



A Review of International Legal Instruments

Facilitation of Transport and Trade in Africa

Second Edition

CHAPTER VI

Jean Grosdidier de Matons

TREATIES

CONVENTIONS

PROTOCOLS

DECISIONS

DIRECTIVES



SSATP
Africa Transport
Policy Program

VI. Subregional Instruments: Eastern and Southern Africa

386. Introduction. As indicated by the title of this chapter, Southern and Eastern Africa may be closely associated in some instruments.¹²⁴ Three categories of instruments and institutions can be identified:¹²⁵

- Four institutions and instruments related closely to facilitation and transport (and reviewed here): Southern African Customs Union (SACU), Southern African Development Community, Common Market for Eastern and Southern Africa (COMESA), and the Inter Regional Cooperation and Integration instrument also known as the Tripartite.
- Four local institutions dealing mainly with corridor access issues and enforcement of SADC policy (and reviewed here): Maputo Development Corridor, Trans-Kalahari Corridor, North-South Corridor, and Dar es Salaam Corridor.
- Instruments related to cooperation in the Indian Ocean (and reviewed here). Five instruments were identified.

A. SOUTHERN AFRICAN CUSTOMS UNION

387. The Southern African Customs Union (SACU) was formed in Pretoria, South Africa, on December 11, 1969, by Botswana, Lesotho, South Africa, and Swaziland. It was joined in 1990 by Namibia.

South Africa, a member of the Customs Union, together with Liberia, Morocco, and Tunisia, ratified the 1982 Geneva International Convention on the Harmonization of Frontier Control of Goods.

388. History.¹²⁶ The Southern African Customs Union can be traced back to a 1903 Customs Agreement (revised in 1910) between the British Empire territories of Southern Africa. A new agreement updating the 1910 Agreement

(then still in force) was enacted in 1969 and concluded between the Governments of Botswana, Lesotho, Namibia (by accession in 1990 at independence), South Africa, and Swaziland. One of the main objectives of the 1969 Agreement was to encourage “the economic development of the less advanced countries of the Customs Union and the diversification of their economies” (Preamble). It has been described as a traditional Customs arrangement in which Customs duties between the coastal and the landlocked States are removed and a common external tariff regime is implemented vis-à-vis goods from third countries: “Initially, the 1969 Agreement was considered a satisfactory deal by all signatories. It kept the Botswana-Lesotho-Swaziland markets opened for South African products and provided a guaranteed source of revenue for the smaller member countries, enabling them to eliminate their dependence on income transfers from the United Kingdom for balancing their budget.”¹²⁷ However, the Agreement was later criticized, mainly because of an absence of joint decision making between South Africa and other Customs union members; the asymmetry of decision making, which caused trade policies to be biased toward the protection or promotion of South Africa’s industries; and an unsatisfactory implementation by South Africa. Negotiations of a new agreement began at the end of 1994. Those negotiations culminated with the signing of the Southern African Customs Union Agreement in October 2002.

The 2002 Agreement came into force in July 2004 and was ratified by Botswana (2007), Lesotho (2008), Namibia (2009), South Africa (July 2005), and Swaziland (July 2006). Thus it has yet to be fully ratified. The 2002 Agreement was inspired by the Uruguay Round with its instant demand to open up the developing countries to the global market and also give them access to the developed market. The purpose of the 2002 Agreement was to align the 1969 Agreement with current developments in international trade relations.

389. Objectives. The following stated objectives of the Agreement are broad and extend beyond the domain of standard Customs unions:

- Promote the integration of SACU members in the global economy with the development of common policies
- Facilitate the cross-border movements of goods
- Establish democratic effective and transparent public institutions

- Promote fair competition and fair sharing of revenue from Customs and other dues.

390. Composition of SACU. Article 20 of the 1969 Southern African Customs Union Agreement provided for the establishment of a Customs Union Commission formed of representatives of the Partner States. Its functions were to discuss any matter related to the implementation of the agreement, The 2002 Agreement provides for a more complete set of institutions:

- *Council of Ministers (Article 8)*. The Council consists of one minister from each Member State. It meets each quarter of the year as the supreme decision-making authority.
- *Customs Union Commission (Article 9)*. The Commission is made up of senior SACU civil servants. It is responsible for implementing the 2002 Agreement and facilitating implementation of the decisions of the Council. It also oversees the work of the SACU Secretariat.
- *Secretariat (Article 10)*. The Secretariat is responsible for the day-to-day operations, which are located in Namibia. The 2002 Agreement established an independent, full-time administrative secretariat to manage the affairs of SACU.
- *Tariff Board (Article 11)*. A Tariff Board replaces the South African Board of Tariffs and Trade. It is composed of a panel of appointed professionals. Each Member State nominates a candidate.
- *Technical liaison committees (Article 12)*. Four technical liaison committees assist and advise the Commission. One is the transport committee.
- *SACU Tribunal (Article 13)*. The SACU Tribunal arbitrates disputes that cannot be settled amicably.
- *National bodies (Article 14)*. National bodies shall be established for receiving and examining requests and changes in tariffs and other SACU-related measures and provisions.

a. *Trade liberalization*

391. Free movement of domestic products. Articles 18 to 31 of the Agreement deal with trade liberalization. The movement of domestic products is free of Customs duties and quantitative restrictions on importation from one

Member State to another. However, Member States may impose restrictions on imports and exports in accordance with national laws for a number of reasons of public health, security, protection of the environment, or other non-trade protection reasons.

- 392. Trade restrictions.** Article 11 of the 1969 Agreement recognized the right of each Contracting State to impose restrictions on imports or exports for the purpose of protecting its industries. Article 25 of the 2002 Agreement has a more restrictive approach. Each member has the right to prohibit or restrict the importation or exportation of any goods for economic, social, cultural, or other reasons *as may be agreed upon by the Council of Ministers*. This, however, does not permit the prohibition or restriction of the importation by any Member State into its area of goods grown, produced, or manufactured in other areas of the Common Customs Area for the purpose of protecting its own industries producing such goods. Member States shall cooperate in the application of import restrictions with a view toward ensuring that the economic objectives of any import control legislation in any state in the Common Customs Area are attained.
- 393. Rail and road transport tariffs.** The 1969 Agreement stipulated that no rate discrimination should apply to goods in transit imported from outside the Customs area or exported to outside such area. Each Contracting Party was to ensure that tariffs applicable to publicly owned transport to and from the other area would be no less favorable than tariffs applicable to similar goods for carriage inside the area. The same equal (*no less favorable*) treatment was to be granted to motor transport operators registered in a Contracting State by authorities of another Contracting State. These provisions, in different wording, are found in Article 27 of the 2002 Agreement. Tariff freedom appears to be the rule for private operators.
- 394. Transit.** The 1969 Agreement stipulated in Article 16 freedom of transit. It was guaranteed to the Parties through each other's territory. Such freedom of transit could be limited by a Member State for reasons of public morals, public health, or security, or in pursuance of the provisions of a multilateral international treaty to which the state is a party. Article 24 of the 2002 Agreement also stipulates freedom of transit in more detailed terms:

... without discrimination to goods consigned to and from the areas of other Member States, provided that a Member State may impose such con-

ditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international agreement to which it is a party; and provided further that a Member State shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purpose of protecting its security interests.

In addition, technical standards and regulations should not be an obstacle to trade (Article 28).

b. *Customs tariffs*

395. Provisions. The provisions of the Treaty related to Customs tariffs are:

- *Articles 19 and 20.* In the 1969 Agreement, Customs duties and sales taxes in force in South Africa and applicable to imported goods were applicable in all the States of the Customs area. Article 7(2) of the Agreement only stipulated that the South African Government, when setting the tariffs, must give “sympathetic consideration” to proposals by other Member States to increase any Customs tariffs applicable to certain goods. The 2002 Agreement transfers jurisdiction to SACU’s Council of Ministers, which on recommendation by the Tariff Board shall set the common Customs duties. A Member State shall not impose any duties on goods imported from any other Member State in the Common Customs Area. Rebates and drawbacks granted by SACU States must be identical for all Member States, but special rebates may be granted in enumerated cases. These provisions are less restrictive than the 1969 provisions stipulating that any rebate, refund, or drawback granted by the Governments of Botswana, Lesotho, and Swaziland have to be identical to any rebate, refund, or drawback granted by South Africa.
- *Article 21.* The Finance Ministers of all Member States shall meet and agree on the rates of excise duties and specific Customs duties to be applied to goods grown, produced, or manufactured in or imported into the Common Customs Area. States shall apply identical rebates, re-

funds, or drawbacks. These shall be determined by the Finance Ministers in the Member States through consultation.

- Article 26. The Member States other than South Africa may, as a temporary measure, levy additional duties to protect their infant industries—that is, industries established less than eight years.

396. Pooling of revenue. The provisions of the Treaty related to pooling revenue are as follows:

- *Articles 32 and 33.* All collected Customs, excise, and other duties are paid into a common revenue pool (Consolidated Fund of South Africa in the 1969 Agreement) managed by the SACU institutions and then allocated to each of the Partner States.
- *Article 34-1 to 34-3.* In the 1969 Agreement, the formula for determining allocation was the Customs-wide collections for the pool as a percentage of the dutiable goods on which they were collected. This global rate was then enhanced by a factor of 1.42 to compensate for the loss of sovereignty of States party to the Agreement and for the higher prices of goods imported from third countries resulting from high South African tariffs. The new formula has a Customs and an excise component, from which is extracted a development component. Each component consists of the gross amount of duties collected less the costs of operating the SACU institutions; it does not include duties rebated or refunded.

397. Revenue sharing. The provisions of the Treaty in Articles 34-4 and 34-5 and Annex A related to revenue sharing are as follows:

- *Customs component.* Each Member State's share of the Customs component shall be calculated (1) from the CIF (cost, insurance, freight) value at the frontier of goods imported from all other Member States in a specific year, and (2) as a percentage of the total CIF value of intra-SACU imports in such year.
- *Excise component.* The excise component shall consist of the gross amount of excise duties collected on goods produced in the Common Customs Area, less an amount set aside to fund the development component. The share for each member shall be calculated from the value of its gross domestic product (GDP) in a specific year as a percentage of the total GDP of SACU members.

- *Development component.* Each Member State shall receive a share of the development component, and the distribution of this component shall be weighted in favor of the less developed Member States, according to the inverse of each country's GDP per capita.

c. *Evaluation of the 2002 Agreement*

- 398. Differences with 1969 Agreement.** The 2002 SACU Agreement contains 51 articles, whereas the 1969 Agreement had only 22. The large number of articles in the new Agreement conveys the notion that the scope of the 1969 Agreement has been enlarged and aligned with current developments in international trade relations by taking into account the different WTO rules on access to the global market. The greatest achievement of the new Agreement is the introduction of joint decision making in all aspects of the Customs Union and the creation of independent institutions. As a result of the good functioning of SACU, free trade agreement negotiations have been under way between SACU and the United States and SACU and the European Union since 2003. A Trade, Investment and Development Cooperation instrument was signed in July 2008 between the United States and the Trade Ministers from SACU.

Both texts appear in Annexes VI-1a and VI-1b of this review. The 2002 Agreement has not been filed with the UN Secretariat.

B. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY¹²⁸

- 399. History.** SADC originated from the political movement of the Front Line States (FLS) in opposition to South Africa's apartheid policy. The FLS countries were Angola, Botswana, Mozambique, Tanzania, and Zambia. The foreign ministers of these countries met in Gaborone, Botswana, in May 1979 to discuss mechanisms to achieve cooperation. The following year, the leaders of the FLS, accompanied by leaders from Lesotho, Malawi, Swaziland, and Zimbabwe, and inspired by the Final Act of Lagos of April 1980, decided to pursue economic integration. On April 1, 1980, the Lusaka Declaration, "Southern Africa: Towards Economic Liberation," was issued by the independent states of South Africa. The Southern African Development Coordination Committee was created, placing an emphasis on infra-

structural development as a means of lessening dependence on South Africa as a transit country and on helping regional integration. The political evolution in South Africa and the movement toward African economic integration illustrated by the June 1991 Abuja Treaty establishing the African Economic Community led to a broader approach. The Southern African Development Community was therefore created. The seat of SADC is at Gaborone. The 15 members of SADC are Angola, Botswana, Democratic Republic of the Congo (joined in 1998), Lesotho, Madagascar, Malawi, Mauritius (joined in 1995), Mozambique, Namibia, South Africa (joined in 1994), Swaziland, the Seychelles (joined in 1998), Tanzania, Zambia, and Zimbabwe. The Windhoek Treaty for the creation of SADC was concluded at Windhoek, Namibia, on August 17, 1992.

- 400.** SADC may appear to be overlapping with the Common Market for Eastern and Southern Africa (COMESA) created in 1993, one year after the Treaty establishing SADC. So far, SADC has resisted the efforts deployed to convince its members to merge the two institutions. Furthermore, unlike for other regional and subregional organizations, the SADC Treaty (Article 23) envisages a role for and cooperation with nongovernmental organizations.
- 401. Objectives.** SADC's arrangement is more ambitious than a Customs union but less than an economic union. Harmonization is the leading word rather than unification. Each Member State retains its autonomy, and decisions at the top are reached by consensus. Its economic objectives are as follows:
- Achieve development and economic growth.
 - Promote self-sustaining development.
 - Achieve complementarities between national and regional strategies and programs.
 - Develop policies for a progressive elimination of obstacles to the free movement of capital, labor, goods, and services among Partner States.
 - Coordinate, harmonize, and rationalize sector strategies, policies, programs, and projects in the areas of cooperation, especially infrastructure and services.

- 402. Institutions and structure.** SADC's original institutions are the following:
- *Summit of Heads of State or Government (Article 10).* This body is responsible for the overall policy direction and control of SADC.
 - *Council of Ministers (Article 11).* The Council is responsible for overseeing the functioning of SADC, and for approving policies, strategies, and work programs.
 - *Sector commissions and coordinating units (Article 12).* These are constituted to guide and coordinate cooperation and integration of policies and programs.
 - *Standing Committee of Officials.* This body is a technical advisory committee to the Council (Article 13).
 - *Secretariat.* The Secretariat is the principal executive institution of SADC (Article 14); located in Gaborone.
 - *Tribunal (Article 16).*
- 403. Allocation of responsibilities among Partner States.** Each Member State was allocated responsibility for coordinating one or more of the 21 sectors identified by SADC. Transport was allocated to Mozambique and trade to Tanzania. Sectorial commissions are assisted by a Commission Secretariat and funded by all Partner States. The sector coordinating units are national institutions established in the appropriate line ministry by the Member State responsible for coordinating the particular sector and staffed by civil servants of that particular country.
- 404. August 2001 amendment to the Treaty.** The SADC Treaty was amended at a meeting of the Council of Ministers in Blantyre, Malawi, in August 2001. The 2001 amendment established these new institutions: Organ on Politics, Defenses and Security Co-operation; Integrated Committee of Ministers; and SADC national committees.

The Treaty on the Southern African Development Community appears in **Annex VI-2** of this review. The treaty does not appear to have been filed with the UN Secretariat. It cannot be traced in the UN Treaty Series, but it can be found in *International Legal Materials* (32 ILM 116 (1993)).

- 405. Protocols¹²⁹.** Protocols are legal instruments that commit Partner States to cooperate, coordinate, harmonize, and integrate policies and strategies in one or more sectors. Sectoral coordinators in collaboration with SADC agencies develop protocols. They are reviewed by SADC's legal sector (Namibia is the coordinator for legal affairs) and are submitted by the Council of Ministers for approval. They have to be ratified by two-thirds of the Partner States before coming into force. Of interest to trade and transport are the 1995 Shared Watercourse Systems Protocol; the 1996 Transport, Communications and Meteorology Protocol; and the 1996 Trade Protocol. The 2000 revised Protocol on watercourses and on trade apparently have not been ratified.

The SADC Protocol on Transport, Communications and Meteorology appears in Annex VI-3 of this review.

- 406. General.** The SADC Protocol on Transport, Communications and Meteorology signed by the Heads of State and Governments in August 1996 has entered into force. It states as a main strategic goal:

Integration of transport, communications and meteorology networks to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures, elimination or reduction of hindrances and impediments to the movements of persons, goods, equipment and services, . . . the right of freedom of transit for persons and goods, the right of landlocked States to unimpeded access to and from the sea, . . . the development of simplified and harmonized documentation which supports the movement of cargoes along the length of the logistical chain, including the use of a harmonized nomenclature.

- 407. The corridor concept.** At an early stage, SADC developed the transport corridor concept in order to compete with South Africa. These corridors therefore originated as politically motivated policies with which sources of international finance were in fact associated. According to the Protocol, a corridor is “a major regional transportation route along which a significant proportion of Partner States or non-Partner States regional and international imports and exports are carried by various transport modes” (Article 1.1). Seven such corridors are identified and were agreed to conform to the definition of the protocol, as presented in table 3.

Table 3. SADC Transport Corridors

Corridor	Origin-destination	Mode
Southern Corridor	South Africa-Botswana-Zimbabwe-Zambia-DR Congo	Rail and road
Maputo Development Corridor	Maputo-Johannesburg, Harare, and Manzini	Rail for Harare; rail and road for Johannesburg and Manzini
Trans Kalahari	Walvis Bay-Pretoria and Johannesburg	Road
Trans Caprivi	Walvis Bay-Lusaka	Road
Beira Corridor	Beira-Lusaka	Road and rail for Lusaka
Nacala Corridor	Beira-Lilongwe and Blantyre	Road for Lilongwe and Blantyre
Dar es Salam Corridor	Nacala-Lilongwe and Blantyre	Rail
	Dar es Salam-Lusaka and Lilongwe	Road and rail to Lusaka
		Road to Lilongwe
Lamu Gateway Development	Kenya, Uganda, Rwanda, Burundi	Road to reach ports for landlocked countries
Lobito Corridor	Lobito-Shaba-Zambia	Not in use
North-South Multimodal Corridor	Dem. Rep. Congo-Zambia-Zimbabwe-South Africa-Mozambique	Multimodal road and rail

Source: SSATP

- 408.** Over time and after policy changes in South Africa modified the regional background, a development corridor concept emerged from the transport corridor concept, encompassing a wider scope than transportation. In addition, South Africa proposed the Spatial Development Initiative (SDI), which overlaps with the development corridor concept. In transport, progress has been made with the implementation of the SADC strategy approved by the Ministers in May 2008. The convening of the North-South Corridor Investment Conference added the importance of provisions-related infrastructure.¹³⁰
- 409. Objectives (Article 3).** The aim of the Protocol is to establish transport systems that provide efficient, cost-effective, and fully integrated transport infrastructure, policy, and operations. The main aspects of the policy are to:
- Develop complementarities between modes and encourage the provision of multimodal services.
 - Establish infrastructural, logistical, institutional, and legal frameworks, including the right of transit and the right of landlocked countries¹³¹ to

unimpeded access to the sea and equal treatment of nationals from different member countries.

- Establish cross-border multimodal corridor planning committees composed of public and private participants.

410. Road Infrastructure (Article 4). The Partner States agree to:

- Ensure and sustain the development of an adequate road network.
- Adopt a common definition of the Regional Trunk Road Network serving as a basis for a coordinated plan for the construction and development of roads.
- Establish autonomous road authorities representative of the public and private sectors for overseeing, regulating, and managing the roads and the effective utilization of funding of roads.
- Develop a policy of funding resources, ensuring that road users contribute to the full cost of maintaining and providing the roads.
- Harmonize technical standards.

411. Road transport (Article 5). The Partner States agree to:

- Facilitate the flow of goods and passengers by promoting the development of a strong and competitive commercial road transport industry.
- Liberalize their market access policies on the cross-border carriage of goods, with the objective of all reaching the same degree of liberalization, through bilateral and multilateral agreements between states addressing the need for single SADC carrier permits or licenses, quota systems, and the establishment of bilateral or multilateral road transport route management groups.
- Develop harmonized transport law enforcement, harmonized safety standards, third-party insurance, training and testing of drivers, etc.
- Cooperate to develop and implement a coordinated regional traffic quality management plan to improve road traffic safety, protect the road infrastructure, exchange and transfer technology with the establishment of a regional coordinating body comprising representatives of all executive law enforcement authorities responsible for roads, and ini-

tiate traffic management and control for implementing and managing a harmonized road traffic quality management plan.

- Conduct environmental controls.
- Develop road traffic information systems.

412. Railways (Article 6). The Partner States agree to:

- Facilitate the provision of efficient railways.
- Formulate a policy for institutional restructuring of the railways, granting autonomy to their management and increasing private sector involvement in railway investment.
- Create an integrated regional network of railway corridors with common standards for customer service and promotion of data information exchange.
- Develop harmonized and simplified procedures and documents as well as a common freight nomenclature to establish a single railway invoicing system.
- Design compatible technical and equipment standards.
- Establish Railway Route Management Groups to support the activities of regional railways and the Corridor Planning Committees.

413. Maritime and inland waterway transport (Chapter 8). In the area of maritime and inland waterways, the objective is to formulate a harmonized policy and collectively develop a common understanding of the net benefits of common shipping and port policy with possible redistribution effects among Partner States. Cooperation and development of common standards in the areas of hydrographic works, chart making, ship standards, seamen's conditions, environmental protection, marine communications, and training of personnel should also be considered.

414. Civil aviation (Chapter 9). Whereas in maritime affairs the emphasis is placed exclusively on the public administration aspects of shipping and marine activities, the approach to civil aviation is twofold. On the one hand, the commercial and competitive positions of the airlines are to be reinforced. On the other hand, new efforts are needed in the area of civil aviation administration.

- 415. Business development in civil aviation.** In the area of business development, the Partner States intend to do the following:
- Liberalize the air transport market for SADC airlines.
 - Develop regionally owned airlines.
 - Restructure existing airlines by commercialization, human resources development, and opening of the capital of government-owned airlines to outside investors.
 - Expand and strengthen government capacity to provide a policy framework and develop supportive regulatory and investor-friendly legislation, with a view to attract national or foreign investors.
 - Develop competent airline management and encourage joint venture operations with the possible integration of existing airlines, with a view toward establishing regionally owned airlines.
 - Possibly standardize equipment.
 - Develop human resources.
- 416.** The Southern African Development Community is currently finalizing joint air transport competition rules, with COMESA and the East African Community, based on implementation of the 1999 Yamoussoukro Decision. It was enforced in July 2002 after two years of preparation, but today it lacks the enforcement tools to settle disputes—one of the matters facing the joint EAC-COMESA-SADC competition policy project.
- 417. Civil aviation public administration.** In the area of civil aviation administration, the Partner States commit themselves to the observance of International Civil Aviation Organization (ICAO) standards and recommended practices. They agree to do the following:
- Recognize each other's licenses and certificates of airworthiness, provided they comply with ICAO standards and recognized practices (SARP).
 - Coordinate their representation in the ICAO and develop a common position in that respect.

- Tentatively seek to integrate actions in some areas of civil aviation public administration, especially safety, but these actions have not yet led to the elaboration of specific instruments for that purpose.

418. Protocol on shared watercourses. On August 25, 1995, the SADC Partner States, including South Africa but excluding Angola, concluded a Protocol on Shared Watercourses Systems in the Southern Africa Development Community. The agreement entered into force in 1998. A revised Protocol was concluded on August 7, 2000. All SADC Members signed the Protocol except for the Democratic Republic of the Congo. The Protocol is based on the 1966 Helsinki Rules on the Uses of the Waters of International Rivers and on the 1997 United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, which embodies the concept of “equitable and reasonable utilization of the watercourses.” However, the UN Convention adopted on May 21, 1997, required ratification of 35 countries to enter into force. As of January 2009, only 16 countries had ratified the Convention. The Protocol exists in printed form in *International Legal Materials* (40 ILM 317 (2001)).

The text of the Protocol is not attached as an annex to this review as it does not deal with the navigational uses of the watercourses.

419. Lake Shipping and Port Services Agreement. In 1995, Malawi and Tanzania signed the Lake Shipping and Port Services Agreement that covers, among other things, cooperation in the operation of lake and port services adoption of a uniform system of coastal surveys and navigational charts, and the construction of navigational aids. The agreement provides for sharing information on the occurrences of pollution.¹³²

The Agreement is not attached to this review.

420. Evaluation¹³³. There is a consensus that SADC works. The launch of the SADC Corridor Development Strategy confirms the existence of a regional commitment to infrastructure development. Several transport and transit facilitation projects are ongoing. The expansion and modernization of the Walvis Bay Port and the Angola and Zambia Agreement on a plan to expand the existing rail line between the two countries are two examples demonstrating that SADC Member States have understood the strength of

coming together for their common economic development, and that they have also realized that this development cannot be made without developing the transit and transport facilitation routes and tools.¹³⁴

C. COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA¹³⁵

421. Preferential Trade Area. The Treaty for the Establishment of a Preferential Trade Area (PTA) for Eastern and Southern Africa was signed in Lusaka, Zambia, on December 21, 1981, by the Heads of State of Angola, Botswana, Burundi, the Comoros, Djibouti, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, the Seychelles, Somalia, Swaziland, Tanzania, Uganda, Zaire (today Democratic Republic of the Congo), Zambia, and Zimbabwe. The PTA was replaced by COMESA.

The 1981 Lusaka Preferential Trade Area Treaty is not attached to this review because it has become obsolete.

422. History.¹³⁶ On November 3, 1993, the Treaty Establishing a Common Market for Eastern and Southern Africa (COMESA) was signed in Kampala, Uganda. The Contracting Parties refer to a January 30-31, 1992, decision of the COMESA Authority, described shortly, to transform the Preferential Trade Area into a common market. They also refer to Article 18 (1) of the 1991 Abuja Treaty establishing the African Economic Community. COMESA is therefore the ultimate stage in a process of economic and social integration, which started with other more limited instruments. Members are Burundi, the Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, the Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.¹³⁷ South Africa, a member of the Southern African Development Community, an organization that somewhat competes with COMESA, is not a COMESA member.

423. Objectives. The objectives of the Common Market (Article 3) are to attain sustainable growth and the development of the Partner States in an overall system of economic cooperation. As a consequence, its aims and objectives, here limited to cooperation in trade and transport, are as follows:

- Establish a Customs union and abolish all non-tariff barriers to trade and simplify and harmonize procedures and documentation—the Customs union was officially launched in June 2009.
- Facilitate trade in goods and services and the movement of persons.
- Facilitate transit trade within the Common Market.
- Adopt a Third Party Motor Vehicle Insurance Scheme. The Yellow Card is largely used within the region, and there is a possibility that it could be extended to the other African Economic Community users.

The COMESA Vision and Strategy into the 21st Century states: “Facilitation of both road and air transport is to ensure more efficient movement of goods and people, thus not only enhancing extra-COMESA trade, but also maximizing the use of existing infrastructure. Transport facilitation programs also try to create stable, competitive and cost-efficient transit systems.”

424. Institutions. The Common Market institutions are as follows:

- *The Authority (Article 8)*. The Authority, composed of the Heads of State or Government of the Partner States, provides for general policy, direction, and control.
- *Council of Ministers (Article 10)*. The Council, formed by one minister of each Member State, ensures the proper functioning of the Common Market (Article 9) and drafts regulations, issues directives, makes decisions and recommendations, and provides opinions. Regulations, decisions, and directives shall be binding.
- *Court of Justice (Chapter 5)*. The Court of Justice ensures the adherence to law in the interpretation and application of the Treaty (Chapter 5). Its decisions take precedence over the decisions of national courts.
- *Committee of Governors of Central Banks (Article 13)*. The Committee is responsible for financial and monetary cooperation.
- *Intergovernmental Committee (Article 14)*. The Committee, consisting of Permanent or principal Secretaries designated by Partner States, is responsible for cooperation in all sectors except monetary and finance.
- *Technical committees (Article 15)*. The technical committees are responsible for the preparation and monitoring of cooperation programs. One

of these committees is devoted to trade and Customs and another to transport and communications.

- *Secretariat (Article 17)* The Secretariat is the executive branch of the Common Market; it is headed by the Secretary General.
- *Consultative Committee of the Business Community and Other Interest Groups (Article 18)*.

425. Trade liberalization. The stipulations are summarized as follows:

- *Articles 45 to 50.* Within 10 years of the entry into force of the Treaty, a Customs Union shall be established. By the year 2000, Customs duties and other similar charges shall be eliminated. A common external tariff shall be established for imports from third countries. Quantitative barriers shall also be eliminated.
- *Articles 51 to 55.* Dumping, as defined by the Treaty, shall be prohibited, as well as any practice negating the objective of free and liberalized trade.
- *Articles 63 to 71.* Customs cooperation shall be organized by simplification of documents, harmonization of procedures and regulations, communication of Customs information, and cooperation in the prevention, investigation, and suppression of Customs offenses. The Common External Tariff of COMESA has been harmonized with the Common External Tariff of the EAC. This is in line with the decisions that the Heads of State and Government of COMESA, EAC, and SADC adopted at their Summit on October 22, 2008, in Kampala, Uganda, calling for the three organizations to form a single free trade area.

A protocol dealing with rules of origin was adopted, and was entered into force in December 1994.

426. Transport. Common policies are to be applicable to all modes of transport:

- *Article 84.* The adequate maintenance of roads, ports, airports, and other facilities, the security of transport systems, the grant of special treatment to landlocked States, and the development of intermodal systems are the main objectives of the common policy.

- *Article 85.* For roads, the Partner States must accede to international conventions on road traffic, road signals, etc.; harmonize the provisions of their laws, standards, formalities, regulations, and transit traffic; and ensure equal treatment of common carriers and road operators in all countries of the Common Market.
- *Article 86.* For railways, the objectives are efficiency and coordination. Priorities are common policies for the development of railways and railway transport, with common safety rules, procedures, regulations, nondiscriminatory tariffs, and standards of equipment.
- *Article 90.* For aviation, the objective is the provision of better and more efficient air transport. Joint air services should be developed as steps toward the establishment of a Common Market airline. Common policies would involve the liberalization of granting traffic rights and coordinating flight schedules.
- *Article 91.* For multimodal transport, the Partner States shall harmonize and simplify regulations and procedures and apply uniform rules. They shall take measures to ratify the international conventions on multimodal transport.
- *Articles 91 and 92.* For freight in general, the Partner States shall install freight booking centers. They will develop CIF exports and FOB (free on board) imports. Licensing of freight forwarders, shipping agents, and Customs clearing agents shall be applied under the same conditions for all citizens of the Partner States.
- *Article 88.* Maritime transport and ports will also be coordinated and harmonized. Port services should be efficient and profitable. Coastal States should facilitate the trade of landlocked States. International conventions on maritime transport should be ratified. Nondiscriminatory tariffs are to be applied.
- *Article 89.* For inland waterway transport, administrative procedures, rules, and regulations shall be harmonized and simplified. Tariffs structure shall be harmonized. They will be the same for cargoes from the different Partner States. Joint ventures should be developed.
- *Article 90.* Partner States shall cooperate in the development of pipeline transport.

The 1993 Kampala Treaty Establishing a Common Market for Eastern and Southern Africa appears in **Annex VI-4** of this review. The treaty was not filed with the UN Secretariat. It does not appear in the UN Treaty Series but was published in *International Legal Materials* (33 ILM 1067 (1994)). The Treaty itself is a massive instrument of 36 chapters and 196 articles.

a. *Protocol on Transit Trade and Transit Facilities*

427. General. Based on Article 4 of the COMESA Treaty by which the Partner States were to set forth regulations for facilitating transit trade, the Protocol for Transit Trade and Transit Facilities was, like the treaty, issued on November 5, 1993, as Annex 1. The Protocol comprises:

- The Protocol itself
- Appendix I, notes on the use of the Common Market transit document
- Appendix II, regulations related to the technical conditions applicable to means of transport other than porters and pack animals. that may be accepted for the transport of goods within the Common Market under Customs seal

428. Provisions. The main provisions of the protocol are as follows:

- *Articles 2(1) and 3.* Until a common external tariff is established, all transit traffic have freedom to cross the territories of the Common Market whether from or to Partner States or from and to third countries, subject to any restriction imposed by a Partner State for the purposes of safety, public health, etc., and generally public interest.
- *Article 2(3).* No import or export duty is to be levied on transit trade; rates and tariffs shall be applied without discrimination. Administrative charges may be levied.
- *Articles 4 and 5.* All carriers engaged in transit traffic shall be licensed. Satisfaction of the technical conditions of the carriage shall be a condition of licensing.
- *Articles 6 to 9.* Standard Common Market transit documents will be used to accompany goods in transit. See Appendix 1 to the protocol on the procedures for the use of the documents and Customs Document—A Completion Guide for COMESA Transit goods will be transported

under seal. Unless there is suspicion of abuse, goods in transit shall be exempt from import or export duties, and not be subject to Customs examination at Customs offices. All transit traffic shall be covered by Customs bonds and sureties arrangements.

- *Articles 10 and 11.* Partner States undertake to facilitate the transfer to other Partner States of the funds necessary for the payment of premiums, penalties, bonds, etc. related to transit operations.

The COMESA Protocol for Transit Trade and Transit Facilities and its appendixes appear in **Annex VI-5** of this review.

b. *Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme*

429. General. This Protocol constitutes Annex II of the Treaty, and concluded on March 5, 1993 in Kampala, Uganda. It implements Article 85 of the Treaty stipulating that Partner States shall adopt minimum requirements for the insurance of goods and vehicles. The scheme provides at least minimum guarantees like those required by the laws in force in the Partner States when an insured vehicle is transiting the territories of other Partner States (Article 2).

430. Provisions. The main provisions of the Protocol are as follows:

- *Article 3.* The scheme is based on a Common Market Yellow Card issued by a national bureau and handed over to motorists on the usual terms by an insurer authorized to undertake this type of business. A national bureau, composed of insurers, will settle on behalf of the insurers the claims arising from accidents caused abroad by the holders of cards they have issued and claims arising from accidents caused in its country by holders of card issued by other national bureaus.
- *Articles 6 and 7.* Yellow Cards, proof of the existence of an insurance policy, are issued for a maximum of one year and for a specific vehicle. Notwithstanding the insurance policy under which it is issued, the Yellow Card provides all the guarantees required by law governing motor vehicle insurance in the country in which the accident occurred.

- *Article 18.* A Council of Bureaus, meeting at least once a year, is composed of representatives of all the bureaus of the Common Market. The council orientates, coordinates, and supervises the insurance scheme established by the protocol, together with the legal, technical, and financial operations of the national bureaus. It also settles disputes between bureaus. An Inter-Bureaus Agreement determines the maximum amount for the delegation of the powers of settlement by one national bureau to another and the minimum handling fee payable for each case handled by them.

The COMESA Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme appears in **Annex VI-6** of this review.

c. *COMESA Customs Documents—A Completion Guide*

- 431. General.** In August 1997, COMESA issued a completion guide for the Customs declarations replacing the Customs declaration forms currently in use. The new form is intended to handle all Customs regimes, whether import, export, transit, or warehousing.

“COMESA Customs Documents—A Completion Guide,” is self-explanatory and appears in **Annex VI-7** of this review.

- 432. Cooperation through COMESA.** In 2008 COMESA sought to expand its free trade zone by including members of the two other African trading blocs. The Virtual Trade Facilitation System (CVTFS) is aimed at integrating the COMESA Yellow Card, Transit Data Transfer Module, COMESA carrier license for road freight operators, COMESA Regional Customs Bond Guarantee System, COMESA Harmonized Axle Load, and Gross Vehicle Mass limits, which includes the COMESA Certificate of Overload Control and the COMESA Customs Declaration Document.¹³⁸

- 433. Establishment of COMESA-EAC-SADC Free Trade Area.** On June 12, 2011, the Heads of State and Governments of the Tripartite, met and signed a Declaration launching negotiations for the establishment of the COMESA-EAC-SADC Free Trade Area (FTA). Twenty-six countries are to strengthen and deepen economic integration.

- 434. Performance.** Measures are being taken to implement Tripartite policies like (1) simplification and harmonization of Customs documents and procedures; (2) harmonization of categorization of goods; (3) application of integrated border management principles with the creation of one-stop border posts; and (4) harmonization of bond guarantee schemes and other procedures for transit traffic. All these actions are in line with the revised 1973 Kyoto Convention on the Simplification and Harmonization of Customs Procedures and with the rules and procedures of the World Customs Organization. Challenges still persist in terms of disruption in the movement of goods. According to COMESA records, trucking operations costs are too high, goods are lost during transit, counterfeit documents are used, cargoes are pilfered, transit times are too long, and Goods Regional Bond Guarantees are often missing. As of 2013, the Tripartite is concentrating on the development and operations of the North-South Corridor.

D. MAPUTO DEVELOPMENT CORRIDOR

- 435. General.** The Maputo Development Corridor connects the port of Maputo in Mozambique to the industrial area of South Africa. It is made up of roads, a port, a railway line, and a gas pipeline. This corridor has a very long history. Two earlier instruments reveal that solving the issue of the access of landlocked States in the subregion to the sea was a concern before independence. The Convention between the United Kingdom and Portugal (June 17, 1950) guaranteed unimpeded movement of goods between the Portuguese colony of Mozambique and the landlocked British colonial territories of Rhodesia. An agreement between the United Kingdom and Portugal guaranteed Swaziland's access to the port of Lourenço Marques, now Maputo. The Maputo Development Corridor (MDC) was launched in 1996 at the initiative of the province of Mpomalanga, South Africa. The Maputo Corridor Company was established as the legal corridor management body. Three protocols were signed between South Africa and Mozambique for the construction of a toll road, the creation of the corridor company, and the upgrading of the railroad and harbor. Concessions for toll roads, port terminals, the railroad, and other activities were granted in the following years, with uneven success and performance. On March 17, 2004, the Maputo Corridor Logistics Initiative (MCLI) was launched as a public-private sector partnership. It was later revised, most recently in September 2010.

- 436. Provisions.** The legal instrument governing the MCLI is the Memorandum and Articles of Association, as revised in May 2007. In the Memorandum of Understanding in place, the South African Department of Transport makes a contribution to the MCLI to assist the Province of Mpumalanga, which borders Mozambique. The goal is to formally establish a public-private partnership corridor institutional framework at a trilateral level with Mozambique and Swaziland.
- 437. Objectives.** According to the Constitution of the Maputo Corridor Logistics Initiative (Revision 3, September 2010), MCLI is the formation of a grouping of infrastructure investors, service providers and users focused on the promotion and development of the Maputo Corridor, as a contribution to the aims and objectives of the Maputo Development Corridor, namely:
- To rehabilitate, in partnership with the private sector, the primary infrastructure network along the Corridor, including road and rail links between South Africa and Maputo, the border post between the two neighbors, and the Port of Maputo.
 - To maximize investment in the potential of the Corridor area and in added opportunities that infrastructure rehabilitation would create.
 - To maximize social development and employment opportunities, and increase participation of historically disadvantaged communities.
 - To ensure sustainability by developing policy, strategies and frameworks for a holistic, participatory and environmentally sustainable approaches to development.

The objectives of the Initiative are therefore to (1) coordinate the views of the investors, service providers, and users to promote development and change to make the Maputo Development Corridor the first choice for carriers; (2) inform the market about the corridor and promote the strategic benefits and opportunities it offers; (3) coordinate initiatives and engage the relevant authorities to contribute to the planning of service and infrastructure improvements; (4) organize events, fact-finding missions, forums, and meetings; (5) communicate progress and developments through electronic newsletters and the media; (6) promote positive attitudes and perceptions toward the Maputo Development Corridor and the logistical benefits offered by the corridor; (7) put users in touch with service providers and provide information on all aspects of how to utilize and benefit from the corridor; and (8) develop a website that provides exposure for members as well as serves as a platform for all communications.¹³⁹

- 438. Institutions.** The Board of Directors is the highest decision-making body of the MCLI. It comprises nine executive directors and seven non-executive directors. The executive directors are mostly private enterprises. Their responsibilities are, among others, to promote the objectives of the MCLI and monitor its implementation. The Executive Committee consists of four members from the Board of Directors. The Committee is largely responsible for (1) overseeing the financial management of the Maputo Corridor Company and (2) providing direction to and monitoring the chief executive officer. MCLI membership is open to interested stakeholders across Mozambique, South Africa, and Swaziland. The MCLI staffing structure consists of a chief executive officer (who is also the public face of the MCLI), a chief operating officer (coordinator), two event administrators, a finance administrator, a personal assistant, an office trainee, and an information and communication technician. The MCLI Board of Directors can establish committees to work on specific matters. Four groups have already been established: Border, Rail, Institutional Framework, and Shipping.

The Maputo Corridor Constitution Act appears in **Annex VI-8** of this review.

E. TRANS-KALAHARI CORRIDOR

a. Walvis Bay Corridor Group Instruments

- 439.** To date, the Walvis Bay Corridor Group is the only institution and related agreement specific to transport facilities identified in South-West Africa. The Group is an association of three Namibia government agencies (Customs, Ministry of Trade and Industry, and Ministry of Transport and Communications), the Namibian Port Authority, NamRail (the Namibian national railway company), the Offshore Development Company, and five trade associations (Walvis Bay Port Users Association, Namibian Association of Freight Forwarders, Namibian Road Carriers Association, Namibian Chamber of Commerce and Industry, and Federation of Namibian Tourism Association). The group is seeking to develop the following corridors:
- Trans-Kalahari Corridor to Botswana and South Africa
 - Walvis Bay–Ndola–Lubumbashi Corridor (formerly known as the Trans-Caprivi Corridor)
 - Trans-Cunene Corridor to Northern Namibia and Zambia

- Northern Route to Southern Angola

440. Trans-Kalahari Corridor Management Committee. The Walvis Bay Corridor Group was established in 1998 as a private sector initiative to expedite the utilization of the following routes:

- Trans-Kalahari Corridor from Walvis Bay to Botswana and Pretoria, South Africa
- Trans-Caprivi Highway and associated railway to the Democratic Republic of the Congo, Zambia, and Zimbabwe
- Northern Route to southern Angola to serve as a central entry structure that can coordinate international trade with SADC countries through the port of Walvis Bay

On October 21, 2001, the Walvis Bay Corridor Group was elected Secretariat of the Trans-Kalahari Corridor Management Committee (TKCMC), which is set up under the SADC Transport Protocol as a trilateral transport facility committee. The Secretariat is jointly funded by Botswana, Namibia, and South Africa and is responsible for implementing an agreed action plan to realize the Memorandum of Understanding on the Development and Management of the Trans-Kalahari Corridor. TKCMC members include representatives of both the Governments and transport industries of the three Trans-Kalahari member countries (Botswana, Namibia, and South Africa).

b. *Memorandum of Understanding on the Development and Management of the Trans-Kalahari Corridor*

441. In 2003 a formal trilateral Corridor Agreement was signed by the Governments of Botswana, Namibia, and South Africa (the Contracting Parties). A MoU established the TKCMC. The MoU was initiated in the framework of the Regional Activity to Promote Integration through Dialogue and Policy Implementation, or RAPID Program, financed by the U.S. Agency for International Development.¹⁴⁰

442. Preamble. The preamble of the MoU states that the Contracting Parties shall do the following:

- Make all laws, regulations, and procedures applicable to the corridor readily available.

- Endeavor to harmonize and simplify all laws, regulations, etc.
- Ensure the efficient administration of transit traffic and practice a consistent application of such laws, regulations, and procedures.
- Ensure mutual cooperation and assistance between themselves.

It is understood that the Contracting Parties are mindful of their obligations and commitments under other agreements such as the 1996 SADC Protocols on Transport, Communications and Meteorology and on Trade and the SACU Memorandum of Understanding on Road Transportation.

443. Main provisions. According to the MoU, the Contracting Parties shall:

- Develop strategic partnerships between themselves and the private sector (Article 1.4).
- Simplify and harmonize their Customs procedures, adopt a common transit procedure, and introduce joint Customs control at border points (Article 2.1).
- Establish consultative committees composed of public and private sector stakeholders on the subject of joint Customs control (Article 2.2).
- Ensure that revenue obtained from users by means of road user charges are dedicated for the maintenance and operation of roads (Article 3.1).
- Offer equal access to each other's transport markets (Article 3.2).
- Adopt and implement harmonized standards for vehicle characteristics, vehicle fitness, road signs, axle loads, etc. (Article 4.1).
- Improve traffic safety by law enforcement and driver training and testing (Articles 4.2 to 4.6).

444. Institutions. The two institutions are as follows:

- The Trans-Kalahari Corridor Management Committee composed of representatives of modal operators, transport infrastructure and transport authorities, port and Customs authorities, freight forwarders, and of all business and agencies interested in the corridor (Article 6.1)
- The Secretariat, which supports the Contracting Parties and provides administrative support (Article 6.2).

The Memorandum of Understanding on the Development and Management of the Trans-Kalahari Corridor appears in **Annex VI-9** of this review.

F. NORTH-SOUTH CORRIDOR

- 445. General.** The North-South Corridor is a Tripartite COMESA-EAC-SADC initiative. The Regional Trade Facilitation Program serves as the Secretariat to the Task Force. The program emerged from the Tripartite Summit held in Kampala, Uganda, in October 2008. It is an economic corridor-based approach. The corridor runs between the port of Dar es Salaam in Tanzania to the copper belts of Zambia and the Democratic Republic of the Congo and down through Zimbabwe and Botswana to the ports in South Africa.
- 446. Objectives.** The main objective of the North-South Corridor program is to bring together the initiatives taking place along this corridor and identify the missing links and activities so that they can be dealt with in a coordinated manner. The North-South Corridor is considered a major tool in the Tripartite policy of taking a regional approach to transport issues rather than strictly national ones. In implementing this policy, the following steps are important: (1) support regional trade policy regulation and trade facilitation initiatives; (2) strengthen national, regional, and inter-regional initiatives; and (3) develop a geographic information system (GIS) database to gather all information so that decision makers are fully informed. To implement the North-South Corridor model initiative, the following mechanisms are in place or are being developed: (1) the establishment of an institutional framework and (2) the harmonization of the policies and regulations; and the establishment a Tripartite fund.¹⁴¹
- 447. Institutions.** The institutional arrangements are twofold. First, at the Tripartite level is the Council of Ministers, composed of Ministers of transport, the Executive Management Committee, and the Secretariat. Second, at the national level are the National Corridor Committee and referral institutions comprising ministries and private sector associations.

G. DAR ES SALAAM CORRIDOR

- 448. General.** The Dar es Salaam Corridor connects the port of Dar es Salaam (Tanzania) to Lusaka (Zambia) and Lilongwe (Malawi). The geographic coverage of the corridor is very clearly captured in the Dar es Salaam Corridor Committee Constitution: it extends to the Southern-Eastern part of the Democratic Republic of Congo, specifically to Katanga Province in DRC through Kapiri Mposhi and Kasumbalesa in Zambia. The management institutions is shared by three partner countries: Malawi, Tanzania and Zambia. The DCC Constitution recognizes the DRC as one of its intended Member States. To this end, work in already in progress to formalize its membership to the DCC. The corridor is made up of a multimodal network of the port of Dar es Salaam, the Tanzara railway, and the Tanzam highway.
- 449. Objectives.** The Dar es Salaam Corridor was a response to the Southern African Development Community Protocol on Transport Communications and Meteorology. It was intended to improve the efficiency of transport services at the subregional level and to allow the corridor to remain competitive with other corridors.
- 450. Institutions.** The Dar es Salaam Corridor Committee (DCC) is a public-private partnership of Governments and private sector institutions from Malawi, Tanzania, and Zambia. It was formally established in November 2008 by means of a Constitution signed by both the public and private DCC stakeholders in the three countries. The Executive Committee is composed of a Chair, a Vice Chair of the Coordinating Committee, and at least three members nominated by the Corridor Committee. It implements the decisions made by the coordinating committee.¹⁴² The DCC has two working groups: transport and Customs. National Corridor Committees (NCCs) are located in each Member State to ensure effective national support of corridor activities. The NCC works closely with the Secretariat to ensure that corridor goals and objectives are fully realized and that problems or obstacles identified at the national level are resolved and highlighted for resolution by the appropriate bodies. The Secretariat is based in Dar es Salaam. Its main role is to coordinate and monitor corridor performance, identify new traffic, and market the corridor. The Secretariat also provides logistical support to the DCC and the working groups and NCCs. It also facilitates trade and development activities in Member States to increase the

traffic on the corridor routes and facilitate the strengthening and integration of the transport delivery system so that it is in a position to compete with the southern and other corridors, exploiting its natural advantages.

451. **Evaluation.** Among the achievements is the introduction of the Single Administrative Document (SAD 500). This document ensures that commercial traffic is cleared within 20-30 minutes at the border points on the corridor. This procedure is being rolled out to other corridors in the region to implement the free trade area and the common market goals launched by the Member States.¹⁴³

The Constitution Act of the Dar es Salaam Corridor appears in Annex VI-10 of this review.

H. INTER-REGIONAL COOPERATION AND INTEGRATION: COMESA-EAC-SADC TRIPARTITE

a. Areas for co-operation

452. The Member States of the three Regional Economic Communities, COMESA, EAC and SADC agree in 2005 to create the COMESA-EAC-SADC Tripartite. The main objectives are to strengthen and deepen the economic integration of the Southern and Eastern African region through market integration, infrastructure and industrial development. It also aims at avoiding duplication, addressing the overlapping characteristics of their membership as well as developing harmonized policies and programs in the areas of trade, customs and infrastructure development. This consensus led to two important Summits. First, in a Tripartite Summit held in Kampala, Uganda, in October 2008, the three RECs reached a decision to develop a joint inter-regional infrastructure master plan that would be a basis for joint planning, resource mobilization, and implementation of infrastructure. The policy approach should be inter-regional, not national. The Tripartite initiates and sponsors the development of the North-South Corridor between Southern, Central, and Eastern Africa. Second, the COMESA-EAC-SADC North-South Corridor Investment Conference, held in Lusaka, Zambia, in April 2009, launched the first step of this collaboration. US\$1.2 billion was pledged at that conference for implementation of infrastructure programs in relation, among other things, to transport infrastructure and

transport and trade facilitation programs. The trust account established for the Tripartite is managed by the Development Bank of Southern Africa. An investment committee is composed of representatives of the three members of the Tripartite, and region-wide sources of financing are being sought. A project preparation and implementation unit has been established in Lusaka for building a pipeline of regional projects and proposing them to sources of financing. A meeting of the Infrastructure Committee of the Tripartite and the road authorities of the Member States was held in June 2010 in Lusaka, Zambia, to plan and agree on the priority road projects along the North-South Corridor.

b. *Memorandum of Understanding*

453. COMESA, EAC, and SADC have programs aimed at facilitating transit and transport across the region. Although some of these programs are already harmonized among the RECs, many of them remain fragmented, and some do not even cover the entire Tripartite region. The response to this situation was the Memorandum of Understanding on Inter Regional Cooperation and Integration drafted for members of the Tripartite. This Memorandum is not dated, but it likely was signed during the June 2011 meeting.
454. **Provisions.** The MoU calls for (1) harmonization of infrastructure programs (Article 3) in which the Parties agree to jointly develop inter-regional infrastructure and harmonize programs on transport and communications; (2) cooperation in the program on the facilitation of the movement of persons (Article 4), in which the Parties agree to facilitate the movement of business persons across borders of the Member States; and (3) dispute resolution (Article 13). The amicable resolution of disputes through a process of negotiation has been established. If they fail to reach an agreement, the Parties will appoint an independent arbitrator.
455. **Institutions.** Article 6 establishes the following organs: (1) the Tripartite Summit, composed of the Heads of State or Governments of COMESA, EAC, and SADC; (2) the Tripartite Council of Ministers; (3) the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs, Economic Matters and Home-Internal Affairs; (4) the Tripartite Sectoral Ministerial Committee on Infrastructure; (5) the Tripartite Sectoral Ministerial Committee on Legal Affairs; (6) other Ministerial Committees that the Tripartite

Council of Ministers may establish; and (7) the Tripartite Committee of Senior Officials and Experts; (8) Tripartite Task force of the secretariats of the three RECs. Each REC shall establish a permanent unit for coordination of the harmonization mechanism of the agreed programs. The three units together will constitute a Tripartite Coordination Secretariat. A project implementation unit (PPIU) was established in Lusaka, Zambia to coordinate, manage, and monitor Tripartite infrastructure projects in the region.

The Memorandum of Understanding appears in Annex VI-11 of this review.

I. INDIAN OCEAN COOPERATION AGREEMENTS

456. General¹⁴⁴. Four instruments are relevant to the cooperation in facilitation and transport in the Indian Ocean:

- 1984 *Accord général de coopération entre les États membres de la Commission de l'Océan indien*
- 1989 *Protocole additionnel to the Accord général de coopération entre les États membres de la Commission de l'Océan indien*
- 1990 Agreement Creating the Organization of Indian Ocean Maritime Affairs
- 1997 Charter of the Indian Ocean Rim Association

The *Accord général de coopération entre les États membres de la Commission de l'Océan indien* was concluded in Victoria, the Seychelles, on January 24, 1984, by Madagascar, Mauritius, and the Seychelles.¹⁴⁵ France acceded to the Agreement in Port Louis, Mauritius, on January 10, 1986. The Comoros joined later. The depository is the Seychelles, but the seat of the Commission is in Port Louis.

457. Objectives. The 1984 *Accord général de coopération* seeks cooperation between the Partner States in economic, human, and environmental matters (Article 1). A major objective is to defend the region's interests in its sustainable development. This objective is centered on the support of the specific interests of the Island signatories of the Agreement; these interests will eventually be different from those of the continental countries. Treaties, conventions, and agreements by one of the Partner States "whatever their

form or nature” shall not be an obstacle to the enforcement of the accord or of any of its protocols (Article 2).

458. Institutions. The institutions of the Indian Ocean Commission are:

- *Council.* The Council is formed at the ministerial level with an equal number of representatives of each Member State (Article 3). Members of the parliaments of the Partner States may participate as observers to the meetings of the Indian Ocean Commission.
- *Committee of permanent liaison officers (OPL Committee).* This Committee is composed of the permanent representatives of the Indian Ocean Commission in each Member State. The committee prepares the work of the Indian Ocean Commission and follows the implementation of its decisions.
- *General Secretary.*

Ad hoc committees of experts may be established to examine technical, sectoral, or specific issues. Details on the functioning of the Indian Ocean Commission are described in a *protocole additionnel* signed in Victoria on April 14, 1989.

The *Accord général de coopération* appears in Annex VI-12 of this review.¹⁴⁶

The *Protocole* to the Agreement appears in Annex VI-13 of this review.

a. *Organization for Indian Ocean Marine Affairs*

459. On September 7, 1990, the Agreement Creating the Organization for Indian Ocean Marine Affairs was signed in Arusha, Tanzania. The 1990 Arusha Agreement has been signed by nine countries—Indonesia, Iran, Kenya, Mauritius, Mozambique, Nepal, Pakistan, Sri Lanka, and Tanzania—and apparently it has been ratified only by five countries—Indonesia, Mauritius, Mozambique, Pakistan, and Sri Lanka. For its entry into force, eight ratifications are needed. This instrument was the follow-up from the first conference on economic, scientific, and technical cooperation in maritime matters held in Colombo, Sri Lanka, in 1987. Sri Lanka is the depository.

460. Content. Although the Agreement deals mainly with integrated oceanographic management, it refers indirectly to transport facilitation.

- The economic and social development of landlocked countries is one of the general policy objectives of the Agreement (Article 3).
- The rule in which “all consideration will be given to the rights and needs of landlocked or geographically disadvantaged States” is one of the principles of cooperation between Member States, and maritime transport is one area of cooperation (Article 4).
- The executive body of the organization includes members from landlocked countries or geographically disadvantaged States (Article 8).

This Agreement was published in *United Nations Law of the Sea Bulletin No. 16*. The Agreement Creating the Organization of Indian Ocean Marine Affairs appears in **Annex VI-14** of this review.

b. *Charter of the Indian Ocean Rim Association*¹⁴⁷

- 461. Partner States.** The 1997 Charter of the Indian Ocean Rim Association for Regional Cooperation was signed by 20 Indian Ocean States—among them, the Comoros, Kenya, Madagascar, Mauritius, Mozambique, the Seychelles, South Africa, and Tanzania. The Association is open to all sovereign States of the Indian Ocean Rim subscribing to the principles and objectives of the Charter. The Association has also Partner States—among them, China, Egypt, France, Japan, the United Kingdom, and the United States.
- 462. Principles of policy.** The Association will facilitate and promote economic cooperation, bringing together representatives of government, business, and academia. Decisions on all matters and at all levels are to be made on the basis of consensus. Bilateral and other issues likely to generate controversy and act as an impediment to regional cooperative efforts are to be excluded from deliberations. Cooperation within the association will not be a substitute for, but will seek to reinforce and be consistent with, the association’s bilateral and multilateral obligations.
- 463. Objectives.** The following objectives of the Indian Ocean Rim Association are significant in terms of transit and trade facilitation:
- Formulation and implementation of projects for economic cooperation related to trade facilitation, promotion, and liberalization, fostering the

principle of nondiscrimination toward members. A 2020 deadline has been set to reduce tariffs to zero for all Member States.

- Lower barriers to the freer and enhanced flow of goods, services, and investments.

- 464. Institutions.** The institutions of the Association are (1) a Council of Ministers, which meets every two years and is in charge of formulating policies and reviewing progress; (2) a Committee of Senior Officials composed of government officials of Partner States; and (3) a Secretariat to coordinate, monitor, and service the implementation of policies.

The Charter of the Indian Ocean Rim Association for Regional Cooperation appears in Annex VI-15 of this review.

J. PORT MANAGEMENT ASSOCIATION OF EASTERN AND SOUTHERN AFRICA

- 465.** The Port Management Association of Eastern and Southern Africa (PMAESA) is among the three port management associations created under the auspice of ECA in Mombasa, Kenya, on April 1973; the others are: the Ports Management Association of West and Central Africa and North African Ports Associations (NAPMA).
- 466.** The Association has for main objectives: 1) create a framework for meetings and exchange of information between members; 2) work for improvement of utilization and management of ports in the Association; and to 3) cooperate with other port associations and related institutions. Full members of the Association are port authorities and terminal operators. The council of the Association, which is its supreme policy organ, includes all full members. The Board of Directors is composed of six members including one from the islands, one from the landlocked countries, two from coastal Eastern and Southern Africa. Associate members are organizations, companies, institutions or other bodies or individuals connected to port management and operations, such as Customs, cargo handling operators, railway companies, etc. The Association can also have individual and honorary members, all related to port affairs.

- 467.** The Association maintains a close working relationship with the United Nations Economic Commission for Africa. According to Article VII of the Constitution, ECA shall assist the Association and all of its organs in the implementation of the Constitution and of its activities.

The Constitution of the Association is attached as **Annex VI-16** of this review.