

Distr.
GENERAL

TD/B/C.3/176/Supp.1
13 July 1982

United Nations Conference on Trade and Development

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Committee on Invisibles and Financing
related to Trade
Tenth session (second part)
Geneva, 13 December 1982

PROBLEMS OF DEVELOPING COUNTRIES
IN THE FIELD OF MOTOR INSURANCE

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The views expressed in this document are those of the author and do not necessarily reflect those of the UNCTAD secretariat.

GE.82-51799

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I. SOCIO-ECONOMIC PROBLEMS

1. Motor accidents cause death, bodily injury and property damage.

Where death or permanent total disablement is caused to an economically active person, it depletes human resources, and where a replacement involves educating, training and developing the skills of a substitute, it results in the expenditure of financial resources which could otherwise have been used for productive purposes. In the interim period between the death or permanent disablement of the person and the instalment of an appropriate replacement there is a reduction in efficiency in the relevant unit of production and a loss to that extent. Such economic consequences may be negligible in a given case; but in the aggregate, taking all the deaths and permanent disablements caused by motor accidents into account, the consequences may be socially and economically large enough to excite national attention and concern.

2. Sudden accidental death or permanent disablement also causes shock and personal anguish. Where the deceased or disabled person is an economically active member of a joint or extended family, the result is a depletion of the relevant unit of production and, in the event of permanent total disablement - as opposed to death - an increase in the burden of the unit to the extent that the person concerned becomes dependent. In a nuclear family, permanent total disablement has similar consequences. But the death of a breadwinner could have far-reaching social effects. A widow left to carry on alone may lose control of her children because she lacks the financial means for keeping the family together, or worry and overwork lead to broken health and result in inadequate care and attention for the children. Alternatively, children may be forced to abandon or neglect their studies to be able to contribute to the family income. In certain instances they may be compelled to accept cruel and difficult working conditions. Juvenile delinquencies, ill health, child exploitation, mental disease and - if these ills are sufficiently widespread - an eventual destabilization of society are likely to follow.

3. If personal harm falls short of death or permanent total disablement it may nevertheless cause varying degrees of social and economic distress in the form of loss of income, loss of services to the employer, medical expenses, reduction in the enjoyment of life, nervous shock, disfigurement and psychological harm.

4. The vehicles involved in an accident, as well as other objects collided with, may require repairs and replacements that often cause not only a waste of local financial resources but also, in most developing countries which import motor cars and spares and building materials and equipment, a waste of scarce foreign exchange.

5. Motor accidents, therefore, create problems for three groups of people, namely (i) governments; (ii) vehicle owners; and (iii) members of the public.

6. Governments are concerned with the waste of human and material resources caused by motor accidents. They are equally concerned with the social problems, including the destabilization of homes, caused by accidental deaths and injuries. There is also the problem of financing medical care, rehabilitation and welfare services for the victims of road accidents.

7. Vehicle owners are adversely affected by damage to their vehicles and also by the financially crippling risk of having to pay enormous amounts to claimants.

8. Members of the public live in fear of being killed or maimed or suffering property damage as a result of a motor accident.

II. OFFICIAL PREVENTIVE SCHEMES

9. Governments are understandably concerned with the socio-economic problems caused by motor accidents and they formally organize schemes or actively support and encourage efforts to reduce road accidents and minimize their consequences. These include physical, procedural and educational strategies.

10. Procedural devices include such measures as traffic laws and codes of conduct (highway codes) regulating not merely the manner of driving but other matters as well such as the wearing of seat belts, helmets for motor cyclists, speed limits, the inspection of vehicles for roadworthiness ensuring driving competence by testing and licensing drivers, supervision of behaviour through road patrols and traffic police and the punishment of delinquent drivers through the courts.

11. Safety campaigns for the public and special lectures and demonstrations for schools are conducted by traffic police and by road safety councils as a part of the programme to reduce accidents.

12. Similarly, in order to reduce the consequences of accidents, governments provide ambulance services, special accident medical clinics, wards and services, instructions in first aid and rehabilitation facilities.

13. The quality of these measures, and hence their effectiveness, varies a great deal from one country to another. It seems, however, that the measures taken by governments in developing countries to reduce road accidents and minimize their consequences are generally inadequate because of a lack of sufficient resources to finance such projects.

14. Moreover, motorization has not yet reached a level where it creates sufficient public pressure to warrant the introduction of certain measures on a priority basis. This will change in time. As an inevitable consequence of the development process - both as an instrument for and as a result of progress - the number of motor vehicles is increasing in developing countries, despite restrictions on imports and the rising cost of fuel. In certain developing countries the increase in the number of road accidents appears to be related to the increase in the number of vehicles and it is believed by some that the risk of road deaths and injuries increases in proportion to the rise in motor vehicle density.

15. Studies in developed countries clearly indicate the contrary. The risk of accidents involving bodily injury declines with an increase in motor vehicle density and, with few exceptions (e.g. Greece and Japan), there is also a decline in accident severity and fewer road deaths. (See annex I). This is also true of certain developing countries. Increasing motorization reaches a point where the number of accidents and resulting damage or harm stimulates enough public concern to pressurize governments to take a more active interest in the matter. When the loss prevention methods come to seem economical in relation to the losses that would otherwise occur, it is felt that the time is ripe for the introduction of more sophisticated physical, procedural and educational devices to reduce the number of road accidents and to limit their severity. Until that point is reached, accident prevention is likely to remain little more than a desirable objective.

16. Since motorization is increasing in developing countries without, in many, yet having reached the critical point of change, the motor insurance business is in its darkest hour, though the dawn of awakening is not far off. Since rapid motorization will accelerate the change, the future for the insurance industry appears to be far from bleak. In fact, in the short and medium-term (say 5-10 years), because the rate of motorization in developing countries is likely to increase more rapidly than in developed countries which have already reached very high levels, the opportunities for insurers to cope with current economic problems (e.g. by offsetting claims costs which are subject to inflationary increases) are somewhat better in developing countries than in developed countries.

17. In the meantime, insurers should take such cost effective steps (not all measures, however desirable that may be socially) as are necessary to reduce the number and severity of road accidents, simply because motor insurance is an important part of their business and it is in their interest to reduce claims. No doubt, with national economic advancement, other classes of insurance business will develop so as to produce a better over-all balance and reduce the current, understandable preoccupation with motor insurance. However, motor insurance business is likely to remain an important, albeit comparatively less significant, segment of general insurance business. In global terms, the share of motor premium volume increased from one-sixth in 1950 to over one-fifth in 1979. Therefore the insurance industry will need to maintain a continuing interest in accident prevention and the limitation of the consequences of road accidents.

18. Hitherto attention has been focused by many countries on the compensation aspect. The following remarks of the Law Reform Commission of Papua New Guinea describes a situation that is typical of most developing countries:

"Briefly the prevention of accidents is preferable to the payment of compensation. But the subject of accident prevention remains virtually unexplored in Papua New Guinea. Apart from roadworthiness checks in the major centres and occasional police 'blitzes' very little has been achieved. Seat belts are not compulsory and breathalysers have not yet been introduced".

The Commission also found that the relevant traffic laws were outdated.

19. There is, however, a growing realization of the need for more attention to be paid to the two other, at least equally important, aspects of the subject: namely, prevention and rehabilitation. The reasons why accident prevention activities should be of interest to insurers have already been referred to.

20. Rehabilitation is just as important, for if victims of road accidents can be fully or partly restored to their former state of health and earning capacity, then claims costs will be reduced correspondingly - quite apart from the socially desirable consequences and the important public relations effect of such efforts.

21. In fact, there is growing agitation for an integrated approach to replace the fragmented attention presently given to the three aspects of prevention, compensation and rehabilitation. It is felt that the prevailing, capricious response to a social problem which cries out for co-ordinated and comprehensive treatment is just not good enough. The New Zealand scheme is designed to take account of all these aspects. In Finland, the Ministry of Social Affairs is empowered to order the inclusion in the insurance premium of a "reasonable" amount for the support of activities which are held to be of general significance in the promotion of road safety.

22. Section 11 of the Samoa Accident Compensation Act of 1979 provides that the Board administering the scheme:

"shall seek to establish a close and harmonious working relationship with industry, commerce, Government Departments, Public Corporations and other bodies and organisations and persons in promoting safety and preventing road, industrial and other accidents, personal injuries and occupational diseases and it shall take all practical steps to promote a well co-ordinated and vigorous programme for medical and vocational rehabilitation of persons who become incapacitated as a result of personal injury by accident."

23. Section 11 goes on to stipulate that the duties and functions of the Board shall include:

"(a) stimulating and maintaining interest in safety and the prevention of accidents, personal injuries and occupational disease by means of education and publicity through the communications media;

"(b) publishing and disseminating accident prevention and rehabilitation literature and information;

"(c) sponsoring, assisting and conducting safety campaigns and safety courses;

"(d) sponsoring and fostering organisations and groups concerned with safety and the prevention of accidents, personal injuries and occupational diseases;

"(e) research into and investigation of ways to reduce the number and severity of accidents and personal injuries and the incidence of occupational diseases;

"(f) supporting, stimulating and fostering the interests of all persons concerned with the rehabilitation of accident victims;

"(g) assisting the training or retraining of incapacitated victims of road or industrial accidents so that they may secure other employment suited to their maximum capacity".

24. The draft Fiji legislation on the subject contains similar provisions.

25. A matter that might be considered here is the bonus/malus schemes of certain insurers, for they are concerned with accident prevention. Such a system has been in operation in the Philippines since June 1978.

26. If, as the evidence shows, most accidents are not caused deliberately or even negligently, then the effectiveness of a bonus/malus system will be necessarily limited. The main usefulness of such a system would be that it leads to a reduction in the number of small claims and related claims costs, the motorist preferring to shoulder his liability or loss to forfeiting his bonus or having to pay an enhanced premium or surcharge.

III. PRIVATE SCHEMES

The public

27. Apart from taking due precautions, there is little a person can do to avoid road accidents. In order to ensure that the financial consequences of an accident will be less severe, business concerns and private citizens purchase various forms of life insurance, including key man insurance, personal accident insurance and property damage insurance.

28. These arrangements are most important in countries which do not have compulsory third party insurance, for unless a person has protected himself by insurance he may find that the motorist who caused him damage or harm is impecunious and unable to comply with the judgement of a Court of Law in his favour.

29. Even in countries with compulsory third party insurance, there is need for such protection. For one thing, most compulsory schemes are limited to death and bodily injury. Secondly, many motorists in developing countries tend to purchase the minimum cover. Thirdly, some systems require compulsory cover only in respect of injury to persons who are not the driver or a passenger in vehicles unless the passenger is being carried for fee or reward. Fourthly, owing to the weakness of enforcement processes, many motorists do not in fact purchase the required third party cover. There are also dangers from the hit-and-run motorist, where anonymity makes recovery impossible. In any event, as will be seen later, recovery through the tort system takes considerable time and expense and depends on the ability of the claimant to prove negligence on the part of the defendant.

30. Unfortunately, owing to a variety of circumstances, including ignorance of the protection available and financial incapacity to purchase it, the vast majority of persons in developing countries remain unprotected or inadequately protected by private insurance. No doubt with increasing education and an improvement in personal economic circumstances there will be an increase in life, personal accident, motor comprehensive and property insurances in developing countries, with corresponding increases in the relevant portfolios of insurers.

31. As will be seen later, in certain countries there are schemes which guarantee the payment of some compensation regardless of questions of fault. Since these threshold payments are often very small, people feel the need to supplement the amounts payable under the scheme by private insurance. In fact there is evidence to show that, on account of the so-called "recognition effect" which such schemes have, people are induced to bridge the gap between what is essentially a social security payment and actual needs. Moreover, premiums for merely topping up are likely to be more affordable than the private purchase of all the required insurance. In the circumstances the introduction of threshold schemes is likely to increase insurance business in various spheres.

Motorists

32. Motorists run the risk of damage to their vehicles. In the event of being responsible for an accident, they also face the prospect of financially crippling claims for damages. In order to protect themselves from various claims and the loss of what is for most people in developing countries the most precious asset after their home - namely their motorcar - motorists purchase comprehensive "own damage" as well as liability insurance. Where vehicles are bought on a hire-purchase basis, the lender usually insists on comprehensive cover on the vehicle to protect his interests.

33. Insurers benefit from such arrangements. In fact in many developing countries motor insurance business constitutes a very significant portion of the non-life section of insurance business. In Egypt, for instance, in 1979 motor insurance constituted 27.3 per cent of the total non-life premium income. In Fiji in 1979 motor business accounted for 31.8 per cent of the non-life premium. In Papua New Guinea in 1979 motor business constituted 33.33 per cent of the non-life business. In the same year motor business accounted for 42.1 per cent of the net non-life premiums received by general insurers in Malaysia.

34. There are exceptions of course. In Pakistan, for example, in 1979 motor premiums accounted for only 4.63 per cent of the non-life premiums of the National Insurance Corporation and, in the case of the private companies, motor insurance accounted for 8.9 per cent of the non-life premium.

IV. PERSONAL RETRIBUTION

35. In most primitive legal systems, the remedy for causing harm or damage was, at least in certain circumstances, personal retribution. For example, in early Roman Law - the ancestor of the modern systems in Europe and much of the developed and developing world - Gaius says (Institutiones, Commentarius Tertius, 223):

"Poena autem injuriarum ex lege XII tabularum propter membrum quidem ruptum talio erat; propter os vero fractum aut collisum trecentorum assium poena erat, si libero os fractum erat; at si servo CL: propter ceteras vero iniurias XXV assium poena erat constituta, et videbantur illis temporibus in magna paupertate satis idoneae istae pecuniariare".

36. Although personal retribution may afford psychological relief and, to that extent, satisfy an injured person, it seldom or never solves the economic consequences of the wrongful act and it may be contrary to the interests of society and civil stability to permit people to take the law into their own hands and extract personal vengeance, retaliation and reparation. The problems caused by the "pay back" system in some developing countries are worth being taken into consideration.

V. TORT LAW

37. In the interests of law and order, therefore, the principle of retaliation is held within certain prescribed norms. These may be fixed by religious law, as in Afghanistan where the Islamic law governs the subject or in Saudi Arabia where Sharia blood money of R 40,000 is payable.

38. It may also be governed and regulated within acceptable bounds by legislation or the rules of Common Law designed to replace retribution or supplement it with correction. For example, the law of torts, which is the basis in most developed and developing countries of the systems relating to the payment of compensation for road accidents, rests on the concept of the punishment of the delinquent. Sir John Salmond, a leading authority on the law of torts, says:

"Reason demands that a loss should be where it falls unless some good purpose is to be served in changing its incidence; and in general the only purpose so served is that of punishment for wrongful intent or negligence".

39. There is some difficulty in deciding whether Roman Law, on which most modern systems are based, regarded culpa in a subjective or objective light; but partly, no doubt, under the influence of Canon Law and its secular offspring, natural law, the modern systems based on Roman Law took culpa to imply moral blameworthiness, and preoccupation with moral blameworthiness has to some extent impeded the solution of the problems caused by motor accidents.

40. The attitude that those who are at fault (proved or inferred) should pay, lies at the base of the prevailing systems of many developed and developing countries. Liability for road accidents is based on established negligence in Belgium (in law), Cyprus, Great Britain, Ireland, Dominican Republic, Trinidad and Tobago, Bermuda, Egypt, Gambia, Ghana, Kenya, Liberia, Libyan Arab Jamahiriya, Sierra Leone, Nigeria, South Africa, Sudan, Swaziland, Uganda, Zambia, Zimbabwe, Lebanon, Pakistan, India, Bangladesh, Sri Lanka, Singapore, Hong Kong, certain States of Australia, Fiji, Tuvalu, Kiribati, Solomon Islands and the Cook Islands.

41. In some other countries the basis is presumed negligence. This is the case in Belgium (in practice), France, Benin, Central African Republic, Chad, Peoples Republic of Congo, Gabon, Ivory Coast, Madagascar, Togo, Tunisia, Upper Volta and Japan.

42. If total or partial relief does, as suggested, depend on punishment for moral wrongdoing for which the offender must pay, then it is a curious fact that this attitude stops short of ensuring that damages are not awarded in proportion to the conduct which is said to justify the award. For the extent of liability is not measured by the quality of a defendant's conduct but by its results. Reprehensible conduct can be followed by feather blows while a moment's inadvertence may have devastating consequences.

43. The fact should be faced that, despite the moralizing which has enabled the fault theory to develop and to take a firm hold of a large number of developed and developing countries, it is really not possible to equate negligence as an independent tort with moral blameworthiness. Negligence is tested not in terms of the state of mind or attitude of the defendant, but impersonally against the (occasionally remarkable) performance of a hypothetical individual described as "the reasonable man of ordinary prudence". If, in all the circumstances, it is likely that a reasonable man would have avoided the accident, then the defendant's failure to measure up will be regarded as negligence, irrespective of his mental attitudes or even his ability to reach the required standards. It is for such reasons that the use in law of the word "negligence" to describe an independent civil wrong has created a good deal of confusion even among lawyers. Because, in its ordinary application, "negligence" carries pejorative overtones, the remedy tends to be primitive.

44. Some judges have attempted to extricate the system from the morass into which it has fallen. But despite denials that damages are punitive, the shadow system duplicating criminal law, in which fault is punished, lingers on in most developed and developing countries.

45. Since spurious moral overtones have attached to words like "tort" and "wrong", the law has been led into the fallacious position that there is misconduct when an injury is caused so that enormous sums must be extracted from the delinquent by way of punishment.

46. This is particularly evident in countries where the law relating to compulsory third party insurance stipulates that cover in respect of bodily injury and death should be "unlimited". This includes Belgium, Cyprus, Finland, Norway, Spain, Australia, Algeria, Benin, Bermuda, United Republic of Cameroon (except for non-passengers), Egypt, Gambia, Ghana, Kenya, Libya, Malawi, Mauritius, Nigeria, Sierra Leone, Uganda, Zaire, Zimbabwe, Bangladesh, Burma, Hong Kong, Republic of Korea, Malaysia, Singapore, Sri Lanka, Syrian Arab Republic and Democratic Yemen.

47. This problem is less acute where the law specifies a minimum sum to be assured, for then the protection purchased tends to be for the stipulated minimum and there is often little or no practical purpose in suing for more even though it may be theoretically possible. Exceptionally, an affluent motorist or a corporate person having substantial assets to protect will take out protection for larger amounts. But most motorists in developing countries would have no need to buy protection beyond the stipulated minimum. Minimum amounts are prescribed in Denmark, France, the Federal Republic of Germany, Greece, Iceland, Italy, Portugal, Sweden, Switzerland, Antigua, Barbados, Brazil, Costa Rica, Dominican Republic, Haiti, Jamaica, Mexico, Trinidad and Tobago, United Republic of Cameroon (in respect of non-passengers), Central African Republic, Chad, Congo, Gabon, Ivory Coast, Malaysia, Morocco, Mozambique (if there is no negligence), Swaziland (in respect of passengers carried for hire or reward), Tunisia, Upper Volta, Zambia, Afghanistan, Indonesia, Iran, Israel, Kuwait (in case of death), Philippines, Turkey, and Yemen.

48. On the other hand the minimum sums prescribed by the relevant statutes or regulations in many developing countries have remained static for so long that the compensation payable has proved to be inadequate. The fact that there is provision to take account of changes in the value of money and revise the minimum sums assured has been of little value where the relevant enabling provision has not been used to update the amounts payable. The payment of enormous sums is also partly attributable to the so called "contingency system" under which lawyers work on a no-cure-no-fee basis. Countries following the British system under the laws relating to champerty prohibit such practices. Arrangements of this sort nevertheless do exist even in such countries and exaggerated sums are demanded by injured persons on the advice of their lawyers, who take a percentage of the award. Judges, assessors and juries, knowing that this happens, sometimes unofficially take this into account in fixing damages. The result is excessive awards which in turn keeps premiums unnecessarily high.

49. The contingency system also encourages litigiousness, for a man is more likely to sue his adversary if he knows he has nothing to lose even though he fails. This tends to overload the courts and to slow down the judicial process, thereby delaying the settlement of claims.

50. Where the contingency system is now used, lawyers tend to extort a large share of the award by way of fees. This defeats the purpose of the award (where judges and juries do not add this unofficially to the award) since the amount left in the hands of the injured party becomes inadequate to serve the needs for which compensation was assessed and awarded.

51. As for the balance that remains once the lawyer has taken his share, importunate friends and relatives or the plaintiff's own improvidence often dissipates it in no time at all. This is a weakness of the lump sum settlements made under the tort system. Admittedly it is neat and simple, but it does not replace income with income and permits the victim to fritter away the money he receives.

52. Another weakness of the compensation scheme in the systems under consideration is the lack of uniformity of the awards made by different judges for similar events or injuries. To take a case to court under the tort system is to enter a lottery. Precedent concerns only legal principle and the award of compensation is generally at the discretion of one person whose views are necessarily coloured by his own experience. There is so much room for individual choice that the assessment of damages is more like an act of discretion than an ordinary act of decision. Naturally, therefore, complaints are often heard that there is injustice.

53. In fact it is impossible to assess compensation accurately. The amount of future earnings, expectation of life, promotion prospects, prospects of remarriage, future tax movements, inflation rates, medical prognosis and similar factors are imponderables and uncertainties.

54. While some persons are paid large amounts by way of compensation, often without sufficient regard for other awards in respect of similar injuries and circumstances, others are paid very little or nothing at all. It is a notorious fact that in certain developing countries, owing to lack of education and "claims-consciousness", claimants are bought off by insurance companies. A few tins of biscuits and some kerosene oil are standard settlement practice in some Pacific island areas. In short, the scene is one of feast and famine with a large proportion of injured persons receiving very little or no compensation at all. One has only to compare the number of persons reported by the police to have been killed or injured in road accidents with the number of claims paid and regarded as incurred by insurance companies to appreciate the seriousness of the problem.

55. The problem is also present in developed countries. For example, it has been estimated that in the United Kingdom about 40 per cent of injured persons are not compensated and that many of those who are compensated have their compensation reduced on the grounds of contributory negligence. (See the report by Advanced Study Group No. 205 of the Insurance Institute of London - 1978). The size of the problem in developing countries however is much larger on account of the lack of claims consciousness and awareness of rights.

56. The fact that in both developed and developing countries many injured persons are not compensated is in part due to the failure to prove fault on the part of the defendant. Before compensation can be awarded negligence must be established by the plaintiff in some countries. These include Cyprus, Great Britain, Ireland, Argentina, Barbados, Brazil, Dominican Republic, Ecuador, Trinidad and Tobago, Burundi, Egypt, Gambia, Ghana, Kenya, Liberia, Libyan Arab Jamahiriya, Nigeria, Sierra Leone, South Africa, Sudan, Switzerland, Uganda, Zambia, Zimbabwe, Hong Kong, India, Lebanon, Malaysia, Singapore, Sri Lanka, Fiji, Kiribati, Tuvalu and Solomon Islands.

57. Proving negligence consists of showing the failure of the defendant to observe the standards of a bonus pater familias, a reasonable man sensitive of his duties towards both himself and his fellow citizens. In the words of the Roman Law from which the current law of negligence is derived: "culpam autem esse quod cum a diligente provideri poterit non esset provisum aut tum denuntiandum esset, cum periculum evitari non possit."

58. Today in the countries mentioned (c.f. para.56) it is for the claimant to establish that the act was occasioned by negligence. The onus of proof is on the plaintiff and if he fails to discharge this burden he will not be awarded damages. In certain circumstances the facts may speak for themselves - res ipsa loquitur - and the presumption of negligence raised by the circumstances will relieve the plaintiff of adducing further evidence of negligence unless the defendant rebuts the presumption.

59. This system has led to unsatisfactory results, for if in the circumstances a judge is satisfied that the decision taken by a motorist, although wrong, was nevertheless one which the hypothetical reasonable man might have taken or was a mere error of judgement, the defendant will be free from liability and the victim of the accident will not be compensated. Error, it ought to be noted, is not slight fault or negligence. It is quite a different concept.

60. Although some accidents are due to negligence, a large number of them are not due to blameworthy conduct. Many of them are due to mere errors attributable to unavoidable human imperfection. Traffic accidents are by and large a social phenomenon (or even an epiphenomenon) and are statistically unavoidable, although they can be predicted and modified in accordance with changing traffic conditions. This is not to deny that the driver is a very important element in the occurrence of a motor accident. He unquestionably is. However, although the traditional concepts of civil liability on which the motor insurance third-party legislation of many countries are based have been devised with the deliberate choice between two possible causes of behaviour in mind, it appears in fact that the main human factor in the causation of accidents is mere error rather than fault. Unlike faults, errors are the result of human imperfection. In many instances accidents are not due to any conscious deviation from a standard of behaviour but simply to accident proneness - that is, a tendency in certain people to have accidents because of slow reflexes, defective vision and other physical and temperamental characteristics. Road users are mere mortals and hence imperfect, physically and mentally. Professor Andre Tunc, writing in the International Encyclopaedia of Comparative Law, quotes a study by the World Health Organization which estimated that a driver commits at least one error every three kilometres. Mere human failures which result in accidents are not intentionally or recklessly or even negligently caused. Road accidents are often the result of split second lapses of care and momentary errors of judgement, of human frailty and fallibility and, as such, are statistically unavoidable. They are the inevitable result of putting the power of hundreds of horses into frail human hands. In developing countries the result is worse than elsewhere because, as we have seen, the environment has not been modified to take account of changing traffic conditions.

61. If, as the evidence suggests, a large number of road accidents are inevitable and a large number of them are not due to negligence but due to mere error and human frailty, then a system which insists on proof of negligence before compensation is given must necessarily leave many persons without any relief. Such a system cannot be acceptable in a modern society which claims to be just and caring.

62. Motor accident litigation does not exist in a vacuum. Many of its problems are those of civil litigation in general. Experience has shown that civil litigation takes too long. The interval between a road accident and the date of judgement may be several years. This has several undesirable results.

63. Firstly, witnesses are reluctant to waste their time coming to court year after year and therefore pretend not to have seen anything. Those who do come give a version of the events which are rather different to those which really took place. Apart from any documented fact, the narration is the result of conjectural recall, imagination, colourful dramatization and often pure inventiveness in the interests of the plaintiff, either on account of sympathy or for a consideration. Even if a witness is honest, he may nevertheless give false information because his impressions may be blurred by the passage of time. Moreover, an accident happens so quickly that a witness's supposed observations may be in reality a series of ex post facto reconstructions of the minutiae of events assumed by him to have happened because he has been told so by other witnesses or by lawyers during the preparation of the case. This sort of evidence has to be reconciled with known physical circumstances such as marks on the road, angles of impact, damage to vehicles and part of the body struck. This is a precarious task. As Ehrenzweig (Psychoanalysis - 871) observes: "We must finally recognize and acknowledge that when we compel litigants in 'negligence' cases to prove and disprove guilt and innocence as causes of what in truth are inevitable incidents of our hazardous society, we are repeating a procedure not greatly superior to trial by battle or the ordeal by water or fire".

64. The second consequence of delay is cost. Since insurers usually step in to defend the delinquent because it is in their interest to do so, the costs of litigation are added to the cost of claims which in turn keep premiums high.

65. In order to remedy this situation some insurers attempt to settle quickly the small, so-called "nuisance" claims and to fight the more substantial claims. Papua New Guinea affords a classic example:

<u>Amount of claims</u> (Kina)	<u>Months for settlement</u>
1 - 1 000	6.11
1 001 - 2 500	4.61
2 501 - 5 000	11.62
5 001 - 10 000	14.67
10 001 - 20 000	16.47
20 001 and over	15.00

66. This has unfortunate results. Those who are slightly hurt are often promptly and even over paid, while those with serious injuries are paid, if at all, a fraction of their damages - and that too only after long delay. In the more substantial cases, the delay is often an insurer's method of breaking down a claimant. With continuing fixed costs in the form of food, rent and so on, plus mounting medical expenses, the claimant becomes more and more desperate and is likely at a certain point to settle for much less than he is fairly entitled to.

67. Other claimants, spurred on by their lawyers, react differently. In the heat of battle, considerations of economy go to the wall and the claimant ends up selling or mortgaging his properties to raise money to litigate. If he succeeds, he will spend a substantial part of his compensation in redeeming his pledged assets. If he fails, he loses it all. Professor James, in Tort Law, comments that "The only class that profits systematically from the present system is the lawyer, and I do not say this to disparage, for I think many of them are doing a conscientious job, given present circumstances, but I do say it to note an important fact in the situation".

68. Yet another problem with the systems based on negligence is the inability of an injured person to establish fault where the delinquent was a "hit-and-run" driver. There is no defendant to be proved guilty of negligence. In such a situation, even if negligence can be inferred from the circumstances, the injured party is left without compensation.

69. Then again, there are problems relating to causation and contributory negligence. If the injury suffered by the plaintiff is too remote a consequence of the defendant's conduct to have been "reasonably foreseeable by him" no negligence can be imputed to him. It is not possible to go into details in a short paper of this sort, but it may be observed that the application of the principles relating to causation has occasioned acute difficulties and deprived many a plaintiff of compensation.

70. If the injured party himself was in some way to blame, then the causal connection between the defendant's act and plaintiff's injury is interrupted by the plaintiff's act and therefore no compensation is payable.

VI. THE RAGGED ADVANCE TOWARDS A SOLUTION

71. For many years the inadequacy, inappropriateness, illogicalities and injustice of the theory and practice of the law relating to compensation for road accidents have been severely criticized in both developed and developing countries. (See, for example, the Report of the Columbia University Council for Research on Compensation for Automobile Accidents, 1932; Douglas Payne, "Compensating the accident victim" (1960), Current Legal Problems; the series of "Consumer Reports" published in 1962 by the United States Consumers Union; "Basic protection for traffic victims"; Hamish Gray, "Liability for highway accidents" (1964) Current Legal Problems"; "A blueprint for reforming automobile insurance (1965)" and "Taming the automobile" North Western University Law Review by Robert E. Keeton, of the Harvard Law School and

Jeffrey O'Connell of the University of Illinois; André Tunc in the chapter on "Traffic accident compensation" published in the International Encyclopaedia of Comparative Law; The Report to the Legislature submitted in 1966 on the accident problem in Puerto Rico; The Woodhouse Committee Report for New Zealand in 1967; The Automobile Insurance and Compensation Study conducted by the United States Federal Department of Transportation published in 1971; A.R.B. Amerasinghe, "Compensation for road accidents in Ceylon", Acta Juridica 1973; The Woodhouse-Mears Report for Australia in 1974; The Report of the Royal Commission on Civil Liability and Compensation for Personal Injury published under the Chairmanship of Lord Pearson in 1978 and the Report of Advance Study Group No. 205 of the Insurance Institute of London in 1978).

A. The so-called merits of tort-based systems

72. However, there has been a general reluctance on the part of governments to dispense with tort law as the basis of compensation for road accidents. It is argued that the system:

- (a) is superior to one of personal retribution;
- (b) enables each case to be treated subjectively, and that this should be so because circumstances do vary;
- (c) is flexible and enables the extension of areas of valid claims;
- (d) although theoretically it requires a plaintiff to obtain relief from court, yet in practice most cases are settled out of court;
- (e) recognizes the established right of a victim to sue for damages and should not be interfered with.

73. Nevertheless it is generally agreed that some change in that system is desirable if not also inevitable. Something more socially acceptable and appropriate to supplement the traditional arrangements which have proved to be illogical, harsh and iniquitous, something to close the gaping lacunae in the compensation provisions which the tort based systems produce, seems to be universally desired. However, people are divided as to the form, nature and direction the changes should take.

74. So far the efforts at reform have been directed towards supplementing rather than supplanting the tort-based systems and there has been a somewhat ragged advance towards a better system. The rest of the report describes the steps taken.

B. Compulsory third party insurance

75. Obtaining a decree from a court does not ensure the payment of compensation. If the delinquent driver is impecunious, the injured party will have only thrown good money after bad. Some countries, including Bolivia, Ecuador, Peru, Venezuela, Ethiopia, Liberia, Lebanon, Oman, Saudi Arabia, Yemen, China, Kiribati and Tuvalu, prefer to leave the matter there, for logically it is difficult to justify a special scheme for victims of road accidents and ignore other accidental injuries, at least if they are occasioned by negligence.
76. New Zealand has put all accidents on an equal footing. The question of affordability prevents most countries from going as far as New Zealand and providing compensation for all accidents occurring anywhere, twenty-four hours a day. But certain categories may be added as required. For example, in 1978 Samoa, through its Accident Compensation Act, put industrial accidents and road accidents on an equal footing and a similar move has reached an advanced stage of consideration in Fiji.
77. However, in order to protect more effectively at least the victims of motor accidents, Massachusetts in 1927 made third party insurance compulsory in respect of personal injuries. The United Kingdom followed. Steps have been taken by many developed and developing countries to require by law that no person shall use or permit any other person to use a motor vehicle unless there is in force a policy of insurance in respect of third party risks that complies with the provisions of the relevant legislation and regulations framed thereunder.
78. This is the case in European countries, including Austria, Belgium, Cyprus, Denmark, Finland, France, the Federal Republic of Germany, Great Britain, Greece, Hungary, Iceland, Ireland, Portugal, Spain, Sweden and Switzerland.
79. The position is similar in the Latin American countries of Antigua, Argentina, Barbados, Brazil, Costa Rica, Dominican Republic (except for diplomats), Haiti, Jamaica, St. Lucia, and Trinidad and Tobago.
80. Third party insurance is also compulsory in the African States of Algeria, Benin, Burundi, United Republic of Cameroon, Central African Republic, Chad, Congo, Egypt, Gabon, Gambia, Ghana, Malawi, Mauritius, Morocco, Mozambique, Nigeria, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, United Republic of Tanzania, Uganda, Upper Volta, Zaire, Zambia and Zimbabwe.
81. Asia-Pacific countries and territories follow suit. For example, compulsory liability protection is required in Australia, Bangladesh, Burma, Fiji, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Malaysia, the Philippines, Singapore, Sri Lanka, Syrian Arab Republic, Turkey and Democratic Yemen.
82. In Togo, compulsory third party insurance is only required of those engaged in transport undertakings. In Thailand, the Transportation Act of 1954 does not require compulsory third party insurance except for carriers and haulage contractors. In Mexico (see Ley sobre el Contrato de Seguro 26.8.1935 Reglamento del transito del D.F.) compulsory third party insurance was not required except for licenced public carriers and haulage contractors. Plans were afoot in 1980 to extend this.

83. The fact that the law requires compulsory third party insurance does not necessarily mean that every vehicle is in fact insured. Enforcement of the law is known to be very weak in many developing countries. It is also the case with developed countries. For example in 1975, 140,000 motorists were successfully prosecuted in the United Kingdom for driving uninsured vehicles and this was said to be just the tip of the iceberg.

84. Moreover, while compulsory third party insurance has the desirable effect of minimizing the chance of a plaintiff ending up with a pyrrhic victory in court, it makes the system illogical. Compulsory third party insurance spreads the economic consequences of negligent driving (a) directly over the insuring public and (b) indirectly (by the cost of insurance being passed on eventually to consumers) over the entire community. Every motorist must share in the losses, whether characteristically inclined to this sort of negligence or whether marked by the uniform prudence of the reasonable man. Against this background the search for negligent drivers who might deserve to pay is really a search to control the aggregate sum that will become payable. It is not the delinquent but (a) the insurance company, (b) the policyholders later and, eventually, (c) the public who pay compensation. As a necessary corollary of the imposition of a system of compulsory insurance, the law of tort relating to negligence, based as it is on punishment of the delinquent, has degenerated into a legal fiction.

85. A further problem in some countries is that certain classes of road users are not required to be covered under the scheme. For example, passengers and the driver are not required to be covered in Fiji or in Sri Lanka unless passengers are being carried for fee or reward. In the Philippines the owners of private motor vehicles must obtain comprehensive cover against third-party liability for death, bodily injury and damage to property. In the case of others, the cover must also be comprehensive in respect of third parties and passengers in respect of death, bodily injury and property damage.

C. Implications for insurance industry

86. Despite strident and oft-repeated claims by insurers that motor business - especially third party business - is "rotten" and that they would rather not transact such business, the underwriting results in some countries suggest that things are not as bad as they are sometimes made out to be.

87. In Pakistan, for instance, the results are as follows for compulsory third party insurance (Pakistan rupees):

<u>Year</u>	<u>Earned premium</u>	<u>Incurred losses</u>	<u>Loss ratio (%)</u>
1975	3,513,195	450,242	12.81
1976	4,222,373	43,006	01.01
1977	5,184,804	730,590	14.09
1978	5,386,872	647,782	12.02
1979	6,464,246	772,338	12.02

88. It is freely admitted (in private, of course) by some insurers in Pakistan that this is the result of few claims and even fewer payments.

89. Other motor business in Pakistan also showed underwriting profits:

<u>Year</u>	<u>Earned premium</u>	<u>Incurred losses</u>	<u>Loss ratio (%)</u>
1975	26,215,876	19,393,574	73.97
1976	31,425,131	22,063,474	70.20
1977	37,402,906	22,444,316	65.35
1978	43,460,956	30,150,848	69.51
1979	52,153,147	36,181,017	69.37

90. In Malaysia net claims as a percentage of earned premium have been as follows:

<u>Year</u>	<u>Act business (%)</u> (i.e. compulsory insurance)	<u>Other motor (%)</u>
1970	93.9	43.0
1971	95.6	45.7
1972	101.4	43.4
1973	106.2	54.8
1974	108.9	60.0
1975	112.7	57.9
1976	115.9	57.6
1977	139.2	49.7
1978	95.1	54.0
1979	96.9	56.1

91. In the Philippines good underwriting results have been obtained in motor insurance business other than compulsory insurance. Even in the sphere of compulsory covers, underwriting results (except in 1975) have been favourable:

Compulsory motor insurance - Philippines

<u>Year</u>	<u>Earned premium</u> (pesos)	<u>Incurred losses</u>	<u>Loss ratio (%)</u>
1975	12,288,198	1,247,903	10.15
1976	101,143,065	114,808,007	113.51
1977	156,897,689	130,622,197	83.25
1978	165,125,215	161,490,253	97.8
1979	164,782,860	161,527,522	96.20

Other motor insurance - Philippines

<u>Year</u>	<u>Earned premium</u> (pesos)	<u>Incurred losses</u>	<u>Loss ratio (%)</u>
1975	153,325,631	101,278,747	66.06
1976	245,492,317	155,160,416	63.2
1977	142,536,263	123,419,590	86.59
1978	166,908,276	106,624,864	63.88
1979	286,712,760	177,027,929	61.74

92. In other countries however the business of compulsory third party insurance does appear to justify the claim that business is bad.

93. In Egypt, for example, motor third party claims ratios in 1978 and 1979 in respect of direct transactions were 232.2 per cent and 245.2 per cent respectively. Loss ratios in comprehensive business, however, were satisfactory with ratios of 63.5 per cent in 1978 and 61.2 per cent in 1979.

94. In Papua New Guinea also loss ratios in compulsory third party motor insurance have been unsatisfactory.

(%)		
1975	..	125.43
1976	..	125.89
1977	..	124.90
1978	..	123.31
1979	..	145.75

95. Fiji was in a similar situation some years ago. Loss ratios for compulsory third party insurance business in Fiji were as follows:

(%)		
1973	..	120
1974	..	89.3
1975	..	105.7
1976	..	103.39

96. However, with the introduction of rate increases, despite strong public protests and a recommendation by a Select Committee of the House of Representatives advocating a reinstatement of the old premiums, the third party account has become profitable. In 1979 the loss ratio was 62.72 per cent. Although the Government did not accept the recommendation of the Select Committee to order the restoration of the old rates, it accepted the recommendation that third party insurance should be taken away from private insurers and placed in the hands of a statutory corporation.

97. Much depends on the freedom to underwrite at economical rates. Many countries and territories have a uniform tariff. These include Turkey, Cyprus, Barbados, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Mexico, Nicaragua, Peru, Venezuela, Algeria, Burundi, United Republic of Cameroon, Egypt, Ethiopia, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Afghanistan, Hong Kong, India, Iraq, Jordan, Republic of Korea, Kuwait, Malaysia, Oman, Philippines, Singapore, Syrian Arab Republic, Democratic Yemen and Fiji.

98. In some of the countries the tariff must be approved by the supervisory authority. This is the case in Cyprus, Costa Rica (Instituto Nacional de Seguros), Ecuador (Superintendencia de Bancos y Seguros), Mexico (Comisión Nacional Bancaria y de Seguros), Gambia, Ghana, Swaziland, United Republic of Tanzania, Zambia, Jordan and Republic of Korea.

99. In others, the tariff must be approved by a Minister or by the government. This is the case in Turkey (Minister of Commerce), Libyan Arab Jamahiriya (Minister of Economy), Morocco (Ministry of Finance), Uganda (State).

100. In a third group of countries, the rates are fixed by statute or regulation. For example, this is the case in the Dominican Republic.

101. A few countries have a free rating system. These include Libyan Arab Jamahiriya, Mauritius, Sudan, Lebanon, Saudi Arabia and Yemen.

102. In yet another group, rating is free but the supervisory authority fixes the maximum. This is the case in Benin, Central African Republic, Chad, Congo, Gabon and Ivory Coast.

103. Where underwriters are free to fix rates, they have no one to blame but themselves if business is bad.

104. On the other hand, if the rate is directly or indirectly controlled by the State, underwriters could be in difficulties (especially where by law or in practice they are compelled to provide the cover if the government or the authority concerned unreasonably refuses to permit the adjustment of premiums to meet established needs).

105. Governments and supervisory authorities have no doubt sometimes been unreasonable. However, in other instances underwriters themselves were to blame, for they have been unable to produce credible statistical information to support their demands for premium adjustments. They have been found in certain places to manipulate arbitrarily IBNR (incurred but not reported) and outstanding claims reserve figures to support demands for premium increases. In some countries insurers complain of poor results despite underwriting profits because high administrative costs, including procurement costs, erode profits. In the absence of evidence that every effort has been made to streamline administrative procedures and peg down procurement and other costs, it is hardly surprising that certain governments and regulatory authorities have refused to authorize premium increases. Moreover governments and supervisory authorities have to be cautious in approving increases, not only because they compel motorists to insure and appear to be in a position of exploitation but also because additional premium costs are passed on to the public, often not merely to the extent of the increase but many times more on the pretext of increased insurance costs.

106. It should also be noted that, despite their complaints, insurers faced with losing the business (e.g. on account of its being transferred on a monopoly basis to a statutory authority) protest vehemently. The reason is that motor business assists them in their cash flow situation. This is of special importance in countries where, owing to over-capacity and competitive considerations, other business is sold on credit and/or high investment returns more than off-set underwriting losses, if any.

D. Hit-and-run and uninsured vehicles

107. Another small but significant step taken by some others to remedy one of the inadequacies of tort-based systems relating to motor accidents is to introduce the concept of what is sometimes called the "nominal defendant". In essence the arrangement is to create a fund from premiums paid or other sources to enable the victim of a hit-and-run accident to claim compensation.

108. Injuries caused by uninsured or hit-and-run vehicles are paid out of a State fund in Brazil, by the Instituto Nacional de Seguros in Costa Rica, in Algeria by the Special Indemnity Fund (F.S.I.), in the United Republic of Cameroon by the Automobile Guarantee Fund (F.G.A.), in Morocco by the Guarantee Fund, in Tunisia by the Guarantee Fund, in Uganda up to 200,000 Ugandan shillings per event by the Motor Vehicle (Third Party) Insurance Fund, in Zimbabwe by the Motor Insurance Bureau, in Malaysia and Singapore by their respective Motor Insurance Bureaus, and in Papua New Guinea by the Motor Vehicles Insurance Trust.

109. Other countries have also been considering the introduction of similar arrangements. Pakistan, for instance, is considering the establishment of a Traffic Accident Victims (Fatal Injuries) Compensation Fund to make ex gratia payments not exceeding Rs.5000 to the dependants of a person killed by an unidentified vehicle.

E. Contributory negligence

110. Following the United Kingdom Law Reform (Contributory Negligence) Act of 1945, most developing countries whose law is based on English law changed the law so that contributory negligence ceased to defeat an injured person's rights but merely operated to reduce damages having regard to the degree in which the claimant was at fault. The court is expected to do what is just and equitable in the circumstances of each case. As might be expected, the apportionment of liability is arbitrary and depends a great deal on the evidence available, the judgement and reliability of witnesses, the persuasiveness of counsel and the personal inclinations of the judge.

111. Developing countries influenced by the continental systems - e.g. in Latin America and certain African States - have had no problems in this regard. Division of blame was recognized as far back as 1811 in the Austrian Civil Code. The principle became part of the German Civil Code which came into force in 1900. French law applied the doctrine of common fault and liability for motor accidents is strict, the presumption of responsibility being rebuttable only by proof of force majeure or cas fortuit or some cause foreign to the defendant.

Legal aid

112. In some countries legal aid schemes mitigate the problems of legal expenses and unaffordability encountered in ordinary circumstances. The free legal aid scheme of Sri Lanka is one example. In Papua New Guinea, the office of the Public Solicitor provides valuable advice and services to litigants at comparatively modest fees.

113. One difficulty with such schemes, however, is the comparative lack of competence of the lawyers handling such matters for claimants. In respect of a claim of any significance insurers are financially better placed to engage the services of a leading counsel against whom the claimant's legal-aid counsel can do very little.

Burden of proof

114. We have seen that negligence is the basis for the recovery of compensation for road accidents in many countries (see paragraphs 40 and 41) and that on account of the uncertainty of some of the principles applicable and the practical application of the general rules, proving negligence is a precarious exercise which comparatively few injured persons are in a position to undertake in the first place and in which even fewer persons eventually succeed, thus leaving a large number of victims of road accidents without any compensation.

115. Various devices have been adopted to remove or minimize the problem.

116. In some countries, while negligence is retained as the basis of the remedy, the ordinary rule of evidence that the plaintiff must adduce evidence to establish the ingredients of his claim (including proof of negligence on the part of the defendant) is amended so that negligence is inferred from the fact of the accident. In other words although (1) negligence must be established, and (2) established by the plaintiff, there is said to be a presumption of negligence, the burden of adducing evidence to disprove negligence being shifted to the defendant. This is the law in some developed as well as developing countries including Denmark, France (presumption of negligence of the "gardien"), Italy, Japan, Benin, Central African Republic, Chad, Congo, Gabon, Ivory Coast, Madagascar, Togo, Tunisia and Upper Volta.
117. Other countries adopt a sort of split system in which negligence remains the basis of the remedy for all persons or types of harm but a presumption of negligence is drawn in certain circumstances. For example in Morocco there is a presumption of negligence in respect of fare-paying passengers and other third parties but passengers carried free of charge must adduce evidence of negligence.
118. In a third group of countries negligence remains the basis of the remedy but the law goes beyond merely drawing an interim, rebuttable presumption of negligence in favour of the claimant and proceeds in certain prescribed cases to conclude firmly that the defendant was negligent. The onus of proof remains on the plaintiff, although in certain countries the plaintiff may through a presumption of negligence be relieved of the burden of adducing evidence. In other words, a system of absolute or strict liability mixed with either the plaintiff being temporarily relieved of the burden of adducing evidence of negligence or required to adduce evidence of negligence in certain cases. For example this is the case in Austria, the Federal Republic of Germany, Turkey, Mozambique and Mauritius, where there is absolute liability in some instances but negligence has to be proved by the plaintiff in other cases.
119. In Portugal and Malawi there is absolute liability in certain cases but negligence must be established in other cases although the claimant, where he is required to establish negligence, is assisted by a presumption of negligence in his favour.
120. The diversity of methods in dealing with the critically important question of the burden of proof is due to historical reasons. It is essential to understand this to refute the suggestion made so often that the tort system is immutable or universal. In fact, owing to the wide diversity of the "rules of evidence", the usual discussions which proceed on the assumption that there is a system which has to be reformed seems futile.
121. The Roman Law, on which most modern tort systems are based, did not specify where the burden of proof lay in cases of negligence. In accordance with the general rule that one who alleges a fact must prove it (ei incumbit probatio qui dicit non qui negat) we must assume the plaintiff had to prove not only the damage but also the guilt of the defendant. This was followed by the English law, and many developing countries, influenced by English law (see above), have followed the rule.

122. The principle of no liability without fault grew in strength in the nineteenth century as the predominant power in the State passed to the entrepreneur class; and the march of progress seemed bound up with the use of machines and other instrumentalities whose usefulness was only matched by their capacity for doing harm. The risk of accidental harm from their operation seemed something to be borne not by their exploiters but by any person who happened to be injured.

123. French law took a different turn. The compilers of the Code Civil inserted in Article 1384, which for the most part deals with questions of liability for the acts of other persons for indemnity for damage caused "par le fait des choses que l'on a sous sa garde". For nearly a century these words were not applied in their literal sense and indeed the possibility of using them to establish a doctrine of strict liability seems never to have suggested itself for almost seventy years. Perhaps it was thought that the scope of the term "des choses que l'on a sous sa garde" was exhausted by the two examples, animals and buildings, which are the subjects of the two following articles, 1385 and 1386. In 1897 the Cour de Cassation disinterred the crucial words "des choses que l'on a sous sa garde" from Article 1384 and gave a stoker damages against his master for personal injuries caused by the explosion of a boiler in the master's custody although the stoker could not prove any fault in his master. The older school of jurists objected on scientific grounds. Although they had not been unsympathetic towards the public policy involved in the decision, they advocated a return to the traditional interpretation of Article 1384. This might conceivably have happened, for the Court had not accepted the extreme theory of risk, had not motor accidents revived the problem in another, perhaps more extreme, form. Although in the earlier stages of development before 1914 there was a general tendency to apply the doctrine of fault, the freedom of French law from any strict theory of precedent has allowed the Courts to swing round first in favour of the presumption of fault and finally since 1930 to a doctrine of presumption of responsibility which can be defeated only by proof of force majeure or cas fortuit or some outside cause not imputable to the defendant.

F. No-fault schemes

124. A system which through a presumption of negligence relieves a plaintiff of the burden of adducing evidence therefore still, in principle, leaves him with the burden of proof and hence the risk - admittedly a reduced risk - of failing in his action on account of insufficient evidence to counter the defendant's submissions.

125. Where the system is mixed, it is difficult to explain away the anomalies caused by partially or totally placing some on one basis and others on a different footing.

126. In any event, even where absolute liability applies in all cases, it leaves the system open to criticism on the other grounds described earlier in this report relating to negligence-based systems.

127. Some countries have therefore, at least partly, dispensed with the system based on negligence and substituted for it a so-called "no fault" system in which negligence, actual or presumed, plays no part in theory or in practice in so far as the no-fault system applies. The only curious exception is in the case of Norway which seems to have a no-fault scheme but recognizes contributory negligence, which a no-fault scheme logically cannot do.

128. There is nothing novel or revolutionary about the basic concept of no-fault legislation. The first serious inroad on the principle of no liability without fault was made by the Prussian Railway Law of 1838, which introduced strict liability for certain accidents. The Act formed the model for the more far-reaching Reichshofpflichtgesetz of 1871 which applied to the whole Reich and for the later extension of the principle to motor cars and aircraft. These reforms spread rapidly to Austria and Germany and to the colonies.

129. In Norway towards the end of the nineteenth century there grew up in the Common Law the principle of absolute liability for dangerous enterprises. When motor cars appeared, they were immediately classified as dangerous enterprises and liability resulting from their use was absolute. This principle of objective liability was incorporated in the Motor Vehicle Liability Act of 21 June 1912.

130. No-fault schemes have been on the statute books for some time in Saskatchewan (1946), Puerto Rico (1968), British Columbia (1970), Massachusetts (1971), Tasmania (1974), Victoria (1974), Norway (1974), Finland (1974), New Zealand (1974), Papua New Guinea (1974), Israel (1975), Sweden (1976), The Philippines (1976), Samoa (1978) and the Northern Territory of Australia (1979). Though federal-level legislation was attempted in the U.S. Senate Bill No.354 and fell by the wayside, more than half the states in the United States of America have no-fault schemes.

131. Other countries have been actively considering the subject. For example in the United Kingdom in 1976 a Private Members' Bill - The Road Accidents Compensation Bill - which was aimed at introducing a no-fault system, failed to get a second reading for lack of time. The Government was not happy for the Bill to proceed before Lord Pearson's Royal Commission had reported. Lord Pearson's Commission recommended a limited no-fault system. However, the recommendation has not been implemented. In Australia, the Woodhouse-Mears recommendations went as far as being incorporated in the National Compensation Bill, but with the dissolution of the Australian Parliament in 1975 the Bill, which would have introduced "no-fault" at a Federal level, lapsed.

132. Similar consideration has been given to no-fault schemes in a few developing countries as well. For example in Malaysia, according to the Commissioner of Insurance (Annual Report 1980): "A careful study of the no-fault insurance scheme in New Zealand has revealed that the scheme is not suitable for Malaysia. Accordingly the Government has decided that a further study be undertaken with a view to including a viable scheme in Malaysia. In this regard Government will continue to review the developments of 'no-fault' schemes in certain relevant countries".

133. In Sri Lanka a Committee of the Minister appointed to report on Road Transport Legislation in 1973 recommended the introduction of a system of no-fault protection. The subject has been revived from time to time, but not proceeded with.

134. In Fiji, The Transport Enquiry Committee of 1974 recommended the introduction of a system of no-fault protection and in 1978 a Select Committee of Parliament made a similar recommendation. Draft legislation has been prepared and endorsed by Cabinet and it is expected that the relevant bill will be introduced in parliament shortly.

135. Any attempt to introduce a system of no-fault protection to replace the tort system runs into various difficulties.

136. The most vociferous opponents are understandably the members of the legal profession, particularly the so-called "ambulance lawyers", who expect to be put out of a very lucrative source of business. And lawyers in developed and developing countries are, both in and out of the legislature, a very influential group.

137. Once the scheme is implemented, however, things are not as bad as they seem. Reporting on the New Zealand scheme, Mr. K.L. Sandford, Chairman of the New Zealand Accident Compensation Commission, speaking to the 62nd Annual Convention of the International Association of Industrial Accident Boards and Commissions on 22 September 1976, stated:

"Lawyers: They have lost their claims for common law damages. But strangely, the legal profession in New Zealand was badly split on whether they welcomed the proposed new scheme or deplored it. They were never able to speak or lobby with an united voice. By now there are only a few lawyers still offering criticism, and by and large the legal profession has accepted accident compensation as part of the moral fabric of our lives. The demand for legal services in New Zealand has been such that most lawyers who have lost their personal injury practice have found plenty of other work to replace it".

In short actual results are better than expected.

138. The New Zealand scheme is the most comprehensive scheme in the world covering all accidents, twenty four hours of the day, for all persons.

139. Objections are nevertheless made by the legal fraternity even where no-fault schemes are to be confined to motor accidents. This happened to the Keeton-O'Connell plan for Massachusetts. It happened also in Samoa. Yet eventually the schemes were introduced.

140. No one, however, ever actually hears the objection that the scheme would adversely affect lawyers. The objections are overtly based on other grounds regardless of what the underlying unmentionable, yet fundamental, motive might be.

141. One of them is that the introduction of a no-fault scheme will result in more accidents because drivers will become careless. This is a common but worthless argument. Drivers do not lose the inducement to drive carefully. Hamish Gray ("Liability for highway accidents" Current Legal Problems (1974), pages 136-7) observes as follows:

"Even today a driver's measure of third party liability is probably no more than the amount of his premium and the loss of his no claim bonus; much more to a driver than either of these sums is the safety of his own car, his own person and the persons in the car with him. And it is an unusual driver who can kill or maim another highway user and remain unmoved by the experience".

142. The Advanced Study Group of the Insurance Institute of London observes as follows:

"In the Soviet Union liability insurance was long prohibited on the grounds that if a man was held personally liable for his own tortious acts he would exercise a greater degree of care. Whether the absence of insurance would in fact have this effect seems doubtful but it is, of course, equally doubtful whether the existence of liability insurance protection has any effect upon the driving standards of the motorist. The drivers who are involved in the majority of accidents become liable because of last moment errors in judgment or because of distractions and it is difficult to appreciate how any concern for civil liability could remedy this kind of error in such circumstances. The following relevant comment appeared in the report of the New York Insurance Department to Governor Rockefeller (1970) "Insurance - for Whose Benefit".

"It is mythology notwithstanding, the fault insurance system is inherently incapable of deterring unsafe driving. Individual, last moment driver mistakes undeterred by fear of death, injury, imprisonment, fine or loss of licence - surely cannot be deterred by fear of civil liability against which one is insured".

143. It might also be pointed out that the introduction of a no-fault system does not imply that the criminal law which is designed to punish reckless and negligent drivers is interfered with at all. Punishment in any event is the sphere of the criminal law and not the civil law of torts.

144. According to J.E. Bannister (Policyholder Insurance Journal, 13 October 1972) in Puerto Rico, following the introduction of the no-fault scheme, third party claims were reduced both in frequency and in cost. Accident rates "did not increase disproportionately and pain and suffering suits did not increase". He adds that the experience in Massachusetts was also favourable.

145. In Samoa, the Annual Report of the Accident Compensation Board for 1980 reported a decrease of 3.5 per cent on claims between 1979/1980 though there was an 8 per cent increase in the number of people involved in accidents during that period.

146. On the weight of evidence available it seems that no-fault schemes per se neither increase nor reduce accidents. They have nothing to do with it. On the other hand an upsurge in the number of claims might be expected because the removal of the barriers of the tort system were intended to have precisely the effect of enabling more people to be compensated. Moreover, in terms of Vesty's law "the frequency and extent of liability claims varies in direct proportion to the probability of their successful prosecution".

147. Another objection to the replacement of the tort system is that it would be tantamount to removing a well-established fundamental right. Action for the recovery of compensation based on negligence in developing countries dates back at most to colonial times and is neither ancient nor well-established.

148. In any event, the history of the remedy even in developed countries (already described in paragraphs 119-122) shows that there is no justification for regarding it as a universal, fundamental right. The Advance Study Group of the Insurance Institute of London concluded that "the tort system is not as it appears to be commonly believed something which is immutable, inherent and implicit in human relationships. Justice changes with the age in which it is administered and the view changes with the viewpoint".

149. It is also relevant to point out that, notwithstanding the introduction of the fault-based systems, there are shortfalls in all of them which leaves the claimant with the right to recover in respect of such deficiency under the law of torts.

150. The most comprehensive scheme in the world, the New Zealand scheme, provides an alternative to only part of the tort system. For example, it does not cover property damage or non-economic losses for which there is no specific provision in the legislation. In these cases recovery must be through the tort system. In other words, the New Zealand system truncated but did not wholly excise the law of tort.

151. Although under the New Zealand scheme a claimant is subject to a recovery ceiling and is denied his former right to sue should he feel that the compensation provided by the law for his injuries is inadequate, in some other schemes the stipulated compensation merely provides a threshold, a dissatisfied claimant being left to recover a larger amount if it is warranted in the opinion of the court and provided liability under the tort system can be established.

152. In Finland and Norway property damage claims are limited under the no-fault scheme. In Sweden they are limited in respect of both property and personal injury claims in excess of 50 million Swedish crowns.

153. Nor was tort abolished in Puerto Rico. It remained possible for an injured party to sue a negligent person who caused the accident if the economic damages exceeded the threshold amount or the agreed cost of the "pain and suffering" loss exceeded the specified threshold.

154. In the Philippines, by the terms of Presidential Decree No. 612 (the Insurance Code), the threshold is 5000 pesos. If the total indemnity claim exceeds 5000 pesos and there is controversy in respect thereto the question of fault becomes relevant for that extra amount claimed. It is only in respect of the first 5000 pesos that questions of fault cannot be raised. Moreover, no-fault indemnity applies only to death or bodily injuries and not to cases of property damage only. And the discharge of obligations arising out of bodily injury takes priority over disabilities for property damage.

155. In Samoa the Accident Compensation Act of 1978 provides a detailed scheme for the assessment of compensation below specified ceilings. Property damage is not covered and to that extent a claimant will have to depend on the law of torts to recover compensation. Even with regard to bodily injury, the claimant may opt to sue under the Common Law. If he does so he is precluded from making a claim under the Accident Compensation Scheme. If he has already obtained compensation paid under the Scheme, the Court must deduct any compensation paid under the Scheme (Section 57).

156. In Papua New Guinea delays in claims settlements caused so much frustration that people started resorting to personal retribution on a "pay back" basis. The Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act was therefore enacted to prevent tribal killings and the wanton destruction of property. In terms of the Act, on receipt of a Court order, certain payments are made regardless of questions of fault. In the case of a deceased person survived by a dependant wife and child the maximum payable is K.2000. In other cases the maximum is K.1500. Further claims may be made under the Common Law but any payment under the Basic Protection Act will be deducted from the Common Law award.

C. No-fault and the insurance industry

157. It is also said that a no-fault scheme would kill the non-life sector of the insurance industry, especially in developing countries. While motor insurance forms an important segment of business in many countries, this, as we have seen, is not the case in every country.

158. Secondly, even in countries where motor business is relatively important, the proportion of third party business may be of comparatively less significance than comprehensive business. In Egypt, for instance, in 1979 third party compulsory covers accounted for only 17.1 per cent of the motor portfolio. Motor third party business accounted for only 4.7 per cent of the total non-life premiums. In the same year in Malaysia Motor 'Act' business accounted for 12.9 per cent of the total non-life premiums. In Fiji, motor third party business in 1979 accounted for 7 per cent of the total non-life premiums, although motor business as a whole account for 31.6 per cent of the general portfolio.

159. In Papua New Guinea compulsory third party premium accounts for 15.25 per cent of the total non-life premiums although motor business as a whole accounts for 35.33 per cent of the general portfolio.

160. Thirdly, although in some countries (like New Zealand, Puerto Rico and Samoa) no-fault schemes are placed in the hands of statutory boards or in the hands of a Government insurer as in Saskatchewan, there is no reason why private insurers cannot be permitted to transact no-fault insurance business as is the case in Norway, Finland, Sweden, Massachusetts and in the Philippines. Moreover, even in countries in which third party business has been lost to a Government organization, the industry as a whole has continued to thrive. Samoa, Puerto Rico and New Zealand bear this out.

161. In fact, for reasons already explained (see paragraph 31), a no-fault scheme may stimulate non-life insurance business.

162. Another argument against a no-fault scheme is that it will not be viable and will eventually end in being a burden on the Government and the community. In New Zealand, for instance, the National Business Review alleged that the scheme was heading for a crisis. Professor Geoffrey Palmer, one of the architects of the scheme, responded strongly, however, that it was nonsense to suggest that the scheme was becoming too much of a burden to sustain. He thought the scheme was a great deal more economical than the insurance schemes which it replaced.

163. The income and expenditure accounts of the Motor Vehicle Compensation Fund of the Samoa Accident Compensation Board for 1979 and 1980 are as follows (\$WS)

<u>1979</u>	INCOME	<u>1980</u>
325 774	Fuel levy	296 876
113 623	Less refund	102 341
<u>212 151</u>		<u>194 535</u>
14 671	Interest from general income and expenditure account	<u>25 449</u>

226 822

219 984

<u>1979</u>	<u>EXPENDITURE</u>	<u>1980</u>	
21 100	Lump sum - deaths	26 075	
13 387	Weekly compensation	3 277	
19 020	Lump sum - injury	17 640	
3 846	Funeral expenses	4 008	
345	Dental expenses	(345)	
19	Conveyance expenses	15	
12 598	Weekly-Aiga compensation	25 767	
<u>70 315</u>	Artificial limbs	(431)	<u>76 006</u>
156 507			143 978
500	Donations-Road Safety Company		
13 501	overhead expenses (from general		
<u>14 081</u>	income and expenditure)		<u>20 324</u>
142 426			
	Fund at 31 December 1980		123 654

164. The Samoa scheme has been in operation only since 1978 and an analysis of figures over such a short period cannot provide a valid, objective picture of the financial effectiveness of the scheme or indicate scientifically acceptable trends. This is equally true of the New Zealand scheme, where the Commission's Auditors, in the report for 31 March 1976, stated:

"The Commission acting on the best information available considers that the item 'Provision for future payments' is adequate to meet existing claims as at 31st March 1976. It will be some years yet before sufficient statistical data has been accumulated to enable an actuarial calculation to be made".

165. What is clear is that the schemes have not yet become the financial disasters they were expected to be by the critics.

166. It should also be pointed out that the question of viability depends on the nature of the scheme. No-fault-based schemes vary a great deal on the question of type of harm covered as well as benefits, each country choosing what it considers affordable and appropriate in other ways. Even many developed countries have proceeded cautiously, gradually extending the application and benefits of the system.

H. Type of harm covered

167. All the no-fault systems cover personal injury and death caused by motor accidents.

168. Some no-fault schemes (e.g. those in Norway, Finland, Sweden, Saskatchewan and Massachusetts) cover property damage as well. Others do not cover property damage. For example, there is no property damage cover under the schemes in New Zealand, Israel, Puerto Rico and Samoa.

5. Benefits payable

(a) Personal injury:

169. In some systems (e.g. those in Norway and Finland) the amount payable in respect of personal injury and death caused by a road accident is unlimited.

170. In others there are limits imposed, but the limits vary from one system to another, not only with regard to amounts but also with regard to kind.

(b) Economic loss:

171. For example, under the New Zealand scheme an injured person is:

(i) entitled to 80 per cent of earnings lost, subject to a weekly maximum;

.....(ii) entitled to compensation payable over an indefinite period.

172. In Saskatchewan, however, weekly payments are limited to 104 weeks, in cases of partial disability, though total and permanent disability benefits can be extended for life.

173. In Massachusetts 75 per cent of actual wages lost is payable and there is no weekly maximum.

174. In the Puerto Rico scheme, there is a fixed weekly maximum of 50 per cent in respect of lost wages for the first year, subject to a maximum which declines in the second year and the whole is limited by a maximum amount.

175. In Samoa, total or partial incapacity for work may, at the discretion of the Compensation Board, be either a lump sum or a weekly payment during the period of incapacity. If a lump sum is awarded, it amounts to a "sum equal to the aggregate of the weekly payments of compensation and weekly allowance, if any, which in the opinion of the Board would probably become payable to the person during the period of his incapacity if compensation by way of a weekly payment were then awarded instead of a lump sum" - Section 21(2). Where weekly payments are made it is an amount equal to 60 per cent of the person's weekly gross earnings but not less than 10 tala and not exceeding 75 tala. No minimum is fixed in respect of partial incapacity but, in order to reduce administrative costs, no compensation is payable if the injury does not incapacitate a person for at least five days. If the incapacity lasts for more than five days, the compensation is payable for the whole period.

(c) Non-economic loss:

176. Compensation for non-economic loss is payable under certain schemes. For example, a lump sum is payable in New Zealand up to a stipulated maximum.

177. In Saskatchewan also a lump sum up to a stipulated maximum is payable in terms of a schedule according to the nature of the injury. Puerto Rico also pays a limited amount in respect of pain and suffering. The agreed cost of pain and suffering is not to exceed \$1,000. Pain and suffering is assessed by the Court according to the circumstances of each case.

178. In Samoa, if the injury causes permanent loss or impairment of any bodily function including the loss of any part of the body, the Compensation Board, in addition to all other compensation and assistance payable, also pays a lump sum not exceeding 2,000 tala in respect of such loss or impairment, representing the appropriate percentage of 2,000 tala specified in the First Schedule to the Accident Compensation Act of 1978. If a person sustains multiple injuries in the same accident he is limited to the maximum sum of 2,000 tala. Sums previously paid by way of compensation for injury to that part of the body are taken into account in making an assessment. Where the injury or impairment is not of a type described in the First Schedule, the Compensation Board may at its discretion, after consulting medical opinion, allot an appropriate percentage to such injury or impairment and apply the schedule by way of analogy.

(d) Medical and hospital expenses

179. In Norway, because of the obligatory National Health Scheme, the insurer is seldom involved in medical expenses claims. Originally, the National Insurance Department had subrogation rights which were enforced but this practice was abandoned because of administrative costs. In Puerto Rico benefits payable under the no-fault scheme include payment of medical and hospital bills without limit.

180. On the other hand under the Massachusetts scheme only reasonable medical benefits, if incurred within two years, are payable in full. In Samoa, an injured person or a dependant, in the event of death, is entitled to reasonable expenses incurred in respect of medical or surgical attendance including first-aid, maintenance as a patient in any hospital and physiotherapy up to a limit of 100 tala.

(e) Compensation on death

181. Samoa pays compensation to cover funeral expenses in the event of death. If the deceased leaves any persons wholly dependant on him, a sum equal to the aggregate of weekly payments of compensation equal to 208 weeks gross earnings or 7,500 tala, whichever is less, is payable to the dependants. If such person leaves only partial dependants, they are paid such sum as is recommended as proportionate to their loss, but not exceeding in any case the amount payable to a total dependant. In every case where any weekly payments of compensation have been paid to the deceased, including any lump sum paid in lieu of any such weekly payment, the amount of compensation payable, in respect of death, to a partial dependant is reduced by the amount of the weekly payment or lump sum.

182. Under the Puerto Rican scheme there was initially a \$500 funeral benefit and death benefits which varied with the age, relationship and dependancy status of the survivor or survivors. For example, a surviving wife with two children under four years of age would, under the original scheme, receive a benefit of \$10,000, a dependant wife without children would receive \$5,000. The maximum total benefit receivable was \$15,000.

(f) Other benefits

183. In the Samoa scheme, where as the result of an injury the provision of an artificial limb or aid becomes necessary or desirable in the opinion of the Board, the Board meets the reasonable cost of the artificial limb or aid and from time to time the reasonable cost of the normal repair or renewal.

184. Furthermore, when the person suffers damage to his natural teeth or suffers damage to any artificial limb or aid being used or worn by him at the time of the accident, the Board pays the cost of repairing the teeth or replacing them with artificial dentures or, in the case of damage to any artificial limb or aid including spectacles, the reasonable cost of repairing or, if necessary, replacing it.

185. In the Massachusetts scheme, provision is made for "replacement services" to cover expenses incurred for hiring substitutes. For example, a housewife is compensated for hiring a baby-sitter or a house-owner is compensated for having to hire a painter because he was, on account of the accident, unable to do the work himself.

186. The approach adopted in Saskatchewan was to make a payment of up to \$4,000 for "extra expenses". In terms of the Reparations Committee recommendations it was proposed that "all reasonable expenses incurred as a result of being injured by a motor vehicle such as medical, surgical, dental, professional nursing, essential non-professional home nursing, ambulance services and the services of a duly qualified doctor or other person authorized to practise a healing up to a limit of \$5,000". In the event of death, funeral expenses would fall under this heading up to \$1,000.

J. Mode of assessment

187. We have seen that one of the criticisms made of certain systems is that the mode of assessment is arbitrary and leads to injustice. No-fault schemes do not necessarily eschew that problem. The question of fault is concerned with proof of liability. It has nothing to do with quantum. In Norway, Finland, Sweden, and the Philippines, for example, although the question of liability is, within the stipulated limits, beyond dispute, quantum remains to be assessed in the usual way. This is done in Norway by a Tribunal, and in Finland by the Motor Vehicles Damage Board on which insurers are represented. The amount of compensation is not known in advance in Norway, as in the New Zealand or Samoan schemes. In Norway, it is fixed by the Tribunal or Loss Adjusters acting for insurers. Norwegian insurers, in co-operation with the Government-sponsored Consumers' Council have formed a Committee of claims officials which, although it has no ultimate power of decision, exercises considerable influence.

188. In the Philippines the matter of assessment is for Court.

189. In Samoa the Accident Compensation Board, within the limits set by the legislation, determines the amounts payable. Discretion is very limited because of the shape of the legislation, especially the schedules of payments stipulating amounts due on account of the loss or impairment of bodily functions. For example, the maximum payable for the total loss of an arm cannot exceed 30 per cent of W.S. \$2,000. Any person who is dissatisfied with a decision of the Board or an officer of the Board may appeal against the decision to the Board and thereafter on a question of law to the Supreme Court.

190. In Sri Lanka, which formally has the traditional tort system, the Insurance Corporation of Sri Lanka has for many years used a system of settling claims on the basis of detailed schedules based on awards made by the Courts in preceding years. The scheme has greatly reduced the number of cases which go to court for settlement and resulted in speedier, less expensive settlements.

K. Financing

191. Financing no-fault schemes takes different forms. In Norway, Finland and Sweden for example, they are financed through the payment of premiums to insurers in a manner similar to payments under compulsory third party premium payments under the tort-based systems.

192. In New Zealand, payments are by way of an annual levy paid by vehicle owners to the Post Office at the time of licencing. There is also an initial levy on driving licenses.

193. In Puerto Rico the scheme is financed by an annual payment in respect of all vehicles registered in Puerto Rico, the fund being controlled by the Accident Compensation Administration.

194. In Papua New Guinea, motor vehicle third party insurance is administered by a trust set up by Parliament. The trust is not liable for sums in excess 100,000 kina in respect of the death or bodily injury to any one person in any one case and 500,000 kina in the case of one accident or series of accidents arising out of one event. All licenced insurers have a percentage participation in the trust. The fund of the trust is operated on a "pool" basis with all premiums and investment income being credited to the pool and claims being debited against it on a pool year basis. In the event of any dispute with regard to the percentage of a participating insurer in the annual pool or fund, the dispute is resolved by the Commissioner of Insurance. Premiums are fixed annually by a Committee. At first, owing to lack of statistical information, making provision for incurred but unacceptable claims caused certain difficulties. These have been overcome by the systematic collection of data.

195. The Philippines scheme too has operated on a pool basis since June 1975. It was set up to act as a clearing house to ensure an equal distribution of risks and to establish rates and policy conditions in respect of compulsory motor vehicle liability insurance.

196. In Samoa the scheme is funded by a cess on motor fuel. This is levied by customs and periodical remittances are made to the Accident Compensation Board. Where fuel is used for purposes other than motoring - e.g. electricity generation - the amount is refunded.

197. The advantage of the Samoa Scheme (this was also proposed for Sri Lanka by the Minister's Committee and is included in the Fiji draft legislation) is that it reduces the cost of collecting premiums. It also eliminates the problem of uninsured vehicles, for every motorist must purchase fuel. Since one who travels more and, therefore, exposes more people to risk also consumes more fuel, he pays more towards the scheme. Furthermore, since the levy is according to consumption of fuel, the payment is spread over the year and relieves the motorist of making a large lump sum payment as he would have to under other schemes.

VII. CONCLUSION

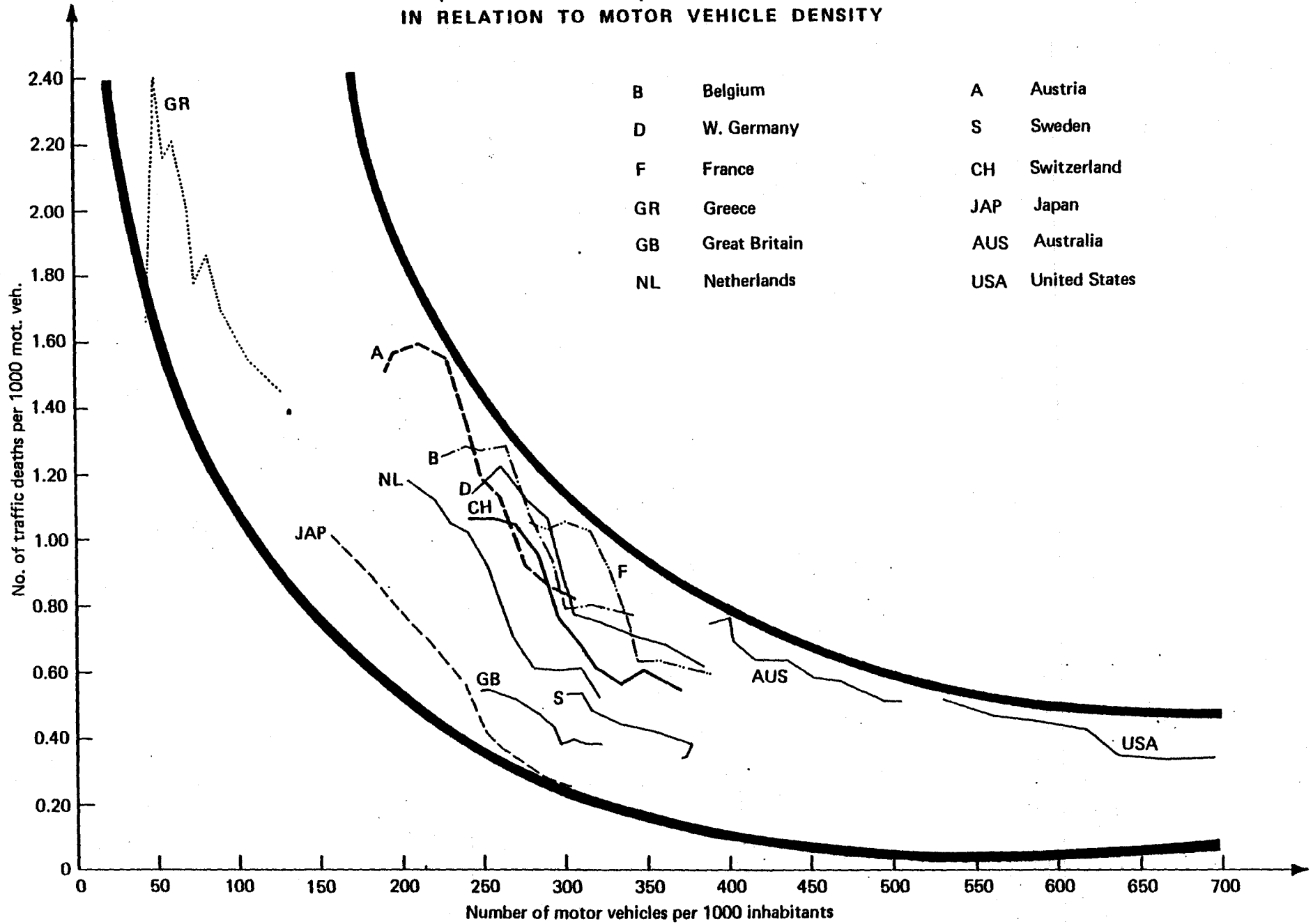
198. Motor accidents cause serious social and economic problems and a variety of strategies have been adopted to deal with them. There has been a somewhat ragged

advance towards a more satisfactory system in each country and no such thing as a perfect system has yet emerged anywhere, either in developed or in developing countries. Nor is there a particularly imperfect system waiting to be reformed. It is certainly incorrect to assume that developing countries have a system and to proceed to discuss measures for the reform of that system, for there is no such system. The question is much more complex. The strategy in each country consists of a package of measures, the contents of which vary a great deal. Rather than attempt to discuss a hypothetical developing country "system", this study has discussed the commonly found elements in national packages and indicated where they are found or not found and the merits and demerits of including or excluding them.

199. The question is: what should be added to each national package? A wide variety of opinions may be held on this, depending on the size and nature of the problem and the social and economic circumstances of the country concerned. The only common feature shared by all is the feeling that the methods adopted - whatever they may be - are more or less inadequate and that changes are warranted.

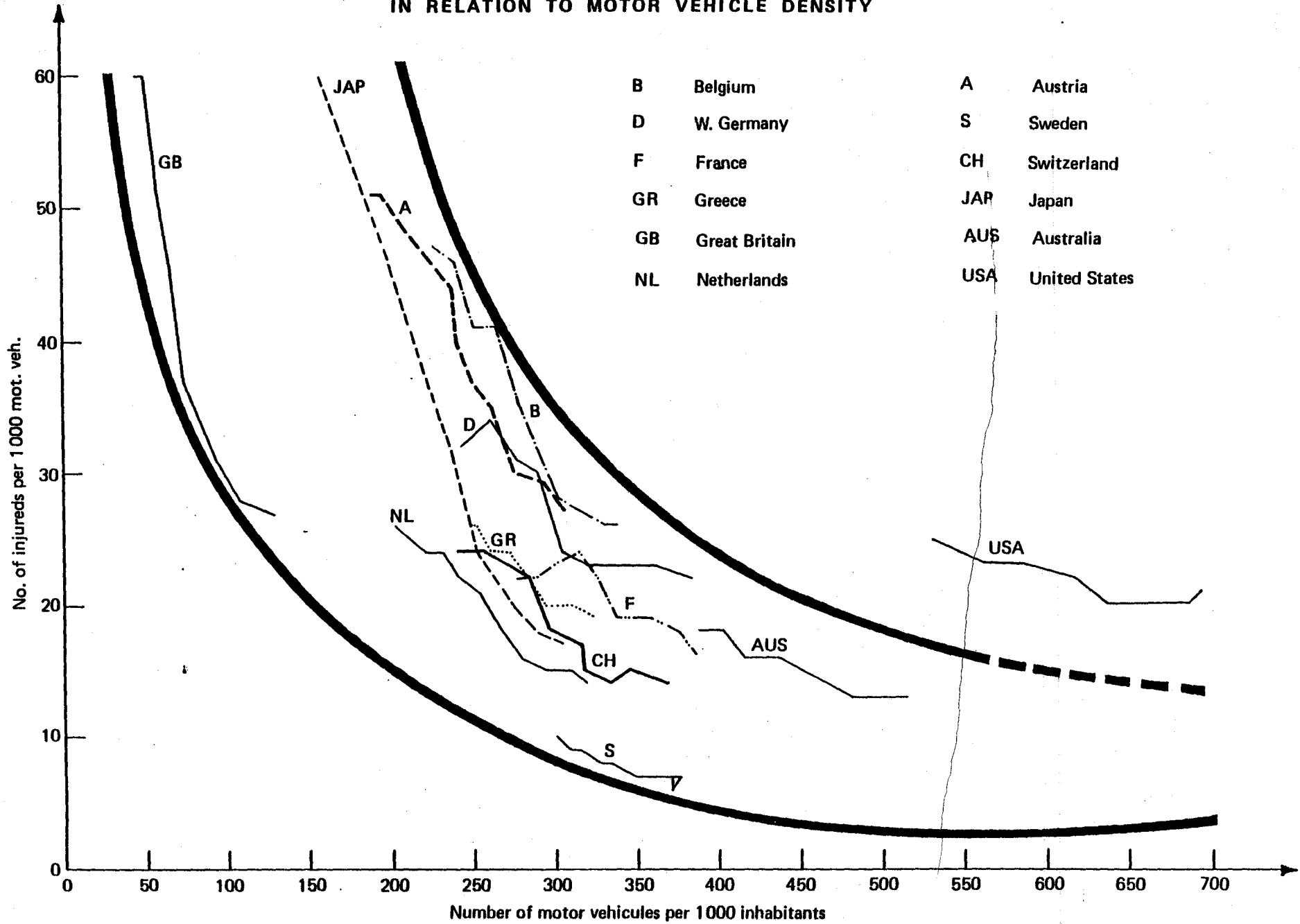
Annex I

ACCIDENT RISK
 (number of traffic deaths per 1000 motor vehicles)
 IN RELATION TO MOTOR VEHICLE DENSITY



Annex II

ACCIDENT RISK
 (Number of injureds per 1000 motor vehicles)
 IN RELATION TO MOTOR VEHICLE DENSITY



- | | | | |
|----|---------------|-----|---------------|
| B | Belgium | A | Austria |
| D | W. Germany | S | Sweden |
| F | France | CH | Switzerland |
| GR | Greece | JAP | Japan |
| GB | Great Britain | AUS | Australia |
| NL | Netherlands | USA | United States |

Annex III

FIJI

POPULATION VEHICLES AND MOTOR ACCIDENTS 1962-1979

