

V. CONCLUDING REMARKS

As the ESCAP region progresses towards an International Integrated Intermodal Transport and Logistics System significant improvement has taken place in regional transport infrastructure, with Asian Highway and Trans-Asian Railway forming the building blocks of the system. Operationalizing the infrastructure networks to ensure connectivity, mobility and inclusiveness depend to a large extent on the degree of facilitation of international transport of goods and people.

In order to move forward, there is a need to comprehensively address infrastructure issues, including road, rail, inland waterways, maritime transport, dry ports, airports, sea ports and information and communication technology, as well as non-physical issues, including multimodal transport operations, Customs clearance, banking and other commercial networks, thereby improving infrastructure and cross-border and transit facilitation measures and logistics systems, in the development of an international integrated intermodal transport system.¹¹

In order to realize new opportunities of economic and trade development brought about by globalization, countries require efficient transport infrastructure and services to access regional and global markets. While much progress has been made in developing regional transport networks, increased coordination among different modes of transport will allow countries to link more efficiently to international production networks and to international markets¹².

Many ESCAP member States have made significant progress towards facilitating international transport/transit, by virtue of their accession to and implementation of the legal instruments listed in Resolution 48/11 of 1992, WTO membership, accession to and implementation of WCO conventions and other relevant United Nations' legal instruments. However, the need for wider accession and more effective implementation of international legal instruments cannot be overemphasized. This is particularly important, especially in cases where there is a lack of territorial continuity in the application of a legal instrument, caused by the non-accession of one State located between Contracting Parties. This prevents harmonization and dramatically diminishes the benefits of seamless international transport/transit operations for all the stakeholders therein.

Harmonizing legal regimes in international transport facilitation is worth the effort for it can result in a transport system that is truly integrated, effective and efficient and would support trade development and implicitly economic growth in the ESCAP region. To achieve this end the following approaches could be followed.

A. Harmonization through Accession to and Implementation of International Legal Instruments

The accession to and implementation of the seven international legal instruments included in resolution 48/11 of 1992 should remain as a priority on the agenda of ESCAP member States. Some of the instruments on the list have been subsequently amended in order

¹¹ Regional Action Programme for Transport Development in Asia and the Pacific, 2007-2011, adopted by ESCAP through Resolution 63/9 of 2007

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to adapt them to the progress and make them better answer the needs of the stakeholders. Ratifying and implementing the subsequent amendments and/or Protocols to the legal instruments should also be a priority of the ESCAP member States.

The ESCAP secretariat, based on its global and regional mandates, is committed to assist member countries, at their request, in assessing the implications of acceding to and implementing the international legal instruments.

The need for progress would also justify the development and adoption of a refined, expanded Resolution 48/11 including a more comprehensive list of the most relevant international legal instruments. The legal instruments that could be considered for inclusion in a future resolution are:

- Intergovernmental Agreement on the Asian Highway Network, 2004
- Intergovernmental Agreement on the Trans-Asian Railway Network, 2006
- Protocol to the Convention on the Contract for the International Carriage of Goods (CMR), of 1978
- Convention on Temporary Admission (Istanbul Convention), 26 June 1990 including its Annexes. The annexes cover temporary admission for several categories of goods and vehicles,
- International Convention on the Simplification and Harmonization of Customs Procedures, as amended (Revised Kyoto Convention), 26 June 1999 including its Annexes
- Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention) as amended

B. Harmonization through Regional Legal Instrument(s)

If mandated by the ESCAP member States the secretariat could prepare, for their consideration, regional legal instruments covering international transport facilitation. The regional legal instruments would be based on the existing (global) international legal instruments and would cover areas like:

1. road transport
 - road traffic (including driving license and vehicles)
 - road safety
 - road transport operations
2. border crossing facilitation for land transport modes
3. dangerous goods and special cargoes carried by land

This approach would result in regional legal instruments that are in conformity with the relevant international legal instruments and also reflect the needs of ESCAP regional member countries. It would enable ESCAP member countries to effectively engage in the preparation and negotiation of regional legal instruments relating to transport facilitation. At the same time such a process would be lengthy and would require a continuous and active participation of the member countries.

C. Harmonization through Conformity with International Legal Instruments

Should this approach be followed, it would require ESCAP member countries to take all the necessary measures to ensure that their laws and regulations relating to transport facilitation are in conformity with the provision of international conventions, without necessarily acceding to them. This solution should be considered for harmonization at all levels: subregional agreements, bilateral agreements and national legislation. The modalities under which harmonization would be achieved varies from one country to another and from one substantive aspect to another. Ideally, this type of conformity should be seen as a stepping stone in conjunction with accession to international legal instruments.

It is important to note that there are several international legal instruments which cannot be incorporated in national legislation without acceding to them, for example the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention).

D. Harmonization through Subregional Legal Instruments

The adoption of subregional agreements represents an alternative approach whereby the basic principles and systems developed in international legal instruments to facilitate international transport/transit are lifted out and elaborated in a single legal instrument – the STFA. This approach should not detract the prospect and the importance of acceding to the international legal instruments once a country has made a full analysis of its implications and has completed the accession process.

At the same time, the adoption of STFAs could be a complementary measure to the implementation of the international legal instruments, provided they follow some basic rules:

- the nature and content of STFAs should answer the needs identified in each sub-region for harmonization, simplification and standardization of procedures, documents and technical parameters relating to international transport/transit facilitation;
- STFAs should be built on the principles contained in the international legal instruments;
- STFAs should be comprehensive and elaborate on the implementation of the principles in order to provide an effective enabling environment for international transport/transit facilitation;
- STFAs should be properly ratified and effectively implemented to produce the expected positive effects;
- The implementation of the STFAs should be made in partnership between the public and private sector.

The ESCAP secretariat could support countries in these processes and particularly in mitigating some of the risks that could jeopardize the harmonization efforts namely:

- overlapping legal regimes, originating in the creation of too many, more than necessary STFAs in the same sub-region;
- incompatibility between STFAs at sub-regional and regional levels;
- non-conformity with the relevant international legal instruments.

The involvement of the ESCAP secretariat in harmonization through subregional legal instruments would:

- provide for subregional compliance with the regional policies adopted by the ESCAP member States;
- ensure that STFAs are comprehensive enough to regulate the issues they are covering, without becoming too complex so as to become a burden on financial and human resources of the Contracting Parties;
- promote the establishment of subregional schemes or systems compatible or that could be extended at regional level notably:
 - Motor Vehicle Third-Party Liability Insurance Scheme;
 - Sub-regional road transport permit schemes;
 - Harmonized road transport charges;

Harmonized legal regimes on international transport facilitation can pave the way towards achieving an international integrated intermodal transport and logistics system in the ESCAP region. Any of the above mentioned approaches can be followed provided they result in coherent and consistent transport facilitation measures at regional level, allowing countries to reap the maximum of benefit of globalization processes.

Facilitation of international transport is an issue that:

- many of the countries in the region face, for which it is necessary to learn from each other;
- benefit from regional or multi-country involvement;
- would benefit from collaborative inter-country approaches;
- is of a sensitive and emerging nature and require further advocacy and negotiation.

International transport facilitation meets all the criteria to be addressed as a priority by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). ESCAP can provide an appropriate platform where countries can meet and exchange best practices, experiences, lessons learned and where they can acquire knowledge. The secretariat will thus continue to work in cooperation with ESCAP member countries towards harmonizing legal regimes on transport facilitation.