II. Issues in International Land Transport

2.1 International land transport issues are too varied, and sometimes too complex in nature, to be realistically addressed within the framework of a single agreement. This explains the multiplicity of related international agreements, conventions, protocols etc, each focusing on specific aspect(s) of international transport. These agreements vary widely in terms of their contents and geographic coverage. While some are specific to a particular transport mode, others apply to transport in general. While some deal with inter-state transport, others deal exclusively with transit transport. Similarly, some of these are region-specific in scope, while others are open for world-wide accession.

2.2 It is perhaps an indication of the complexity of international land transport issues that, unlike the International Civil Aviation Organization (ICAO) for air transport and the International Maritime Organization (IMO) for maritime transport, there is no one single inter-governmental organization to deal with international land transport. Nevertheless, the development of an international land transport route or corridor can today make use of substantial experiences generated by the development and application of a large number of international agreements and conventions as well as the functioning of various organizations having expertise in international land transport issues.

2.3 The United Nations Economic Commission for Europe (ECE) has been particularly prolific in this respect. ECE has sponsored as many as 53 international transport agreements and conventions since its inception in 1947, covering various aspects of international transport, particularly in relation to road transport. Other international organizations and conferences like the Intergovernmental Organization for International Railway Transport (OTIF), the International Road Union (IRU), International Road Federation (IRF), International Union of Railways (UIC), European Commission (EC), Organization for Railways Cooperation (OSShD), European Conferences of the Ministers of Transport (ECMT), the Trans-European Transport Conferences, to name a few, have made, and continue to make, significant contribution towards an improved understanding of and agreement on various international land transport questions.

2.4 Since international transport involves the use of transport infrastructure and vehicles in moving goods and natural persons across national boundaries, issues relating to infrastructure, vehicles, goods and natural persons all need to be addressed to make efficient international transport possible. Therefore, any transport agreement aimed at developing and operationalizing a transport route or corridor will need to deal with these issues either directly or by invoking other related agreements. As far as infrastructure is concerned, some of the key issues are the harmonization of technical and operational standards and requirements of international routes under various modes, as well as user charges for such infrastructure. For vehicles, the key issues include commercial operating rights, vehicle registration, vehicle technical standards, traffic rules and signage, driving licenses, third party liability, and temporary importation of vehicles for the purpose of carrying goods and people across national frontiers. The movement of goods requires facilitation of customs procedures, an efficient transit regime, various kinds of inspection of goods, people and plants, as
2.5 Broadly speaking, the issues addressed by international agreements, conventions and organizations fall under two categories: the so-called "hardware" issues of harmonizing the technical and operational standards and requirements of land transport infrastructure, vehicle and equipment and related installations, and secondly, the "software" issues of facilitation of international border-crossings through the harmonization of the relevant legal and administrative systems.

2.6 While adjustment in and development of transport infrastructure in a coordinated manner is critical to ensure technical compatibility and inter-operability of national transport systems, coordination in the management and control of traffic and user information is key to optimizing the use of such infrastructure. The gains in efficiency from technical measures can however be offset in the absence of streamlined legal and administrative systems for international border-crossings. Discriminatory road charging, restrictive traffic quotas, restrictions on the use of foreign trucks on territory of particular countries and, last but not the least, the amount of time needed for police, customs and security clearance of vehicles and drivers are some of the factors that influence directly the transport operator's choice of the traffic route. When these and other factors are not adequately dealt with, traffic will be lost to alternative routes, involving waste on the side of the transit country which loses potential income from transit traffic and the shipper who takes a less efficient or more expensive route.

A. "Hardware" Issues of an International Land Transport Route

2.7 In operationalizing an international land transport route, the problem of incompatibility with respect to infrastructure, equipments and vehicles may be addressed either by adopting common standards or applying technical solutions. It is however generally agreed that the use of a common standard rather than technical solution is the most efficient long-term answer to the problem of technical incompatibility between national transportation systems. An important question is how such technical standardization can be applied in a realistic manner to a particular land transport route. While a minimum level of standardization is required for all land transport modes, the need for interoperability of transport networks is perhaps more immediately felt in rail transport than in road transport, particularly since the road vehicles and their operators can adapt more easily to an existing difference in the technical characteristics of transport infrastructure. On the other hand, the legal and administrative issues facing international road transport seem to be more difficult to deal with as compared with railway transport in which the networks tend to be State-owned or regulated monopolies. In Europe and Asia, most administrative arrangements between railways are regulated within the framework of either the COTIF Convention of OTIF or the SMGS Agreement of OSShD. Both these systems will be discussed below.
A.1 Hardware Issues: Railway Transport

2.8 The need for developing technical and operational standards in international railway transport has been long recognized. The International Agreement on Railway Technical Unity (UT), concluded at Berne in 1882, sought to ensure the compatibility and security of rail techniques by setting technical standards for international railway equipment. The International Union of Railways (UIC) was created in 1922 as a permanent conference of national railway administrations to work towards the standardization and improved conditions of rail systems. The UIC Code is disseminated through more than 600 technical leaflets, updated on a regular basis, which deal with technical as well as economic and commercial aspects of railways. Starting with 51 networks from 29 countries, the UIC’s membership today includes 92 railway networks from 63 countries, from five continents. UIC has the competency in the matter of technical specifications for rolling stock, track and structures and motive power.²

2.9 The scope of technical standardization extends beyond rolling stock, track and structures and motive power to the development and application of uniform technical rules for the carriage of special categories of goods. The Regulations Concerning the International carriage of Dangerous Goods by Rail (RID) provides a framework for carriage of dangerous goods by railways. RID, which is annexed to the COTIF Convention to be discussed later, is harmonized with ADR (for road transport) by joint ADR/RID Meetings.

A.2 Hardware Issues: Road Transport

2.10 In international road transport route, a more uniform road typology improves the ability of vehicle operators to adapt driving in greater safety. Efforts to standardize road structure in Europe, under the aegis, inter alia, of ECE and IRF, have produced valuable experience. The international conventions now largely cover transverse sections, longitudinal slopes, the clearance of the engineering structures, the design of interchange, etc. The Convention on Road Traffic 1968, through its Annex 5, deals with technical conditions concerning motor vehicles and trailers used in international traffic. The uniform technical rules for the carriage of dangerous goods by roads are contained in the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) of 1957. The ADR Agreement is intended to replace the variety of national and local regulations applicable to international transport of dangerous goods. In addition to classifying, packaging and labelling dangerous goods, ADR is concerned with construction and equipment of vehicles and tanks and with the means of carrying the goods, service requirements, loading, unloading, handling and operation of vehicles. The ECE is responsible, through the Economic and Social Council (ECOSOC), for the harmonization of all provisions governing the transport of dangerous goods at the world level and for all modes of transport. The work of the ECOSOC in this area is carried out by the Committee of Experts on the Transport of Dangerous Goods, which has produced the “Regulations on the Transport of dangerous Goods”, also known as the “Orange

²The technical and operational differences are often addressed through technical solutions rather than the adoption of common technical standards. For example, the Eurostar which runs from London to Paris involves 3 networks and the Channel Tunnel and uses three types of power supply and four types of signalling.
Book”. First produced in 1956, the Orange Book, which has undergone ten revisions, sets out the minimum requirements applicable for the transport of dangerous goods by all modes of transport.

2.11 There are a number of ECE sponsored international agreements on road traffic and road sign and signals. By means of harmonizing the often conflicting national road signs and signals, imposing restrictions on weights and dimensions of vehicles permitted to travel on certain roads, and prescribing minimum requirements for the issue and validity of driving permits, these agreements and conventions aim at promoting a safer and more efficient national and international road transport. These issues are important to ensure that an appropriate balance is struck between speed and safety in international land transport routes.

B. “Software” Issues in International Land Transport
B.1 Transit Agreements and International Land Transport Routes

2.12 When a land route passes through the territories of different countries, the carriage of traffic, whether of goods or passengers, along such a route is possible only when a country grants to the others the right of transit through its territory under specified conditions. Such transit rights are fundamental to the operation of an international transport route in the sense that all other measures designed to facilitate international carriage of goods and passengers become relevant only when such rights of transit have been granted. Given that sovereign states have exclusive jurisdiction over transportation within its territory, such rights, and limits on such rights, can be created only sovereign states by voluntarily signing bilateral, multilateral or international agreement and/or convention.

2.13 The need for an international transit convention or agreement is often discussed in the context of providing to the land-locked countries free access to the sea. The 1965 New York Convention on Transit Trade of Land-locked Countries, developed under the auspices of UNCTAD, specifically addresses this particular issue. In this Convention, “traffic in transit” is defined as “the passage of goods including unaccompanied baggage across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage.” (Article 1b). It should be noted that the Convention makes an explicit reference to the movement of goods only, and not to passenger traffic. The Article 2(3) obligates a Contracting State to “authorize, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons necessary for traffic in transit.” It would thus appear that the scope of the Convention is restricted to goods traffic and serves

3 The agreements, among others, are listed at Annex I.


5 Of the 40 land-locked states in the world, 12 are located in the ESCAP region, namely: Afghanistan, Armenia, Azerbaijan, Bhutan, Kazakhstan, Kyrgyzstan, Lao PDR, Mongolia, Nepal, Tajikistan, Turkmenistan and Uzbekistan.

6 ESCAP member countries which are signatories are Afghanistan, Lao PDR, Mongolia, Nepal, Russian Federation and Turkey.
the needs of international land transport only to the extent that it forms part of a transport chain which must include sea transport.

2.14 Similarly, the scope of most bilateral and multilateral transit agreements concluded by land-locked countries and coastal countries is also limited to providing an access to the sea, and fall far short of providing general freedom of transit.

2.15 International land transportation, in so far as it includes not only overland bilateral transport but also overland transit transport across one or more countries, underscores the need for recognizing freedom of transit as a universal need rather than as a need specific to the land-locked countries. The universal nature of the need for freedom of transit was recognized in the Convention and Statute on Freedom of Transit, concluded on 20 April 1921 at Barcelona.7

2.16 Unlike the 1965 Convention, the Barcelona Convention of 1921 covers international traffic of both goods and passengers. Traffic is “deemed to be in transit across territory under the sovereignty or authority of one of the Contracting Parties, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place.” (Article 1 of Statute on Freedom of Transit). Transit rights created under the Barcelona Convention are thus broader in scope than those under the New York Convention. At the same time, the Barcelona Convention only provides for transit by rail or waterway, but not by road.

B.2 International Contracts of Carriage

2.17 Most international land transport is carried out under private contracts that regulate the rights, obligations and responsibilities of a chain of stakeholders including passengers, carriers, consignors, consignees, transport operators, insurers and so on. The efficiency of international transport largely depends on the efficiency with which these contracts are concluded and enforced. Unlike domestic transport contracts, the performance of these contracts spans different national legal systems. This creates a degree of legal uncertainty about the rights and obligations of different stakeholders in international transport, which is clearly detrimental to efficiency in international transport. Reflecting this, there is a long tradition of efforts at improving the efficiency of international transportation through the standardization of the conditions that govern contracts for international carriage of goods by all transport modes.

2.18 The Berne Convention on the international transport of goods by rail was adopted in 1890, followed by the Brussels Convention of 1924 on maritime transport of goods under bills of lading and the 1929 Warsaw Convention on air transport. This process of covering major transport modes was completed in 1961 with the adoption of the 1956 Convention on the Contract for the International Carriage of Goods by Road (known usually as CMR convention), developed under the aegis of ECE. Some of the major international conventions as applied to railway and road transport modes are described in greater detail below.

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7 ESCAP member countries which are signatories are: Cambodia, India, Islamic Republic of Iran, Japan, Lao PDR, Nepal, Thailand and Turkey.
B.2.1 Contract of Carriage by Railway

2.19 The Berne Convention of 1890 led to the implementation of the first convention for the international carriage of goods by rail (CIM) in 1893 and the convention for the international carriage of passengers and baggage by rail (CIV) in 1928, each of which provided a uniform regime of rules for the making and execution of the contract for international carriage. These rules have been periodically updated reflecting the changing needs of international transport. This process eventually led to the 1980 Convention Concerning International Carriage by Rail (popularly known by its French acronym COTIF), which incorporates the CIM and CIV conventions as its Annexes.

2.20 The COTIF Convention creates a uniform legal system for international railway routes. Through its Annexes, the Convention regulates the conclusion and enforcement of the contract of carriage, liabilities, claims and suits, assertion of rights, as well as the relationship between different railway networks. Superseding individual national rights, the Convention thus allows for the direct carriage of goods, passengers and baggage, with one single transport document and on the basis of a standard transportation law.

2.21 The provisions of COTIF apply only to those railway lines which member states bring, through common agreement, within its purview. Reflecting the growing importance of multimodal transport, a 1990 Protocol extended the scope of COTIF to other internal carriage which is undertaken under the responsibility of railway to complement carriage by rail. Consequently, the scope of COTIF includes at present several thousand kilometers of roadway and maritime lines, which are completed by railway passage. An important feature of the Convention is the system of collective responsibility of railways for international carriage of goods whereby each railway involved in the carriage becomes a party to the contract and assumes responsibility for goods it takes over from another railway in the transport chain. The COTIF Convention has been accepted and applied in 36 countries, mainly in Western and Central Europe and in some countries in Asia including the Islamic Republic of Iran. It is administered by OTIF, based at Berne, Switzerland.

2.22 In parallel to the COTIF convention, the Agreement on International Railway Freight Communications (SMGS), which is administered by the Organization for Railways Cooperation (OSShD), provides the legal system for railways in practically all Eastern European countries, including the newly independent states as well as some countries in Asia (e.g. China, Democratic People’s Republic of Korea, Mongolia, Vietnam). Some countries in Europe, like Hungary and Poland, have applied both regimes: the COTIF convention for westbound traffic and the SMGS Convention for the eastbound traffic. The corresponding legal system for passenger traffic is provided by the SMPS Convention.

B.2.2 Contract of Carriage by Road

2.23 The two international conventions that seek to standardize the conditions governing the contracts for the international transportation by road are the Convention on the Contract for the International Carriage of Goods by Road (CMR) of 1956 and the Convention on the International Carriage of Passengers and Luggage by Road (CVR) of 1973, and their respective protocols. Like COTIF for railways, these
conventions have been ratified mostly by the countries in Europe. However, of these two conventions, CMR has been by far the more widely adopted. While forty one countries are now contracting parties to the CMR Convention, CVR has been signed and ratified by only six. The contracts for carriage of goods and people by road transport outside of Europe remain mostly subject to national laws and regulations.

2.24 National laws governing the relationship between road carriers and consignees or consignors usually differ from country to country. The CMR Convention standardizes the terms and conditions under which goods are carried for reward on an international journey, defining the liability of the transport operator and the responsibility of the consignor. The CMR, despite its private law nature, provides for the imposition by the Government of a legal framework within which private parties are free to negotiate transport contracts. It applies "to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country" (Art. 1-1). The Convention applies "irrespective of the place of residence and nationality of the parties" (Art. 1-1). The implication of Art. 1-1 is that a transport contract drawn up in a country which is not a signatory to CMR will still be subject to the CMR Convention in the country of destination if the latter is a signatory.

2.25 Like COTIF, CMR takes into account the development of multimodal transport and applies to all transport operations in which "the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, where the goods are not unloaded from the vehicle (Art. 2)." The CMR provides for the confirmation of a contract of carriage by means of a consignment note, although such a note is not essential to the performance of such a contract. The CMR also creates a system for determining the liability for loss and damage, as well as for the assessment and award of compensation once the liability has been established. Under CMR, the onus of such liability is placed on the carrier.

B.3 Customs and Transport Facilitation

B.3.1 Railway Transport

2.26 It is recognized that the multiplicity of documents in international transport adds significantly to transaction costs and thus is a major source of inefficiency. Attempts have therefore been made to standardize the customs declaration form to replace multiplicity of national forms as well as to consolidate number of separate documents into a single one. The International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail of 1952 prescribed the standard International Customs Declaration (TIF form) which the European railways in the past used.

2.27 Although COTIF is not a customs convention, the "Uniform Rules Concerning the Contract for International Carriage of Goods by Rail" or CIM (Annex B of COTIF) has provided the legal basis for the acceptance and use of CIM consignment note as a customs document for railway transport, in place of the TIF form, by the customs authorities in the eighteen countries of the European Commission (EC) and the European Free Trade area (EFTA). This has considerably reduced all customs control measures during the transport operation, since the traditional customs procedures that required the use of special customs document,
sealing devices and the provision of a guarantee are no longer required. In return for these facilities, Customs authorities in EC and EFTA require certain measures to be undertaken by the participating railways which become jointly and severally responsible for the proper conduct of international transit operations.

2.28 The ECE is now working on a draft convention on international customs transit procedures for the carriage of goods by rail, which is intended to extend the simplified customs transit procedures used in EC and EFTA to other COTIF member states of Europe as well as to the countries that now use the SMGS system. The alternative approaches that have been considered are: to use only CIM note, to allow both CIM and SMGS notes to be used and, finally, to prepare a universal railway Customs document requiring modifications in the CIM and the SMGS consignment notes. It is not yet clear whether it would possible to prepare a single legal regime that would allow the simultaneous or successive use of two different consignment notes regulated by two different legal instruments. Although it is becoming more and more relevant in the context of emerging interregional links, introduction of a universal customs document is still viewed as a long-term goal as it would require considerable time and efforts. ECE is seeking to resolve these issues in cooperation with the Committee for the Organization for Railways Cooperation (OSShD).

2.29 The simplification of customs procedure provided by the well-known TIR Customs Convention⁹, to be discussed in greater detail below, was originally intended for road transport only. The 1975 revision of the Convention allows the TIR carnets to be used for railway transport in the context of multimodal transport, as long as a part of the journey is effected by means of road transport.

B.3.2 Road Transport

2.30 As many as fourteen agreements⁹, conventions and protocol developed under the aegis of ECE contain measures to facilitate the international movement of passengers, vehicles and transport equipments through (a) the standardization of customs treatment of tourism; (b) temporary importation of private road vehicles; (c) temporary importation of aircraft and pleasure boats for private use; and (d) temporary importation of commercial road vehicles, pallets used in international transport and containers. Furthermore, an international convention- International Convention on the Harmonization of Frontier Controls of Goods, 1982- prescribes a “good practice” regime to harmonize frontier controls with a view to simplify and speed up border-crossings through reduction in the number and duration of all types of controls. The Harmonization Convention, which has been ratified by thirty three parties worldwide, covers customs procedures and other controls such as medico-sanitary inspection, veterinary inspection, compliance with technical standards and quality control measures. The Inland Transport Committee of ECE adopted an important resolution (Resolution No 230), aimed at promoting the world-wide application of this Convention. This Resolution recommends that Contracting Parties to the Convention should endeavour to provide to the developing countries, upon their request and

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⁹ TIR is the French acronym for Transports Internationaux Routiers or International Road Transport.

⁹ A list of these agreements etc is given in Annex I.
mutually agreed conditions, any technical assistance deemed necessary for its adoption and implementation.

2.31 One of the most successful international transport conventions, and in fact so far the only universal transit system in existence, is the Customs Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention). Under the TIR convention, no frontier check is carried out on transported goods between the customs offices of departure and arrival. An international guaranteeing scheme has been created to cover the duties and taxes at risk throughout the whole journey. Originally adopted in 1956, the TIR Convention was revised in 1975 to include multimodal transport that necessitated the acceptance of the container, under certain conditions, as a Customs secure loading unit. It means that the TIR regime no longer covers only road transport but extends to rail, inland waterways and even maritime transport, although at least one part of the total transport operation still has to be by road.

2.32 The idea behind the TIR Convention and its transit regime has formed the basis for many regional transit systems and has thus contributed to the facilitation of international transport, especially international road transport. The application of TIR Convention extends beyond Europe to other parts of the world such as the Middle-east, Africa, Asia and Latin America. As of 1999, it has fifty six Contracting Parties, including the European Community (EC). The United States of America and Canada are also Contracting Parties as well as Chile and Uruguay in South America. The number of TIR transit movements has increased to more than 2.4 million per year and on many border crossings in Central Europe as many as 80 per cent of all truck movements are covered by the TIR system.

2.33 The TIR system is constantly being promoted under United Nations auspices to make it as widely available as possible for all countries wishing to make use of it. In 1984, the Economic and Social Council of the United Nations adopted a Resolution (1984/79), developed by the ECE Group of Experts on Customs Questions affecting Transport, which recommended that countries worldwide examine the possibility of acceding to the Convention and introducing the TIR system in their national legislation. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), through its Resolution 48/11, called upon its Members States to accede to seven conventions including the TIR Convention. Currently work is under way to establish a TIR or a similar system in Latin America between Argentina, Brazil, Chile and Uruguay. A number of countries in Western and Central Africa are also currently considering the establishment of a TIR system geared to their specific needs and possibilities.

2.34 Despite the overall success of the TIR system, its application has had its share of difficulties, particularly in the context of rapid increase in East-West traffic within Europe and the emergence of many newly independent states. Involvement of international organized crime in the misuse of facilities provided under the Convention has also been reported. As a countermeasure, a special TIR Carnet requiring a guarantee of US $200,000, in place of the normal guarantee of US $50,000 per TIR truck/carnet, has been made mandatory for the transport of high risks goods such as tobacco and alcohol. Under a number of amendments made in the TIR Convention in February 1999, minimum conditions and requirements have to be
applied at the national level to ensure that only honest and experienced associations and operators are allowed to make use of the TIR Customs transit system.

2.35 The implementation of the TIR Convention also poses particular technical challenge to the developing countries with regard to vehicle and container construction and its maintenance. Another major problem for the application of the TIR transit system outside Europe and North America is the establishment of a well-functioning guaranteeing system to cover national taxes and duties due in these countries. Given the very different levels of development in different regions, it would be very difficult to assess the risks for insurers and, directly related to it, the cost of a worldwide TIR Carnet. This brings up the possibility of separate regional guaranteeing systems under the umbrella of a worldwide guaranteeing scheme. Such a system would not only allow regional transport but also inter-regional and inter-continental transport under the TIR regime. The efficient operationalization of any international land transport route would need to address this issue.

2.36 Road vehicles, whether used as private transport or for carriage of passengers and goods on commercial basis, are subject to payment of various national, state or local taxes and duties. With a view to promoting the reduction or abolition of double taxation on vehicles engaged in international transport in Europe, two separate Conventions on the taxation of road vehicles engaged in international passenger transport, and in international goods transport were adopted in 1956. These conventions provide for exemption of international road vehicles from payment of such taxes and duties, subject to fulfillment of certain conditions, and thereby facilitate border-crossings by road vehicles. In practice, most bilateral agreements between European States regulating access to the transport market by foreign transport operators and vehicles provide for mutual exemption of taxes and charges levied on the circulation and the possession of such vehicles.

2.37 Even though they have been prepared under the auspices of ECE, the ECE Conventions, Agreements and Protocols dealing with various aspects of international transport are in fact international legal instruments, which are usually open to all States Members of the United Nations and its specialized agencies. This is so even when a Convention stipulates in its final provisions that it is open for accession to the States Members of ECE. The Terms of Reference of ECE allows the admission in a consultative capacity of European nations which are not members of the United Nations as well as the United Nations member countries which are not members of the ECE.