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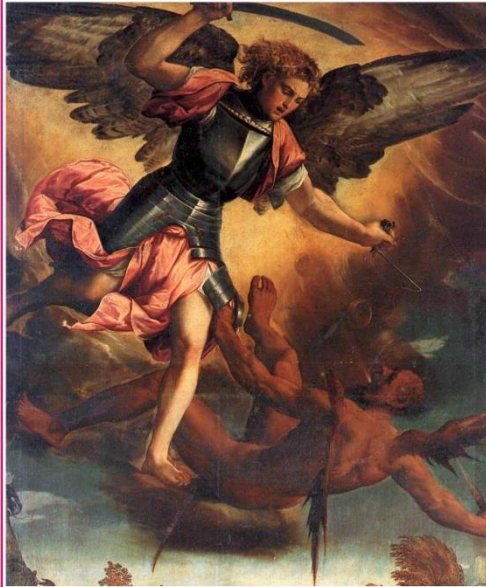
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# Regulation of Transit Issues: Multilateral International Treaties and National Law

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## Abstract

This article discusses the theoretical and practical foundations of international violation of national and international legal norms for the transit of goods, cargo, and passengers via comparative qualitative research methods. The practical and theoretical significance of the research results consists in putting forward proposals to improve the norms of international conventions and Kazakhstani legislation on transit issues, and to deepen the scientific analysis of domestic and international aspects of transport transit. In conclusion, analysis of the texts of international treaties on transit issues showed that they do not settle transit issues systematically.

**Keywords:** Transit, Transport, Convention, Corridor, Trade.

# *Regulación de asuntos de tránsito: tratados internacionales multilaterales y legislación nacional*

## **Resumen**

Este artículo analiza los fundamentos teóricos y prácticos de la violación internacional de las normas legales nacionales e internacionales para el tránsito de mercancías, carga y pasajeros a través de métodos comparativos de investigación cualitativa. La importancia práctica y teórica de los resultados de la investigación consiste en presentar propuestas para mejorar las normas de los convenios internacionales y la legislación de Kazajstán sobre cuestiones de tránsito, y para profundizar el análisis científico de los aspectos nacionales e internacionales del transporte en tránsito. En conclusión, el análisis de los textos de los tratados internacionales sobre temas de tránsito mostró que no resuelven los problemas de tránsito de manera sistemática.

**Palabras clave:** Tránsito, Transporte, Convención, Corredor, Comercio.

## **1. INTRODUCTION**

Transit relations are closely related to transport relations. Accordingly, the problems of the transport sector and transport policy should be taken into account when examining transit problems. There are many important studies on transport policy in different countries. For example, works by Fichert (2017), Emberger (2017), Haque et al. (2013) examine complex transit issues in Europe and Asia.

Kazakhstani legal literature on transit issues includes a monograph by Tuleugaliyev (2002), and there are articles on these issues from a scientific perspective by (Nazarkulova, 2018; Kussainova, 2018; Thomazinho et al., 2017).

The insufficiency of the systemic international legal regulation of transport and transit relations is substantial. Concerning this, a number of recommendations are made for regional transit conventions and improvements to legal regulations. The organizational and legal measures that determine the proper logistics and other services for the Kazakhstani part of Western Europe–Western China Highway (WE–WC) are substantiated. For the purposes of systemic legal regulation, it is necessary to develop and adopt under the UN auspices a universal multilateral convention regulating transit issues: concepts, goals, objectives, principles, types, procedures, conditions, dispute resolution procedures, and other issues. At the level of the national legislation of the Republic of Kazakhstan (ROK), one such measure could be found in the development of the draft Kazakhstani law on transit (OT) in the domestic and international spheres, as well as a number of other drafts Kazakhstani laws relating to transit.

## **2. INTERNATIONAL AND INTERNAL TRANSIT**

Transit is a complex of transport services for the movement of goods and passengers. Transit can be domestic or international. Customs transit can be defined as the procedures by which goods are

transported under customs control from one customs institution to another in the same state. International transit denotes the passing through a territory of a vehicle either on land, water, or in the air carrying persons or goods from another sovereign state and with points of departure and destination outside the state. International transit is possible only in connection with the signing of appropriate multilateral and bilateral agreements and conventions between states. Customs transit can be defined as international if the customs agencies that carry out this procedure are located in the customs territories of different countries. An internal customs transit procedure can be considered a national procedure aimed at facilitating the movement of goods under customs control in one customs territory.

The China–Kazakhstan section is already operational. Now, it is a matter of logistics. Along with this transit route and other international highways in the country, gas stations, campgrounds, hotels/motels, repair shops, police stations, warehouses, and other facilities are needed. To this end, the Kazakhstan law On Logistics and Maintenance of International Motorway Corridors ought to be developed and adopted. According to experts' forecasts, the annual average volume of cargo transportation between Europe and Asia will be approximately 800 million tons starting in 2020. To service such a volume of cargo at least 330 logistics centers are required. Trade between the EU and China today totals more than USD 500 billion. Kazakhstan plans to benefit from the transit of goods and to increase its share in the cargo traffic between China and Europe to eight percent

by 2020. The WE–WC will play a significant role in the flow of this cargo.

### **3. TRANSIT AND TRADE LAW**

The concept of transit is also associated with the right of landlocked states to access to the sea. This right is directly related to trade, fisheries, scientific research, the extraction of certain mineral resources, naval affairs, and other spheres of human activity at sea. Careful examination of the Convention on Transit Trade of Landlocked States (TTLS) of July 1965 reveals the importance of this Convention on the world stage, yet, just over 40 states are party to the Convention. Significantly, coastal states are few. But not all of the forty-five inland states have become parties to the Convention and not all of them have established business relations with coastal states. It is necessary to ensure coverage of all landlocked countries so that they all become parties to this Convention, and it is also highly desirable that several dozen coastal states also join the Convention, which would strengthen the positions of the Convention and the interests of landlocked countries. How can the number of parties to the Convention be increased?

Both the name and, accordingly, the content of this Convention should be changed. A possible title is: On the mutual provision of transit and assistance in trade and other areas of activity for landlocked and coastal states. This new convention could provide the following

benefits. Neighboring states (inland and coastal) could provide mutual trade and investment as well as visa-free travel for their citizens. In the case of joint use of coastal ports, landlocked states could create special economic zones as additional preferential treatment for the companies of the coastal states. An intracontinental state, in agreement with the coastal state, could create for the coastal states an appropriate preferential customs regime for the sale of goods.

Based on the above provisions, a draft of a number of articles might be included in OT. Kazakhstan requires access to the seaports of neighboring states. This need is satisfied, in particular, by several agreements: the Kazakh–Chinese Agreement of 1995 on the use by the ROK of the Chinese seaport of Lianyungang; the 2013 Agreement with China providing Kazakhstan with a portion of said seaport for the construction of its own terminal; the Kazakhstan–Iran Agreement (December 2016) on cooperation, in particular, through a joint shipping company with access to the seaports of both countries: Kazakhstan’s Aktau and Iran’s Bender-Enzeli, and other port access. Thanks to the Chinese seaport and the WE–WC, Kazakhstan is now at the crossroads of transit routes by road, rail, and sea routes and can direct cargo to Canada, Australia, and all of Southeast Asia as well as to the European continent. In the future, it will be possible for Kazakhstan to conclude similar bilateral agreements with Pakistan and India.

Article V of the General Agreement on Tariffs and Trade (GATT) (October 1947) specifically regulates transit issues. The GATT supplemented Article V with a provision on the application of

most-favored-nation treatment to transit and exempted transit goods from customs duties. It notes that goods and other transported commodities are considered to be the next transit through the territory, when such transit is only one part of the complete journey, beginning and ending beyond the boundaries of the contracting party through which the transportation is carried out. This document further states, for the first time, that transit is implemented in accordance with the principle of freedom of transit on a non-discriminatory basis.

#### **4. TRANSIT OF ELECTRICITY AND ENERGY**

Ensuring energy security is an important component of national security. It raised the problem of the need to create a transit transport infrastructure, that is, buildings and structures designed to serve transit. However, there is no norm in this convention that obliges states to grant transit rights to other states. The convention has been ratified by a small number of states, and since it has not been denounced by other states, it should be considered a valid international legal instrument. Since Kazakhstan transfers electricity to neighboring states from western and southeastern regions of the country, it needs to explore the provisions of this international convention, decide on the feasibility of assenting to it, and recommend similar exploration to neighboring states. If Kazakhstan and its neighbors decide to adhere to the convention, they could uniformly solve issues surrounding the mutual transit of electric energy.



The ROK could make a fruitful contribution to the implementation of the multilateral, international Convention Relating to the Transmission in Transit of Electric Power, since it has been an active party since September 2001, in the regional Agreement on the Transit of Electric Energy and Power of the Member States of the Commonwealth of Independent States (January 2000). Article 2 of this agreement states that parties should, within the limits of existing technical possibilities, provide unimpeded transit of electric energy and power through their territories at economically reasonable and transparent tariffs, in accordance with the concluded agreements. From the export of electricity to EAEU states, Kazakhstan expects to make an annual profit of up to KZT 8 billion (or more than USD 21 million).

The development of regional and international agreements on the transit of electricity and energy should account for various factors: formation of common transport policy within the common energy market, rapid international expansion of national companies, and threats to the stability of critical infrastructure. Additionally, EU Court of Justice case law (Article 18 (1) of Directive 2009/28 / EC) clarifies that countries do not always allow the free import of energy resources through their territory, despite the existence of agreements. In OT, provisions for individual agreements on pipelines should be fixed.

## **5. INTERNATIONAL CUSTOMS TRANSIT LAW**

If a full exemption from import customs duties and taxes is applied to goods, then such customs clearance and control in respect of these goods is made using the ATAC. Though the main purpose of the ATA system is to carry out temporary import operations, this convention also applies to customs transit of goods to a country or countries between the temporary import country and the return country. This international legal document can be used in conjunction with the Customs Convention on the Temporary Importation of Professional Equipment and the Customs Convention Concerning Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events (Conventions entered into force on July, 1 and 13, 1962).

Another Customs Convention, on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) (November 1975), is directly related to the transit territories of states through which goods are transported when drivers have a TIR book. The unabbreviated form of TIR is Transports International Routiers, which means International Road Transport or Transport International Road. TIR Carnet (TIRC) is a document of customs transit that provides the right to transport goods, in-car bodies or containers sealed by the customs of the state of departure, through a state and across customs borders using simplified customs procedures.

The multilateral universal customs convention on the international carriage of goods using a TIRC was created to simplify clearance procedures when cargo crosses state and customs borders in Europe, Asia, and the Middle East (57 countries in total). The

dismissal of the obligation to obtain a transit permit through this agreement maximally simplifies the customs escort of goods under the TIR. The transit issues of the Convention are directly indicated by its Articles 26 and 48 and also the Convention states that goods transported under the TIR procedure are exempt from paying or depositing import or export duties and charges in intermediate customs (Article 4) and that goods in intermediate customs are exempt from customs inspection (Article 5) (Bergqvist & Monios, 2014; Emam & Shajari, 2013).

However, there are some flaws in the text of the convention. For example, Article 5 of the convention states that goods transported under the TIR procedure in sealed vehicles, sealed vehicle assemblies or sealed containers, as a rule, are exempt from customs inspection in intermediate customs. Such an approach could help more quickly resolve transit issues. We propose in the text of OT that the cargo transported through the ROK be drawn up with a single transport document, which will be developed by the Ministry of Transport and other interested departments on the basis of previously adopted universal legal documents. When all the states on Earth fully implement electronic transport documents, then it will be time for a single transport document (Schippers, 2018; Akbari et al, 2013).

In the Convention on International Customs Transit Procedures for the Carriage of Goods by Rail (ICTRCGR) using the SMGS consignment note (April 2007), Article 1 defines the concept of international customs transit as conditions in which goods are transported across the borders of one or more states under customs

control from customs point of departure to customs point of destination (Yang et al., 2019; Soo et al., 2019). The term customs transit means any customs office through which goods are brought into the territory of a contracting party or exported from its territory during an international customs transit operation. It is not excluded that the customs of transit may coincide with the customs of the point of destination or the customs of the point of departure.

Studies by European scientists have shown that efficient systems of intra-state transport systems are necessary for the proper functioning of inter-country transport involving both different modes of transport (multimodal transport) and intermodal transport. The regulation of multimodal transport is currently based on international unimodal conventions, national laws, and standard conditions. Additionally, the importance of the legal regulation of multimodal transport systems lies in the strict distribution of the carrier's liability for delay, damage, or loss of cargo (Indriastuti, 2019).

## **6. RESULTS**

### **The need to accept a specialized universal convention**

At the Barcelona Conference on April 1921, two conventions (which included statutes on freedom of transit and the regime of international shipping routes) and two resolutions were adopted on the international regimes of ports and railways. Articles 37-42 of the UN Convention on the Law of the Sea (December 1982) regulate maritime

transit issues. The international conventions on various aspects of transit analyzed in this article, as well as the International Air Services Transit Agreement (December 1944), the Convention on a Common Transit Procedure (May 1987), and the Agreement on the Procedure of Transit through the Territories of the States Members of the Commonwealth of Independent States (June 1999), could, to a certain extent, become the basis for the text of a new universal multilateral convention that would be dedicated only to transit, and could be entitled *On the content and use of international transit for the carriage of goods and passengers* (Göçmen, 2018).

The following transit principles could be placed in a separate article: recognizing the right to freedom of transit for an inland state, duty-free transit, equality and non-discrimination between landlocked and coastal states for access to the sea, inadmissibility of the cancellation of concluded transit agreements and the promotion of the introduction of new transit agreements; and adopting national legislation to create favorable conditions for proper transit traffic. These principles are consistent with the historical claims of landlocked countries, which are based on the principles of natural law.

When a state transports goods, cargo, or passengers through another state, certain legal relations arise between them, their transport companies, and individuals. These relations are expressed in the respective rights and obligations of the parties and in the mutual responsibility of the parties. These legal relations become real and complex in the case of accident or catastrophe. The convention could designate the relevant ministry or department of a certain state, which

would grow in its competency to resolve issues of responsibility, determine the relevant rights and obligations of parties, and carry out any necessary preliminary investigations.

These actions could be given an international legal character through the proposed convention. States will have a right, though, to prevent transit for certain legal entities and individuals, as well as for transit of goods, some of which may be prohibited for security reasons, or for the necessity to block the spread of infectious or other diseases, as well as for other reasons. It should be emphasized that international transit between states is based on reciprocity, which is legally enshrined in mutual treaties and agreements. In our proposed convention, we can consolidate the concepts of direct and indirect international transit. The difference between them is: goods stored in a customs warehouse are classified as indirect; those that are not so stored are direct international transit.

As for setting transit tariffs, states should be guided by principles of rationality, transparency, non-discrimination, and simplified tax code. The contracting parties could assume the following obligations on transit: in unforeseen interferences of transit flow, the inadmissibility of interruption or reduction of transit; compensation for damages caused by non-compliance with the agreement; response to requests from contracting parties; commitment to resolve transit conflicts; settling of disputes and conflicts through diplomatic channels; and dispute resolution via international arbitration.

The Principles of management of international transit compiled by the International Road Transport Union serve as an example. In the event that wrong is committed, legal action must be taken. The convention could provide a specialized investigative council for any party that identifies a state creating unfair or difficult conditions of transit. This council, when considering such an appeal, would consult other participating states. In accordance with this article, the council would then present its conclusions and recommendations to the states in a state of disagreement.

## **7. CONCLUSION**

Analysis of the texts of international treaties on transit issues showed that they do not settle transit issues systematically. Therefore, the authors offered recommendations for the improvement of a number of the norms of these international conventions. Additionally, we proposed changing the name of the well-known convention TTLS of 1965 to: On the mutual provision of transit and assistance in trade and other fields of activity of inland and coastal states. The study of these international legal documents was conducted using the practical example of the Kazakhstani part of the WE–WC. OT was developed analytically throughout the article in relation to international transit regulations.

The Kazakhstani law accompanying this act, according to the authors, could be on logistics and maintenance of international corridors-highways. In the current ROK law (April 2004), on the regulation of trading activities, the authors proposed a number of additional transit regulations. With a view to a more systematic international legal settlement of transit relations, it was proposed that a universal multilateral convention regulating transit issues, under the auspices of the UN, be developed and adopted.

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