

RECUEIL DES INSTRUMENTS JURIDIQUES ET INSTITUTIONNELS
DE FACILITATION DU TRANSPORT ET DES ÉCHANGES
EN AFRIQUE SUBSAHARIENNE

ANNEXE V-6

1985 NORTHERN CORRIDOR TRANSIT AGREEMENT
PROTOCOL No 5 TRANSPORT BY RAIL OF GOODS IN TRANSIT

TRANSPORT BY RAIL OF GOODS IN TRANSIT

Article 1: Application

Pursuant to Section 9 of the Northern Corridor Transit Agreement, the Contracting Parties agree to apply the provisions of this Protocol related to transport by rail of goods in transit, which is an integral part of the Agreement.

Article 2: Content of the Protocol •

This Protocol contains provisions relevant for the transport by rail of goods in transit through Kenya and Uganda, also benefiting other Northern Corridor States through onward transit by road to these countries, and vice versa. Detailed rules regarding the administration and operation of rail traffic shall be laid down in a railway working agreement between the rail carriers of Kenya and Uganda.

SECTION 1: GENERAL PROVISIONS

Article 3: Definitions

For the purpose of this Protocol, and in addition to the definitions included in Section 2 of the Northern Corridor Transit Agreement, the following expressions shall have the meanings hereby assigned to them:

Border: The point at which the lines of the Kenya Railways Corporation meet the lines of the Uganda Railway Corporation, and vice versa;

Border station: The railway station at the border;

Connecting and transit services: All railway activities required for the transfer of goods, coaches, wagons and vans, containers and loading devices from a rail carrier of one Contracting Party to a rail carrier of the other Contracting Party;

Frontier connecting line: The railway line which connects the State frontier and the *interchange station*;

Frontier line: The railway line which connects the State frontier and the *border station*;

Frontier section: Section of the railway line which connects two *border stations* situated on both sides of a State frontier;

Interchange station: Railway station or rail wagon ferry terminal at which *connecting and transit services* are performed;

Rail and transit traffic: Rail traffic proceeding between railway stations of one Contracting Party to railway stations on the territory of another Contracting Party.

Article 4: Connecting and transit services

Connecting and transit services on railway lines connecting the territories of the Contracting Parties shall be performed at designated interchange stations.

Article 5: Border stations and interchange stations •

1. The following shall be the border stations on the rail routes open to rail transit traffic:

in Kenya: Malaba;
in Uganda: Tororo.

2. The following shall be the interchange stations on the rail routes open to rail transit traffic:

in Kenya: Malaba and Kisumu;
in Uganda: Kasese and Jinja.

3. The competent authorities of the Contracting Parties may, if necessary, agree to change the frontier and interchange stations mentioned in 1 and 2 above.

SECTION 2: OPERATIONAL ARRANGEMENTS •

Article 6: Establishment and operation of border and interchange stations

1. Connecting and transit services shall be operated by the rail carriers of Kenya and Uganda at the border and interchange stations specified in Article 5 of this Protocol.
2. At the border stations the rail carrier of the neighbouring State shall hand over wagons, goods and documents to the rail carrier responsible for their onward movement.
3. At the interchange stations the rail carrier concerned shall hand over, as appropriate, wagons, goods and documents to the carrier responsible for their onward movement.

Article 7: Technical inspection of rolling stock

Each Contracting Party shall hand over to the other all vehicles destined for destination beyond the border, loaded or empty, in good and running order. Any technical inspection of these vehicles shall be in accordance with any relevant operational agreement between rail carriers of the two Contracting Parties concerned.

Article 8: Inspection of goods in rail transit traffic

Inspection of goods carried in transit by rail shall be conducted at the designated border and interchange stations by the relevant authorities of the State where the station is situated. Such inspection shall be conducted in a manner that ensures that wagons in transit are not unduly detained.

Article 9: Carriage of dangerous goods

Carriage of dangerous goods shall be governed by the provisions of Article 31 of the Northern Corridor Transit Agreement.

Article 10: Removal of obstacles on frontier connecting lines

Where obstacles to traffic arise on a frontier connecting line, they shall be removed by the Contracting Party in whose territory they are located. The rail carriers of the Contracting Parties shall, so far as they can and

upon request, assist each other in removing obstacles to rail traffic in transit, in particular by providing the necessary equipment, vehicles, materials and labour, against reimbursement for the actual cost of providing such assistance, in accordance with any relevant provision of any operational agreement between the rail carriers of the two Contracting Parties concerned.

SECTION 3: LIABILITY OF RAIL CARRIER •

Article 11: Liability to third persons

Liability to third persons for damage occurring in transit shall rest with the rail carrier that causes the damage. If it has not been proved that such damage has been caused by a particular rail carrier, subject to the Railways Act of the countries concerned, liability shall rest with the rail carrier of the Contracting Party on whose territory the damage was sustained.

Article 12: Assertion of claims

The assertion of claims between the rail carriers of the Contracting Parties shall be governed by the following principles:

- (a) Liability for damage caused by the fault of railway employees shall rest with the employing rail carrier;
- (b) Liability for damage resulting from the unsatisfactory condition of structures and installations used for purposes of rail traffic or to ensure the safety of such traffic shall rest with the rail carrier responsible for the maintenance and reconstruction of the structures and installations;
- (c) Liability for damage resulting from the unsatisfactory technical condition of rolling stock shall rest with the rail carrier which last accepted the rolling stock for technical handling;
- (d) Where damage was caused jointly by the rail carriers of both Contracting Parties or by employees of the said carriers, or where it is impossible to determine which carrier, or the employees of which carrier caused the damage or on whose territory the

damage occurred, liability shall rest with the two rail carriers.

between the rail carriers of the Contracting Parties.

Article 13: Application of liability provisions

Details relating to the provisions of Article 12, as well as the method of conducting inquiries to determine the cause and extent of damage, shall be regulated by agreement

Article 14: Interpretation of provisions

Any question regarding the proper application of the provisions of this Protocol, or for amendments thereto, shall be referred to the Transit Transport Co-ordination Authority.

EXPLANATORY NOTES TO PROTOCOL NO. 5

TRANSPORT BY RAIL OF GOODS IN TRANSIT

Article 2

This Protocol applies to all the States of the Northern Corridor so that all Contracting Parties may benefit from improvements in railway transport. The fact that Burundi and Rwanda do not have any railway must not preclude them from taking economic advantage, whenever possible, of railway transport.

A Working Agreement ruling the matters related to the administration and functioning of the railway traffic was signed on 15 June 1983 between the Kenya Railways Corporation and the Uganda Railways Corporation.

Article 5

The connecting and transit services defined in Article 3 and covered by Article 4 are carried out at an interchange station conveniently located on a railway link between both countries concerned.

SECTION 2

The provisions appearing in this Section conform with the principles expressed in the

International Convention on Transport of Goods by Rail (1965) and with the bilateral railway agreements included in the United Nations series of treaties.

They deal with the relations of the two rail carriers in performing the tasks related with the practical functioning of the transport of goods by rail.

SECTION 3

Recognition by railways of their responsibility towards their clients for damages to or losses of goods in transit is a particularly important aspect of the development of rail transport. For a potential client, to know that he will be reimbursed in case of an accident may determine his choice of mode of transport.

In the Northern Corridor, railway capacity is not fully used due to weak demand from the potential clients. To increase demand and attract customers, confidence must be restored in this mode of transport which remains the most economical transport alternative for long distance transit of goods. To attain this the liability of rail carriers must be clearly defined, both during the transport and when handling goods at the stations.