I. INTRODUCTION

Transport and trade are inseparable; one is not possible without the other and their efficient functioning as a system is determined among others by two major components: infrastructure and facilitation. The transport infrastructure in the ESCAP region is steadily developing. The Intergovernmental Agreement on the Asian Highway Network (entered into force on 4 July 2005) and the Intergovernmental Agreement on the Trans-Asian Railway Network (expected to enter into force in the first half of 2008) are two essential pillars in strengthening economic links between countries and providing physical access to markets. They also serve as platforms for ESCAP member States to cooperate at a regional level and to meet transport infrastructure development challenges.

Infrastructure alone however would not facilitate the movement of people and goods between countries if non-physical impediments are not removed. Efforts to facilitate transport are paramount to the smooth movement of goods and people especially in international traffic, as transport facilitation reduces the economic distance to markets. Transport facilitation can only serve its purpose if based on harmonized legislation, institutions, and practices, at sub-regional, regional and international levels.

Despite consistent efforts and achievements over the years, significant differences continue to exist between countries in terms of their legislation, institutional arrangements and practices. Operational standards that differ between neighboring countries lead to lack of traffic and transit rights and barriers to the movement of goods and people, having a negative impact on countries' economies.

An analysis of the current level of legal harmonization in the ESCAP region through accession to, and implementation of international legal instruments relating to transport facilitation indicates progress, notably for countries forming traditional groups, based on common history, culture or trade-linkages. At the same time it clearly indicates a need to further raise awareness of the benefits of harmonization and simplification of standards, rules and procedures using transport facilitation instruments that have proven their worth in other parts of the world. This is of particular significance as some countries have not yet acceded to international legal instruments that could ensure a minimum level of harmonization. Such awareness and understanding are also important for countries which became parties to legal instruments but are yet to proper implement them.

The ESCAP region is the most dynamic region in economic terms, yet there is still a lot to be done in order to effectively facilitate transport through, among others, harmonizing legislation. Effective transport facilitation in the ESCAP region calls for the development of new legal frameworks accounting for regional idiosyncrasies, as well as for the modification of existing laws and regulations, through good relationships, mutual trust and confidence, resulting in mutual benefits for all the parties concerned.

The present study "Towards a Harmonized Legal Regime on Transport Facilitation in the ESCAP Region" is meant to provide guidelines to support the effort of ESCAP member countries in their endeavor to facilitate international land transport/transit, through suggesting possible ways to progress towards a harmonized legal regime. The guidelines could be used, in principle, for all modes of transport; however they are mainly addressing the land transport modes, with an emphasis on road transport.

The guidelines also seek to enhance the understanding of transport policy makers and legislators in the ESCAP region on the benefits and implications of acceding to and implementing the relevant international legal instruments, with a view to further facilitate transport and implicitly trade, at subregional, regional and global levels.

A. International law and harmonization

In early times communities were preoccupied with creation and/or improvement of rules which composed their internal, "national" legislation. In the course of development, the communities, politically organized as States, established mutual relations and needed a regulatory framework for further progress of the international relations. The international law was born, and was developed as an answer to the need for structured interstate relations, initially in the form of bilateral agreements. In their early stages the inter-State relations could only be standardized based on the custom (unwritten law) but it didn't take too long until new instruments like treaties were created.

Originally international relations were established exclusively between States but the situation evolved quite fast and the rules governing the relations between the participants in the international life needed to be adjusted. The foundations of the international public law were set in the ancient times, after a distinction started to be made between public and private law, understanding by "public" the States themselves or the entities under the State's authority.

Many of the general principles of the international law originate in the Roman Empire: negotiations, envoys, concluding and implementing the treaties, protection of foreigners etc. The (still valid) fundamental principle "*pacta sunt servanda"* ("pacts must be respected") is of Roman origin. Some of the rules concerning arbitration as an instrument to solve both political and commercial disputes as well as the basics of the mutual protection of goods and persons applied to foreign traders have their origins in Ancient Greece.

International commercial law today owes some of its fundamental principles to the Law Merchant (*Lex Mercatoria*) as it was developed in the medieval ages. This includes the choice of arbitration institutions, procedures, applicable law and arbitrators, and the goal to reflect customs, usage and good practice among the parties.

In the modern times, efforts to harmonize laws across nations through negotiation of bilateral and multilateral treaties of unification or harmonization, some of which are still in force, can in fact be traced back to the 19th century. The first multilateral convention, concerning the prisoners of war, was concluded in Geneva in 1864; another example of early international harmonization is the Paris Convention for the Protection of Industrial Property, which was concluded in 1883.

The first half of the 20th century was marked by the disruptions caused by World Wars I and II. Consequently, the Peace Treaties of 1919-1920 resulted in the creation of new sovereign states and the forerunner of the United Nations, the League of Nations, was established in 1919 under the Treaty of Versailles "to promote international cooperation and to achieve peace and security." In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the Charter of the United Nations, which was signed on 26 June 1945. The United Nations Organization

officially came into existence on 24 October 1945, when the Charter had been ratified by a majority of signatories.

There is unanimous agreement that international public law developed extremely fast and became more and more complex in the second half of the 20th century. This evolution has been dictated, at the beginning, by the need to recover and re-settle after the World War II and then by the creation of political and/or economical blocks such as the COMECON, the European Union and the ASEAN.

In this 21st century the world is characterized by the following main features:

- Globalization, understood as the generalized expansion of international economic activity which includes increased international trade, growth of international investment (foreign investment) and movement of goods and people, and increased creation of technology among countries. In other words, globalization means an increasing world-wide integration of markets for goods, services, labor, and capital;
- Increased interdependence of states, in the sense that countries/regions that are linked through trade are also dependent on each other and each is affected by another's economic decisions and situations (e.g. landlocked and transit developing countries);
- Preeminence of the economic on the politic, seen as a consequence of the globalization: the world is more and more oriented towards a global market while the political systems remain fragmented; in most of the cases an economical solution might be used to solve a political problem;
- Regionalization as a reaction to globalization: a number of States are officially or unofficially grouped into regional structures/initiatives/ organizations in which states share certain common traits or interests (of different natures: cultural, economic, historical etc) with each other that make them different from the other regions. The most common objective of such associations is to maximize the effect of their region on the world stage;
- Increased opening or even disappearance of borders, resulting from the delegation, by the States, of some of their competences; Customs Unions are a relevant example in this respect (e.g. European Union).

These characteristics influence the whole legislative process, especially in instances that have a universal vocation such as the United Nations Organization. Most of the modern multilateral international legal instruments are development driven and take into consideration the interest of all countries irrespective of their size. This is the key to ensure effective global applicability of the international laws and consequently to achieve the goals for which they have been elaborated.

B. Need for harmonization

Facilitating transport means making transport easier, more convenient. There are multiple ways to achieve transport facilitation but one of the most effective is through harmonized legislation. The word "harmonize" is defined [1] as "when governments or

[1] Source: Collins COBUILD dictionary

organizations harmonize laws, systems or regulations, they agree in a friendly way to make them the same or similar". The word "harmony" is defined[2] as "a state of order, agreement, or completeness in the relations of things or of parts of a whole to each other". Harmonization is needed when differences between national legislations impede the international transport and could thus be defined as any attempt by whatever legal instrument to minimize or eliminate differences/conflicting provisions between national laws as they apply to international transport.

The functioning of society and most human activities are regulated either by practice (precedent) or by theory (legal instruments: international conventions/agreements, national regulations). While they are essential to ensure the proper functioning of one or more activities, regulations are only beneficial as long as they do not become a burden on the activities they are supposed to streamline.

From the moment the wheel has been invented, few activities have been more subject to over-regulation than transport and especially international transport. This is partly because of its international nature and partly because of its impact on almost all the components of the society: social, economic, environmental, political etc.

International transport contributes to ensuring free movement of goods and people. This mobility can only be achieved in an accessible and open environment. Not all countries however are prepared for this to the same extent, and at the same time. This could explain the lack of harmonization: countries developed Customs, immigration, vehicles and other standards independent of each other and a transport operator crossing several countries during the course of an international journey could expect to be presented with numerous forms to fill in, often asking for exactly the same information, but in a slightly different way. In case of non-harmonized legislations, as trade and transport develop so is the paperwork involved: the number of separate documents required varies from border to border and the number of copies required of some of these documents are often excessive. Additional dangers are generated by the lack of proper understanding of the mutual rights and obligations of the parties involved in international transport. In such cases, small and medium transport companies are at higher risk as they can neither bear the legal costs incurred by infringements (including sanctions) nor afford prior legal advice to avoid such risk. The lack of harmonization has consequences that can be measured through the direct impact on transport cost, for instance, where tolls, duties, fines or other unexpected fees have to be paid. Other consequences, such as time and administrative expense, are indirect and are less easily converted into monetary value. This is particularly the case of cumbersome procedures (e.g. different technical standards for vehicles, Customs clearance at borders, different forms of documents relating to cargo or transport) or multiple interpretations of the laws by the competent authorities of the countries transited.

An increasing integration of markets for goods, services, labor, and capital has revived the interest of all stakeholders, public and private entities, for facilitation through, among others, legal harmonization. This is not a new idea but the current harmonization process might be easier due to positive developments such as the existence nowadays of a number of inter-governmental and non-governmental organizations specialized in this area. Another advantage is the existence of a variety of tools used to harmonize legislation, institutions and practices, and implement them.

[2] Source: Webster's comprehensive dictionary

There can be many specific reasons for which countries would intensify efforts toward harmonizing their legislations especially through acceding to and implementing the international legal instruments. One reason may be the reform of their economy including the transport sector after fundamental political changes. If they accede to and properly implement the international legal instruments, countries rely on neutral laws to govern the international transport, and are also provided with theoretical and practical know-how legitimated by international experts that drafted the international legal instruments. Another reason for harmonization, most common, is the decision of countries to implement the same standards as their neighbors with the objective to facilitate exchanges with them. Such a decision is either taken because countries decided to integrate a subregional or regional body (usually economic or political entities) or as a consequence of strong demand from groups of interest (traders, manufacturers, transport operators or others).

The example of the Association of Southeast Asian Nations (ASEAN)

ASEAN was established on 8 August 1967 in Bangkok by five original member countries, namely, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Viet Nam on 28 July 1995, Lao People's Democratic Republic and Myanmar on 23 July 1997, and Cambodia on 30 April 1999.

The ASEAN Declaration states that the aims and purposes of the Association are:

(1) to accelerate economic growth, social progress and cultural development in the region and
(2) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the Charter of the United Nations.

In 2003, the ASEAN Leaders resolved that an ASEAN Community shall be established comprising three pillars, namely, ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community.

The ASEAN Economic Community shall be the end-goal of economic integration measures as outlined in the ASEAN Vision 2020. Its goal is to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020. To this end, several plans of action have been approved, among which the "Integrated implementation programme for the ASEAN plan of action in transport and communications (1997)". One of the programmes is the following

[…]

PROGRAMME 3:

HARMONIZATION OF ROAD TRANSPORT LAWS, RULES AND REGULATIONS IN ASEAN

1. […]
2. […]

Thus, ASEAN cooperation shall be towards **the harmonization of road transport laws, rules and regulations, with the end in view of facilitating cross border land transport and achieving mutual recognition of safety standards and practices in driving, and in vehicle and highway design**. Accession of member countries to existing ASEAN agreements in the land

transportation sub-sector will also be addressed. […]

3. Considering the differences in the transport laws, rules and regulations in ASEAN, the priority will be on feasible areas for cooperation. Where harmonization is not feasible, a flexible approach will be considered through administrative or executive issuances (as distinguished from legislative action which is a lengthy process).

[…]

Source: www.aseansec.org

C. Methods to bring laws closer

The most common ways of bringing the laws closer are legal transplantation, legal harmonization and legal unification.

Legal transplantation could be defined as the process by which laws and legal institutions developed in one country are then adopted by another. Generally, this was the case of colonies, which implemented the laws of the colonizing power through transplantation. The best known examples of legal transplantation include the adoption of the 1804 French Civil Code by Louisiana and by several European nations and the transplantation of the 1900 German Civil Code (the *Buergerliches Gesetzbuch* or BGB) in Japan. BGB served also as model for the civil law jurisdictions of China, Japan, Korea or Greece. Legal transplantation is especially common in economic laws such as competition (antitrust) or consumer protection. Legal transplantation is not very common in transport, mainly because transport is one of the areas where national specificities are very present.

Legal harmonization could be defined as a process in which a group of countries agree on a set of objectives and targets and let each country amend its internal law to fulfill the agreed objectives. In transport, one example of this type of harmonization could be the implementation of conditions for access to the profession of transport operator, especially of the financial standing criterion. The objective internationally agreed in this case could be an amount *xyz* to be in possession of the candidate transport operator but each country would be free to decide if, to satisfy the requirement for authorization, this amount should be possessed by the candidate in cash, bank guarantee, assets or other forms.

Legal unification could be defined as a process in which a group of countries decide to replace their national rules and adopt a unified set of rules agreed at the interstate level. In transport, this type of harmonization is particularly used in the case of technical standards (regulations for vehicle construction, pollution norms, vehicle's weight or dimensions) or documents (driving licenses, vehicle's technical inspection documents). One example of legal unification is the adoption by ASEAN member States of the same particulars of the multimodal transport document, through the Framework Agreement on Multimodal Transport (2005).

The candidate countries for accession to the European Union have largely used all three methods mentioned above to make their legislation, institutions and practices comply with those of the European Union.

The example of the European Union

1. Provisions in force in the European Union

Article 249

"In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

A **regulation** shall have general application. It shall be binding in its entirety and directly applicable in all member States.

A **directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A **decision** shall be binding in its entirety upon those to whom it is addressed.

Recommendations and **opinions** shall have no binding force."

Source: Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community, incorporating the amendments made by the Treaty of Athens, signed on 16 April 2003. *Official Journal C 321E of 29 December 2006*

2. Provisions proposed, not in force, in the European Union

Article I-33

The legal acts of the Union

"1. To exercise the Union's competences the institutions shall use as legal instruments, in accordance with Part III, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European **law** shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all member States.

A European **framework law** shall be a legislative act binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A European **regulation** shall be a non-legislative act of general application for the implementation of legislative acts and of certain provisions of the Constitution. It may either be binding in its entirety and directly applicable in all member States, or be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A European **decision** shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and **opinions** shall have no binding force.

[…]"

Source: Treaty establishing a Constitution for Europe, Official Journal C 310 , 16 December 2004

D. Challenges to harmonization

As previously explained, an accessible and open environment is a pre-requisite for goods and people to move internationally without barriers. Not all countries however are prepared for this to the same extent, and at the same time.

Some countries might fear that application of internationally harmonized law erodes the dominance of their national legislation. Very often, implementation of international law creates the conditions for fair competition between foreign and national transport companies and the national carriers might not be prepared for it. This might generate social protest and pressure on the Governments against adoption of harmonized legislation.
Even if countries are positive in respect of ratifying and implementing international legal instruments there can still intervene dissuasive factors. The lack of representative capacity is one such factor in all the stages: participation in the drafting and negotiation of the international legal instrument, subsequent participation in the international management of the instrument as well as in the decision making process. Lengthy and sophisticated national procedures to ratify/implement the international legal instrument might also be dissuasive.

In many cases translation into national language is a problem and not only because of the costs of the translation itself. At the domestic level, legislation is drafted in the national language system, in the context of the domestic legal system and by persons who are knowledgeable about it. That is not the case when a legal text is prepared at the international level for introduction into domestic legal systems. Those negotiating the legal text are usually experts in the area of law in question and are aware of the problems of coordination that may be encountered in many legal systems. However, the legal text is to a large extent drafted in the abstract, i.e. in a generic form that may have to be adapted to local circumstances. If it is done well, it will be drafted in clear language, will not use words with particular meanings in specific legal systems and will be easy to translate with a low likelihood of error. Texts negotiated at the international level are typically adopted in one or more languages used by the relevant organization (in the case of United Nations, Arabic, Chinese, English, French, Russian and Spanish). The rule is that each is an original text and that they are equally authentic. In practice, however, the text is usually drafted in the working language most widely used among government delegates and the secretariat of the organization in question. The other texts are in most cases translations and their accuracy depends largely on the skills of the translators and the scrutiny of government delegates participating at the meetings. The result will almost assuredly be a style of drafting unfamiliar to many versed in the national legislation of their own country.[3]

[3] Source: Estrella Faria, José Angelo– "Legal harmonization through model laws: the experience of the United Nations Commission on International Trade Law (UNCITRAL)"

The decision to ratify an international legal instrument can also be negatively influenced by the fear of high costs incurred to implement it. Even if ratification itself is a process which, in general, does not incur costs, the implementation of the legal instrument might have financial implications for example when there is a need to create institutions or to invest in changing an existing situation.

These are general problems faced by international legal harmonization, irrespective of the subject matter and the form of the instrument and the difficulties are well known. Yet the challenging question is still open: what to do where disharmony is not acceptable? In the ambit of organizations such as the United Nations, all stages of the preparation, negotiation and adoption of an international instrument depend exclusively on the will of States. One must assume that States make decisions to undertake work and to carry it through despite the difficulty, length, cost and uncertainty inherent to the process because they have concluded that a certain degree of harmonization in a given area is desirable. Once States have decided that harmonization is necessary and/or desirable, they have to use the tools available to them.[4]

E. Becoming party to international legal instruments[5]

According to Article 2 (g) of Vienna Convention on the Law of Treaties, 1969, "**party**" means a State which has consented to be bound by the treaty and for which the treaty is in force. Becoming party to international legal instruments (treaties, conventions, agreements, protocols etc) requires countries to take action at four different stages:

1. Internal evaluation/assessment

Becoming party to international legal instruments is a serious matter which requires careful analysis and evaluation at national level. This process may call for adaptation of national laws and institutions, the adoption of new technical standards in transport infrastructure and equipment, as well as acceptance of new organizational and operational systems. The legal instrument has thus to be evaluated to determine its benefits and implications for the government and the industry, as well as its overall economic, social and financial impact. Such evaluation is carried out by the Ministry most concerned (in transport facilitation matters it would be the Ministry of Transport) but normally requires multidisciplinary teamwork from several Government agencies as well as consultation with representatives of the private sector, as almost all the stages of the process concern both the public and private sectors. Assessment and evaluation, preceding a decision to become party to an international legal instrument as well as the implementation plan, should therefore be made jointly.

The simplest form of evaluation is the "conformity table", where the national law(s) in the specific area is (are) compared with the international legal instrument, article by article. The result will show the degree of compliance of the national law(s) with the international legal instrument. Once filled-in, the table will also give details about the cost of implementing the international legal instrument as well as the time needed for that. Detailed action plans can be further elaborated based on the conformity table, by each of the authorities concerned with the implementation of the international legal instrument.

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[4] Source: Estrella Faria, José Angelo– "Legal harmonization through model laws: the experience of the United Nations Commission on International Trade Law (UNCITRAL)"

[5] Source: United Nations Treaty Collection - Treaty Reference Guide, 1999

To show a purely hypothetic example, in case a country envisages becoming party to the International Convention on the Harmonization of Frontier Controls of Goods, 1982, the conformity table could have the form presented below.

Conformity table for the International Convention on the Harmonization of Frontier Controls of Goods, 1982					
International legal instrument	**Corresponding national law(s)**	**Difference**	**Necessary adjustments**	**Impact of implementation**	**Time needed for compliance**
Article 1- Definitions For the purposes of this Convention:					
(a) "Customs" means the Government Service which is responsible for the administration of Customs law and the collection of import and export duties and taxes and which also has responsibility for the application of other laws and regulations relating, inter alia, to the importation, transit and exportation of goods;	Reproduce here the equivalent definition from the e.g. "Law on the organization and functioning of the national Customs" of the country.	National definition is more comprehensive	Not needed	No impact	Compliant
(b) "Customs Control" means measures applied to ensure compliance with the laws and regulations which the Customs are responsible for enforcing;	Reproduce here the equivalent definition from the e.g. "Law on the organization and functioning of the national Customs" of. the country	National definition is more comprehensive	Not needed	No impact	Compliant
(c) "Medico-sanitary inspection" means the inspections exercised for the protection of the life and health of persons, with the exception of veterinary inspection;	No equivalent definition exists in the national law.	No equivalent definition exists in the national law.	Amendment to the "Law on the organization and functioning of the health services" of the country	No impact: this activity already exists but is not defined as such.	XYZ months, by…200x, taking into account the procedures to amend the Law.

Conformity table for the International Convention on the Harmonization of Frontier Controls of Goods, 1982					
International legal instrument	**Corresponding national law(s)**	**Difference**	**Necessary adjustments**	**Impact of implementation**	**Time needed for compliance**
…[each of the articles 2, 3, 4 analyzed the same way]					
Article 5 - Resources of the services To ensure that the control services operate satisfactorily, the Contracting Parties shall see to it that, as far as possible, and within the framework of national law, they are provided with:	The provisions of this article are specific requirements of the international legal instrument. They will, therefore, be introduced in the national legislation. through the Law ratifying the convention	No equivalent definition exists in the national law.	Introduction of the provisions through the Law of ratification of the convention.		
(a) qualified personnel in sufficient numbers consistent with traffic requirements;			- determine the Border offices where the convention will apply and, based on traffic and human resources data, determine the necessary staff.	- recruitment of XYZ numbers of personnel, costing…., or - re-assignment of personnel from other border offices, costing…. or - the current staff is sufficient	XYZ months or by….200x
(b) equipment and facilities suitable for inspection, taking into account the mode of transport, the goods to be checked and traffic requirements;			- investing in facilities and acquisition of equipment, or	- the minimum facilities (e.g. X-ray scanner, etc) would cost about	XYZ months/years or by…200x.

Conformity table for the International Convention on the Harmonization of Frontier Controls of Goods, 1982					
International legal instrument	**Corresponding national law(s)**	**Difference**	**Necessary adjustments**	**Impact of implementation**	**Time needed for compliance**
(c) official instructions to officers for acting in accordance with international agreements and arrangements and with current national provisions.			- necessary equipment and facilities are already in place - XYZ numbers of officers will need training	- the training will be ensured in XYZ stages for XYZ officers/stage, each stage costing XYZ…	XYZ months or by…200x
…and so on for every substantive article…					

In case the preliminary decision is in favor of becoming party to the international legal instrument, the process of adjusting legislation and institutional arrangements can start, in order to make possible the effective and efficient implementation of the international legal instrument immediately after its ratification.

2. Ratification/Acceptance/Approval/Accession

Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depository to collect the ratifications of all States, keeping all parties informed of the situation. The institution of ratification grants States the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. [Articles 2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain States acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state. [Articles 2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]

"Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other States. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depository, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other States or for a limited and defined number of States. In the absence of such a provision, accession can only occur where the negotiating States were agreed or subsequently agree on it in the case of the state in question. [Articles 2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

Becoming a party to an international legal instrument has to be approved at a national level, in accordance with the national law. Once this is approved the deposit of the instrument of ratification, acceptance, approval or accession can take place in accordance with the provisions of the international legal instrument itself.

3. Deposit

After a treaty has been concluded, the written instruments, which provide formal evidence of consent to be bound, and also reservations and declarations, are placed in the custody of a depository. Unless the treaty provides otherwise, the deposit of the instruments of ratification, acceptance, approval or accession establishes the consent of a state to be bound by the treaty. For treaties with a small number of parties, the depository will usually be the government of the state on whose territory the treaty was signed. Sometimes various States are chosen as depositories. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositories. The depository must accept all notifications and documents related to the treaty, examine whether all formal

requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned. [Articles 16, 76 and 77, Vienna Convention on the Law of Treaties 1969]

4. Adjustments

Once the international legal instrument has been accepted in accordance with national legal procedures, the necessary adjustments to national legislation, institutions, standards and practices have to be made.

5. Implementation

Countries are expected to effectively implement the international legal instruments to which they became a party. Where the implementation involves the work of several different Government agencies, as in the case of transport facilitation, the experience proved that establishing implementation mechanisms can be a solution to ensure coordination, effectiveness and efficiency in the implementation. There are several levels at which this issue should be addressed:

- At national level: the most successful example of implementation mechanism is the National Trade and Transport Facilitation (NTTF) body. To work efficiently, such a body should be:
    - duly empowered by the Government;
    - given a clear mandate and responsibilities, including the obligation to report and to follow-up on the decisions taken;
    - composed of representatives of both public and private sectors from all the fields concerned (transport, trade, Customs, sanitary etc) possibly with specialized working sub-groups;
    - placed under the coordination of a high-level Government official
    - guided by the regional transport facilitation policy, transposed into guidelines/recommendations at sub-regional level

- At sub-regional level: it should be envisaged that the NTTF bodies discuss and cooperate on matters relating to the implementation of an international legal instrument of common interest. A possible approach is that NTTF bodies along transport corridors meet and exchange experiences and best practices in the implementation of international legal instruments.

- At regional level: countries could meet and exchange experiences and best practices in the implementation of international legal instruments.

Most of the United Nations legal instruments relating to transport facilitation have been elaborated under the auspices of the United Nations Economic Commission for Europe (UNECE). This does not prevent countries from regions other than Europe to become parties to the vast majority of these legal instruments. The management of the conventions, agreements, protocols is made by the Contracting Parties to the legal instruments, meeting in Working Groups/Parties or Administrative Committees.

The example of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975)

The TIR Convention, 1975, is one of the most modern and up-to-date international Customs Conventions. It is working efficiently with only a limited number of incidences of litigation, resulting from unclear and vague provisions and different interpretations. Several reasons for the smooth functioning of the Convention exist, one of which is the interest of all Parties concerned, be it transport operators or Customs authorities, to keep the system in operation as it saves time and money for all concerned.

Technological changes occur very rapidly today, and what was "state of the art" in 1975 when the Convention was created, is not necessarily valid today. This affects not only Customs techniques, but also vehicle and container manufacturing and smuggling techniques. In addition, as smuggled goods, particularly drugs, become more and more expensive, profits for smugglers soar, with the result that more and more elaborate smuggling techniques evolve. In view of these developments, the TIR system, and the TIR Convention as its legal base, has to be constantly kept up-to-date. This task has been entrusted to the TIR Administrative Committee, the TIR Executive Board (TIRExB) and to the United Nations Economic Commission for Europe (UNECE) in Geneva.

The TIR Administrative Committee

The Administrative Committee, composed of all Contracting Parties to the Convention, is the highest organ under the Convention. It usually meets twice a year in spring and autumn under the auspices of the UNECE in Geneva to approve amendments to the Convention and to give all countries, competent authorities and concerned international organizations an opportunity to exchange views on the functioning of the system. Until today more than twenty amendments to the TIR Convention have been adopted and numerous resolutions, recommendations and comments have been approved by the Committee.

TIR Executive Board (TIRExB)

The TIR Executive Board (TIRExB) has been established by the Contracting Parties to the Convention in 1999. Its objective is to enhance international cooperation among Customs authorities in the application of the TIR Convention and to supervise and to provide support in the application of the TIR system and the international guarantee system. The TIRExB is composed of nine members who are elected in their personal capacity by the Governments which are Contracting Parties to the Convention for two year terms of office. The TIRExB is inter alia mandated to supervise the centralized printing and distribution of TIR Carnets, to oversee the operation of the international guarantee and insurance system and to coordinate and foster exchange of intelligence among Customs and other Governmental authorities. The TIR Executive Board (TIRExB), as an inter-governmental organ, ensures that each of the actors in the TIR procedure adequately applies the provisions of the Convention. In case of difficulties in the application of the TIR Convention at the international level, Customs authorities may wish to address the TIRExB for guidance and support. The TIRExB is also at the disposal of all Contracting Parties to coordinate and foster the exchange of intelligence and other information. The decisions of the TIRExB are executed by the TIR Secretary who is assisted by the TIR secretariat. The TIR Secretary shall be a member of the UNECE secretariat. The operation of the TIRExB is financed, for the time being, through a

levy on each TIR Carnet issued.

The UNECE Working Party on Customs Questions Affecting Transport (WP.30)

The work of the TIR Administrative Committee is supported by the UNECE Working Party on Customs Questions affecting Transport (WP.30) which holds between two and three sessions a year in Geneva, usually in conjunction with the sessions of the TIR Administrative Committee. Participation in the Working Party is open to all member States of the United Nations and to interested international organizations. The Working Party also regularly adopts comments on certain provisions of the Convention. These comments are not legally binding for the Contracting Parties to the Convention, such as are the Articles and the Explanatory Notes of the Convention. However, they are important for the interpretation, harmonization and application of the TIR Convention because they reflect a consensus opinion of the Working Party in which the majority of the Contracting Parties and the major users of the TIR system are represented (comments adopted by the Working Party are usually transmitted to the TIR Administrative Committee for consideration and endorsement).

Source: UNECE, TIR Handbook, edition 2005

F. The United Nations as source of legal harmonization[6]

The United Nations Organization is central to today's global efforts to solve problems that challenge humanity. One of the United Nations' central mandates is the promotion of higher standards of living, full employment, and conditions of economic and social progress and development. Part of these mandates is accomplished through normative work including elaboration of international multilateral legal instruments. More international law has been developed through the United Nations in the past six decades than in all previous history. Over 500 conventions, treaties and standards resulting from this work have provided a framework for promoting international peace and security and economic and social development.

Charter of the United Nations

Article 1

The Purposes of the United Nations are:

1. …
2. …
3. To achieve **international co-operation** in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for **harmonizing the actions of nations** in the attainment of these common ends.

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

[6] Source: www.un.org

1. higher standards of living, full employment, and **conditions of economic and social progress and development**;
2. **solutions of international economic, social, health, and related problems**; and international cultural and educational cooperation; and
3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Through United Nations efforts, Governments have concluded many multilateral agreements. This comprehensive body of international law is one of the United Nations' great achievements. Some of these legal instruments form the basis for law governing relations among States, some others are designed to harmonize and facilitate international transport and trade.

In the early 1950s, the United Nations took the lead to help Governments create an enabling environment for facilitation of transport and implicitly trade. This resulted in more than 100 legal instruments elaborated under the auspices of the United Nations, its regional commissions (mainly the UNECE) and its specialized agencies (International Maritime Organization, International Civil Aviation Organization) aimed at regulating in a harmonized way all the aspects pertaining to international transport. The main objectives of United Nations' international harmonization efforts are to enhance legal certainty and predictability.

Any legal instrument elaborated under the auspices of the United Nations, its regional commissions or specialized agencies may only become binding law after a State has decided to adopt it but no State is obliged to do so. As a rule, these legal instruments are open for accession by all the United Nations' member States irrespective of the region they belong to.

G. Elements of transport facilitation

A "holistic" approach of the international transport facilitation in land transport modes would take into consideration the following elements:

1. The infrastructure
    - Standards of roads/railways, bridges, tunnels
    - Road/railways numbering, signs and signals
    - Border crossing points
    - Freedom of access to the roads/railways of international importance
    - Terminals
    - Parking facilities
2. The transport operation
    - Access to the profession
    - Access to the market (transit, bilateral and cabotage)
        - Permits and quotas (bi- or multilateral)
    - Fiscal aspects
    - Freedom of transit
    - Infrastructure user charges
    - Transport technology/operational parameters
3. The means of transport
    - General technical standards (e.g. weights and dimensions)
    - Special standards if applicable (e.g. dangerous goods, perishable foodstuffs)
    - Customs-related standards (load compartment)

- Freedom of transit (temporary admission)
- Technical inspection certificate (mutual recognition)
- Registration documentation
- Availability of special equipment
- Insurance policy (Green card or other)

4. The crew/driver
    - Driving licence (mutual recognition)
    - Travel documents (identity documents and visas)
    - Driving and rest hour documentation (tachograph)
    - Special certificates (e.g. dangerous goods)
    - Liability-related documents
    - Health insurance policy
5. The cargo
    - Freedom of transit (e.g. Customs transit system)
    - Customs transit document
    - Consignment Note (transport contract)
    - Cargo insurance policy
    - Special certificates (sanitary, phyto-sanitary, dangerous goods)
6. The passenger
    - Travel documents (identity documents and visas)
    - Sanitary requirements
    - Transport contract
    - Health insurance policy
7. Traffic rules

Harmonizing the provisions regulating all these elements is a difficult task but can be achieved through negotiating, becoming party and effectively implementing international legal instruments on each or several aspects of transport facilitation.

Depending on the geographic area covered, the international legal instruments regulating international transport and particularly transport facilitation can be:

- Global (universal): regulate the relations between all the subjects of international law (e.g. the United Nations' Treaties, World Customs Organization's conventions);
- Regional: regulate the relations between several subjects of international law, usually at a continent level (e.g. the Intergovernmental Agreement on the Asian Highway and the Intergovernmental Agreement on the Trans-Asian Railway);
- Sub-regional: regulate the relations between more than two subjects of the international law in a given sub-region (e.g. the agreements concluded or negotiated under the GMS, ASEAN, SCO);
- Bilateral: regulate the relations between two subjects of the international law (e.g. treaties of good neighborhood, agreements between two countries on international transport between them).

In areas where there are vast divergences and difficulties in arriving at harmonization at regional/global level, the subregional approach could be beneficial, provided one principle is strictly observed: the bilateral norms should comply or at least should not contradict the sub-regional norms, which should comply with regional norms, which should comply with

the global ones. Unfortunately conflicting provisions, duplication and overlapping are still common situations, especially at sub-regional and bilateral levels.

This study is meant to assist countries in their efforts to assess realistically the implications of implementing global legal instruments, and to avoid duplication, overlapping and introduction of conflicting provisions in subregional and bilateral legal instruments