

II. TRANSPORT FACILITATION AND INTERNATIONAL LEGAL INSTRUMENTS

International transport including transport facilitation is a very complex activity, encompassing social, economic, and environmental aspects. It is therefore extremely difficult to deal in a sufficiently comprehensive manner with all the components of transport facilitation in one single legal instrument. This is the reason why, in principle, each component (infrastructure, transport operation, crew, transport means, cargo, passengers, traffic rules) is covered by at least one legal instrument.

A. Introduction

The Ministerial Conference on Infrastructure held in Seoul in 2001 formulated a vision for Asia and the Pacific: an International Integrated Intermodal Transport System to improve regional transport infrastructure policy formulation and planning as well as operation, thereby assisting countries in enhancing their competitiveness in accessing global markets and thus facilitating international trade.

In respect of transport infrastructure, countries in ESCAP region achieved significant progress: the Intergovernmental Agreement on the Asian Highway Network entered into force in July 2005 and the Intergovernmental Agreement on the Trans-Asian Railway Network is expected to enter into force in the first half of 2008, once eight countries have ratified it. These two agreements have been the building blocks for the development of the International Integrated Intermodal Transport System but more efforts need to be invested in transport facilitation and logistics in order to make the system effective and efficient in coping with the demands of globalization.

The Ministerial Conference on Transport held in Busan, Republic of Korea, in November 2006, adopted the Busan Declaration on Transport Development in Asia and the Pacific, including the Regional Action Programme (RAP) for phase I (2007-2011). Subsequently, in May 2007, the Commission approved, through resolution 63/9, the implementation of both the Busan Declaration and the RAP.

The RAP contains specific actions for transport facilitation, considering that the smooth and efficient movement of goods and people across borders in the region requires close collaboration between ministries and agencies and support from all stakeholders, including the private sector. Multilateral legal instruments relating to international transport can provide a mechanism for simplifying and harmonizing the documentation, formalities and procedures of border crossing. While progress is being made in these areas, much could be done to further reduce the delays and costs associated with border crossings in the region. The immediate objective established in this respect by the RAP is to assist countries in putting in place suitable legal regimes to facilitate international land transport.

B. ESCAP resolution 48/11

Road and rail transport modes in relation to facilitation measures

The ESCAP resolution 48/11 on “Road and rail transport modes in relation to facilitation measures” has been adopted by the Commission in 1992. It recommends that countries in the region, if they have not already done so, consider the possibility of acceding to seven international conventions relating to transport facilitation. In adopting the resolution

the Commission recognized that harmonized transport facilitation measures at the national and international levels are a prerequisite for enhancing international trade and transport along road and rail routes of international importance. The Commission noted that a large number of international agreements and conventions already exist in the field of transport facilitation to which countries may wish to accede, or whose provisions could be used as an example for similar regional agreements and conventions. Annex II - 1 contains Resolution 48/11 on “Road and rail transport modes in relation to facilitation measures”.

1. Origins

When ESCAP Resolution 48/11 was formulated there were around 50 transport related international legal instruments aimed at facilitating the movement of goods, people and vehicles across international borders, initiated by the ECE. Hence, the secretariats of ESCAP and ECE took the initiative to assist countries select a set of conventions that, once implemented, could fulfill the minimum requirements to facilitate trade and transport not only between Asia and Europe, but more importantly for a coherent regional integration, between countries in the ESCAP region. Work on Resolution 48/11 has been a response to an improved political climate in the region, accompanied by a development in international trade and the expansion of the use of container in transport. Resolution 48/11 was envisaged as an initial step to be further developed, and was adopted at the forty-eighth session of ESCAP on 23 April 1992 as one component of the Asian Land Transport Infrastructure Development Project (ALTID)⁷.

The main objective of this component of the ALTID project was to give an impetus to transport facilitation in the region and to support the implementation of the resolution in the long-term, pursuing a step-by-step approach in accordance with the developments in Asia and the Pacific and taking into account the needs of the countries. Its immediate aim was to provide the countries in the region with a common, harmonized set of standards in the field of international land transportation facilitation, through an initial set of conventions, which countries in the ESCAP region could accede to and implement. The selected seven conventions, developed under the auspices of the ECE, are the following:

1.	Convention on Road Traffic (Vienna, 8 November 1968)
2.	Convention on Road Signs and Signals (Vienna, 8 November 1968)
3.	Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) (Geneva, 14 November 1975)
4.	Customs Convention on the Temporary Importation of Commercial Road Vehicles (Geneva, 18 May 1956)
5.	Customs Convention on Containers (Geneva, 2 December 1972)
6.	International Convention on the Harmonization of Frontier Controls of Goods (Geneva, 21 October 1982)
7.	Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956)

2. Subsequent steps

(a) At its fifty fourth session (1998), the Commission adopted a “Refined strategy for the implementation of the ALTID project” an important component of which was the

⁷ The other two components were the Asian Highway (AH) and the Trans-Asian Railway (TAR) projects.

“Facilitation of land transport at border crossings and maritime transport at ports through the promotion of the relevant international conventions and agreements in Asia to improve the efficiency of international transport along land and land-cum-sea routes”. Stressing the importance of the accession to and implementation of the conventions listed in Resolution 48/11 for the improvement of international traffic at border crossings and ports, the refined strategy suggested several additional conventions to be acceded to and implemented, as follows:

1.	Convention and Statute on Freedom of Transit, Barcelona, 20 April 1921 (Barcelona Transit Convention)
2.	Convention on Transit Trade of Landlocked States, New York, 8 July 1965 (New York Transit Convention)
3.	Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention) as amended
4.	Conventions and agreements aimed at facilitating rail traffic

(b) At its 56th session, in 2000, the Commission recognized the importance of facilitation measures and stressed the countries’ need for assistance in acceding to international legal instruments. It was also emphasized that subregional agreements should be consistent with international conventions, to avoid complications in the future. Moreover, the Commission decided to extend the validity of Resolution 48/11, with reports on its implementation to be submitted to the Commission every two years. It was also requested that a special study be conducted to evaluate the progress in the implementation of resolution 48/11, with specific focus on the identification of major problem areas as well as suggestions for remedial measures. These guidelines represent the result of the special, in-depth study requested by the 56th session of the Commission.

(c) The Ministerial Conference on Transport held in Busan, Republic of Korea (November 2006) stressed the importance of harmonizing transport laws and regulations and of adopting unified transport documents for international transport, as well as streamlining of border-crossing formalities and procedures, including visa procedures for professional drivers, in order to reduce delivery time and transport costs.

3. Current status

More than fifteen years have passed since the adoption of ESCAP resolution 48/11, during which countries in the ESCAP region have been profoundly influenced by the process of globalization and undergone significant political and economic transformation. Some countries experienced major structural changes opening their domestic markets to imports and enabling key export-oriented sectors to thrive, while others took on the enormous task of transforming from centrally-planned to market-oriented economic systems. A number of ESCAP member States have taken steps towards further liberalizing trade regimes, including the adoption of international legal instruments aimed at trade and transport facilitation. These include the conventions listed in resolution 48/11 as well as other conventions developed by the United Nations, the UNECE, the World Customs Organization (WCO) or the World Trade Organization (WTO)⁸. It is important to note that during the intervening years

⁸ Only members of the WTO can be parties to the organization’s legal instruments; however the ESCAP secretariat, in an attempt to make known as many aspects of transport facilitation as possible, will also touch some of the most relevant WTO provisions thereof.

countries have been influenced not only by the process of globalization, but also by the policies and tools promoted by other international organizations such as the WCO, which have been active in developing new legal instruments to help countries better cope with the new trade and transport environment.

Countries in the ESCAP region have undertaken considerable efforts towards regional integration by upgrading and interconnecting physical infrastructure: defining the Asia Highway (AH) and Trans-Asian Railway (TAR) networks and mobilizing resources to build/improve roads and railways is a concrete evidence of positive developments in the integration process. Nonetheless, legal and institutional harmonization and enforcement have not yet been achieved at the level expected when resolution 48/11 was adopted. Annex II - 2 contains one table showing the status of UNESCAP member States' accession to international conventions listed in Commission Resolution 48/11, as of September 2007.

Full implementation of global/regional legal instruments provide for a set of common standards among countries, but specific issues such as traffic rights or conditions for the free movement of goods/services/people/capital between countries are dealt with at subregional and bilateral levels between governments. Thus all three types of agreements (international legal instruments, subregional agreements and bilateral agreements) have a role to play in facilitating international transport.

The 62nd Commission Session requested the secretariat to provide countries assistance in acceding to international conventions on transport facilitation. The secretariat has collated and analyzed the most relevant international legal instruments on transport facilitation, listed in resolution 48/11 or that have been identified important, to be included in a refined resolution 48/11. The conventions listed in resolution 48/11 were, to a large extent, dedicated to road transport. In view of a possible inclusion of conventions relating to facilitation of railway transport in the refined resolution 48/11, as requested by the 54th session of the Commission, these guidelines also contain a sub-chapter dedicated to railway transport.

This analysis is based on documents issued by the organizations under the auspices of which the legal instruments have been elaborated: UNECE, WCO, IMO etc.

4. Conventions listed in resolution 48/11

(a) The Convention on Road Traffic, 1968

i) Overview

The Convention on Road Traffic, done in Vienna in 1968, aims at facilitating international road traffic and at increasing road safety through the adoption of uniform road traffic rules. The Convention sets up commonly agreed rules on all factors influencing international road traffic and its safety, including the driver and the vehicle, with which Contracting Parties must comply and ensure compliance. The Convention establishes that, in general, and without affecting the right of a Contracting Party to make the admission of vehicles in their territory subject to any applicable national law, 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 Convention and to recognize vehicle registration certificates issued by other Contracting Parties. In addition, the Convention details the basic conditions for the admission of vehicles and drivers in international traffic. This Convention is crucial for facilitating international road traffic, therefore international transport and trade as well as tourism. In addition, implementing the Convention rules would provide for a high level of

road safety. Contracting Parties on 18 September 2007: 67 States, of which 13 ESCAP regional member countries are Contracting Parties and 3 are signatories.

ii) Objectives

- To facilitate international road traffic,
- To increase road safety,
Through internationally agreed traffic rules and the reciprocal recognition of documents issued in conformity with those rules.

iii) Key Provisions

- Binds Contracting Parties to admit vehicles and drivers in international traffic on their territory, but preserves their right to refuse it,
- Establishes general and specific rules for drivers:
 - To be at all times able to control their vehicle
 - Must hold a driving permit, issued after tests
 - Driving rules: speed, distance, overtaking etc.
- Defines rules of behavior towards pedestrians, cyclists etc.
- Establishes general rules for vehicles
 - Must be registered, proved by a Registration Certificate
 - To bear the distinguishing sign of the country of registration

iv) Recent amendments

- Prohibition of using hand-held mobile phone while driving,
- Introduction of new information in the driving permit.

v) Benefits

- Establishes a set of agreed road traffic rules, reference for national Highway Codes,
- Reciprocal recognition of vehicle certificates and driving permits,
- Facilitates international transport, trade, tourism,
- Provides for road traffic safety.

vi) Basic implications

The implementation of the Convention on Road Traffic, 1968, improves significantly the degree of facilitation through rules and regulations that are common to all the Contracting Parties. While the harmonization of traffic rules is beneficial for the development of international transport, trade and tourism, it might also translate in significant direct and indirect costs in cases where the major existing rules and regulations have to be changed. In such cases, the implementation can only be done following a step-by-step approach. The assessment made by the Governments prior to decide on becoming a party to this convention should include, but not be limited to, consideration of the following most important responsibilities:

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository) and notification of the Legal Office of the distinguishing sign for display in international traffic on vehicles registered in the country ;
- Contracting Parties are participating in the management of the Convention by sending representatives in the meetings of the relevant working groups, committees etc. Normally, the meetings take place in Geneva, Switzerland, at the UNECE;

- Contracting Parties are expected to ratify and implement the subsequent amendments to the Convention;
- Contracting Parties must take appropriate measures to ensure that the rules of the road in force in their territories conform in substance to the provisions of Chapter II of the Convention. The Convention allows additional national rules to be included;
- Contracting Parties must take appropriate measures to ensure that the rules in force in their territories concerning the technical requirements to be satisfied by motor vehicles and trailers conform to the provisions of Annex 5 to the Convention. The Convention allows additional national rules to be included provided that they are in no way contrary to the safety principles governing the provisions of Annex 5;
- Subject to some exceptions provided for in Annex 1 to the Convention, Contracting Parties shall be bound to admit to their territories in international traffic motor vehicles and trailers which fulfill the conditions laid down in Chapter III of the Convention and whose drivers fulfill the conditions laid down in Chapter IV; they shall also be bound to recognize registration certificates issued in accordance with the provisions of Chapter III as *prima facie* evidence that the vehicles to which they refer fulfill the conditions laid down in the said Chapter III;
- Contracting Parties must take the necessary measures to ensure that road safety education be provided on a systematic and continuous basis, particularly in schools, at all levels;
- Whenever driving instruction for learner drivers is provided by professional driving establishments, domestic legislation must lay down minimum requirements concerning the curriculum and the qualifications of the personnel responsible for providing such instruction;
- Contracting Parties to this Convention which are not Contracting Parties to the Convention on Road Signs and Signals, 1968, undertake that:
 - (a) All road signs, traffic light signals and road markings installed in their territory shall form a coherent system and shall be designed and placed in such a way as to be easily recognizable;
 - (b) The number of types of sign shall be limited and signs shall be placed only at points where they are deemed useful;
 - (c) Danger warning signs shall be installed at a sufficient distance from obstructions to give drivers adequate warning;
 - (d) It shall be prohibited:
 - To affix to a sign, to its support or to any other traffic control device anything not related to the purpose of such sign or device; if, however, Contracting Parties or subdivisions thereof authorize a non-profit making association to install informative signs, they may permit the emblem of that association to appear on the sign or on its support provided this does not make it less easy to understand the sign;
 - To install any board, notice, marking or device which might be confused with signs or other traffic control devices, might render them less visible or effective, or might dazzle road-users or distract their attention in a way prejudicial to traffic safety;
 - To install on pavements and verges devices or equipment that might unnecessarily obstruct the movement of pedestrians, particularly elderly or disabled persons.

It is obvious from the above that becoming a party to the Convention on Road Traffic, 1968, and implementing it properly, needs careful prior assessment. The ESCAP secretariat has the necessary expertise and full willingness to assist member countries in this process, upon their request.

The Convention on Road Traffic, 1949

The 1968 Convention was preceded by an older version: the Convention on Road Traffic concluded in 1949, to which a number of 17 ESCAP member States (of which 8 are regional) are still Contracting Parties.

According to Article 48 of the Convention on Road Traffic, 1968, “ Upon its entry into force, this Convention shall terminate and replace, in relations between the Contracting Parties, the International Convention relative to Motor Traffic and the International Convention relative to Road Traffic, both signed at Paris on 24 April 1926, the Convention on the Regulation of Inter-American Automotive Traffic, opened for signature at Washington on 15 December 1943, and the Convention on Road Traffic, opened for signature at Geneva on 19 September 1949.”

This can be interpreted as the 1949 Convention being still valid in the relation between Contracting Parties to it. In other words, traffic rules and signalization and marking of roads should already be harmonized to a reasonable extent and vehicles and drivers in international traffic could be admitted on each other’s territory by the Contracting Parties, based on the 1949 Convention.

(b) The Convention on Road Signs and Signals, 1968

i) Overview

The Convention on Road Signs and Signals, done in Vienna in 1968, sets up a set of commonly agreed road signs and signals. It classifies road signs in three categories: danger warning, regulatory and informative, and provides for each of them definitions and physical appearance, including dimensions, shapes and colors, graphic symbols and norms for ensuring their visibility and legibility. The Convention also prescribes common norms for traffic light signals and signals for pedestrians.

Moreover, the Convention prescribes uniform conditions for road markings, signs for road works and signals and gates for level crossings. Amendments, including new provisions regarding the legibility of signs, priority at roundabouts and new signs to improve safety in tunnels, were adopted in 2003.

Contracting Parties on 18 September 2007: 56 States, of which 12 ESCAP regional member countries are Contracting Parties and 3 are signatories.

ii) Objectives

- To facilitate international road traffic,
- To increase road safety,
Through internationally agreed road traffic signs and signals.

iii) Key Provisions

- Defines three categories of road signs:
 - Danger Warning, Regulatory, Informative
- Establishes norms on shapes, dimensions, colours, visibility
- Establishes norms on traffic light signals, road markings
- Defines road works and level crossings signs

iv) Benefits

- Defines over 200 reference road signs and signals,
- Facilitates international road traffic, trade, tourism through harmonization,
- Provides for road traffic safety through education based on common standards.

v) Basic implications

The Convention on Road Signs and Signals, 1968, improves the degree of facilitation of international road transport and enhances significantly the road safety, through rules and regulations that are common to all the Contracting Parties. The implementation of the Convention is beneficial for the development of international transport, trade, tourism, and contributes to the reduction of social costs by diminishing the number of road accidents. At the same time, implementing the Convention might also translate in direct and indirect costs in cases where the existing signaling and markings have to be changed. In such cases, the implementation can only be done following a step-by-step approach. The assessment made by the Governments prior to decide on becoming a party to this convention should include, but not be limited to, consideration of the following most important responsibilities:

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository);
- Contracting Parties are participating in the management of the Convention by sending representatives in the meetings of the relevant working groups, committees etc. Normally, the meetings take place in Geneva, Switzerland, at the UNECE;
- Contracting Parties are expected to ratify and implement the subsequent amendments to the Convention;
- The Contracting Parties to the Convention accept the system of road signs, signals and symbols and road markings described herein and undertake to adopt it as soon as possible;
- Contracting Parties undertake to replace or supplement, not later than four years from the date of entry into force of the Convention in their territories, any sign, symbol, installation or marking which, although it has the characteristics of a sign, symbol, installation or marking belonging to the system prescribed by the Convention, is used with a different meaning from that assigned to it in the Convention;
- Contracting Parties undertake to replace, within 15 years from the date of entry into force of the Convention in their territories, any sign, symbol, installation or marking which does not conform to the system prescribed in the Convention. During this period, in order to familiarize road-users with the system prescribed in the Convention, previous signs and symbols may be retained beside those prescribed in the Convention;

- Contracting Parties will not be required to adopt all the types of sign and marking prescribed in this Convention. On the contrary, Contracting Parties shall limit the number of types of sign or marking they adopt to what is strictly necessary;
- The Contracting Parties undertake that it shall be prohibited to affix to a sign, to its support or to any other traffic control device anything not related to the purpose of such sign or device, and to install any board, notice, marking or device which might be confused with signs or other traffic control devices, might render them less visible or effective, or might dazzle road-users or distract their attention in a way prejudicial to traffic safety.

International transport of goods and people by road increases with the improvement of the infrastructure and the opening of borders for commercial or cultural exchanges. One of the consequences of globalization was that road signs and signals were harmonized (to a certain extent) all over the world without countries being necessarily Contracting Parties to this Convention. However, where lack of harmonization in road signaling and marking still persists, it translates in significant economic and social risks.

The decision to become a party to the Convention on Road Signs and Signals, 1968, and to implement it, has to be made based on an in-depth analysis of its benefits and implications. The ESCAP secretariat has the necessary expertise and full willingness to assist member countries in this process, upon their request.

Consolidated Resolutions relating to road transport

The UNECE Working Parties specialized on road traffic and road safety noted that the provisions of the two most relevant international legal instruments (the Conventions on Road Traffic and Road Signs and Signals respectively, of 1968) leave open the possibility of divergences between one country and another as regards some of the regulations in question. Aiming to establish greater uniformity in road transport in general and improve the transport processes and road safety, the Working Parties elaborated three Resolutions containing recommendations relating to road traffic, road signs and signals and facilitation of international road transport.

The three Resolutions are as follows:

1. Consolidated Resolution on Road Traffic (R.E.1.)

Contains provisions relating to roads, road traffic rules, conditions for the use of vehicles and their equipment including periodic inspection of vehicles, road users including guidelines for professional driving instruction.

2. Consolidated Resolution on Road Signs and Signals (R.E.2)

Contains provisions relating to road signs, traffic light signals, signing of humps, roadworks etc.

3. Consolidated Resolution on the Facilitation of International Road Transport (R.E.4)

Contains provisions relating to the regulation of international road transport including conditions for access to the profession, passenger transport and the regime

applicable, goods transport and the regime applicable, exchange of information, matters concerning road vehicles including registration certificates for hired vehicles and The International Motor Insurance Card System (the “Green Card System”).

Governments have been recommended, in order to eliminate the divergences between them as far as possible, to incorporate into their domestic legislation regulations which conform to the recommendations contained in the Resolutions.

Governments which are not yet in a position to ratify or accede to the above mentioned international legal instruments are recommended nevertheless to apply the provisions of those instruments forthwith to the fullest extent possible.

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

i) Overview

The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), of 1975, sets up the procedure that permits the international carriage of goods by road vehicles or containers from one Customs office of departure to a Customs office of arrival, through as many countries as necessary, without intermediate check of the goods carried and without the deposit of a financial guarantee at each border. The procedure includes the use of secure vehicles or containers that have to be approved by authorities according to standards prescribed in the Convention in order for them to be used for TIR operations.

It also includes an international guarantee chain to cover duties and taxes at risk throughout the journey and whereby in each Party a duly authorized association provides a guarantee towards national competent authorities. In addition, the goods are accompanied by an international Customs document, the TIR Carnet, which certifies the contents of the cargo as checked at the Customs Office of departure and which is also a guarantee document. The Customs authorities at intermediate borders recognize the inspections performed at the Customs office of departure, trust the information contained in the TIR Carnet and do not undertake checks except in justified cases. The procedure also foresees a controlled access to the TIR System and the exclusion from the system of operators that misuse it for illegal purposes. An electronic control system for TIR Carnets (SafeTIR) was developed by the private sector to strengthen the security of the TIR. It uses an international computer network and dedicated software, supporting efforts of the actors involved in the TIR system, including Customs, to ensure a better Risk management.

Contracting Parties on 18 September 2007: 67 States and the European Community.

ii) Objective

- To facilitate the seamless international carriage of goods by road vehicles/containers across one or more borders,

Through a carefully designed border crossing procedure and an international guarantee chain, in partnership between public and private sectors.

iii) Key Provisions

- Goods can be transported under the TIR regime only in secure, approved load compartment of vehicles or in secure containers,

- An international guarantee system is covering all the transports under the TIR Carnets,
- Mutual recognition of Customs controls: the control made at the Customs office of departure and the corresponding stamp and seals are recognized by all the Customs offices en route,
- The TIR Carnet is both a Customs and a Guarantee document; the guarantee provided amounts to a maximum recommended of 50,000 USD,
- Controlled access of operators to the TIR System: only trustworthy operators can become TIR Carnet Holders,
- SafeTIR electronic control system to strengthen the security of the TIR System through an electronic monitoring of the TIR Carnet lifecycle.

iv) Benefits

- No need for inspection of goods at intermediate borders, as the validity of Customs control at origin is recognized by all Customs *en route*,
- No need for payment of taxes and duties *en route*, as the TIR Carnet represents a guarantee for those taxes and duties,
- Reduced border delays, transport costs and import/export costs,
- Increased competitiveness and growth.

v) Basic implications

(1) For Governments

- Acceptance of the TIR Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository);
- Contracting Parties are members of the Administrative Committee of the TIR Convention and are participating in the management of the Convention by sending representatives in the meetings of the relevant working groups, committees etc. Normally, the meetings take place in Geneva, Switzerland, at the UNECE (see box below). An average of three meetings of these bodies take place every year, which involves costs for countries' representatives to participate;
- Contracting Parties are expected to ratify and implement the subsequent amendments to the Convention;
- The Government should support the private sector in the establishment and functioning of a national association which will be afterwards authorized to guarantee the TIR Carnets. The TIR functions as a centralized international guarantee system; therefore an association shall not be approved in any country unless its guarantee also covers the liabilities incurred in that country in connection with operations under cover of TIR Carnets issued by foreign associations affiliated to the same international organization as that to which it is itself affiliated. An international organization shall be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility (at present, the international organization which is responsible for the organization and functioning of the TIR international guarantee chain is the International Road Transport Union, IRU). The minimum conditions and requirements to be complied with by associations in order to be authorized by Contracting Parties to issue TIR

Carnets and act as guarantor in accordance with Article 6 of the Convention are:

- (a) Proven existence for at least one year as an established association representing the interests of the transport sector. This can include organizations involved in the international trade of goods, including chambers of commerce;
 - (b) Proof of sound financial standing and organizational capabilities enabling it to fulfill its obligations under the Convention;
 - (c) Proven knowledge of its staff in the proper application of the Convention. The IRU is providing TIR training to the associations, prior to the authorization and after that;
 - (d) Absence of serious or repeated offences against Customs or tax legislation;
 - (e) Establishment of a written agreement or any other legal instrument between the association and the competent authorities (the Customs Authority) of the Contracting Party in which it is established;
 - (f) An undertaking in the written agreement or any other legal instrument under (e), that the association will fulfill a number of obligations among which “shall provide its guarantee for all liabilities incurred in the country in which it is established in connection with operations under cover of TIR Carnets issued by itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated”;
- Publication of the list of Customs offices approved for accomplishing TIR operations. Contracting Parties can limit the application of the TIR Convention to a limited number of Customs offices along a fixed itinerary or a transport corridor. Usually, this way of gradually implementing the Convention helps all the TIR stakeholders gain confidence and acquire the necessary expertise before expanding the application to the whole territory of the country;
 - Training of Customs officials in the operation of TIR Customs procedures, covering departure, transit and destination as well as handling claims. Usually, the training is provided by the UNECE alone or in cooperation with the IRU but the TIR Executive Board can also contribute to training;
 - Establishment or designation of an authority responsible for the approval of road vehicles and containers to carry goods under the TIR regime. In general there is no need for a special authority, most of the countries having already established an authority responsible with the technical certification of the vehicles. The approval for the international transport of goods under Customs seal only concerns the load compartments of the vehicles; to be approved, they have to be constructed and equipped in such a manner that:
 - (a) no goods can be removed from or introduced into, the sealed part of the vehicle without leaving obvious traces of tampering or without breaking the Customs seal;
 - (b) Customs seals can be simply and effectively affixed to them;
 - (c) they contain no concealed spaces where goods may be hidden;
 - (d) all spaces capable of holding goods are readily accessible for Customs inspection.

(2) *For the private sector*

- The national guaranteeing association:
 - (a) Establishment of the national guaranteeing association (for example by an association of national transport operators) and affiliation to the international organization authorized to print and distribute the TIR Carnets and to take on responsibility for the organization and functioning of the international chain of guarantee. Currently the International Road Transport Union (IRU) is the only authorized organization but the TIR Convention allows for several organizations to be authorized;
 - (b) Conclusion of a written agreement or any other legal instrument (contract of commitment) with the national Customs authorities;
 - (c) Conclusion of a contract of commitment with the international organization;
 - (d) Conclusion of a declaration of commitment with transport operators requesting TIR Carnets and duly authorized as TIR Carnet Holders by competent authorities;
 - (e) Distribution of TIR Carnets to the TIR Carnet Holders.
- The transport operator, Holder of TIR Carnet:
 - (a) Conclusion of a declaration of commitment with the national guaranteeing association (stipulating the conditions for the use of TIR Carnets);
 - (b) Obtaining the certificate of approval for road vehicles and containers and mounting of the TIR plate thereon.
- The international organization:
 - (a) Obtaining the authorization to print and distribute TIR Carnets and to take on responsibility for the effective organization and functioning of an international guarantee system, granted by the TIR Administrative Committee;
 - (b) Procurement of the acceptance of the national guaranteeing association by the international guarantee system (insurance pool);
 - (c) Conclusion of written agreements on the functioning of the international guarantee system with national guaranteeing associations;
 - (d) Information to all national guaranteeing associations and national Customs authorities of the admission of new guaranteeing associations;
 - (e) Administration of the TIR guarantee system and providing competent bodies, on an yearly basis, with global data of claims lodged, paid and pending;
 - (f) Administration of the TIR Carnet system, including centralized printing and distribution of TIR Carnets to national guaranteeing associations;
 - (g) Offering its good offices and experience to support training of interested parties, i.e. national associations.

The TIR Convention is a complex legal document and the preparations for its effective implementation include significant efforts and require cooperation and coordination both at national and international levels. The sectors that are directly concerned with the implementation of the Convention are the Customs and the transport industry. However, insurance and banking are also important and should be functioning at the moment when the decision was made to ratify and implement the TIR Convention. The authorization procedures within both the public and the private sectors might take some time, depending on the preparedness of the stakeholders to take on the required responsibilities. Notwithstanding

the (sometimes) lengthy procedure and the preparation efforts, the TIR System is one of the most beneficial transit system in operation and the best known tool for trade and transport facilitation.

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 9 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

(d) The Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956

i) Overview

The Customs Convention on the Temporary Importation of Commercial Road Vehicles, of 1956, facilitates the temporary admission into a country Party to the Convention of commercial road vehicles registered in another country also Party to the Convention without payment of import duties and taxes for the vehicle. The Convention introduces a standardized procedure and provides for an internationally recognized document, which replace national procedures and documents, often different from one country to another. The transit system created by this Convention is almost identical to the TIR System.

The Convention sets up the principle of temporary importation of such vehicles under cover of the international document "Carnet de passage en douane" (CPD). These Carnets guarantee payment of import duties and taxes of the vehicles to national competent authorities if the vehicle that has been temporarily admitted is not re-exported. The CPDs are issued by authorized organizations or associations, which guarantee the payment. The Convention describes the functioning of the temporary importation procedures and the documents to be used as well as claims procedures to be applied when the exportation of vehicles has not been done within the time limits prescribed. The procedure also avoids the operation of national guarantee systems, as all taxes and duties are covered. As a result, the Convention helps minimize procedures and delays at border crossings.

Contracting Parties on 18 September 2007: 39 States and the European Community.

The Customs Convention on the Temporary Importation of Private Road Vehicles, of 1954, facilitates the temporary admission into a country Contracting Party to the Convention of private road vehicles registered in another country, also Contracting Party to

the Convention, without payment of import duties and taxes for the vehicles. The principles of this Convention are the same as those concerning the commercial road vehicles. Contracting Parties on 18 September 2007: 79 States and the European Community.

ii) Objective

- To facilitate temporary admission of commercial/private road vehicles registered in another country,
Through agreed procedures and in partnership between the public and private sectors.

iii) Key Provisions

- Creates the Carnet de Passage en Douane, an international Customs document and guarantees vehicle taxes if the vehicle is not re-exported,
- Establishes procedures for temporary importation, including for claims if no re-exportation of the vehicle takes place.

iv) Benefits

- Internationally agreed procedure for temporary admission of vehicles and for dealing with claims;
- No need for payment of vehicle import taxes, as these are guaranteed by the international guarantee chain through the CPD Carnet;
- Lower border delays, lower border costs;
- Lower transport and export/import costs;
- Growth in tourism, as the facilities for commercial vehicles also apply to bus and coach transport of persons for remuneration.

v) Basic implications

(1) For Governments

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository);
- Participation in the meetings of the Working Party on Customs Questions Affecting Transport (WP.30) which take place three times a year in Geneva, Switzerland, and are serviced by the UNECE
- Authorization of (a) national association(s) to guarantee the CPD Carnets and conclusion of a contract of commitment between the Customs authorities and the national guaranteeing association;
- Training of Customs officials in the operation of temporary importation procedures.

(2) For the private sector

- The national guaranteeing association:
 - (a) Establishment of the national guaranteeing association (for example by the national automobile club) and affiliation to the international organization managing the only existing international guarantee chain, the International Touring Alliance/International Automobile Federation (AIT/FIA, French acronym);
 - (b) Conclusion of a contract of commitment with the national Customs authorities;

- (c) Conclusion of a contract of commitment with the international organization;
- (d) Distribution of “Carnets de Passage en Douanes” (CPDs) to approved transport operators or in case of private cars, to the owners.
- The transport operator/owner of the vehicle, Holder of the CPD:
 - (a) Appropriate use of the duly filled-in and stamped CPD in line with the provisions of the Convention;
 - (b) Compliance with the time frame provided for in the temporary importation papers;
 - (c) Upon re-exportation of the vehicle, obtaining the necessary exit (visa) stamp from the authorized Customs office of departure at the border.
- The international organization:
 - (a) Procurement of the acceptance of the national guaranteeing association by the international insurance pool;
 - (b) Issuance of “Carnets de Passage en Douane” to national guaranteeing associations;
 - (c) Administration of the CPD and the guarantee system.

The Customs Conventions on the Temporary Importation of Commercial/Private Road Vehicles have brought important simplification of formalities in international transport and improved the degree of facilitation mainly in transport and tourism.

(e) The Customs Convention on Containers, 1972

i) Overview

The Customs Convention on Containers, of 1972, facilitates the movements of containers in international transport by deferring payment of taxes and duties and without producing Customs documents for the temporary use in a Contracting Party of containers registered in another Contracting Party. Customs authorities can avoid the organization of national documentary system if they so wish and the administration of national guarantee systems. However, Customs authorities retain the right, under certain circumstances, to require the furnishing of a form of security and/or the production of Customs documents. In case control measures are to be carried out, Customs authorities can request to check the records kept by container operators or their representatives in the country as regards all container movements. Thus, the Convention provides Customs authorities with a flexible instrument to reduce administrative work while safeguarding, at the same time, Customs control.

As the Convention also provides for the possibility to use temporarily imported containers one single time for internal traffic before re-exportation, the container transport operators are advantaged because not only they avoid the deposit of large sums and the delays in border crossing procedures but can be able to react in a flexible manner to emerging transport needs.

The Convention has been elaborated under the auspices of the UNECE but its administration was transferred to the World Customs Organization; however, it remains a United Nations Convention

Contracting Parties on 18 September 2007: 35 States.

ii) Objective

- To facilitate the temporary admission in a country of containers registered in another country by deferring payment of taxes and duties.

iii) Key provisions

- Common temporary admission procedures;
- No document requirements but clear rules for identification;
- Undertaking by owner provides guarantee for payment of Customs taxes and duties in case container is not re-exported;
- Prescriptions for secure sealing and use.

iv) Benefits

- Minimum border procedures, deferred payment of Customs taxes and duties;
- Recovery of Customs duties if container not re-exported;
- Facilitates international transport of goods.

v) Basic implications

(1) For Governments

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository);
- Participate in the meetings dedicated to the administration of the Convention, in Brussels (Belgium) at the WCO Headquarters;
- Training of Customs officials in the operation of temporary importation procedures.

(2) For the private sector

- The transport operator:
 - (a) Marking the containers in line with the provisions of the Convention;
 - (b) Compliance with the time frame for the temporary importation as provided for in the Convention;
 - (c) Compliance with imposed restrictions as to use the container only once in internal traffic;
 - (d) Keeping detailed records, if requested, of the movements of each individual container in the country of temporary importation and establishing a national representative in that country.

(f) The International Convention on the Harmonization of Frontier Controls of Goods, 1982

i) Overview

The International Convention on the Harmonization of Frontier Controls of Goods, of 1982, aims at facilitating border crossing in international transport of goods through harmonization and reduction of the requirements for completing formalities and the number and duration of border controls. The Convention is effectively a statement of good practice and establishes the procedures for carrying out efficiently all types of controls that may be necessary at borders, including Customs controls, medico-sanitary inspections, veterinary inspections, phytosanitary inspections, controls of compliance with technical standards and quality controls. Procedures largely call for facilitation through national

cooperation and coordination of the various services among them, as well as through international cooperation between the respective border services of the adjacent countries. At the same time, the Convention does not preclude the application of the prohibitions or restrictions relating to importation, exportation, or transit, imposed for reasons of public order, and in particular public safety, morality, and health, or for the protection of the environment, of cultural heritage or industrial, commercial and intellectual property.

The Convention foresees measures that include joint controls of goods and documents through the provision of shared facilities, same opening hours and same types of services at the same border. These procedures apply to all goods being imported, exported or in transit and **to all modes of transport**. The Convention is foreseen for global application and provides for a reduction in the number and duration of all types of controls and best practices for efficient controls of goods at border crossings. It aims at promoting the one-stop-shop principle for border controls. If properly implemented the Convention reduces border delays, which results in lower transport costs and, therefore, in lower export and import costs.

Contracting Parties on 18 September 2007: 49 States and the European Community.

ii) Objective

- To facilitate cross border transport of goods,

Through nationally coordinated, internationally harmonized, shorter, reduced formalities and controls on goods at borders

iii) Key provisions

- Procedures for efficient border controls:
 - (a) Customs, Medico-Sanitary, Veterinary, Phyto-Sanitary, Compliance with technical standards, etc.;
- Coordination among various national services;
- Cooperation and coordination between border services of adjacent countries, including:
 - (a) Joint controls, harmonized opening hours, same controls, etc.;
- The newly added Annex 8 to the Convention (to enter into force on 20 May 2008) covers the following aspects:
 - (a) facilitation of visa procedures for professional drivers;
 - (b) operational measures to speed-up border crossing procedures for goods, particularly for urgent consignments, such as live animals and perishable goods;
 - (c) harmonized technical provisions relating to faster control of road vehicles (technical inspections) and equipment used for transport of goods under controlled temperatures;
 - (d) standardized weighing operations and procedures to avoid, to the extent possible, repetitive weighing procedures at border crossings;
 - (e) minimum infrastructure requirements for efficient border crossing points;
 - (f) monitoring provisions facilitating appropriate implementation of the Annex in all Contracting Parties to the Convention.

iv) Benefits

- Lower border delays, costs for carriers and export/import;
- Lower border operating costs for State budget;

- More efficient investments in border facilities.

v) Basic implications

(1) For Governments

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository);
- Participation in the meetings of the Administrative Committee of the Convention (AC.3), which is held when the need arises, and in the meetings of the Working Party on Customs Questions Affecting Transport (WP.30), which is held three times a year; both bodies' meetings are held in Geneva, Switzerland, and are serviced by the UNECE;
- Training of officials at border stations to streamline import, export and transit procedures;
- Providing the control services, as far as possible, and within the framework of national law, with:
 - (a) qualified personnel in sufficient numbers consistent with traffic requirements;
 - (b) equipment and facilities suitable for inspection, taking into account the mode of transport, the goods to be checked and traffic requirements;
 - (c) official instructions to officers for acting in accordance with international agreements and arrangements and with current national provisions.
- The Contracting Parties undertake to co-operate with each other and to seek any necessary co-operation from the competent international bodies, in order to achieve the aims of the Convention, and furthermore to attempt to arrive at new multilateral or bilateral agreements or arrangements, if necessary;
- Whenever a common inland frontier is crossed, the Contracting Parties concerned shall take appropriate measures, whenever possible, to facilitate the passage of the goods, and they shall, in particular:
 - (a) endeavour to arrange for the joint control of goods and documents, through the provision of shared facilities;
 - (b) endeavour to ensure that the following correspond: opening hours of frontier posts, the control services operating there, the categories of goods, the modes of transport and the international Customs transit procedures accepted or in use there.
- The Contracting Parties shall, on request, send each other information necessary for the application of the Convention under the conditions specified in the annexes thereto;
- The Contracting Parties shall endeavor to further the use, between themselves and with the competent international bodies, of documents aligned on the United Nations Layout Key;
- The Contracting Parties shall, wherever possible, provide simple and speedy treatment for goods in transit, especially for those traveling under cover of an international Customs transit procedure, by limiting their inspections to cases where these are warranted by the actual circumstances or risks. Additionally, they shall take into account the situation of land-locked countries. They shall endeavor to provide for extension of the hours and the competence of existing Customs posts available for Customs clearance for goods carried under an

international Customs transit procedure. They shall endeavor to facilitate to the utmost the transit of goods carried in containers or other load units affording adequate security.

The International Convention on the Harmonization of Frontier Controls of Goods, of 1982, is one of the most efficient facilitation tools, providing for the possibility of applying it to all modes of transport. Wording such as “shall endeavor”, “wherever possible” or “as far as possible” demonstrate that the drafters of this legal instrument took into account the differences existing between the countries that might consider becoming a party to the Convention and implementing it. While the financial implications of implementing this Convention are not as significant as for other legal instruments, the political will and commitment to cooperate and coordinate at national and international levels are essential for its implementation. The ESCAP secretariat has the necessary expertise and willingness to assist member countries, upon their request, in their assessment prior to becoming a party to this Convention and in implementing it.

(g) The Convention on the Contract for the International Carriage of Goods by Road (CMR)

i) Overview

The Convention on the Contract for the International Carriage of Goods by Road (CMR), done in Geneva on 19 May 1956, facilitates international road transport by providing a common transport contract, including a common Consignment Note and harmonized liability limits. The CMR fixes the conditions governing the contract for the international carriage of goods by road between the carrier and the forwarder and sets the conditions of liability of the carrier in case of total or partial loss of goods. The CMR belongs to private law and have no direct implications for the Government but, in order for transport operators to implement the Convention, it must be included in their national legislation.

Contracting Parties on 18 September 2007: 51 States.

The Protocol to the Convention on the Contract for the International Carriage of Goods by Road of 1978 modifies the provisions concerning the liability of the carrier for compensation in respect of loss of goods, set out in article 23 of the Convention. Concretely, the “Franc” (outdated as reference for determining currency conversions) is replaced by Special Drawing Right (SDR) as the currency reference when calculating compensation payable by road transport carriers.

Contracting Parties to this Protocol, on 18 September 2007: 36 States.

In order to facilitate the optional making out of the Consignment Note by means of procedures used for the electronic recording and handling of data, the Contracting Parties approved in October 2007, a new Protocol supplementing the Convention. Subject to the provisions of this Protocol, the Consignment Note referred to in the Convention, as well as any demand, declaration, instruction, request, reservation or other communication relating to the performance of a contract of carriage to which the Convention applies, may be made out by electronic communication. An electronic Consignment Note that complies with the provisions of this Protocol shall be considered to be equivalent to the Consignment Note referred to in the Convention and shall therefore have the same evidentiary value and produce the same effects as that Consignment Note.

ii) Objectives

- To facilitate international road transport,

Through a commonly agreed transport contract, including contract document and liabilities.

iii) Key Provisions

- Defines contract conditions
 - (a) The contract document: the Consignment Note
 - (b) Fixes carrier's liability limits in case of total or partial loss of goods or delay
- The e-Consignment Note has just been approved (date of entry into force not yet precised).

iv) Benefits

- Fair competition between carriers,
- Lower international road transport costs, including insurance costs.

v) Basic implications

(1) For Governments

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Legal Office of the United Nations in New York (depository);
- Participation in the meetings of the Working Party on road Transport (SC.1) that take place once every year in Geneva, Switzerland, and are serviced by the UNECE;
- Ratification and implementation of subsequent amendments, supplements, Protocols to the Convention.

(2) For the private sector

- The transport operator:
 - (a) Establishment of an international transport contract in line with the requirements of the Convention;
 - (b) Compliance with the requests of the consignee and the consignor;
 - (c) Acceptance of the liability for loss and delay.

The CMR ensures that transport operators engaged in international road transport enjoy basically the same legal contractual treatment in all the countries having accepted the Convention. By that, it helps to maintain fair competition between carriers and limits the costs of international road transport, including insurance costs. For the Convention to achieve its objectives the road transport operators must be prepared to assume their liabilities; it is also essential that the insurance/banking sectors work properly.

5. Conventions to be considered for inclusion in an expanded resolution 48/11

The following legal documents were elaborated under the auspices of the World Customs Organization (WCO) and the International Maritime Organization (IMO), which is a United Nations Specialized Agency.

The WCO International Convention on the Simplification and Harmonization of Customs Procedures, as amended (revised Kyoto Convention), 1973 and the Convention on Temporary Admission (Istanbul Convention), 1990 are well known facilitation tools for trade and implicitly for transport. These Conventions are assessed into detail by the WCO itself and that is why the present guidelines are only describing them in principle. Most of the ESCAP member countries are active members of the WCO; acceding to and implementing the Conventions and their Annexes should only be natural and beneficial to all the stakeholders involved in trade and transport in the region.

The IMO Convention on Facilitation of International Maritime Traffic (FAL), 1965 might be wrongly considered as inappropriate or of secondary importance for landlocked countries. In fact, the Convention is aiming to secure the highest practicable degree of uniformity in formalities and other procedures in international maritime transport but can also be used as an example of good practice for other modes of transport.

(a) The International Convention on the Simplification and Harmonization of Customs Procedures, as Amended (Revised Kyoto Convention), 1973

i) Overview

The **Revised Kyoto Convention on Simplification and Harmonization of Customs Procedures** entered into force on 3 February 2006. The entry into force of this legal instrument, with major countries being Contracting Parties thereto could effectively mean that around 80 per cent of international trade will be facilitated by its provisions. The revised Kyoto Convention has incorporated important modern concepts which include the application of new technology, the implementation of new philosophies of Customs control and the establishment of a partnership between Customs and the business community.

Customs administrations under the revised Kyoto Convention are committed to provide transparency and predictability of actions, to adopt the use of risk management techniques and to take measures to coordinate their work with the control functions of other agencies. In addition to the key provisions, the Kyoto Convention provides implementation guidelines and ensures that the principles of simplification and modernization contained in the Convention are applied effectively by Customs Administrations. The Convention is composed of a Body, a General Annex and ten specific Annexes. The Specific Annexes A-K relate to particular Customs formalities, such as importation, exportation, Customs warehouses and free zones, transit, processing, temporary admission and rules of origin. Annex E, relating to Customs transit by **all modes of transport** is of particular relevance to intra-regional trade and the transit trade for landlocked countries.

Contracting Parties at 18 September 2007: 53 States and the European Community.

ii) Objective

- To provide an international legal framework for the development of global Customs procedures;
- To promote international trade by removing divergence between Customs procedures and practices, ensuring appropriate standards of Customs control;
- To achieve a high degree of simplification and harmonization of Customs procedures and practices among trading nations.

iii) Key provisions

- The maximum use of automated systems including electronic fund transfer;

- Risk management techniques (including risk assessment and selectivity of controls);
- The use of pre- arrival information to drive programmes of selectivity;
- Customs interventions coordinated with other agencies;
- Making information on Customs requirements, laws, rules and regulations easily available to anyone;
- Providing a system of appeals in Customs matters;
- Establish formal consultative relationships between Customs and trade.

The legal framework of the revised Kyoto Convention is contained in the General Annex and the specific Annexes. The General Annex lays down three basic principles namely that:

- The Definitions, Standards and Transitional Standards in this Annex shall apply to Customs procedures and practices specified in this Annex and, insofar as applicable, to procedures and practices in the Specific Annexes;
- The conditions to be fulfilled and Customs formalities to be accomplished for procedures and practices in this Annex and in the Specific Annexes shall be specified in national legislation and shall be as simple as possible;
- The Customs shall institute and maintain formal consultative relationships with the trade to increase cooperation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.

The key provisions in the General Annex also relate, among others, to:

- Clearance and other Customs formalities which include designation of Customs offices, specification and conditions related to declarants, rights of declarants, goods declaration formats, documents required to support goods declaration, lodgment, registration and checking of goods declaration, and examination of goods;
- Assessment, collection and payment of duties and taxes;
- Deferred payment of duties and taxes;
- Repayment of duties and taxes when it is established that taxes have been overcharged as a result of an error in their assessment;
- Security (guarantee): national legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided;
- Customs control with the injunction that Customs control shall be limited to that necessary to ensure compliance with the Customs law;
- Application of information technology with the requirement that the introduction of information technology shall be carried out to the greatest extent possible in consultations with all relevant parties directly concerned;
- Relationship between the Customs and third parties, i.e. persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf;
- Information of general application pertaining to Customs law to be readily available;
- Right of appeal in Customs matters.

iv) Benefits

- Facilitation of international trade and implicitly transport;
- The maximum use of information technology and standardized and simplified procedures enable goods to move faster across national borders reducing the need to maintain security or buffer stocks;

- The application of risk management techniques reduces the work load of Customs officials;
- The use of electronic fund transfers and the establishment of formal consultative relations with the business community will be of significant benefit to the business community and in particular to traders and transport operators.

v) Basic implications

(1) For Government

- Acceptance of the Convention (and its Annexes) in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Secretary General of the Customs Cooperation Council (World Customs Organization) in Brussels (depository).

The Body of the Convention and the General Annex are obligatory for accession to the Convention. A Contracting Party is free, however, to accept all the Specific Annexes or only a number of Specific Annexes or Chapters dependent upon their specific requirements. Any Contracting Party shall, at the time of signing, ratifying or acceding to the Convention, specify which if any of the Specific Annexes or Chapters therein it accepts. It may subsequently notify the depository that it accepts one or more Specific Annexes or Chapters therein. It is recommended that at least the Specific Annexes on home use and export are accepted, as well as those concerning the formalities prior to the lodgment of the goods declaration and those for warehouses, transit and processing. Acceptance of these basic procedures which are implemented by most Customs administrations will provide the first level of simplification and harmonization of Customs procedures across different administrations.

- Training of Customs officials in implementing the harmonized, simplified procedures as provided by the Convention;
- Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements;
- Customs shall designate the Customs offices at which goods may be produced or cleared. In determining the competence and location of these offices and their hours of business, the factors to be taken into account shall include in particular the requirements of the trade;
- Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices. At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls;
- Customs offices at major ports or harbors, airports and land frontier routes will normally be competent to deal with all Customs procedures, and may be open 24 hours a day for persons to present or declare goods.

(2) For the private sector

- The business community:
 - (a) Participate in the formal consultative relations with Customs;

- (b) Comply with the specifications and conditions related to declarants, goods declaration formats, documents required to support goods declaration, lodgment etc.;
- (c) Provide the security/guarantee in the cases in which security is required and in the form in which security is to be provided.

(b) Convention on Temporary Admission (Istanbul Convention), 1990

i) Overview

The **Convention on Temporary Admission (Istanbul Convention), 1990**, is a legal instrument dedicated to temporary admission procedures, as it was considered that too many instruments on temporary admission were existing. The Istanbul Convention addresses this issue effectively by providing uniform provisions for temporary admission of goods of all kinds (products for trade fairs and exhibitions, traded goods, commercial and tourist vehicles). It seeks to provide uniform provisions in respect of temporary admission through the adoption of a single instrument combining all existing Conventions on temporary admission. The different subjects covered by other Conventions, such as (i) products to trade fairs, (ii) goods in transit, **by all modes of transport** (iii) commercial vehicles, and (iv) private road vehicles are covered in separate Annexes to the Istanbul Convention.

Under the temporary importation regime of the Istanbul Convention, goods are imported without payment of Customs duties and taxes subject to re-exportation and subject to the production of A.T.A. Carnets (abbreviation resulting from the French “Admission Temporaire” and the English “Temporary Admission”) issued by National Associations which have to be approved by Customs and which must be affiliated to an international guaranteeing chain administered by the ICC World Chambers Federation (Until June 2001, the International Bureau of Chambers of Commerce). This arrangement for administering the guaranteeing chain is convenient to many countries since their National Chambers of Commerce are members of the International Chamber of Commerce.

The Istanbul Convention offers the business community considerable simplification of Customs procedures while providing Customs Administrations with adequate security against potential tax evasion.

Contracting Parties on 30 June 2007: 50 States and the European Community.

ii) Objective

- Replace the existing international Customs Conventions on temporary admission and regulate internationally all the categories of temporary admission;
- Facilitate the accomplishment of temporary admission formalities;
- Simplify and harmonize Customs procedures and, in particular, the adoption of a single international instrument combining all existing Conventions on temporary admission.

iii) Key provisions

- A single international legal instrument for the simplification and harmonization of temporary formalities, replacing all existing Conventions or recommendations dealing solely or principally with temporary admission;
- Each Annex authorizes the temporary admission of goods imported for a specific purpose, e.g. Annex B.1 covers goods for display or use at fairs or exhibitions;

- Goods imported duty free cannot remain indefinitely in the country of temporary importation. The period fixed for re-exportation is laid down in the Annex;
- Goods must be re-exported in the same state. They must not undergo any change during their stay in the country of temporary importation, except normal depreciation due to the use made of them;
- Economic prohibitions or restrictions at importation are not applied since such constraints generally relate to goods cleared for home use, thus serving as a national protection measure.

iv) Benefits

- Uniform provisions in respect of temporary admission, resulting in a high degree of simplification and harmonization of Customs procedures;
- Facilitation of temporary admission in pursuit of economic, humanitarian, cultural, social or touring objectives;
- Standardized model temporary admission papers as international Customs documents with international guarantee, facilitating the temporary admission procedure where a Customs document and a guarantee are required.

v) Basic implications

(1) For Governments

- Acceptance of the Convention (and its Annexes) in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession at the Secretary General of the Customs Cooperation Council (World Customs Organization) in Brussels (depository);
- Authorization of (a) national association(s) to guarantee the Temporary Admission Documents - ATA and CPD Carnets - and conclusion of a contract of commitment between the Customs authorities and the national guaranteeing association(s);
- Training of Customs officials in the operation of temporary importation procedures.

(2) For the private sector

- The national guaranteeing association:
 - (a) Establishment of the national guaranteeing association(s) (for example by an association of automobile clubs or of chambers of commerce) and affiliation to one of the international organization managing the existing international guarantee chain, such as the International Touring Alliance/International Automobile Federation (AIT/FIA, French acronym) or the ICC World Chambers Federation;
 - (b) Conclusion of a contract of commitment with the national Customs authorities;
 - (c) Conclusion of a contract of commitment with the international organization;
 - (d) Distribution of the temporary admission documents (ATA Carnets, CPD carnets) to approved transport operators, or to the owners of vehicles/goods.
- The transport operator/owner of the vehicle:

- (a) Appropriate use of the duly filled-in and stamped Customs document in line with the provisions of the Convention;
 - (b) Compliance with the conditions provided for in the temporary importation papers;
 - (c) Upon re-exportation of the vehicle/goods, obtaining the necessary exit (visa) stamp from the authorized Customs office of departure at the border.
- The international organization:
- (a) Procurement of the acceptance of the national guaranteeing association by the international insurance pool;
 - (b) Issuance of temporary admission documents (ATA Carnets, CPD Carnets) to national guaranteeing associations;
 - (c) Administration of the guarantee system.

vi) The A.T.A. Carnet

The A.T.A. Carnet system under the Istanbul Convention replaces national Customs formalities for temporary admission or transit, thus saving the costs in clearing goods at each frontier. Any duties and taxes that may become due are guaranteed simply by the presentation of the Carnet and its acceptance by Customs offices. There is therefore no need to furnish a cash deposit or other form of security. The A.T.A. Carnet covers the transport of goods in Customs transit while *en route* to or returning from a country of temporary importation and, where applicable, within that country. For the period of validity of the A.T.A. Carnet (normally one year), the goods can be temporarily imported under the same Carnet in the Customs territories of as many Contracting Parties, and as often as the Carnet holder wishes. The seals affixed or identification of the goods by Customs office is recognized by Customs offices of other Contracting Parties where goods subsequently pass. This reduces the work load of Customs and saves the Carnet holder time when goods cross frontiers. The ATA international guarantee chain provides reciprocal guarantees assuring Customs administrations that duties and taxes due in case of misuse will be paid. Fees vary according to the country. They are determined by the value of the goods, the number of countries to be visited, plus any additional costs for security, insurance or other services. Fees will always represent a small fraction of the value of the goods covered by the Carnet. Each country in the system has a single guaranteeing body approved by the national Customs authorities and the ICC World Chambers Federation (Until June 2001, the International Bureau of Chambers of Commerce). The national guaranteeing association is entitled to issue Carnets and to authorize local chambers on the national territory to deliver them on its behalf. In major trading nations, dozens of local chambers have that authority. Within the ICC World Chambers Federation, the World ATA Carnet Council (WATAC) runs the ATA system and its international guarantee chain. The Council is made up of representatives from all countries and territories where Carnets are issued and accepted.

(c) The Convention on Facilitation of International Maritime Traffic (FAL), 1965

i) Overview

The **Convention on Facilitation of International Maritime Traffic (FAL), 1965**, was adopted on 9 April 1965 and entered into force on 5 March 1967; it was amended 10 times since. By the early 1960s the maritime nations had decided that the situation could not be allowed to deteriorate further in respect of increasing bureaucracy and obstacles to facilitation. International action was called for and to achieve it Governments turned to IMO; in the early 60ies an Expert Group was convened which recommended that an international

convention be adopted to assist the facilitation of international maritime traffic. In October 1963 the 3rd IMO Assembly adopted a resolution which approved the report of Expert Group and in particular recommended that a convention be drafted which would be considered for adoption at a conference to be held under IMO auspices in the spring of 1965. The conference duly took place and the Convention on Facilitation of International Maritime Traffic (FAL), 1965 was adopted on 9 April. The Convention is open to any Member State of the United Nations. Contracting Parties as on 30 September 2007: 111 states.

ii) Objectives

- To prevent unnecessary delays in maritime traffic;
- To aid co-operation between Governments;
- To secure the highest practicable degree of uniformity in formalities and other procedures: the Convention reduces to just eight the number of declarations which can be required by public authorities.

iii) Key provisions

- Standards and recommended practices.

In its Annex, the Convention contains "Standards" and "Recommended Practices" on formalities, documentary requirements and procedures which should be applied on arrival, stay and departure to the ship itself, and to its crew, passengers, baggage and cargo. The Convention defines **standards** as internationally-agreed measures which are "necessary and practicable in order to facilitate international maritime traffic" and **recommended practices** as measures the application of which is "desirable". The Convention provides that any Contracting Government which finds it impracticable to comply with any international standard, or deems it necessary to adopt differing regulations, must inform the Secretary-General of IMO of the "differences" between its own practices and the standards in question. The same procedure applies to new or amended standards. In the case of recommended practices, Contracting Governments are urged to adjust their laws accordingly but are only required to notify the Secretary-General when they have brought their own formalities, documentary requirements and procedures into full accord. This flexible concept of standards and recommended practices, coupled with the other provisions, allows continuing progress to be made towards the formulation and adoption of uniform measures in the facilitation of international maritime traffic.

- The IMO Standardized Forms (FAL 1-7)

Standard 2.1 lists the documents which public authorities can demand of a ship and recommends the maximum information and number of copies which should be required. IMO has developed Standardized Forms for seven of these documents. They are the:

- (a) IMO General Declaration;
- (b) Cargo Declaration;
- (c) Ship's Stores Declaration;
- (d) Crew's Effects Declaration;
- (e) Crew List· Passenger List;
- (f) Dangerous Goods.

Two other documents are required under the Universal Postal Convention and the International Health Regulations. The general declaration, cargo declaration, crew list and passenger list constitute the maximum information necessary. The ship's stores declaration

and crew's effects declaration incorporate the agreed essential minimum information requirements.

iv) Amendment procedure

The 1965 Convention included the traditional amendment procedure whereby changes to the Convention had to be positively accepted by two-thirds of contracting Parties. Minor amendments adopted in 1969 and 1977 entered into force in 1971 and 1978 respectively, but it was obvious that major improvements to the Convention would take a while to achieve the required acceptances. As a result, Parties to the Convention in 1973 adopted amendments to introduce the "tacit acceptance" procedure, whereby amendments would be deemed accepted by a specified date unless a required number of Parties objected. Amendments are generally considered and adopted by IMO's Facilitation Committee, while Contracting Governments can also call a Conference of Parties to the Convention to adopt amendments.

- **The 1973 amendments (entered into force in June 1984)** introduced the "tacit acceptance" procedure included in many other IMO conventions;
- **The 1986 amendments (entered into force in October 1986)** were designed primarily to reduce "red tape" and in particular to enable automatic data processing techniques to be used in shipping documentation;
- **The 1987 amendments (entered into force in January 1989)** simplify the documentation required by ships including crew lists, and also facilitate the movement of ships engaged in disaster relief work and similar activities;
- **The 1990 amendments (entered into force in September 1991)** revise several recommended practices and add others dealing with drug trafficking and the problems of the disabled and elderly. They encourage the establishment of national facilitation Committees and also cover stowaways and traffic flow arrangements;
- **The 1992 amendments (entered into force in September 1993)** restructure the Annex to the Convention and deal with the following subjects:
 - (a) electronic data processing/electronic data interchange (EDP/EDI);
 - (b) private gift packages and trade samples;
 - (c) consular formalities and fees;
 - (d) submission of pre-import information;
 - (e) clearance of specialized equipment;
 - (f) falsified documents.
- **The 1993 amendments (entered into force in September 1994)** concern the Annex to the Convention and deal with unmanifested parcels and the handling of stowaways;
- **The 1996 amendments (entered into force in 1 May 1997)** concern the passenger list, national facilitation committees, inadmissible persons, immigration pre-arrival clearance, pre-import information and cruise passengers;
- **The 1999 amendments (entered into force in January 2001)** relate to the combating of illicit drug trafficking; arrival, stay and departure of ships, passengers, crews and cargo; and the use of electronic data interchange (EDI) for ship clearance purposes;
- **The 2002 amendments (entered into force in May 2003)** add new standards and recommended practices for dealing with stowaways. Another amendment relates to the Dangerous Goods Manifest (FAL Form 7), which becomes the basic document providing public authorities with the information regarding dangerous goods on board ships;

- **The 2005 amendments (entry into force: 1 November 2006)** are intended to modernize the Convention in order to enhance the facilitation of international maritime traffic. These amendments include the following:
 - (a) a Recommended Practice for public authorities to develop the necessary procedures in order to use pre-arrival and pre-departure information to facilitate the processing of information, and thus expedite release and clearance of cargo and persons;
 - (b) a Recommended Practice that all information should be submitted to a single point to avoid duplication;
 - (c) encouragement of electronic transmission of information;
 - (d) the addition of references to the International Ship and Port Facility Security (ISPS) Code and SOLAS chapter XI-2 in the Standards and Recommended Practices which mention security measures; and
 - (e) amendments to the IMO Standardized FAL Forms (1 to 7).

v) Benefits

- Harmonized standards and practices;
- Reduced bureaucracy and increased automatic data processing techniques used in shipping documentation;
- Streamlined procedures of clearance of cargo and persons;
- Increased safety and security for vessel, cargo, crew and passengers;
- Proven to be one of the most efficient instruments for facilitation of international maritime traffic.

vi) Basic implications

(1) For Governments

- Acceptance of the Convention in accordance with the national legal procedures and modification, if need be, of national laws, regulations and administrative instructions in line with the provisions of the Convention;
- Deposit of an instrument of accession with the Secretary General of the International Maritime Organization (IMO) in London;
- Training of Customs officials in entry, stay, exit procedures;
- Training of civil servants of other authorities (border and anti-drug police, sanitary, etc) involved in border controls;
- In the case of recommended practices, Contracting Governments are urged to adjust their laws accordingly but are only required to notify the Secretary-General when they have brought their own formalities, documentary requirements and procedures into full accord;
- Development of the necessary procedures in order to use pre-arrival and pre-departure information to facilitate the processing of information, and thus expedite release and clearance of cargo and persons;
- Measures to ensure that all information should be submitted to a single point to avoid duplication.

(2) For private sector

- Compliance with documentary requirements of the Convention;
- Compliance with requirements relating to the ship (pre-departure/pre-arrival information, transport of dangerous goods, stowaways, disabled and elderly etc);
- Training of crew in conformity with the provisions of the Convention.

C. Facilitation of International Railway Transport

1. Introduction

The strategy of the Commission in implementing the Asian Land Transport Infrastructure Development (ALTID) project, endorsed by the Commission at its forty-eighth session in 1992, has included the formulation and formalization of the Asian Highway (AH) and Trans-Asian Railway (TAR) networks as well as the promotion of land facilitation measures.

In the area of facilitation, one of the thrust areas of the Commission has been promotion of the seven international conventions contained in Commission resolution 48/11 on Road and rail transport modes in relation to facilitation measures of 23 April 1992. These conventions are however principally concerned with the road transport sector. With the adoption of Commission resolution 62/4 on Intergovernmental Agreement on the Trans-Asian Railway Network of 12 April 2006 the initial formalization of the TAR network is complete. It is expected that the Agreement will entry into force in early 2008, once eight countries would have ratified it. It is therefore timely that countries consider ways and means to develop or improve border and transit facilitation measures that improve the efficiency of international railway and intermodal transport.

2. Border-crossing and transit problems in the railway sector

Experience in the ESCAP region, as well as in other parts of the globe highlights/illustrates the persistent nature of border-crossing and transit problems in the railway sector. Consequently, consideration of these problems affords important lessons concerning the problems that can be avoided if early action is taken by ESCAP member and associated member countries.

A report of the European Conference of Ministers of Transport (ECMT)⁹ published in 2004 described many of the problems arising at railway border crossings. These are not specific to a region/continent and can be classified under six main headings, namely infrastructure at borders, rolling stock and interoperability, communications, technical procedures, administrative procedures and personnel. Examples of problems arising from administrative procedures include the following:

(a) General administration

- Sequential (as distinct from parallel) administrative, technical and safety controls (sometimes at different locations);
- Large numbers of documents;
- Technical inspections carried out at borders (rather than make-up or marshalling yards or yards with repair facilities);
- Administrative inspections carried out at borders (rather than at loading or unloading points);
- Lack of cooperation between inspection services within countries;
- Lack of cooperation between inspection services in different countries;
- Non-application of conventions to which countries are signatories.

⁹ European Conference of Ministers of Transport, "Removal of obstacles at border crossings: Report", CEMT/CM(2004)23, 22-Apr-2004.

(b) Customs

- Cumbersome and complex Customs procedures due to:
 - Specific controls for certain types of goods (e.g. alcohol and tobacco);
 - Systematic controls for goods in transit;
 - More detailed Customs controls on sealed wagons.

(c) Police

- Tighter police controls at borders due to:
 - Illegal immigration;
 - Terrorism;
 - Stricter controls at external borders following European Union enlargement.

(d) Veterinary and phytosanitary

- Extremely sophisticated inspections.

(e) Commercial

- Several sets of documents required;
- Different sets of legal rules (e.g. CIM/ SMGS);
- Commercial documents not used for Customs controls, especially for transit traffic;
- Inadequate provision of information by inspection services to shippers, and shipping agents about documents required;
- Incomplete or erroneous documentation;
- Lack of cooperation/ coordination between inspection services and shippers;
- Lack of automatic document processing (especially Consignment Notes and other documents);
- Absence of interface between inspection services and shippers;
- No regulations for railway operators to carry-out end-to-end international transport under their sole commercial responsibility.

The principal impacts of these problems are delays and high costs which in turn increase import costs and reduce export competitiveness.

3. Measures to address problems

There are few United Nations legal instruments dedicated to railway transport and all of them are old: the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail, of 1952, the International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail, of 1952, and the Customs Convention concerning Spare Parts Used for Repairing Europ Wagons, of 1958. This situation was not generated by a lack of interest of the United Nations and its member countries for the railway transport but by the fact that the regulatory work in the field was shared between two major specialized intergovernmental organizations: the Intergovernmental Organization for International Carriage by Rail (OTIF) and the Organization for the Co-operation of Railways (OSZhD).

4. Intergovernmental Organization for International Carriage by Rail (OTIF)

The Intergovernmental Organization for International Carriage by Rail (OTIF) was created on 1 May 1985 with the entry into force of the Convention concerning International Carriage by Rail of 9 May 1980 (COTIF). The first International Convention concerning the

Carriage of Goods by Rail dates from 1890 and created an Administrative Union according to the rules of international law of that time, with a permanent secretariat, the Central Office for international carriage by rail, with its headquarters in Berne (Switzerland). OTIF has legal personality both in international law and in the national laws of its member States.

The principal aim of the Organization is to establish a uniform system of law applicable to the carriage of passengers and goods in international traffic by rail between member States, and to facilitate the application and development of this system.

The uniform rules currently applicable to international carriage by rail are mainly contained in the COTIF and the Appendices to it, namely:

- Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV - Appendix A to the Convention)
- Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to the Convention)
- Regulation concerning the International Carriage of Dangerous Goods by Rail (RID - Appendix C to the Convention)
- Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV - Appendix D to the Convention)
- Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI - Appendix E to the Convention)
- Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU - Appendix F to the Convention)
- Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF - Appendix G to the Convention).

At present OTIF has 42 member States in Europe (mostly Western Europe), North Africa and the Near East, of which Iran and Turkey are members of the UNESCAP.

5. The Organization for the Co-operation of Railways (OSZhD)

The organization was created in the early 50ies and was composed initially of railway administrations of the former communist Eastern European countries. In June 1956, following a Consultation of the Ministers of Transport, the OSZhD became intergovernmental organization, having as strategic goal to promote the development of a reliable and effective railway transport between OSZhD member countries. The policy of the organization also aims at preserving and strengthening the position of railways on the international transport markets.

The first basic documents adopted by the organization were the Agreement on passenger and baggage transport by railways in direct international transport (IPT) and the Agreement on freight transport by railways in direct international transport (IFT). The management of the agreements was entrusted to the State Polish Railways which created a dedicated Bureau for the performing of this function.

Later on, the agreements were subject to global changes, and were re-named Agreement on International Goods Transport by Rail (SMGS) and Agreement on International Passenger Transport by Rail (SMPS) respectively. Several other rules and regulations have been adopted within the OSZhD among which:

- Rules on the Use of Wagons in International Traffic (RIV),

- International Passenger Tariff Treaty (IPT),
- Unified Transit Tariff Treaty, and
- Rules of Payments in International Passenger and Cargo Traffic.

At present OSZhD has 27 members, of which 13 are UNESCAP member countries (Azerbaijan, Georgia, Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, People's Republic of China, Democratic People's Republic of Korea, Mongolia, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Viet Nam).

The UNESCAP and OSZhD have concluded a Memorandum of Cooperation and have worked together on several railways projects of importance to the region.

6. The UNECE Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes

On 26 February 2007 The Secretary-General of the United Nations, acting in his capacity as depositary, has issued a Depositary Notification informing of the opening for signature of a new UNECE Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes. The Convention will be open for signature at United Nations Headquarters in New York, until 31 December 2007 including, for Members of the United Nations, which are members of the 1951 Agreement on International Goods Transport by Rail, the so-called SMGS Agreement. However, the Convention covers countries beyond the UNECE region and countries outside the SMGS area can also become Contracting Parties according to Article 21 of the Convention. The Convention provides for Customs facilities for rail transit, including far-reaching facilitation measures applicable to Customs transit procedures in rail transport, such as exemption to furnish guarantees and to provide sealing of wagons, no physical inspection of the cargo by Customs authorities and a waiver of Customs formalities during transit operations. With the adoption of this Convention a uniform legal status for the use of the SMGS Consignment Note as a Customs document in the SMGS area was developed, thereby creating an integrated instrument for rail transport and Customs procedures in the region.

The entry into force of the Convention would be even more important with the development of the joint CIM/SMGS Consignment Note, which would provide a seamless transport network between the member countries of the OTIF and the OSZhD areas respectively, thereby creating the possibility of an integrated rail transit system between them.

7. Common initiatives OTIF-OSZhD

For many years the rules and regulations governing the railway transport were different between the two areas, Eastern and Western Europe. After the geopolitical changes that occurred in Europe at the end of the 80ies, and especially during the last decade, the two organizations OTIF and OSZhD have been increasingly considering ensuring the technical, technological, legal and tariff compatibility with each other. The two organizations signed in 2002 a document called "Common Position" with the global aim of harmonization the different rail transport systems. The main reasons for this change of attitude were on one hand, the opening of the "economic" borders and the need for providing regular transcontinental railway transport between the geographical areas covered by the two organizations and mainly between Europe and Asia and on the other hand, the appearance of

new independent countries resulting in the implementation of additional procedures, which lead to supplementary delays and costs.

(a) The CIM/SMGS Consignment Note

In 2006 a CIM/SMGS Consignment Note model and a corresponding manual have been prepared and approved by each of the organizations' highest bodies and by the interested competent Customs authorities on each side, so that the CIM/SMGS Consignment Note can be used from 1 September 2006 both as a transport and as a Customs document.

The new CIM/SMGS Consignment Note means that the drawing up of a new CIM or SMGS Consignment Note at the border between the geographical scope of the two regimes can be avoided, allowing a simplification of Customs formalities thus saving time and cost for customers and carriers. Even if there are still two regimes governing liability, CIM and SMGS, the CIM/SMGS Consignment Note represents an important step forward in the facilitation of railway transport.

(b) Draft new Annex 9 facilitation of border crossing procedures for international rail freight to International Convention on the Harmonization of Frontier Controls of Goods, 1982 ("Harmonization Convention")

OSZhD and OTIF have jointly drafted a proposal for a new Annex to the "Harmonization" Convention and transmitted it to the UNECE Working Party on Customs Questions affecting Transport (WP.30) for consideration in early 2008.

The main provisions of the proposed Annex refer to the Contracting Parties:

- facilitating the procedures for granting of visas for locomotive crews, refrigerated unit crews, persons accompanying freight shipments and staff at border (transfer) stations engaged in international rail transport in accordance with national best practice for all visa applicants;
- observing minimum requirements for border (transfer) stations open to international rail freight traffic:
 - (a) Border (transfer) stations to be properly equipped to carry out daily and round-the-clock controls, including phytosanitary, veterinary and other controls where appropriate and adequate for the volume of traffic;
 - (b) Equipment, facilities, information technology and communications systems must be available to enable the exchange in advance of information;
 - (c) Sufficient qualified staff of the railway, Customs, border and other agencies must be on hand at border (transfer) stations to cope with the freight volumes involved;
 - (d) Ability to accept and use technical approval and inspection data.
- ensuring reciprocal recognition of all forms of control of rolling stock, containers, piggyback semi-trailers and goods, provided the objectives thereof coincide;
- carrying out Customs controls relying on the principle of selection on the basis of risk evaluation and management;
- carrying out simplified controls at border (transfer) stations, moving certain forms of control to the station of departure and destination in accordance with the legislation of the Contracting Parties;
- exemption from inspections of transit goods if reliable information on the goods has been provided and if they are contained in a properly closed and sealed rolling stock unit, container, piggyback semi-trailer or wagon.

(c) Draft Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport

OSZhD and OTIF have jointly drafted a proposal for a new UNECE Convention to Facilitate the Crossing of Frontiers in International Railway Passenger Transport and transmitted it to the UNECE Working Party on Customs Questions affecting Transport (WP.30) for consideration in early 2008. This new Convention once approved would replace the International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail, of 1952.

The objective of the proposed Convention is to facilitate railway transport of passenger; its main provisions are:

- To reduce the waiting time of passenger trains at stations, upon agreement of the two parties, border and Customs controls may be carried out while the train is in motion, by means of joint or separate controls, on condition that no stops are made during the control
- To establish the necessary conditions for efficient controls of international passenger transport, the adjoining countries shall designate border stations for controls, with a designated zone for controls, encompassing any:
 - (a) Buildings for carrying out passenger and baggage controls and for housing the staff of the controlling bodies;
 - (b) Areas for the storage of baggage and hand baggage selected for inspection;
 - (c) Passenger trains;
 - (d) Passenger platforms and sections of track;
 - (e) Gauge-changing areas.
- The country in whose territory the zone is located shall, on the basis of bilateral agreements, allow the adjoining country to use the facilities therein
- The service vehicles, equipment and effects used for control purposes on the territory of the adjoining country and the personal effects of the personnel of the inspection bodies shall be temporarily imported and exported free of Customs duties, taxes and charges, upon presentation of the appropriate Customs declaration
- Controls of passengers and their hand baggage shall be carried out in the following order:
 - (a) Customs and other controls of the country of exit;
 - (b) Border control of the country of exit;
 - (c) Border control of the country of entry;
 - (d) Customs and other controls of the country of entry.
- The waiting time for controls of international trains shall be determined in accordance with the train schedule:
 - (a) At stations without gauge changes the waiting time shall not normally exceed 40 minutes;
 - (b) At stations with gauge changes the waiting time shall not exceed the time technically required for the gauge change.
- The Contracting Parties shall facilitate border crossing procedures, including by issuing visas to locomotive and train crews and railway staff accompanying the baggage;
- The officials of the controlling bodies shall take measures to prevent the train from being delayed.

Railway transport regulations are still far from being harmonized in many parts of the world including the ESCAP region. Specific subregional agreements dealing with railway transport including facilitation are rather uncommon. It is however highly probable that on short term several international legal instruments dealing with facilitation of railway transport will be negotiated and adopted in the appropriate instances. Until then, a possible solution for countries to progress in harmonizing the rules governing international railway transport including facilitation could be to join one of the specialized intergovernmental organizations, OSZhD or OTIF. This would be of particular interest for the operationalization of the Trans-Asian Railway Network.