



Impact of the refugees on Channel crossing transport



Context

Increase of the number of asylum requests in Europe in 2015

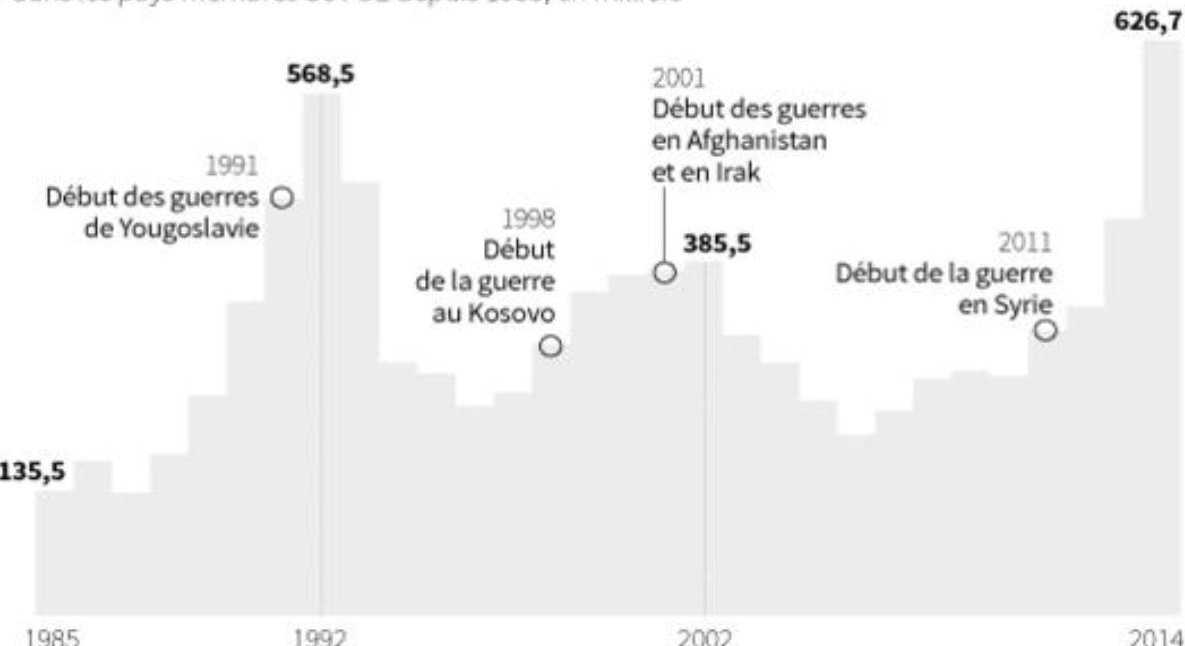
In France, increase of +22%

No European response adding a crisis of asylum and accomodation to the crisis of the refugees

Long term and structural issue (since 1991) exarcerbated by the lack of measures and facilities to manage the flow of asylum seekers

LA PLUS GRANDE VAGUE DE RÉFUGIÉS DEPUIS 30 ANS

Evolution du nombre de demandeurs d'asile dans les pays membres de l'UE depuis 1985, en milliers





Context

2 main attractive areas for the stowaways : Eurotunnel and port of Calais

Since the opening of the « jungle », there is no more squats in town





Context

The local economy is highly concerned

- Unemployment rate over the national average and growing fast
- Bad image of the town impacts tourism oriented activities (40 to 45% drop of turnover)
- -10% tourists

Postponed major project

- Oct 2015 the first Rail Motorway terminal delivered in a port
 - 105 wagons were ordered to Lohr Industrie to carry the trailers from Calais to the Spanish border
 - The launching scheduled to 12 January 2016 is postponed till 29 March for security reasons
 - Stowaways block the trains on the tracks, and climb in the trailers, damaging the cargo
 - They should not get access to the tracks where the trains are at low speed
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Context

Difficulties for the local Road Haulage companies

- Higher costs (X2)

Losses of customers

- Some prefer to avoid Calais: -9% tourists cross through the port of Calais, +26% in Dunkirk
- -33% of trains through the Channel tunnel

A moving problem

- Normandy: Le Havre, Dieppe, Ouistreham
 - A court in Dieppe decided the dismantling of a jungle in April 2016, but the « Préfecture » reminded that it was not up to the State to guarantee the integrity of the restricted access area but up to the terminal operator
 - But also Zeebrugge and tomorrow Rotterdam ?
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Stowaways intrusions and terminals security



Ports

Port security is rule by the ISPS code (IMO)

- Reg. CE n°725/2004 (31 march 2004) concerning ports facilities and ships security
- Dir. CE n°2005/65 (26 Oct. 2005) extends the spirit of the regulation to the whole ports
- Order 2007/476 (29 march 2007) includes the European regulations into the French corpus of laws
- An interministerial group dedicated to the security of maritime transport and port operations is created
- Some ports like Calais got a local comitee.



Eurotunnel & DB Cargo

Contract of concession:

- Art. 15: safety, security and border controls defined in terms of competences, costs of the security controls, customs and struggle against illegal immigration
- Art. 24: « exceptionnal circumstances and force majeure. Exoneration of liability of the parties in case of force majeure

An Intergovernmental Commission (IGC) was created by the Treaty of Canterbury (1986)

A local comitee of security was created to advise the ICG on all the security issues



Eurotunnel & DB Cargo

Commercial background:

- The situation seems to be stabilized and operating hours increased back to a 24 hour operation
- The railway at Calais and through the tunnel is operated with high voltage overhead power lines – during incursions the power has to be switched off, preventing train movements
- Many refugees come from countries with little or no railway culture. They have a different perception of safety
- Trains had to be operated with 2 drivers under instruction not to leave locomotives or interact with refugees as the operating environment can be intimidating
- Some businesses have ceased totally (e.g. containerised FMCG goods from Italy) and other businesses continue at a much reduced level.



Eurotunnel & DB Cargo

- Due to reliability issues, customers have adapted their supply chains
- DBC UK has lost over £5M in revenue since the start of July 2015 due to trains cancelled or not ordered
- Across all operators there has been a 33% decline in number of rail freight trains at the Channel tunnel due to the intrusions
- Before the top of the crisis in July 2015 DBC UK operated an average of 30 trains per week in each direction through the tunnel. Currently this figure has dropped to 20. At the height of the disruptions, the number was as low as 15 or 16
- No containerised service uses Eurotunnel currently



Eurotunnel & DB Cargo

Controls and protection devices

- Fencing: on its own, it is never sufficient. Stowaways use steel saws and cut the fences
- On the terminals, security guards with dogs patrolling around the fences are crucial
- DBC UK carries out additional security checks on trains entering the UK at Dolland's Moor
- Security procedures currently in place have been proved successful in deterring clandestines from boarding trains and detected 76 stowaways who crossed between July 2015 and April 2016
- Since 2013, DBC UK has invested over £600.000 in security measures at Dolland's Moor to meet the requirements of DfT (replacement of CCTV, updated trace explosive equipment, more security staff, etc.)



Eurotunnel & DB Cargo

Controls and protection devices

- DBC UK endorses the strategy to manage all the cross Channel port infrastructure at Calais as one
- Good quality fencing, lighting and security guards are required in sufficient number to simultaneously secure all the infrastructure round the clock
- A 24/7 presence is needed by SNCF-SUGE to protect the facilities particularly away from the tunnel entrance to Fontinettes. This means that Eurotunnel can deploy its resources elsewhere too

Port and tunnel are more secured and it is very difficult to use this ways to cross

New methods, more aggressive take place on the motorways with tragic ends for many of them



Stowaways intrusions and liability of the hauliers



Liability of the haulier

Liability in case of damages to the stowaways

- Civil liability

Road haulage: law of 05 July 1985 , n°85-677

Rail transport: common rule over **delictual civil liability**

Maritime transport: difficulties to determine the applicable law (pavilion, place of the accident, nationality of the victim...). Under the French law, use of the general regime of liability to the ships mentioned in the art. L5121-1 and following of the Code of transports with **limitations of liability**

- Penal liability: unintentional injuries (222-19 Penal Code), reckless endangerment (223-1)
 - Specific offense in compliance with the Code of entries and stay of the foreigners and asylum seekers
 - Civil penalties in UK: fines till £2.000 per stowaway
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Liability in case of loss or damages

Road haulage

National: loss, damages, delays: art. L133-1 and L133-2 of the Code of Commerce (*The haulier guarantees against the loss of the cargo, excepted in case of force majeure...*)

Exemptions: force majeure or inherent defect or vice of the goods (L133-1 al 2) and fault of the co-contractor

International: art. 17 of the CMR

Maritime transport

French law : art L5422-12 of the Code of Transports considers that the shipping company is responsible for the loss and damages, unless he proves that these losses result from exempting causes enumerated.

Convention of Brussels 25 August 1924 – The Hague Rules:

The shipping company is presumed person in charge and can exempt itself only by establishing a case of exception on a list of 17



Liability in case of loss or damages

Rail transport

The internal rail transportations are submitted to the **common law** of the ground transport with the same causes of exemption

The agreement relative to the international rail transportations (COTIF, in May 9th, 1980) is applicable to the international rail transportations, in particular the appendix B of this agreement which is dedicated in the uniform rules concerning the contract of railroad international transport of the goods (RU-CIM on 1999)



An already covered risk?

French policy of insurance of the goods transported by land (in July 1st, 2012)

French policy of marine insurance on faculties (cargo) with guarantee "any risks" (in July 1st, 2009)

Question of the exclusion from guarantee bound in the "riots, popular movements, strikes, lockout and other similar facts..."

It should not cover the hypothesis of migrants' intrusion, except particular context or exceptional circumstances.

French policy of marine insurance on faculties (goods) Guarantee "sauf FAP" (in July 1st, 2009): **damage caused by migrants' intrusion is not covered**



Relevance of the creation of a new guarantee?

Thinking on the necessity of a new *specific* guarantee

e.g. guarantee for specific theft for Italy in the 90s

However, there are already some specific guarantees:

Additional clause - conditions of guarantee of theft risks - public transports of goods by road (in July 1st, 2009). The guarantee is acquired, **subject to the respect for the rulers of measures of prevention**

Complains ?

on a contractual base

Formed by Eurotunnel at the level of 29M€, based on the treaty of Canterbury and the contract of concession

The precedent in 2007: partial judgment of the international arbitral Court of The Hague establishing the responsibility of the British and French States concerning the camp of Sangatte

Appeal against the State on an extracontractual base

Beforehand, required to “bind” the dispute: in administrative affairs, the request must be managed against an administrative act

To obtain such an act, it is necessary to make a request to the administration, to request an answer

Express answer: it will establish the foundation of the appeal

Absence of answer: the silence of the administration during two months will be worth refusal and will allow to introduce a contentious procedure

Complains ?

Appeal against the State on a contractual special foundation

Administrative policy

- Liability for fault
- Responsibility without fault for break of the equality in front of the public office

Responsibility for created risk

Liability for risk created by the administration because of activities or because of dangerous situations

Case law creation (IT, in March 28th, 1919, Regnault-Desroziere; on February 3rd, 1956 Minister of Justice vs Thouzellier): responsibility **without fault**



Conclusions ?

Migrations : short term or structural issue ?

Means to protect the traffic exist but have a cost. Where are they the most useful ? Last mile ? Terminals within the port ? All the port ?

If no agreement is found on the infrastructure, the market will find another place to cross. And will bring stowaways with it.

Liability can be searched, but will have a cost as insurances will have to pay more. Relationships between contractual parties will worsen. Over costs for the chain of transport and less reliability

Liability of the State can be searched too. But legal affairs require time while we need reactivity.

Who can assume the overcosts ? Should they be let to the market only ? If yes, what about the objectives of modal shift ?