

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

ANNEXE V-2

1985 NORTHERN CORRIDOR TRANSIT AGREEMENT
PROTOCOL No 1 MARITIME PORT FACILITIES

PROTOCOL NO. 1

MARITIME PORT FACILITIES

Article 1: Application •

Pursuant to Section 4 of the Northern Corridor Transit Agreement, the Contracting Parties agree to apply the provisions of this Protocol related to maritime port facilities, which is an integral part of the Agreement.

Article 2: Content of the Protocol

This Protocol governs the use by the Contracting Parties of Kenya's maritime port facilities, for the purpose of moving transit goods through those areas under the jurisdiction of the Kenya Ports Authority.

Article 3: Use of port facilities •

The Government of Kenya agrees to the use of her maritime port facilities by the other Contracting Parties for the movement of goods in transit to and from the Northern Corridor States, and to make available warehouses, sheds, open space and other appropriate facilities, to the extent possible, and under the terms and conditions noted in this Protocol.

Article 4: Equal treatment of ships •

The Government of Kenya guarantees that ships registered in, chartered by, or carrying goods for the other Contracting Parties, and the crews of such ships, shall enjoy treatment equal to that accorded to Kenyan vessels as regards access to and use of the maritime port facilities.

Article 5: Fees and charges •

The fees and charges to be paid by the Northern Corridor States for use of the maritime port facilities shall be assessed in accordance with the official tariffs and rates in force at the time and shall not exceed those paid by other users of the port facilities under similar circumstances.

Article 6: Jurisdiction over port facilities and services •

Overall responsibility for the administration, operation and maintenance of facilities and services made available to the Northern Corridor States shall remain with the Kenya Ports Authority which in turn shall remain subject to the jurisdiction and laws of the Republic of Kenya.

Article 7: Settlement of disputes •

Any dispute between the Contracting Parties concerning the interpretation of this Protocol shall be settled in accordance with the provisions laid down in Section 13 of the Northern Corridor Transit Agreement.

Article 8: Matters dealt with in other Protocols

Customs procedures and Documentation and procedures shall be governed by the provisions contained in Section 7, Customs Control, and Section 8, Documentation and procedures, of the Northern Corridor Transit Agreement.

EXPLANATORY NOTES TO PROTOCOL NO. 1

MARITIME PORT FACILITIES

Article 1

For land-locked countries, maritime port facilities, giving access to the sea, constitute an essential element in any transit agreement. Bilateral agreements generally identify specific areas and related facilities intended for transit traffic to and from land-locked countries.

The Protocol on transport and communications of the PTA treaty gives the basic principles on which the provisions of this Protocol are based.

Article 3

Article 6, Maritime transport and ports, (d), of Protocol on transport and communications of the PTA treaty states that the Member States shall "where they are coastal States, co-operate with land-locked Member States in maritime transport so as to facilitate the trade of such land-locked Member States".

The use of Kenya's maritime port facilities by the land-locked Northern Corridor countries is being understood within the limits of the means available in the port of Mombasa.

The experience of land-locked countries has evidenced that the carriage of their goods across one or several transit countries to their final destination requires the use of certain facilities in the maritime port of entry and exit. These include access to warehouses and handling equipment for loading and unloading the ships as well as to facilities for sorting the consignments before dispatch to their final destination.

Article 6, Maritime transport and ports, (g), of Protocol on transport and communications of the PTA treaty states that the Member States shall "agree to allocate space for storage of goods traded among themselves within their goods sheds".

Article 4

Article 6, Maritime transport and ports, (e), of Protocol on transport and communications of the PTA treaty states that the Member States

shall "...apply the same rules and regulations in respect of maritime transport among themselves without discrimination".

This Article also reflects the provisions on non-discrimination of Articles 2 and 4 of the Convention and Statute on the Freedom of Transit (Barcelona, 1921).

Article 5

Port fees and charges paid by the land-locked Northern Corridor States should not discriminate against land-locked countries. These fees and charges should be negotiated at the request of the Port Authority, or of the user countries, taking into consideration the following elements:

- (a) the official tariffs applied to all port users, Kenyan as well as foreign;
- (b) the amount of expenses actually incurred by the Port Authority for the benefit of transit traffic.

Article 6

Article 8 of the 1965 Convention on Transit Trade of Land-locked States codifies the States practice in this context. While specifying that land-locked States have a right of access to maritime port facilities in a transit State, it leaves to the Countries concerned to determine by agreement the modalities of the use of such facilities.

Article 7

The provisions of Section 13 of the Northern Corridor Transit Agreement on settlement of disputes apply to any dispute arising of this Protocol.