in compliance with the company's plan. The company's plan must be presented for a time frame of at least two years of operation. The company must also notify the authority about any plans to operate a regular or irregular service on a continent or in a region of the world that was not previously served, changes that may occur in the type or the number of operated airplanes, or a substantial modification in the volume of its activities. The company must also notify the aeronautic authority of any plans for merger or redemption prior to its implementation and notify it within 14 days of any change equal to 10 percent or more in the assets of a carrier controlling it. Delivery of the license is dependent on the professional fitness and competence of the persons managing effectively the activities of the air carrier (Article 6). The obligation to be insured is stated in Article 7. The insurance company must have its headquarters within the subregion, covering, among other things, the risk of accidents affecting passenger, baggage,

cargo, mail, and third parties on the ground, in compliance with the provisions stated in international conventions, treaties, and protocols. The remaining requirements are common to those recommended by Annex 6 of the 1944 Chicago Convention on International Civil Aviation related to the certification of air transport and the leasing of airplanes. Article 15 of the Decision clearly states that all its provisions shall not be understood as contrary to the Yamoussoukro Decision of November 14, 1999, regarding freedom of access to the air transport market in Africa, except that the Decision reviewed here is more favorable to the process of the subregional integration.

- 303.** Decision No. 17/CEEAC/CCEG/XV/12 regarding the requirements to access air transport in Central Africa. The most important articles of this instrument are related to safety and security measures (Articles 10 and 11). They refer to the 1944 Chicago Convention and compliance with its recommended measures on security and safety.
- 304.** Decision No. 18/CEEAC/CCEG/XV/12 on tariffs for passengers, cargo, and mail applicable to services within, coming from, and going to ECCAS Member States. This Decision gives air carriers the freedom to establish air transport tariffs for passengers, cargo, and mail (Article 3). However, this freedom may be suspended if the tariff is assessed to be excessively high or low. The Member State in this case may establish rules and procedures for transparency in order to protect consumers in the absence of a legal framework on competition.
- 305.** Decision No. 19/CEEAC/CCEG/XV/12 on air carrier liability toward passengers in case of accident within the subregion. This decision refers to the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage. The scope of the liability is stated in Article 2. The liability applies in case of death, physical injuries, or any other injuries so long as the accident causing the prejudice occurred inside the airplane or during the act of entering or exiting the airplane on the subregion territory. The level of air carrier liability is stated in Article 3 of the Decision. This liability is similar to that one stated in the 1999 Montreal Convention establishing the strict liability of the air carrier. The prejudice is paid in special drawing rights, as it is stated in the 1999 Montreal Convention.
- 306.** Decision No. 20/CEEAC/CCEG/XV/12 regarding competition in air transport services in the ECCAS Member States. The main objective of this Decision is to promote and guarantee freedom of competition and transparency in the

field of air transport in Central Africa, to bring about the establishment of an air transport industry, and to contribute to development and regional integration (Article 2). Agreements, decisions, and anti-competition practices are considered illegal. Article 3.2 provides a non-limitative list of what practices may constitute anti-competition practices. Article 4 prohibits abuse of a dominant position and defines what constitutes abusive practices. Article 5 refers to a regional agency on regulation to be created by the General Secretary of ECCAS. It would seek to monitor the practices on competition implemented by air carriers. The missions, operation, and financing of the regional agency on regulation are defined by the Council of Ministers and adopted by the Conference of Heads of State of ECCAS. The regional agency on regulation is created by Article 9 of the Decision under review here.

- 307.** **Decision No. 21/CEEAC/CEEG/XV/12** regarding exemptions on some agreements, decisions, and practices related to competition in air transport services in the Member States. It establishes the right for air carriers to plan and coordinate joint programs of flight, joint operations, and joint consultations on tariffs for passengers and cargoes on regular flights. The Decision regulates the manner in which this is possible. For this purpose, the regional agency on regulation plays a key role in monitoring these exemptions. The agency is also competent to investigate any infringement of these rules and may also act as a judiciary body (Article 12 and seq.).
- 308.** **Decision No. 22/CEEAC/CEEG/XV/12** on creating a Steering and Coordination Committee on the implementation of the 2008-2015 action plan to improve air transport in Central Africa. The Committee is composed of the Ministers in charge of civil aviation and the General Secretary of ECCAS. It is assisted by a Technical Commission composed of General Directors of the civil aviation administrations, airport General Directors, weather broadcast service General Directors of Member States, General Directors of public and private airlines or their representatives, and experts from ECCAS, CEMAC, Central African States Development Bank (BDEAC), and Bank of Central African States (BEAC) (Article 2). The Committee is responsible for monitoring implementation of the action plan; ensuring that the objectives selected are reached by mobilizing human, financial, and material resources; liaising with the Heads of State on the importance of gathering the required resources; implementing the Community rules; and ratifying the international conventions in the air transport field and on the freedom of movement of people. The

Technical Commission prepares for the Committee meetings, ensures implementation of decisions made by the Committee, decides on the practical aspect of implementation of the action plan, and reviews the reports and documents presented by the institutions and services in charge of air transport in the Member States and by the ECCAS General Secretary.

- 309. Evaluation.** Being too recent, it is too early to evaluate the implementation of these decisions. However, ECCAS is showing its will to comply with the Ya-moussoukro Decision and the international conventions on air transport by following the recommended practices.

D. ECONOMIC COMMUNITY OF THE GREAT LAKES COUNTRIES

- 310. General.** The Convention Establishing the Economic Community of the Great Lakes Countries was concluded in Gisenyi, Burundi, on September 20, 1976, between Burundi, Rwanda, and Zaire (now Democratic Republic of the Congo). The Convention originates in the Declaration of Goma, dated March 20, 1967, in which the three States committed themselves to developing their mutual cooperation. The 1969 Gisenyi Conference concluded with the Gisenyi Resolution confirming the intention to cooperate. This resulted in a number of agreements between 1971 and 1975 and then to the 1976 Gisenyi Convention reviewed here. The Convention stipulates that cargoes and goods in transit in one of the Partner States shall be free of taxes and duties. On September 10, 1978, at Gisenyi the same States entered into a Trade and Customs Cooperation Agreement.
- 311. Objectives (Article 2).** The objectives of the Community are (1) safety of populations, (2) design of common projects, (3) trade development, and (4) co-operation in various areas, mainly transport and Customs administration.
- 312. Institutions (Article 5).** The institutions of the Community are:
- *Conference of Heads of State.* The Conference has the power of decision making in all matters and overall policy-making authority. Each Head of State is in turn chair of the conference for a period of one year.
 - *Council of Ministers and State Commissioners.* The council is composed of members of Governments, appointed by the Conference of Heads of State.

The council prepares the meetings of the Conference and drafts proposals for decisions.

- *Permanent Executive Secretariat.* The Secretariat is in charge of studies, review of the elaboration of decisions, and the preparation and supervision of Community projects.
- *Arbitration Commission.* The Commission is composed of four judges in charge of controlling the legal aspects of enforcement of the Convention.
- *Specialized commissions* (policies, trade and finance, planning, transport, etc.). These commissions are in charge of evaluating the degree of cooperation by Member States in the areas of jurisdiction of the Conference of Heads of State.

The Convention Establishing the Economic Community of the Great Lakes Countries was filed under No. 16748 with the UN Secretariat (reference 1092 UN Treaty Series 43). The text appears in **Annex IV-15** of this review.

a. *Trade and Customs Cooperation Agreement*

- 313.** This Agreement between Burundi, Rwanda, and Zaire (today Democratic Republic of the Congo) was concluded on September 10, 1978, and amended on January 31, 1982,¹¹⁴ both in Gisenyi, Burundi. It does not seem to have been filed with the UN Secretariat, nor has it been published in the UN Treaty Series. The text is available in UNCTAD document TD/B/C7/51 (Part II), Add.1 (Vol. IV), 1988, p. 228. The Agreement was later amended.
- 314. Objectives.** The objectives of the Agreement and its amendment as formulated in their preambles are to (1) develop and facilitate trade between the states party to the agreement and (2) fight fraudulent practices in trade.
- 315. Provisions.** The main provisions are as follows:
- *Article 1.* The Parties agree to the import to and export from their respective territories of products listed in attachments to the agreement, providing these products originate from such respective areas. In summary, there are no quantitative restrictions.

- *Article 2.* The domestic legislation of each State shall apply to these imports and exports, but states may grant each other, with reciprocity, any rebate on Customs tariffs they consider advisable.
- *Article 3.* The Parties agree to grant the right of transit to goods originating from and bound for one of the said States “within the limits and according to regulations on international transit of goods” free of Customs and other duties, except fees and charges compensatory of costs of services rendered during such transit.
- *Article 8.* Jurisdiction and working hours of respective Customs agencies shall be harmonized.
- *Articles 10 to 14.* These are standard provisions on cooperation and exchange of information between Customs agencies, inspired by the Customs Cooperation Council in Brussels.

The text of the Amendment to the Trade and Customs Cooperation Agreement appears in **Annex IV-16** of this review.

b. *Protocol on Transit and Transport Standards*

- 316. General.** The Protocol was concluded in Gisenyi, Burundi, on January 11, 1982, on transit and transport standards. The objective was to harmonize road transport policies.
- 317. Provisions.** The main stipulations of the Protocol are as follows:
- *Article 3.* Interstate road corridors are identified.
 - *Articles 4 and 5.* Pending agreement between Partner States, the rules on axle loads are those in force in each of the Partner States. The maximum dimensions of vehicles and trailers are set.
 - *Articles 9 and 10.* Safety and other checks on vehicles are conducted every three months for vehicles for public transport of passengers and six months for vehicles carrying goods.
 - *Articles 12 and 13.* Vehicles from any Member State may load in another Member State for international traffic only and in accordance with the rules and regulations of freight bureaus and other regulations such as those related to railroad coordination.

- *Article 14.* Combining the transport of passengers and goods in the same vehicle is prohibited.
- *Article 17.* Third-party liability insurance is compulsory in accordance with the provisions of the Convention on the subject in force between CEPGL States.

318. Evaluation. In 1996, following the Rwandan crisis, all agreements were suspended. Before the regional crisis, the CEPGL had promoted freedom of movement, transport and transit facilities for goods, cooperation in agricultural development, and creation of a regional bank. It was only in 2004 that the Government of Belgium called the Parties to the CEPGL to restart the organization's activities. In 2007, the reopening of the CEPGL was officially launched in the capital city of Burundi. The road linking Rwanda to Burundi was launched and constructed. In December 2009, the French Government and the CEPGL signed a financing convention to support the capacity building of the organization's Executive Secretariat.

The text of the Protocol on Transit and Transport Standards appears in **Annex IV-17** of this review.

E. INTERNATIONAL COMMISSION FOR THE CONGO-OUBANGUI-SANGHA RIVER BASIN

319. General. This Agreement stems from the interconnection of rivers running into the Congo-Oubangui-Sangha River Basin and the need to develop their capacity and potential in the common interest. The Agreement is also likely to open the way to a revision of the existing Protocol between the Democratic Republic of the Congo and the Central African Republic on river maintenance by the interstate Agency for the Common Management Service of Waterways (*Service commun d'entretien des voies navigables*). Significantly and despite the fact that the two countries are not or were not automatically Parties to these instruments, the Brazzaville Agreement specifically refers to the major international instruments applicable to international rivers, such as the 1885 Act of Berlin and the 1921 Barcelona Convention on the regime of the Congo River. The Agreement reviewed here is therefore well in line with the tradition of international cooperation in the matter of international rivers inaugurated by the 1815 Treaty of Vienna.

- 320. Objectives.** The objectives are in line with the Organization of African Unity's objectives to create common institutions and reinforce the existing ones. In addition, the Agreement (Article 2) aims to undertake the following:
- Establish a uniform river regime based on freedom and equal treatment.
 - Equip and operate the rivers on the basis of "a right to equitable and reasonable participation to the benefits derived from the lasting use of the rivers."
 - Establish to that effect an International Commission of the Congo-Oubangui-Sangha River Basin. The seat of the commission is in Kinshasa, Democratic Republic of the Congo.
- 321.** Details on the spirit in which the Agreement should be interpreted appear in Article 15, concluding with the special provisions applicable to special circumstances such as war. Article 15 stresses the importance of integrated management for the river basin, for the optimal use of the existing navigable waters, and for the community of interest of the Parties to the Agreement.
- 322.** Detailed terms of reference are assigned to the Commission (Article 17) with short-term, mid-term, and long-term objectives. Short-term objectives are basically to enforce the existing regulations, police river traffic, and develop common standards. Mid-term objectives are to formulate and implement a coherent maintenance policy and a transport policy conducive to the opening of landlocked areas. The long-term objective is to extend implementation of the agreement to other river basins and lakes of the subregion.
- 323. Operating provisions.** The following are the main operating provisions:
- *Access to river basin (Article 4).* Freedom of navigation for riverboats of all nations is the rule. However, the carriage of cargo or passengers between two points on the territory of one Contracting State by a riverboat of another Contracting State (cabotage) requires a specific agreement.
 - *Rules regarding transport (Article 5).* If navigation is free, transport is not reserved to the Contracting States. A special regime, as determined by the Commission, is applicable to transport by third-party boats.
 - *Fees (Article 6).* Navigation in the river basin is tax-free, and no duty, whatever its basis or denomination, may be levied. Fees may be levied for

construction, maintenance, and improvements of rivers and associated transport facilities. These fees are to be “equitable and reasonable.”

- *Special circumstances (Articles 11 to 14)*. Special circumstances are mainly an emergency and war. In both cases, action and compensation for damages is based on solidarity between states party to the agreement. In case of war, “the rivers, their facilities...enjoy the protection granted by rules and principles applicable to armed conflicts.”

324. Institutions. The following are the main institutions:

- *International Commission (Article 16)*. The Commission is the basic international institution established by the Agreement. Its organs are:
 - Committee of Ministers
 - Management Committee
 - General Secretariat
- *Committee of Ministers (Articles 19 to 24)*. Members of the Committee are the Ministers in charge of river navigation in each Member State. The Committee is a policy-making body that supervises the Management Committee and approves budgets and accounts. It settles litigation between Member States on river navigation.
- *Management Committee (Article 25)*. The Committee is composed of two representatives of each Member State: a representative of the agency in charge of river transport and a representative of the carriers. The Committee prepares all deliberations of the Committee of Ministers. It reviews all proposals for decision by the Committee of Ministers and formulates recommendations.
- *General Secretariat (Articles 26 and 27)*. The General Secretariat conducts the day-to-day affairs of the International Commission with wide powers of coordination and actions in the implementation of the commission’s plans, programs, and budget.

The Agreement appears in **Annex IV-18** of this review, but was not filed with the UN Secretariat and does not appear in the UN Treaty Series.

a. *Instruments on river transport signed under CICOS*

325. **Convention on Exploitation of Pool Malebo between Congo and the Democratic Republic of the Congo.** This Convention was signed on November 22, 2005, under the facilitation of CICOS. The objectives of the Convention are to regulate navigation between Kinshasa and Brazzaville, notably to administer the conditions of access to and docking in the ports; to transport passengers and their baggage; and to facilitate the journey by river and resolve any potential dispute regarding navigation (Article 2). The Convention also requires the port authorities to adjust and maintain access to ports to direct the flow of passengers and their baggage in order to facilitate control and suppress fraud (Article 5). Implementation of the Convention is monitored by a consultation committee composed of representatives of the two States: port authorities; ship-owners, border post services, agencies responsible for regulating the river; and services responsible for river maintenance. To date, passenger and trade traffic is facilitated by Customs in both ports.

This Convention appears in **Annex IV-19** of this review.

326. **Tripartite Protocol on Maintenance of Navigable River.** This Protocol, discussed in 2008 by the Central African Republic, Democratic Republic of the Congo and Congo, has not yet been signed by the three Parties. The Protocol divides the sections of the river to be maintained by each Party (Article 1). A Technical Committee in charge of controlling the implementation of the works is created and is responsible for providing a detailed report to the Governments and the General Secretary of CICOS. The Tripartite Protocol is not attached to this study because it has not yet been ratified.
327. **Evaluation.** In June 2008, a workshop took place in Congo, Brazzaville, to create monitoring agencies within the riparian countries that will serve as an interface between the State Parties and CICOS. These agencies will be responsible for ensuring that CICOS actions are effectively implemented by the riparian countries, notably in ensuring possible joint investments in shipping to facilitate transport and transit within the Member States.

V. Subregional Instruments: Eastern Africa

- 328. History.** East Africa has a long history of interstate cooperation, starting well into the colonial period with the Customs Collection Center in 1900 and the East Africa Currency Board in 1905. Cooperation continued after independence with institutions such as the East African Common Services Organization in 1961.¹¹⁵ On June 6, 1967, the Treaty for East African Cooperation was concluded at Kampala, Uganda. It established the East African Community and, as an integral part of such a Community, the East African Common Market.¹¹⁶ Parties to the Treaty were Kenya, Tanzania, and Uganda. Finally, in January 1986, by the Djibouti Agreement, the States of the Horn of Africa—Djibouti, Ethiopia, Kenya, Somalia, Sudan, and Uganda, later joined by Eritrea—established the Intergovernmental Authority on Drought and Development (IGADD). This was revitalized in 1996 as the Intergovernmental Authority on Development (IGAD).
- 329.** For trade and transport, the objectives of the East African Community and East African Common Market were, according to Article 2 of the 1967 Treaty for East African Cooperation:
- A common Customs and excise tariff
 - Abolition of restrictions on trade between Partner States
 - Operation of services common to the Partner States
 - Coordination of transport policy

In addition, according to Article 29 of the Treaty, Partner States were to “cooperate in the coordination of their surface transport policies.”

- 330.** The East African Community was dissolved in 1977 after failing to develop adequately.¹¹⁷ One of the main reasons was the uneven benefits derived from the members of the Community and the resulting inter-Community tensions.

The 1967 Treaty for East African Cooperation is not attached here as an annex as it is now obsolete. A new Treaty for the Establishment of the East African Community

was concluded in 1999 between the same States and was amended on December 14, 2006, and on August 20, 2007.

331. Enforceable instruments. Several sets of instruments are presently enforceable in Eastern Africa:

- Amended Treaty for the Establishment of the East African Economic Community (EAC), concluded August 20, 2007
- 1985 Northern Corridor Transit Agreement (NCTA) and Protocols, currently being replaced by the 2007 Northern Corridor Transit & Transport Agreement and its 11 Protocols; in force since December 6, 2012
- 2006 Central Corridor Transit Transport Facilitation Agency Agreement
- Constitution Act of the Dar es Salaam Corridor (studied in next chapter as all Member States except for Tanzania are also members of SADC)
- 1986 (original) and 1996 (revised) Djibouti Agreements establishing and reorganizing IGAD, the Intergovernmental Authority for Development
- Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) Treaties with all the relevant texts and protocols applicable to Eastern and Southern Africa

332. Institutions. The institutions for Eastern and Southern Africa largely overlap. The East African States were also party to the 1981 Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern Africa (PTA), which itself was a first step toward the 1993 treaty establishing COMESA). Both instruments are described in chapter VI of this review. Tanzania also belongs to SADC. Ethiopia, Kenya, Sudan, and Uganda belong to IGAD as well, whose mission is, among other things, to promote intra-regional trade and improve communications infrastructure. IGAD, however, does not seem to have at present any projects in transport and facilitation, nor has it developed any legal instrument related to transport and facilitation.

333. Membership of subregional organizations. Table 2 summarizes the distribution of membership in the subregional organizations described here.

Table 2 Membership of Subregional Organizations, Eastern and Southern Africa

	COMESA (20)	EAC (5)	SADC (15)	NCTTA	CCTFA	Dar es Salaam Corridor
Angola			x			
Botswana			x			
Burundi	x	x		x	x	
Comoros	x					
Cong, Dem. Rep.	x		x	x	x	x
Djibouti	x					
Egypt	x					
Ethiopia	x					
Eritrea	x					
Kenya	x	x		x		
Libya	x					
Lesotho			x			
Madagascar	x					
Malawi	x		x			x
Mauritius	x		x			
Mozambique			x			
Namibia			x			
Rwanda	x	x		x	x	
Seychelles, The	x		x			
Somalia						
South Africa			x			
South Sudan				x		
Sudan	x					
Swaziland	x		x			
Tanzania		x	x		x	x
Uganda	x	x		x	x	
Zambia	x		x			x
Zimbabwe	x		x			

Source: SSATP

Note: COMESA =Common Market for Eastern and Southern Africa; EAC = East African Community; SADC = Southern African Development Community; NCTTA = Northern Corridor Transit & Transport Agreement ; CCTFA = Central Corridor Transit Transport Facilitation Agency

A. NORTHERN CORRIDOR TRANSIT & TRANSPORT AGREEMENT

- 335. Instruments.** The Northern Corridor Transit Agreement (NCTA) covered the use of transportation facilities of East Africa served by the port of Mombasa in Kenya. It was concluded in Bujumbura, Burundi, on February 19, 1985, between Burundi, Kenya, Rwanda, and Uganda. At signature, four Protocols were attached to the Agreement, a somewhat short document. One annex and five more Protocols were added at Nairobi on November 8, 1985. The Signatories ratified the Agreement in 1985 and 1986, and Zaire (now Democratic Republic of the Congo) acceded to it on May 8, 1987, in Kigali. The initial duration of the Agreement was 10 years. It is stated in the 2007 preamble that at its ninth meeting, the Northern Corridor Transit Transport Coordination Authority (NCTT-CA) extended the Agreement by another 10 years, taking effect on November 15, 1996 (Decision No. TTCA/A/A/9/96/1 dated October 25, 1996). The depository of the Agreement is the United Nations Economic Commission for Africa. One explanatory note to the Agreement and 10 notes to the annex and protocols clarify its content. The new Northern Corridor Transit & Transport Agreement (NCTTA) was signed in Nairobi, Kenya, on October 7, 2007, between the Governments of Burundi, Democratic Republic of the Congo, Kenya, Rwanda, and Uganda. It entered into force on December 6, 2012. The Republic of South Sudan acceded to the Agreement as the sixth member state on March 7, 2013. This new Agreement extends the mandate and scope of the 1985 Agreement. It renews the protocols and develops new ones in areas where none existed. It has 11 Protocols, whereas the 1985 NCTA had only nine.
- 336.** The preamble to the 1985 Agreement refers to a number of international instruments. Not all of them are in effect or were acceded to by the Contracting Parties, such as the 1977 International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences or the 1980 United Nations Convention on International Multimodal Transport of Goods. Because some of the instruments listed were not ratified by some of the State Signatories of the Agreement, the list of these instruments can be considered for reference only.
- 337.** The preamble to the 2007 Agreement refers to the 1994 Marrakech Declaration establishing the World Trade Organization, the 1972 Geneva Customs Convention on Containers, and the 1973 Kyoto Convention on the Simplifica-

tion and Harmonization of Customs Procedures. As of July 2010, only Burundi (1998) had ratified the 1972 Customs Convention on Containers. Uganda is the only country among the Parties that did not ratify the 1973 Kyoto Convention. The preamble to the 2007 Agreement also refers to close coordination between Governments and the private sector as a key factor in the development of trade and transit facilitation. The new Agreement acknowledges the importance of developing along the Northern Corridor a transit system that is economical, safe, and environmentally sustainable. These references are well in accord with the new international trends calling for public-private partnerships and sustainable environmental development.

- 338. Objective.** The purpose of this Agreement is to promote the use of the Northern Corridor, as defined by the Agreement, as a most effective route for the surface transport of goods between Partner States. As a result, the Contracting States have agreed to grant each other the right of transit through their respective territories and to provide all possible facilities, regulations, and procedures for that purpose, without any discrimination.
- 339. No conflict with other instruments.** Nothing in the Agreement prevents any Contracting Party from fulfilling its obligation under any other international convention and from granting facilities greater than those provided in the Agreement.
- 340. Evaluation.** Altogether, the 1985 set of documents was considered to be the clearest and most complete, making the most judicious reference to other international conventions and other instruments compared with the other regional treaties and conventions reviewed here. It showed a clear understanding of the problems, and its explanatory notes (widely used in this presentation) still make it an excellent legal document. It can and should be used as a model. The 2007 Agreement is certainly considered an improved version of the 1985 Agreement because it has instituted modern transport modes such as multi-modal transport. It also refers to international instruments that have not always been ratified by the Member States, and yet they are acknowledged in the 2007 instrument.
- 341. Institutions.** The Northern Corridor Transit Transport Coordination Authority – NC-TTCA (renamed Northern Corridor Coordination Authority in 2007 and having regained its original name in 2013) is composed of the Ministers responsible for transport matters in each of the participating States and

their Permanent Secretaries. The annex to the 2007 Agreement makes explicit the role and duties of the NC-TTCA and its Executive Officer, who is the Executive Secretary of the authority's Permanent Secretariat. Authority for the study of all questions related to cooperation in transit and transport matters remains with the Ministers. The Permanent Secretariat of the NC-TTCA conducts the day-to-day operations, circulates information, and furnishes advice to the Contracting Parties. The 2007 Agreement made a slight change in the institutions and introduced two new institutions within the Transit and Transport Authority: Specialized Committees and the Public-Private Partnership Committee.

342. The NC-TTCA is an international organization with legal capacity. It comprises the Council of Ministers, Executive Board, Specialized Committees, Public-Private Partnership Committee, and Permanent Secretariat.
343. The Specialized Committees are composed of organizations and persons dealing with specialized areas of transport and transit. The Committees are responsible for preparing implementation strategies for corridor operations; reporting their activities in periodic reports to the Executive Board through the Permanent Secretariat; and advising the Executive Board on required amendments to this Agreement. The Public-Private Partnership Committee is composed of public and private sector persons and organizations dealing with matters of interstate transport and transit along the corridor, and is responsible for identifying and addressing problems within its areas of operation; making recommendations for review by the Council of Ministers; and facilitating implementation of decisions of the organs of the Coordination Authority.
344. **Financial provisions.** These provisions are common to the 1985 and 2007 Agreements.¹¹⁸ No mention is made of the responsibility of the Coordination Authority on the matter of rates and charges on transit traffic. According to the Article 50, Section 13, of the Agreement in force (2007), "no duties, taxes or charges of any kind ... regardless of their designation and purposes, shall be levied on traffic in transit, except charges for administrative expenses entailed for traffic in transit...and charges levied on the use of toll roads, bridges, warehousing, or similar charges." Furthermore, the Contracting Parties agree that said charges "should be calculated on the same basis as for similar domestic transport operations." There is no explicit statement that the charges should be equivalent to the extent possible, with the expenses actually incurred by the state through which transit traffic takes place. This is, however, stated in

the explanatory notes with reference to Article 3 of the 1921 Barcelona Convention and Statute on Freedom of Transit, Article 5 of the 1947 General Agreement on Tariffs and Trade, and other international instruments quoted in such notes.

- 345. Settlement of disputes.** The NCTA includes provisions for the settlement of disputes by consultation and discussion between Contracting Parties and, if necessary, by arbitration. The appointing authority for arbitration is the Arbitration Center in Cairo, a branch of the Asian-African Legal Consultative Organization (AALCO). By contrast, the 2007 Agreement states that disputes have to be referred to the Council of Ministers (Article 54). The Council of Ministers may, at the request of any of the Contracting Parties involved, settle disputes by arbitration. The arbitrator is selected by agreement between the Contracting Parties, and he or she must be a national of the Contracting Parties. If the Council of Ministers fails to agree on the appointment of an arbitrator, any of the Parties shall refer the matter to the COMESA Court of Justice or any other internationally recognized arbitration center (Article 55).
- 346. Issues of immunity.** The Agreement does not provide for any form of immunity from jurisdiction and execution. However, there is a flavor of reservation in the explanatory notes, in which it is pointed out that under all normal circumstances national law will prevail in the case of offenses (Article 47) and that some state-owned enterprises established as companies are considered as “an emanation of the State. As a consequence...the company is not legally distinct from the State and should benefit from the same advantages and privileges as the State it belongs to”—that is, immunity. The 2007 Agreement does not refer specifically to this question. However, Article 56 states that the decision taken by the COMESA Court of Justice or arbitrator is final and binding on the Contracting Parties and the competing parties. The good news is that all the Member States are also COMESA members.

The issues here are (1) whether immunity resulting from national law is limited to execution following the sanctioning of offenses or applies to the execution of all judicial and arbitration awards; and (2) implicitly, whether in the case of a conflict of laws in implementation of the agreement domestic law takes precedence over the agreement—that is, national law versus an international instrument.

In any case, whether a government-owned enterprise engaged in commercial operations is immune is very much open to question, State immunity implies that, in the

common or public interest, state entities perform government functions that cannot be conducted by private parties—for example, the exercise of the police power. The issue is different when the government-owned entity engages in operations that could be conducted by private operators who frequently are in competition with the state-owned entity, in which case there are no grounds for immunity. The present trend of jurisprudence is to refuse immunity to state-owned companies performing revenue-earning commercial activities. This is specially the case when there has been recourse to arbitration. No longer do courts accept that a government-owned company, which accepted arbitration, refuses to submit itself to the decision of the arbitrators, citing its immunity.

The text of the 2007 Northern Corridor Agreement, together with its Annex on the Transport Coordination Authority and Explanatory Note appear in **Annex V-1** of this review. The 1985 Agreement does not appear to have been filed with the UN Secretariat, and it is not listed in the UN Treaty Series.

a. *Protocol No. 1—Maritime Port Facilities*

347. Provisions. According to Section 4 or Article 5 of the 1985 Agreement, Kenya undertakes to provide the necessary port facilities, including sheds and warehouses, at Mombasa. The Protocol governs the use of these facilities. Ships registered in or chartered by one of the Parties to the Agreement shall be treated equally—a somewhat redundant obligation and commitment since Kenya is in any case bound by the equal treatment rule formulated in the 1923 Geneva Convention and Statute on the International Regime of Maritime Ports. Fees and charges on vessels and cargoes shall not be discriminatory. This is also Protocol No. 1 of the 2007 agreement, which restates the same provisions.

The text of Protocol No. 1 on Maritime Port Facilities, together with an explanatory note, appears in **Annex V-2** of this review.

b. *Protocol No. 2—Transit Routes and Facilities*

348. Provisions. Pursuant to Section 5 of the Agreement, transit routes are specified in this Protocol. The objective is to allocate traffic to routes capable of carrying such traffic, or to avoid routes that are not. It is also to permit Customs control and to distribute accurately the costs of construction, maintenance, and repair of the road network. The selection of routes follows the principles

set forth in the 1921 Barcelona Convention and Statute on the Freedom of Transit and the 1965 New York Convention on Transit Trade of Landlocked Countries. Roads should be safe, secure, and in good condition. On these routes, facilities and services such as first-aid services, repair facilities, fuel filling stations, storage areas, buildings, etc. should be made available. Any payment for the use of facilities or the delivery of services should be at the rates that apply to nationals of the country in which the facility is located or the service rendered. During repair work and in case of emergency, transit traffic may be prohibited by any Contracting State. This is also Protocol No. 2 of the 2007 agreement. However, the 2007 Protocol No. 2 states in detail the transit itineraries for road traffic and for railway traffic. The Protocol specifies that the Contracting Parties shall agree on transit itineraries for inland waterway, pipeline transit, and Customs controls at the borders.

The text of Protocol No. 2—Transit Routes and Facilities, together with an explanatory note, appears in **Annex V-3** of this review.

c. *Protocol No. 3—Customs Control*

- 349. Structure.** Protocol No. 3 contains a main text and two annexes that set forth the minimum requirements to be met by Customs seals and fastenings and give the list of international instruments providing the conditions and procedures for the approval of transport units. As noted earlier, if a country has not been a party to one of the instruments quoted, its mention can be considered for reference only. Protocol No. 3 has detailed provisions, and is divided into six sections. Before the first section, there is an article stating definitions of all the terms to be used by Customs. Section I defines the general provisions related to Customs, such as designation of Customs offices for transit, working hours, and all the relevant documents that need to be produced. Section II is related to the formalities to be undertaken in the departure Customs office, and Section III defines the formalities to be fulfilled before the transit and in the destination custom office. Section IV is related to the mutual administrative assistance. Section V covers warehousing facilities. Finally, Section VI deals with various provisions such as the priority that needs to be given to some shipments, dangerous goods, accidents, etc.

The text of Protocol No. 3—Customs Control, together with an explanatory note, appears in **Annex V-4** of this review.

350. Provisions of Protocol and Annexes. Pursuant to Section 7 of the Agreement, the Contracting States must limit their Customs control to the minimum required to ensure compliance with applicable laws and regulations. Joint Customs control at border crossings (frontier points) shall be facilitated. The procedures for transit traffic are detailed in the Protocol, which sets forth the rules on Customs security and guarantees for transit operations. Annex 1 to the Protocol sets the minimum requirements to be met by Customs seals and fastenings. In the 2007 Agreement, these provisions are stated in Annex II, while Annex I refers to the rules applicable for transit in the Community. In the same Agreement, Annex II lists the international instruments providing for the conditions and procedures for the approval of transport units. Comments in the explanatory notes seem to indicate suspicion that Customs offices will have to modify their working practices if this provision of the agreement is to be adequately and usefully implemented. Joint control, with Customs officers of one State operating on the side of the frontier of the other State, may raise legal issues, especially if legal action has to be taken against an offender. A court of law may not accept execution of the law by a national officer on the territory of another nation, thus offering a welcome loophole to offenders.

d. *Protocol No. 4—Documentation and Procedures*

351. Provisions. Pursuant to Section 8 of the 1985 Agreement whose objective is to reduce the number of documents needed for the transit of goods and to simplify procedures, this Protocol contains provisions related to the documents to be used in Northern Corridor transit operations. For that purpose, it refers to a number of international instruments such as International Standard Organization (ISO) standards, the UN Layout Key for Trade Documents, and the 1980 United Nations Convention on International Multimodal Transport of Goods, etc. Standard formats of documents are attached. Of special interest is the reference to the recourse to non-negotiable sea waybills, to be substituted for negotiable bills of lading, which is significant in the multimodal carriage of goods. The 2007 Agreement also refers to this protocol as Protocol No. 4 and restates the same provisions.

The text of Protocol No. 4—Documentation and Procedures, together with an explanatory note, appears in Annex V-5 of this review.

e. *Protocol No. 5—Transport by Rail of Goods in Transit*

352. **Provisions.** Pursuant to Section 9, Article 36, this Protocol also deals with the transport by rail of goods in transit. It stipulates that detailed rules regarding the administration and operation of rail traffic shall be laid down in a railway working agreement between the rail carriers of Kenya and Uganda.¹¹⁹ The Protocol identifies the border posts and traffic interchange stations where connecting and transit services will only be performed. There is a commitment to conducting the inspection of goods carried in transit in a manner that ensures that wagons in transit are not unduly detained. Finally, the Protocol sets the rules on the liability of the respective rail carriers involved in transit operations. It does not refer to the past or existing international conventions on rail transport, which is good since Burundi, Rwanda, and Zaire (now Democratic Republic of the Congo) are not Parties to these conventions. The 2007 Agreement also refers to it as Protocol No. 5. All these provisions are reiterated in the 2007 Agreement.

The text of Protocol No. 5—Transport by Rail of Goods in Transit, together with an explanatory note, appears in **Annex V-6** of this review.

f. *Protocol No. 6—Transport by Road of Goods in Transit*

353. **Provisions.** Pursuant to Section 9 of the 1985 Agreement, this Protocol provides for the transport by road of goods in transit. It sets rules regarding (1) road transit transport, (2) the technical requirements for vehicles, and (3) transport contracts and the liability of road carriers. The basic rule is that the national laws and regulations of the Contracting Party on whose territory the operation is being carried out are applicable:
- *Road transport permits.* These may be issued by the states in whose territory transport takes place, subject to issuance of a certificate of fitness to the vehicle and to compliance with the technical requirements for road vehicles as set forth in the protocol.
 - *Consignment note.* Transport contract shall be confirmed by the issuance of a consignment note (bill of lading) containing the particulars enumerated in the protocol plus any particular that the Parties to the carriage contract may deem useful.

- *Liability regime.* The liability regime is inspired by the rules set forth in contemporary conventions such as the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR). The carrier shall be liable for loss, damages, and delays. Burden of proof shall rest with the carrier, who may be relieved from liability by the wrongful act or neglect of the claimant and in a number of circumstances enumerated in the protocol, such as defective condition of packing, carriage of livestock, etc. The Protocol also sets forth rules regarding liability in case of delay in delivery; goods should be delivered within 30 days. Rules on compensation in case of loss or delay in delivery are also set forth. Compensation is based on the market value of goods at the time and place when and where they were accepted for carriage, with a ceiling computed in special drawing rights (SDRs), applicable except when a special declaration of value has been entered in.

This protocol is also referred to as Protocol No. 6 in the 2007 Agreement, and these provisions are reiterated in that Agreement.

The text of Protocol No. 6—Transport by Road of Goods in Transit, together with an explanatory note, appears in **Annex V-7** of this review.

g. *Protocol No. 7—Inland Waterways Transport (new, 2007 Agreement)*

- 354. Provisions.** Pursuant to Section 9 of the 2007 Northern Corridor Transit & Transport Agreement, the Contracting Parties agree on the provisions for inland waterway transport, establishing the principle of equal treatment between the users regardless of their nationality. This equality applies to access to the waterways by non-riparian ships. This equality is also mandatory for access to port facilities and payment of taxes. The last provision refers to the requirement that each Contracting Party ensure that the ships used for inland waterway transport meet the technical fitness requirement and that the personnel employed are qualified. It also states that the Contracting Parties shall inspect the ships to evaluate their fitness as to their viability and require repairs if necessary. This Protocol is important as it sets a standard in regulating Lake Victoria as a common waterway for the Member States. The main responsibility of the Lake Victoria Basin Commission will therefore be to coordinate the exploitation of the lake to secure its sustainability.

The text of Protocol No. 7—Inland Waterways Transport appears in Annex V-8 of this review.

h. *Protocol No. 8—Transport by Pipeline (new, 2007 agreement)*

355. **Provisions.** Pursuant to Article 39 (c) of Section 9 of the 2007 Agreement, the Contracting Parties agree on the provisions for transport by pipeline, establishing the obligation to ensure the continuous transport of oil through the pipeline, the ownership of the pipeline by each Contracting Party, and freedom of movement of the staff responsible for pipeline maintenance. The Protocol refers to the observance by the Contracting Parties of the international instruments regarding health, environmental protection, and safety in inspecting and monitoring the pipeline. The protocol also refers to a mandatory liability for damages caused to the environment and to third parties and requires a prompt and adequate indemnification for any losses suffered. This Protocol is currently applied to the Kenya-Uganda pipeline.

The text of Protocol No. 8—Transport by Pipeline appears in Annex V-9 of this review.

i. *Protocol No. 9—Multimodal Transport of Goods (new, 2007 agreement)*

356. **Provisions.** This new Protocol fills a gap existing in the 1985 Agreement. Pursuant to Article 40 (a) of Section 9 of the Northern Corridor Transit & Transport Agreement, the Contracting Parties agree on the provisions establishing (1) the issuance of a negotiable and non-negotiable multimodal transport document; (2) the carrier's responsibility and liability for the loss of or damages to goods during the course of a multimodal transport operation; and (3) recourse to a tribunal or arbitration and mitigation of damages. Several articles of the protocol are devoted to the carrier's liability. These articles mostly restate what is in the 1980 United Nations Convention on International Multimodal Transport of Goods. It is important to note that, among Contracting Parties to the 2007 Northern Corridor Transit & Transport Agreement, only Burundi (1998) and Rwanda (1987) had signed this UN Convention, which is not yet enforceable.

The text of Protocol No. 9—Multimodal Transport of Goods appears in Annex V-10 of this review.

j. *Protocol No. 10—Handling of Dangerous Goods*

357. **Provisions.** Pursuant to Article 31 of the 1985 Agreement, this Protocol deals with the carriage of dangerous goods. These are handled and transported "in accordance with accepted international recommendations." Accordingly, the Protocol refers to standard international instruments on the matter, such as the International Maritime Dangerous Goods Code (IMDG Code), Regulations for the Transport of Radioactive materials, etc. In the 2007 Agreement version, this Protocol is pursuant to Article 41 (b) of the Agreement. The 2007 Agreement also refers to these international instruments.

The text of Protocol No. 10—Handling of Dangerous Goods, together with an explanatory note, appears in Annex V-11 of this review.

k. *Protocol No. 11—Facilities for Transit Agencies and Employees*

358. **Provisions.** Pursuant to Section 10 of the 1985 Agreement, this protocol covers the provision of facilities and making of arrangements for transit employees. Each Contracting Party shall grant duly recognized carriers of another party permission to set up agencies within its territory. Multiple entry visas shall be issued to employees of transport enterprises and their travel shall be facilitated. This protocol is Protocol No. 11 in the 2007 agreement. In that agreement, this protocol is pursuant to its Section 10 of Article 43 (d). These provisions are reiterated in the 2007 agreement.

The text of Protocol No. 11—Facilities for Transit Agencies and Employees appears in Annex V-12 of this review.

B. CENTRAL CORRIDOR TRANSIT TRANSPORT FACILITATION AGENCY AGREEMENT

359. **Instruments.** The Central Corridor Transit Transport Facilitation Agency Agreement covers the transit route for cargo and passenger transport utilizing all Tanzanian roads connecting to Burundi, Democratic Republic of the Congo, Rwanda, and Uganda, together with all roads and railway systems in these landlocked countries connecting to the port of Dar es Salaam. This Agreement includes the port of Dar es Salaam, the railway system operated by the Tanza-

nia Railways Corporation, and the Isaka Dry Port. The details of the routes can be found in Schedule Number 1 of the Agreement. The Agreement was concluded in Dar es Salaam, Tanzania, on September 2, 2006, by Burundi, Democratic Republic of the Congo, Rwanda, Tanzania, and Uganda. Its duration is 10 years from the date of entry into force (Article 36). No protocols have yet been issued. The depository of the Agreement is the United Nations Economic Commission for Africa.

- 360. Preamble to the Agreement.** The preamble refers to a number of international programs favoring landlocked countries but also regional integration. First, it cites the Almaty Programme of Action, which promotes the establishment of an efficient transit transport system and its maintenance over time for landlocked and transit countries. Second, it refers to the UN General Assembly Resolution 56/180 related to specific actions for landlocked developing countries. Third, the Agreement refers to the Millennium Declaration, which recognizes the special needs and problems of the landlocked developing countries. And, fourth, the Agreement refers to the consistency with NEPAD and the existence of COMESA.
- 361. Objective.** The purpose of the Agreement is to provide the most efficient and effective route for the transportation of goods by surface and lake transport between the Contracting States and the sea and to promote its use. As a result, the Contracting States have agreed to grant each other the right of transit in order to facilitate the movement of goods through their respective territories and to provide all possible facilities for traffic in transit between them. The TTFA's objectives are, among others, (1) to ensure that the Central Corridor is available to importers and exporters from the landlocked States of Burundi, Rwanda, and Uganda as an efficient and economic addition to other trade routes; (2) to actively market the corridor with a view toward encouraging its increased utilization in order to improve international and domestic traffic levels; and (3) to promote the sustained maintenance of infrastructure and encourage development of the Central Corridor, etc.
- 362. No conflict with other instruments.** Nothing in the Agreement prevents any Contracting Party from (1) fulfilling its obligation under any other international convention and (2) granting facilities greater than those provided in it.

- 363. Evaluation.** The Agreement seems very clear and thorough. However, its protocols should address specific issues pertaining to each mode of transport and the potential liabilities involved.
- 364. Institutions.** An agency for coordination of transport transit in the corridor, the Transit Transport Facilitation Agency (TTFA), is established in the Agreement. It is composed of the Interstate Council of Ministers, which is in turn composed of the Ministers responsible for transport matters from the Contracting States. The Executive Board is composed of the Permanent Secretaries/General Directors of the Ministries responsible for transport matters and one representative of the private sector from each Member State. The Stakeholders Consultative Committee (STACON) is composed of the bodies listed in Schedule Number 2 to the Agreement. The role and duties of the TTFA are described in Article 3.5 of the Agreement.
- 365. Provisions.** No mention is made in Article 12 of the Agreement of the responsibility of the TTFA in the matter of rates, charges, and payment arrangements. The Government of Tanzania undertakes to provide the necessary maritime port facilities to the corridor Member States, and each Contracting Party commits to granting each other the right of transit through its territory. To reduce the cost and time affecting the efficiency of the transit operations, the Contracting Parties undertake to keep these costs and delays to a minimum by harmonizing and limiting the number of documents and reducing the procedures and formalities required for traffic in transit. The States also undertake (1) to align their documents with those of the United Nations Layout for Trade Documents and (2) to harmonize commodity codes and descriptions with those commonly used in international trade.
- 366. Settlement of disputes.** The Agreement includes provisions for the settlement of disputes by consultation and if necessary by arbitration. The arbitrator shall not be a national of any of the Contracting Parties. The decision rendered by the arbitrator is to be made in accordance with the rules of arbitration of the agency within the United Nations Commission on International Trade Law (UNCITRAL). The Agreement also states that the decision of the arbitrator appointed shall be final and binding on the Parties concerned.

The 2006 Central Corridor Transit Transport Facilitation Agency Agreement appears in Annex V-13 of this review. The Agreement was not filed with the UN Secretariat, and it is not listed in the UN Treaty Series.

C. CORRIDOR-RELATED BILATERAL AGREEMENTS

- 367. Tanzania-Malawi Agreement.** The Government of Tanzania has allowed the Government of Malawi to construct, own, and operate dedicated inland container depots (ICDs) or cargo centers in the port of Dar es Salam and at Mbeya in Tanzania. The Agreement between the two countries was signed in Lilongwe, Malawi, on August 15, 1987, and registered in the UN Treaty Series on December 29, 1989. This Agreement between the two countries pertains to the Malawi-Tanzania Corridor Transport System. The Agreement gives a right of transit and port facilities to Malawi cargo. Article IX of the Agreement gives Malawi railway holdings the right to lease suitable sites at Dar es Salaam and Mbeya and develop two transshipment facilities from port to rail and road: Malawi Cargo Centre Dar es salaam (MCC DAR) and Malawi Cargo Centre Mbeya (MCC Mbeya).
- 368. Democratic Republic of the Congo-Kenya Agreement.** The Government of the Democratic Republic of the Congo has an agreement with the Government of Kenya for the accommodation of storage facilities at the port of Mombasa.

The text of this Agreement has not been found during this review.

D. TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY

- 369. General.** The Treaty for the Establishment of the East African Community (EAC Treaty) was concluded at Arusha, Tanzania, on November 30, 1999.¹²⁰ Parties to the Treaty are Kenya, Uganda, and Tanzania. Its origin is an initiative of the Heads of State, who in 1997 instructed the Permanent Tripartite Commission for East Africa to start upgrading the November 26, 1994, Kampala Agreement establishing the Commission into a new East Africa Community Treaty. The Commission itself had been equipped with a secretariat based in Arusha that was, among other things, in charge of supervising the elimination of non-tariff barriers in the subregion. Rwanda and Burundi acceded to the EAC Treaty on June 18, 2007, and became full members of the East African Community as of July 1, 2007. The Treaty was subsequently amended on December 14, 2006, and August 20, 2007.

370. Institutions. According to Article 9, the organs of the East African Community are as follows:

- Summit, composed of Heads of State
- Council, composed of ministers
- Coordination Committee
- Sectorial committees
- East African Court of Justice
- East African Legislative Assembly
- Secretariat
- Such other organs as may be established by the Summit

The East African Community also has various other institutions linked with transport such as the Lake Victoria Basin Commission (LVBC), which coordinates the sustainable development agenda of the lake, and the Civil Aviation Safety and Security Oversight Agency (CASSOA).

371. Transport policy. Chapter 15 of the Treaty is entitled Cooperation in Infrastructure and Services and covers transport. Common transport policies are the subject of Article 89. The Partner States undertake “to evolve coordinated, harmonized and complementary transport and communications policies... [and] to improve and expand existing links and establish new ones.” To this end, the Partner States shall take steps to

- Develop harmonized standards and regulatory laws, procedures, and practices
- Construct, upgrade, and maintain facilities
- Review and redesign intermodal transport systems and develop new routes.
- Grant special treatment to landlocked countries
- Provide security and protection to transport systems
- Harmonize and conduct joint training of personnel
- Exchange information on the subject

These provisions are further detailed in Article 90, Roads and Road Transport; Article 91, Railways and Rail Transport; Article 92, Civil Aviation and Civil Air Transport; Article 93, Maritime Transport and Ports; Article 94, Inland Waterways Transport;

Article 95, Multimodal Transport; Article 96, Freight Booking Centers; and Article 97, Freight Forwarders, Customs Clearing Agents and Customs Agents.

372. Importance of infrastructure. The EAC Development Strategy for 2006-2010 emphasizes deepening and accelerating the integration process. It states that “provision of adequate and reliable supporting infrastructure is a key area of intervention for deepening and accelerating integration through the sharing of the production, management, and operations of infrastructure facilities, hubs and development corridors. Priority sectors include energy, roads and Information and Communication Technology (ICT).”

Altogether, the EAC Treaty is the most detailed of all African cooperation treaties in the areas of transport and communications.

373. Transport provisions. The main transport provisions and stipulations are:

- *Article 90.* The provisions on transport deal mainly with its technical and regulatory aspects. Except for noting the common requirements for insurance, there is no reference to the terms of carriage contracts and to the adoption of modern contractual formats. However, the Article mentions the importance of developing competition to make road transport more effective. There is a marked concern for equal treatment of carriers in all Partner States (Article 90 (t) and 90 (u)) and a reference to the need to “gradually reduce and finally eliminate non-physical barriers to road transport within the Community” (Article 90 (s))—a perennial problem in the Africa region.
- *Article 91.* Rail transport is to be coordinated and new lines constructed where necessary. Railways would be made more efficient by developing their managerial autonomy.¹²¹ Documentation, packaging, procedures, standards, etc. would be harmonized, and tariff discrimination would be eliminated.
- *Article 92.* Civil aviation policies would be harmonized and joint services facilitated. Efforts would be undertaken to make air transport services safe, efficient, and profitable through autonomous management. The 1944 Chicago Convention on International Civil Aviation would be implemented,¹²² flight schedules coordinated, and ICAO policies and guidelines on the determination of user charges applied. Rules and

regulations related to scheduled air transport would be the same in all Partner States.

- *Article 93.* The liberalization and commercialization of port services are seen as a way of promoting efficient and profitable port services. Landlocked States would be granted easy access to port facilities and opportunities to participate in the provision of port and maritime services. The Partner States would agree to charge nondiscriminatory tariffs on goods from their territories and from other Partner States *except where their goods enjoy domestic transport subsidies and apply the same rules and regulations in respect of maritime transport among themselves without discrimination.* Other provisions refer to other objectives of coordination and harmonization.
- *Article 94.* Partner States shall harmonize their inland waterway policies and harmonize and simplify their rules, regulations, and administrative procedures and tariffs. Space would be provided on board vessels, without discrimination. Joint ventures would be developed.
- *Article 95.* Partner States shall harmonize and simplify the regulations, procedures, and documents required for multimodal transport. They shall develop intermodal exchange facilities such as inland clearance depots and dry ports. They will take measures to ratify or accede to international conventions on multimodal transport and containerization and take the necessary steps to implement them.
- *Article 96.* Partner States shall encourage the establishment of freight booking centers.
- *Article 97.* Partner States shall harmonize the requirements for registration and licensing of freight forwarders, Customs clearing agents, and shipping agents. They shall allow any person to register and to be licensed as a freight forwarder or other transport services agent, and they shall not restrict the commercial activities of such a lawfully licensed agent. There are indications that some Partner States tend to limit access to transport services professions to their own nationals.

374. Customs¹²³. The Partner States agree to develop an East African trade regime and jointly develop (1) trade liberalization, (2) a Customs union, and (3) a common market.

- *Customs Union rules (Article 75)*. These rules are to be contained in a protocol to be issued within a period of four years. The rules include the elimination of internal tariffs and of nontariff barriers; the establishment of a common external tariff; the establishment of measures on dumping, subsidies, and countervailing duties; and the simplification and harmonization of trade documentation and procedures. The EAC countries established a Customs Union in 2005 and are well advanced in working toward the establishment of a common market. A monetary union is also scheduled and possibly a political federation of the East African States.
- *Establishment of a Customs Union (Article 75)*. The establishment of a Customs Union shall be progressive. As of a date to be determined by the Council, the Partner States shall not impose any new duties and taxes or impose new ones or increase existing ones. Nor are they to enact legislation or apply administrative measures that may directly or indirectly discriminate against the same or like products of other Partner States.
- *Common Market (Article 76)*. A protocol shall be issued on a Common Market among the Partner States. Within the Common Market, there is to be free movement of labor, goods, services, and capital, and the right of establishment. The Common Market Protocol was signed in November 2009 and ratified in 2010 by all the States party to it.

The 2007 Treaty for the Establishment of the East African Community appears in Annex V-14 of this review. The treaty does not appear to have been filed with the UN Secretariat, and it cannot be located in the UN Treaty Series. It is found in *African Yearbook of International Law* 421–509 (1999).

a. *Evaluation of the Treaty implementation and progress on transit and transport facilitation as of July 31, 2010*

375. Transport provisions in general. EAC is party to the Tripartite agreements which have been signed in the fields of road transport, inland waterway transport, rail transport, and civil aviation transport. The Regional Economic Communities in Eastern and Southern Africa (COMESA, EAC, SADC) have decided to come together to form a free trade area. The Tripartite Summit was held on October 22, 2008, in Kampala, Uganda, to give political endorsement and direction to the process of cooperation and harmonization. In infrastruc-

ture development, a Memorandum of Understanding between the Tripartite Task Force and the British Department for International Development (DfID) on the management of the North-South Corridor (NSC) was signed in London in January 2010.

376. **Rail transport.** Two new corridors are actually proposed: (1) Lamu Corridor: Port Lamu (deep water port)—rail to Addis Ababa to Juba to Pakwach; and (2) Bas Congo Corridor: complete route from Mombasa to Banana (Democratic Republic of the Congo) with various options to connect the eastern Democratic Republic of the Congo with the Atlantic Ocean.
377. **Air transport.** The EAC Civil Aviation Safety and Security Oversight Agency (CASSOA) started operation on 1st June 2007, as an autonomous self-accounting body of the East African Community following the signing of the establishing Protocol by the three founder Partner States on 18th April 2007 and was formally established on 18th June 2007 during the 5th Extraordinary Summit of EAC Heads of State held in Kampala Uganda.
378. **Inland waterway transport.** The Protocol establishing the Lake Victoria Basin Commission (LVBC) was signed on November 29, 2003, and ratified in December 2004. The current coordination arrangements involve the Minister of water of Burundi, the Minister of natural resources of Rwanda, and Ministers of water/mineral resources of Kenya, Tanzania, and Uganda.
379. **Air transport.** For this purpose, the Civil Aviation Safety and Security Oversight Agency (CASSOA) was created on June 18, 2008.
380. **Customs.** The revised version of the 2009 East African Community Customs Management Act incorporates all amendments concluded to December 2008. The Protocol on the Establishment of the East African Customs Union deals mainly with the technical and regulatory aspects of the union (Articles 6 to 8). As of 2010, there were still many challenges affecting implementation of the Customs Union such as lack of an efficient coordination and monitoring system at the local and regional levels. There were also some conflicting interests at the national and regional levels. In November 2009, the Member States signed the Common Market Protocol and ratification, followed in 2010 by all the Partner States.

E. INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT

- 381. General.** The Intergovernmental Authority on Development comprises eight countries in the Horn of Africa: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan (admitted in 2011), and Uganda. It was established by agreement on March 31, 1996, at Nairobi, Kenya in order to revitalize and expand the duties of the existing Intergovernmental Authority on Drought and Development established in 1986. It is incorporated with privileges and immunities similar to those accorded to regional or international organizations of similar status.
- 382. Objectives (Article 7).** The preamble to the Nairobi Agreement refers to both the Treaty establishing the African Economic Community and the Treaty Establishing the Common Market for Eastern and Southern Africa. The aims of the authority, in the area of transport, trade, and facilitation, are as follows:
- Promote joint development strategies and harmonize policies on, among other things, trade, transport, communications, and Customs.
 - Promote the free movement of goods, persons, and services.
 - Set an enabling environment for foreign, cross-border, and domestic trade.
 - Develop and improve a coordinated infrastructure of transport.
- 383. Institutions.** The institutions of the Authority are as follows:
- *Assembly of Heads of State and Governments (Article 9).* The Assembly of Heads of State and Governments issues policies and guidelines and directs or controls the functioning of the Authority. It meets once a year.
 - *Council of Ministers (Article 10).* The Council of Ministers, assisted if needed by sectoral committees, meets at least twice a year. It issues recommendations to the Assembly, approves the budget of the Authority, and supervises its functioning.
 - *Committee of Ambassadors (Article 11).* The Committee of Ambassadors is composed of ambassadors of the Member States appointed to the country of headquarters of the Authority. The Committee is in charge of, among other things, guiding the Executive Secretary in the interpretation of policies and guidelines. The Committee informs the Member States as needed.

- *Executive Secretary (Article 12)*. The Executive Secretary is in charge of all executive functions of the Authority—financial, administrative, or other.
- *Resources of the Authority (Article 14)*. The resources of the Authority are contributions by Member States and assistance from other sources.

384. Transport and facilitation. In addition to defining the aims and objectives of the Authority, the Agreement stipulates the areas of cooperation between Member States (Article 13 A). For trade, facilitation, and transport, these areas are (1) to work toward the harmonization of trade policies and practice and the elimination of tariff and nontariff barriers, and (2) to harmonize transport policies and eliminate physical and non-physical barriers.

385. Performance. Except for the identification of different infrastructure projects, especially road and port rehabilitation, IGAD has concentrated on peacekeeping efforts in States in the Horn of Africa. In 2008 IGAD expanded its activities with initiatives to improve the investment, trade, and banking environment of Member States.

The Nairobi Agreement Establishing the Intergovernmental Authority on Development appears in **Annex V-15** of this review. The 1996 Nairobi Agreement does not appear to have been filed with the UN Secretariat.

VI. Subregional Instruments: Eastern and Southern Africa

386. Introduction. As indicated by the title of this chapter, Southern and Eastern Africa may be closely associated in some instruments.¹²⁴ Three categories of instruments and institutions can be identified:¹²⁵

- Four institutions and instruments related closely to facilitation and transport (and reviewed here): Southern African Customs Union (SACU), Southern African Development Community, Common Market for Eastern and Southern Africa (COMESA), and the Inter Regional Cooperation and Integration instrument also known as the Tripartite.
- Four local institutions dealing mainly with corridor access issues and enforcement of SADC policy (and reviewed here): Maputo Development Corridor, Trans-Kalahari Corridor, North-South Corridor, and Dar es Salaam Corridor.
- Instruments related to cooperation in the Indian Ocean (and reviewed here). Five instruments were identified.

A. SOUTHERN AFRICAN CUSTOMS UNION

387. The Southern African Customs Union (SACU) was formed in Pretoria, South Africa, on December 11, 1969, by Botswana, Lesotho, South Africa, and Swaziland. It was joined in 1990 by Namibia.

South Africa, a member of the Customs Union, together with Liberia, Morocco, and Tunisia, ratified the 1982 Geneva International Convention on the Harmonization of Frontier Control of Goods.

388. History.¹²⁶ The Southern African Customs Union can be traced back to a 1903 Customs Agreement (revised in 1910) between the British Empire territories of Southern Africa. A new agreement updating the 1910 Agreement

(then still in force) was enacted in 1969 and concluded between the Governments of Botswana, Lesotho, Namibia (by accession in 1990 at independence), South Africa, and Swaziland. One of the main objectives of the 1969 Agreement was to encourage “the economic development of the less advanced countries of the Customs Union and the diversification of their economies” (Preamble). It has been described as a traditional Customs arrangement in which Customs duties between the coastal and the landlocked States are removed and a common external tariff regime is implemented vis-à-vis goods from third countries: “Initially, the 1969 Agreement was considered a satisfactory deal by all signatories. It kept the Botswana-Lesotho-Swaziland markets opened for South African products and provided a guaranteed source of revenue for the smaller member countries, enabling them to eliminate their dependence on income transfers from the United Kingdom for balancing their budget.”¹²⁷ However, the Agreement was later criticized, mainly because of an absence of joint decision making between South Africa and other Customs union members; the asymmetry of decision making, which caused trade policies to be biased toward the protection or promotion of South Africa’s industries; and an unsatisfactory implementation by South Africa. Negotiations of a new agreement began at the end of 1994. Those negotiations culminated with the signing of the Southern African Customs Union Agreement in October 2002.

The 2002 Agreement came into force in July 2004 and was ratified by Botswana (2007), Lesotho (2008), Namibia (2009), South Africa (July 2005), and Swaziland (July 2006). Thus it has yet to be fully ratified. The 2002 Agreement was inspired by the Uruguay Round with its instant demand to open up the developing countries to the global market and also give them access to the developed market. The purpose of the 2002 Agreement was to align the 1969 Agreement with current developments in international trade relations.

389. Objectives. The following stated objectives of the Agreement are broad and extend beyond the domain of standard Customs unions:

- Promote the integration of SACU members in the global economy with the development of common policies
- Facilitate the cross-border movements of goods
- Establish democratic effective and transparent public institutions

- Promote fair competition and fair sharing of revenue from Customs and other dues.

390. Composition of SACU. Article 20 of the 1969 Southern African Customs Union Agreement provided for the establishment of a Customs Union Commission formed of representatives of the Partner States. Its functions were to discuss any matter related to the implementation of the agreement, The 2002 Agreement provides for a more complete set of institutions:

- *Council of Ministers (Article 8)*. The Council consists of one minister from each Member State. It meets each quarter of the year as the supreme decision-making authority.
- *Customs Union Commission (Article 9)*. The Commission is made up of senior SACU civil servants. It is responsible for implementing the 2002 Agreement and facilitating implementation of the decisions of the Council. It also oversees the work of the SACU Secretariat.
- *Secretariat (Article 10)*. The Secretariat is responsible for the day-to-day operations, which are located in Namibia. The 2002 Agreement established an independent, full-time administrative secretariat to manage the affairs of SACU.
- *Tariff Board (Article 11)*. A Tariff Board replaces the South African Board of Tariffs and Trade. It is composed of a panel of appointed professionals. Each Member State nominates a candidate.
- *Technical liaison committees (Article 12)*. Four technical liaison committees assist and advise the Commission. One is the transport committee.
- *SACU Tribunal (Article 13)*. The SACU Tribunal arbitrates disputes that cannot be settled amicably.
- *National bodies (Article 14)*. National bodies shall be established for receiving and examining requests and changes in tariffs and other SACU-related measures and provisions.

a. *Trade liberalization*

391. Free movement of domestic products. Articles 18 to 31 of the Agreement deal with trade liberalization. The movement of domestic products is free of Customs duties and quantitative restrictions on importation from one

Member State to another. However, Member States may impose restrictions on imports and exports in accordance with national laws for a number of reasons of public health, security, protection of the environment, or other non-trade protection reasons.

- 392. Trade restrictions.** Article 11 of the 1969 Agreement recognized the right of each Contracting State to impose restrictions on imports or exports for the purpose of protecting its industries. Article 25 of the 2002 Agreement has a more restrictive approach. Each member has the right to prohibit or restrict the importation or exportation of any goods for economic, social, cultural, or other reasons *as may be agreed upon by the Council of Ministers*. This, however, does not permit the prohibition or restriction of the importation by any Member State into its area of goods grown, produced, or manufactured in other areas of the Common Customs Area for the purpose of protecting its own industries producing such goods. Member States shall cooperate in the application of import restrictions with a view toward ensuring that the economic objectives of any import control legislation in any state in the Common Customs Area are attained.
- 393. Rail and road transport tariffs.** The 1969 Agreement stipulated that no rate discrimination should apply to goods in transit imported from outside the Customs area or exported to outside such area. Each Contracting Party was to ensure that tariffs applicable to publicly owned transport to and from the other area would be no less favorable than tariffs applicable to similar goods for carriage inside the area. The same equal (*no less favorable*) treatment was to be granted to motor transport operators registered in a Contracting State by authorities of another Contracting State. These provisions, in different wording, are found in Article 27 of the 2002 Agreement. Tariff freedom appears to be the rule for private operators.
- 394. Transit.** The 1969 Agreement stipulated in Article 16 freedom of transit. It was guaranteed to the Parties through each other's territory. Such freedom of transit could be limited by a Member State for reasons of public morals, public health, or security, or in pursuance of the provisions of a multilateral international treaty to which the state is a party. Article 24 of the 2002 Agreement also stipulates freedom of transit in more detailed terms:

... without discrimination to goods consigned to and from the areas of other Member States, provided that a Member State may impose such con-

ditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international agreement to which it is a party; and provided further that a Member State shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purpose of protecting its security interests.

In addition, technical standards and regulations should not be an obstacle to trade (Article 28).

b. *Customs tariffs*

395. Provisions. The provisions of the Treaty related to Customs tariffs are:

- *Articles 19 and 20.* In the 1969 Agreement, Customs duties and sales taxes in force in South Africa and applicable to imported goods were applicable in all the States of the Customs area. Article 7(2) of the Agreement only stipulated that the South African Government, when setting the tariffs, must give “sympathetic consideration” to proposals by other Member States to increase any Customs tariffs applicable to certain goods. The 2002 Agreement transfers jurisdiction to SACU’s Council of Ministers, which on recommendation by the Tariff Board shall set the common Customs duties. A Member State shall not impose any duties on goods imported from any other Member State in the Common Customs Area. Rebates and drawbacks granted by SACU States must be identical for all Member States, but special rebates may be granted in enumerated cases. These provisions are less restrictive than the 1969 provisions stipulating that any rebate, refund, or drawback granted by the Governments of Botswana, Lesotho, and Swaziland have to be identical to any rebate, refund, or drawback granted by South Africa.
- *Article 21.* The Finance Ministers of all Member States shall meet and agree on the rates of excise duties and specific Customs duties to be applied to goods grown, produced, or manufactured in or imported into the Common Customs Area. States shall apply identical rebates, re-

funds, or drawbacks. These shall be determined by the Finance Ministers in the Member States through consultation.

- Article 26. The Member States other than South Africa may, as a temporary measure, levy additional duties to protect their infant industries—that is, industries established less than eight years.

396. Pooling of revenue. The provisions of the Treaty related to pooling revenue are as follows:

- *Articles 32 and 33.* All collected Customs, excise, and other duties are paid into a common revenue pool (Consolidated Fund of South Africa in the 1969 Agreement) managed by the SACU institutions and then allocated to each of the Partner States.
- *Article 34-1 to 34-3.* In the 1969 Agreement, the formula for determining allocation was the Customs-wide collections for the pool as a percentage of the dutiable goods on which they were collected. This global rate was then enhanced by a factor of 1.42 to compensate for the loss of sovereignty of States party to the Agreement and for the higher prices of goods imported from third countries resulting from high South African tariffs. The new formula has a Customs and an excise component, from which is extracted a development component. Each component consists of the gross amount of duties collected less the costs of operating the SACU institutions; it does not include duties rebated or refunded.

397. Revenue sharing. The provisions of the Treaty in Articles 34-4 and 34-5 and Annex A related to revenue sharing are as follows:

- *Customs component.* Each Member State's share of the Customs component shall be calculated (1) from the CIF (cost, insurance, freight) value at the frontier of goods imported from all other Member States in a specific year, and (2) as a percentage of the total CIF value of intra-SACU imports in such year.
- *Excise component.* The excise component shall consist of the gross amount of excise duties collected on goods produced in the Common Customs Area, less an amount set aside to fund the development component. The share for each member shall be calculated from the value of its gross domestic product (GDP) in a specific year as a percentage of the total GDP of SACU members.

- *Development component.* Each Member State shall receive a share of the development component, and the distribution of this component shall be weighted in favor of the less developed Member States, according to the inverse of each country's GDP per capita.

c. *Evaluation of the 2002 Agreement*

- 398. Differences with 1969 Agreement.** The 2002 SACU Agreement contains 51 articles, whereas the 1969 Agreement had only 22. The large number of articles in the new Agreement conveys the notion that the scope of the 1969 Agreement has been enlarged and aligned with current developments in international trade relations by taking into account the different WTO rules on access to the global market. The greatest achievement of the new Agreement is the introduction of joint decision making in all aspects of the Customs Union and the creation of independent institutions. As a result of the good functioning of SACU, free trade agreement negotiations have been under way between SACU and the United States and SACU and the European Union since 2003. A Trade, Investment and Development Cooperation instrument was signed in July 2008 between the United States and the Trade Ministers from SACU.

Both texts appear in Annexes VI-1a and VI-1b of this review. The 2002 Agreement has not been filed with the UN Secretariat.

B. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY¹²⁸

- 399. History.** SADC originated from the political movement of the Front Line States (FLS) in opposition to South Africa's apartheid policy. The FLS countries were Angola, Botswana, Mozambique, Tanzania, and Zambia. The foreign ministers of these countries met in Gaborone, Botswana, in May 1979 to discuss mechanisms to achieve cooperation. The following year, the leaders of the FLS, accompanied by leaders from Lesotho, Malawi, Swaziland, and Zimbabwe, and inspired by the Final Act of Lagos of April 1980, decided to pursue economic integration. On April 1, 1980, the Lusaka Declaration, "Southern Africa: Towards Economic Liberation," was issued by the independent states of South Africa. The Southern African Development Coordination Committee was created, placing an emphasis on infra-

structural development as a means of lessening dependence on South Africa as a transit country and on helping regional integration. The political evolution in South Africa and the movement toward African economic integration illustrated by the June 1991 Abuja Treaty establishing the African Economic Community led to a broader approach. The Southern African Development Community was therefore created. The seat of SADC is at Gaborone. The 15 members of SADC are Angola, Botswana, Democratic Republic of the Congo (joined in 1998), Lesotho, Madagascar, Malawi, Mauritius (joined in 1995), Mozambique, Namibia, South Africa (joined in 1994), Swaziland, the Seychelles (joined in 1998), Tanzania, Zambia, and Zimbabwe. The Windhoek Treaty for the creation of SADC was concluded at Windhoek, Namibia, on August 17, 1992.

- 400.** SADC may appear to be overlapping with the Common Market for Eastern and Southern Africa (COMESA) created in 1993, one year after the Treaty establishing SADC. So far, SADC has resisted the efforts deployed to convince its members to merge the two institutions. Furthermore, unlike for other regional and subregional organizations, the SADC Treaty (Article 23) envisages a role for and cooperation with nongovernmental organizations.
- 401. Objectives.** SADC's arrangement is more ambitious than a Customs union but less than an economic union. Harmonization is the leading word rather than unification. Each Member State retains its autonomy, and decisions at the top are reached by consensus. Its economic objectives are as follows:
- Achieve development and economic growth.
 - Promote self-sustaining development.
 - Achieve complementarities between national and regional strategies and programs.
 - Develop policies for a progressive elimination of obstacles to the free movement of capital, labor, goods, and services among Partner States.
 - Coordinate, harmonize, and rationalize sector strategies, policies, programs, and projects in the areas of cooperation, especially infrastructure and services.

- 402. Institutions and structure.** SADC's original institutions are the following:
- *Summit of Heads of State or Government (Article 10)*. This body is responsible for the overall policy direction and control of SADC.
 - *Council of Ministers (Article 11)*. The Council is responsible for overseeing the functioning of SADC, and for approving policies, strategies, and work programs.
 - *Sector commissions and coordinating units (Article 12)*. These are constituted to guide and coordinate cooperation and integration of policies and programs.
 - *Standing Committee of Officials*. This body is a technical advisory committee to the Council (Article 13).
 - *Secretariat*. The Secretariat is the principal executive institution of SADC (Article 14); located in Gaborone.
 - *Tribunal (Article 16)*.
- 403. Allocation of responsibilities among Partner States.** Each Member State was allocated responsibility for coordinating one or more of the 21 sectors identified by SADC. Transport was allocated to Mozambique and trade to Tanzania. Sectorial commissions are assisted by a Commission Secretariat and funded by all Partner States. The sector coordinating units are national institutions established in the appropriate line ministry by the Member State responsible for coordinating the particular sector and staffed by civil servants of that particular country.
- 404. August 2001 amendment to the Treaty.** The SADC Treaty was amended at a meeting of the Council of Ministers in Blantyre, Malawi, in August 2001. The 2001 amendment established these new institutions: Organ on Politics, Defenses and Security Co-operation; Integrated Committee of Ministers; and SADC national committees.

The Treaty on the Southern African Development Community appears in **Annex VI-2** of this review. The treaty does not appear to have been filed with the UN Secretariat. It cannot be traced in the UN Treaty Series, but it can be found in *International Legal Materials* (32 ILM 116 (1993)).

- 405. Protocols¹²⁹.** Protocols are legal instruments that commit Partner States to cooperate, coordinate, harmonize, and integrate policies and strategies in one or more sectors. Sectoral coordinators in collaboration with SADC agencies develop protocols. They are reviewed by SADC's legal sector (Namibia is the coordinator for legal affairs) and are submitted by the Council of Ministers for approval. They have to be ratified by two-thirds of the Partner States before coming into force. Of interest to trade and transport are the 1995 Shared Watercourse Systems Protocol; the 1996 Transport, Communications and Meteorology Protocol; and the 1996 Trade Protocol. The 2000 revised Protocol on watercourses and on trade apparently have not been ratified.

The SADC Protocol on Transport, Communications and Meteorology appears in Annex VI-3 of this review.

- 406. General.** The SADC Protocol on Transport, Communications and Meteorology signed by the Heads of State and Governments in August 1996 has entered into force. It states as a main strategic goal:

Integration of transport, communications and meteorology networks to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures, elimination or reduction of hindrances and impediments to the movements of persons, goods, equipment and services, . . . the right of freedom of transit for persons and goods, the right of landlocked States to unimpeded access to and from the sea, . . . the development of simplified and harmonized documentation which supports the movement of cargoes along the length of the logistical chain, including the use of a harmonized nomenclature.

- 407. The corridor concept.** At an early stage, SADC developed the transport corridor concept in order to compete with South Africa. These corridors therefore originated as politically motivated policies with which sources of international finance were in fact associated. According to the Protocol, a corridor is “a major regional transportation route along which a significant proportion of Partner States or non-Partner States regional and international imports and exports are carried by various transport modes” (Article 1.1). Seven such corridors are identified and were agreed to conform to the definition of the protocol, as presented in table 3.

Table 3. SADC Transport Corridors

Corridor	Origin-destination	Mode
Southern Corridor	South Africa-Botswana-Zimbabwe-Zambia-DR Congo	Rail and road
Maputo Development Corridor	Maputo-Johannesburg, Harare, and Manzini	Rail for Harare; rail and road for Johannesburg and Manzini
Trans Kalahari	Walvis Bay-Pretoria and Johannesburg	Road
Trans Caprivi	Walvis Bay-Lusaka	Road
Beira Corridor	Beira-Lusaka	Road and rail for Lusaka
	Beira-Lilongwe and Blantyre	Road for Lilongwe and Blantyre
Nacala Corridor	Nacala-Lilongwe and Blantyre	Rail
Dar es Salam Corridor	Dar es Salam-Lusaka and Lilongwe	Road and rail to Lusaka Road to Lilongwe
Lamu Gateway Development	Kenya, Uganda, Rwanda, Burundi	Road to reach ports for landlocked countries
Lobito Corridor	Lobito-Shaba-Zambia	Not in use
North-South Multimodal Corridor	Dem. Rep. Congo-Zambia-Zimbabwe-South Africa-Mozambique	Multimodal road and rail

Source: SSATP

- 408.** Over time and after policy changes in South Africa modified the regional background, a development corridor concept emerged from the transport corridor concept, encompassing a wider scope than transportation. In addition, South Africa proposed the Spatial Development Initiative (SDI), which overlaps with the development corridor concept. In transport, progress has been made with the implementation of the SADC strategy approved by the Ministers in May 2008. The convening of the North-South Corridor Investment Conference added the importance of provisions-related infrastructure.¹³⁰
- 409. Objectives (Article 3).** The aim of the Protocol is to establish transport systems that provide efficient, cost-effective, and fully integrated transport infrastructure, policy, and operations. The main aspects of the policy are to:
- Develop complementarities between modes and encourage the provision of multimodal services.
 - Establish infrastructural, logistical, institutional, and legal frameworks, including the right of transit and the right of landlocked countries¹³¹ to

unimpeded access to the sea and equal treatment of nationals from different member countries.

- Establish cross-border multimodal corridor planning committees composed of public and private participants.

410. Road Infrastructure (Article 4). The Partner States agree to:

- Ensure and sustain the development of an adequate road network.
- Adopt a common definition of the Regional Trunk Road Network serving as a basis for a coordinated plan for the construction and development of roads.
- Establish autonomous road authorities representative of the public and private sectors for overseeing, regulating, and managing the roads and the effective utilization of funding of roads.
- Develop a policy of funding resources, ensuring that road users contribute to the full cost of maintaining and providing the roads.
- Harmonize technical standards.

411. Road transport (Article 5). The Partner States agree to:

- Facilitate the flow of goods and passengers by promoting the development of a strong and competitive commercial road transport industry.
- Liberalize their market access policies on the cross-border carriage of goods, with the objective of all reaching the same degree of liberalization, through bilateral and multilateral agreements between states addressing the need for single SADC carrier permits or licenses, quota systems, and the establishment of bilateral or multilateral road transport route management groups.
- Develop harmonized transport law enforcement, harmonized safety standards, third-party insurance, training and testing of drivers, etc.
- Cooperate to develop and implement a coordinated regional traffic quality management plan to improve road traffic safety, protect the road infrastructure, exchange and transfer technology with the establishment of a regional coordinating body comprising representatives of all executive law enforcement authorities responsible for roads, and ini-

tiate traffic management and control for implementing and managing a harmonized road traffic quality management plan.

- Conduct environmental controls.
- Develop road traffic information systems.

412. Railways (Article 6). The Partner States agree to:

- Facilitate the provision of efficient railways.
- Formulate a policy for institutional restructuring of the railways, granting autonomy to their management and increasing private sector involvement in railway investment.
- Create an integrated regional network of railway corridors with common standards for customer service and promotion of data information exchange.
- Develop harmonized and simplified procedures and documents as well as a common freight nomenclature to establish a single railway invoicing system.
- Design compatible technical and equipment standards.
- Establish Railway Route Management Groups to support the activities of regional railways and the Corridor Planning Committees.

413. Maritime and inland waterway transport (Chapter 8). In the area of maritime and inland waterways, the objective is to formulate a harmonized policy and collectively develop a common understanding of the net benefits of common shipping and port policy with possible redistribution effects among Partner States. Cooperation and development of common standards in the areas of hydrographic works, chart making, ship standards, seamen's conditions, environmental protection, marine communications, and training of personnel should also be considered.

414. Civil aviation (Chapter 9). Whereas in maritime affairs the emphasis is placed exclusively on the public administration aspects of shipping and marine activities, the approach to civil aviation is twofold. On the one hand, the commercial and competitive positions of the airlines are to be reinforced. On the other hand, new efforts are needed in the area of civil aviation administration.

- 415. Business development in civil aviation.** In the area of business development, the Partner States intend to do the following:
- Liberalize the air transport market for SADC airlines.
 - Develop regionally owned airlines.
 - Restructure existing airlines by commercialization, human resources development, and opening of the capital of government-owned airlines to outside investors.
 - Expand and strengthen government capacity to provide a policy framework and develop supportive regulatory and investor-friendly legislation, with a view to attract national or foreign investors.
 - Develop competent airline management and encourage joint venture operations with the possible integration of existing airlines, with a view toward establishing regionally owned airlines.
 - Possibly standardize equipment.
 - Develop human resources.
- 416.** The Southern African Development Community is currently finalizing joint air transport competition rules, with COMESA and the East African Community, based on implementation of the 1999 Yamoussoukro Decision. It was enforced in July 2002 after two years of preparation, but today it lacks the enforcement tools to settle disputes—one of the matters facing the joint EAC-COMESA-SADC competition policy project.
- 417. Civil aviation public administration.** In the area of civil aviation administration, the Partner States commit themselves to the observance of International Civil Aviation Organization (ICAO) standards and recommended practices. They agree to do the following:
- Recognize each other's licenses and certificates of airworthiness, provided they comply with ICAO standards and recognized practices (SARP).
 - Coordinate their representation in the ICAO and develop a common position in that respect.

- Tentatively seek to integrate actions in some areas of civil aviation public administration, especially safety, but these actions have not yet led to the elaboration of specific instruments for that purpose.

418. Protocol on shared watercourses. On August 25, 1995, the SADC Partner States, including South Africa but excluding Angola, concluded a Protocol on Shared Watercourses Systems in the Southern Africa Development Community. The agreement entered into force in 1998. A revised Protocol was concluded on August 7, 2000. All SADC Members signed the Protocol except for the Democratic Republic of the Congo. The Protocol is based on the 1966 Helsinki Rules on the Uses of the Waters of International Rivers and on the 1997 United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, which embodies the concept of “equitable and reasonable utilization of the watercourses.” However, the UN Convention adopted on May 21, 1997, required ratification of 35 countries to enter into force. As of January 2009, only 16 countries had ratified the Convention. The Protocol exists in printed form in *International Legal Materials* (40 ILM 317 (2001)).

The text of the Protocol is not attached as an annex to this review as it does not deal with the navigational uses of the watercourses.

419. Lake Shipping and Port Services Agreement. In 1995, Malawi and Tanzania signed the Lake Shipping and Port Services Agreement that covers, among other things, cooperation in the operation of lake and port services adoption of a uniform system of coastal surveys and navigational charts, and the construction of navigational aids. The agreement provides for sharing information on the occurrences of pollution.¹³²

The Agreement is not attached to this review.

420. Evaluation¹³³. There is a consensus that SADC works. The launch of the SADC Corridor Development Strategy confirms the existence of a regional commitment to infrastructure development. Several transport and transit facilitation projects are ongoing. The expansion and modernization of the Walvis Bay Port and the Angola and Zambia Agreement on a plan to expand the existing rail line between the two countries are two examples demonstrating that SADC Member States have understood the strength of

coming together for their common economic development, and that they have also realized that this development cannot be made without developing the transit and transport facilitation routes and tools.¹³⁴

C. COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA¹³⁵

421. Preferential Trade Area. The Treaty for the Establishment of a Preferential Trade Area (PTA) for Eastern and Southern Africa was signed in Lusaka, Zambia, on December 21, 1981, by the Heads of State of Angola, Botswana, Burundi, the Comoros, Djibouti, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, the Seychelles, Somalia, Swaziland, Tanzania, Uganda, Zaire (today Democratic Republic of the Congo), Zambia, and Zimbabwe. The PTA was replaced by COMESA.

The 1981 Lusaka Preferential Trade Area Treaty is not attached to this review because it has become obsolete.

422. History.¹³⁶ On November 3, 1993, the Treaty Establishing a Common Market for Eastern and Southern Africa (COMESA) was signed in Kampala, Uganda. The Contracting Parties refer to a January 30-31, 1992, decision of the COMESA Authority, described shortly, to transform the Preferential Trade Area into a common market. They also refer to Article 18 (1) of the 1991 Abuja Treaty establishing the African Economic Community. COMESA is therefore the ultimate stage in a process of economic and social integration, which started with other more limited instruments. Members are Burundi, the Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, the Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.¹³⁷ South Africa, a member of the Southern African Development Community, an organization that somewhat competes with COMESA, is not a COMESA member.

423. Objectives. The objectives of the Common Market (Article 3) are to attain sustainable growth and the development of the Partner States in an overall system of economic cooperation. As a consequence, its aims and objectives, here limited to cooperation in trade and transport, are as follows:

- Establish a Customs union and abolish all non-tariff barriers to trade and simplify and harmonize procedures and documentation—the Customs union was officially launched in June 2009.
- Facilitate trade in goods and services and the movement of persons.
- Facilitate transit trade within the Common Market.
- Adopt a Third Party Motor Vehicle Insurance Scheme. The Yellow Card is largely used within the region, and there is a possibility that it could be extended to the other African Economic Community users.

The COMESA Vision and Strategy into the 21st Century states: “Facilitation of both road and air transport is to ensure more efficient movement of goods and people, thus not only enhancing extra-COMESA trade, but also maximizing the use of existing infrastructure. Transport facilitation programs also try to create stable, competitive and cost-efficient transit systems.”

424. Institutions. The Common Market institutions are as follows:

- *The Authority (Article 8)*. The Authority, composed of the Heads of State or Government of the Partner States, provides for general policy, direction, and control.
- *Council of Ministers (Article 10)*. The Council, formed by one minister of each Member State, ensures the proper functioning of the Common Market (Article 9) and drafts regulations, issues directives, makes decisions and recommendations, and provides opinions. Regulations, decisions, and directives shall be binding.
- *Court of Justice (Chapter 5)*. The Court of Justice ensures the adherence to law in the interpretation and application of the Treaty (Chapter 5). Its decisions take precedence over the decisions of national courts.
- *Committee of Governors of Central Banks (Article 13)*. The Committee is responsible for financial and monetary cooperation.
- *Intergovernmental Committee (Article 14)*. The Committee, consisting of Permanent or principal Secretaries designated by Partner States, is responsible for cooperation in all sectors except monetary and finance.
- *Technical committees (Article 15)*. The technical committees are responsible for the preparation and monitoring of cooperation programs. One

of these committees is devoted to trade and Customs and another to transport and communications.

- *Secretariat (Article 17)* The Secretariat is the executive branch of the Common Market; it is headed by the Secretary General.
- *Consultative Committee of the Business Community and Other Interest Groups (Article 18)*.

425. Trade liberalization. The stipulations are summarized as follows:

- *Articles 45 to 50.* Within 10 years of the entry into force of the Treaty, a Customs Union shall be established. By the year 2000, Customs duties and other similar charges shall be eliminated. A common external tariff shall be established for imports from third countries. Quantitative barriers shall also be eliminated.
- *Articles 51 to 55.* Dumping, as defined by the Treaty, shall be prohibited, as well as any practice negating the objective of free and liberalized trade.
- *Articles 63 to 71.* Customs cooperation shall be organized by simplification of documents, harmonization of procedures and regulations, communication of Customs information, and cooperation in the prevention, investigation, and suppression of Customs offenses. The Common External Tariff of COMESA has been harmonized with the Common External Tariff of the EAC. This is in line with the decisions that the Heads of State and Government of COMESA, EAC, and SADC adopted at their Summit on October 22, 2008, in Kampala, Uganda, calling for the three organizations to form a single free trade area.

A protocol dealing with rules of origin was adopted, and was entered into force in December 1994.

426. Transport. Common policies are to be applicable to all modes of transport:

- *Article 84.* The adequate maintenance of roads, ports, airports, and other facilities, the security of transport systems, the grant of special treatment to landlocked States, and the development of intermodal systems are the main objectives of the common policy.

- *Article 85.* For roads, the Partner States must accede to international conventions on road traffic, road signals, etc.; harmonize the provisions of their laws, standards, formalities, regulations, and transit traffic; and ensure equal treatment of common carriers and road operators in all countries of the Common Market.
- *Article 86.* For railways, the objectives are efficiency and coordination. Priorities are common policies for the development of railways and railway transport, with common safety rules, procedures, regulations, nondiscriminatory tariffs, and standards of equipment.
- *Article 90.* For aviation, the objective is the provision of better and more efficient air transport. Joint air services should be developed as steps toward the establishment of a Common Market airline. Common policies would involve the liberalization of granting traffic rights and coordinating flight schedules.
- *Article 91.* For multimodal transport, the Partner States shall harmonize and simplify regulations and procedures and apply uniform rules. They shall take measures to ratify the international conventions on multimodal transport.
- *Articles 91 and 92.* For freight in general, the Partner States shall install freight booking centers. They will develop CIF exports and FOB (free on board) imports. Licensing of freight forwarders, shipping agents, and Customs clearing agents shall be applied under the same conditions for all citizens of the Partner States.
- *Article 88.* Maritime transport and ports will also be coordinated and harmonized. Port services should be efficient and profitable. Coastal States should facilitate the trade of landlocked States. International conventions on maritime transport should be ratified. Nondiscriminatory tariffs are to be applied.
- *Article 89.* For inland waterway transport, administrative procedures, rules, and regulations shall be harmonized and simplified. Tariffs structure shall be harmonized. They will be the same for cargoes from the different Partner States. Joint ventures should be developed.
- *Article 90.* Partner States shall cooperate in the development of pipeline transport.

The 1993 Kampala Treaty Establishing a Common Market for Eastern and Southern Africa appears in **Annex VI-4** of this review. The treaty was not filed with the UN Secretariat. It does not appear in the UN Treaty Series but was published in *International Legal Materials* (33 ILM 1067 (1994)). The Treaty itself is a massive instrument of 36 chapters and 196 articles.

a. *Protocol on Transit Trade and Transit Facilities*

427. General. Based on Article 4 of the COMESA Treaty by which the Partner States were to set forth regulations for facilitating transit trade, the Protocol for Transit Trade and Transit Facilities was, like the treaty, issued on November 5, 1993, as Annex 1. The Protocol comprises:

- The Protocol itself
- Appendix I, notes on the use of the Common Market transit document
- Appendix II, regulations related to the technical conditions applicable to means of transport other than porters and pack animals. that may be accepted for the transport of goods within the Common Market under Customs seal

428. Provisions. The main provisions of the protocol are as follows:

- *Articles 2(1) and 3.* Until a common external tariff is established, all transit traffic have freedom to cross the territories of the Common Market whether from or to Partner States or from and to third countries, subject to any restriction imposed by a Partner State for the purposes of safety, public health, etc., and generally public interest.
- *Article 2(3).* No import or export duty is to be levied on transit trade; rates and tariffs shall be applied without discrimination. Administrative charges may be levied.
- *Articles 4 and 5.* All carriers engaged in transit traffic shall be licensed. Satisfaction of the technical conditions of the carriage shall be a condition of licensing.
- *Articles 6 to 9.* Standard Common Market transit documents will be used to accompany goods in transit. See Appendix 1 to the protocol on the procedures for the use of the documents and Customs Document—A Completion Guide for COMESA Transit goods will be transported

under seal. Unless there is suspicion of abuse, goods in transit shall be exempt from import or export duties, and not be subject to Customs examination at Customs offices. All transit traffic shall be covered by Customs bonds and sureties arrangements.

- *Articles 10 and 11.* Partner States undertake to facilitate the transfer to other Partner States of the funds necessary for the payment of premiums, penalties, bonds, etc. related to transit operations.

The COMESA Protocol for Transit Trade and Transit Facilities and its appendixes appear in **Annex VI-5** of this review.

b. *Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme*

429. General. This Protocol constitutes Annex II of the Treaty, and concluded on March 5, 1993 in Kampala, Uganda. It implements Article 85 of the Treaty stipulating that Partner States shall adopt minimum requirements for the insurance of goods and vehicles. The scheme provides at least minimum guarantees like those required by the laws in force in the Partner States when an insured vehicle is transiting the territories of other Partner States (Article 2).

430. Provisions. The main provisions of the Protocol are as follows:

- *Article 3.* The scheme is based on a Common Market Yellow Card issued by a national bureau and handed over to motorists on the usual terms by an insurer authorized to undertake this type of business. A national bureau, composed of insurers, will settle on behalf of the insurers the claims arising from accidents caused abroad by the holders of cards they have issued and claims arising from accidents caused in its country by holders of card issued by other national bureaus.
- *Articles 6 and 7.* Yellow Cards, proof of the existence of an insurance policy, are issued for a maximum of one year and for a specific vehicle. Notwithstanding the insurance policy under which it is issued, the Yellow Card provides all the guarantees required by law governing motor vehicle insurance in the country in which the accident occurred.

- *Article 18.* A Council of Bureaus, meeting at least once a year, is composed of representatives of all the bureaus of the Common Market. The council orientates, coordinates, and supervises the insurance scheme established by the protocol, together with the legal, technical, and financial operations of the national bureaus. It also settles disputes between bureaus. An Inter-Bureaus Agreement determines the maximum amount for the delegation of the powers of settlement by one national bureau to another and the minimum handling fee payable for each case handled by them.

The COMESA Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme appears in **Annex VI-6** of this review.

c. *COMESA Customs Documents—A Completion Guide*

- 431. General.** In August 1997, COMESA issued a completion guide for the Customs declarations replacing the Customs declaration forms currently in use. The new form is intended to handle all Customs regimes, whether import, export, transit, or warehousing.

“COMESA Customs Documents—A Completion Guide,” is self-explanatory and appears in **Annex VI-7** of this review.

- 432. Cooperation through COMESA.** In 2008 COMESA sought to expand its free trade zone by including members of the two other African trading blocs. The Virtual Trade Facilitation System (CVTFS) is aimed at integrating the COMESA Yellow Card, Transit Data Transfer Module, COMESA carrier license for road freight operators, COMESA Regional Customs Bond Guarantee System, COMESA Harmonized Axle Load, and Gross Vehicle Mass limits, which includes the COMESA Certificate of Overload Control and the COMESA Customs Declaration Document.¹³⁸

- 433. Establishment of COMESA-EAC-SADC Free Trade Area.** On June 12, 2011, the Heads of State and Governments of the Tripartite, met and signed a Declaration launching negotiations for the establishment of the COMESA-EAC-SADC Free Trade Area (FTA). Twenty-six countries are to strengthen and deepen economic integration.

- 434. Performance.** Measures are being taken to implement Tripartite policies like (1) simplification and harmonization of Customs documents and procedures; (2) harmonization of categorization of goods; (3) application of integrated border management principles with the creation of one-stop border posts; and (4) harmonization of bond guarantee schemes and other procedures for transit traffic. All these actions are in line with the revised 1973 Kyoto Convention on the Simplification and Harmonization of Customs Procedures and with the rules and procedures of the World Customs Organization. Challenges still persist in terms of disruption in the movement of goods. According to COMESA records, trucking operations costs are too high, goods are lost during transit, counterfeit documents are used, cargoes are pilfered, transit times are too long, and Goods Regional Bond Guarantees are often missing. As of 2013, the Tripartite is concentrating on the development and operations of the North-South Corridor.

D. MAPUTO DEVELOPMENT CORRIDOR

- 435. General.** The Maputo Development Corridor connects the port of Maputo in Mozambique to the industrial area of South Africa. It is made up of roads, a port, a railway line, and a gas pipeline. This corridor has a very long history. Two earlier instruments reveal that solving the issue of the access of landlocked States in the subregion to the sea was a concern before independence. The Convention between the United Kingdom and Portugal (June 17, 1950) guaranteed unimpeded movement of goods between the Portuguese colony of Mozambique and the landlocked British colonial territories of Rhodesia. An agreement between the United Kingdom and Portugal guaranteed Swaziland's access to the port of Lourenço Marques, now Maputo. The Maputo Development Corridor (MDC) was launched in 1996 at the initiative of the province of Mpomalanga, South Africa. The Maputo Corridor Company was established as the legal corridor management body. Three protocols were signed between South Africa and Mozambique for the construction of a toll road, the creation of the corridor company, and the upgrading of the railroad and harbor. Concessions for toll roads, port terminals, the railroad, and other activities were granted in the following years, with uneven success and performance. On March 17, 2004, the Maputo Corridor Logistics Initiative (MCLI) was launched as a public-private sector partnership. It was later revised, most recently in September 2010.

- 436. Provisions.** The legal instrument governing the MCLI is the Memorandum and Articles of Association, as revised in May 2007. In the Memorandum of Understanding in place, the South African Department of Transport makes a contribution to the MCLI to assist the Province of Mpumalanga, which borders Mozambique. The goal is to formally establish a public-private partnership corridor institutional framework at a trilateral level with Mozambique and Swaziland.
- 437. Objectives.** According to the Constitution of the Maputo Corridor Logistics Initiative (Revision 3, September 2010), MCLI is the formation of a grouping of infrastructure investors, service providers and users focused on the promotion and development of the Maputo Corridor, as a contribution to the aims and objectives of the Maputo Development Corridor, namely:
- To rehabilitate, in partnership with the private sector, the primary infrastructure network along the Corridor, including road and rail links between South Africa and Maputo, the border post between the two neighbors, and the Port of Maputo.
 - To maximize investment in the potential of the Corridor area and in added opportunities that infrastructure rehabilitation would create.
 - To maximize social development and employment opportunities, and increase participation of historically disadvantaged communities.
 - To ensure sustainability by developing policy, strategies and frameworks for a holistic, participatory and environmentally sustainable approaches to development.

The objectives of the Initiative are therefore to (1) coordinate the views of the investors, service providers, and users to promote development and change to make the Maputo Development Corridor the first choice for carriers; (2) inform the market about the corridor and promote the strategic benefits and opportunities it offers; (3) coordinate initiatives and engage the relevant authorities to contribute to the planning of service and infrastructure improvements; (4) organize events, fact-finding missions, forums, and meetings; (5) communicate progress and developments through electronic newsletters and the media; (6) promote positive attitudes and perceptions toward the Maputo Development Corridor and the logistical benefits offered by the corridor; (7) put users in touch with service providers and provide information on all aspects of how to utilize and benefit from the corridor; and (8) develop a website that provides exposure for members as well as serves as a platform for all communications.¹³⁹

- 438. Institutions.** The Board of Directors is the highest decision-making body of the MCLI. It comprises nine executive directors and seven non-executive directors. The executive directors are mostly private enterprises. Their responsibilities are, among others, to promote the objectives of the MCLI and monitor its implementation. The Executive Committee consists of four members from the Board of Directors. The Committee is largely responsible for (1) overseeing the financial management of the Maputo Corridor Company and (2) providing direction to and monitoring the chief executive officer. MCLI membership is open to interested stakeholders across Mozambique, South Africa, and Swaziland. The MCLI staffing structure consists of a chief executive officer (who is also the public face of the MCLI), a chief operating officer (coordinator), two event administrators, a finance administrator, a personal assistant, an office trainee, and an information and communication technician. The MCLI Board of Directors can establish committees to work on specific matters. Four groups have already been established: Border, Rail, Institutional Framework, and Shipping.

The Maputo Corridor Constitution Act appears in **Annex VI-8** of this review.

E. TRANS-KALAHARI CORRIDOR

a. Walvis Bay Corridor Group Instruments

- 439.** To date, the Walvis Bay Corridor Group is the only institution and related agreement specific to transport facilities identified in South-West Africa. The Group is an association of three Namibia government agencies (Customs, Ministry of Trade and Industry, and Ministry of Transport and Communications), the Namibian Port Authority, NamRail (the Namibian national railway company), the Offshore Development Company, and five trade associations (Walvis Bay Port Users Association, Namibian Association of Freight Forwarders, Namibian Road Carriers Association, Namibian Chamber of Commerce and Industry, and Federation of Namibian Tourism Association). The group is seeking to develop the following corridors:
- Trans-Kalahari Corridor to Botswana and South Africa
 - Walvis Bay–Ndola–Lubumbashi Corridor (formerly known as the Trans-Caprivi Corridor)
 - Trans-Cunene Corridor to Northern Namibia and Zambia

- Northern Route to Southern Angola

440. Trans-Kalahari Corridor Management Committee. The Walvis Bay Corridor Group was established in 1998 as a private sector initiative to expedite the utilization of the following routes:

- Trans-Kalahari Corridor from Walvis Bay to Botswana and Pretoria, South Africa
- Trans-Caprivi Highway and associated railway to the Democratic Republic of the Congo, Zambia, and Zimbabwe
- Northern Route to southern Angola to serve as a central entry structure that can coordinate international trade with SADC countries through the port of Walvis Bay

On October 21, 2001, the Walvis Bay Corridor Group was elected Secretariat of the Trans-Kalahari Corridor Management Committee (TKCMC), which is set up under the SADC Transport Protocol as a trilateral transport facility committee. The Secretariat is jointly funded by Botswana, Namibia, and South Africa and is responsible for implementing an agreed action plan to realize the Memorandum of Understanding on the Development and Management of the Trans-Kalahari Corridor. TKCMC members include representatives of both the Governments and transport industries of the three Trans-Kalahari member countries (Botswana, Namibia, and South Africa).

b. *Memorandum of Understanding on the Development and Management of the Trans-Kalahari Corridor*

441. In 2003 a formal trilateral Corridor Agreement was signed by the Governments of Botswana, Namibia, and South Africa (the Contracting Parties). A MoU established the TKCMC. The MoU was initiated in the framework of the Regional Activity to Promote Integration through Dialogue and Policy Implementation, or RAPID Program, financed by the U.S. Agency for International Development.¹⁴⁰

442. Preamble. The preamble of the MoU states that the Contracting Parties shall do the following:

- Make all laws, regulations, and procedures applicable to the corridor readily available.

- Endeavor to harmonize and simplify all laws, regulations, etc.
- Ensure the efficient administration of transit traffic and practice a consistent application of such laws, regulations, and procedures.
- Ensure mutual cooperation and assistance between themselves.

It is understood that the Contracting Parties are mindful of their obligations and commitments under other agreements such as the 1996 SADC Protocols on Transport, Communications and Meteorology and on Trade and the SACU Memorandum of Understanding on Road Transportation.

443. Main provisions. According to the MoU, the Contracting Parties shall:

- Develop strategic partnerships between themselves and the private sector (Article 1.4).
- Simplify and harmonize their Customs procedures, adopt a common transit procedure, and introduce joint Customs control at border points (Article 2.1).
- Establish consultative committees composed of public and private sector stakeholders on the subject of joint Customs control (Article 2.2).
- Ensure that revenue obtained from users by means of road user charges are dedicated for the maintenance and operation of roads (Article 3.1).
- Offer equal access to each other's transport markets (Article 3.2).
- Adopt and implement harmonized standards for vehicle characteristics, vehicle fitness, road signs, axle loads, etc. (Article 4.1).
- Improve traffic safety by law enforcement and driver training and testing (Articles 4.2 to 4.6).

444. Institutions. The two institutions are as follows:

- The Trans-Kalahari Corridor Management Committee composed of representatives of modal operators, transport infrastructure and transport authorities, port and Customs authorities, freight forwarders, and of all business and agencies interested in the corridor (Article 6.1)
- The Secretariat, which supports the Contracting Parties and provides administrative support (Article 6.2).

The Memorandum of Understanding on the Development and Management of the Trans-Kalahari Corridor appears in **Annex VI-9** of this review.

F. NORTH-SOUTH CORRIDOR

- 445. General.** The North-South Corridor is a Tripartite COMESA-EAC-SADC initiative. The Regional Trade Facilitation Program serves as the Secretariat to the Task Force. The program emerged from the Tripartite Summit held in Kampala, Uganda, in October 2008. It is an economic corridor-based approach. The corridor runs between the port of Dar es Salaam in Tanzania to the copper belts of Zambia and the Democratic Republic of the Congo and down through Zimbabwe and Botswana to the ports in South Africa.
- 446. Objectives.** The main objective of the North-South Corridor program is to bring together the initiatives taking place along this corridor and identify the missing links and activities so that they can be dealt with in a coordinated manner. The North-South Corridor is considered a major tool in the Tripartite policy of taking a regional approach to transport issues rather than strictly national ones. In implementing this policy, the following steps are important: (1) support regional trade policy regulation and trade facilitation initiatives; (2) strengthen national, regional, and inter-regional initiatives; and (3) develop a geographic information system (GIS) database to gather all information so that decision makers are fully informed. To implement the North-South Corridor model initiative, the following mechanisms are in place or are being developed: (1) the establishment of an institutional framework and (2) the harmonization of the policies and regulations; and the establishment a Tripartite fund.¹⁴¹
- 447. Institutions.** The institutional arrangements are twofold. First, at the Tripartite level is the Council of Ministers, composed of Ministers of transport, the Executive Management Committee, and the Secretariat. Second, at the national level are the National Corridor Committee and referral institutions comprising ministries and private sector associations.

G. DAR ES SALAAM CORRIDOR

- 448. General.** The Dar es Salaam Corridor connects the port of Dar es Salaam (Tanzania) to Lusaka (Zambia) and Lilongwe (Malawi). The geographic coverage of the corridor is very clearly captured in the Dar es Salaam Corridor Committee Constitution: it extends to the Southern-Eastern part of the Democratic Republic of Congo, specifically to Katanga Province in DRC through Kapiri Mposhi and Kasumbalesa in Zambia. The management institutions is shared by three partner countries: Malawi, Tanzania and Zambia. The DCC Constitution recognizes the DRC as one of its intended Member States. To this end, work is already in progress to formalize its membership to the DCC. The corridor is made up of a multimodal network of the port of Dar es Salaam, the Tanzara railway, and the Tanzam highway.
- 449. Objectives.** The Dar es Salaam Corridor was a response to the Southern African Development Community Protocol on Transport Communications and Meteorology. It was intended to improve the efficiency of transport services at the subregional level and to allow the corridor to remain competitive with other corridors.
- 450. Institutions.** The Dar es Salaam Corridor Committee (DCC) is a public-private partnership of Governments and private sector institutions from Malawi, Tanzania, and Zambia. It was formally established in November 2008 by means of a Constitution signed by both the public and private DCC stakeholders in the three countries. The Executive Committee is composed of a Chair, a Vice Chair of the Coordinating Committee, and at least three members nominated by the Corridor Committee. It implements the decisions made by the coordinating committee.¹⁴² The DCC has two working groups: transport and Customs. National Corridor Committees (NCCs) are located in each Member State to ensure effective national support of corridor activities. The NCC works closely with the Secretariat to ensure that corridor goals and objectives are fully realized and that problems or obstacles identified at the national level are resolved and highlighted for resolution by the appropriate bodies. The Secretariat is based in Dar es Salaam. Its main role is to coordinate and monitor corridor performance, identify new traffic, and market the corridor. The Secretariat also provides logistical support to the DCC and the working groups and NCCs. It also facilitates trade and development activities in Member States to increase the

traffic on the corridor routes and facilitate the strengthening and integration of the transport delivery system so that it is in a position to compete with the southern and other corridors, exploiting its natural advantages.

451. **Evaluation.** Among the achievements is the introduction of the Single Administrative Document (SAD 500). This document ensures that commercial traffic is cleared within 20-30 minutes at the border points on the corridor. This procedure is being rolled out to other corridors in the region to implement the free trade area and the common market goals launched by the Member States.¹⁴³

The Constitution Act of the Dar es Salaam Corridor appears in Annex VI-10 of this review.

H. INTER-REGIONAL COOPERATION AND INTEGRATION: COMESA-EAC-SADC TRIPARTITE

a. Areas for co-operation

452. The Member States of the three Regional Economic Communities, COMESA, EAC and SADC agree in 2005 to create the COMESA-EAC-SADC Tripartite. The main objectives are to strengthen and deepen the economic integration of the Southern and Eastern African region through market integration, infrastructure and industrial development. It also aims at avoiding duplication, addressing the overlapping characteristics of their membership as well as developing harmonized policies and programs in the areas of trade, customs and infrastructure development. This consensus led to two important Summits. First, in a Tripartite Summit held in Kampala, Uganda, in October 2008, the three RECs reached a decision to develop a joint inter-regional infrastructure master plan that would be a basis for joint planning, resource mobilization, and implementation of infrastructure. The policy approach should be inter-regional, not national. The Tripartite initiates and sponsors the development of the North-South Corridor between Southern, Central, and Eastern Africa. Second, the COMESA-EAC-SADC North-South Corridor Investment Conference, held in Lusaka, Zambia, in April 2009, launched the first step of this collaboration. US\$1.2 billion was pledged at that conference for implementation of infrastructure programs in relation, among other things, to transport infrastructure and

transport and trade facilitation programs. The trust account established for the Tripartite is managed by the Development Bank of Southern Africa. An investment committee is composed of representatives of the three members of the Tripartite, and region-wide sources of financing are being sought. A project preparation and implementation unit has been established in Lusaka for building a pipeline of regional projects and proposing them to sources of financing. A meeting of the Infrastructure Committee of the Tripartite and the road authorities of the Member States was held in June 2010 in Lusaka, Zambia, to plan and agree on the priority road projects along the North-South Corridor.

b. *Memorandum of Understanding*

453. COMESA, EAC, and SADC have programs aimed at facilitating transit and transport across the region. Although some of these programs are already harmonized among the RECs, many of them remain fragmented, and some do not even cover the entire Tripartite region. The response to this situation was the Memorandum of Understanding on Inter Regional Cooperation and Integration drafted for members of the Tripartite. This Memorandum is not dated, but it likely was signed during the June 2011 meeting.
454. **Provisions.** The MoU calls for (1) harmonization of infrastructure programs (Article 3) in which the Parties agree to jointly develop inter-regional infrastructure and harmonize programs on transport and communications; (2) cooperation in the program on the facilitation of the movement of persons (Article 4), in which the Parties agree to facilitate the movement of business persons across borders of the Member States; and (3) dispute resolution (Article 13). The amicable resolution of disputes through a process of negotiation has been established. If they fail to reach an agreement, the Parties will appoint an independent arbitrator.
455. **Institutions.** Article 6 establishes the following organs: (1) the Tripartite Summit, composed of the Heads of State or Governments of COMESA, EAC, and SADC; (2) the Tripartite Council of Ministers; (3) the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs, Economic Matters and Home-Internal Affairs; (4) the Tripartite Sectoral Ministerial Committee on Infrastructure; (5) the Tripartite Sectoral Ministerial Committee on Legal Affairs; (6) other Ministerial Committees that the Tripartite

Council of Ministers may establish; and (7) the Tripartite Committee of Senior Officials and Experts; (8) Tripartite Task force of the secretariats of the three RECs. Each REC shall establish a permanent unit for coordination of the harmonization mechanism of the agreed programs. The three units together will constitute a Tripartite Coordination Secretariat. A project implementation unit (PPIU) was established in Lusaka, Zambia to coordinate, manage, and monitor Tripartite infrastructure projects in the region.

The Memorandum of Understanding appears in Annex VI-11 of this review.

I. INDIAN OCEAN COOPERATION AGREEMENTS

456. General¹⁴⁴. Four instruments are relevant to the cooperation in facilitation and transport in the Indian Ocean:

- 1984 *Accord général de coopération entre les États membres de la Commission de l'Océan indien*
- 1989 *Protocole additionnel to the Accord général de coopération entre les États membres de la Commission de l'Océan indien*
- 1990 Agreement Creating the Organization of Indian Ocean Maritime Affairs
- 1997 Charter of the Indian Ocean Rim Association

The *Accord général de coopération entre les États membres de la Commission de l'Océan indien* was concluded in Victoria, the Seychelles, on January 24, 1984, by Madagascar, Mauritius, and the Seychelles.¹⁴⁵ France acceded to the Agreement in Port Louis, Mauritius, on January 10, 1986. The Comoros joined later. The depository is the Seychelles, but the seat of the Commission is in Port Louis.

457. Objectives. The 1984 *Accord général de coopération* seeks cooperation between the Partner States in economic, human, and environmental matters (Article 1). A major objective is to defend the region's interests in its sustainable development. This objective is centered on the support of the specific interests of the Island signatories of the Agreement; these interests will eventually be different from those of the continental countries. Treaties, conventions, and agreements by one of the Partner States "whatever their

form or nature” shall not be an obstacle to the enforcement of the accord or of any of its protocols (Article 2).

458. Institutions. The institutions of the Indian Ocean Commission are:

- *Council.* The Council is formed at the ministerial level with an equal number of representatives of each Member State (Article 3). Members of the parliaments of the Partner States may participate as observers to the meetings of the Indian Ocean Commission.
- *Committee of permanent liaison officers (OPL Committee).* This Committee is composed of the permanent representatives of the Indian Ocean Commission in each Member State. The committee prepares the work of the Indian Ocean Commission and follows the implementation of its decisions.
- *General Secretary.*

Ad hoc committees of experts may be established to examine technical, sectoral, or specific issues. Details on the functioning of the Indian Ocean Commission are described in a *protocole additionnel* signed in Victoria on April 14, 1989.

The *Accord général de coopération* appears in Annex VI-12 of this review.¹⁴⁶

The *Protocole* to the Agreement appears in Annex VI-13 of this review.

a. *Organization for Indian Ocean Marine Affairs*

459. On September 7, 1990, the Agreement Creating the Organization for Indian Ocean Marine Affairs was signed in Arusha, Tanzania. The 1990 Arusha Agreement has been signed by nine countries—Indonesia, Iran, Kenya, Mauritius, Mozambique, Nepal, Pakistan, Sri Lanka, and Tanzania—and apparently it has been ratified only by five countries—Indonesia, Mauritius, Mozambique, Pakistan, and Sri Lanka. For its entry into force, eight ratifications are needed. This instrument was the follow-up from the first conference on economic, scientific, and technical cooperation in maritime matters held in Colombo, Sri Lanka, in 1987. Sri Lanka is the depository.

460. Content. Although the Agreement deals mainly with integrated oceanographic management, it refers indirectly to transport facilitation.

- The economic and social development of landlocked countries is one of the general policy objectives of the Agreement (Article 3).
- The rule in which “all consideration will be given to the rights and needs of landlocked or geographically disadvantaged States” is one of the principles of cooperation between Member States, and maritime transport is one area of cooperation (Article 4).
- The executive body of the organization includes members from landlocked countries or geographically disadvantaged States (Article 8).

This Agreement was published in *United Nations Law of the Sea Bulletin No. 16*. The Agreement Creating the Organization of Indian Ocean Marine Affairs appears in **Annex VI-14** of this review.

b. *Charter of the Indian Ocean Rim Association*¹⁴⁷

- 461. Partner States.** The 1997 Charter of the Indian Ocean Rim Association for Regional Cooperation was signed by 20 Indian Ocean States—among them, the Comoros, Kenya, Madagascar, Mauritius, Mozambique, the Seychelles, South Africa, and Tanzania. The Association is open to all sovereign States of the Indian Ocean Rim subscribing to the principles and objectives of the Charter. The Association has also Partner States—among them, China, Egypt, France, Japan, the United Kingdom, and the United States.
- 462. Principles of policy.** The Association will facilitate and promote economic cooperation, bringing together representatives of government, business, and academia. Decisions on all matters and at all levels are to be made on the basis of consensus. Bilateral and other issues likely to generate controversy and act as an impediment to regional cooperative efforts are to be excluded from deliberations. Cooperation within the association will not be a substitute for, but will seek to reinforce and be consistent with, the association’s bilateral and multilateral obligations.
- 463. Objectives.** The following objectives of the Indian Ocean Rim Association are significant in terms of transit and trade facilitation:
- Formulation and implementation of projects for economic cooperation related to trade facilitation, promotion, and liberalization, fostering the

principle of nondiscrimination toward members. A 2020 deadline has been set to reduce tariffs to zero for all Member States.

- Lower barriers to the freer and enhanced flow of goods, services, and investments.

- 464. Institutions.** The institutions of the Association are (1) a Council of Ministers, which meets every two years and is in charge of formulating policies and reviewing progress; (2) a Committee of Senior Officials composed of government officials of Partner States; and (3) a Secretariat to coordinate, monitor, and service the implementation of policies.

The Charter of the Indian Ocean Rim Association for Regional Cooperation appears in Annex VI-15 of this review.

J. PORT MANAGEMENT ASSOCIATION OF EASTERN AND SOUTHERN AFRICA

- 465.** The Port Management Association of Eastern and Southern Africa (PMAESA) is among the three port management associations created under the auspice of ECA in Mombasa, Kenya, on April 1973; the others are: the Ports Management Association of West and Central Africa and North African Ports Associations (NAPMA).
- 466.** The Association has for main objectives: 1) create a framework for meetings and exchange of information between members; 2) work for improvement of utilization and management of ports in the Association; and to 3) cooperate with other port associations and related institutions. Full members of the Association are port authorities and terminal operators. The council of the Association, which is its supreme policy organ, includes all full members. The Board of Directors is composed of six members including one from the islands, one from the landlocked countries, two from coastal Eastern and Southern Africa. Associate members are organizations, companies, institutions or other bodies or individuals connected to port management and operations, such as Customs, cargo handling operators, railway companies, etc. The Association can also have individual and honorary members, all related to port affairs.

- 467.** The Association maintains a close working relationship with the United Nations Economic Commission for Africa. According to Article VII of the Constitution, ECA shall assist the Association and all of its organs in the implementation of the Constitution and of its activities.

The Constitution of the Association is attached as **Annex VI-16** of this review.

VII. Subregional Instruments: West Africa

A. BASIC SUBREGIONAL INSTRUMENTS¹⁴⁸

468. **Presentation.** Like East Africa, West Africa has long experience in interstate cooperation in transport. Agreements have been signed either between States of Francophone and Anglophone groups or between States of either group. Two subregional groups are present in place: the Economic Community for West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU). These two institutions are described here, together with the maritime policy of the subregion and a number of instruments related to river navigation and operations.
469. **West African Customs Union (1959) and Economic Community of West African States (1973).** On June 9, 1959, the West African Customs Union was established by six Francophone States of West Africa: Côte d'Ivoire, Burkina Faso, Mali, Mauritania, Niger, and Senegal. The objectives and results of the Customs Union were limited, despite a revision of the original Agreement on June 3, 1966, and a tentative broadening of the institution to include Anglophone States in 1967. The Heads of State decided at the meeting in Bamako, Mali, in May 1970 to create a new grouping of States for increased economic cooperation. On April 17, 1973, the Abidjan Treaty was concluded between the same six States to form the Economic Community of African States. The same full name of the Community had been used in 1967 to designate a still-born regional grouping of Francophone and Anglophone states. The 1973 CEAO was intended to encourage the harmonious and balanced development of the economies of its Partner States (Article 3, Abidjan Treaty). For that purpose, an active policy of economic integration was to be conducted at the regional level, in particular with respect to transportation (Article 4). A unified Customs zone was created in which goods originating within the Community were to circulate without quantitative restrictions (Article 5). Tariffs were common in relations with third countries, and a special Customs regime was applied to intra-community trade. Chapter VII of the Abidjan Treaty and Protocol F annexed to the Treaty and an integral part of it provided for "the principles and main procedures of implementation of a common policy of transport and communications coordination and development." Protocol F also provided for (1) a study of the transportation system (infrastructure and

operations) of the community of states and (2) the setting up of freight bureaux and shippers councils to facilitate foreign trade. A committee for cooperation in transportation, created in the Secretariat General and composed of experts appointed by the Partner States, was to study the creation of a common transportation service.

The Abidjan Treaty is no longer enforceable as CEAO was dissolved in 1994 and replaced by WAEMU.

470. **Economic Community for West African States.**¹⁴⁹ A Protocol was concluded in Accra on May 4, 1967 for the establishment of the Economic Community of West Africa (CEAO) between 14 States, 9 Francophone and 5 Anglophone. The CEAO Articles of Association called for, among other things, eliminating Customs and other obstacles to trade within the Community and contributing to an “orderly expansion of trade” between the Partner States and the rest of the world. The Accra Protocol registered with the United Nations (No. 8623, May 4, 1967) was apparently not ratified. The successive Protocol launches of the Francophone CEAO in 1973 and of ECOWAS in 1975 indicate that it made little progress.
471. **Economic Community of West African States (ECOWAS).** ECOWAS was established by a treaty concluded at Lagos, Nigeria, on May 28, 1975. Fifteen countries are members. The treaty was replaced on July 24, 1993, by a new treaty concluded in Cotonou, Benin. ECOWAS is the guardian of the Treaty in Lagos. It inherited, in an enlarged form, the model drafted with the creation of CEAO, a bilingual institution (developments on ECOWAS are found in section C of this chapter).
472. **West African Economic and Monetary Union** replaced the Francophone Economic Community of West Africa (*Communauté économique de l’Afrique de l’Ouest*) as an enlarged non-English-speaking group. It was established by the Dakar Treaty concluded on January 10, 1994 (modified on January 29, 2003), by the Francophone States of West Africa, all members of the CFA Franc Zone. It also replaced the monetary institution (*Union monétaire ouest-africaine*) established by these States as members of the CFA Franc zone. The WAEMU organizational structure, scope, and norms appear to have been inspired by the Treaty of Rome establishing the European Economic Community. WAEMU is reviewed in section D of this chapter.

473. Presently dormant, the Mano River Declaration, dated October 3, 1973, and concluded at Amalena, established a Customs Union between Liberia and Sierra Leone (see section F of this chapter).
474. Just as in Eastern and Southern Africa, subregional institutions overlap, with some West African States belonging to groups spanning several subregions such as OHADA. Table 4 summarizes the participation of countries in the different groups.

Table 4. Membership of Subregional Organizations, West and Central Africa

	ECOWAS	UEMOA	OHADA
Benin	x	x	x
Burkina Faso	x	x	x
Cabo Verde	x		
Côte d'Ivoire	x	x	x
Gambia, The	x		
Ghana	x		
Guinea	x		x
Guinea-Bissau	x	x	x
Liberia	x		
Mali	x	x	x
Niger	x	x	x
Nigeria	x		
Senegal	x	x	x
Sierra Leone	x		
Togo	x	x	x

Source: SSATP

Note: Mauritania, which initially was a member of ECOWAS and of the predecessors of WAEMU, has now left all regional groups in West Africa with the exception of the *Organisation pour la mise en valeur du fleuve Sénégal* (OMVS).

B. SPECIFIC TRANSPORT AND FACILITATION AGREEMENTS

475. **1970 Niamey Convention on Road Transport.** On December 9, 1970, a Convention regulating road transport was concluded in Niamey, Niger, between Burkina Faso, Benin, Côte d'Ivoire, Niger and Togo. The Convention entered into force in 1978 due to belated ratification by Burkina Faso. International

routes were designated in the Convention. It also set forth the maximum dimensions and weight of vehicles, signs, markings, etc. Vehicles were to (1) load in one state only for foreign destination; (2) operate through freight offices (*bureaux de fret*); and (3) comply with Customs and police regulations for border crossings. A bilingual transit card was to be delivered to each vehicle in a format set forth in an annex to the Convention. ECOWAS rules have now rendered this instrument obsolete.

This Convention is not attached as an annex to this review.

476. 1975 Abidjan Protocol on Inter-State Road Transport. On February 18, 1975, and based on the 1970 Niamey Convention not yet in force, Togo and Niger concluded in Abidjan a Protocol on road transport (*Protocole d'accord de transports routiers*). The Protocol regulates interstate transport. Its main provisions are the following:

- Freight is distributed between the two countries: two-thirds for Niger and one-third for Togo for goods carried through ports and equally for other goods. Passenger traffic is distributed equally. Mixed traffic (goods and passengers) is prohibited.
- Axle load is limited to 11 tons. Maximum weight of vehicles is 22 tons and 30 tons for a truck plus trailer.
- Rules are specified for licenses, transit card, insurance, etc.
- Freight forwarders and other shipping agents shall adhere to the distribution key just described.
- Transit routes are stipulated.
- Vehicles of each country may operate only transit traffic in the other country. They are not authorized to engage into domestic traffic.

The Protocol is not attached to this review.

477. Both the 1970 Convention and the 1975 Protocol are significant for their orientation toward a non-market approach of traffic distribution, with quota systems administered by freight bureaus. It is likely that other bilateral agreements, similar to the Abidjan Niger-Togo Agreement, were concluded and are still in force, but they have yet to be identified.

478. **River navigation.** Three river navigation instruments are in force for the Senegal and Niger Rivers (see section G of this chapter).
479. **Maritime transport instruments.** Based on the initial work of the Inter-State Ministerial Conference on Maritime Transport, the Maritime Transport Charter for West and Central Africa was concluded at Abidjan, Côte d'Ivoire, on May 7, 1975, by 23 West and Central African States: Angola, Benin, Cameroon, Cabo Verde, the Central African Republic, Chad, Congo, Côte d'Ivoire, Gabon, The Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo, Upper Volta (Burkina Faso), and Zaire (Democratic Republic of the Congo). These instruments are reviewed in Section H of this chapter.

C. ECONOMIC COMMUNITY OF WEST AFRICAN STATES¹⁵⁰

480. **Original 1975 Lagos Treaty.** The 1975 ECOWAS Treaty was supposed to be associated with the dawn of the New International Economic Order, which had been the subject of a declaration by the General Assembly of the United Nations on May 1, 1974, in New York (13 ILM 715 (1974)). It was also inspired by the development of the European Common Market. The aim of the Treaty was to promote cooperation and development for the purpose of raising the standard of living and fostering closer relations among the members of ECOWAS. For that purpose, ECOWAS was to do the following by stages:
- Eliminate Customs duties between Partner States.
 - Eliminate quantitative and administrative restrictions on trade between Partner States.
 - Establish a common tariff toward third countries.
 - Abolish obstacles to the free movement of capital and services.
 - Conduct joint development of transport infrastructure.
 - Harmonize the economic, agricultural, industrial, and monetary policies of Partner States.

The central objective was therefore to establish a Customs Union, but there were clear objectives of harmonization if not of integration.

- 481. Membership.** ECOWAS Members are Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Guinea-Bissau acceded in 1975 and Cabo Verde in 1979. Mauritania was a member but has since left. The withdrawal of Mauritania became effective on December 31, 2000.
- 482. Revision of the 1975 Treaty.** The 1993 revision of the 1975 Treaty was prepared by a Committee of Eminent Persons (CEP) appointed for that purpose in 1991 so that *the Community could adjust itself to the dramatic changes taking place in West Africa and other parts of the world*. The CEP identified a number of legal problems related to the 1975 treaty, among them:
- The powers of the Authority of Heads of State and Government (AHSO) and of the Council of Ministers were too vaguely defined.
 - AHSO decisions were not binding on the Partner States.
 - Protocols were not ratified by the Partner States.
 - There was no authority to interpret the Treaty, and the ECOWAS Tribunal that might have conducted such an interpretation was never actually constituted.

The CEP thus recommended moving beyond the limited level of a Customs union and reinforcing the position of ECOWAS in its relations with the Partner States.

- 483. New 1993 Cotonou Treaty.** The 1993 Revised Treaty Establishing the Economic Community of West African States substitutes economic and monetary integration and union for the Customs Union. The founders wanted to increase the economic mass and therefore the bargaining base of African economies through pooling economic sovereignty. According to this new Treaty (Article 3), the main ECOWAS objectives are as follows:
- Harmonize and coordinate policies and promote integration programs, particularly in transport.
 - Establish a common market with a common external tariff and abolish inter-Community tariffs non-tariff barriers.
 - Create an economic union.
 - Promote joint ventures in trade, transport, and industry.

ECOWAS objectives make a special mention of landlocked States as a problem to which special attention should be given (Article 3 (k)).

484. Institutions. The institutions of ECOWAS are the following:

- *Authority of Heads of State and Government.* This body is responsible for the general direction and control of ECOWAS, issuing guidelines in that respect. Decisions are taken either by consensus, unanimously, or by a two-thirds majority in accordance with a protocol on the subject.
- *Council of Ministers.* The Council is responsible for the functioning of the Community, making recommendations, issuing directives on matters concerning coordination and harmonization, and making regulations binding on institutions under its authority
- *Community Parliament*
- *Economic and Social Council*
- *Court of Justice and Arbitration Tribunal.* Pending the establishment of an Arbitration Tribunal provided for under Article 16 of the revised treaty, the court has the competence to act as arbitrator.
- *Executive Secretariat of the Community.* This body was replaced by the *Commission* on January 2007, following amendment of the ECOWAS Treaty in June 2006.

In general, the Commission coordinates the activities of all Community institutions. It represents the Community in its external and international relations and is responsible for strategic planning and policy analysis as well as regional integration in the subregion. The Commission adopts rules to implement the policy enacted by the Council of Ministers. These rules have the same legal force as acts adopted by the council itself. The Commission also makes recommendations and gives advice that is not enforceable. The Commission is divided into several offices, among which is the Office of the Commissioner of Infrastructure containing the Department of Transport and Telecommunications. The department has responsibility for carrying out the following functions in alignment with Articles 32 and 33 of the revised ECOWAS Treaty.

- Prepare common transport and telecommunications policies, laws, and regulations.
- Set an extensive network of all-weather highways within the Community.

- Formulate a program for the improvement of coastal shipping services and interstate inland waterways and for the harmonization of maritime transport policies and services.
- Promote the development of regional air transport services and implement air transport safety and security programs.
- Encourage the establishment and promotion of joint ventures as well as the participation of the private sector in the areas of transport and telecommunications.

There is also an Office of the Commissioner on Trade, Customs, Industry, and Free Movement, but no documents could be found on its mission.

The ECOWAS Bank for Investment and Development (EBID) was previously called the Fund for Cooperation, Compensation and Development; it was established by Article 50 of the Treaty of 1975. It was restructured in 2000-2001 and is now called EBID. It has two subsidiaries: ECOWAS Regional Investment Bank (ERIB) and ECOWAS Regional Development Fund (ERDF).

485. The ECOWAS Transport Policy is stated in Chapter VIII of the 1975 Lagos Treaty and in Articles 40 to 44 and Chapter VII, Article 32, of the 1993 Cotonou Treaty. There are differences of formulation between the two treaties as shown by the next two paragraphs.

The 1975 ECOWAS Treaty was filed with the UN Secretariat as No. 14843. The text appears in **Annex VII-1** of this review.

The 1993 ECOWAS Treaty concluded at Cotonou, Benin, was apparently not filed with the UN Secretariat and does not appear in the UN Treaty Series. It is available in English in *International Legal Materials* (35 ILM 660 (1996)) and the *African Journal of International and Comparative Law* (8 AJICL 187). The treaty was revised in 2006. The 1993 revised treaty appears in **Annex VII-2** of this review.¹⁵¹

486. **1975 Lagos Treaty.** The objective of the policy is to “further the physical cohesion of the Partner States and the promotion of greater movement of persons, goods and services within the Community” (Article 40). The stated policy is ambitious and strongly oriented toward subregional integration. Plans for a comprehensive network of all-weather roads within the Community are to be formulated by the Transport, Communications and Energy Commission of

ECOWAS, together with plans for reorganizing and improving the railways in view of their future connection (Articles 41 and 42). Policies on shipping and international waterways transport are to be harmonized and rationalized (Article 43). National airlines should be merged in order to promote efficiency and profitability; training of nationals and standardization of equipment will be sought (Article 44). However, Articles 40 to 44 make no specific reference to the problems of the landlocked countries of the subregion. Altogether, the policy as formulated in the treaty was strongly oriented toward the physical development of the transport system and may appear to be more of an investment program than a declaration of policy. The revised treaty reaffirmed these provisions and the laws that have been passed are directed at practical regional integration and a common market.

- 487. 1993 Cotonou Treaty.** The Partner States seek to evolve common transport policies, laws, and regulations. Plans are to be formulated for the integration of road and railway as well as road networks of the region. Programs are to be formulated for the harmonization of policies on maritime transport, and positions in international negotiations in the area of maritime transport should be coordinated. The Partner States also seek to bring about the merger of their national airlines in order to promote efficiency and profitability.
- 488. 2006 revised Treaty.** The amended Treaty reaffirms the commitments undertaken under the 1993 treaty toward transport policy. The revised Treaty mainly focuses on two changes: the Court of Justice and the ECOWAS Executive Secretariat that was transformed into a commission composed of several bodies, as described earlier.
- 489. Transport institutions.** The Department of Transport and Telecommunications is in charge of transport policy as stated in Article 32 of the revised ECOWAS Treaty.
- 490. Transport instruments.** From 1975 to 1992, 29 instruments were recorded reflecting the ECOWAS transport policy and its implementation: 1 treaty, 4 conventions, 3 protocols, 4 directives, 10 resolutions, and 7 decisions. These instruments were published in English and in French in brochures issued in 1992 by the ECOWAS Executive Secretariat. Although the earlier instruments (1975-80) reflect a period of institution building, the later instruments (1990-94) reflect delays in ratification and incomplete enforcement of the instruments of the earlier period. Details on the instruments issued in 1991 are pub-

lished in the *Official Gazette of the Community* or in brochures. From 2003 to 2011, several transport rules of origin of goods, and freedom of movement instruments were enacted by ECOWAS authorities, they are published in the *Official Gazette of the Community*. The goal is to accelerate regional integration.

- 491. Monitoring implementation and enforcement.** Follow-up of the implementation and enforcement of the different conventions, protocols, and other instruments required the establishment of national committees for that purpose. On August 6, 1994, the Conference of Heads of State and Government issued in Abuja Decision A/DEC 3/8/94 on the creation of national monitoring committees for effective implementation of decisions and protocols on transportation. The preamble to the decision refers especially to the issue of the proliferation of (official or abusive) checkpoints on interstate roads of the subregion. Each national committee was to be composed of heads of government departments with one representative of the road transport industry (Article 2). The committees would follow up implementation of the ECOWAS transport instrument “with view to facilitate the free movement of persons and goods in the subregion” (Article 3). However, because of a lack of funding for the national and regional committees in charge of the management of the transit corridors,¹⁵² the ECOWAS Commission put in place in May 2007 a strategic plan for its transport policy that will be analyzed shortly.

The text of ECOWAS Decision A/DEC 3/8/94 appears in **Annex VII-3** of this review.

a. *ECOWAS Transport Program*

- 492. Decision on transport programs.** On May 28, 1980, the ECOWAS Heads of State issued Decision A/DEC 20/5/80 directing the ECOWAS executive secretary to carry out a short-term program and a long-term transport program.¹⁵³

The text of ECOWAS Decision A/DEC 20/5/80 appears in **Annex VII-4** of this review.

- 493. Short-term program.** The short-term program included institutional action such as the study and adoption of international transport conventions; harmonization of legislation, regulations, and road control systems within the Community; and simplification of airport formalities. Regarding investments, studies were to be conducted on a number of road and rail links.¹⁵⁴ The possibility of establishing an ECOWAS air transport company and an ECOWAS shipping company was also to be reviewed. Two directives issued eight years

later may be significant in explaining the incomplete implementation of items in the program. Directive C/DIR 1/12/88 indicated measures to be taken by the Executive Secretariat to ensure better cooperation and coordination in the area of air transport—which was in fact a policy measure rather than a program item. The same day, Directive C/DIR 2/12/88 was issued, specifying measures for determining the means of establishing an ECOWAS coastal shipping line. Finally, in the area of air transport, Resolution C/RES 8/7/91 on a route network and flight schedules, issued in Abuja, Nigeria, on July 3, 1991, asked the Partner States to conclude between themselves bilateral air transport agreements in order to facilitate economic and political integration, and it asked them to negotiate the Fifth Freedom traffic rights.¹⁵⁵ Again, this was in fact a policy recommendation rather than a program item.¹⁵⁶

These directives are not attached to this review.

- 494. Long-term program.** The long-term program was the realization of some of the projects reviewed in the short-term program, mainly railway projects. By Decision A/DEC 4/11/84 issued at Lomé, Togo, and making reference to the 1980 Transport Program, the ECOWAS Heads of State agreed in principle to establish an ECOWAS coastal shipping line. Again making reference to the program, Decision C/DEC 8/12/88 issued in Banjul, The Gambia, on December 6, 1988, sets forth the second phase of ECOWAS road projects related to the interconnecting roads for opening up the landlocked countries,¹⁵⁷ and also makes reference to the 1980 Transport Program.

ECOWAS Decision C/DEC 8/12/88 appears in **Annex VII-5** of this review.

- 495. Execution of program.** The physical execution of the program was the subject of Resolution C/RES 6/5/90 issued in Banjul, The Gambia, on May 27, 1990. In the Resolution, the Council of Ministers urge the Partner States concerned to initiate action toward completion of the Trans-West African Highway Lagos-Nouakchott-Dakar-N'Djamena.

The text of Resolution C/RES 6/5/90 appears in **Annex VII-6** of this review.

b. *Convention Regulating Inter-State Road Transportation*

- 496. General.** The Convention Regulating Inter-state Road Transportation between ECOWAS Member States (A/P 2/5/1982) was concluded in Cotonou, Benin,

on May 29, 1982. The Convention seeks to define the conditions under which transportation by road would be carried out between Member States. The Convention concentrates on vehicles rather than on transportation operations, the regime of which is left to domestic law (especially the rules laid down by the offices in charge of freight) or to contract law between shipper and carrier.

- 497. Stipulations.** The Convention identifies 102 routes in 15 countries as ECOPAS road axes. It sets forth axle load (11.5 tons), dimensions of vehicles, maximum number of passengers, and minimum periods for mechanical examination of vehicles (three months for goods vehicles and six months for passenger vehicles). Vehicles will be issued licenses valid for one year. Conditions of delivery of licenses shall be defined by bilateral or multilateral agreements between States. The agreements shall also stipulate for State the number and category of vehicles authorized to operate in the other state or states based on tonnage and authorized number of passengers. Waybills are to be used as evidence of the carriage contract; carriage of passengers and goods in the same vehicle is prohibited; and third-party liability insurance is compulsory.

Convention A/P 2/5/1982 appears in **Annex VII-7** of this review.

Complementary to the Convention is Resolution C/RES 3/5/90 issued at Banjul, The Gambia, on May 27, 1990. In the resolution, the Council of Ministers urges Partner States to computerize their vehicle registration system along lines proposed.

ECOWAS Resolution C/RES/3/5/90 appears in **Annex VII-8** of this review.

- 498. Additional instruments.** The following additional and complementary instruments are significant:

- Resolution C/RES 5/5/90 issued at Banjul, The Gambia, on May 27, 1990, in which Partner States are urged to introduce weighbridge and axle scales to monitor tonnage transported and axle load.
- Decision C/DEC 7/7/91 issued at Abuja, Nigeria, on July 3, 1991, in which the Council of Ministers adopts road traffic regulations based on the 11.5 ton axle load.

Resolution C/RES 5/5/90 appears in **Annex VII-9** of this review.

Decision C/DEC 7/7/91 appears in **Annex VII-10** of this review.

c. *Harmonization of highway legislation*

- 499.** Related to the Convention on road transport is Decision A/DEC 2/5/81, issued in 1981 and about the harmonization of highway legislation in the Community. This is in fact only a recommendation to Partner States.

Decision A/DEC 2/5/81 appears in **Annex VII-11** of this review.

According to the instrument, the Partner States are to do the following:

- Set up adequate administrative machinery for road transport.
 - Ratify and adhere to the 1968 Vienna conventions on road traffic and on road signs and signals (see **Annexes II-23** and **II-24**).
 - Introduce the practice of right-hand driving.
 - Adopt standardized equipment, driving licenses, and vehicle documents.
- 500.** The matter was the subject of a second instrument, Resolution C/RES 7/5/90 on the Establishment of an Appropriate Administrative Framework, which was intended to serve as a reminder of the 1981 decision. The resolution was issued at Banjul, The Gambia, on May 27, 1990. It requests the Partner States to establish an appropriate framework such as a directorate of road transport and to accelerate the implementation of ECOWAS decisions related to the transport sector.

Resolution C/RES 7/5/90 appears in **Annex VII-12** of this review.

d. *Convention and other instruments on the interstate road transit of goods*

- 501.** **1982 Convention Relating to Interstate Road Transit of Goods.** The Convention Relating to Interstate Road Transit of Goods (A/P 4/5/1982) between ECOWAS Partner States was signed in Lomé, Togo, on May 29, 1982. The Convention sought to facilitate the movement of goods in the subregion. Goods are to be covered by the Interstate Road Transit Declaration in the standard ECOWAS Interstate Road Transit Log-Book, but Partner States may impose additional documents. Goods shall be transported in means of transport satisfying conditions set forth by the Convention in terms of markings, sealing, etc. Transit offices at border points are not to carry out checks unless irregularities that may give rise to foul play are suspected (Article 18).

Convention A/P 4/5/1982 appears in **Annex VII-13** of this review.

The ECOWAS ISRT Log-Book appears in **Annex VII-14** of this review.

502. 1988 Resolution on implementation of program. Resolution C/RES. 1/12/88 on implementation of the program of the Higher Committee on Land Transport was issued at Banjul, The Gambia, on December 6, 1988. Under the instrument, the ECOWAS Council of Ministers resolves the following:

- Transit transport shall not, within the territory of the transit State, be subject to any Customs duties, import or export duties, or any special transit taxes levied by the said state. This statement is in reference to the 1965 New York Convention on Transit Trade for Landlocked Countries, and despite the fact that a few ECOWAS member countries did not ratify the Convention.
- Partner States shall reduce the number of road checkpoints.
- Interstate road transport and transit conventions shall be ratified by all Partner States.
- Partner States shall enforce the agreed-upon axle load limitation of 11.5 tons and implement the ECOWAS international waybill also agreed upon.

Resolution C/RES 1/12/88 appears in **Annex VII-15** of this review.

503. 1990 Resolution on reducing the number of checkpoints in ECOWAS Partner States. Resolution C/RES 4/5/90 was issued in Banjul, The Gambia, on May 27, 1990. It raised again the issue of checkpoints by urging Partner States to reduce their number.¹⁵⁸ The issue of landlocked countries was also raised in Resolution C/RES 6/5/90 in which the Council of Ministers urges the Partner States concerned to give priority in their investment programs to interconnecting roads facilitating access to such countries.

Resolution C/RES 4/5/90 appears in **Annex VII-16** of this review.

Again, these resolutions are significant in both the delays by Partner States in ratifying the different conventions and the inadequate enforcement of their stipulations.

e. *ECOWAS Facilitation Program*

- 504. 2003 Facilitation Program.** Because insufficient progress was being made in facilitation, the Authority of Heads of State and Government met in Dakar in January 2003 and issued Decision A/DEC13/01/03 Relating to the Establishment of a Regional Road Transport and Transit Facilitation Program in Support of Intra-community Trade and Cross-border Movements. The program was intended to (1) establish joint border posts; (2) create observatories to identify bad practices; and (3) launch an awareness campaign for implementation of the 1982 Convention Relating to Inter State Road Transit of Goods. The Trans-Coastal Lagos-Nouakchott Corridor and the Trans-Sahelian Dakar-N'Djamena Corridor were selected for implementation of the program. Member States were within 12 months to implement a series of measures at the national level to support the program, such as identifying sites for establishing joint checkpoints, establishing monitoring committees and road safety units, developing the Brown Card system, etc. The ECOWAS Executive Secretariat was placed in charge of monitoring implementation and requesting multinational grants from development partners to finance the desired and necessary actions. Following this Facilitation Program, the Abidjan-Lagos Corridor Organization (ALCO) was launched and is viewed as a perfect success story of ECOWAS Member States.

Decision A/DEC/13/01/03 appears in **Annex VII-17** of this review.

f. *Supplementary Convention on Guarantee Mechanism for Interstate Road Transit*

- 505.** According to the 1982 Convention Relating to Interstate Road Transit of Goods (A/P 4/5/1982), security for payment of Customs dues was to be provided by a guarantee from a reputable financial institution affiliated with the West African Clearing House or any government-approved institution of a Member State.
- 506.** A second instrument in that respect was Directive C/DIR 3/12/88 on the Implementation of the Land Transport Program. Among other issues, the Council of Ministers directs that the Executive Secretariat should accelerate the implementation of a single guarantee system for goods in transit.

Directive C/DIR 3/12/88 appears in **Annex VII-18** of this review.

507. In 1990 the "urgent necessity" to establish a satisfactory mechanism led to the signing in Banjul, The Gambia, of a Supplementary Convention (A/SP 1/5/90). According to the Supplementary Convention Establishing a Community Guarantee Mechanism for Interstate Road Transit of Goods, the mechanism consists of a chain of national bodies responsible for the guarantee. Each national body is designated by its Member State.

Supplementary Convention A/SP 1/5/90 appears in Annex VII-19 of this review.

g. *Convention on the Temporary Importation of Passenger Vehicles into Partner States*

508. The Convention on the Temporary Importation of Passenger Vehicles into Partner States (A/P 1/7/85) and concluded in Lomé, Togo, on July 6, 1985, is a logical follow-up to the 1979 ECOWAS Dakar Protocol Relating to Free Movement of Persons, Residence and Free Establishment (see Annex VII-26 of this review) to which it refers. The basic rule (Article 2) is that each Member State shall grant temporary admission free of import duties and without prohibitions or restrictions, but subject to re-exportation—that is, to passenger vehicles being imported for private or commercial use during a visit either by the owners of the vehicles or by other persons normally resident outside its territory. Temporary import permits known as Customs Clearance Booklets valid for one year maximum will be issued. The maximum duration of temporary importation shall be 90 days for private vehicles and 15 days for commercial vehicles. Associations and bodies, especially those associated with an international organization (e.g., auto clubs), may be authorized by governments to issue the booklets and act as guarantors of the payment of any Customs or other dues payable in case the vehicle is not re-exported.

Convention A/P 1/7/85 appears in Annex VII-20 of this review.

h. *Protocol establishing an Insurance Brown Card*

509. **Protocol.** The Protocol on the Establishment of an ECOWAS Brown Card Relating to Motor Vehicle Third Party Liability Insurance (A/P 1/5/82) was concluded in Cotonou, Benin, on May 29, 1982. Its objective was to facilitate payment of damages in case of an accident and to harmonize the settlement of claims between countries of the Community. The Brown Card was to be is-

sued by national bureaus of insurers, which would settle claims on behalf of the insurers. Partner States were to recognize the Brown Card, enact the necessary legislation for the establishment of the card scheme, and guarantee the solvency of their national bureaus by depositing in their national banks the necessary letter of credit. Local insurers were designated as subsidiary participants to the scheme; they would issue the cards to their policyholders on behalf of the national bureau and compensate this bureau for any payment to their clients.

Protocol A/P 1/5/82 appears in **Annex VII-21** of this review.

- 510.** Attached to the Protocol is a model of an inter-bureau agreement for implementation of the scheme.

The Agreement on the implementation of the Brown Card Scheme appears in **Annex VII-22** of this review.

- 511. Decision on implementation.** Decision C/DEC 2/5/83 Relating to the Implementation of the ECOWAS Insurance Brown Card states that a Council of Bureaus shall consist of a representative of each national bureau (see Article 6, Protocol). The Council has the general function of orientation, coordination, and supervision of the whole ECOWAS insurance scheme. It coordinates the operations of the national bureaus and for that purpose issues a standard inter-bureau contract that determines the maximum amount of settlement between National Bureaus. Disputes between bureaus shall be settled by the Council of Bureaus, and its decision is final. The Council may, on its own initiative or on the initiative of a government party to the protocol, propose changes in the laws and regulations of Partner States in the matter of third-party car insurance and related road traffic matters.¹⁵⁹

Decision C/DEC 2/5/83 appears in **Annex VII-23** of this review.

- 512. Evaluation.** The ECOWAS Brown Card scheme is considered one of the region's success stories. However, the existing insurance laws in Member States need to be harmonized to provide for a common approach and modalities for the payment of compensation. The period covered by the policy should also be uniform throughout the subregion. It is worth noting that some Francophone ECOWAS Member States are also party to the CIMA Code. The similarities

and disparities between ECOWAS third-party liability and that of CIMA should be checked and any risks of conflicting laws exposed.

i. *Instruments on road safety and accident prevention*

513. Instruments. The issue of road safety seems to have been identified at a later stage, but the information on it is still incomplete. The instruments were:

- Directive C/DIR 1/7/92 issued in July 1992 concerned the preparation of an ECOWAS program on road safety and road accident prevention.
- Resolution C/RES 8/7/92 issued in July 1992 concerned the creation of national road safety agencies in all ECOWAS Partner States.
- Resolution C/RES 5/7/94 issued in Abuja, Nigeria, on July 27, 1994
- Decision A/DEC 2/8/94 on the Community Program for Road Safety and Road Accident Prevention in ECOWAS States issued in Abuja, Nigeria, on August 6, 1994. The decision states that two series of measures at the Community and national levels "are adopted." These are detailed in the two paragraphs that follow.

Decision A/DEC 2/8/94 appears in **Annex VII-24** of this review.

514. Community level. At the Community level, these measures are to be taken:

- Enforce conventions, protocols, and regulations related to facilitation and road transport, referring to the earlier 1981 Decision on harmonization of road legislation and to the 1982 Protocol on Brown Card.
- Elaborate a policy for financing road safety programs.
- Implement road safety education and awareness programs, including organization of an annual ECOWAS Road Safety and Accident Prevention Enlightenment Week.
- Create a data bank on road accidents.
- Adopt a standard regional format for accident recording.
- Create a West African Union of Road Safety Commissions.

515. National level. At the national level, the following measures and actions need to be taken.

- Create National Road Safety Commissions.
- Introduce compulsory technical control of vehicles.
- Implement public relations programs and awareness and training of drivers, students, and the public in general.
- Introduce regulatory measures for vehicle, driver, and passenger safety.
- Create a data bank on road accidents.

516. Decision A/DEC 5/8/94 issued at Abuja, Nigeria, on August 6, 1994, grants the African Group on International Road Safety (AGIRS) observer status within ECOWAS institutions.

Decision A/DEC 5/8/94 appears in **Annex VII-25** of this review.

j. *Protocol on Free Movement of Persons, Residence and Establishment*¹⁶⁰

517. Substance. Protocol A/P 1/5/79 was concluded in Dakar, Senegal, on May 29, 1979. It stipulates the right of citizens of the Community to enter, reside, and establish themselves in the territory of Partner States. The Protocol was to be implemented in three phases:

- Right of entry and abolition of visa
- Right of residence
- Right of establishment

Within five years of the entry into force of the Protocol (June 5, 1980) and based on the experience gained from the implementation of the first phase, proposals were to be made to the Council of Ministers for further liberalization.

518. Rules regarding vehicles. Part IV of the Dakar Protocol sets forth the rules applicable to vehicles:

- Private vehicles are admitted in a Member State for a period not exceeding 90 days on presentation of documents listed in the protocol (valid driving license, etc.).
- Commercial vehicles are admitted for a period of 15 days on presentation of similar documents. The right of access of vehicles was the subject of a subsequent convention on the temporary import of such vehicles.

Dakar Protocol A/P 1/5/79 appears in **Annex VII-26** of this review.

- 519. Residence.** The second phase of the Dakar Protocol (right of residence) was the subject of Supplementary Protocol A/SP 1/7/86 concluded in Abuja, Nigeria, on July 1, 1986. It creates the right of residence in member countries for nationals of other member countries. Such a right includes the right to seek and carry out income-earning employment. A residence card or residence permit is necessary, and the protocol sets forth the conditions and procedure of delivery.

Supplementary Protocol A/SP 1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons appears in **Annex VII-27** of this review.

k. *Directive on road charges*

- 520.** Road charges do not seem to have been a matter of concern at the early stages of implementation of the ECOWAS Transport Program. On December 6, 1988, the Council of Ministers issued Directive C/DIR 3/12/88 in which it directs the Executive Secretariat to prepare an inventory of existing road taxes in view of their harmonization at the subregional level.

l. *Convention for Mutual Assistance in Customs Matters*

- 521. General.** Concluded in Cotonou, Benin, on May 29, 1982, this Convention has been in force since April 1995 between ECOWAS members, except Liberia, Mauritania, and Sierra Leone, which do not seem to have acceded to it.
- 522. Provisions.** The main provisions of the Convention are as follows:
- *Application (Article 2).* Partner States may request the assistance of any judicial or administrative agency of another party in the course of an inquiry in relation to the Convention. Assistance, however, does not include assistance to perform an arrest or to recover dues, fines, or other monies.
 - *Communication (Articles 5 and 6).* Communication takes place directly between the competent authorities and normally in writing.
 - *Obligatory assistance (Articles 9 and 10).* Competent authorities of the Member States will communicate to the competent authorities of the other states any significant information collected during the course of informal activities that leads to suspicions of a serious Customs or trade infringement. Any relevant document, record, or proceedings will also be

communicated. Information shall also be communicated regarding the origin and value of goods imported or exported.

- *Assistance (Articles 11 and 12)*. Assistance shall be provided during monitoring and for surveillance.
- *Statements (Article 14)*. Statements of representatives of competent authorities may, if a Member State requests it, take place before foreign tribunals and courts.
- *Presence on the territory of another Member State (Article 15)*. Competent authorities of one state may be present on the territory of another Member State upon a written request of a Member State to gain access to papers, records, and other documents.
- *Centralization of information (Article 19)*. Partner States shall cooperate in the establishment and maintenance of an index of information on Customs fraud involving persons and vehicles, under the responsibility of the Executive Secretariat.

The Convention for Mutual Assistance in Customs Matters appears in Annex VII-28 of this review.

m. *Training and professional organizations*

523. On December 6, 1988, the ECOWAS Council of Ministers issued Directive C/DIR 3/12/88 on the implementation of the land transport program. The Directive instructed the Executive Secretariat to (1) prepare a detailed inventory of transport training centers in the fields of road transport and maintenance and (2) examine the means of developing a Community Union Professional Association of Road Transport Owners. Because of this Directive, a West African Road Transporters Union has been created as an organ to promote the facilitation of road transport.

Directive C/DIR 3/12/88 is not attached to this review.

524. The *Centre régional de formation pour l'entretien routier* (CERFER), a training center in the field of road maintenance, was established in Lomé, Togo, by a Convention concluded in Abidjan, Côte d'Ivoire, on May 18, 1970, by Côte d'Ivoire, Benin, Burkina Faso, Niger, and Togo. The center was a nonprofit in-

stitution supported by contributions of the Partner States. It was established to train staff in public works (Article 2).

The Convention appears in Annex VII-29 of this review.

n. *ECOWAS strategic transport policy, 2007-2010*¹⁶¹

525. Under this ECOWAS plan, the priority and fundamental objectives of the sector are the following:

- *Road transport.* (1) Improve the efficiency and efficacy of road transport between states with a view toward reducing transportation costs and poverty; (2) improve the procedures and regulations (simplified and harmonized) of transportation and interstate transit and ensure safety and security at the ports along the priority corridor (Abidjan–Lagos); (3) establish a supervisory and coordinating organ to implement the program for the facilitation of transportation within regional organizations (ECOWAS and WAEMU) and in Member States; (4) reduce the propagation of the HIV/AIDS pandemic on the roads and borders between states; and (5) ensure systematic surveillance of abuses on the road between the states.
- *Rail transport.* Develop an efficient network of railways interconnected in the ECOWAS subregion.
- *Maritime transport.* (1) Develop dependable, profitable, viable, and affordable maritime transport and (2) harmonize maritime transport policies.
- *Air transport.* In relation to air transport policy and the implementation of the Yamoussoukro Decision, (1) strive for a dependable, viable, and coordinated air transport network; (2) ensure equitable access for airlines eligible for the West African market for air transportation; and (3) encourage the creation of a private regional airline. However, the West African States split into two distinct groups; UEMOA, comprising eight French-speaking West African States, and the Banjul Accord Group (BAG), comprising seven predominantly English-speaking countries. BAG was created on January 29, 2004, by Cabo Verde, The Gambia, Ghana, Guinea, Liberia, Nigeria, and Sierra Leone. BAG has produced two documents in addition to the BAG Agreement: the Multilateral Air Services Agreement (MASA) and a memorandum of understanding for the implementation of a technical cooperation project (COSCAP) for BAG MASA was signed on

January 29, 2004, by all seven West African States party to the BAG Agreement. MASA is an identical application of the Yamoussoukro Decision for the BAG Member States and even goes beyond the principles of the Yamoussoukro Decision because it emphasizes safety and security. For example, the state parties of the Yamoussoukro Decision can only reaffirm their obligation to comply with the civil aviation safety standards and practices recommended by ICAO, whereas MASA Contracting States can request consultations on the safety standards of any other Contracting States related to aeronautical facilities and services, air crews, aircraft, and the operations of designated airlines (Article VII, MASA). According to the specialists in air transport, MASA is a good example of an agreement that liberalized air transport markets.¹⁶²

o. *Evaluation of ECOWAS transport policy as of December 2011*

526. The successful partnership between ECOWAS and WAEMU has resulted in regional programs that have liberalized and facilitated transit movements throughout West Africa. There are several ECOWAS and WAEMU decisions on transport at the subregional level: the Convention on Road Transit of Goods, Convention on Road Transport, Convention on Guarantee Mechanism for Inter-State Road Transit; Decision on Maximum Permissible Axle Loads, and Protocol on Vehicle Specifications for Vehicles Undertaking Transit of Goods. However, more progress is needed as on interstate roads several Customs posts seem to favor corruption. Landlocked countries such as Niger and Burkina Faso are victims of these illegal border posts. The 1,036-kilometer national road between Cotonou and Niamey used for transit transport is also full of illegal border posts. Finally, achievements have also been made in the freedom of movement of persons. No entry visa is required for citizens of Member States to travel within ECOWAS.

D. WEST AFRICAN ECONOMIC AND MONETARY UNION¹⁶³

527. **General.** The 2003 Dakar Treaty modifying the 1994 Treaty establishing WAEMU
- Makes specific reference to the ECOWAS Treaty and confirms the adherence of the member countries to ECOWAS objectives.

- Declares the Partner States' determination to adhere to an open and competitive market favoring the optimal allocation of resources.
- Declares the objective to complete the West African Monetary Union by including an economic union.

528. Membership. UEMOA members are Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

The revised Treaty in French appears in **Annex VII-30** of this review. The treaty does not seem to have been filed with the UN Secretariat. It does not appear in the UN Treaty Series.

529. Coherence of WAEMU international law instruments. The main provisions on the coherence of WAEMU international law instruments are as follows:

- *Article 6.* Instruments resulting from the Union or issued by the Union take precedence over any past, present, or future national legislation.
- *Article 14.* The Partner States shall, by mutual consultation, seek to take all necessary measures to eliminate contradictions or overlapping of prior instruments, commitments, or conventions entered into or acceded to with third parties.
- *Article 42.* Regulations issued by UEMOA are directly enforceable in the Partner States.
- *Article 43.* Directives indicate which results should be obtained and as such are binding obligations on the Partner States.

All instruments except recommendations must be issued with motives, and writs of execution issued are enforceable in accordance with domestic rules of civil procedure.

530. Objectives. According to Article 4, in addition to a monetary union and cooperation, UEMOA's objectives are as follows:

- Reinforce the competitiveness of Partner States economies in the framework of a competitive market and a rationalized and harmonized legal environment.
- Ensure the convergence of the performances of the economic policies of Partner States.
- Establish a common market between Partner States.

- Coordinate sectoral policies, including transport; harmonize the legislation of the Partner States, especially on taxation.

531. Institutions. WAEMU institutions are as follows:

- *Heads of State Conference (Articles 17 and seq.)*. This body defines the major orientation of WAEMU policies.
- *Council of Ministers (Articles 20 and seq.)*. The council, assisted by a committee of experts, is in charge of implementing WAEMU policies. The council issues regulations, directives, and decisions and may formulate recommendations (Article 42).
- *Commission (Articles 26 and seq.)*. The Commission, which includes the governor of the *Banque centrale des États de l'Afrique de l'Ouest* (BCEAO), is the executive branch and takes care of the day-to-day administration. The Commission issues regulations for the implementation of decisions of the Council of Ministers and stipulates decisions. It may also formulate recommendations (Article 43)
- *Court of Justice (see additional Protocol I)*.
- *Audit Court (see additional Protocol I)*.
- *Inter-parliamentary Committee (Articles 35 and seq.)*. The committee is appointed by the parliament of each Member State. It contributes to integration efforts and debates, formulates resolutions, and issues reviews. It is to participate in the drafting of a treaty establishing a parliament for WAEMU.
- *Consultative entities (Article 40)*. Among these is the *Chambre consulaire régionale*, formed by the chambers of commerce and other professional organizations of the Partner States. It is specifically mentioned in the treaty and is a good example of a public-private partnership.
- *Specialized institutions*. Examples are the BCEAO and the West African Bank for Development (*Banque Ouest Africaine de Développement*, BOAD), which "contribute in full independence to the reaching of the WAEMU objectives" (Article 41).

532. Trade. The following measures are to be taken (Articles 76 and seq.) in full compliance with the provisions of the General Agreement on Tariffs and Trade (Articles 77 and 83):

- Eliminate Customs duties between Partner States, quotas, other taxes, and measures of similar impact.
- Create a common external tariff.
- Issue common rules regarding competition (private and public enterprises) and subsidies.
- Facilitate freedom of movement of goods and persons.
- Implement the principle of free movement of goods and persons
- Harmonize technical standards.

Two instruments have been enacted. Decision No. 38/2009/CM/UEMOA concerns the financing of the border posts, and Regulation No. 15/2009/CM/UEMOA defines the legal regime of the border posts by clarifying the scope of the functions of border posts agents and the general framework of the control exercised at the border posts, which also participate in the control of road traffic, especially in corridors.

533. Transport—general. Protocol II outlines WAEMU sector policies. For the transport sector, the only policy orientations stipulated are the following:

- The establishment of a transport infrastructure and transport systems improvement scheme to be prepared by the commission
- The gradual enforcement of Articles 91 to 93 of the Treaty on freedom of residence, work, business, etc. in order to allow the adaptation of the domestic industry; facilitation of transport and transit shall be given priority.

In addition to the Protocol, specific directives and recommendations are issued on each transport mode.

534. Road transport—general. Since 2004, several programs and regulations and other instruments have been adopted in road and maritime transport.

In 2009 more than 10 laws were published by the UEMOA Council of Ministers on the transport and management of corridors to reinforce the integration process through the development of roads. These laws can be found on the UEMOA website and are not included as an annex of this review.

535. **Road safety.** The following ruling instruments have been enacted on road safety in the subregion:

- *Decision No. 04/2009/CM/UEMOA on the creation, organization, and functioning of the Regional Committee of Road Safety.* The scope of the committee's work, detailed in Article 2 of the Decision, includes training road users, land transport, transport infrastructure, country planning, health and assistance for road accident victims, the automobile industry, road security checks, and communications. The mission of this Committee is to provide opinion and recommendations, check that laws are enforced, organize the subregional mobilization of the different partners, suggest which norms and standards will be acceptable in the subregion, promote research, check national and regional capacity building, and consolidate strategies, instruments, and management skills in the road safety area. The committee is composed of three representatives of each Member State.
- *Directive No. 12/2009/CM/UEMOA on harmonizing the management of road safety in UEMOA States.* According to Article 3, (1) each State shall have a national road safety policy defined by the Parliament or the Government; (2) a multi-sectoral consultative body shall be established to provide opinion on all the queries regarding the concept and the implementation of the road safety policy; (3) this consultative organism shall comprise representatives of the different fields mentioned in Article 4. A managing structure shall be established with the financial autonomy to lead and implement policy, programs, and national projects on road safety, including data collection on road accidents, research, communications, information, and education and training of road users. An autonomous fund on road safety shall be established to finance activities on road safety. Article 4 calls for the mandatory participation of persons in areas related to training, construction and development of road infrastructure, urban and country planning, road checkpoints, automobile insurance, and justice—among the most important ones.
- *Directive No. 14/2009/CM/UEMOA on a computerized system for road accidents in the Union.* Article 4 of this directive establishes a form to be completed, a data collection process, and a database. The system established also includes a mapping device of road accident data and a device for monitoring road accident victims.

Several regulations have been issued by the Council of Ministers that are directly enforceable in Member States.

- Regulation No. 14/2005/CM/UEMOA on the harmonization of laws and procedures for inspection of the size of trucks transporting goods within the Member States.
- Decision No. 15/2005/CM/UEMOA on modalities to implement the regional plan of inspection on the interstate road axis following the additional Protocol II on UEMOA sector policies.
- Directive No. 08/2006/CM/UEMOA on decreasing inspection points on the interstate roads axis within UEMOA Member States.

536. Road corridors. WAEMU road policy is strongly oriented toward developing corridors giving access to inland areas and especially to countries without access to the sea. A major instrument is Decision No. 39/2009/CM/UEMOA on the creation and management of WAEMU corridors. This Decision created 11 corridors and organized their management.¹⁶⁴ Article 4 states that each corridor is managed by a committee that is under the supervision of an Steering Council (*Conseil d'orientation*) that is in turn under the general supervision of the WAEMU Commission. It also added that several corridors could be managed by a public-private partnership committee of 12 members divided equally among the sectors. This decision is important because it details the scope of the Orientation Council mission (Article 5) as well as that of the Managing Committee (Article 8). One innovation that the concept of public-private partnership management is created for the first time in the subregion. The mission of the Managing Committee is to (1) identify the obstacles impeding traffic and the remedies to them; (2) monitor implementation of the Community regulations of transport facilitation and road transit in the corridor for which it is responsible; evaluate the impact of all facilitation measures on corridor performance; (3) collect and disseminate all information on transport facilitation and transit on the corridor; (4) promote the corridor; (5) inform and increase users' awareness of any decision or measure that may affect the corridor; and (6) take the necessary steps to enforce the laws on transport facilitation applicable to corridors. Article 9 emphasizes the public-private composition of the Managing Committee. The Abidjan-Lagos Corridor is of special interest and is reviewed in section E.

- 537. Maritime transport.** In 1998 the WAEMU Council of Ministers issued recommendations for a common program of development of the maritime subsector (recommendations dated May 1998 and July 3, 1998) and recommendations for coordination of the different national programs on the matter. It reminded members of the importance of maritime transport in WAEMU foreign commerce. The Council expressed concerns about the declining contributions of Members' fleets to maritime traffic and the lack of coordination of national strategies in the face of the rapid changes in the international maritime environment. It also noted the lack of cooperation between operators and the weakness of data collection and communication. It therefore recommended that (1) WAEMU renew coordination efforts in a free market under regulations common to all WAEMU countries and (2) establish national committees in charge of defining the common maritime policy. Ports should cooperate and a WAEMU shipping company should be established following a cooperative effort between all public and private interested parties.

After efforts to define a maritime policy, WAEMU issued a number of recommendations and directives over the next 10 years.

- 538. Regulation No. 02/2008/CM/UEMOA.** This regulation on the terms for maritime transport in WAEMU Member States is applicable to domestic maritime transport, interstate maritime transport, and international maritime transport outgoing or incoming at a port of a Member State. This regulation is applicable to both passenger transport and the transport of goods.
- 539. Regulation No. 03/2008/CM/UEMOA.** Dated March 28, 2008, this regulation applies to ship and cargo agents and other suppliers of services in the maritime transport and port industry in the Member States.
- 540. Directive No. 04/2008/CM/UEMOA.** Dated March 28, 2008, this directive concerns the implementation of a harmonized institutional framework of the maritime subsector within WAEMU countries. The goal of this directive is to facilitate the implementation of a joint development program of the maritime subsector. It also seeks to harmonize the actions of the different public and private institutions that intervene in the subsector.

All together, the delay between the 1998 definition of policies and their tentative implementation 10 years later seems to indicate that the problems of implementing a common maritime policy are difficult to solve. Traffic is in the hands of foreign com-

panies, and the competition is acute, which does not exclude arrangements between companies in the tradition of the old shipping conferences. Information is difficult to obtain because of the secretive tradition of the sector. The costs of establishing a WAEMU company would be very high. Such a company can exist only under a national flag, which also raises serious issues. Finally, cooperation between ports is largely an illusion, especially because African ports are increasingly in competition owing to the development of land transport between countries.

- 541. Air transport.** In 2002 a common air transport program framework was launched within WAEMU Member States based on Article 2 of the Treaty. The main objectives were to (1) open up the Union territory; to develop a safe air transport system in alignment with international norms; (2) promote efficacy of civil aviation administration and the competitiveness of air transport operation; (3) give the poor access to air transport at a lower cost; and (4) ensure harmonization of the sectoral national policies. The West and Central Africa Air Transport Safety project was launched and financed by the World Bank in 2006 with the objectives of improving the compliance of civil aviation authorities (CAAs) with International Civil Aviation Organization (ICAO) safety standards; increasing the compliance of CAAs with ICAO security standards; and finally enhancing the compliance of the main international airports with ICAO security standards. The project is now in its final phases, and the results have been judged satisfactory.
- 542. Evaluation.** Although the WAEMU is building strong institutions, many challenges must still be overcome to fulfill the treaty's goals. In 2008 the WAEMU Commission underlined in its annual report the persistence of barriers to the movement of goods. An example of this resistance is the technical and administrative bottlenecks imposed on community products, such as inspection formalities before boarding and the requirement to import minimal quantities. There are also physical obstacles to the freedom of movement of goods, such as escorts, undue deductions, and a multiplicity of barriers along the Corridor of the Community.
- 543. Road transport.** In road transport, a community action plan is being implemented. It has five components: (1) Road Program I, WAEMU /Ghana; (2) a road construction program for the Bamako-Dakar corridor by the south; (3) a construction program for the Dori-Tera road; (4) a construction program and transport facilitation for the Dakar-Conakry corridor; and (5) the Boke-Quebo road construction project and transport facilitation for the Conakry-

Bissau corridor. Most of these road construction and transport facilitation programs are ongoing despite the financing challenges Member States are facing. As for transport facilitation on these projects, the construction, equipping, and implementation of inspection points at the borders have been completed for some of the projects. An observatory of inappropriate practices has been developed on major interstate roads with external support. The rules on the simplification and harmonization of procedures of movement of goods and vehicles in the corridor are being developed.

544. **Maritime transport.** Since 2008 several regulations have been adopted for maritime transport in order to harmonize and strengthen the sector. The laws developed in 2009 are in response to the difficulties faced in transport and transit facilitation. The management concept of a public-private partnership in the management of corridors should improve the facilitation and transit process in the subregion.
545. **Air transport.** For several years after adoption of the common air transport program WAEMU made progress by adopting several regulations in conformity with the Yamoussoukro Decision; some of them even exceeded the decision. For example, Regulation 24/2002/CM/UEMOA on conditions for market access of air carriers within WAEMU grants all freedoms, including cabotage, after entitlement by the state members. This regulation exceeds the requirements of the Yamoussoukro Decision, which includes Third, Fourth, and Fifth Freedom traffic rights. Regulation No. 07/2002/CM/UEMOA on tariffs on air service for passengers, freight, and mail within WAEMU allows carriers to freely fix tariffs by filing only 24 hours in advance, whereas the Yamoussoukro Decision requires filing at least 30 days in advance.

E. ABIDJAN-LAGOS CORRIDOR

546. **General.** The Memorandum of Understanding creating the Abidjan-Lagos Corridor was signed in Accra, Ghana, in September 2007 by Benin, Côte d'Ivoire, Ghana, Nigeria, Togo, and the ECOWAS Commission. Its scope includes the movement of goods and persons along the corridor (Article 1.2). This MoU was followed by another MoU signed between the ECOWAS Commission and the Abidjan-Lagos Corridor Organization (ALCO) in July 2008. In that MoU, the two signatory parties agreed (1) that they would devel-

op and maintain an excellent framework of collaboration and dialogue and (2) that the ECOWAS Commission would entrust ALCO with part of the implementation of its road transport and transit facilitation program.

547. Provisions. The main provisions of the MoU creating the Abidjan–Lagos Corridor are stated in Chapter 2, Border Post Management and Law Enforcement, and in Chapter 3, Institutional Arrangements. The most important provisions follow:

- Provide adequate and well-maintained border post facilities that meet the requirements of border post users and operators.
- Improve Customs cooperation by strengthening training on trade facilitation in favor of all stakeholders, especially for Customs officers.
- Improve the exchange of statistics, transit monitoring, and data sharing between Customs headquarters and border points in and among the corridor countries.
- Establish intergovernmental joint border committees to serve as a forum for consultation and communication on issues related to border post operations.
- Harmonize business hours of all national border agencies on both sides of borders and extend the business hours of border posts to facilitate the movement of goods and persons where it is justified by the level of traffic.
- Develop and implement coordinated strategies for road traffic control, including axle load control, and traffic law enforcement.
- Develop a common schedule of road traffic-related offenses and penalties as well as documents used by law enforcers.
- Eliminate en route controls for transit cargo and passengers.
- Ensure regular maintenance of the road infrastructure.
- Install and maintain signaling and marking.
- Control the encroachment and improvement of the safety and security of vehicles, users, and goods.

548. Objectives. The objectives of this arrangement are (1) to facilitate the movement of goods and persons on the Abidjan-Lagos Corridor by simplifying and harmonizing the border controls that govern the movement of goods and per-

sons, enabling interconnectivity among Customs authorities along the corridor, or developing and implementing coordinated strategies for road traffic control and road safety; (2) establish, build consensus, and foster cooperation and information flows among all control agencies at the border; (3) secure and monitor the implementation of the ECOWAS Transport Program along the Corridor; and (4) ensure compliance with the international transit code.

- 549. Institutions.** The additional Protocol of 2008 established ALCO as the corridor organization for the fight against HIV/AIDS. The Road Transport and Transit Facilitation and Cross-Border Corridor Management Committees in West Africa were created by the decision of the Heads of State and Government in 2005 to monitor the performance of the corridor.
- 550. Evaluation.** Overall, the outcome of the project is satisfactory in all its components. In terms of health, it has promoted awareness of the HIV/AIDS danger and reduces the stigma against the sickness and better collaboration among state members. As for transport and transit, it has increased the capacity building of Customs agents along the borders and better practices to apprehend the criminals. A six-year World Bank-financed project became effective in August 2010 that seeks to reduce the barriers to trade and transport in ports and on the roads along the corridor.

The Memorandum of Understanding creating the Abidjan–Lagos Corridor on Transport and Transit Facilitation appears in **Annex VII-31** of this review.

F. MANO RIVER UNION¹⁶⁵

- 551. General.** The Mano River Declaration was concluded in Malema, Sierra Leone on October 3, 1973, by the Presidents of Liberia and Sierra Leone, in follow-up to two statements issued March 16, 1971, and January 28, 1972, on accelerating the economic growth, social progress, and cultural advancement of the two countries. Guinea joined the Mano River Union on October 25, 1980. According to the Declaration:
- A Customs union called the Mano River Union is created.
 - Mutual trade between Mano River Union members will be liberalized through the elimination of tariff and nontariff barriers.

- Rates of import duties for goods of local origin will be harmonized
- The secretariat of the Union shall be in Freetown and a Customs training school will open in Monrovia.

552. **Transport.** Additional agreements were concluded in the form of successive protocols on which information is missing. The Consolidated Fourth Protocol (1980) identifies a series of instrumental activities or common policies, such as a common program for the development of transport. The Consolidated Thirteenth Protocol establishes a Union Technical Commission for Transport and Communications in the Secretariat.

553. **Evaluation.** The Mano River Union underwent a dormant period because of political turmoil in the region. It was reactivated on May 20, 2004, at a Summit of Heads of State organized in Conakry, Guinea. However, no documents are available to allow a practical analysis.

The Mano River Declaration was filed with the UN Secretariat as No. 16308 (reference 952 UN Treaty Series 264). A copy of the Declaration appears in **Annex VII-32** of this review.

G. RIVER TRANSPORT INSTRUMENTS¹⁶⁶

554. Four instruments are in effect:

- Two 1972 instruments related to the Senegal River: the *Convention relative au statut du Fleuve Sénégal* and the *Convention portant création de l'Organisation pour la mise en valeur du fleuve Sénégal*
- Two 1964 and 1980 instruments related to the Niger River.

The 1972 instruments on the Senegal River were preceded by a first agreement concluded on February 17, 1968, and establishing *the Organisation des États riverains du fleuve Sénégal* (OERS). Partner States were Guinea, Mali, Mauritania, and Senegal. The agreement was registered with the UN Secretariat (672 UN Treaty Series 251). The OERS was dissolved on November 17, 1971, following difficulties in relations between Guinea and Senegal.¹⁶⁷

555. The *Convention et Statuts relatifs à la mise en valeur du bassin du Lac Tchad*, concluded by Cameroon, Chad, Niger, and Nigeria on May 22, 1964, includes

Article 7, which declares that the Partner States “shall establish common regulations to facilitate to a maximum navigation and transport on the lake.” These regulations were to be drafted by the Chad Basin Commission created by the same convention and seated in N’Djamena.

a. *1972 Nouakchott Convention Relating to the Senegal River*

556. The *Convention relative au statut du fleuve Sénégal* was concluded in Nouakchott, Mauritania, on May 11, 1972. Signatories were Mali, Mauritania, and Senegal. The preamble refers to the rational economic use of the Senegal River and its use for navigation. Only this aspect is reviewed here.

557. **Principles.** The Convention refers in its preamble to the UN Charter and to the Charter of Africa Unity but not to the 1921 Convention on International Rivers. The reason may be that these States, then French colonies, did not benefit from the French ratification of the 1921 convention. The main principles of the Convention are as follows:

- *Article 1.* The Senegal River is designated as an international river (*fleuve international*), including its tributaries. There is, however, no definition of an international river and, as just noted, the Convention does not refer to the 1921 instrument that could have provided such a definition.
- *Article 2.* The Partner States “solemnly affirm their will to guarantee equal treatment of users.”

558. **Provisions on transport.** The main provisions on transport of Title II of the Convention are as follows:

- *Article 6.* Navigation is “entirely free and open to the citizens [of the Partner States], to boats and goods from the Partner States, to boats chartered by one or more Partner States, on an equal footing as regards port and navigation dues.” Specific regulations, to be issued later, will apply to foreign boats.
- *Article 7.* The Partner States commit themselves to the maintenance and conservancy of the Senegal River. Separate conventions shall set forth rules and procedures of financing.
- *Article 8.* Dues or rates shall not be discriminatory and shall be levied only for compensation of costs of services to shipping and navigation.

- *Article 9.* Roads, railways, and canals that may be constructed for the special purpose of avoiding the non-navigable portions of the river shall be considered an integral part of the river and shall be equally open to international traffic. The same regime shall apply to lakes. On the roads, railways, and canals, tolls shall be computed on the basis of and limited to the compensation of construction, conservancy, and administration of facilities and services.
- *Article 10.* A joint agency shall be established for the safety and control of navigation in order to facilitate traffic as much as possible.

The Convention appears in Annex VII-33 of this review, but does not appear to have been filed with the UN Secretariat and cannot be traced in the Treaty Series.

b. *1972 Nouakchott Convention portant création de l'Organisation pour la mise en valeur du fleuve Sénégal*

559. *The Convention portant création de l'Organisation pour la mise en valeur du fleuve Sénégal* was concluded in Nouakchott, Mauritania, on May 11, 1972, and amended on April 15, 1973, by Resolution No. 4/CCEG CD. Signatories were Mali, Mauritania, and Senegal, and Guinea has since joined the group.
560. **Scope and objectives.** The Convention creates a “joint cooperation agency for the development of the resources of the Senegal River, named the *Organisation pour la mise en valeur du fleuve Sénégal* (OMVS).” The agency is to implement the 1972 convention and to coordinate studies and research and any assignment that the Partner States may give it (Article 1).
561. **Institutions.** The institutions of the agency are the following:
- *Conference of Heads of State (Articles 3 to 6).* This body is in charge of policy definition and decisions.
 - *Council of Ministers.* This “organ of policy definition and supervision of the agency” (Article 8) defines the general policy, approves the budget, and makes financial decisions, especially on the financial contributions of each Member State (Articles 8 to 11).
 - *General Secretariat (Articles 12 to 16).* This permanent body is in charge of the day-to-day administration, studies, reviews, statistics, etc.

562. **Evaluation.** There is continual progress on strengthening the agreements between the river States. The 2002 Charter setting the principles and procedures for allocating the use of water by the different sectors is an example of this continuing effort and is especially important for the sustainable development of the subregion. Several attempts have been made to increase the participation of Guinea in the decision-making process. In 2003, Guinea participated in the Summit of Heads of State in Nouakchott, Mauritania. In 2004, the country participated for the first time in the Inter-Ministerial Meeting held in Dakar, Senegal, between Guinea and OMVS Member States.

The *Convention portant création de l'Organisation pour la mise en valeur du fleuve Sénégal* appears in **Annex VII-34** of this review. The Convention does not appear to have been filed with the UN Secretariat. It cannot be traced in the UN Treaty Series.

c. *1964 Niamey Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger*

563. The Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger was concluded at Niamey, Niger, on November 25, 1964, by Benin (then Dahomey), Burkina Faso (then Haute Volta), Cameroon, Chad, Côte d'Ivoire, Guinea, Mali, Niger, and Nigeria. It was revised in Niamey on February 2, 1968, and June 15, 1973, in Lagos on January 26, 1979, and by the Faranah Convention on November 21, 1980.
564. The 1964 Niamey Agreement on the Niger River Commission is enforceable because all Partner States ratified it in 1965–66. It was adopted at the Conference of the Riparian States of the River Niger, Its Tributaries and Sub-tributaries, in Niamey in October 1963. The conference adopted the Act of Niamey setting forth the principles of cooperation between riparian states. However, the 1964 Niamey Agreement, according to its Article 12, is an integral part of the Act of Niamey.
565. **Enforceability of 1921 Convention.** The 1964 Niamey Agreement makes no reference to the 1921 Convention on International Rivers. The Partner States therefore do not consider themselves bound by the provisions of this Convention. It should be noted, however, that Nigeria may be a party to it because it inherited the ratification operated by the United Kingdom on its account when the country was part of the British Empire. Anyway, the rules set in the

Agreement are in line with the spirit of the 1921 Convention, especially in the opening to international traffic, equal treatment, and the reasonableness of tariffs and rates.

566. Institutions. The main provisions of the 1964 Niamey Agreement are:

- *Article 1.* A Niger River Commission is established in Niamey.
- *Article 2.* The Commission shall prepare general regulations for the full application of the principles set forth in the Act of Niamey. Such regulations shall be binding on the riparian States after their approval and a time limit set by the Commission. The Commission will ensure liaison with the Partner States, collect all information on the Niger River and its basin, follow the progress of studies and works in the basin, and draw up navigation regulations.
- *Articles 3 to 8.* Each riparian State shall appoint a commissioner. Commissioners will meet once a year. An administrative secretary will conduct with staff the affairs of the Commission.
- *Article 11.* The Commission shall have the status of an international organization.

The Niger River Commission appears to have met six times between 1964 and 1980 and was replaced that year by the Niger Basin Authority.

567. Transport. Provisions of the Agreement regarding transport are as follows:

- *Article 13.* Taxes and duties payable by vessels and goods using the river and its facilities shall be in proportion to services rendered to navigation and shall in no way be discriminatory.
- *Article 14.* Roads, railways, and canals that may be constructed for the special purpose of avoiding the non-navigable portions of the river shall be considered an integral part of the river and shall be equally open to international traffic.

On these facilities, only such tolls shall be collected as calculated on their cost of construction, maintenance, and management. For such tolls, the nationals of all States shall be treated on the basis of complete equality.

The Agreement Concerning the Niger River Commission and the Navigation and Transport on the River Niger was filed with the UN Secretariat as No. 8507 (reference 587 UN Treaty Series 362). The text appears in **Annex VII-35** of this review.

d. *1980 Convention Creating the Niger Basin Authority (with a Protocol Relating to the Development Fund of the Niger Basin)*

568. General. The Convention Creating the Niger Basin Authority was concluded in Faranah, Guinea, on November 21, 1980, by the Signatories of the 1964 Niamey Agreement, of which it is, according to its Article 21, a revision. Based on the 1964 Act of Niamey, it originates in a will to give new energy to the River Niger Commission, as decided in a meeting of the Heads of State and Government held at Lagos in January 1979. The final objective is a promotion of economic development through an integrated development of the Niger River Basin (see preamble of the Convention).

569. Institutions. The following provisions describe the institutions of the Niger Basin Authority:

- *Article 1.* Niger River Commission becomes Niger Basin Authority.
- *Articles 5 to 7.* The institutions of the Niger Basin Authority are the Summit of Heads of State and Government, Council of Ministers, Technical Committee of Experts, and Executive Secretariat and its specialized agencies. The Summit of Heads of State and Government meet every two years and defines the general orientation of the policy of the authority. The Council of Ministers meets annually and monitors the activities of the Executive Secretariat, the executive branch of the authority. Each Member State is represented in both bodies and has one vote.
- *Articles 10 to 14.* The operating budget of the authority is financed by the contributions of Member States, paid in convertible currency. Accounts are kept in special drawing rights.
- *Article 16.* The Niger Basin Authority is incorporated as an intergovernmental institution. The executive secretary and his or her deputy are granted diplomatic immunity.

570. Transport. The responsibilities of the authority are much broader than those of the commission. It is in charge of all integrated development policies in the

Niger Basin, including transport. Its specific duties in the area of transport are described in Article 4-2(b) as the following:

- Design, study, and construction of works, plants, and projects in the field of transport
- Improvement and maintenance of navigable waterways
- Development of river transport and promotion of an integrated multi-modal transport system (sea-river-rail-road) as a factor of integration and for opening up the landlocked Sahelian Member States.

As the 1980 Faranah Convention is only a revision of the 1964 Niamey Agreement, it is likely that the financial provisions (tolls and dues) stipulated then are still in effect.

The Convention Creating the Niger Basin Authority and its attached protocol came into force on December 2, 1982. It was filed with the UN Secretariat as No. 22675 and is published in the UN Treaty Series. The text appears in **Annex VII-36** of this review.

571. At the 8th Summit of the Heads of State and Government held on April 30, 2008, a legal instrument was adopted. The purpose of this instrument is to ensure that the Niger River is managed in a sustainable manner, and also it serves as a legal basis to prevent and manage potential risks that may arise from users of the river. There is now greater interest in the management of the river because it serves a large percentage of population of the riparian countries not only as their transport to access social services and markets, but also for the important role that its good use could play in reducing poverty and protecting the environment.

H. MARITIME TRANSPORT CHARTER FOR WEST AND CENTRAL AFRICA AND SUBSEQUENT INSTRUMENTS

572. Three levels of instruments are reviewed in this section:

- 1975 Maritime Transport Charter setting forth basic policy objectives
- 1977 Convention on the institutionalization of the Ministerial Conference of the ministers in charge of maritime transport in Partner States
- Annexes to the 1977 convention (two) being themselves conventions establishing the following:

- Association of National Shipping Lines
- Union of National Shippers' Councils
- Ports Management Association
- A framework of regionalization of the Nungua/Accra and Abidjan Maritime Training Centers.

None of these instruments were filed with the UN Secretariat. They are not inserted in the UN Treaty Series.

a. *1975 Abidjan Maritime Transport Charter*

573. **General.** The Maritime Transport Charter concluded in Abidjan, Côte d'Ivoire, on May 7, 1975, was ratified or acceded to by Angola, Benin, Burkina Faso, Cameroon, the Central African Republic (then Empire), Cabo Verde, Chad, Republic of the Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Nigeria, Niger, Senegal, Sierra Leone, Togo, and Zaire (today, Democratic Republic of the Congo).

574. **Maritime affairs.** The decisions on maritime affairs made during the 1975 Abidjan conference and formulated in the charter were as follows:

- Set up a permanent coordinating body on maritime transport and institutionalize the Conference of Ministers in Charge of Maritime Affairs (Ministerial Conference).
- Establish shippers' councils and regroup them within the framework of a cooperating body.
- Set up national and regional facilitation committees.
- Organize state intervention in the area of ancillary services such as stevedoring, cargo handling, freight forwarding, etc.
- Encourage grouping of freight and the development of FOB imports and CIF exports.
- Develop local maritime insurance entities.

575. **Shipping companies.** The objectives selected were as follows:

- Develop local shipping lines.

- Take the majority of shares when developing a shipping company with foreign participation.
- Set up an African Conference for West and Central Africa.
- Ensure rapid “Africanization” of the representatives in Africa of foreign maritime conferences serving Africa.
- Undertake a study on the feasibility of setting up international shipping companies.

576. Ports. The decisions made were as follows:

- Develop management structures with wide port management autonomy to increase efficiency.
- Encourage management association of West and Central African ports.
- Undertake development studies for the accommodation of container vessels and bulk carriers.

577. Landlocked States. For these States, the following objectives were set:

- Institutionalize the participation of landlocked States in the management of ports serving the hinterland.
- Grant preferential tariffs to hinterland-bound or export cargoes from landlocked States.

578. Training. A decision was made to develop regional training centers & schools.

The Maritime Transport Charter for Central and West Africa appears in **Annex VII-37** of this review.

b. *Convention on the Institutionalization of the Ministerial Conference*

579. The Accra Convention on the Institutionalization of the Ministerial Conference was replaced by the Maritime Organization for West and Central Africa (OMAO), which is reviewed in chapter III, Regional Instruments.

580. Objectives. On February 27, 1977, the Signatories of the Maritime Transport Charter signed the Convention on the Institutionalization of the Ministerial

Conference in Accra, Ghana. The objectives of the Conference are as follows (Articles 1 to 5):

- Set up national and regional merchant fleets, shippers' councils, and regional training centers.
- Adopt measures to improve and develop port management and operation and to give preferential and adequate treatment to the need of landlocked countries for access to the sea.

581. Institutions. The Ministerial Conference is composed of the following:

- *General Assembly (Articles 6 to 10).* The General Assembly is composed of the ministers in charge of merchant shipping .
- *Permanent General Secretariat (Articles 11 and 12).* This body is the executive branch of the Ministerial Conference.
- Specialized agencies whose statutes are attached to the Statutes of the Conference: Association of National Shipping Lines, Union of National Shippers' Councils, Ports Management Association, and Côte d'Ivoire and Ghana Maritime Training Schools.

The headquarters of the Ministerial Conference is Lagos, Nigeria. The Conference has decided to establish an Association of Maritime Administrations/Merchant Marines whose goals will be to bring together all the maritime administrations to cooperate and develop national and subregional capacities in safety, security, and environmental protection.

The Convention on the Institutionalization of the Ministerial Conference appears in **Annex VII-38** of this review.

c. *Association of National Shipping Lines*

582. Status and objectives. The Constitution of the Association of National Shipping Lines is attached as Annex A to the Accra Convention and is an integral part of it. The preamble makes explicit reference to the Code of Conduct of Conferences adopted in Geneva on April 7, 1974, and to the need for the Parties to the Accra Convention to create national shipping lines. The objectives of the association are mainly to harmonize and coordinate the activities and

trade policies of the national lines, with a view toward making optimum and economic use of their transport capacity.

583. The institutions of the association are follows:

- *Council*. This body is made up of the top executives of the national shipping lines of the Partner States.
- *Operations Committee*. The committee is made up of the directors of operations of each of the shipping lines members of the association.
- *Permanent Secretariat*.

The Constitution of the Association of National Shipping Lines (Annex A to Charter) appears in **Annex VII-39** of this review.

d. *Union of National Shippers' Councils*¹⁶⁸

584. The Constitution of the Union of National Shippers' Council is attached as Annex B to the Accra Convention and is an integral part of it. The preamble refers to the 1973 Code of Conduct for Liner Conferences and to the close cooperation required between National Shippers' Councils to strengthen their power of consultation and negotiation with the conferences. The objectives are to reinforce negotiation mechanisms, take measures against unreasonable freight rate increases, rationalize traffic and implement the Code of Conduct¹⁶⁹ (Article 3), promote cooperation policies for the transportation of goods, and reduce the effects of transportation costs on the economies of Member States.

585. The institutions of the Union of National Shippers' Councils are:

- *General Assembly*. The General Assembly is composed of CEOs and Union members. It is responsible for determining the objectives and policy of the Union; examining and approving the program of activities; and drafting the budget and accounts prepared by the General Secretariat.
- *Steering Committee*. The main responsibility of the Steering Committee is to supervise the operations of the General Secretariat. It also carries out the preliminary examination of the draft budget and the accounts.
- *General Secretariat*. The General Secretariat implements the Union policies, drafts the program of activities and implements it after adoption, and prepares the draft budget and implements it after adoption.

- *Auditors.* The Auditors audit and certify the Union's accounts.
- *Permanent or ad hoc committees.* These committees are established by the General Assembly when necessary.

The Constitution of the Union of National Shippers' Councils (Annex B to charter) appears in **Annex VII-40** of this review.

e. *Port Management Association*

586. Constitution and membership. The Ports Management Association of West and Central Africa (PMAWCA) is established in October 1972 under the auspices of the Economic Commission for Africa (UNECA) and following a recommendation made at a meeting of the African Ministers in charge of transport, held in Tunisia in February 1971. The PMAWCA Constitution is attached as Annex C to the Accra Convention. It is an agreement between the Heads of port authorities who were represented by the Signatories of the Accra Convention. However, Article 11 of the Constitution states that the signatures of five port authorities are necessary for the Constitution to come into force to establish the Association as a corporate entity in accordance with the statutes of the country in which the Association filed for incorporation (Nigeria). Statutory members of the Association are port authorities. Associate members are port operators from States not within the jurisdiction of the United Nations Economic Commission for Africa (UNECA) or private economic operators from States within the jurisdiction of the UNECA but not providing port services, if port services in these States are government controlled and financed.

Clearly, the spirit of the Constitution is that neither the African nor expatriate port private sector is welcome in the association.

587. Objectives. The association seeks to do the following:

- Improve, coordinate, and standardize operations equipment and services.
- Establish relationships with transportation institutions, undertakings, international organizations, and others.
- Provide a forum for members.

588. Institutions. The institutions of the association are the following:

- *Council.* The Council is the supreme body of the association. Each member may appoint two representatives.
- *General Secretariat.* The General Secretariat is funded by the annual dues of the States. The Permanent Secretariat has a diplomatic status.
- *Steering Committee.* The Steering Committee is composed of a chair, two vice chairs, a treasurer, and two members.
- *Technical committees.* Examples of the technical committees are Administrative and Legal Affairs, Finance, and Economic.

The Constitution of the Port Management Association of West and Central African States (Annex C to Charter) as appears in **Annex VII-41** of this review.

f. *Training schools*

589. The Convention on the Regionalization of the Nungua-Accra and Abidjan National Maritime Institutes (*Académie régionale des sciences et techniques de la mer*, ARSTM) is attached as Annex D to the Accra Convention and is an integral part of it. This regional academy has two schools: the College of Navigation (trains seamen and industrial staff) and the maritime transport college (trains shore staff).

The Convention appears in **Annex VII-42** of this review.

VIII. Conclusion

This review is certainly still incomplete, particularly the bilateral agreements, although some multilateral agreements are missing as well. For example, the instruments related to shipping and ports in West Africa are well identified and well known, but they are not as well-known in other parts of Africa. It is hoped that consultation of this document will encourage readers to send to the SSATP the text of or references to any instrument that may still be missing.

This review has also revealed that access to and ratification of basic worldwide agreements on trade, transit, facilitation, and transport are uneven. The fact that some regional or subregional instruments make explicit references to conventions that have not been ratified by the signatories of the instrument is in itself a positive indication. It shows that the signatories are well informed about the superior international instrument and that they are anxious that their own instruments be in line with the basic corpus of international law accepted and operated by the international community. And yet a more careful follow-up of the necessary accession to and ratification of the major conventions would be in order. It is the responsibility of ministries in charge of foreign affairs. But, since the matter is special and often quite technical, it is up to the agencies in charge of transport, ports, facilitation, Customs, and the like to bring to the attention of their ministry of foreign affairs the importance of ensuring that the set of international instruments is in good order.

Furthermore, this review appears to indicate a conflict of jurisdiction between regional organizations such as the Organization of African Unity (predecessor of the African Union) and the General Secretariat of the United Nations. Too many regional and subregional agreements were not filed with the UN Secretariat, despite the provisions to that effect stipulated in Article 14 of the UN Charter. These agreements were most probably filed with the OAU or the AU, which is the depository of a number of conventions. Nevertheless (although this is not certain), a regional institution is not a substitute for the United Nations. A random selection of non-African regional or subregional conventions or agreements has revealed that similar negligence can be observed, but to a somewhat lesser degree, in other regions or subregions of the

world. This is a modest consolation, however, and an effort may also be recommended in that area. Meanwhile, this may be an opportunity for the denunciation of obsolete agreements, particularly bilateral or executed agreements between a limited number of States. These agreements either overlap with or are contradictory to more recent and broader ones.

However desirable may be the above recommended measures of clarification of the international law corpus, this aspect is not the main issue. How this corpus is translated in domestic legislation and regulations and how these are implemented or enforced need to be better known. The magnitude of litigation and its outcome have not been evaluated. Except for South Africa, the effort by the Organization for the Harmonization of Business Law in Africa (*Organisation pour l'harmonisation du droit des affaires en Afrique*, OHADA) to disseminate jurisprudence is next to unique and calls for a similar action to be initiated, and most importantly maintained elsewhere in the region. Whether court decisions have an impact on legislation and practice is unknown. So is the status and state of arbitration and so is, unfortunately, the degree of confidence that operators may have in the legal setup and the amount of safety they can derive from it. A review of international instruments would be of modest value if it did not measure the gap between their provisions and their actual enforcement—or the lack of it.

List of Annexes

ANNEXES TO CHAPTER II

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- Annex VI-8 Maputo Corridor Constitution Act (Maputo, 2010))
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- Annex VII-31 Memorandum of Understanding creating The Abidjan-Lagos Corridor on Transport and Transit Facilitation (Accra, 2007)
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¹⁹ E. Lauterpacht, “Freedom of Transit in International Law,” *Transactions of the Grotius Society* 44 (1958–59): 313; L. Oppenheim, *International Law* (London: Longman, 1955), 675; G. Schwarzenberger, *A Manual of International Law* (Milton, U.K.: Professional Books, 1961), 103.

²⁰ For each of the conventions, treaties, or other agreements quoted in this document, the status of ratification or accession for African States is indicated. It is based on the United Nations Treaty Series and is up to date only as far as the series is current.

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²⁴ See League of Nations Treaty Series, vol. 30, no. 371.

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²⁶ Cuba, Lao People's Democratic Republic, Jordan, and the Islamic Republic of Iran are also Contracting Parties.

²⁷ The goal was to streamline administrative procedures and remove cross-border technical barriers.

²⁸ On this subject, see A. W. Lowe, "The Right of Entry into Maritime Ports in International Law," *San Diego Law Review* 4 (1977): 597–622.

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³² On this subject, see B. Mercadal, *Droit des transports terrestres et aériens* (Paris: Dalloz, 1996), 177–248; M. Allégret, “Transports internationaux ferroviaires, Jurisclasseur commercial,” Fasc. 680, Paris, 1996.

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³⁶ Both terms are used. *Combined* is especially used in the United States.

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³⁸ United Nations Treaty Collection, Chapter 11, Transport and Communications, Multimodal Transport.

³⁹ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Scope of Application and Freedom of Contract—CMI—Colloquium on the Rotterdam Rules, Rotterdam, September 21, 2009.

⁴⁰ See International Chamber of Commerce, “ICC Uniform Rules for a Combined Transport Document,” Publication No. 298. Paris.

⁴¹ On Incoterms, see I. Ramerg, *Guide to Incoterms* (Paris: International Chamber of Commerce, 1991); F. Reynolds, *Incoterms for Americans, Simplifies and Answers Questions about Incoterms for U.S. Foreign Traders* (Holland, OH: International Projects, 1993); M. L. M. Granziara, *Contratos internacionais, negociacao e renegociacao comentarios aos Incoterms* (São Paulo, Brazil, 1993).

⁴² In fact, ICC/UNCTAD rules would be more accurate because the original text is an ICC document.

⁴³ Rule 2 contains only definitions.

⁴⁴ See P. Hugon, ed., *Analyse comparative des processus d'intégration économique régionale* (Paris: Ministère des Affaires étrangères, 2001), 183–89; R. H. Thomas, *The EU-South Africa Trade Development and Cooperation Agreement: Precedent or Complicating Factor?* Regional Workshop on the Cotonou ACP-EU Agreement, What Are the Options for SADC? (Harare, 2000); Yann Alix, *Les Corridors de Transport* (Cournelles-le-Royal, France: Editions EMS Management et Société, 2012).

⁴⁵ See G. J. Naldi, *The Organization of African Unity: An Analysis of Its Role* (London: Mansell, 1989). The text of the OAU Charter can be found in *African Yearbook of International Law* 8 (2000): 481–523; L. B. Sohn, ed., *Basic Documents of African Regional Organizations*, 4 vols. (New York: Oceana, 1972); M. Glele-Ahanhanzo, *Introduction à l'Organisation de l'Unité africaine et aux organisations régionales africaines* (Paris: LGDJ, 1986).

⁴⁶ Guinea was suspended after the 2008 coup d'état, Madagascar after the Malagasy political crisis, and Niger after the 2010 coup d'état.

⁴⁷ S. Ndebele, "African Maritime Transport Charter Adopted," October 19, 2009, <http://www.gov.za>.

⁴⁸ See A. Amjadi and A. Yeats, "Have Transport Costs Contributed to the Relative Decline of Sub-Saharan Exports? Some Preliminary Empirical Evidence," Policy Research Working Paper 1559, World Bank, Washington, DC, 1995.

⁴⁹ The First Transport Decade was followed by a second one that ended 1990. Preparation for the decade included identification of needs, and it was financed by the United Nations Development Programme (UNDP). In fact, it does not appear that the identified programs and projects were specially selected for financing by the bilateral or multilateral donors and that the preparatory work had an actual impact on the selection of projects.

⁵⁰ "OAU–Lagos Plan of Action for the Implementation of the Monrovia Strategy for Economic Development of Africa," Lagos, 1981; Resolution of the Lagos Plan of Action in UNDP, "Economic Cooperation and Integration among Developing Countries: A Review of Recent Developments in Sub-regional, Regional and Interregional Organizations and Arrangements," TD/B/C.7/51 (1988), vol. 1, 7.

⁵¹ For additional information, see <http://www.icafrica.org>.

⁵² Twenty-first NEPAD Heads of State and Government Implementation Committee (HSGIC), Sirte, Libya, June 30, 2009.

⁵³ On this subject, see E. Berg, "Regionalism and Economic Integration in Sub-Saharan Africa," U.S. Agency for International Development (USAID), Washington, DC, 1988; D. A. De Rosa, "Regional Integration Arrangements, Static Economic Theory, Quantitative Findings and Policy Guidelines," World Bank, Washington, DC, 1998; E. Foroutan, "Regional Integration in Sub-Saharan Africa: Past Experience and Future Prospects," in *New Dimensions in Regional Integration*, ed. J. de Melo and A. Panagariya (Cambridge: Cambridge University Press, 1993); B. Thompson, "Legal Problems of Economic Integration in the West African Sub-Region," *African Journal of International and Comparative Law* 2 (1990): 85–102; B. Thompson, "Economic Integration Efforts in Africa: A Milestone, the Abuja Treaty," *African Journal of International and Comparative Law* 5 (1993): 743; J. Senghor, "The Treaty Establishing the African Economic Community, an Introductory Essay," *African Yearbook of International Law* 1 (1993): 183–94; N. Luaba Lumu, "De la nature de la Communauté économique africaine," *African Journal of International and Comparative Law* 8 (1996): 51–66; S. Babalola Ajulo, "Temporal Scope of ECOWAS and AEC Treaties, a Case for African Economic Integration," *African Journal of International and Comparative Law* 8 (1996): 111–38; A. Mahiou, "La Communauté économique africaine," *Annuaire français de droit international* 29 (1983): 798.

⁵⁴ The treaty and other documents refer to the communities as "regional." However, because the region in UN parlance is Africa, the communities are designated here as sub-regional.

⁵⁵ The date of the starting period is unclear. It may be either the original date or the date two years after the end of phase 3.

⁵⁶ Article 18 of the charter can be found at www.africa-union.org/Official_documents.

⁵⁷ The Maritime Organization of West and Central Africa (MOWCA) was created in 1975, prior to the charter, and is based in Abidjan, Côte d'Ivoire. It has 25 members—20 coastal States and 5 landlocked States. The coastal members are Angola, Benin, Cameroon, Cabo Verde, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Nigeria, Republic of Congo, Sierra Leone, São Tomé and Príncipe, Senegal, and Togo. The landlocked States are Burkina, the Central African Republic, Chad, Mali, and Niger. The charter gave it an incentive to be more effective.

⁵⁸ www.au.int/files/AFRICAN_MARITIME_TRANSPORT_CHARTER.pdf.

⁵⁹ Also see United Nations Conference on Trade and Development (UNCTAD), "Review of Maritime Transport," 2009, http://unctad.org/en/docs/rmt2009_en.pdf.

⁶⁰ African Union Decision on the Second African Union Conference of Ministers Responsible for Maritime Transport, DOC. EX.CL/556 (XVI), February 2010, [http://www.africa-union.org/root/ar/index/EX.CL%20Dec.521-555\(XVI\)_E.pdf](http://www.africa-union.org/root/ar/index/EX.CL%20Dec.521-555(XVI)_E.pdf).

⁶¹ OHADA has been the subject of a considerable literature. For a comprehensive bibliography, see "Bibliographie des articles et ouvrages consacrés à l'OHADA," *Penant* 110 (2000): 232–40.

Also see M. Kirsch, “Historique de l’OHADA,” *Penant* 108 (1998): 129–35; L. Sawadogo, “Le traité relatif à l’harmonisation du droit des affaires en Afrique,” *Annuaire français de droit international* 40 (1994): 823–48; J. G. Gervais de Lafond, “Le traité relatif à l’harmonisation du droit des affaires en Afrique,” *La Gazette du Palais* 263 (November 1994): 26–27; P. G. Pogoué, *Le droit des sociétés commerciales et du groupement d’intérêt économique* (Yaoundé, Cameroon: Presses de l’Afrique, 1998); P. Tiger, *Le droit des affaires en Afrique* (Paris: Presses universitaires de France, 1999); N. Morelle-Kombi, “L’avenir de l’OHADA,” *Revue juridique et politique—indépendance et coopération* 54 (2001): 243–51. Also see OHADA (London: Kagan Page, 2003).

⁶² “Un tournant décisif: L’adhésion de la RDC à l’OHADA,” Lettre d’Information OHADA.com du 19/02/2010.

⁶³ Sebastien Vilder and Aude Godfroy, “Recent Developments in OHADA Treaty: Continued Effort of Harmonization of Business Law in Sub-Saharan Africa,” 2009.

⁶⁴ For more information on the amendments and declarations, see www.ohada.com.

⁶⁵ See www.ohada.com/fichiers/newsletters/332/opening-address-ohada-conference-accra.pdf.

⁶⁶ See J. R. Gomez, “Analyse critique de l’avant-projet d’Acte uniforme organisant des sûretés dans les États membres de l’OHADA,” *Penant* 107, no. 825 (1997).

⁶⁷ OHADA’s arbitration regime was the subject of a special issue of *Penant* 110 (2000): 125–232.

⁶⁸ The text of the Treaty amended can be found at www.ohada.com.

⁶⁹ Paul Gerard Pougoue and Sylvie Sorel Kuate Tameghe, “Les grandes décisions de la cour commune de justice et d’arbitrage de l’OHADA,” *L’harmattan* (2010).

⁷⁰ There is abundant literature on the Acte Uniforme. For more details, see the following articles: Nicole Lacasse and Jacques Putzeys, “L’Acte Uniforme de l’OHADA Relatif aux Contrats de Transport de Marchandises par Routes,” OHADA, April 2006; Ibrahima Khalil Diallo, “Etude de l’Acte Uniforme Relatif au Contrat de Transport de Marchandises par Routes, Ohadata,” May 2008; Joseph Issa-Sayegh, “Présentation générale de l’Acte Uniforme sur le Contrat de Transport de Marchandises par Route,” Ohadata, July 2003.

⁷¹ See *Penant* 113, no. 845 (November 2003); K. M. Brou, “Le nouveau droit des contrats de transport de marchandises par route dans l’espace OHADA,” 394–446.

⁷² See X. Forneris, “Governance, Development and Globalization. Harmonizing Commercial Law in Africa: The OHADA,” University of Warwick, U.K., 2000.

⁷³ For jurisprudence in common law countries, see A. Milner, ed., *The African Law Reports, Commercial Law Series* (New York: Oceana). Three volumes are published per year.

⁷⁴ M. Ndulo, “The Need for the Harmonization of Trade Laws in the Southern African Development Community,” *African Yearbook of International Law* 3 (1996): 195–225. In the collection entitled “Du Recueil de Jurisprudence de la Cour Commune de Justice et D’Arbitrage,” vol. 1, OHADA 2003–05, there is no report of case law related to the Uniform Act Relative to the Contracts on Road Transport of Goods.

⁷⁵ See R. Dossou Yovo, “La nouvelle réglementation des opérations d’assurance dans les pays africains de la zone franc: un pas vers l’intégration économique régionale,” *Revue juridique et politique—indépendance et coopération* 48 (1995): 132–46.

⁷⁶ Code CIMA, Edition 2009, Livre III, Titre I, Chapitre Unique, Section II, from Articles 309 through 310-6.

⁷⁷ This, of course, is valid only between parties to the treaty. There is no obligation whatsoever for other states or institutions (other African States, European states, etc.).

⁷⁸ See V. E. Bokalli, “Le nouveau droit du contrat d’assurance des États africains francophones,” *African Journal of International and Comparative Law* 10 (1996): 423–45; 12 (1998): 423 ff.

⁷⁹ Code des Assurances CIMA, Nouvelle Edition 2009.

⁸⁰ The Cotonou Agreement provides for a revision clause that foresees that the agreement is adapted every five years until 2010.

⁸¹ The Cotonou Agreement represents progress in a number of respects. It is designed to establish a comprehensive partnership based on three fundamentals: development cooperation, economic and trade cooperation, and a political dimension. For the purposes of this study, only the provisions relevant to trade, transit, and transport are mentioned here.

⁸² Olufemi Babarinde and Gerrit Faber, eds., *The European Union and the Developing Countries: The Cotonou Agreement* (Leiden, The Netherlands: Martinus Nijhoff, 2005).

⁸³ Article 34 of the Cotonou Agreement emphasizes WTO conformity as an objective of this cooperation. This conformity is also reiterated in Articles 36 and 37.

⁸⁴ World Bank, *Doing Business 2009* (Washington, DC: World Bank, 2009).

⁸⁵ For complete information on the Cotonou Agreement, see <http://www.acpsec.org/en/>

⁸⁶ In April 1968, the Central African Republic and Chad left UDEAC for the creation, with Zaire, of the Union des États de l’Afrique centrale (Central African States Union). In December 1968, the Central African Republic returned to UDEAC; Chad returned in 1984. See *Yearbook of International Organizations*, 1995/1996, vol.1, 1473.

⁸⁷ On this subject, see D. Gbetnkom, “La dynamique de l’intégration économique régionale par le marché, l’exemple de l’UDEAC,” thesis, third cycle, Université de Yaoundé, November 1995.

⁸⁸ On this subject, see S. Delaouane-Gherari and H. Gherari, *Les organisations régionales africaines* (Paris: La Documentation française, 1981), 311–13 (bibliography); M. L. Marasinghe, “A Review of Regional Economic Integration in Africa with Particular Reference to Equatorial Africa,” *International and Comparative Law Quarterly* 33 (January 1984): 39–56; L. K. Mytelka, *International Capital and Regional Integration in the UDEAC*, (Ottawa: International Development Research Center, 1977); P. Robson, “L’UDEAC et la Communauté d’Afrique orientale, comparaisons et contraintes,” *Études et Statistiques*, no. 131, Banque centrale des États de l’Afrique équatoriale et centrale, Brazzaville, February 1968, 121–43; B. Vinay, “Coopération intra-africaine et intégration: l’expérience de l’UDEAC,” *Penant* 81, no. 733 (1971): 313–31; M.

Yondo, *Dimension nationale et développement économique, théorie et application dans l'UDEAC* (Paris: LGDJ, 1970).

⁸⁹ Also see Philippe Cabanius, "Improvement of Transit Systems in Central Africa," UNCTAD, June 2003, <http://www.unctad.org>.

⁹⁰ "Bordeaux Ct of A. Dec 21, 1994," *Bulletin des transports internationaux* (1995): 74.

⁹¹ European case law is strict on the interpretation of *force majeure*.

⁹² Because of the wording of Article 2, there is still a doubt whether this is "and" or "or."

⁹³ Hakim Ben Hammouda and Hachim-Mamadou Koumaré, *Les transports et l'intégration régionale en Afrique*, Commission Economique pour l'Afrique (Paris: Maisonneuve and Larose, 2004); Bitse Ekomo Christophe Bernard, "La côte atlantique du Cameroun et les Etats sans littoral d'Afrique Centrale: évolution et défis de la question d'accès à la mer," Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 2008, www.un.org

⁹⁴ United Nations Economic Commission for Africa, "Rapport—Réunion sous-Régionale Préparatoire au Troisième Forum pour le Développement de l'Afrique (ADF III)," Yaoundé, Cameroon, February 3–5, 2002.

⁹⁵ CEMAC, UEAC, Secrétariat Exécutif, Programme D'Actions Exercice 2005; CEMAC, UEAC, 14eme session ordinaire du Conseil des Ministres, Programme D'Actions du Secrétariat Exécutif de la CEMAC, Exercice 2006.

⁹⁶ "Le rôle et les activités du Comité Opérationnel de suivi du plan directeur consensuel des Transports en Afrique Centrale (PDCT-AC)."

⁹⁷ On this subject, see D. Avom, "Le traité de la CEMAC: nouveau départ pour le processus d'intégration en Afrique centrale," *Revue juridique et politique—indépendance et coopération* 52, no. 2 (1999): 158–79; C. K. Tchepnga, "Le droit public camerounais à l'épreuve du droit communautaire de l'UDEAC/CEMAC. L'exemple du contrôle de la profession d'expert-comptable," *African Journal of International and Comparative Law* 11 (1999): 474; J. Noaungue Kobila and L. Donpack, "La CEMAC, à la recherche d'une nouvelle dynamique de l'intégration en Afrique centrale," *African Yearbook of International Law* 6 (1998): 64–106.

⁹⁸ The Conference of Heads of States requested an audit of the activities of the institution from the time of its inception through 2004. The audit report was released in February 2006, and the result of the diagnosis was to replace the Executive Secretariat with a commission that would be given more decision power to implement the laws and decisions made by the Conference of Heads of States.

⁹⁹ An interstate air transport agreement (*Accord relatif au transport aérien entre les États membres de la CEMAC*) was signed on August 18, 1999. Attached to it are the procedures for follow-up of CEMAC's air transport policy (*Mécanisme de gestion et de contrôle de la mise en œuvre de la politique des transports aériens dans la CEMAC*).

¹⁰⁰ By July 2008, the Democratic Republic of the Congo had still not ratified the code. A workshop was thus organized in its capital city to promote ratification.

¹⁰¹ In June 2008, CEMAC experts met in Brazzaville to revise the Merchant Shipping Code. The goal was to adapt the revised code to the recent International Code Safety for Merchant Shipping and Ports Installations and all the relevant laws and regulations enacted by the International Maritime Organization (IMO). To date, the final revised version has not yet been published because of the long process for its entry into force. This revision is made with the technical support of the IMO. The revised code appears in Annex IV-8 of this review.

¹⁰² According to the CEMAC Programmes of Actions 2005, it was necessary to revise this code and the CEMAC/RDC Code of Interior Navigation.

¹⁰³ CEMAC experts have encouraged the insertion in the revised code of the relevant rules of the 2008 New York Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea—otherwise known as the Rotterdam Rule. But such an insertion may cause a series of conflicts in laws because this newly enacted UN convention has not yet been entered into force.

¹⁰⁴ *Réglementation sur le régime de transit communautaire et le mécanisme de cautionnement unique.*

¹⁰⁵ The system is called *acquitt-a-caution*.

¹⁰⁶ Chad and the Republic of Congo have not yet acceded.

¹⁰⁷ The Central African Republic, Chad, and Republic of Congo have not yet acceded to this convention.

¹⁰⁸ CEMAC, “Diagnostic Institutionnel, Fonctionnel et Organisationnel de la CEMAC,” tome I, Performances Management Consulting, February 2006.

¹⁰⁹ Economic Commission for Africa/Sub-Regional Office for Central Africa (ECA/SRO-CA), “Réunion ad hoc d’experts sur l’harmonisation des programmes et activités des acteurs de l’intégration en Afrique centrale,” September 2006. The programs and activities related to transit and transport facilitation of all these subregional organizations should be harmonized. If not, laws could come in conflict because many of the Member States are also parties to other subregional organizations. For example, Burundi, Democratic Republic of Congo and Rwanda are members of the *Communauté Économique des Grands Lacs* (EPGL). This necessity has also been highlighted by experts from the Economic Commission for Africa.

¹¹⁰ *Plan directeur consensuel des transports en Afrique centrale (PDCT-AC).*

¹¹¹ *Comité de suivi de la mise en œuvre du PDCT-AC.*

¹¹² *Communauté Économique des États de l’Afrique centrale (CEEAC), “Plan d’action 2008-2015 pour l’amélioration du transport aérien en Afrique centrale,”* Kinshasa, October 24, 2009.

¹¹³ *Journal Officiel de la Communauté Economique des Etats de l’Afrique Centrale (CEEAC),* French edition, no. 8 (April 2012).

¹¹⁴ Provisions regarding facilitation are the same in the 1978 and 1982 versions.

¹¹⁵ On this subject, see J. Banfeld, “The Structure and Administration of the East African Common Services Organisation,” in *Federation in East Africa, Opportunities and Problems*, ed. C. Leys and F. Robson (London, Nairobi, 1965); A. Hazlewood, “The Territorial Incidence of East African Common Services,” *Bulletin of East African Economics and Statistics* 18, no. 1 (September 1979): 40–58; A. R. Rok, “The Impact of the East African Treaty on the Distribution of East African Common Services Organization Benefits,” *East African Economics Review* 3 (December 1967): 39–52; J. H. Proctor and K. G. V. Krishna, “The East African Common Services Organization: An Assessment,” *South Atlantic Quarterly* 64 (1965): 526–48.

¹¹⁶ On this subject, see I. Doimidi de Lupis. *The East African Community and Common Market* (London: Longman, 1970); W. C. Asare, *La Communauté d’Afrique de l’Est* (Paris: Université Paris I, 1977); D. Ghai, “Territorial Distribution of Benefits and Cost of the East African Common Market,” *East African Economic Review* 6 (1964); D. Ghai, “State Trading and Regional Economic Integration,” *Journal of Common Market Studies* 12, no. 3 (1974); Brett, “Closer Union in East Africa,” in *Inter-State Relations in Africa*, ed. D. Austin and H. N. Weiller (Fribourg, Switzerland, 1965), 51–67.

¹¹⁷ On this subject, see F. Constantin, “La fin de la Communauté est-africaine: commentaires à l’usage de l’Afrique de l’Ouest,” *L’Année africaine* (1977): 404–25; A. Hazlewood, “The End of the East African Community: What Are the Lessons for Regional Integration Schemes?” *Journal of Common Market Studies* 18, no. 2 (September 1979), 40–58; D. Kappeler, “Causes et conséquences de la désintégration de la communauté est-africaine,” *Politique étrangère* 42, no. 3 (1978): 319–30; A. T. Mugomba, “Regional Organizations and Africa under Development: The Collapse of the East African Community,” *Journal of Modern African Studies* 16, no. 2 (1978): 260–72; N. Mwase, “Regional Economic Integration and the Unequal Sharing of Benefits: Background to the Disintegration and Collapse of the East African Community,” *African Review* 8, no. 1.2 (1978); A. Segal, “The East African Common Market: Historic, Cultural and Incidental Dysfunctions,” *African Review* 8, no. 1.2 (1978).

¹¹⁸ Articles 49 and 50 of the 2007 Agreement.

¹¹⁹ To date, the working agreement has not yet been located.

¹²⁰ On this subject, see W. Kaawha, “The Treaty for the Establishment of the New East African Community: An Overview,” *African Yearbook of International Law* 7 (1999): 61–84; A. Leon, “East African Cooperation,” in *Analyse comparative des processus d’intégration économique régionale*, ed. P. Hugon (Paris: Ministère des Affaires étrangères, 2000), 112–23; G. G. Maasdorp, “The Establishment of an East African Trade Regime,” EAC Secretariat, 1999; A. Rajaram, A. Yeats, N. Ng’eno, N. Musonda, and F. Mwau, “On the Appropriate Transition to an East African Customs Union,” EAC Secretariat, Arusha, Tanzania, 1999; H. G. K. Nyakoojo, “Freeing Cross-Border Trade in Agricultural Products,” Country Report Uganda, in *Cooperation with GTZ*, EAC Secretariat, Arusha, Tanzania, 2000; Munetsi Madakufamba, “Region Takes Giant Step toward African Economic Community,” *SANF 09*, no. 1 (January 2009);

Reuters, "FACTBOX-East African Common Market Begins," July 1, 2010, Richard Frimpong Oppong, "The African Union, the African Economic Community and Africa's Regional Economic Communities: Untangling a Complex Web," *African Journal of International and Comparative Law* 18 (2010); "Talking Notes for Minister of East African Community," Hon. Amason Jeffah Kingi, MP—Infrastructure Development in East African Community.

¹²¹ AEC Railways Conference, March 11, 2010, Dar es Salaam, Tanzania.

¹²² This is a rather surprising statement because the partner states did ratify the convention individually.

¹²³ <http://www.eac.int/about-eac.html>.

¹²⁴ For information on the implementation of subregional agreements, conventions, and other instruments on transport and facilitation, see InterAfrica (Pty) Ltd. (UNCTAD consultant), "Review of Progress in the Development of Transit Transport Systems in Eastern and Southern Africa," UNCTAD/LDC/115, July 20, 2001.

¹²⁵ On this subject, see S. Belahouane-Gherari and H. Gherari, *Les organisations régionales africaines* (bibliography on South Africa, in French) (Paris: La Documentation française, 1988), 324–36; M. Aicardi de Saint Paul, "Interdépendance économique en Afrique australe," *Le Mois en Afrique*, no. 217/218 (February 1984): 38–62; M. R. A. Heiman, "The Drive towards Rationalization in Southern Africa: Fictional Reality," *African Journal of International and Comparative Law* 9 (1997): 640–65.

¹²⁶ S. O. Ettinger, "The Economics of the Customs Union between Botswana, Lesotho, Swaziland and South Africa," University of Michigan, Ann Arbor, 1974.

¹²⁷ R. Kirk and M. Stern, "The New Southern African Customs Union Agreement," African Region Working Paper Series No. 57, World Bank, Washington, DC, June 2003.

¹²⁸ On this subject, see Economic Intelligence Unit, "SADC in the 1990s: Development on the Front Line," Special Report No. 1158, London, 1989; SADC Annual Reports, "Report of the SADC Council of Ministers on the Review of the Operations of SADC," Gaborone, Botswana, 2000; A. B. Shankango, *20 Years of Development in South Africa: A Sectoral Review of Regional Integration of SADC*, Harare, Zimbabwe, 2001; H. Labayle, "La SADC ou les difficultés d'une coopération économique régionale en Afrique australe," *L'Année africaine* (1981): 254–80; M. O. Blanc, "La SADC, la SACU et l'Afrique du Sud," in *Analyse comparative des processus d'intégration économique régionale*, ed. P. Hugon (Paris: Ministère des Affaires étrangères, 2000), 124–41; R. Mtengen-Migiro, *Institutional Arrangements for Economic Integration in Southern Africa: A Study of SADC and the PTA with Experience from the EEC* (Konstanz, Germany: Harting-Gorre, 1992); A. M. Mawanzu, ed., *Structural Adjustment Programs in SADC: Experience and Lessons from Malawi, Tanzania, Zambia and Zimbabwe* (Harare, Zimbabwe: SAGES, 1992); M. Ndulo, "The Need for the Harmonization of Trade Laws in the Southern African Development Community," *African Yearbook of International Law* 4 (1996): 195–225;

M. B. Gleave, *The Dar es Salam Corridor: An Appraisal* (London: African Affairs, 1992), no. 91, 249–67.

¹²⁹ See H. Sano and K. Mizuno, “Regional Transport Infrastructure in Southern Africa,” *Japan Bank for International Cooperation Review*, no. 2 (November 2000): 116–33.

¹³⁰ See Yao Adzigbey, Charles Kunaka, and Tesfamichael Nahusemay Mitiku, “Institutional Arrangements for Transport Corridor Management in Sub-Saharan Africa,” Sub-Saharan Africa Transport Policy Program (SSATP) Working Paper No. 86, October 2007.

¹³¹ On this subject, see J. Baloro, “Rights of Access to the Sea, International Legal Aspects of Land-locked SADC States Dependency on the Republic of South Africa, University of Swaziland, ca. 1980; T. Maluwa, “Southern Africa Landlocked States and Rights of Access under the New Law of the Sea,” *International Journal of Marine and Coastal Law* (1995): 529–42; R. K. Sizani, “The Law of the Sea Convention and the Rights of Neighboring African Land-locked States to Fish in the South African Fishing Zone,” *African Journal of International and Comparative Law* 3 (1991): 597; S. Marks, “Transit Rights of Lesotho,” *Commonwealth Law Bulletin* (1990): 329–48.

¹³² UNCTAD Document LDC 115, July 20, 2001.

¹³³ “SADC Major Achievements and Challenges: 25 Years of Regional Cooperation and Integration,” [/www.sadc.int/cms](http://www.sadc.int/cms).

¹³⁴ For a general overview of achievements and challenges, see SADC Infrastructure, Development Status Report for Council and Summit, September 2009, <http://www.sadc.int>

¹³⁵ On this subject, see M. Gondwe, “From PTA to COMESA. The Quest for Sub-regional Economic Integration in East and South Africa,” *African Yearbook of International Law* (1998): 3–22; S. Karangizi and M. J. Musonda, “The Institutional Framework of COMESA,” in *The Free Trade Area of the Common Market for Eastern and Southern Africa*, ed. V. Murende (Aldershot, U.K.: Ashgate, 2001); O. Abegunrin, *Economic Dependence and Regional Cooperation in Southern Africa: SADCC and South Africa in Confrontation* (Lewiston, NY: Edwin Mellen Press, 1990); M. Lundahl and L. Petersson, *The Dependent Economy: Lesotho and the Southern African Customs Union*, (Boulder, CO: Westview Press, 1991); Namibian Economic Policy Research Unit, “Namibia and the Southern African Customs Union,” Windhoek, Namibia, 1992; M. O. Blanc, “Le devenir du COMESA,” in *Analyse comparative des processus d’intégration économique régionale*, ed. Ph. Hugon (Paris: Ministère des Affaires étrangères, 2000), 137.

¹³⁶ See S. G. Mwale, “A Historical Background of the Formation of COMESA,” in *The Free Trade Area of the Common Market for Eastern and Southern Africa*, ed. V. Murende (Aldershot, U.K.: Ashgate, 2001).

¹³⁷ Angola left the Common Market, and Lesotho left in 1997, Mozambique in 1997; and Namibia on May 2, 2004. Somalia does not appear to be a member state, perhaps because of two decades of civil war. Tanzania left the Common Market on September 2, 2000.

¹³⁸ <http://comesa.int>.

¹³⁹ See <http://www.mcli.co.za>.

¹⁴⁰ Daniel Brundige, Elizabeth Dawson, Mackenzie Massey, and Sasha Moore, "An Economic Development Strategy for the Trans-Kalahari Corridor," Worcester Polytechnic Institute, Worcester, MA, 2011.

¹⁴¹ See "Report on the Infrastructure Components of the North-South Corridor," prepared on behalf of the Tripartite Task Force by TradeMark Southern Africa, December 2011.

¹⁴² For information on the corridors, see www.uneca.org

¹⁴³ For more information on corridors, see Adzibey, Kunaka, and Mitiku, "Institutional Arrangements for Transport Corridor Management in Sub-Saharan Africa."

¹⁴⁴ See J. Verdier, "La Commission de l'Océan Indien de la coopération à l'intégration économique," *Marchés tropicaux*, no. 48, November 25, 1994.

¹⁴⁵ For an overview of the institutions, see <http://www.coi-ioc.org/>.

¹⁴⁶ See details in *Yearbook of International Organizations, 1995/1996*, vol. 1, 699.

¹⁴⁷ G. Campbell, ed., *The Indian Ocean Rim: Southern Africa and Regional Cooperation* (New York; Routledge Curzon, 2002).

¹⁴⁸ On the subject as a whole, see Belaouane-Gherari and Gherari, *Les organisations régionales africaines*; G. C. Abangwe, *Systems Approach to Regional integration in West Africa Journal of Common Market Studies* 13, no. 1-2 (1975): 113–35; R. O. Akeju, "The Political Economy of Prosperity: Possibilities and Problems of Functional Integration in West Africa," Howard University, Washington, DC, 1977; J. P. Renninger, *ECOWAS and Other West African Regional Organizations, Multilateral Cooperation for Development in West Africa* (Oxford, U.K.: Pergamon Press, 1979); R. E. Ubogu et al., *Development Planning Priorities and Strategies in the Economic Community of West African States* (Ibadan, Nigeria: Heinemann Educational Books, 1983).

¹⁴⁹ Belahouane-Gherari and Gherari, *Les organisations régionales africaines*, 138–47; J. C. Gauthron, "La Communauté économique de l'Afrique de l'Ouest, antécédents et perspectives," *Annuaire français de droit international* 21 (1975): 196–215.

¹⁵⁰ On this subject, see S. Belahouane-Gherari and S. Gherari, *Les institutions régionales africaines* (Paris: La Documentation française, 1988). A bibliography on ECOWAS (CEDEAO) and other institutions in West Africa appears on pages 152–67. Also see M. Irele, *The ECOWAS, A Bibliography and Sourcebook* (Lagos, Nigeria, 1990); U. Ezenwe, *ECOWAS and the Economic Integration of West Africa* (London: C. Huirst, 1983); Babalola Ajulo, "Temporal Scope of ECOWAS and AEC Treaties: A Case for African Economic Integration," *African Journal of International and Comparative Law* 8 (1996): 111–38; K. O. Kufor, "Law, Power, Politics: Critical Issues Arising Out of the New ECOWAS Treaty," *African Journal of International and Comparative Law* 6 (1994): 429–48; I. A. Gambari, *Political and Comparative Dimensions of Regional Integration. The Case of ECOWAS* (Atlantic Highlands, NJ: 1991); I. E. Okolo, "The Development and Structure of ECOWAS," in *West African Regional Cooperation and Develop-*

ment (Boulder, CO: Westview Press, 1990); A. Ovwah, "Harmonisation of Laws within the Economic Community of West African States," *African Journal of International and Comparative Law* 6 (1994); K. O. Kufor, "Securing Compliances with the Judgments of the ECOWAS Court of Justice," *African Journal of International and Comparative Law* 9 (1996): 1–11; A. Akanni-Honvo, "L'UEMOA et la CEDEAO," in *Analyse comparative des processus d'intégration économique régionale*, ed. Ph. Hugon (Paris: Ministère des Affaires étrangères, 2000), 142–63.

¹⁵¹ However, it is surprising, given that the instrument is bilingual and both languages have equal legal force, that the ECOWAS website presents only the English-language version.

¹⁵² Yao. G. Adzigbey. "ECOWAS/UEMOA Regional Road Transport and Transit Facilitation Programme," UNCTAD–World Bank Trade Facilitation Seminar, Geneva, May 13, 2004.

¹⁵³ This decision represents a comprehensive set of guidelines for development of the transport sector related to the ECOWAS transport program, including, among other things:

- Free movement of persons, goods, and capital
- Introduction of regionwide motor vehicle insurance
- Regulation of axle loads on interstate roads
- Establishment of an interstate road transit trade for landlocked countries
- Creation of autonomous funds for road maintenance.

¹⁵⁴ On the interconnection of railways networks in West Africa, see United Nations Economic Commission for Africa, "Study on the Interconnection of the Railway Networks in West Africa, Addis Ababa, Ethiopia, 1993–96. The study was recommended by UNCTAD in its report on the Second Africa Transport Decade, 1985–90.

¹⁵⁵ The Fifth Freedom is the right to disembark or to pick up passengers and freight to and from any Contracting State. In fact, the content and interpretation of the Fifth Freedom concept have been the source of considerable difficulties.

¹⁵⁶ This short-term program was reinforced by the January 2000 Bamako Declaration of Ministers and Governors of Central Banks of ECOWAS and UEMOA underlining, among other things, the needs to accelerate regional integration by completing the regional road programs and to implement the infrastructure construction projects—notably, the rail, marine, and air transport links between ECOWAS countries. The ECOWAS mini-summit of March 2000 also made decisions on removing roadblocks and easing formalities at borders, implementing of the Road Maintenance Initiative.

¹⁵⁷ No instrument related to a First Phase has yet been identified.

¹⁵⁸ On the perennial issue of checkpoints, see N'Guessan N'Guessan, "Problématique de la gestion intégrée des corridors en Afrique subsaharienne," SSATP Analysis Document No. 3F, World Bank, Washington, DC, 2001 (in French).

¹⁵⁹ For an example of domestic legislation on the Brown Card, see (1) Togo Decree No. 85-13 creating the national bureau in charge of implementing in Togo the ECOWAS system Brown Card regarding third-party car insurance (*Journal officiel de la République togolaise*, March 7,

1985), and (2) Togo By-law No. 127/MEF/DA setting forth the procedures of the ECOWAS Brown Card National Bureau, March 8, 1985.

¹⁶⁰ See M. V. Gasiokwu, "ECOWAS Problems of Citizenship and Free Movement, Nigeria, 1998"; "A "Compendium of Protocols, Conventions and Decisions Relative to the Free Movement of Persons and Goods," ECOWAS Executive Secretariat, Lagos, Nigeria, 1998.

¹⁶¹ "ECOWAS Commission Strategic Plan for 2007–2010," May 2007.

¹⁶² Charles E. Schlumberger, "Open Skies for Africa, Implementing the Yamoussoukro Decision," World Bank, Washington, DC, 2010.

¹⁶³ "L'Union économique et monétaire ouest africaine, un traité pour l'avenir," ADE, Louvain la Neuve, Belgium, 1995; L. M. Ebriga, "L'UEMOA, une nouvelle approche de l'intégration économique régionale," *African Yearbook of International Law* 6 (1998): 23–64.

¹⁶⁴ These corridors are Abidjan-Yamoussoukro-Ferkessedougou-Leraba-Ouagadougou-Kantcharri-Makalondi-Niamey; Abidjan-Yamoussoukro-Ferkessedougou-Zegoua-Sikasso-Bougouni-Bamako; Cotonou-Malanville-Niamey-Gao; Cotonou-Tindangou-Ouagadougou-Heremakono-Bamako; Lome-Cinkanse-Koupela-Kantchari-Makalondi-Niamey-Gao; Lome-Cinkanse-Ouagadougou-Heremakono-Bamako; Dakar-Diboli-Bamako-Herekamono-Ouagadougou-Kantchari-Makalondi-Niamey; Dakar-Bissau; Bissau-Pirada-Tambacounda-Kedougou-Kita-Bamako; San Pedro-Odiene-Bougouni-Bamako; and Abidjan-Bouna-Gaoua-Pa-Ouagadougou-Niamey.

¹⁶⁵ P. Pennetta, "The Mano River Union," *African Journal of International and Comparative Law* 8 (1996): 403–27. This is a comprehensive bibliography on the subject.

¹⁶⁶ On this subject, see L. Calfisch, "Règles générales du droit des cours d'eau internationaux," *Recueil des cours de l'Académie de droit international de La Haye* 219 (1989-III): 20; T. Malewa, "The Development of International Fluvial Law in Post-colonial Africa, The Senegal Regime," *Revue de droit international, de sciences diplomatiques et politiques* 67 (1989): 23; K. Rowny, *West Africa Contribution to the Law of International Watercourses* (Ile-Ife, Nigeria: University of Ife Press, 1974); M. Mubuala, "Le régionalisme africain en droit international fluvial," *African Journal of International and Comparative Law* 6 (1994): 449–70; M. Mubala, "La théorie du riverain léonin," *African Journal of International and Comparative Law* 8 (1996): 307–13.

¹⁶⁷ Guinea withdrew from the OERS and the organization became defunct. See http://www.transboundarywaters.orst.edu/research/case_studies/OMVS_New.htm.

¹⁶⁸ See K. C. Nubukpo, "Les conseils nationaux des chargeurs des pays en voie de développement. L'exemple du Niger," *Revue juridique et politique—indépendance et coopération* 41 (1987): 168–84.

¹⁶⁹ See L. Nojambou, "Le destin des conférences maritimes sur la COA dans le contexte des indépendances nationales et de la libéralisation des échanges," *Cahiers d'Outre-Mer*, no. 178, June 4, 1997, 137–50.