Policy Instruments to Limit Negative Environmental Impacts from Increased International Transport: Constraints and Opportunities in International Law

Global Forum on Transport and Environment in a Globalising World
10-12 November 2008 / Guadalajara, Mexico

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CISDL Programming:

• **Dialogue:** Conferences (*Sustainable Justice 2002: Implementing International Sustainable Development Law*, Montreal); Legal Experts Panels (WSSD, UN CBD, WTO, UNCCD); Academic Workshops (McGill, Yale, Oxford), etc.

• **Curriculum:** Legal Seminars & Courses (McGill, Oxford, UVic, Capetown, UdM, Cambridge, Chile, etc.); Judicial Education (UNEP, IDLO, NJI).

• **Research:** Six Research Programmes, led by nine Lead Counsel, with over 80 Legal Research and Associate Fellows and a Student Research Group.

• **Publications:** *Sustainable Development Law: Principles, Practices & Prospects* (Oxford University Press, 2004); *Sustainable Justice* (Martinus Nijhoff, 2004); *Sustainable Developments in World Trade Law* (Kluwer Law International, 2005); *World Trade Law in Practice* (Globe, 2006); etc.

• **Partnerships:** *International Law for Sustainable Development* Experts Panel Event at the 2002 WSSD launched the CISDL-IDLO-ILA ILSD Partnership.
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Presentation Outline

1. Introduction
2. International Law on Air Transport
   - Framework and constraints
   - Opportunities
3. International Law on Sea Transport
   - Framework and constraints
   - Opportunities
4. International Law on Land Transport
   - Frameworks and constraints
   - Opportunities
5. Conclusions
**Introduction**

- **A rapidly growing sector:** Global trade and transport is growing, with 14% increases in recent years (WTO).

- **Many potential environmental impacts:** Transport generates many forms of pollution including SOx & NOx, GHGs, particulate matter, noise, etc.

- **Thorny jurisdictional issues:** In international law, territory and nationality give rise to strongest (but not exclusive) claims to jurisdiction and hence, authority to regulate. Immunities correspond to some of these jurisdictional limitations.

- **Need for legal & other instruments:** Law is not the solution to all problems, “indeed sometimes it is advisable to call a doctor, engineer, CEO or even a plumber…” (Lowe)
**Significant Existing Instruments:**
- 1944 Chicago Convention & ICAO
- ICAO Cte on Aviation Environmental Protection (CAEP) work on GHGs and Emission trading (but see experience w noise)
- ICAO Annexes – Standards and Recommended Practices (SARPs)

**Constraints in international law:**
- State sovereignty over air space
- Bilateral constraints
- Unilateral actions
Air Transport: Opportunities

Opportunities to move forward:

Developments

- Transparency requirement for higher standards, mainly (Art 38 Chicago Convention) – especially effective for regional standards.
- CAEP work on GHGs and Emission trading
- Practical issues for GHG under climate law - especially how to allocate intl emissions.
- UNFCCC Discussions.

Innovations

- Effects doctrine is significant.
- Trade laws on subsidies, labelling, public procurement.
- Other non-discriminating options – such as passenger taxes (eg, UK).
Significant Existing Instruments:

- 1948 IMO Convention – formal climate change discussions since 1997 in Marine Environment Protection Cte (MEPC), but no resolution.
- MARPOL 73.78 successful on SOx [SECAs], NOx, Ozone depleting substances & other environmental challenges such as sewage and waste.
- Regional Seas conventions

Constraints in international law:

- Freedom of the seas, jurisdiction over territorial sea.
- Unilateral measures – cannot affect high seas, but possible due to flag and/or port state authority.
Opportunities to move forward:

Developments

- IMO 2008 comprehensive & coherent framework - GHG reduction, binding on all flag states, cost-effective, energy efficiency etc.
- CO2 Design Index?
- Replication of MARPOL 73.78 successful approaches.
- IMO *International Convention for the Control and Management of Ships’ Ballast Water and Sediments.*

Innovations

- Art 194 UNCLOS – jointly or individually take necessary measures to prevent, reduce, & control pollution.
- Global ETS?
- Regional seas approach – OSPAR?
- New directions for trade law?
- Port state authority and MOU under UNCLOS for port state control.
Land Transport: Frameworks, Constraints and Opportunities

**Existing instruments:**
- Road and rail transport is relatively under-regulated [can be seen as both a limit and opportunity]
- Existing treaties don’t impose significant constraints – mostly security oriented (*Convention on Road Traffic 1949 & 1968*).
- In rail transport, the *Convention relative aux transport internationaux ferroviaires* has explicit facilitation goal – New Vilnius Protocol (dangerous goods provisions).
- European Union has several laws in place (emissions, particulate matter, noise) and is contemplating far reaching measures in Greening Transport Package.

**Constraints and Opportunities**
- Territorial jurisdiction sets limits and opens opportunities.
- Potential environmental impacts from old vehicle fleets have been identified by UNECE.
- Regional approaches?
Conclusions

- **Global Action Needed:** Real opportunities for ICAO and IMO to find new ways regulating GHGs and have shown varying degrees of leadership in addressing other environmental consequences from international transport.

- **Building on Regional Innovations:** Regional initiatives offer successful models to debate, design and adopt innovative rules which later find their way into global schemes.

- **Supported by Domestic Regulation:** Considerable freedom to regulate exists for flag states, port states and otherwise affected states.

- **Shift from Security to Sustainability:** Past focus on security is evolving, actors are starting to address environmental / sustainable development issues.

- **Thinking beyond the Law:** Measures can be complemented by CSR, industry self-regulation and business wide recommendations.

- **Path Forward:** International law generally offers many opportunities in this sector, at this time.
Thank you / Gracias

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