

Transport and trade connectivity in the age of pandemics:

contactless, seamless and collaborative UN solutions

Proposals for crisis-response provisions in regional
and bilateral transport agreements of the ESCAP
member States



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Chapter 1. Background

The spread of Covid-19, a health issue, generated an unprecedented general crisis, affecting humanity's existence under all its aspects. Successful concepts developed in decades such as "globalization" or "partnerships" are now challenged and questioned because of (i) the initial reactions to this pandemic disease; and (ii) the ways of dealing with pandemics' consequences, under the economic, social, or environmental angles.

One estimated¹ economic impact of Covid-19 on the global logistics industry is a decrease of 6.1 percent in gross value added by the logistics industry. The estimated impact of Covid-19 on logistics markets varies across countries, from a 0.9 decline in China to 18.1 decline in Italy. The global freight forwarding market is expected to shrink by 7.5 percent at worst in 2020 compared with 2019.

Exchanges with immediate or more distant neighbors or partners are essential, and they are not possible without transport. Hence transportation services are vital for all the aspects of our lives: economy, social, health, leisure; this is so much more valid for land modes especially for road transport.

Following the outbreak of the pandemic, rail passenger and rail freight transport have also suffered large decreases in their transport services. The circumstances are beyond the control of railway undertakings that are facing considerable liquidity problems, also considering the scarcity of national budgets, in countries where railway transport is subsidized under one form or another.

Although in many countries trucking was soon after identified as an essential service and exempt from some of the restrictions, many drivers who transported non-essential goods, or who supplied non-essential businesses, were put on hold and lost their revenues. Drivers who kept working faced challenging working conditions: limited washrooms and food stations, and additional quarantine measures on their return home. Additional protocols (such as physical distancing at loading/unloading places, personal protection in parking/rest areas, etc.) introduced to ensure the safety of workers contributed to bottlenecks for freight. For example, in the European Union, trucks formed 37-mile-long lines on the A4 highway after Poland closed its border with Germany in mid-March. In India, the lockdown created a shortage of truck drivers, which resulted in over 50,000 containers piling up in the ports of Chennai, Kamajalar, and Kattupalli.²

Small trucking businesses have been severely hit because they tend not to have any backup, recovery plan, or intermittent operation plan. Lack of technology, as well as tools to follow health guidelines (for example, disinfecting deliveries), further complicate their response. But even top players have experienced a strong impact: in April, both DHL and CEVA Logistics declared Force

¹ Coronavirus: impact on the transportation and logistics industry worldwide - statistics & facts, available at: <https://www.statista.com/topics/6350/coronavirus-impact-on-the-transportation-and-logistics-industry-worldwide/> accessed Oct 21, 2020

² International Finance Corporation, The Impact of COVID-19 on Logistics, available at: https://www.ifc.org/wps/wcm/connect/2d6ec419-41df-46c9-8b7b-96384cd36ab3/IFC-Covid19-Logistics-final_web.pdf?MOD=AJPERES&CVID=naqOED5%C2%A0, accessed

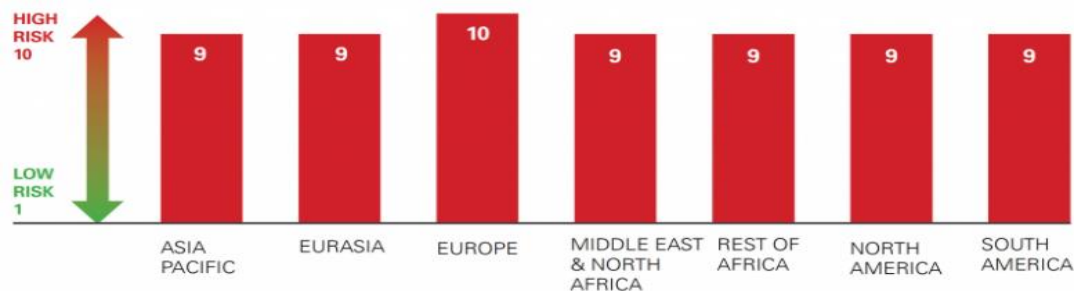
Majeure—a clause that allows contracts to be declared null and void due to acts of God or other unexpected circumstances—on all their contracts due to Covid-19.³

When the pandemic first reached Central Asia, Kazakhstan introduced green corridors for much needed medical goods and food products, lowering the risk management level from red to yellow, as well as introducing a range of tariff and tax deferrals. Its regional neighbours did likewise. In Kyrgyzstan, the government deferred a range of trade-related tariffs and tax payments. In Uzbekistan, the government opened a call centre to help traders with their queries, and used the moment to expand digitalisation in customs and trade procedures. These measures amounted to a concerted effort from regional policy-makers to keep trade flowing. However, in November 2020, trade data for many countries tell a similar story. For example, Uzbekistan and Kazakhstan saw exports fall by 22% and 13% respectively, with the consequences of Covid-19 for the latter compounded by falling global oil prices and the application of OPEC+ cuts. In Turkmenistan, where over 90% of exports are hydrocarbons, the country’s 27% fall in exports to China is likely to create far more immediate pressures than Uzbekistan’s 44% decline, because over 80% of Turkmen exports are destined for China compared to 20% of Uzbekistan’s.⁴

A recent IRU research⁵ shows that in road transport global losses have escalated to USD 679 billion for goods transport, and at least USD 500 billion for passenger transport. The update is particularly disastrous for Europe, where forecast losses for goods transport operators have soared by two-thirds since the summer to USD 125 billion, and stand at USD 94 billion for passenger transport companies.

Insolvency indicators assessed include fixed asset turnover, forecast cash flow and real revenue turning point. Ranked on a risk scale from one to ten, all regions of the world are standing at the highest levels, nine or ten. This points to a looming wave of bankruptcies in road transport, which will have a devastating effect on the global economy and its ability to recover from the pandemic.

Figure 1. Regional overview of the level of business default risk in 2020



Source: Coface, IHS. Markit, October, 2020

³ International Finance Corporation, The Impact of COVID-19 on Logistics, available at: https://www.ifc.org/wps/wcm/connect/2d6ec419-41df-46c9-8b7b-96384cd36ab3/IFC-Covid19-Logistics-final_web.pdf?MOD=AJPERES&CVID=naqOED5% C2% A0

⁴ Available at: <https://www.oecd.org/coronavirus/policy-responses/covid-19-crisis-response-in-central-asia-5305f172/>

⁵ Available at: <https://www.iru.org/resources/newsroom/government-inaction-will-lead-wave-bankruptcies-road-transport-sector>



According to WTO⁶, 80 countries and customs territories have introduced mostly temporary export prohibitions or restrictions as a result of the Covid-19 pandemic as early as on 23 April 2020. Most of these focused on medical supplies (e.g. facemasks and shields), pharmaceuticals and medical equipment (e.g. ventilators), but also additional products, such as foodstuffs and toilet paper.

The unknown triggers unexpected reactions and this was also the case in cross-border transport. In many countries, an immediate unexpected transport development has taken place in reaction to the outbreak of Covid-19: the access of foreign means of transport and their personnel was prohibited. Morals/ethics and human principles aside, one important observation is that, in some cases, based on the treaties binding the two States (registration and host), such suspensions of international transports through lockdowns and border closures were not illegal.

Where an explanation was given, this was that transport is a vector of transmission of the virus thus social/physical distancing would protect host countries from infection; yet, in many cases transport was banned just because there was an "occasion to test", or as an automatic measure before assessing its potential effects.

In general, after the first shockwave, solutions have been found through intense diplomatic effort or following need for and shortage of staple products like food, medicine supplies, raw material, or finished products.

All these solutions were subjective, involving emotions and reactive actions and negotiations; the situation created in transports by Covid-19 would have been much easier to deal with if there were objective frameworks to refer to and to apply.

The present study aims at providing suggestions for a proactive approach so that cases of force majeure are treated in a significantly more sensible manner in the future.

⁶ Available at: https://www.wto.org/english/news_e/news20_e/rese_23apr20_e.htm

Chapter 2. Legal framework for international transport

The fundamental role of treaties in the history of international relations is recognized by the Vienna Convention on the Law of Treaties (done on 23 May 1969, entered into force on 27 January 1980), which has 116 Contracting Parties, 28 of which are regional members of ESCAP. The Convention sets a number of principles that should govern international negotiations of treaties, in the spirit of maintaining international peace and security, developing friendly relations, and achieving cooperation among nations.

Among others, the Convention establishes the pillar-principles that

- A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law, which is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (“jus cogens”).
- Every treaty in force is binding upon the parties to it and must be performed by them in good faith (“pacta sunt servanda”).
- A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46 (on the provisions of internal law regarding competence to conclude treaties).

The modern legal framework is a complex mix of (i) international multilateral treaties, usually elaborated under the auspices of global organizations (United Nations, World Customs Organization, World Trade Organization, etc.); (ii) regional and sub-regional treaties, negotiated and concluded under the auspices of regional (UNESCAP, UNECA, etc.) or sub-regional (ASEAN, EU, SCO, etc.) organizations; and, (iii) bilateral treaties/agreements, which are the formal expression of (existing or wished for) ties between trade or other nature partners, whether they are geographically neighbors or not.

1. Legal framework for international road transport

The negotiation and conclusion of agreements is the exclusive competence of sovereign nations willing to be bound by their provisions. In (sub)regions where legal or economic integration has yet to be achieved, bilateral agreements remain the most impactful instruments in a wide array of sectors, with transport as a top example. This is why having clear and comprehensive bi- or multi-lateral transport agreements is of utmost importance for the unhindered international movement of goods, services, and people.

Although the first truck was built by Daimler only in 1896, road transport has been holding for the last century the most important part of all modes of transport notably for the distribution of goods. This is mainly due to being geographically the farthest reaching, and commercially the most flexible mode, adapting to the location and requirements of the clients. Also, trucking as a small family business has always and everywhere been one of the basic factors in the development of the private sector.



Aware of the advantages brought to economies by unhindered transport across borders and in response to the realities of road transport, countries have concluded transport agreements between them; the majority of international transport treaties cover bilateral road transport between countries.

In general, the overarching goal of the international road transport agreements is to set the conditions under which goods and persons can be transported by one party to or through the territory of another party, and from/to the territory of a third party. The main result of such agreements are traffic and transit rights granted to parties' vehicles and crews; in most of the cases, traffic and transit are not free and illimited but subject to permits issued by the parties to each other, subject to various criteria.

2. ESCAP's work on international agreements

For decades, ESCAP has been seeking ways to assist their member economies in their development and regional integration efforts; among others, the organization has advocated for transport facilitation in Asia and the Pacific and provided their members with applicable solutions to achieve a smoother movement of goods and people across borders. Since 2007, these solutions included model bi- and multi-lateral agreements designed to cover most of the characteristics/issues that could arise in international land transport.

The 2007 study "Towards a Harmonized Legal Regime on Transport Facilitation in the ESCAP Region"⁷ analysed the legal regimes in force in the region and recognized that bilateral agreements have vital importance for all ESCAP economies, and much more so for the landlocked member countries of ESCAP. It revealed that countries in the ESCAP region have signed a large number of road transport bilateral agreements, with the main objective to facilitate the commercial exchanges between them; some countries had signed about thirty such agreements since 1990ies.

The study concluded that observing and complying with too many agreements with different content represents a challenge for all the stakeholders and may cause difficulties notably for transport operators and their personnel. Also, proper management and implementation of such numerous agreements require tremendous time and capacity and institutional building for both public and private sectors.

Another finding of the study was that few existing bilateral agreements were clearly structured, while others did not follow a logical sequence of issues or covered issues of a different nature in the same article.

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