



SELECTED LEGAL ISSUES AFFECTING MULTIMODAL TRANSPORT OPERATIONS IN ASIA AND THE PACIFIC

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OVERVIEW

- Several international conventions designed to regulate unimodal carriage;
- diverse regional/sub-regional agreements;
- national laws;
- standard term contracts

*A fragmented and complex legal framework creates uncertainty, which in turn creates transaction costs as it gives rise to legal and evidentiary enquiries, costly litigation and rising insurance costs.

KEY ISSUES IN REGULATING MULTIMODAL TRANSPORT

- Infrastructure;
- Legal/administrative requirements;
- Industry practices.

INFRASTRUCTURE

- Successfully coordinated and harmonized regionally – at first unimodally (AH/TAR) and later in more integrated manner:
 - ESCAP Intergovernmental Agreement on Dry Ports;
 - UNECE European Agreement on Important International Combined Transport Lines and Related Installations
 - OSJD Agreement on Organizational and Operational Aspects of Combined Transportation between Europe and Asia
- * Already observed differences in terminology: this can be seen across instruments and bibliography (intermodal, multimodal, combined transport) – differing legal vs. operational understandings of terms
- Infrastructure agreements are necessary but not sufficient for multimodal transport – they do not address operational complexities and they are also of limited geographical scope.

LEGAL/ADMINISTRATIVE ISSUES

- Risks, liabilities and limitation of liability (straightforward in case of unimodal carriage)
- Multimodal transport: often multiple contracts (sub-contracting)
 - *difficult to realistically predict the amount of compensation to be paid in any scenario (multiple causes, non-localized loss etc). Under these circumstances, insurance costs tend to increase
- Significant differences in monetary limits of liability between unimodal regimes
- difficult to determine at the outset of a multimodal transport what – international and/or national – law will apply to the contract as a whole or to its various parts.

TYPES OF LIABILITY SYSTEMS

- Network: divides the journey into stages as if there had been separate contracts for each stage.
 - Advantage:** the main contract and the second layer of contracts will be matched, and the same rules will apply;
 - Disadvantage:** cases of non-localized loss, gradual loss and “in-between stages” e.g. warehousing
- Uniform: same rules of liability apply throughout the entire transport, irrespective of mode of transport or where the loss/damage occurred
 - Advantage:** transparency
 - Disadvantage:** Recourse gap (when the multimodal carrier is held liable for a larger amount than can be regained from the actual carrier)
- “Limited network” system: combines both (in principle uniform system unless an exception applies)
 - Disadvantage:** more than one unimodal regime could apply to claims - confusion as to which of these regimes actually governs a specific dispute, often leaving it to the discretion of the court to determine on a case-by-case basis.

EXISTING CONVENTIONS/AGREEMENTS

- Several developed, none implemented:
 - (i) United Nations Convention on International Multimodal Transport of Goods (uniform system, not in force);
 - (ii) Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (limited network system, not in force);
 - (iii) ASEAN Framework Agreement on Multimodal Transport (uniform system – in force but not fully implemented);
 - (iv) Agreement on the Development of Multimodal transport on the Europe-Caucasus-Asia Corridor (uniform system – not implemented);

Commercial practices and industry led initiatives

- UNCTAD/ICC Rules: standard set of contract rules attempts to fill the gap in the field of international multimodal transport liability legislation that was expected initially to have been covered by the UN Convention.
- The rules have been incorporated in widely used multimodal transport documents such as the FIATA Multimodal Bill of Lading (FBL)
- FIATA Multimodal Transport Waybill (FWB)

Possible ways forward

- Another liability regime may just add to the proliferation of regional law in this area. In order to solve the existing problems in multimodal transport law without adding any more options for conflict, an instrument of a supplementary nature might be a reasonable option
- guidelines that could serve to harmonize the understanding and applications of certain related processes within national legal systems.
- development of capacity building programmes tailored to assist practitioners and officials in uniform application of existing contractual rules on multimodal transport, based on the existing recommendations
- New legal instrument which could be:
 - Regional; or
 - Sub-regional; or
 - Corridor-based.

Thank you

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