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**LEGAL ASPECTS ON THE FACILITATION OF TRANSIT
AND CUSTOMS FORMALITIES IN
THE COUNTRIES OF WESTERN ASIA**

**A Study in Customs Transit
By
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The views expressed herein do not necessarily reflect those of the United Nations Economic Commission for Western Asia.

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Foreword

This study was made by Abdul Rahman El-Kawakebi at the request of the Transport, Communications and Tourism Division of the Economic Commission for Western Asia (ECWA) from 1 November - 15 December, 1983 as part of the report prepared by the Division on the facilitation of transit formalities among Arab countries. This study does not in any way reflect the views of ECWA but rather expresses the viewpoint of the consultant. It will not be considered an official document until final approval is given by ECWA.

Introduction

The customs transit of goods through countries all over the world is considered one of the cornerstones of international trade. It is a matter which has resulted in countries continuously establishing international rules to regulate it and to facilitate the formalities involved. After World War I, countries signed the Barcelona Convention on Transit in 1921, and since then have been concluding bilateral and multilateral conventions. The U.N. has adopted some of them as part of the documents it calls on countries all over the world to apply. The U.N. bodies systematically arrange for the conclusion of transit conventions. The U.N. Economic Commission for Europe in October 1982 worked out a convention on transit between European countries.

The U.N. has already adopted the Kyoto Convention, the TIR Convention and other ones.

For a long time Arab countries have been well aware of the importance of transit. Syria and Iraq signed a transit convention in 1925. Since then Arab countries have been concluding bilateral conventions.

Throughout the ages, Arab countries by dint of their special geographical position have been a transit point for world trade. For their own trade, however they still depend on various methods of land transportation such as vehicles and containers which cross transit countries like Syria, Lebanon and Iraq on their way to consumer countries in the southern Arab region and the Gulf.

Every day the Syrian entry centre in Bab El-Hawa, on the Syrian - Turkish border, receives some 150-220 transit trucks heading for Jordan on their way to other Arab countries.

The number of vehicles travelling across northern Iraq from Turkey was put at 509 per day in 1982.

The importance of transit has prompted all Arab countries to enact legislations including rules which provide for the exemption of transit goods from taxes and duties, and for the pursuance of regulations and formalities which facilitate transit traffic and reduce procedures to a bare minimum sufficient to act as a guarantor against misuse.

It is worth noting that the regulations and procedures in various countries tend to be more standardized and consequently easier to observe and control, this is what the Arab countries have been seeking in concluding their multilateral or bilateral conventions.

The aim of the present study is to shed light on the rules and regulations stipulated by the customs laws in the Arab countries concerned in this paper, namely Iraq, Jordan, Kuwait, Saudi Arabia and Syria. The study also examines the relation between these regulations on one hand and those of international conventions on the other, as well as the scope of their application. It also analyses and compares them.

1. INTERNATIONAL CONVENTIONS

The present study is concerned with three main conventions, namely the Kyoto Convention, the Customs Convention on the International Transport of Goods Under the Cover of TIR Carnet (TIR Convention) and the Convention on the Regulation of Transit Traffic among the Arab League States. Following are some details about them:

A. The Kyoto Convention

The provisions of the Convention were laid down by the Technical Committee of the Customs Co-operation Council (C.C.C.) in 1975. They were incorporated in a convention by the C.C.C. Technical Committee at a meeting held in Buenos Aires, Argentina, in the same year, and have come to be known as "The International Convention on the Simplification and Standardization of Customs Procedures".

The Convention has a special Annex concerning customs transit which deals with all the basic elements of both national and international transit.

The Annex first provides several customs definitions and terms. For example, it defines "customs transit" as the customs procedure under which goods are transported under customs control from one customs office to another. It also defines a "customs transit operation" as the transport of goods from an office of departure to an office of destination under customs transit.

In the "Principles" section of the Annex, Article I notes that customs transit shall be governed by the provisions of this Annex. For the sake of clarification the Article says that the member States have the right to make the reservations they deem necessary regarding the Convention. They also have the right to introduce amendments to the provisions in order to apply them in the manner that best suits their own circumstances. Customs authorities may grant facilities greater than those provided for in the Convention. The granting of such facilities is even recommended by the Convention. According to Article II, national legislations shall specify the conditions to be fulfilled and the formalities to be accomplished for the purposes of customs transit. According to Article III, the customs authorities shall allow goods to be transported under customs transit in their territory, from an office of entry to an office of exit, from an office of entry to an inland customs office-which may be a port or an inland city, from an inland customs office to an office of exit, and from one inland customs office to another inland customs office. Customs transit movements referring to offices of entry and exit are termed "international customs transit" when they take place as part of

a single customs transit operation during which one or more frontiers are crossed in accordance with a bilateral or multilateral agreement. Such an agreement provides for both a goods declaration forms and acceptable security. International transit, which the Convention terms "direct transit" is our main concern in the present study. The Convention notes that the expressions used are not official in the sense that they form part of internationally accepted customs terminology but are used purely to facilitate the description of the various possible types of customs transit movement.

In accordance with Article IV and subsequent ones, goods being carried under customs transit shall not be subject to the payment of import or export duties. Besides any person having the right to dispose of the goods, for example the owner, the carrier, the forwarding agent or the consignee should be entitled to declare the goods for customs transit. The customs authorities may require the declarant to establish his right to dispose of the goods the declarant shall be responsible to the customs authorities for compliance with the obligations incurred under custom transit. The customs authorities shall designate the customs offices which are competent to carry the functions laid down for the purposes of customs transit. Articles VIII and IX provide recommended practices. They stipulate that where corresponding customs offices are located on a common frontier, the customs authorities of the two countries concerned should correlate the business hours and the competence of those offices for the purposes of customs transit.

At the request of the person concerned, customs authorities should perform the functions laid down for the purposes of customs transit outside the business hours and outside the premises of the customs office, it being understood that the expenses entailed may be charged to the person concerned. Priority shall be given to the customs operations relating to live animals, perishable goods and other urgent consignments which are under customs transit.

Formalities at the Customs Office of Departure (Loading): In Article XI, the Convention stipulates that a customs declaration for the goods transported by trucks shall be presented to the office of departure.

In other Articles, the Convention provides for the presentation of information required by customs declaration forms, manifests and documents. They also deal with financial guarantees, the affixation of metal seals to transport-units, and specifications for the construction and equipment of transport units.

Article 23 and subsequent ones provide additional control measures for authentication of documents and discharge in case of fulfilment of obligations.

According to Article 30, exemption from the payment of import or export duties and taxes normally chargeable shall be granted if the goods being transported under customs transit have been destroyed or damaged by force majeure, for reasons due to their nature or by accident.

Under the title of "Inter national Agreements Relating to Customs Transit" Article 31 and subsequent ones, mention such conventions including "The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets", which will be dealt with subsequently. The Convention calls on contracting parties to give careful consideration to accession to the other Conventions. It further says that the contracting parties which cannot join the aforementioned conventions, are recommended to draw up bilateral or multilateral agreements on transit documents, guarantees and seals, taking account therein of the provisions of the Kyoto convention itself, which have already been summarized.

The convention thus provides a model of the Customs Transit Declaration describing its specifications, size, and items of information. In Appendix III of the Transit Section, it cites requirements to be met by customs seals for transit purposes as a means of guarantee.

B. TIR Convention

The revised form of the TIR Convention was done in Geneva, in November 1975. The Introduction stresses that the aim of the contracting parties is the simplification and standardization of administrative formalities in the field of international transport, particularly at frontiers.

According to Article I the term "TIR operation" shall mean the Transport of goods from a customs office of departure to a customs office of destination, under the procedure called the TIR procedure. It also defines the terms duties, taxes, road vehicle, combination of vehicles, container and customs offices, including "the customs office en route" which means any customs office of a contracting party through which a road vehicle, combination of vehicles or containers is imported or exported in the course of a TIR operation. It also provides specifications for transported goods and defines the term "guaranteeing association".

Article II defines the scope of TIR as the transport of goods without intermediate reloading, in road vehicles, combinations of vehicles or in containers, across one or more frontiers

between a customs office of destination of another or of the same contracting party.

Article III stipulates that the transport operation must be performed by vehicles or containers complying with specific conditions set by the Convention. It also provides that the transport operations must be guaranteed by approved associations and performed under cover of a TIR Carnet, which shall conform to the model annexed to the convention. In this study we shall refer to it as "the carnet".

Article IV and V set two principles, namely, that goods carried under the TIR procedure shall not be subjected to the payment of import or export duties and taxes at customs offices en route and shall not, as a general rule, be subjected to examination at customs offices en route save in exceptional cases.

Article VI prescribes how to issue a TIR Carnet and mentions the associations authorized to issue it and act as guarantors. The guarantee covers the regularity of the operation and liabilities incurred.

Article VIII explains that the guaranteeing association shall be responsible for any irregularity in the TIR operation. It stipulates that when payments of chargeable sums become due, the competent authorities shall as far as possible require payment from the persons directly liable before making a claim against the guaranteeing association.

According to Article IX and subsequent ones the guaranteeing association shall fix the period of validity of the TIR Carnet by specifying a final date of validity. The Articles also cover conditions for issuing the carnet and attendant consequences.

Chapter III concerning the transport of goods under the TIR Carnet prescribes specifications as to which vehicles and containers shall comply with for the movement of goods.

Section B of the same Chapter is concerned with the temporary importation of vehicles and containers. It notes that a contracting party may require the fulfilment of certain formalities to guarantee their re-exportation.

Article XVI stipulates, that when a vehicle is carrying out a TIR operation, one plate bearing the inscription TIR shall be affixed to the front and another to the rear.

According to Article XVII a single TIR Carnet shall be made in respect of each road vehicle, container or group of vehicles or containers. In the case of several vehicles, each must have a separate manifest of goods. The carnet shall be valid for one

journey only. The office of departure shall provide a manifest for exported goods and shall affix necessary seals to the vehicle or container.

Article 20 and subsequent ones are concerned with transit provisions for transport units, their arrival, the affixation of seals examining the carnet and discharging it.

Article C, starting with Article XX, states provisions for the movement of heavy or bulky goods under the TIR Carnet in view of their nature. The cover of the carnet shall bear the endorsement "heavy or bulky goods" and shall be attached to the documents of the operation for the identification of the goods carried.

Chapter IV is concerned with "Irregularities", while Chapter VI includes "Miscellaneous Provisions" such as necessary facilities for foreign currency transfers and the publication by the contracting party of the lists of customs offices of departure offices en route and offices of destination approved for accomplishment of TIR operations. (Article 45.) According to the provisions no charge shall be made for customs attendance in connection with the customs operations save where it is provided at times or places other than those normally appointed for such operations.

According to Article 47, the Convention shall not preclude the application of restrictions and controls on grounds of public morality, public security, or public health. It adds that the Convention does not preclude the application of other provisions either national or international.

Article 48 provides that the contracting parties which form a customs or economic union are entitled to enact special provisions in respect of transport operations commencing or terminating in, or passing through, their territories, provided that such provisions do not attenuate the facilities provided by this Convention.

Article 50 stipulates that the contracting parties shall communicate to one another information necessary for implementing the provisions of this Convention. Chapter VII contains "Final Clauses". According to Article 52 all states Members of the United Nations or of any of its agencies or members of other international organizations may become contracting parties to this Convention by any form of signing, acceptance, approval etc... The Convention shall enter into force according to the provisions of Article 53.

The following Articles are concerned with procedures related to denunciation and termination of the operation of the Convention, settlement of disputes by arbitration, and amendment

upon the proposal of a contracting party. They also deal with review conferences and the proclamation of the Convention by the U.N. Secretary General. These Chapters are followed by a number of Annexes concerning the form and content of the carnet and regulations on technical conditions applicable to road vehicles which may be accepted for international transport under customs seals and customs inspection.

The Annexes also prescribe the specifications of the TIR plates and provide explanatory notes to the Convention. They are also concerned with regulations on technical conditions applicable to containers. The last Annex of the TIR Convention is concerned with the composition and rules of procedure of the Administrative Committee, stipulating that it shall comprise representatives of the contracting parties.

C. The Convention on the Regulation of Transit Traffic
among the Arab League States

This Convention was concluded in March, 1977. In Article I it explains some relevant definitions such as road vehicles which includes means of land transportation like trailers and semi trailers, which are the object of our concern in this report. It also provides a definition of containers.

The Convention also explains terms such as the offices of loading, departure, transit and destination. These are the offices where the movement and transit operations of goods carried by vehicles or in containers start from, go through and, ultimately, reach their destination. The Article also provides a detailed definition of the manifest, the transit declaration, the transit zone, the carrier, the guarantor, etc...

Article II defines transit as the complete transport of goods across the territory of one of the contracting parties as long as the transport operation begins and ends outside the territory of the state across which the goods are transported, and provided that the country of destination is one of the contracting parties. Article III sums up the scope of application of the Convention.

Article IV stipulates that all goods shall be transported in vehicles with specifications mentioned in the Convention, and shall have a transit declaration, a guarantee card and a manifest.

According to Article V, the goods shall not be subject to the payment or deposit of taxes or duties at the customs office of departure or the transit office but are subject to the payment of official service charges including transit and road maintenance provided that the sum paid does not exceed 0.4 per

cent of the value of the transit goods. The Article also rules that transit goods are exempt of customs checks or examination.

Chapter III deals with "Special Provisions" including the registration of vehicles, and the adequate facilities which vehicles shall be accorded for passage, residence and the use of ports for transit purposes. The facilities also involve steady improvement and maintenance of transit roads, permitting vehicle to cross unloaded provided they do not engage in internal transport within the country concerned. It also provides for insurance of vehicles, and stipulates that the transit declaration drawn up in the exporting country shall be recognized at all stages of transit operations.

Chapter IV describes the technical specification of vehicles. Article II thereof provides for setting standardized specifications by a committee representing all the contracting parties.

Article 12 provides specifications for sheets, fastening and customs seals. Articles 14 and 15 deal with contraventions.

Chapter VII, Article 16 and Chapter VIII, Article 17 describe official procedures at customs offices of loading, departure and transit. Article 18 and subsequent ones deal with customs seals and relevant provisions.

Official procedures at the customs office of destination are covered by Article 21. Customs authorities shall endorse the manifest ascertaining that the goods had arrived intact for the purpose of clearance.

Article 22 and subsequent ones provide for reciprocal administrative co-operation and the exchange of information in connection with manifest, seals, vehicles, etc...

Article 25 and subsequent articles in Chapter XI deal with "Miscellaneous Provisions" barring the transportation of additional goods not referred to in the transit declaration, and permitting the termination of the transit operation at a customs office other than the one specified in the transit declaration. According to the Articles, the responsibility for the transit operation may be transferred from one carrier to another according to specified terms. The competent authorities may fix time-limits for the transport of goods within their territory, prescribe a specific route, subject vehicles in transit to a customs escort and subject the transport of heavy or bulky loads to their applicable laws. Arabic shall be the main language used in the manifests.

Article 31 stipulates that the contracting parties shall facilitate the completion of formalities, giving priority to

perishable goods. They shall also allow the completion of formalities outside working hours and collect service charges for that. The Convention does not prevent the application of wider facilities which contracting countries may grant to one another.

Chapter XII incorporates final clauses concerning the ratification of the Convention, as well as accession to it under the auspices of the Arab League. It also deals with denunciation of the convention and the establishment of a technical committee comprising representatives of the contracting parties to examine matters related to the application or amendment of this convention.

This is followed by Annexes which produce a model of the Transit Declaration (Annex 1), Regulations on technical conditions for sheets, fastenings and customs seals, (Annex 2), and the Accidents Reporter (Annex 3).

II. CUSTOMS RULES AND REGULATIONS

This section deals with the customs transit rules and regulations applicable in the following neighbouring countries, namely Iraq, Jordan, Kuwait, Saudi Arabia and Syria, which have been reviewed in detail in a report prepared by ECWA's Transport, Communications and Tourism Division.

A. Perhaps it is worthwhile noting, in brief, that the Iraqi Customs formalities are governed by several instructions such as the Customs Instructions No. 2 passed in 1960. It stipulates that the founding members of transport companies have to obtain the approval of the Ministry of the Interior in order to carry goods between neighbouring countries in order to guarantee the payment of due charges and to check the fitness of the vehicle for transport operations.

The company should be registered at the competent government authority, shall present a Bank warrant issued by any Iraqi Bank for an amount not less than five thousand dinars, renewable every year.

This foreign land transportation companies have to obtain a license from the manager of the Iraqi Customs to carry out their operations in Iraqi within certain terms, including:

- The vehicle must belong to a country which observes the principle of reciprocal treatment with Iraq, own a specific number of vehicles, and present a bank warrant for not less than five thousand dinars. It must submit all instruments establishing that it is licensed in the country of origin to carry out transport operations. It shall also present any required document proving its financial standing, and a list of the names of countries or places where it has branches or agencies, provided it submits substantiating evidence.

- According to these instructions, trucks must enter Iraq through the declared regular routes, head for the nearest customs office after crossing into Iraqi borders, and must be accompanied by a manifest. Such vehicles are not permitted to leave Iraq loaded with goods except after securing the approval of competent authorities.

- Instructions No. 7, 1980 issued by the Iraqi Customs, regulate the transport of goods by containers, first prescribing the technical specifications to be complied with, and subsequently defining requirements for their entry and exit. The instructions stipulate declaring both the goods and the container itself in the manifest or the consignment note, or preparing a special manifest for the container. They also provide for the presentation, to the customs authorities, of a money deposit in

pledge, or a letter of guarantee issued by a bank, to ensure re-exportation of the vehicle. The instructions then deal with clearance procedures.

B. The Syrian Customs procedures consider transit a condition suspending duties. After crossing the borders in exit the goods become exempted from all duties and charges except those levied for services.

- The regulations distinguish between ordinary and special transit. In our study, we are mainly concerned with special transit. The regulations define it as transit which vehicle transportation companies carry out and are responsible for in return for guarantees specified in their licenses. The completion of formalities requires submitting special detailed declarations. Then goods are subject to general inspection, as a matter of principle, and the carriers and vehicles are to obtain customs seals.

- Transit vehicles have to follow designated regular routes and a term period, and to carry out formalities at offices prescribed by customs authorities.

- The procedures adhere to the 1921 Barcelona Convention which provides for free transit without discrimination, and for exemption from all duties except those charged for control and administration of transit operations.

- As a condition, the transport company must own a number of vehicles registered in the Arab Republic of Syria, not less than six in number.

- According to the regulations, the companies transporting goods in special or Arab transit, which are governed by the Arab League Convention and Syrian-Iraqi Declaration on Standardization, shall present a warrant for seven hundred thousand liras.

- The transport companies, when completing formalities have to fill in a manifest known as B9 in several copies, including the required undertaking to carry the goods to the country of destination under intact customs seals and within a specific time period, and to meet all due duties and legal penalties if applicable. To the B9 Manifest are annexed B10 Declarations which include details concerning the vehicles and the goods, such as identification of the merchandise, the means of transport and the persons concerned.

- The regulations permit approval of the TIR Carnet of goods carried in international transit from Europe or elsewhere instead of the B10 Declarations provided the carnet includes all the required data.

- The regulations permit the acceptance of one 89 Declaration for a number of vehicles provided every vehicle presents a manifest specifying its load and presenting the required information.

- According to provision No. 165 of the rules, the clearance formalities in the case of special transit are similar to those of ordinary transit in respect of the reproduction of declarations bearing regular exit, arrival and clearance endorsements.

- The regulations provide adequate explanation of Article 95 of the Syrian customs laws indicating that, if bilateral or multilateral conventions include transit provisions varying with the provisions of the customs laws, the former shall be applicable.

- Article 172 provides for using the Arab Manifest for goods transported under these regulations. All other types of declarations shall be discarded. Presentation and approval of this manifest shall suffice.

The Arab Manifest was prescribed as a standardized form by the Technical Committee of the Arab Transit Treaty, 1960.

The Syrian regulations specify the Arab transit roads and routes, and provide for affixing seals to goods in Arab transit as a whole, but in the case of bulky goods which cannot be covered by a sheet, seals shall be affixed to individual packages.

Bilateral Agreements

The Syrian customs regulations provide for observation of the instructions concerning the application of the Syrian-Jordanian Bilateral Transport and Transit Agreement, and law No. 28 was passed on 7 December, 1975 to this effect. It provides for granting mutual facilities to the transit of vehicles carrying goods between the two countries.

The Syrian-Saudi Trade and Economic agreement, concluded in 1972, provides for mutual facilities similar to its Syrian-Jordanian counterpart.

Transit between Syria and Iraq is governed by the agreement concluded in 1925. This was followed by the unified instructions agreed upon in Damascus in 1979 at the meetings of a committee stemming from the Syrian-Iraqi Transport and Communications Committee. The instructions prescribe the use of a unified customs declaration of a special form for foreign goods entering Iraq from Syria, and vice versa, as well as for goods exported by one of the two countries through the territory of the other, or to another country.

The agreement further prescribes specifications for trucks, their number and routes. Instruction No. 2 / 1979 provides for uniformity of instruments.

There is also an agreement between the United Arab Emirates and the Syrian Arab Republic regulating the movement of goods by vehicles, which entered into force on 26 February 1975. It provides for the extension of mutual facilities between the two countries.

Syria concluded a number of similar agreements with European countries. The Syrian Law No. 6 / 1976 regulates the transit of trucks registered in non-Arab countries and designates entry and exit points

C. The rules of transit in Jordan are governed by the Jordanian Customs Law, 1964, which differentiates between ordinary and international transit. They do not differ, in principle, from the general international transit rules. Transit vehicles have to fill in a "Transit Goods Declaration" for their goods to be appended to the manifest. The Declaration includes all the regular information which customs declarations generally require.

D. Customs regulations in Kuwait are also simple. They demand filling in the B4 form for transit goods encompassing adequate information on their identification, specification and route, as well as the persons concerned. This is to be appended with a manifest for the goods carried by vehicles in accordance with the Arab Transit Convention. The transit rules are governed by Customs Law No. 13 / 1980.

III. APPLICATION OF THE CONVENTIONS

The present study examines the scope of application of international conventions in regulating transit operations in Arab countries. This is reflected in the procedures pursued in such operations or in the instructions and regulations providing, in their texts, for application of the conventions.

(a) No Arab law or procedure dictates the application of, reliance upon, or even knowledge of the Kyoto Convention though it is an international convention adopted by the Customs Co-operation Council in Brussels and its application can help harmonize customs procedures at the international level, and standardize customs terms and expressions through out customs authorities.

As for transit, the formalities are in harmony with the principles of the Convention and with the simplification it advocates; because international relations and the need for understanding and reciprocal treatment renders it imperative for countries to resort to such facilities.

(b) This leads us to the application of the TIR Convention in the Arab countries concerned in this report. Kuwait, Jordan and Syria are contracting parties to the Convention but have not put it into force and the TIR Carnet is not accepted in the transit operations they carry out either between themselves or with the other non-contracting countries.

Nonetheless, the applied transit procedures are in harmony with some of the TIR Convention provisions for the same reasons as in the case of the Kyoto Convention.

It is worth noting that the signature of the TIR Convention by some Arab states has not enabled them to apply it because neighbouring had not acceded to it. Application must be collective.

(c) With reference to the Convention on the Regulation of Transit Traffic among the Arab League States, all Arab countries have signed it and applied it. Most regulations provide for accepting the transit declaration according to the model designed by the Convention.

The declaration in current use is somewhat different in form from the model included in the convention but its chief advantage is its uniformity among customs authorities in Arab countries.

A study of the customs rules and regulations applied to international transit indicates that all international and

bilateral conventions stipulate rules for facilitating transit and encouraging countries to extend greater facilities than those included in them.

The Arab countries concerned in this report extend varying facilities to international transit. However, the facilities in common are:

- Exemption of transit vehicles and goods from duties and taxes with the exception of transit-related administrative charges; acceptance of the affixation of metal seals to vehicles or containers, and singly to bulky and heavy goods which can be identified separately; acceptance of the Arab Manifest in accordance with the provisions of the Arab Transit Convention; acceptance of goods declaration by any of the persons concerned be it the owner, driver, the consigning company or its agent, or the forwarding agent; completion of formalities outside the official working hours; giving priority to goods which, by nature, have to be handled promptly; acceptance of a brief manifest and a general inspection of goods in transit; and acceptance of one transit declaration for a number of trucks.

However, constraints vary from one country to the other according to its economic and security conditions. However, they are not many and can be overcome or reduced by introducing some amendments to present regulations. Border to border customs escort of goods in Syria and Jordan, for instance, makes the movement of trucks difficult.

The demand by some countries of additional documents also obstructs transit traffic. The Syrian customs authorities insist on clearance of a certificate on the arrival of goods at the country of destination, and even demand a consumption status certificate in most cases. As transit operations and formalities are done at the responsibility and initiative of the driver, he may not ask the destination authorities for the required certificates out of ignorance or negligence of transit formalities. Consequently, his statements would remain incomplete and the customs in Syria would continue to claim clearance.

With numerous formalities to be completed at the borders of every country by a truck driver, there is the possibility of loss or negligence. Consequently the driver would be held responsible and liable to prosecution. When a foreign driver carrying a Syrian transit declaration enters Jordan he has to prepare a Jordanian declaration in order to reach his destination in a third Arab country, in accordance with the Jordanian declaration. As this declaration need not be discharged except by crossing borders, the driver considers himself acquitted of the responsibility and does not bother to endorse the Syrian declaration, thus the Syrian guarantor would be prosecuted.

On the other hand, subsequent discharge of the Syrian declaration on the grounds of documents and regulations is rejected by the other Arab countries. In other words, these countries refuse to endorse subsequent clearance declarations. The persons concerned face these difficulties in the countries which do not accept to endorse discharge after completing the entry formalities and the exit of vehicles from their territory.

A change of destination is unacceptable to Syrian customs, except in the case of obtaining prior approval, otherwise it shall be considered smuggling. This obstructs the freedom of movement of international trade. The number of customs declarations (international transit declarations) in 1982 at Bab Al-Hawa entry centre was 28,106, and in 1983, up to 24 November of that year, the figure was 250,400 declarations. A declaration may be made for more than one vehicle.

IV. COMPARATIVE ANALYSIS

In this section we shall make a comparative analysis of the question of transit in international conventions with reference to legal and organizational elements. For the sake of brevity, we will refer to the Kyoto Convention as "the agreement", the TIR Convention as "the convention" and the Arab League Convention as "the Arab convention".

"The International Convention on the simplification and standardization of Customs Procedures", approved by the Customs Co-operation Council in Brussels, and discussed in the second paragraph of the present study, is known as the Kyoto Convention. We shall consider it an ideal in customs matters, including transit. All countries ought to observe its customs regulations.

A. Definitions

The agreement defines "customs transit" and "the Transit operation". We explained what is meant by both when we were speaking about the transit section of the agreement in the second part of the present study.

As for the TIR Convention, it was originally conceived solely for transit and that is why it does not define transit. However, it defines the transit operation as the carriage of goods from the customs office of departure to another customs office meant in the carriage operation (the office of destination) under cover of a system known as (TIR system) which is governed by this Convention.

We find that the "TIR operation" is the same as "the customs transit operation" as defined by the Kyoto agreement. The definition is one and the same, and is also in harmony with the definition of "transit" in the Arab convention.

The agreement distinguishes between the office of loading and the office of departure. The Arab Convention follows suit.

However, TIR defines the office of departure only, as the validity of its carnet starts from there and has nothing to do with the customs office of loading. The Arab Convention further adds that the office of departure may be the office of loading at the same time.

As for the "office en route" both the Convention and the agreement provide detailed definitions of it. The definition made by the Arab Convention is briefer but gives more or less the same meaning as it says "the office en route is the customs office of one of the contracting parties which a transport unit passes by in the course of the transit operation"

It is worth noting that the agreement refers to the transit of goods in import or export, which is a correct expression. However, the Convention notes that it is the office through which passes an import or export vehicle, group of vehicles or a container under cover of TIR.

Nonetheless, the agreement concentrates on goods while the Convention focuses on the means of transport being the object of its concern. For its part, the Arab Convention says "transport unit" and it ought to have added "carrying goods". Because the main concern in the transit operation is the goods rather than the means of transport. Hence, we may consider the Kyoto definition of the "office en route" the best one.

The Arab Convention defines the manifest in detail, explaining its contents and describing it as the instrument in which is stated specifications of the goods carried by transport units.

However, the agreement does not mention the manifest as it advocates the use of the TIR Carnet.

The TIR Convention touches on the manifest in passing in Article 17 which stipulates that when there is more than one vehicle or container under the cover of the TIR Carnet, it should include a separate manifest for every vehicle or container. Article 19 provides that the authorities concerned in the country of departure have to check that the goods comply with the manifest.

The agreement deals with the "goods declaration" defining it as the instrument prepared according to a special form specified by the customs, by which the persons concerned determine the customs system applicable to their goods, and indicate the elements which the customs want to be declared for the purpose of applying regulations thereon. Thus the agreement means the "transit declaration" as the provisions of subsequent articles indicate.

On the other hand, the Arab Convention defines the transit declaration as the complete declaration which must be presented at every transit operation in the country it originates from.

The distinction in the Arab Convention between the manifest and the transit declaration is prompted by the transport conditions in Arab countries and the need for authenticating most of the goods declarations.

As for the definition of the office of destination the three conventions are in agreement. The declarant is defined by the Kyoto Convention as the person who signs the manifest in

person or by proxy. The Arab Convention defines him as the person who signs the transit declaration or he who acts for him. It is worth noting that both definitions amount to the same thing.

Article V of the agreement gives further descriptions reduced in the Arab Convention into "he who acts for him". According to the agreement any person entitled to dispose of goods such as the owner, carrier, agent, consignee or a person authorized by the customs, can declare them in the transit declaration. The customs authorities are entitled to ask the declarant to establish his right to dispose of the goods. In fact, the brevity of the Arab Convention in this respect provides a "better explanation because the customs' demand for evidence of disposing of the goods in one of the elementary organizational procedures.

In Article 6, the agreement further says that the declarant is responsible before customs authorities for completing the formalities (documents) attendant upon the transit declaration. In particular, he is responsible for carrying the goods intact to the office of destination in accordance with the conditions set by the customs authorities.

The TIR Convention makes no reference to either the declaration or the declarant.

The Arab Convention goes further as it defines the "carrier" as the person who undertakes carriage in the transit operation and is licensed by the concerned customs authorities to do so.

The "transport unit" is defined in more or less the same terms in the three Conventions.

"Import and export duties and taxes" have similar definitions in the Kyoto and the TIR Conventions. A slight difference in the Kyoto definition makes it linguistically better.

They are defined as the taxes and duties charged for imported and exported goods. The Arab agreement adds "for transit" to import and export conditions, a matter which makes it more accurate. The rest of the Arab definition is in line with the Kyoto and the TIR definitions.

The definition of "person" is the same in the three conventions, namely the natural or legal person.

The Kyoto Convention defines "security" as the person who stands surety before the customs authorities for the fulfilment of obligations. "Security" is considered "general" if he stands surety for the fulfilment of several operations.

However, the Arab Convention defines him as the person approved by the customs authorities to submit warranties for transit operations.

This shows that the Arab Convention is more precise and accurate. It also links the warranty to transit, and this constitutes a correct term of reference. The definition provided by the agreement is general, though cited in the context of transit.

The TIR Convention provides a third definition of "security" describing it as a "guaranteeing association" approved by customs authorities to stand surety for the persons making use of the system. The Arab definition provides the best and most precise definition of "security".

B. Scope of Application

According to the Kyoto Convention the customs authorities shall permit the transportation of goods in transit through its territory from an office of entry to an office of exit and vice versa, from an inland office to an office of exit, or from and inland office to another inland office. It also prescribes specifications in line with the type of transit operation. It describes transit movements from the office of entry to the office of exit as direct transit. When one or more frontiers are crossed the transit movements are termed "international customs transit". (Article 3).

This Convention permits or rather recommends the granting of more facilities than those included in it.

The scope of application of the TIR Convention is circumscribed by the reasons for its conclusion. It deals with transport across the international borders of the signatory countries and sets as a condition that part of the movement should be by land (Article 2).

The Arab Convention defines the transit it is concerned with in what may be summed up as transport through the territories of one of the contracting parties provided the destination is one of these parties, or the goods originate from one of them even if the destination is in a non-contracting country. In short, for transit goods to benefit from the provisions of this Convention their origin or destination must be in one of the contracting parties. (Article 2).

The Arab Convention, being a regional one, keeps into account security and political conditions in the contracting countries. For example, it refers to "observation of the boy-

cott provisions". It also stipulates that the signatories are to make use of the ports of the contracting parties for the purposes of this Convention and calls on countries to provide mutual facilities as far as possible.

Means of transport: The TIR Convention, in view of its nature, provides in Article 3 that movement shall be done by road trucks or a group of vehicles or containers complying with technical specifications prescribed by the Convention, or by means of transport equipped for bulky and heavy goods. The movement must be done under security of a guaranteeing association approved by the contracting parties of the Convention, and, under cover of a TIR Carnet it specifies and provides a model thereof.

Article 12, 13 and 14 stipulate that the transport units shall comply with technical specifications prescribed in the Annexes to the Convention and have a certificate to this effect. Transport units also include containers, the technical specifications thereof being prescribed by the United Nations Agreement on Containers adopted in 1972.

The TIR Convention calls on the contracting parties to be flexible enough in checking the technical specifications and allow a vehicle to continue its trip if deviations from the prescribed specifications were minor and unlikely to be used for smuggling purposes.

According to Article 4 of the Arab Convention, beneficiaries from its provisions have, in cases other than those of additional load, to move their goods by transport units complying with the prescribed specifications.

The beneficiary has to present a transit declaration attached to the transport unit to the customs authorities at the office of departure. In this respect both the Arab Convention and the TIR Convention stipulate that the declarant should carry a security card or should be covered by a warranty approved by one of the contracting countries. He should also present a manifest prepared by the transporter and endorsed by the customs in the country of departure. The Kyoto Convention does not deal with the means of transport.

Taxes and duties: The three Conventions uphold the principle that goods in transit are exempt from payment of import or export taxes and duties chargeable in the transit country.

The Arab and the TIR Conventions add to "payment" the words "or deposit". The Arab Convention provides exemption from payment of official services charges such as transit and road maintenance charges provided their total does not exceed 0.4 per cent of the goods in transit (Articles 4 of the Kyoto

Convention, 4 of the TIR Convention and 5 of the Arab Convention).

Competent offices: Article 7 of the Kyoto Convention, stipulates that the customs authorities shall designate the customs offices which are competent to terminate the functions laid down for the purposes of customs transit. The Arab Convention does not refer to this principle, but all the Arab customs laws observe it.

Article 8 of the Kyoto Convention underlines the need for correlating the business hours and official holidays at offices located on a common frontier, while the Arab Convention makes no mention of it. The TIR Convention refers to it in Article 45 which stipulates that the contracting parties shall declare the names of their offices concerned with departure, transit or arrival, and the authorities of neighbouring countries shall co-ordinate their working hours.

Work outside business hours: Article 9 of the Kyoto Convention stipulates that for reasons deemed valid by the customs authorities, they should, so far as administrative circumstances permit, perform the functions laid down for the purposes of customs transit outside the business hours and outside the premises of the customs office, it being understood that the expenses entailed may be charged to the person concerned.

The Arab Convention has the same provisions in Articles 31 and 32.

The TIR Convention refers to the same issue in Article 46 which permits the payment of due charges, if customs operations were completed outside the official working hours and at locations other than the competent offices.

Priority in formalities: The three Conventions give priority to live animals, perishable or short goods, and urgent consignments. (Kyoto 10 - TIR 46 - Arab 31).

Formalities at the customs offices of departure: The Kyoto Convention stipulates that unless waived by the customs authorities a written goods declaration for customs transit shall be presented at the office of departure (Article 11). The Article cites cases where the submission of declarations can be dispensed with, such as goods moving only in the frontier zone or carried by rail.

In Article 12, the Kyoto Convention stipulates that goods declaration forms for transit shall conform to the official model prescribed by the competent authorities, and should contain certain items which it cites as generally common in all customs declarations. (Annex 2).

The Arab Convention does not go into such details but refers to the formalities related to the declaration and the transport units in Article 16. It also produces a model of an Arab transit declaration.

Similarly, Article 19 of the TIR Convention deals with the presentation of the TIR Carnet with the goods and means of transport at the office of departure, where customs authorities shall take necessary measures to satisfy themselves as to the accuracy of the goods manifest. According to Article 18 of the TIR Convention a TIR operation may involve several customs offices of departure and destination, but, save as may otherwise be authorized by the contracting party or parties concerned, the customs office of departure shall be situated in only one country. The customs office of destination shall be situated in not more than two countries. The total number of customs offices of departure and destination shall not exceed four.

The Arab Convention, however, does not refer to all that and we do not think it can either permit or envisage it.

C. Security

According to the Kyoto Convention, the form in which security is to be provided for the purposes of customs transit shall be laid down in national legislation or determined by the customs authorities in accordance with national legislation. The choice between the various acceptable forms of security should be left to the declarant. The customs authorities shall determine the amount in which security is to be provided for the customs transit operation. When security is required to ensure that the obligations arising from several customs transit operations will be fulfilled, the customs authorities shall accept a general security. According to the Kyoto Convention, the amount of any security shall be set as low as possible with regard to the import or export duties and taxes potentially chargeable. (Articles 14-18).

The TIR Convention views "security" in the light of the former's international nature, and the latter is important. Article 6 stipulates that subject to such conditions and guarantees as it shall determine, each contracting party may authorize associations to issue TIR carnets, either directly or through corresponding and even rival associations, and to act as guarantors. The guaranteeing association shall undertake to pay the import or export duties and taxes, together with any default interest, due under the customs laws and regulations in which an irregularity has been noted in connection with a TIR operation. It shall be liable, jointly and severally, with the persons from whom the sums mentioned above are due, for payment of such sums.

Each contracting party shall determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association. The liability of the guaranteeing association to the country where the customs office of departure is situated shall commence at the time when the TIR Carnet is accepted by the customs office. In the succeeding countries through which goods are transported under the TIR procedure, this liability shall commence at the time when the goods are imported or, where the TIR operation has been suspended - because the transport takes place in the territory of a state which is not a contracting party to this Convention -, at a time when the TIR Carnet is accepted by the customs office where the TIR operation is resumed. In other words the security runs parallel to the TIR operation so long as it is in process. The liability of the guaranteeing association shall cover not only the goods which are enumerated in the TIR Carnet but also any goods which, though not enumerated therein, may be contained in the sealed section of the means of transport. For the purpose of determining potential taxes and duties, the particulars of the goods as entered in the TIR Carnet shall, in the absence of evidence to the contrary, be assumed to be correct. To reserve the rights of the guaranteeing associations, the TIR Convention stipulates that when payment of the aforementioned sums becomes due, the competent authorities shall so far as possible require payment from the persons directly liable before making a claim against the guaranteeing association. (Articles 8-26.)

While Article 8 provides for the liability of the guaranteeing association, Article 9 provides that it shall fix the period of validity of the TIR Carnet by specifying a final date of validity after which the carnet may not be presented for acceptance at the customs office of departure.

Article 10 deals with the procedures for claiming payment from the guaranteeing association, the time limit afforded it to discharge its carnet, and related matters.

The Arab Convention does not go into details of security matters, leaving them to national legislations and regulations. However, Article 10 stipulates that every contracting party shall set the conditions which must be met by those who guarantee the operations and the type and amount of guarantee that must be presented to cover transit goods.

The Arab Convention expresses hope that the contracting parties shall set up a joint guaranteeing association which shall issue guarantee cards acceptable to all parties.

According to Article 16 customs authorities at the office of departure shall permit a transit operation to take its regular course only if transit declarations were accompanied with a

valid guarantee. According to Article 17, customs offices in route shall ascertain that the transit operation is regular.

D. Additional Control Measures

Article 23 of the Kyoto Convention provides that the customs authorities shall adopt additional control measures only if they consider them to be indispensable. These measures include prescription of a time limit for the transit of goods as stipulated by Article 20 of the TIR Convention, and Article 28 of the Arab Convention. Another measure requires goods to be transported under customs escort. The Arab Convention adopts this measure. The TIR Convention, however, takes a negative stand stipulating that customs authorities shall not require means of transport to be escorted at the carrier's expense. This provision does not rule out the possibility of escort.

The Kyoto Convention stipulates, in the interest of the carrier, that when the customs authorities prescribe a time limit for the production of goods at a specified customs office they should take account of the circumstances in which the customs transit operation will take place. (Article 24).

Customs Seals and Identification Marks

These are indispensable control measures in transit operations.

Article 25 of the Kyoto Convention stipulates that customs seals used in application of customs transit shall fulfil the minimum requirements laid down in Appendix III to the Annex on Transit. According to the Appendix seals shall be strong, capable of being affixed easily, capable of being readily checked and identified, not permit removal or undoing, bear identifying marks ... etc.

Article 16 of the Arab Convention considers that affixation of seals part of the official procedures of the offices of loading and departure. The Kyoto Convention takes seals as elementary matter of fact. The Arab Convention considers the affixation of seals a regulatory condition. In paragraph 2 of Article 16 it stipulates that customs authorities shall affix to the vehicles the customs seals recorded on the manifest which shall show the name of the office, the details of the affixed seals and the date they were affixed.

The TIR Convention refers to seals as a technical complement of the transit operation. From the beginning, the Convention speaks about the means of transport under customs seals.

Article 19, defining the duties of the office of departure, includes the affixation of customs seals to means of transport and to goods.

The office of destination: For the completion of a customs transit operation, Article 27 of the Kyoto Convention stipulates that national legislation shall not, in respect of the termination of a customs transit operation, require more than that the goods and the relevant goods declaration be presented at the office of destination within any time limit fixed without the goods having undergone any change, and without having been used, and with customs seals or identification marks intact. The Article notes that the controls carried for the purposes of the termination of the customs transit operation may vary according to the circumstances of every operation.

National legislation may provide that accidents or unforeseen events en route affecting the customs transit operation be reported to the customs or other competent authorities closest to the scene of the accident or other event. The Convention provides further explanation, in this respect.

According to Article 28 when it has been established to the satisfaction of the competent customs authorities that the person concerned has fulfilled his obligations, any security given shall be discharged without delay.

In Transit: The Arab Convention deals with it, more or less, in Article 18 which states that the vehicle shall be presented to the customs authorities at the customs office of departure of the country of transit, with its fastenings and seals intact. The transit declaration for the goods shall also be presented and this authority shall verify that the vehicle has not been tampered with, and that the fastenings, customs seals and identification marks are intact. It shall then endorse the transit declaration. In this regard, the Kyoto Convention refers to the regularity of seals at the office of destination, but does not mention their regularity in transit. The matter is not referred to again until Article 32. However, the Arab Convention has the advantage of dealing with the regularity of seals en route considering it of no less importance than the arrival at the office of destination. Concerning accidents, Article 20 of the Arab Convention sets a provision similar in principle to what the Kyoto Convention stipulates in this connection. However, the Arab Convention goes into further details and provides solutions for problems created by accidents. The responsibility of taking these solutions rests on the persons concerned and the competent authorities in the countries of transit for the purpose of insuring the rights of both parties and guaranteeing positive results.

The office of destination: Like the Kyoto Convention, the Arab Convention provides in Article 21 that the loaded vehicle, with fastenings and customs seals intact shall be presented to the customs authorities at the office of destination, along with the transit declaration. There the authorities shall verify that the declarant or carrier has fulfilled all his obligations. The authorities shall record on the transit declaration that the goods had arrived intact at the office of destination, endorse the declaration and grant the declarant a certification of this. The endorsement and certification shall be accepted for clearance purposes.

Seals en route: The TIR Convention refers in Article 22 to seals affixed to vehicles, stating that the contracting parties shall accept the customs seals of other contracting parties provided that they are intact. In this way the contracting parties will be standardizing their seals. However, the customs authorities, if control requirements make it necessary, add their own seals.

The customs seals thus accepted by a contracting party shall have in the territory of that contracting country the benefit of the same legal protection as is accorded to the national seals.

The Arab Convention implicitly provides for that, Article 19 stipulates that if customs authorities conducting an examination of the load at a customs office en route or in the course of the journey decide to break the seals, they shall record the description of the new seals on the transit declaration. The Kyoto Convention includes a similar provision in paragraph 6 of Article 32. The TIR Convention lays down a similar provision in Article 24.

E. Damaged goods

Exemption from payment of import or export duties and taxes normally chargeable shall be granted when it is established to the satisfaction of the customs authorities that goods being transported under customs transit have been destroyed or irrevocably lost by accident or by force majeure, or are short for reasons due to their own nature. (Article 30 of the Kyoto Convention).

The Convention further notes that remnants of such goods may be cleared for home use in their existing state as if they had been imported in that state, or re-exported, or abandoned free of all expenses to the treasury, or destroyed or rendered commercially valueless under customs control. The Article gives detailed explanatory notes of these points.

The Arab Convention deals with the question of the damage of goods in a different way. While the Kyoto Convention is concerned with the damage and impairment of goods with reference to exemption from payment duties and taxes normally chargeable, the Arab Convention deals with such goods and methods of checking their conditions.

From the technical and practical points of view the Arab Convention provides better stipulation because it is mainly concerned with transit.

Article 20 of this Convention notes that the carrier has to promptly report the damage of goods to the nearest customs office where competent authorities shall take adequate measures, draw up a report laid out by the Convention, and permit the transit operation to continue. In case the carrier does not find a customs authority nearby he has to contact any official authority.

Paragraph 4 of the Convention stipulates that the contracting party shall permit the continuation of the transit operation if the breaking of customs seals or fastenings or the damaging of the goods or vehicles had not occurred in the territory of a contracting party provided this is substantiated by an official report. Article 30 of the Arab Convention, provides that vehicles totally damaged by force majeure in the course of the transit operation shall be exempt from the payment of taxes and duties normally due.

Article 41 of the TIR Convention provides for the exemption of damaged or irrevocably lost goods, following the example of the Kyoto Convention. Article 42 of the TIR Convention calls on contracting parties concerned with a TIR operation to furnish the other contracting parties with all the available information.

International transit conventions: Article 31 of the Kyoto Convention calls on contracting parties to consider the possibility of accession to a number of international conventions it mentions, or to any international agreement that may supercede them, namely, the Customs Convention on the International Transit of Goods (III Convention) done in Vienna in 1971, the TIR Convention concluded in Geneva in 1975, and the ATA Convention done in Brussels in 1961.

E. Special Provisions

Article 32 of the Kyoto Convention stipulates that if the contracting parties are not in a position to adhere to these international conventions, they should, when drawing up bilateral or multilateral agreements with a view to setting up an international customs transit procedure, take account therein of

provisions 1-30 in the Annex on Transit. They should in addition, incorporate specific provisions in the agreement. In these provisions, the Convention stresses, as a matter of necessity, that the customs authorities should satisfy themselves of the accuracy of the documents accompanying the goods in transit and record on the documents the name of the office of loading, details of the customs seals affixed and of the date of affixing.

When the goods are declared for customs transit, the authorities at the office of departure shall accept the seals affixed by the loading office and the accompanying documents. Common goods declaration forms for transit should be accepted in each customs territory involved. One model is appended to Annex I of the Convention.

The Article goes on to deal with the security acceptable to all the customs authorities in each customs territory involved.

Paragraph 5 of the Article calls on the customs authorities to specify the formalities to be carried out at transit offices and advocates limiting them to checking the regularity of the declaration, seals, identification marks and the transport unit. They should then endorse the goods declaration.

Article 18 of the Arab Convention deals with the same measures. The Convention also covers the question of seals and of changing them in paragraph 6 of the Article 32, and in Article 19 as already mentioned.

The Kyoto Convention provides in paragraph 8 for mutual assistance, between the customs administrations of the countries concerned, particularly with regard to the exchange of information on the accuracy of the documents describing goods transported under customs transit and of the authenticity of customs seals. To this end, the Arab Convention devotes Chapter X (Articles 22-23-24) under the title of "Administrative Co-operation".

The TIR Convention does not deal with similar provisions.

Declaration: The Kyoto Convention produces a model of a transit declaration coupled with an elaborate explanation of its contents and size. The TIR Convention presents a model of its carnet, while the Arab Convention gives a model of its goods declaration.

Some of the points tackled in the TIR Convention and the Arab Convention are not mentioned in the Kyoto Convention, namely:

Checks and examinations: The TIR Convention provides in Article 5 that transport units, as a rule, shall not be subjected to examination at customs offices en route. However, to prevent abuses, customs authorities may in exceptional cases and particularly when irregularity is suspected, carry out an examination of the goods at such offices.

In such an event, they shall record on the TIR Carnet particulars of the new seals affixed and of the controls carried out.

The TIR Convention stipulates in Article 23 that the customs authorities shall not require examination en route of vehicles and their loads except in special cases.

The Arab Convention provides in Article 5 that as a general rule transport units are not subject to checks or examinations at the customs offices en route, if the affixed seals are in order and there is no evidence of fraud or irregularity. However, this provision does not apply to heavy or bulky goods.

The Arab Convention deals in Chapter 6 (Articles 14-15), with contraventions and calls for the adoption of necessary measures and payment of due taxes, duties and fines. This implies that a contravention had taken place, and the authorities had checked and examined the goods, contrary to the general rule.

Change of destination: Article 27 of the TIR Convention, stipulates that subject to the provisions of Article 18 another customs office of destination may be substituted for a customs office of destination originally mentioned.

In Article 26 the Arab Convention permits the termination of a transit operation at a customs office other than the one specified in the transit declaration considering it an office of destination at the request of the person concerned, and subject to the approval of the competent customs authority, namely the destination authority.

Exceptional Cargoes: The Arab Convention defines them as goods which, because of their weight, size or nature, are not normally carried in a closed vehicle that can be sheeted or sealed, provided they can be easily identified. (Article 1).

The TIR Convention provides a similar definition in Article I though it refers to them as "heavy or bulky goods".

The Arab Convention subjects these goods to checks and examinations at the customs offices en route (Article 5) as they cannot be sheeted and sealed, and have to be identified. However, Article 16 exempts them from customs seals if they can be easily identified by referring to markings, numbers or

descriptions given. Otherwise, identification marks or customs seals shall be affixed so as to ensure that the goods are not removed during transit. The customs authorities shall be entitled to request price lists, pamphlets, catalogues or photographs of the goods. In such cases, these are considered to be official documents which must be attached to the transit declarations. The Convention subjects exceptional goods to its applicable laws, regulations and provisions.

The TIR Convention stipulates similar provisions in Article 29 noting that the liability of the guaranteeing association shall cover them. It sets as a condition that the TIR Carnet shall bear on its cover the endorsement "heavy or bulky goods" lists, photographs, drawings ... etc necessary for identification are to be appended to the TIR Carnet.

6. Contraventions

In Articles 14-15, the Arab Convention deals with detection and determination of contraventions and the appropriate measures to be taken, as has already been mentioned. In this respect we may add that the authority in whose territory a contravention has occurred, shall be authorized to take appropriate measures to deal with it.

However, in case it is hard to determine in which country it occurred it can be considered committed in the country where it was uncovered. Contracting parties concerned reserve the right to take legal proceedings in respect of the contravention, if it is subsequently established that it occurred within their territory.

In like manner, any act that constitutes a crime according to the law or any breach of the provisions of this Convention shall render the offender liable, in the country where the act or breach was committed, or in the country where the act or breach was deemed under Article 14 to have been committed, to the penalties prescribed by the law of that country, including the imposition of fines and the restitution of taxes and other dues. Article 33 stipulates that each of the contracting parties shall have the right to exclude, temporarily or permanently, from the operation of this Convention, any person guilty of any serious offence against the customs laws or regulations. This exclusion shall be notified to the customs authorities of the other contracting parties concerned and also to the guaranteeing association.

The TIR Convention includes similar provisions in Articles 36 and 37. Article 38 stipulates that each of the contracting parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious offence against the customs laws or regulations.

This exclusion shall be notified immediately to the other contracting parties.

According to Article 39, discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual contents of the transport units shall not be considered as infringements of the Convention by the holder of the carnet when evidence is produced that these discrepancies were not due to mistakes committed knowingly or through negligence at the time when the goods were loaded. Article 40 stipulates that the customs authorities of the two countries shall not consider the holder of the TIR Carnet responsible for the discrepancies which may be discovered in those countries, when the discrepancies relate to procedures in each country, and in which the holder was not involved.

The Arab Convention ought to have included similar provisions.

Explanations: The TIR Convention has a number of Annexes. The explanatory notes set out in Annex 6 and Annex 7, interpret certain provisions of the Convention and recommend certain practices, as Article 43 states. This is an asset to the Convention as it facilitates its application, explains its content and expressions, and provides regulations, on technical conditions applicable to the means of transport.

Miscellaneous Provisions: Chapter VI of the TIR Convention contains Miscellaneous Provisions. According to Article 47, the provisions of this Convention shall not preclude the application of restrictions and controls imposed under national regulations on grounds of public morality, public security, or hygiene and public health. The Arab Convention contains similar provisions in Article 5.

Final Clauses: In the TIR Convention "Final Clauses" are covered by Chapter VII, Article 52-64. It is worth noting that this Convention, passed in 1975, supercedes the 1959 TIR Convention. The aforementioned Articles deal with signature, amendment, acceptance, approval, accession, settlement of disputes, and penalties. This is followed by Annexes and Models.

The Final Clauses of the Arab Convention are briefer. Chapter XII deals with signature, ratification, accession, operation, denunciation, the Technical Committee and amendments. Models and Annexes follow.

Special Provisions: The Arab Convention has a number of "Special Provisions" which are lacking in the other Convention. These are:

1. Contracting countries shall give priority to the use of their ports for transit purposes.

2. No contracting party shall grant states which are not contracting parties privileges or facilities which are comparable to, or better than, those provided for in this Convention. However, a contracting party may, under extraordinary circumstances, act contrary to those provisions, provided that it submits justifications for such action.

3. No political considerations shall prevent the implementation of this Convention.

4. Contracting parties shall promote the improvement and maintenance of transit roads.

5. The contracting parties shall encourage the use of railroads for the movement of goods whenever possible.

6. When goods are transported by rail, the customs and railroad authorities shall co-operate. (Article 34).

V. The Arab Scope

The present research paper is mainly concerned with a comparative analysis of the laws and regulations in force at present in the countries under study.

Laws: This section will not be lengthy, because legal texts on transit are few, brief and almost limited to the establishment of general principles, while measures for their application are prescribed by regulations and administrative instructions.

If legal texts are drawn from the Customs Law on Standardization done by the Council for Arab Economic Unity they are similar or identical.

However, if they do not draw on this exemplary law, they endorse general internationally observed principles which do not differ from the provisions of that law.

Considering international trade relations, the administrative regulations and instructions must be in line with the provisions of international conventions, particularly the Arab Convention which all Arab countries operate.

1. The Syrian law, which draws on the Arab Law on Standardization, starts with a definition of transit stipulating it shall be exclusively by land transportation. The Iraqi and Jordanian Laws include similar provisions.
2. Customs Laws provide that transit traffic must follow the routes prescribed by customs authorities.
3. It is not permissible to complete customs formalities except at the customs offices designated by administrative decrees.
4. Goods in transit shall not be subjected to restrictions and prohibitions except when otherwise stipulated by operative laws and regulations.

The Iraqi law provides in Article 141 that the goods subject to import or export prohibitions, are not allowed to cross Iraq in transit. However, it is permissible to suspend prohibition upon the issuance of regulations to this effect in accordance with the conventions concluded with the other countries.

The Higher Supply Committee is exceptionally permitted to carry goods subject to import or export prohibitions in transit through Iraq provided declarations are issued for this purpose.

5. Article 92 of the Syrian Law provides that the movement of goods must be conducted by vehicles affiliated with vehicle

transportation companies licensed by the director general of customs and at the responsibility of these companies and associations. The license shall include the required guarantees and conditions. I have already spoken about suspending or withdrawing such a license.

The Iraqi Law does not refer to licenses but deals with security in Article 142.

6. The Syrian Law stipulates in Article 94 that goods in transit are subject to a summary declaration and to general inspection, as a matter of principle. The Iraqi Law does not touch on that point.

7. Article 96 of the Syrian Law permits transit by international documents for companies licensed for that purpose provided adequate security is extended and the vehicles comply with certain specifications.

Syria has signed the TIR Convention in accordance with which the TIR carnet is issued and considered an international document. However, Syria has not made the Convention operational. The Iraqi Law does not deal with that matter. However, Syria and Iraq, along with the other Arab countries accept "the Arab Transit Declaration" as official. The Arab League Convention has provided for acceptance of this Declaration and has prescribed its model.

Regulations and instructions:

1. According to the Customs Instructions No. 2 for 1960, the Iraqi Customs Authority restricts transit rights to companies owning not less than six vehicles. These companies may belong to countries according Iraq reciprocal treatment, provided the companies concerned extend the security required. The instructions set other conditions which transport companies have to meet, such as having 51% of their vehicles registered in Iraq.

The Syrian Customs regulations, issued by the General Customs Authority in 1980, also restrict transit rights to companies registered in Syria provided that at least half their vehicles are Syrian-registered and are not less than six in number. There are additional conditions which the transport companies should meet.

2. All customs demand bank warranties and guarantees.

3. All customs rules prescribe technical specifications for vehicles and containers.

4. All customs rules designate routes for international transit.

5. Every Arab country demands the presentation of transit declarations. Syria demands a brief transit declaration known as B9 including declarations known as B10 for every car mentioned in B9. The B10 form is concerned with data about, and particulars, of the goods and the vehicles, in addition to manifests as well as a copy of the TIR Carnet.

This is apart from the Arab Transit Declaration, which has a special status, as several transit operations between Arab countries can exclusively depend on it.

Arab Transit: This is the term the Syrian regulations use and devote a whole chapter to. At the beginning of this chapter reference is made to Syria's accession to the convention on the Facilitation of Trade, Exchange and Regulation of Transit Trade and the Convention on the Settlement of Payments of Current Transactions and on Capital flows between the Arab League Member Countries concluded in 1953. Article 4 of the latter deals with transit, stating that all the contracting parties shall undertake to facilitate transit traffic by all means of transport throughout their countries in accordance with the customs rules and regulations applied in each transit country.

The provisions on transit in this convention were amended in 1956. The Syrian regulations provide for the application of all the facilities stipulated by it.

The Arab Manifest: It was adopted by the Technical Committee of the Arab Transit Convention at its meeting in 1960. The Committee worked out a uniform model thereof.

Arab countries have put the Arab Transit Manifest into application. It is in accordance with the numbers and dates of these Manifests that Arab countries discharge transit declarations and undertakings to re-export goods and also issue certificates testifying that the goods had arrived intact.

The Arab Manifest has three copies. The one with two red lines on the top left hand corner accompanies the goods and shall be endorsed by all customs offices en route.

The Syrian regulations include special provisions for transit operations, concerning licensing, annual warranties, the liabilities and registration of carries, the number of vehicles, and the Arab transit roads and routes.

The Syrian customs regulations deal with the question of licensing by which they mean the affixation of seals. It is an old expression meaning the affixation of lead seals which are now made of any metal except lead.

Bilateral Agreements: A number of bilateral transit agreements have been concluded by various Arab countries.

According to the provisions of the Syrian regulations such agreements shall be operative, particularly as some of the facilities they stipulate are more than what the Arab League Convention provides for. Syria has concluded bilateral agreements with Lebanon, Jordan, Saudi Arabia, Algeria, Iraq and the U.A.E. concerning transit operations, routes, documents, means of transport and conditions.

VI. RECOMMENDATIONS

Our study of the international transit conventions and the regulations observed in Arab countries, though brief, has focused on transit as a basic element in foreign trade and international economic relations.

We note that facilitation of transit operations is the prevailing spirit in international conventions despite their keenness on providing adequate guarantees against contraventions and abuses.

Customs rules and regulations in the Arab countries concerned in this study show a strong desire to introduce possible transit facilities with the aim of activating foreign trade and simplifying its measures, in the first place, and promoting good neighbourly relations and mutual benefit, in the second place.

For the purpose of improving transit conditions in the Arab countries concerned in this study, we present the following recommendations:

A. Accession to International Conventions

1. The Arab Convention: All Arab countries are signatory to the convention on the Regulation of Transit Traffic Among the Arab League States. They all apply it, and benefit from the uniformity of the procedures and the facilities it provides for.

A review of the Arab Manifest used for transit goods from one Arab country to the other shows that it covers indispensable issues and information which can neither be reduced nor cancelled.

Besides, the provisions of the Convention set minimum restrictions dictated by economic and security considerations in the countries of the region. The bilateral transit agreements have further improved the situation and facilitated procedures.

Hence, it is possible to reconsider the Convention so as to incorporate the easing of restrictions and procedures stipulated by the bilateral agreements and to expand them into a collective Arab Convention.

2. The Kyoto Convention: As we have mentioned at the beginning of our study, it is known as the International Convention on the Simplification and Standardization of Customs Procedures.

The Arab countries familiar with it are those which attend the meetings of the Customs Co-operation Council in Brussels which proclaimed the Convention.

As its title shows, the Convention helps the contracting countries to jointly adopt principles and measures, and standardize their formalities and models thereby making international customs speak one language and pursue uniform methods. The Convention was adopted by the United Nations as serving the ends of the world body.

Hence, we believe that the countries concerned in this study should sign the convention and apply its principles. Though the Arab Convention covers most of the provisions concerned with transit, the Kyoto Convention tackles customs work in its entirety.

3. The TIR Convention: It is known as the Customs Convention on the International Transport of goods under cover of the TIR Carnet.

The United Nations has adopted the TIR Convention, as it had earlier accepted the Kyoto Convention.

Accession of the Arab countries to the TIR Convention will contribute in a practical manner to the easing of the transit operations they conduct among themselves and with the European countries linked with them by transit routes.

As already mentioned Syria, Jordan and Kuwait have signed the Convention but do not apply it or accept its carnet. Actually, application must be collective, otherwise individual application proves futile. We believe that it is in the interest of all the Arab countries to sign and apply the Convention which will facilitate transit between them and Europe through simple regulations and standardized international forms ensured by adequate guarantees.

B. Instruments and Formalities

In this respect we mean by instruments the documents accompanying goods and vehicles, and presented to customs authorities as they cross several borders both in entry and exit. Formalities refer to the procedures which regulations stipulate and which the persons concerned - for example, drivers forwarding agents or company agents - have to complete at custom offices at international border crossings.

The required instruments at present are the transit declaration, the manifest, invoices and any additional paper the customs officers may require to ascertain the accuracy of

declarations, by the persons concerned, for their goods in transit.

The Arab Transit Declaration and Manifest have solved the problem as far as Arab - made goods are concerned. However, the goods imported from Europe via Syria first need a B9 transit declaration, then the conveyance should present a similar declaration in every transit country en route to its destination. The models of these instruments vary from one country to the other.

The Syrian B9 declaration looks very old though it is newly printed. It is also too big and contains legal provisions meant to remind the persons concerned of articles they know nothing about. Besides, there is no point drawing their attention to such provisions in this manner. Furthermore, the provisions are extracted from the Syrian Customs Law promulgated in 1935, though it was nullified and superceded by Law No 9 in 1975.

The declarations of Jordan and other Arab countries are moderate in size and practical in use. We have no proposal to make regarding any amendment.

However, we recommend reconsideration of the Syrian declaration so as to give it a new modern form in line with the models of international conventions.

The Syrian B9 declaration, the Arab Manifest and the Kuwaiti declaration mention "lead" and "lead affixation" in reference to the lead Seals affixed to goods and vehicles.

Practically speaking, the seals, now in use for years are modern "metal seals" while "lead" and "lead affixation" are obsolete in customs operations, so it is better not to use them in declarations and rather use the term "seals" only.

We also recommend reducing the transit declarations filled in by vehicles to one declaration to be written on entering the first Arab borders and to accompany the vehicle all through as a unified transit declaration permitting it to cross the borders of transit countries en route provided all customs authorities endorse it.

Procedures: These vary in difficulty from one customs authority to another. At the Syrian Bab El Hawa centre, which is the entry point for international transit heading for Syria or other Arab countries, customs authorities very often carry out inspection procedures. Transit containers gather at this centre forming a convoy to go through the country under customs escort until their exit from the border centre of Daraa. Jordan too insists on customs escort of transit convoys through the Jordanian territory.

As for the procedures related to discharging transit declarations, Syria demands returning the B9 declaration after endorsement by the country of destination indicating the arrival of the goods in transit as well as the mode of their use. If the driver in charge of the transport operation forgets to obtain the arrival endorsement from the customs authorities in the country of destination, the operation shall remain incomplete and the guaranteeing association shall remain responsible for it and liable to fines. In this case the association cannot set matters right by trying to obtain subsequent endorsement because customs authorities in countries of destination, particularly Saudi Arabia and Kuwait, refuse to grant such endorsement because of restrictions placed on goods leaving the customs office, and on the mode of their usage. This is an obstacle placed in the way of the persons by the customs authorities of the countries of destination concerned.

Accordingly we recommend:

1. The customs authorities in Syria and Kuwait establish check points along transit routes to examine transport units until their exit from their borders, instead of the hectic customs escort operations which do not even serve the underlying aims of the customs authorities.
2. The Syrian authority should accept for the purpose of discharging declarations, the endorsements by the Syrian exit centre and by the offices en route in other countries, just as these countries do.
3. In case Syria insists on total discharge upon arrival in the country of destination, Arab countries should make allowance and accept to issue subsequent endorsement of declarations on the basis of their own restrictions and records.
4. The Syrian authorities at border centres abstain from carrying out complete inspection, except in extremely suspicious cases.
5. Facilitating the exchange of specimens of the signatures of officials responsible for discharge between various administrations so as to make matters easier for the persons concerned.

C. Standardization of Documents

Arab countries have taken a very significant step towards the standardization of documents by using the Arab Transit Declaration. They have also worked out a customs law on standardization model which is being applied by several countries. In pursuance of this trend we recommend Arab countries - represented by their customs authorities, within the framework of the

Economic Commission for western Asia or the Council for Arab Economic Unity - to devise standard forms of customs declarations and other official documents provided they are to be accepted collectively.

In this manner different customs authorities can speak one customs language in correct Arabic.

D. The Exchange of Information

The Arab Convention stipulates in Article 33 that any contracting party which finds a person guilty of any offence against the customs laws within its territory, shall notify the other contracting parties concerned of the penalties it had inflicted on the offender.

In fact, the exchange of information between customs authorities in the countries under study and rather between all Arab countries is of great help in organizing customs transit and in coping with contraventions.

Accordingly, we recommend every customs authority to notify its counterparts in other Arab countries of any organizational measure it applies, to provide them with specimens of the customs seals it uses and of the signature of officials authorized to endorse clearance operations, and to inform them of any contravention within its territory by persons concerned.

We also recommend customs authorities to exchange information concerning transit vehicles, their numbers, and related matters.

The most important information concerning transit vehicles carrying goods is their arrival at their destination and the fate of the goods as this helps the other parties to endorse declarations for the purpose of clearance, and also helps the persons concerned complete the clearance formalities. Such information complements the usual formalities and are of particular significance in case these formalities are incomplete or inadequate.

In order to promote a positive exchange of information we recommend setting up a customs central office within the framework of ECWA or the Council for Arab Economic Unity. The office is to receive regularly the aforementioned information from Arab customs authorities, then co-ordinate, group and redistribute it among Arab customs authorities monthly or quarterly, provided its bulletins shall be considered official documents binding on all parties.

E. Co-operation

Our last recommendation calls on Arab countries to establish a customs co-operation council within the framework of ECWA or the Council for Arab Economic Unity comprising all institutions concerned with customs affairs, such as the central office I have already proposed and the technical committees concerned with customs matters within the scope of the Council for Arab Economic Unity or the Arab League in accordance with Article 42 of the Arab Transit Convention.

This office is to undertake the co-ordination of customs legislation, regulations and formalities. In this manner the Arab countries will have gone a long way towards economic complementarity and unity.

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