



A Review of International Legal Instruments

Facilitation of Transport and Trade in Africa

Second Edition

CHAPTER V

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TREATIES

CONVENTIONS

PROTOCOLS

DECISIONS

DIRECTIVES



SSATP
Africa Transport
Policy Program

V. Subregional Instruments: Eastern Africa

- 328. History.** East Africa has a long history of interstate cooperation, starting well into the colonial period with the Customs Collection Center in 1900 and the East Africa Currency Board in 1905. Cooperation continued after independence with institutions such as the East African Common Services Organization in 1961.¹¹⁵ On June 6, 1967, the Treaty for East African Cooperation was concluded at Kampala, Uganda. It established the East African Community and, as an integral part of such a Community, the East African Common Market.¹¹⁶ Parties to the Treaty were Kenya, Tanzania, and Uganda. Finally, in January 1986, by the Djibouti Agreement, the States of the Horn of Africa—Djibouti, Ethiopia, Kenya, Somalia, Sudan, and Uganda, later joined by Eritrea—established the Intergovernmental Authority on Drought and Development (IGADD). This was revitalized in 1996 as the Intergovernmental Authority on Development (IGAD).
- 329.** For trade and transport, the objectives of the East African Community and East African Common Market were, according to Article 2 of the 1967 Treaty for East African Cooperation:
- A common Customs and excise tariff
 - Abolition of restrictions on trade between Partner States
 - Operation of services common to the Partner States
 - Coordination of transport policy

In addition, according to Article 29 of the Treaty, Partner States were to “cooperate in the coordination of their surface transport policies.”

- 330.** The East African Community was dissolved in 1977 after failing to develop adequately.¹¹⁷ One of the main reasons was the uneven benefits derived from the members of the Community and the resulting inter-Community tensions.

The 1967 Treaty for East African Cooperation is not attached here as an annex as it is now obsolete. A new Treaty for the Establishment of the East African Community

was concluded in 1999 between the same States and was amended on December 14, 2006, and on August 20, 2007.

331. Enforceable instruments. Several sets of instruments are presently enforceable in Eastern Africa:

- Amended Treaty for the Establishment of the East African Economic Community (EAC), concluded August 20, 2007
- 1985 Northern Corridor Transit Agreement (NCTA) and Protocols, currently being replaced by the 2007 Northern Corridor Transit & Transport Agreement and its 11 Protocols; in force since December 6, 2012
- 2006 Central Corridor Transit Transport Facilitation Agency Agreement
- Constitution Act of the Dar es Salaam Corridor (studied in next chapter as all Member States except for Tanzania are also members of SADC)
- 1986 (original) and 1996 (revised) Djibouti Agreements establishing and reorganizing IGAD, the Intergovernmental Authority for Development
- Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) Treaties with all the relevant texts and protocols applicable to Eastern and Southern Africa

332. Institutions. The institutions for Eastern and Southern Africa largely overlap. The East African States were also party to the 1981 Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern Africa (PTA), which itself was a first step toward the 1993 treaty establishing COMESA). Both instruments are described in chapter VI of this review. Tanzania also belongs to SADC. Ethiopia, Kenya, Sudan, and Uganda belong to IGAD as well, whose mission is, among other things, to promote intra-regional trade and improve communications infrastructure. IGAD, however, does not seem to have at present any projects in transport and facilitation, nor has it developed any legal instrument related to transport and facilitation.

333. Membership of subregional organizations. Table 2 summarizes the distribution of membership in the subregional organizations described here.

Table 2 Membership of Subregional Organizations, Eastern and Southern Africa

	COMESA (20)	EAC (5)	SADC (15)	NCTTA	CCTFA	Dar es Salaam Corridor
Angola			x			
Botswana			x			
Burundi	x	x		x	x	
Comoros	x					
Cong, Dem. Rep.	x		x	x	x	x
Djibouti	x					
Egypt	x					
Ethiopia	x					
Eritrea	x					
Kenya	x	x		x		
Libya	x					
Lesotho			x			
Madagascar	x					
Malawi	x		x			x
Mauritius	x		x			
Mozambique			x			
Namibia			x			
Rwanda	x	x		x	x	
Seychelles, The	x		x			
Somalia						
South Africa			x			
South Sudan				x		
Sudan	x					
Swaziland	x		x			
Tanzania		x	x		x	x
Uganda	x	x		x	x	
Zambia	x		x			x
Zimbabwe	x		x			

Source: SSATP

Note: COMESA =Common Market for Eastern and Southern Africa; EAC = East African Community; SADC = Southern African Development Community; NCTTA = Northern Corridor Transit & Transport Agreement ; CCTFA = Central Corridor Transit Transport Facilitation Agency

A. NORTHERN CORRIDOR TRANSIT & TRANSPORT AGREEMENT

- 335. Instruments.** The Northern Corridor Transit Agreement (NCTA) covered the use of transportation facilities of East Africa served by the port of Mombasa in Kenya. It was concluded in Bujumbura, Burundi, on February 19, 1985, between Burundi, Kenya, Rwanda, and Uganda. At signature, four Protocols were attached to the Agreement, a somewhat short document. One annex and five more Protocols were added at Nairobi on November 8, 1985. The Signatories ratified the Agreement in 1985 and 1986, and Zaire (now Democratic Republic of the Congo) acceded to it on May 8, 1987, in Kigali. The initial duration of the Agreement was 10 years. It is stated in the 2007 preamble that at its ninth meeting, the Northern Corridor Transit Transport Coordination Authority (NCTT-CA) extended the Agreement by another 10 years, taking effect on November 15, 1996 (Decision No. TTCA/A/A/9/96/1 dated October 25, 1996). The depository of the Agreement is the United Nations Economic Commission for Africa. One explanatory note to the Agreement and 10 notes to the annex and protocols clarify its content. The new Northern Corridor Transit & Transport Agreement (NCTTA) was signed in Nairobi, Kenya, on October 7, 2007, between the Governments of Burundi, Democratic Republic of the Congo, Kenya, Rwanda, and Uganda. It entered into force on December 6, 2012. The Republic of South Sudan acceded to the Agreement as the sixth member state on March 7, 2013. This new Agreement extends the mandate and scope of the 1985 Agreement. It renews the protocols and develops new ones in areas where none existed. It has 11 Protocols, whereas the 1985 NCTA had only nine.
- 336.** The preamble to the 1985 Agreement refers to a number of international instruments. Not all of them are in effect or were acceded to by the Contracting Parties, such as the 1977 International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences or the 1980 United Nations Convention on International Multimodal Transport of Goods. Because some of the instruments listed were not ratified by some of the State Signatories of the Agreement, the list of these instruments can be considered for reference only.
- 337.** The preamble to the 2007 Agreement refers to the 1994 Marrakech Declaration establishing the World Trade Organization, the 1972 Geneva Customs Convention on Containers, and the 1973 Kyoto Convention on the Simplifica-

tion and Harmonization of Customs Procedures. As of July 2010, only Burundi (1998) had ratified the 1972 Customs Convention on Containers. Uganda is the only country among the Parties that did not ratify the 1973 Kyoto Convention. The preamble to the 2007 Agreement also refers to close coordination between Governments and the private sector as a key factor in the development of trade and transit facilitation. The new Agreement acknowledges the importance of developing along the Northern Corridor a transit system that is economical, safe, and environmentally sustainable. These references are well in accord with the new international trends calling for public-private partnerships and sustainable environmental development.

- 338. Objective.** The purpose of this Agreement is to promote the use of the Northern Corridor, as defined by the Agreement, as a most effective route for the surface transport of goods between Partner States. As a result, the Contracting States have agreed to grant each other the right of transit through their respective territories and to provide all possible facilities, regulations, and procedures for that purpose, without any discrimination.
- 339. No conflict with other instruments.** Nothing in the Agreement prevents any Contracting Party from fulfilling its obligation under any other international convention and from granting facilities greater than those provided in the Agreement.
- 340. Evaluation.** Altogether, the 1985 set of documents was considered to be the clearest and most complete, making the most judicious reference to other international conventions and other instruments compared with the other regional treaties and conventions reviewed here. It showed a clear understanding of the problems, and its explanatory notes (widely used in this presentation) still make it an excellent legal document. It can and should be used as a model. The 2007 Agreement is certainly considered an improved version of the 1985 Agreement because it has instituted modern transport modes such as multi-modal transport. It also refers to international instruments that have not always been ratified by the Member States, and yet they are acknowledged in the 2007 instrument.
- 341. Institutions.** The Northern Corridor Transit Transport Coordination Authority – NC-TTCA (renamed Northern Corridor Coordination Authority in 2007 and having regained its original name in 2013) is composed of the Ministers responsible for transport matters in each of the participating States and

their Permanent Secretaries. The annex to the 2007 Agreement makes explicit the role and duties of the NC-TTCA and its Executive Officer, who is the Executive Secretary of the authority's Permanent Secretariat. Authority for the study of all questions related to cooperation in transit and transport matters remains with the Ministers. The Permanent Secretariat of the NC-TTCA conducts the day-to-day operations, circulates information, and furnishes advice to the Contracting Parties. The 2007 Agreement made a slight change in the institutions and introduced two new institutions within the Transit and Transport Authority: Specialized Committees and the Public-Private Partnership Committee.

342. The NC-TTCA is an international organization with legal capacity. It comprises the Council of Ministers, Executive Board, Specialized Committees, Public-Private Partnership Committee, and Permanent Secretariat.
343. The Specialized Committees are composed of organizations and persons dealing with specialized areas of transport and transit. The Committees are responsible for preparing implementation strategies for corridor operations; reporting their activities in periodic reports to the Executive Board through the Permanent Secretariat; and advising the Executive Board on required amendments to this Agreement. The Public-Private Partnership Committee is composed of public and private sector persons and organizations dealing with matters of interstate transport and transit along the corridor, and is responsible for identifying and addressing problems within its areas of operation; making recommendations for review by the Council of Ministers; and facilitating implementation of decisions of the organs of the Coordination Authority.
344. **Financial provisions.** These provisions are common to the 1985 and 2007 Agreements.¹¹⁸ No mention is made of the responsibility of the Coordination Authority on the matter of rates and charges on transit traffic. According to the Article 50, Section 13, of the Agreement in force (2007), "no duties, taxes or charges of any kind ... regardless of their designation and purposes, shall be levied on traffic in transit, except charges for administrative expenses entailed for traffic in transit...and charges levied on the use of toll roads, bridges, warehousing, or similar charges." Furthermore, the Contracting Parties agree that said charges "should be calculated on the same basis as for similar domestic transport operations." There is no explicit statement that the charges should be equivalent to the extent possible, with the expenses actually incurred by the state through which transit traffic takes place. This is, however, stated in

the explanatory notes with reference to Article 3 of the 1921 Barcelona Convention and Statute on Freedom of Transit, Article 5 of the 1947 General Agreement on Tariffs and Trade, and other international instruments quoted in such notes.

- 345. Settlement of disputes.** The NCTA includes provisions for the settlement of disputes by consultation and discussion between Contracting Parties and, if necessary, by arbitration. The appointing authority for arbitration is the Arbitration Center in Cairo, a branch of the Asian-African Legal Consultative Organization (AALCO). By contrast, the 2007 Agreement states that disputes have to be referred to the Council of Ministers (Article 54). The Council of Ministers may, at the request of any of the Contracting Parties involved, settle disputes by arbitration. The arbitrator is selected by agreement between the Contracting Parties, and he or she must be a national of the Contracting Parties. If the Council of Ministers fails to agree on the appointment of an arbitrator, any of the Parties shall refer the matter to the COMESA Court of Justice or any other internationally recognized arbitration center (Article 55).
- 346. Issues of immunity.** The Agreement does not provide for any form of immunity from jurisdiction and execution. However, there is a flavor of reservation in the explanatory notes, in which it is pointed out that under all normal circumstances national law will prevail in the case of offenses (Article 47) and that some state-owned enterprises established as companies are considered as “an emanation of the State. As a consequence...the company is not legally distinct from the State and should benefit from the same advantages and privileges as the State it belongs to”—that is, immunity. The 2007 Agreement does not refer specifically to this question. However, Article 56 states that the decision taken by the COMESA Court of Justice or arbitrator is final and binding on the Contracting Parties and the competing parties. The good news is that all the Member States are also COMESA members.

The issues here are (1) whether immunity resulting from national law is limited to execution following the sanctioning of offenses or applies to the execution of all judicial and arbitration awards; and (2) implicitly, whether in the case of a conflict of laws in implementation of the agreement domestic law takes precedence over the agreement—that is, national law versus an international instrument.

In any case, whether a government-owned enterprise engaged in commercial operations is immune is very much open to question, State immunity implies that, in the

common or public interest, state entities perform government functions that cannot be conducted by private parties—for example, the exercise of the police power. The issue is different when the government-owned entity engages in operations that could be conducted by private operators who frequently are in competition with the state-owned entity, in which case there are no grounds for immunity. The present trend of jurisprudence is to refuse immunity to state-owned companies performing revenue-earning commercial activities. This is specially the case when there has been recourse to arbitration. No longer do courts accept that a government-owned company, which accepted arbitration, refuses to submit itself to the decision of the arbitrators, citing its immunity.

The text of the 2007 Northern Corridor Agreement, together with its Annex on the Transport Coordination Authority and Explanatory Note appear in **Annex V-1** of this review. The 1985 Agreement does not appear to have been filed with the UN Secretariat, and it is not listed in the UN Treaty Series.

a. *Protocol No. 1—Maritime Port Facilities*

347. Provisions. According to Section 4 or Article 5 of the 1985 Agreement, Kenya undertakes to provide the necessary port facilities, including sheds and warehouses, at Mombasa. The Protocol governs the use of these facilities. Ships registered in or chartered by one of the Parties to the Agreement shall be treated equally—a somewhat redundant obligation and commitment since Kenya is in any case bound by the equal treatment rule formulated in the 1923 Geneva Convention and Statute on the International Regime of Maritime Ports. Fees and charges on vessels and cargoes shall not be discriminatory. This is also Protocol No. 1 of the 2007 agreement, which restates the same provisions.

The text of Protocol No. 1 on Maritime Port Facilities, together with an explanatory note, appears in **Annex V-2** of this review.

b. *Protocol No. 2—Transit Routes and Facilities*

348. Provisions. Pursuant to Section 5 of the Agreement, transit routes are specified in this Protocol. The objective is to allocate traffic to routes capable of carrying such traffic, or to avoid routes that are not. It is also to permit Customs control and to distribute accurately the costs of construction, maintenance, and repair of the road network. The selection of routes follows the principles

set forth in the 1921 Barcelona Convention and Statute on the Freedom of Transit and the 1965 New York Convention on Transit Trade of Landlocked Countries. Roads should be safe, secure, and in good condition. On these routes, facilities and services such as first-aid services, repair facilities, fuel filling stations, storage areas, buildings, etc. should be made available. Any payment for the use of facilities or the delivery of services should be at the rates that apply to nationals of the country in which the facility is located or the service rendered. During repair work and in case of emergency, transit traffic may be prohibited by any Contracting State. This is also Protocol No. 2 of the 2007 agreement. However, the 2007 Protocol No. 2 states in detail the transit itineraries for road traffic and for railway traffic. The Protocol specifies that the Contracting Parties shall agree on transit itineraries for inland waterway, pipeline transit, and Customs controls at the borders.

The text of Protocol No. 2—Transit Routes and Facilities, together with an explanatory note, appears in **Annex V-3** of this review.

c. *Protocol No. 3—Customs Control*

- 349. Structure.** Protocol No. 3 contains a main text and two annexes that set forth the minimum requirements to be met by Customs seals and fastenings and give the list of international instruments providing the conditions and procedures for the approval of transport units. As noted earlier, if a country has not been a party to one of the instruments quoted, its mention can be considered for reference only. Protocol No. 3 has detailed provisions, and is divided into six sections. Before the first section, there is an article stating definitions of all the terms to be used by Customs. Section I defines the general provisions related to Customs, such as designation of Customs offices for transit, working hours, and all the relevant documents that need to be produced. Section II is related to the formalities to be undertaken in the departure Customs office, and Section III defines the formalities to be fulfilled before the transit and in the destination custom office. Section IV is related to the mutual administrative assistance. Section V covers warehousing facilities. Finally, Section VI deals with various provisions such as the priority that needs to be given to some shipments, dangerous goods, accidents, etc.

The text of Protocol No. 3—Customs Control, together with an explanatory note, appears in **Annex V-4** of this review.

350. Provisions of Protocol and Annexes. Pursuant to Section 7 of the Agreement, the Contracting States must limit their Customs control to the minimum required to ensure compliance with applicable laws and regulations. Joint Customs control at border crossings (frontier points) shall be facilitated. The procedures for transit traffic are detailed in the Protocol, which sets forth the rules on Customs security and guarantees for transit operations. Annex 1 to the Protocol sets the minimum requirements to be met by Customs seals and fastenings. In the 2007 Agreement, these provisions are stated in Annex II, while Annex I refers to the rules applicable for transit in the Community. In the same Agreement, Annex II lists the international instruments providing for the conditions and procedures for the approval of transport units. Comments in the explanatory notes seem to indicate suspicion that Customs offices will have to modify their working practices if this provision of the agreement is to be adequately and usefully implemented. Joint control, with Customs officers of one State operating on the side of the frontier of the other State, may raise legal issues, especially if legal action has to be taken against an offender. A court of law may not accept execution of the law by a national officer on the territory of another nation, thus offering a welcome loophole to offenders.

d. *Protocol No. 4—Documentation and Procedures*

351. Provisions. Pursuant to Section 8 of the 1985 Agreement whose objective is to reduce the number of documents needed for the transit of goods and to simplify procedures, this Protocol contains provisions related to the documents to be used in Northern Corridor transit operations. For that purpose, it refers to a number of international instruments such as International Standard Organization (ISO) standards, the UN Layout Key for Trade Documents, and the 1980 United Nations Convention on International Multimodal Transport of Goods, etc. Standard formats of documents are attached. Of special interest is the reference to the recourse to non-negotiable sea waybills, to be substituted for negotiable bills of lading, which is significant in the multimodal carriage of goods. The 2007 Agreement also refers to this protocol as Protocol No. 4 and restates the same provisions.

The text of Protocol No. 4—Documentation and Procedures, together with an explanatory note, appears in Annex V-5 of this review.

e. *Protocol No. 5—Transport by Rail of Goods in Transit*

352. **Provisions.** Pursuant to Section 9, Article 36, this Protocol also deals with the transport by rail of goods in transit. It stipulates that 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.¹¹⁹ The Protocol identifies the border posts and traffic interchange stations where connecting and transit services will only be performed. There is a commitment to conducting the inspection of goods carried in transit in a manner that ensures that wagons in transit are not unduly detained. Finally, the Protocol sets the rules on the liability of the respective rail carriers involved in transit operations. It does not refer to the past or existing international conventions on rail transport, which is good since Burundi, Rwanda, and Zaire (now Democratic Republic of the Congo) are not Parties to these conventions. The 2007 Agreement also refers to it as Protocol No. 5. All these provisions are reiterated in the 2007 Agreement.

The text of Protocol No. 5—Transport by Rail of Goods in Transit, together with an explanatory note, appears in **Annex V-6** of this review.

f. *Protocol No. 6—Transport by Road of Goods in Transit*

353. **Provisions.** Pursuant to Section 9 of the 1985 Agreement, this Protocol provides for the transport by road of goods in transit. It sets rules regarding (1) road transit transport, (2) the technical requirements for vehicles, and (3) transport contracts and the liability of road carriers. The basic rule is that the national laws and regulations of the Contracting Party on whose territory the operation is being carried out are applicable:
- *Road transport permits.* These may be issued by the states in whose territory transport takes place, subject to issuance of a certificate of fitness to the vehicle and to compliance with the technical requirements for road vehicles as set forth in the protocol.
 - *Consignment note.* Transport contract shall be confirmed by the issuance of a consignment note (bill of lading) containing the particulars enumerated in the protocol plus any particular that the Parties to the carriage contract may deem useful.

- *Liability regime.* The liability regime is inspired by the rules set forth in contemporary conventions such as the 1956 Convention on the Contract for the International Carriage of Goods by Road (CMR). The carrier shall be liable for loss, damages, and delays. Burden of proof shall rest with the carrier, who may be relieved from liability by the wrongful act or neglect of the claimant and in a number of circumstances enumerated in the protocol, such as defective condition of packing, carriage of livestock, etc. The Protocol also sets forth rules regarding liability in case of delay in delivery; goods should be delivered within 30 days. Rules on compensation in case of loss or delay in delivery are also set forth. Compensation is based on the market value of goods at the time and place when and where they were accepted for carriage, with a ceiling computed in special drawing rights (SDRs), applicable except when a special declaration of value has been entered in.

This protocol is also referred to as Protocol No. 6 in the 2007 Agreement, and these provisions are reiterated in that Agreement.

The text of Protocol No. 6—Transport by Road of Goods in Transit, together with an explanatory note, appears in **Annex V-7** of this review.

g. *Protocol No. 7—Inland Waterways Transport (new, 2007 Agreement)*

- 354. Provisions.** Pursuant to Section 9 of the 2007 Northern Corridor Transit & Transport Agreement, the Contracting Parties agree on the provisions for inland waterway transport, establishing the principle of equal treatment between the users regardless of their nationality. This equality applies to access to the waterways by non-riparian ships. This equality is also mandatory for access to port facilities and payment of taxes. The last provision refers to the requirement that each Contracting Party ensure that the ships used for inland waterway transport meet the technical fitness requirement and that the personnel employed are qualified. It also states that the Contracting Parties shall inspect the ships to evaluate their fitness as to their viability and require repairs if necessary. This Protocol is important as it sets a standard in regulating Lake Victoria as a common waterway for the Member States. The main responsibility of the Lake Victoria Basin Commission will therefore be to coordinate the exploitation of the lake to secure its sustainability.

The text of Protocol No. 7—Inland Waterways Transport appears in Annex V-8 of this review.

h. *Protocol No. 8—Transport by Pipeline (new, 2007 agreement)*

355. **Provisions.** Pursuant to Article 39 (c) of Section 9 of the 2007 Agreement, the Contracting Parties agree on the provisions for transport by pipeline, establishing the obligation to ensure the continuous transport of oil through the pipeline, the ownership of the pipeline by each Contracting Party, and freedom of movement of the staff responsible for pipeline maintenance. The Protocol refers to the observance by the Contracting Parties of the international instruments regarding health, environmental protection, and safety in inspecting and monitoring the pipeline. The protocol also refers to a mandatory liability for damages caused to the environment and to third parties and requires a prompt and adequate indemnification for any losses suffered. This Protocol is currently applied to the Kenya-Uganda pipeline.

The text of Protocol No. 8—Transport by Pipeline appears in Annex V-9 of this review.

i. *Protocol No. 9—Multimodal Transport of Goods (new, 2007 agreement)*

356. **Provisions.** This new Protocol fills a gap existing in the 1985 Agreement. Pursuant to Article 40 (a) of Section 9 of the Northern Corridor Transit & Transport Agreement, the Contracting Parties agree on the provisions establishing (1) the issuance of a negotiable and non-negotiable multimodal transport document; (2) the carrier's responsibility and liability for the loss of or damages to goods during the course of a multimodal transport operation; and (3) recourse to a tribunal or arbitration and mitigation of damages. Several articles of the protocol are devoted to the carrier's liability. These articles mostly restate what is in the 1980 United Nations Convention on International Multimodal Transport of Goods. It is important to note that, among Contracting Parties to the 2007 Northern Corridor Transit & Transport Agreement, only Burundi (1998) and Rwanda (1987) had signed this UN Convention, which is not yet enforceable.

The text of Protocol No. 9—Multimodal Transport of Goods appears in Annex V-10 of this review.

j. *Protocol No. 10—Handling of Dangerous Goods*

357. **Provisions.** Pursuant to Article 31 of the 1985 Agreement, this Protocol deals with the carriage of dangerous goods. These are handled and transported "in accordance with accepted international recommendations." Accordingly, the Protocol refers to standard international instruments on the matter, such as the International Maritime Dangerous Goods Code (IMDG Code), Regulations for the Transport of Radioactive materials, etc. In the 2007 Agreement version, this Protocol is pursuant to Article 41 (b) of the Agreement. The 2007 Agreement also refers to these international instruments.

The text of Protocol No. 10—Handling of Dangerous Goods, together with an explanatory note, appears in Annex V-11 of this review.

k. *Protocol No. 11—Facilities for Transit Agencies and Employees*

358. **Provisions.** Pursuant to Section 10 of the 1985 Agreement, this protocol covers the provision of facilities and making of arrangements for transit employees. Each Contracting Party shall grant duly recognized carriers of another party permission to set up agencies within its territory. Multiple entry visas shall be issued to employees of transport enterprises and their travel shall be facilitated. This protocol is Protocol No. 11 in the 2007 agreement. In that agreement, this protocol is pursuant to its Section 10 of Article 43 (d). These provisions are reiterated in the 2007 agreement.

The text of Protocol No. 11—Facilities for Transit Agencies and Employees appears in Annex V-12 of this review.

B. CENTRAL CORRIDOR TRANSIT TRANSPORT FACILITATION AGENCY AGREEMENT

359. **Instruments.** The Central Corridor Transit Transport Facilitation Agency Agreement covers the transit route for cargo and passenger transport utilizing all Tanzanian roads connecting to Burundi, Democratic Republic of the Congo, Rwanda, and Uganda, together with all roads and railway systems in these landlocked countries connecting to the port of Dar es Salaam. This Agreement includes the port of Dar es Salaam, the railway system operated by the Tanza-

nia Railways Corporation, and the Isaka Dry Port. The details of the routes can be found in Schedule Number 1 of the Agreement. The Agreement was concluded in Dar es Salaam, Tanzania, on September 2, 2006, by Burundi, Democratic Republic of the Congo, Rwanda, Tanzania, and Uganda. Its duration is 10 years from the date of entry into force (Article 36). No protocols have yet been issued. The depository of the Agreement is the United Nations Economic Commission for Africa.

- 360. Preamble to the Agreement.** The preamble refers to a number of international programs favoring landlocked countries but also regional integration. First, it cites the Almaty Programme of Action, which promotes the establishment of an efficient transit transport system and its maintenance over time for landlocked and transit countries. Second, it refers to the UN General Assembly Resolution 56/180 related to specific actions for landlocked developing countries. Third, the Agreement refers to the Millennium Declaration, which recognizes the special needs and problems of the landlocked developing countries. And, fourth, the Agreement refers to the consistency with NEPAD and the existence of COMESA.
- 361. Objective.** The purpose of the Agreement is to provide the most efficient and effective route for the transportation of goods by surface and lake transport between the Contracting States and the sea and to promote its use. As a result, the Contracting States have agreed to grant each other the right of transit in order to facilitate the movement of goods through their respective territories and to provide all possible facilities for traffic in transit between them. The TTFA's objectives are, among others, (1) to ensure that the Central Corridor is available to importers and exporters from the landlocked States of Burundi, Rwanda, and Uganda as an efficient and economic addition to other trade routes; (2) to actively market the corridor with a view toward encouraging its increased utilization in order to improve international and domestic traffic levels; and (3) to promote the sustained maintenance of infrastructure and encourage development of the Central Corridor, etc.
- 362. No conflict with other instruments.** Nothing in the Agreement prevents any Contracting Party from (1) fulfilling its obligation under any other international convention and (2) granting facilities greater than those provided in it.

- 363. Evaluation.** The Agreement seems very clear and thorough. However, its protocols should address specific issues pertaining to each mode of transport and the potential liabilities involved.
- 364. Institutions.** An agency for coordination of transport transit in the corridor, the Transit Transport Facilitation Agency (TTFA), is established in the Agreement. It is composed of the Interstate Council of Ministers, which is in turn composed of the Ministers responsible for transport matters from the Contracting States. The Executive Board is composed of the Permanent Secretaries/General Directors of the Ministries responsible for transport matters and one representative of the private sector from each Member State. The Stakeholders Consultative Committee (STACON) is composed of the bodies listed in Schedule Number 2 to the Agreement. The role and duties of the TTFA are described in Article 3.5 of the Agreement.
- 365. Provisions.** No mention is made in Article 12 of the Agreement of the responsibility of the TTFA in the matter of rates, charges, and payment arrangements. The Government of Tanzania undertakes to provide the necessary maritime port facilities to the corridor Member States, and each Contracting Party commits to granting each other the right of transit through its territory. To reduce the cost and time affecting the efficiency of the transit operations, the Contracting Parties undertake to keep these costs and delays to a minimum by harmonizing and limiting the number of documents and reducing the procedures and formalities required for traffic in transit. The States also undertake (1) to align their documents with those of the United Nations Layout for Trade Documents and (2) to harmonize commodity codes and descriptions with those commonly used in international trade.
- 366. Settlement of disputes.** The Agreement includes provisions for the settlement of disputes by consultation and if necessary by arbitration. The arbitrator shall not be a national of any of the Contracting Parties. The decision rendered by the arbitrator is to be made in accordance with the rules of arbitration of the agency within the United Nations Commission on International Trade Law (UNCITRAL). The Agreement also states that the decision of the arbitrator appointed shall be final and binding on the Parties concerned.

The 2006 Central Corridor Transit Transport Facilitation Agency Agreement appears in Annex V-13 of this review. The Agreement was not filed with the UN Secretariat, and it is not listed in the UN Treaty Series.

C. CORRIDOR-RELATED BILATERAL AGREEMENTS

- 367. Tanzania-Malawi Agreement.** The Government of Tanzania has allowed the Government of Malawi to construct, own, and operate dedicated inland container depots (ICDs) or cargo centers in the port of Dar es Salam and at Mbeya in Tanzania. The Agreement between the two countries was signed in Lilongwe, Malawi, on August 15, 1987, and registered in the UN Treaty Series on December 29, 1989. This Agreement between the two countries pertains to the Malawi-Tanzania Corridor Transport System. The Agreement gives a right of transit and port facilities to Malawi cargo. Article IX of the Agreement gives Malawi railway holdings the right to lease suitable sites at Dar es Salaam and Mbeya and develop two transshipment facilities from port to rail and road: Malawi Cargo Centre Dar es salaam (MCC DAR) and Malawi Cargo Centre Mbeya (MCC Mbeya).
- 368. Democratic Republic of the Congo-Kenya Agreement.** The Government of the Democratic Republic of the Congo has an agreement with the Government of Kenya for the accommodation of storage facilities at the port of Mombasa.

The text of this Agreement has not been found during this review.

D. TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY

- 369. General.** The Treaty for the Establishment of the East African Community (EAC Treaty) was concluded at Arusha, Tanzania, on November 30, 1999.¹²⁰ Parties to the Treaty are Kenya, Uganda, and Tanzania. Its origin is an initiative of the Heads of State, who in 1997 instructed the Permanent Tripartite Commission for East Africa to start upgrading the November 26, 1994, Kampala Agreement establishing the Commission into a new East Africa Community Treaty. The Commission itself had been equipped with a secretariat based in Arusha that was, among other things, in charge of supervising the elimination of non-tariff barriers in the subregion. Rwanda and Burundi acceded to the EAC Treaty on June 18, 2007, and became full members of the East African Community as of July 1, 2007. The Treaty was subsequently amended on December 14, 2006, and August 20, 2007.

370. Institutions. According to Article 9, the organs of the East African Community are as follows:

- Summit, composed of Heads of State
- Council, composed of ministers
- Coordination Committee
- Sectorial committees
- East African Court of Justice
- East African Legislative Assembly
- Secretariat
- Such other organs as may be established by the Summit

The East African Community also has various other institutions linked with transport such as the Lake Victoria Basin Commission (LVBC), which coordinates the sustainable development agenda of the lake, and the Civil Aviation Safety and Security Oversight Agency (CASSOA).

371. Transport policy. Chapter 15 of the Treaty is entitled Cooperation in Infrastructure and Services and covers transport. Common transport policies are the subject of Article 89. The Partner States undertake “to evolve coordinated, harmonized and complementary transport and communications policies... [and] to improve and expand existing links and establish new ones.” To this end, the Partner States shall take steps to

- Develop harmonized standards and regulatory laws, procedures, and practices
- Construct, upgrade, and maintain facilities
- Review and redesign intermodal transport systems and develop new routes.
- Grant special treatment to landlocked countries
- Provide security and protection to transport systems
- Harmonize and conduct joint training of personnel
- Exchange information on the subject

These provisions are further detailed in Article 90, Roads and Road Transport; Article 91, Railways and Rail Transport; Article 92, Civil Aviation and Civil Air Transport; Article 93, Maritime Transport and Ports; Article 94, Inland Waterways Transport;

Article 95, Multimodal Transport; Article 96, Freight Booking Centers; and Article 97, Freight Forwarders, Customs Clearing Agents and Customs Agents.

372. Importance of infrastructure. The EAC Development Strategy for 2006-2010 emphasizes deepening and accelerating the integration process. It states that “provision of adequate and reliable supporting infrastructure is a key area of intervention for deepening and accelerating integration through the sharing of the production, management, and operations of infrastructure facilities, hubs and development corridors. Priority sectors include energy, roads and Information and Communication Technology (ICT).”

Altogether, the EAC Treaty is the most detailed of all African cooperation treaties in the areas of transport and communications.

373. Transport provisions. The main transport provisions and stipulations are:

- *Article 90.* The provisions on transport deal mainly with its technical and regulatory aspects. Except for noting the common requirements for insurance, there is no reference to the terms of carriage contracts and to the adoption of modern contractual formats. However, the Article mentions the importance of developing competition to make road transport more effective. There is a marked concern for equal treatment of carriers in all Partner States (Article 90 (t) and 90 (u)) and a reference to the need to “gradually reduce and finally eliminate non-physical barriers to road transport within the Community” (Article 90 (s))—a perennial problem in the Africa region.
- *Article 91.* Rail transport is to be coordinated and new lines constructed where necessary. Railways would be made more efficient by developing their managerial autonomy.¹²¹ Documentation, packaging, procedures, standards, etc. would be harmonized, and tariff discrimination would be eliminated.
- *Article 92.* Civil aviation policies would be harmonized and joint services facilitated. Efforts would be undertaken to make air transport services safe, efficient, and profitable through autonomous management. The 1944 Chicago Convention on International Civil Aviation would be implemented,¹²² flight schedules coordinated, and ICAO policies and guidelines on the determination of user charges applied. Rules and

regulations related to scheduled air transport would be the same in all Partner States.

- *Article 93.* The liberalization and commercialization of port services are seen as a way of promoting efficient and profitable port services. Landlocked States would be granted easy access to port facilities and opportunities to participate in the provision of port and maritime services. The Partner States would agree to charge nondiscriminatory tariffs on goods from their territories and from other Partner States *except where their goods enjoy domestic transport subsidies and apply the same rules and regulations in respect of maritime transport among themselves without discrimination.* Other provisions refer to other objectives of coordination and harmonization.
- *Article 94.* Partner States shall harmonize their inland waterway policies and harmonize and simplify their rules, regulations, and administrative procedures and tariffs. Space would be provided on board vessels, without discrimination. Joint ventures would be developed.
- *Article 95.* Partner States shall harmonize and simplify the regulations, procedures, and documents required for multimodal transport. They shall develop intermodal exchange facilities such as inland clearance depots and dry ports. They will take measures to ratify or accede to international conventions on multimodal transport and containerization and take the necessary steps to implement them.
- *Article 96.* Partner States shall encourage the establishment of freight booking centers.
- *Article 97.* Partner States shall harmonize the requirements for registration and licensing of freight forwarders, Customs clearing agents, and shipping agents. They shall allow any person to register and to be licensed as a freight forwarder or other transport services agent, and they shall not restrict the commercial activities of such a lawfully licensed agent. There are indications that some Partner States tend to limit access to transport services professions to their own nationals.

374. Customs¹²³. The Partner States agree to develop an East African trade regime and jointly develop (1) trade liberalization, (2) a Customs union, and (3) a common market.

- *Customs Union rules (Article 75)*. These rules are to be contained in a protocol to be issued within a period of four years. The rules include the elimination of internal tariffs and of nontariff barriers; the establishment of a common external tariff; the establishment of measures on dumping, subsidies, and countervailing duties; and the simplification and harmonization of trade documentation and procedures. The EAC countries established a Customs Union in 2005 and are well advanced in working toward the establishment of a common market. A monetary union is also scheduled and possibly a political federation of the East African States.
- *Establishment of a Customs Union (Article 75)*. The establishment of a Customs Union shall be progressive. As of a date to be determined by the Council, the Partner States shall not impose any new duties and taxes or impose new ones or increase existing ones. Nor are they to enact legislation or apply administrative measures that may directly or indirectly discriminate against the same or like products of other Partner States.
- *Common Market (Article 76)*. A protocol shall be issued on a Common Market among the Partner States. Within the Common Market, there is to be free movement of labor, goods, services, and capital, and the right of establishment. The Common Market Protocol was signed in November 2009 and ratified in 2010 by all the States party to it.

The 2007 Treaty for the Establishment of the East African Community appears in Annex V-14 of this review. The treaty does not appear to have been filed with the UN Secretariat, and it cannot be located in the UN Treaty Series. It is found in *African Yearbook of International Law* 421–509 (1999).

a. *Evaluation of the Treaty implementation and progress on transit and transport facilitation as of July 31, 2010*

375. **Transport provisions in general.** EAC is party to the Tripartite agreements which have been signed in the fields of road transport, inland waterway transport, rail transport, and civil aviation transport. The Regional Economic Communities in Eastern and Southern Africa (COMESA, EAC, SADC) have decided to come together to form a free trade area. The Tripartite Summit was held on October 22, 2008, in Kampala, Uganda, to give political endorsement and direction to the process of cooperation and harmonization. In infrastruc-

ture development, a Memorandum of Understanding between the Tripartite Task Force and the British Department for International Development (DfID) on the management of the North-South Corridor (NSC) was signed in London in January 2010.

376. **Rail transport.** Two new corridors are actually proposed: (1) Lamu Corridor: Port Lamu (deep water port)—rail to Addis Ababa to Juba to Pakwach; and (2) Bas Congo Corridor: complete route from Mombasa to Banana (Democratic Republic of the Congo) with various options to connect the eastern Democratic Republic of the Congo with the Atlantic Ocean.
377. **Air transport.** The EAC Civil Aviation Safety and Security Oversight Agency (CASSOA) started operation on 1st June 2007, as an autonomous self-accounting body of the East African Community following the signing of the establishing Protocol by the three founder Partner States on 18th April 2007 and was formally established on 18th June 2007 during the 5th Extraordinary Summit of EAC Heads of State held in Kampala Uganda.
378. **Inland waterway transport.** The Protocol establishing the Lake Victoria Basin Commission (LVBC) was signed on November 29, 2003, and ratified in December 2004. The current coordination arrangements involve the Minister of water of Burundi, the Minister of natural resources of Rwanda, and Ministers of water/mineral resources of Kenya, Tanzania, and Uganda.
379. **Air transport.** For this purpose, the Civil Aviation Safety and Security Oversight Agency (CASSOA) was created on June 18, 2008.
380. **Customs.** The revised version of the 2009 East African Community Customs Management Act incorporates all amendments concluded to December 2008. The Protocol on the Establishment of the East African Customs Union deals mainly with the technical and regulatory aspects of the union (Articles 6 to 8). As of 2010, there were still many challenges affecting implementation of the Customs Union such as lack of an efficient coordination and monitoring system at the local and regional levels. There were also some conflicting interests at the national and regional levels. In November 2009, the Member States signed the Common Market Protocol and ratification, followed in 2010 by all the Partner States.

E. INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT

- 381. General.** The Intergovernmental Authority on Development comprises eight countries in the Horn of Africa: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan (admitted in 2011), and Uganda. It was established by agreement on March 31, 1996, at Nairobi, Kenya in order to revitalize and expand the duties of the existing Intergovernmental Authority on Drought and Development established in 1986. It is incorporated with privileges and immunities similar to those accorded to regional or international organizations of similar status.
- 382. Objectives (Article 7).** The preamble to the Nairobi Agreement refers to both the Treaty establishing the African Economic Community and the Treaty Establishing the Common Market for Eastern and Southern Africa. The aims of the authority, in the area of transport, trade, and facilitation, are as follows:
- Promote joint development strategies and harmonize policies on, among other things, trade, transport, communications, and Customs.
 - Promote the free movement of goods, persons, and services.
 - Set an enabling environment for foreign, cross-border, and domestic trade.
 - Develop and improve a coordinated infrastructure of transport.
- 383. Institutions.** The institutions of the Authority are as follows:
- *Assembly of Heads of State and Governments (Article 9).* The Assembly of Heads of State and Governments issues policies and guidelines and directs or controls the functioning of the Authority. It meets once a year.
 - *Council of Ministers (Article 10).* The Council of Ministers, assisted if needed by sectoral committees, meets at least twice a year. It issues recommendations to the Assembly, approves the budget of the Authority, and supervises its functioning.
 - *Committee of Ambassadors (Article 11).* The Committee of Ambassadors is composed of ambassadors of the Member States appointed to the country of headquarters of the Authority. The Committee is in charge of, among other things, guiding the Executive Secretary in the interpretation of policies and guidelines. The Committee informs the Member States as needed.

- *Executive Secretary (Article 12)*. The Executive Secretary is in charge of all executive functions of the Authority—financial, administrative, or other.
- *Resources of the Authority (Article 14)*. The resources of the Authority are contributions by Member States and assistance from other sources.

384. Transport and facilitation. In addition to defining the aims and objectives of the Authority, the Agreement stipulates the areas of cooperation between Member States (Article 13 A). For trade, facilitation, and transport, these areas are (1) to work toward the harmonization of trade policies and practice and the elimination of tariff and nontariff barriers, and (2) to harmonize transport policies and eliminate physical and non-physical barriers.

385. Performance. Except for the identification of different infrastructure projects, especially road and port rehabilitation, IGAD has concentrated on peacekeeping efforts in States in the Horn of Africa. In 2008 IGAD expanded its activities with initiatives to improve the investment, trade, and banking environment of Member States.

The Nairobi Agreement Establishing the Intergovernmental Authority on Development appears in **Annex V-15** of this review. The 1996 Nairobi Agreement does not appear to have been filed with the UN Secretariat.