

Model Subregional Agreement on Transport Facilitation



updated 2022



Introduction

The Model Subregional Agreement on Transport Facilitation has been elaborated on the basis of comparative studies on major subregional agreements on transport facilitation to which various ESCAP member States are parties, conducted by the secretariat in 2013-2014.

The purposes of the studies were to:

- a) Compare the provisions of selected subregional agreements on transport facilitation
- b) Identify commonalities and differences between the provisions of major subregional agreements, primarily in countries which are parties to more than one subregional agreement
- c) Propose ways to harmonize the provisions of different subregional agreements, especially in countries which are parties to more than one subregional agreement
- d) Propose a common framework for subregional agreements on transport facilitation, with the overarching goal of harmonizing the provisions of these agreements and make their implementation and enforcement easier.

Summary of the recommendations for planning subregional agreements

In order to expedite the negotiation process of a subregional agreement and to facilitate its subsequent practical implementation, the potential Contracting Parties may consider the following recommendations, which served as the basis for the proposed structure of this Model Agreement

1. When planning new subregional agreements, the potential Contracting Parties may undertake a realistic preliminary assessment of the capacity of negotiating subregional agreements within reasonable time, capacity of subsequent practical implementation of the particular provisions included in the subregional agreements, challenges which can be solved through the subregional agreements which are planned or being negotiated.
2. Potential Contracting Parties may use a “modular approach” for designing subregional agreements. They can select “modules” which they plan to include into the agreement, on the basis of their assessment of practical feasibility of reaching consensus on those issues and, what is crucially important, of implementing the agreed provisions in practice. This may involve planning several subregional agreements on different inter-related topics.
3. The potential Contracting Parties may envisage a “step-by-step” approach to the implementation mechanisms, under which they can anticipate the practical steps for implementation of the provisions of the subregional agreement being formulated. The countries may develop a plan for gradual implementation of the substantive provisions of a subregional agreement. Measures which are easier to implement (for example, implementation arrangements requiring cooperation between one competent authority and its counterparts

in each of the other Contracting Parties) can be scheduled at early stage. The implementation of provisions which require more complicated arrangements (for example, those requiring inter-country cooperation and internal coordination between multiple competent authorities) can be scheduled for a later stage.

4. In terms of establishing conditions for granting traffic rights and permit system, the potential Contracting Parties should consider the existing bilateral agreements on international road transport concluded among them in order to avoid legal conflicts between the provisions of bilateral agreements versus the negotiated subregional agreement and find the way to make both types of legal instruments compatible.

5. The Model Subregional Agreement is intended to serve as a common framework for subregional agreements on transport facilitation. The Model can be used for drafting and negotiating new subregional agreements as well as for bringing amendments to existing agreements.

6. The Model Subregional Agreement provides a checklist of issues that are typically contained in subregional agreements on transport facilitation. The focus of the model has been on international road transport; hence the checklist of issues to be covered is related to a larger extent to road transport than to other modes.

7. The Model proposes a structure and a brief description of the main structural elements and specific substantive issues that would be covered by a subregional agreement with a focus on international road transport. It does not contain uniform wording to be used for all the issues that are supposed to be covered by the agreement.

8. The Model includes a list of issues recommended to be settled through additional subregional agreements, due to their complexity or specific nature.

The Model Subregional Agreement on Transport Facilitation has been adopted by the Third Ministerial Conference on Transport (Moscow, 2016) as an annex to the Ministerial Declaration on Sustainable Transport Connectivity in Asia and the Pacific.

2022 updated version

In 2021, as part of the United Nations' rapid response to the COVID-19 pandemic crisis, the secretariat conducted a study on proposals for crisis-response provisions in regional, subregional and bilateral transport agreements that could be incorporated in the existing and future transport agreements of ESCAP member States. The description of such proposed clauses and approaches to their formulation are included in the current updated version of the Model Subregional Agreement on Transport Facilitation, as provided in its updated Section V (C) and the in the proposed Model Annex on Force-majeure in the text below.

Structural elements and contents of the subregional agreement

I. Preamble

The preamble of subregional agreements usually contains the affirmation of the political will and commitment of the participants in the agreement to cooperate towards the achievement of the strategic goals therein. The Preamble may include an enumeration of the Contracting Parties to the agreement. While remaining concise, the Preamble may also refer to the reasons that lead to the conclusion of the agreement and may mention the legal basis for it.

II. Definitions and abbreviations

For purposes of clarity and to ensure a good level of understanding by all the stakeholders including users of the subregional agreement, all the terms used in it should be explained at the beginning of the documents. It is highly desirable that definitions are the same as in the corresponding international legal instruments, with a view to improve the level of harmonization.

III. Objectives and purposes, general provisions

The section should contain the main key policy objectives of the subregional agreement. Depending on the specific or more general area addressed by the agreement and without being exhaustive, the objectives may mention the subregional economic through development of economic relations, trade and transport communications; the establishment of an effective, efficient, integrated and harmonized transport system in the sub-region; the facilitation of transit transport of goods, through simplification and harmonization of transport, trade and customs regulations; the promotion of trade within and beyond the sub-region and improvement of access to the international freight markets; the harmonization and standardization of technical characteristics of infrastructure and equipment.

IV. Scope

This section should indicate the areas and activities that are subjects of the subregional agreement. Where there are issues on which no consensus can be reached in terms of harmonizing them through the subregional agreement, the section may clarify the legal position regarding these issues, for example by stating that they remain subject to domestic legislation.

As the proposed model subregional agreement is focused on international road transport, the most common indications in such a section could be international transit transport of goods and/or passengers by road.

V. Substantive issues covered by subregional agreement

A. Transport issues

a) Key transport issues

Introductory note

Conditions of grant of traffic rights and permit system for international road transport remain the key transport issues which should be addressed by subregional agreements, as in many countries of UNESCAP region international transport operations are confined to border areas and a limited number of roads, and are subject to single-entry permits issues in respect of each vehicle. Another constraint to international road transport is the restriction of transit operations.

Agreements related to international road transport facilitation, both subregional and bilateral, should serve the same purpose of liberalization of conditions for international road transport to the possible.

At present, UNESCAP member countries largely rely on the implementation of the arrangements of bilateral agreements for traffic rights, transport permits and their quota. Subregional agreements, even if implemented, play a supplementary role (see Figure 1 below).

Bilateral agreements+ supplementary use of subregional agreement (status quo)

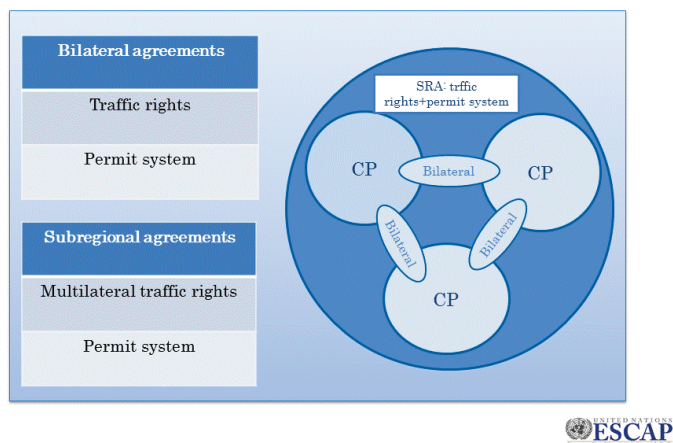


Figure 1. Traffic rights and permit system settled by both bilateral agreements (as a main tool) and subregional agreements (as a supplementary tool)

The approach proposed by this model agreement is the establishment of multilateral traffic rights and multilateral permit system by subregional agreement with a level of liberalization, which can be realistically agreed upon by the Contracting Parties. At the same time, the Contracting Parties to the subregional agreements can provide greater facilities and more liberalized legal regime in terms of traffic rights and requirements for permits through bilateral agreements among them (see figure 2 below).

Subregional system + provision of greater facilities at bilateral level (recommended option)

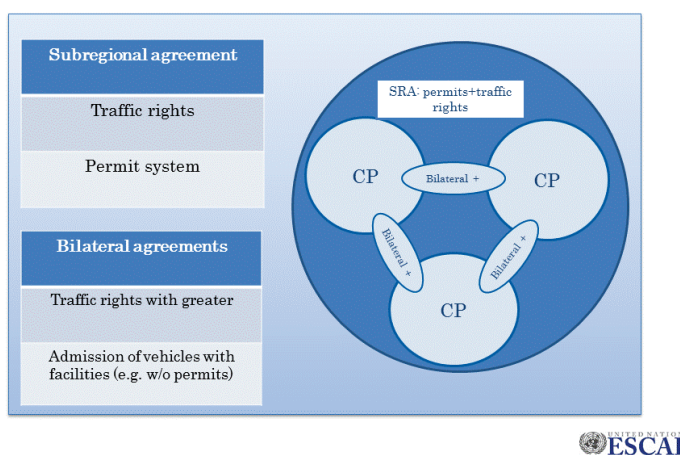


Figure 2. Grant of traffic rights and permit system settled by subregional agreements, greater facilities provided by bilateral agreements

Traffic rights

Under this section of the subregional agreement the Contracting Parties define on which conditions do they grant the right to undertake international transport operations by foreign carriers on their territories. It should list the types of international transport of goods and/or passengers allowed under the agreement, which can include:

- a) Transport operations involving the territories of two Contracting Parties (bilateral or inter-state);
- b) Transit transport operations;
- c) Transport to/from/across third countries.

If the Contracting parties decide so, they may also allow cabotage on certain conditions.

Road transport permits

The target in the region is wider application of multiple-entry transport permits valid for one year and multiple routes or road networks, issued to a carrier for any compliant vehicle in its fleet, which could be used both for bilateral (inter-state) and transit transport operations.

This section should indicate the types of permits required for each type of transport operation which can be undertaken under the agreement. It may also indicate the types of transport operations that are exempt from permits.

This section should also establish a mechanism to provide a sufficient number of permits and define their criteria for their issuance to carriers. Those details of the operation of the permit system may be contained in an Annex and/or Protocol to the subregional agreement.

Designation of routes and border crossings

A large number of countries of the UNESCAP region require vehicles to go through designated transport routes and through designated specific border crossings, while many other countries consider all their road network open for international road transport

For the cases when the Contracting Parties to the subregional agreement prefer to limit international transport operations to routes and border crossings, this section can indicate such routes and border crossings. It can be done either in the body of the agreement or by a separate Annex or Protocol. The flexible procedure for quick amendment of the list of routes and border crossing should also be established.

The section may also contain indications on the technical parameters and/or design standards of the designated routes. Logically, these parameters should comply with those of the existing regional transport infrastructure networks, such as Asian Highway Network.

b) Other transport issues

Mutual recognition of driving licenses

This section of the subregional agreement may provide for mutual recognition of the driving licenses by the Contracting Parties. It may also establish a subregionally accepted driving license. The detailed conditions and/or minimum requirements for the issue and validity of the subregionally accepted driving license may be specified in an Annex and/or Protocol to the subregional agreement.

The Convention on Road Traffic, 1968 is containing detailed provisions on all the aspects relating to the driving license such as (but not limited to): minimum requirements for professional driving instruction (concerning driving instructors), guidelines for professional driving instruction (scope of tuition), guidelines for the methods of professional tuition, recommendations for professional drivers of vehicles of categories C, D and E (training programme).

If the countries negotiating a subregional agreement are already the Contracting Parties to this Convention, the section may not be required, or may just refer to the provisions of the mentioned Convention.

Harmonization of requirements for road vehicle documents

Technical inspection certificate

This section of the subregional agreement may state the commitment of the contracting parties either to recognize each other's technical inspection certificates or to adopt a Standard/Model Certificate of Technical Inspection and recognize the initial inspection in the country of registration of the vehicle. Such an approach would allow vehicles in international traffic which present valid inspection certificates not be further inspected in the countries of transit and destination.

Registration certificate

This subsection may provide for:

- a) mutual recognition of vehicle registration certificates issued in accordance with their national laws if such certificate is accompanied by a certified translation into a language which can be recognized by all the Contracting Parties; or
- b) establishment of standardized requirements for vehicle registration, possibly including a model vehicle registration certificate to be followed by the competent authorities of the Contracting parties when issuing registration certificates for vehicles in their countries. The detailed conditions for model registration certificate may be contained in an Annex and/or Protocol to the subregional agreement.

The Convention on Road Traffic, 1968 provides for mutual recognition of vehicle registration certificates issued in accordance with its provisions. If the countries negotiating a subregional agreement are already the Contracting Parties to this Convention, the section may not be required, or may just contain a reference to the mentioned Convention.

The provisions of the Convention on Road Traffic, 1968 can also be utilized for designing the system of requirements to vehicle registration at subregional level.

Harmonization of requirements for weights and dimensions

When technical standards differ from one country to the other, access of foreign vehicles may be denied or they can be forced to pay extra charges. The harmonization of technical standards is therefore a critical factor for the facilitation of international transport/ transit and implicitly of trade. For a variety of good reasons, notably to promote harmonization, enhance road safety, prevent accelerated road damage and mitigate environmental degradation, this section of the subregional agreement may set out minimum requirements and standards for vehicles performing international transport/transit operations. These requirements usually refer to: a) permissible maximum axle and laden weights; b) maximum dimensions of vehicles; and c) emission standards and brake efficiency.

Mutual Recognition of Weighing Certificates

This section of the STFA may provide for either for recognition of the Contracting Parties of each other's certificates or to adopt a Standard/Model Certificate of Weighing and recognize the initial weighing at the origin all along the journey of the vehicle. A model that could be used

has been developed in the framework of the UN International Convention on the Harmonization of Frontier Controls of Goods (“Harmonization” Convention), 1982 (Annex 8).

Vehicle third-party insurance system

This section of the subregional agreement may state the willingness/commitment/decision of the participants to establish a scheme of compulsory motor vehicle insurance at subregional level, grouping insurance companies in the sub-region. The negotiations and subsequent operationalization of motor vehicle third-party liability insurance schemes should include both public and private sectors. Governments and the sub-regional insurance companies will have to coordinate the necessary measures and actions needed to establish the system. A possible example of motor vehicle third-party liability insurance scheme to be used as basis by drafters of subregional agreements could be the Green Card System.

Carrier licensing

This section of the subregional agreement can contain reference to obligation for carriers to obtain license (access to profession) to undertake international transport operations in accordance with their national laws and regulations. As an option, specific common minimum criteria can be set out in a subregional agreement.

Provisions for passenger transport

This section can include provisions for regular and occasional passenger transport operations, such as grant of traffic rights (should they be different from traffic rights for goods transport) and permit system. In terms of structure of the subregional agreement, those provisions could be put into the sections on traffic rights and permits respectively.

It is recommended to cover the issues of rules of carriage for passenger transport, including carrier liability, in a separate agreement touching upon the issues relate to private law (same recommendation applies to rules of carriage of goods).

Provisions for specific categories of goods

This section of the subregional agreement can contain the requirement to obtain special permit for transportation of oversize/overweight/dangerous goods.

In respect of dangerous goods, the subregional agreement can also include the list of dangerous goods allowed for international transportation by road and conditions for their carriage.

While defining such conditions, the provisions of the European Agreement concerning the International Carriage of Dangerous Goods by Road, 1957 and of the United Nations Recommendations on the Transport of Dangerous Goods/Model Regulations can be used as the reference.

B. Fiscal and Customs issues

Charges and other financial obligations

This section of the subregional agreement may establish the principle of non-discrimination in respect of collection of charges, fees, tolls, taxes and other levies imposed on transport operations. It may also refer in the section to their commitment to adopt standard elements for the calculation of costs, to ensure the transparency of the taxes and charges and to make them public, as well as to take measures or at least endeavor to simplify the methods of payment, including through the use of modern technologies.

Temporary importation of vehicles

This section of the subregional agreement may establish the conditions under which temporary admission of goods and means of transport can be granted. The Contracting Parties to the subregional agreement could, ideally, envisage a simple procedure without payment of import duties and taxes and without depositing a customs guarantee bond, subject to re-exportation but they could also require production of a Customs document and provision of security for temporary importation.

The section may also include a commitment of the Contracting Parties to reduce to a minimum the Customs formalities required in connection with the facilities provided for in the STFA and to promptly publish all regulations concerning such formalities.

International legal instruments that can be used as reference in drafting and negotiating this sub-section are the Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956, and/or WCO Convention on Temporary Admission, 1990 (Istanbul Convention).

Harmonization and simplification of Customs procedures and formalities

This section of the subregional agreement mention the steps which the Contracting Parties undertake to simplify and harmonize their customs control procedures, aiming to facilitate international transport operations. Depending on the preparedness of the Contracting Parties, this section may provide for, but not limited to, the following specific measures (or some of these measures):

- a) undertaking Customs controls based on Risk Management techniques;
- b) performing Customs procedures at inland offices rather than at borders in case of countries of origin and destination ;
- c) limiting the number of documents and reducing procedures and formalities required for transit traffic;
- d) aligning documents to the UN layout key for trade documents;
- e) joining an existing international customs transit system or establishing a subregional one¹;
- f) eliminating any documents and formal requirements which may no longer serve important purposes;
- g) providing for special, expeditious, treatment in case of transports of livestock and perishable goods.

C. Other facilitation issues

Administrative assistance and cooperation between control authorities

This section of the subregional agreement may include a general declaration on willingness of the Contracting Parties to develop cooperation and mutual administrative assistance of their control authorities. Depending on readiness of the Contracting Parties to implement steps for practical cooperation of their control authorities, this section can also provide for specific means, such as exchange of information and documentation, use of modern customs techniques, mutual

¹ In case of intention to establish a subregional customs transit system, it is recommended to formulate a separate agreement on this matter (see section on “Issues recommended to be settled through formulation of separate subregional agreements” below).

assistance in the investigation of cases related to infringement of the provisions of the subregional agreements and applicable national laws.

This section may also include the provision on the assistance of the competent authorities of the Contracting Parties in case of traffic accidents in the course of international road transport, including the assistance to the carrier involved and notification of the competent authorities of such carrier's home country.

Force majeure

The recent global pandemic crisis resulted in heavy disruption of cross-border trade and, inevitably, transport operations. It showcased the need to envisage including a more detailed force majeure clause in the existing or to-be-negotiated agreements on land transport

It is not likely that a large number of the existing agreements would be re-negotiated in the short- and medium-term to amend them only to include a detailed force majeure clause. However, the situation created by the Covid-19 outbreak, with blockage of transports at borders and all the deriving inconvenience, prove that such a clause is needed. One feasible solution is to include the detailed force majeure clause in the existing agreements as a separate annex. The content of such annex can be elaborated on the basis of recommendations of the Model Annex on Force Majeure (see Attachment 1).

Miscellaneous

Establishment of offices

Permission to establish representative office of carrier registered in another contracting party is stipulated by some agreements. This helps carriers to familiarize themselves with local laws, respond quickly to changes of local laws, provide guarantee for their vehicles, assist in handling of accidents with involvement of their vehicles or crew, assist their sick crew and passengers and deal with any problems raised in transport process.

Establishment of branches of foreign carrier, which are directly involved in business operation, or concern on market competition, can also be allowed under this section of the subregional agreement.

The necessity of this section largely depends on applicable national laws of the Contracting Parties and availability of restrictions or special conditions on establishment of branches or representative offices of foreign carriers.

This section may contain other miscellaneous provisions, as the Contracting Parties agree.

D. Relationship with other international treaties

Harmonization Based on International Legal Instruments

This section of the subregional agreement can contain references to international legal instruments (conventions and agreements) which can be applied to cover certain thematic issues related to the scope of the subregional agreement. If all the Contracting Parties to the subregional agreement are also Contracting Parties to a particular international convention or agreement, reference to its provisions can be made in the subregional agreement for the sake of clarity.

Alternatively, if the Contracting Parties to the subregional agreement do not participate in relevant international legal instruments, this section may state the willingness of the Contracting Parties to accede to and implement the international legal instruments relevant for the area(s) dealt with by the subregional agreements.

Reference to other international treaties of the contracting parties

This section may indicate that the agreements do not affect the rights and obligations of each Contracting Party arising from the existing international treaties in which either Contracting Party participates.

Provision of greater facilities

This section may indicate if other existing international treaties of the Contracting Parties provide greater facilities for international road transport (for example, in terms of grant of traffic rights), the subregional agreement in question can not serve as a prejudice for application of their respective provisions.

E. Institutional arrangements, implementation and monitoring mechanisms

Inter-Governmental structures

This section may define the inter-Governmental structures as agreed by the Contracting Parties of the subregional agreement, such as, for example, joint committees consisting of the representatives of the Contracting Parties. It may also include the conditions for their functioning and principles concerning the frequency of the meetings or the place of the meetings. The detailed terms of reference and the rules of procedure of the bodies may constitute an Annex or a Protocol to a subregional agreement.

National structures for implementation and monitoring

The complexity and multilateral nature of some subregional agreements require effective inter-agency cooperation to enable their implementation at national level. The establishment of national coordinating structures (such as national trade and transport facilitation committees) may be referred to or encouraged by this section of the subregional agreement.

Designation of competent authorities

This section can include the list of relevant competent authorities involved into implementation of the subregional agreement and establish the procedure for notification of all the Contracting Parties in case of change of national competent authorities in one of the Contracting Parties.

Secretariat support

If the subregional agreement is signed by countries that are members of a subregional economic integration grouping which has its own secretariat, the existing secretariat could also service the agreement, including acting as its depositary. In this case, this sub-section should define the tasks and responsibilities of the agreement's secretariat.

If the Contracting Parties to the agreement are not members of a subregional economic integration grouping, two options may be considered:

- a) one country offers to host the secretariat of the agreement, permanently or for a limited duration, with full financing by the host country or with shared financing among the participants. In this case, this sub-section should clearly reflect all the conditions for the establishment and functioning of the secretariat as well as its tasks and responsibilities in servicing the agreement; or
- b) the agreement could be serviced on a rotating basis by the Contracting Parties. In this case, the sub-section should clearly reflect all the conditions for servicing the agreement.

Dispute settlement arrangements

This section should define the rights and obligations of Contracting Parties, including the procedures for the pursuit of claims in case of dispute. Most of the subregional agreements envisage that the Contracting Parties should resolve their disputes arising from the interpretation or implementation of the agreements through consultations. However, this sub-section may also indicate other means for dispute settlement such as negotiations in the intergovernmental structures established under the agreement or appointment of arbitrators.

VI. Final provisions

Entry into force

This section should provide for the manner and date of entry into force of the subregional agreement. It may also contain special indications for instance that when the consent of a State to be bound by the subregional agreement is established on a date after the subregional agreement has come into force, the agreement enters into force for that State on that date, unless the treaty otherwise provides.

Term of agreement

This section can indicate the term of the agreement. Most typically, the subregional agreements are concluded for an indefinite term.

Domestic procedures for entry into force

This section can indicate the domestic procedures required for entry of the agreement into force. Most typically these are ratification, acceptance or approval by the governments of the Contracting Parties. However, in some cases signing of the agreement is sufficient for some countries for being bound by it.

Procedure for amendment

This section should state the rules for amending the subregional agreement itself as well as its Annexes and Protocols. As the procedures to amend the main agreement are usually more complicated as they require approval by the highest national instances in each of the Contracting Parties, provisions on simplified amendment procedures for Annexes and Protocols are desirable.

Possibility of accession by other countries

Subregional agreement may belong to subregional groupings, and only the member countries of that grouping can be contracting parties to the agreement. In case when some member countries of the subregional grouping do not initially sign the agreement, the procedure for their subsequent accession should be defined in this section.

In some cases, participation in subregional agreements is not limited to a membership in a subregional grouping and can be formulated in a way allowing other countries to accede to it. In this case, the relevant procedure should also be established.

Suspension

A Contracting Party to the subregional agreement may temporarily suspend the agreement due to, for example in case of emergency situation affecting national security. This section should contain a provision on the obligation of such Contracting Party to timely inform other Contracting Parties of the effective start date of suspension, as well as of effective date of end of suspension.

Denunciation

This section can contain a provision on the procedure for denunciation of the agreement by a Contracting Party, including the notification of other Contracting Parties and indication of time period following notification, after which the denunciation can take effect.

Languages and their authenticity

Subregional agreements are typically authenticated in one language, but the Contracting Parties may also decide to authenticate it in two or more languages. In this case, this sub-section should clearly state that when a subregional agreement has been authenticated in two or more languages, the text is equally authoritative in each language, unless the Contracting Parties agree that, in case of divergence, a particular text shall prevail.

The above list of issues related to final provisions is typical, but not exhaustive. The international legal instrument that may be used as reference for this part when drafting and negotiating a subregional agreement is the Vienna Convention on the Law of Treaties, 1969.

VII. Annexes and protocols

It is quite typical for subregional agreements to have certain issues covered in annexes and protocols supplementing the main agreement (specific technical issues, implementation arrangements, procedural issues, etc.).

Issues recommended to be settled by separate subregional agreements

I. Facilitation of visas for professional drivers and crews of road vehicles

Ideally, the agreement should provide for visa free regime for professional drivers and crews of road vehicles.

In case when introduction of visa free regime for those categories is not feasible for the countries negotiating a subregional agreement, possibility of issuance of multiple-entry visas valid for at least one year can be a good practical solution, with national competent authorities or professional road transport associations acting as guaranteeing institutions.

The national guaranteeing institution in each country may prepare a list of professional drivers (crew members) and submit it to the ministries of foreign affairs of other countries in accordance with the procedure established by the agreement for forwarding to embassies or consulates. Embassies or consulates will expedite issue of visas for the drivers with reference to the list.

Alternatively, national guaranteeing institutions may provide certifying letters with guarantee letters from carriers when drivers apply for visas at the embassies/consulates.

With such arrangements, drivers employed by one carrier may be considered as one group in visa application and exempt from the requirement of personal presence.

As consular treaties must be reached by the ministries of foreign affairs, transport authorities need to request the ministries of foreign affairs and possibly other competent authorities to participate in negotiating of the agreement.

II. Customs transit system

The use of unified document and centralized subregional guarantee system may not be the most convenient solution for carriers, but it does help carriers avoid cash or bond deposit or charges. This system is particularly useful for travel through several countries.

The Contracting Parties to a subregional agreement, if they have not acceded any existing international transit system, may be willing to join such international transit system.

In case when consensus might be easier to reach by means of putting in place of a smaller scale transit system at subregional level, negotiation on such system would require the involvement of Customs administrations, and it is thus recommended to formulate a separate agreement on this matter.

It is also important to design such system in a way that the characteristics of the subregional customs transit system should not prevent the possibility for future implementation of a global system through accession to respective international legal instruments.

III. Facilitation of border-crossing formalities and inspections

Facilitation of numerous and different inspections and controls of people, vehicles and goods requires involvement of respective government authorities and control agencies in charge, thus negotiation of a separate subregional agreement on these matters is preferable.

Such agreement may include general part, which would identify the major objectives to be gradually achieved such as, for example, performing joint controls for the beginning, then continuing by enabling single-stop and single-window inspections to be performed. Deadlines or at least attempted deadlines could also be included into this general statement.

Several sections could then cover the main activities at border-crossings that contribute to the facilitation of international transport:

- a) Customs control and border management (harmonization of documentation and procedures, synchronization of working hours at border checkpoints, introduction of single window, single stop inspections, integrated border management, joint control, application of ICT for facilitation of border checks and other possible measures).
- b) Veterinary, sanitary and phytosanitary control (availability of laws, rules, regulations and procedures relating to veterinary, sanitary and phytosanitary control in force to all stakeholders, harmonization of and procedures for veterinary, sanitary and phytosanitary controls).
- c) Police control (ensuring non-discrimination with respect to controls performed by police, steps towards harmonization of standards and practices affecting international transport and mutual recognition of the documents concerning the means of transport, their crew, the goods and the passengers).

- d) Physical infrastructure facilities (list of designated border-crossings where international transport operations would be facilitated through appropriate type and level of physical infrastructure, facilities and equipment, steps to be taken by the Contracting parties to gradually provide adequate facilities at other posts).

IV. Private law (rules of carriage)

Rules of carriage of goods and passengers, including carrier liability and its limitation, are related to the area of private law, which is different in nature and approaches from public law issues and may require specific experts to negotiate them. It is thus recommended to formulate a separate agreement on rules of carriage. The agreement on this topic can cover either rules of carriage for both goods and passengers/luggage, or may be split between two respective agreements.

Rules of carriage normally include the coverage of contractual obligations arising out of carriage of passengers or goods, civil liability of carriers and other actors of the contract of carriage, including limitation of carrier's liability, contractual documentation, pricing, claims and actions.

As regards rules of carriage of goods, the Convention on the Contract for the International Carriage of Goods by Road, 1956 with additional Protocol, 1978 can be recommended as a reference international legal instrument to follow.

Attachment 1

This model aims at providing a starting point in the negotiation of a detailed Force Majeure clause in any new transport agreement or when revising an existing agreement.

In case of a new agreement, the Model can be included as an article of the agreement, with the title “Force Majeure”.

In case of revising an existing agreement, the Annex will have to be referred to in the agreement, by including an article titled “Force Majeure” indicating that “the procedures in force majeure cases are detailed in Annex XYZ to the present agreement.”

Model Annex on Force Majeure

1. Definition of the scope

Detailed practices for a force majeure clause could cover only the unexpected cases, those which occur without intention/willingness of any of the parties. More specifically:

- accident, fire, explosion, or
- natural disaster such as, but not limited to, storm, cyclone, hurricane, earthquake, landslide, flood, drought, or
- plague, epidemic, pandemic, other viral outbreak.

The force majeure clause could also include cases of:

- war, whether declared or not, or any other armed conflict, military or non-military interference by any third party state or states, act of terrorism or serious threat of terrorist attacks, or
- civil riot, sabotage or piracy, strike or boycott, or
- act of government, requisition, nationalisation, or any other acts of authority whether lawful or unlawful, blockade, siege or sanction.

However, detailed practices for such cases should therefore not be included in a transport agreement as such a sectoral agreement may not realistically cover their specifics.

Procedures for humanitarian transport and logistics could be excluded from the object of specific transport agreements, because those are multidisciplinary, multi-sectoral arrangements, too complex to be framed as “transport only” issues.

2. The human element

The force majeure clause could contain a commitment by the parties to

- provide their respective transport workers with instructions and adequate personal protection equipment
- provide, on their respective territories, safe and secure parking and rest spaces, with decent sanitary facilities
- train their personnel on behaviour and elementary rules to follow for cases of force majeure

Although such a clause would not be negotiated specifically for the case of pandemics, some parties may wish to go into further detail about protecting their transport personnel, in which case other measures could be added to this section, such as:

- minimizing unnecessary contact at all points by using electronic advanced information or pre-booking e.g. for passport control, loading and unloading, etc.
- where possible having the same small groups of workers load or unload vehicles
- enabling each other's drivers to access health and social facilities when required, consistent with other instructions
- instructing drivers to stay in their vehicles where this does not compromise their safety and safe working practice
- transport workers should not be subject to mandatory quarantine or similar travel restrictions, without prejudice for competent authorities to apply measures aiming to minimize the risk of contagion (for example requiring those workers to pass through disinfecting tunnels if needed)
- defining a minimum necessary health check at borders such as measuring transport worker's body temperature and asking max. three questions related to their health during a certain number of days prior to the trip. These checks should not imply transport workers leaving their workplace, vehicle etc.
- reminding transport workers the basic rules to follow while they are on the territory in which the force majeure occurred. Possibly preparing short leaflets and hand them to the drivers at the entry point
- procedures for repatriation of transport personnel

3. Means of transport (vehicle, wagon, etc.)

The condition of vehicles used for the transport of goods and passengers is important at all times, but so much more in cases of force majeure. For example, roadworthiness may play a crucial role in saving goods and lives in the event of a natural disaster; also, cleanliness of a vehicle may limit the spread of germs, viruses, etc. The parties negotiating a force majeure clause in their transport agreement could include therein measures like:

- agree on a set of minimum technical and safety features to be inspected at origin, and commit to recognize these inspections at border crossing and destination

- setting norms of compliance with environmental legislation in force in their respective territories
- agree on possible derogations for force majeure situations
- jointly design and implement cleaning and disinfecting protocols at origin, border crossing points, and destination (establishing disinfecting stations, etc)
- defining procedures for the safe temporary storage of transport means and goods transported, in case of drivers become unable to drive (because of disease or natural disaster)

4. Infrastructure

A major concern in any force majeure/crisis case is to ensure the distribution of essential commodities. There are few (if at all) entirely self-sustained economies left in today's globalized world; hence, in any force majeure case, ways to keep borders open for freight have to be identified. A detailed force majeure clause in the transport agreement could include:

- designating specific routes ("green lanes") to be used in case of force majeure. When choosing those routes, parties should consider elements like the actual connectivity of the route, the time reasonably necessary to transit the territory, condition of infrastructure, existence of rest areas, food supply and facilities, possibilities of control en route
- directing international transport through dedicated entry/exit border points where parties might have mobilized capacity for carrying out border and health checks, in terms of facilities, equipment, and human resources. For railway transport of goods, these could also be the points where locomotive and crews are switched
- designating specific loading/unloading places in connection with the "green lanes"

Ideally, the designating routes, entry/exit points, loading/unloading places, and facilities should be part of the major networks agreed as priorities for development by all ESCAP members: Asian Highway, Trans-Asian Railway, Dry Ports, and major multimodal transport corridors.

5. Procedures

Clear and simple procedures are the backbone of any efficient process; therefore, the parties negotiating a force majeure clause in their transport agreement should include reference to elements like:

- acts or orders of governments or public authorities based on force majeure cases should be notified immediately to the other party
- while keeping control of the operations, procedures should be simplified. Parties could discuss and agree on possible deviation/derogation from the "normal" regulations. For example, parties may envisage limiting the roadside checks *en route* or "softening" restrictions on operation of heavy goods vehicles: traffic during night, weekends and public holidays, driving/rest times, pollution norms

- agree on measures to be taken on their respective territories, for example using a convoy system on the designated routes
- parties may agree on jointly developing/encouraging the development of e-platforms where freight and transport would meet
- defining a list of transports which should be given priority in case of force majeure: medical supplies, fresh food, transport of people for medical assistance, etc.

6. Documents

Pandemics or natural disasters generate disfunctions not only in international transport but also in national systems managing identity documents or attestation/certification of professional competence. Under crisis circumstances, renewals or extension of validity may become impossible: the issuing authority suffers from shortage of human resources or has taken measures to limit contact with the public, etc. Parties negotiating a force majeure clause should consider referring to:

- jointly developing e-documents (such as e-consignment notes) and simplified templates for documents required for control purposes
- drivers should be allowed to fill-in the required documents at control points without leaving the cabin
- recognizing and accepting documents with validity expired during the crisis, such as ID cards, driving licenses, certificates of professional competence. This should be done only for a short, limited period of time and upon confirmation of exceptional extension of validity by the issuing party.

7. Cooperation and mutual assistance

All the treaties include an explicit or implicit article in which the parties commit to cooperate and lend each other assistance in matters pertaining to the treaty. However, cooperation between the parties is even more important in dire circumstances, such as natural disasters or pandemics, or other force majeure cases. Parties negotiating a force majeure clause should be precise in describing the manner of assisting each other:

- agree on the obligation to timely inform each other of acts or orders of governments or public authorities based on force majeure cases
- include lines of reporting, possibly by thematic area or subject
- include, to the extent possible, contact persons with name, position, and contact details
- set rules for communication: direct contact between ministries, diplomatic channels, etc.
- assistance for repatriation of transport personnel, transport means, and goods and persons transported, in case of force majeure.