SOME LEGAL ISSUES CONCERNING
THE MULTIMODAL TRANSPORT
IN THE ASIA–PACIFIC REGION

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The Eurasian land transport corridors passed through areas of the ESCAP region can provide the appropriate transit time and the cost of goods transportation among countries in the Asia-Pacific region, European Union, South-East Asia and Central Asia. The latitudinal railway and road routes of the member States constitute the infrastructure core of these corridors.
FACTORS OF THE TRANSPORT CORRIDORS DEVELOPMENT

The expanding of international economic cooperation and involving an increasing number of regional trade markets have led to a significant increase in volume of trade value and, respectively, in traffic flows between Europe and Asia countries. It leads to significant increase in containerization in Euro-Asian flow.

The increasing need for providing and widening the economic cooperation among states predetermined the necessity to diversify of the existing supply routes and to conduct the coordinated activity to form the stable over land connection, first of all, through the largest international organizations.

The formation of transcontinental transport corridors with high-technical and quality characteristics could help optimize the existing structure of the Global Economy, which is, increase the access to raw materials and to new markets with significant delivery time reduction and simplification of controls for all transport market participants.

The formations of reliable international transport land corridors is an integral factor in the economic development and regional integration; it contributes to wider integration of the regions (notably the landlocked countries of Central Asia) in global trade–manufacturing chains.

In order to speed up the cargo traffic the coordinated technical and organizational parameters are required as well as the implementation of compatible transportation solutions as the basis for the integration of national transport system into the World Transport System.
The major development trends in multimodal transportation

The multimodal transportation is an essential component of a systemic approach to business in an increasingly competitive and interdependent global economy. The availability of the technology and improved information systems provide advanced features to coordinate services between transport regimes and terminals.

By using the integrated transport solutions, the existing capacity and infrastructure can be used more efficiently through the multimodal transport, they can serve more cargo flows, meet the requirements of global supply chains, and promote a better balance between cargo delivery modes.

The modern-day legal system, however, doesn’t reflect the changes in terms of transport models, technologies and international trades.

The current legal framework consists of several international conventions, which provide the regulation of unimodal transport, various regional/sub-regional agreements, national legislation and standard fixed-term contracts.

The fragmented and complex legal framework creates uncertainty, which turns creates transaction costs, as it leads to legal and evidentiary investigations, costly litigation and rising insurance costs.
THE KEY FACTORS IN THE MULTIMODAL FREIGHT AND CARGO TRANSPORTATION REGULATION

The regulation of efficient multimodal transport system has 3 key elements, such as: transport infrastructure, legal/administrative requirements and industry.

The current infrastructure agreements

UNECE European agreement on International Combined Transport Lines and related facilities (ICTL)

The agreement defines the minimum standards for infrastructure of combined transport, including the railway lines and terminals, all lines and corridors to which the standard would apply.

This creates a common framework for planning transport infrastructure in almost all European countries.

OSJD agreement about organizational and operational aspects of combined transport between Europe and Asia

The agreement defines the network of main lines for combined transport and the main technical parameters of such lines.

The agreement is based on the ICTL and similar to it by subject and structure.

ESCAP intergovernmental agreement on dry ports

The Agreement was designed to strengthen the regional cooperation among ESCAP member States for the coordinated development of regional transport and logistics.

The agreement complements the Intergovernmental Agreement on the Asian Highway Network and the Agreement on the Trans-Asian Network by promoting the integration of modes of transport.
The major challenge arising from the unpredictability of the applicable legal framework, when it comes to multimodal transport, it is in terms of financial issues. In unimodal freight and cargo transportation each party undertakes specific risks, some obligations and limitations of liability for its own part of the contract of carriage.

The uncertainty about the governing law in multimodal transportation leads to impossibility of the cargo claimant and carries to make a realistic assessment of the compensation, if it will be paid in any case. The liability limits of the carrier are very different in their nature in accordance with the mode of transport as they are specifically adopted to the requirements and risks of each mode of transport.

The lack of a unified legal framework and legitimate liability in multimodal transport leads to significant differences in compensation to be paid, between one liability regime and another. This complicates the transport liability and increases the risk of additional costs.

There is no uniformity in the definition of "the most general type of transport operations", which includes several types of transport. The terms, such as “intermodal transport”, “multimodal transport” and “combined transport” are used interchangeably and even on random basis.
DIFFICULTIES IN DEFINING OF INTERNATIONAL RESPONSIBILITY

The lack of an unified legal framework in multimodal transportation makes difficult to identify at the beginning of such transportation the following items:

- Which international liability and/or national law would apply for the whole multimodal contract or for its parts.
- Which regime is recognized and applicable.

Application of any regime depends on several factors, such as: type and volume of multimodal transportations, contract, which modes of transport were reflected in the contract and in which way, then how exactly the transport documents addressed to the Court were prepared, views on scope and application of unimodal conventions and other factors.
GOALS OF CREATING THE UNIFIED LEGAL FRAMEWORK FOR MULTIMODAL TRANSPORT

The transportation must provide:
- operational efficiency;
- adequate legal protection of cargo and passengers

TWO MAIN PROBLEMS FOR CARRIERS:

- LIMITATION OF THEIR LIABILITY IN THE CASE OF LOSS OR DAMAGE OF THE CARGO;
- ISSUES OF MINIMIZATION THE COST OF THEIR INSURANCE

As concern the limitation of liability: various international conventions on unimodal transport provide different means to avoid liability and low limits for recoverable amount, or maximum quantity of goods per weight unit or per package.

For multimodal transportations – the accident and liability risks are not protected.
THE MAIN LEGAL AND RECOMMENDING DOCUMENTS FOR THE CURRENT PERIOD

UN Convention on international combined transportation of cargoes – Convention MT – 1980 was not accepted, as the required number of supporters for its acceptance is 30, while the actual number of supporters of this Convention is 11, and since 1996 there have been no new joinings.

ASEAN framework agreement on multimodal Transport of 2005 (AFAMI), which has entered into force for 8 out of 10 ASEAN member states.

Convention on contracts for the international carriage of goods wholly or partly by sea, also known as the Rotterdam Rules, which was signed in Rotterdam on 23 September 2009. This Convention was originally intended to unify the legal aspects of Maritime transport.

Agreement on the development of multimodal transport along the Europe-Caucasus-Asia corridor, which was concluded in 2009 within the framework of the TRACECA program and is intended to regulate the conditions of multimodal transport along this corridor.

Multimodal transport documents of FIATA – multimodal bill of FIATA, FIATA bill of lading (FBL) and FIATA multimodal transport waybill (FWB), as well as UNCTAD / ICC and Rules for multimodal transport documents.
The main reasons for the lack of demand for current legal documents

The limitation of liability is determined by any applicable international unimodal Convention or mandatory national law that provides for a higher limit of liability than that provided for by the MT Convention.

High monetary ensuring of responsibility.

The confusion in consideration of the claims: which of the legal regimes actually governs a particular dispute is left to the discretion of the court to determine on a case-by-case basis.

Numerous recourse actions against the carrier’s sub-contracted modes of transport and the proposal to introduce the mandatory limited liability of levels in relation to transport, otherwise not fall under the action of mandatory legislation.

The limited network of the Rotterdam rules, which proved to be too complex for practical application and the instrument also did not attract enough members for its entry into force.

FIATA multimodal transport documents play the important role in filling the legislative gap due to recommendations on unification of contract relationships. At the same time they are not legal documents, but recommendations for the freight forwarding industry.
ECONOMIC LOSSES FROM THE LACK OF AN UNIFIED LEGAL FRAMEWORK

SOME FIGURES:
The average cost of renewal of the SMGS consignment note into the CRM consignment note, the sea bill of landing into the SMGS consignment note is $15 – 20 /document.

Assuming that there are 2-4 types of transport in the standard logistics chain, the cost of a single shipper for processing several transport documents can reach Up to $60 – 80 /container.

If the volume of Euro-Asian multimodal transportations is up to 300,000 TEUs per year, additional costs for clients for processing documents can reach $18 000 000 – 24 000 000 per year.

It should also take into account the indirect losses of cargo owners from delays and downtime associated with the time required for reissuing documents and possible errors in their reissue.
However, the rules may enter into force only to the extent that they do not contradict a mandatory law, as well as the provisions of international conventions or national legislation applicable to multimodal transport.
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<td>The country's 13th five-year economic and social development plan (2016-2020) called for accelerating the development of intermodal transport and the construction of intermodal cargo hubs. The strategy of intermodal freight transport involves the study of goods flows to assess the existing capacity, intermodal infrastructure and hubs, development of a strategy of freight transport for each mode of transport, identification of bottlenecks and improvement of information technology to improve service levels and integration into the intermodal cargo hubs. The main corridors are linked to the freight corridors being developed under the “One belt, One road“ Initiative.</td>
<td>India's new electrified freight rail lines will allow trains to load more and deliver goods faster, cheaper and more reliably. The corridors will stimulate the economic development of industrial corridors and logistics parks along intermodal routes. Dedicated freight corridor lines are being built for a maximum speed of up to 100 km per hour compared to the current 25 km per hour. The routes will also have a load capacity of between 6,000 and 12,000 gross tons for freight trains with an axle load of 25 tons. The cargo corridors will significantly reduce the transit time from the point of departure to the destination point and, in some cases, reduce the delivery time by more than 50%.</td>
<td>The comprehensive plan for the expansion and modernization of the main infrastructure provides a balanced development of integrated transport infrastructure for all types of transport. Development of major transport hubs, logistics centers, dry ports and terminals on the main routes and at the junctions between modes of transport, as well as ensuring their interoperability. Extensive development of transit and multimodal transport. Use of digital resources, information and communication technologies, information standards and unified transport documents, as well as improving the transport energy efficiency.</td>
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1. ESCAP member-States are actively carried out the transportation in all modes of transport. However, not all states are parties to international agreements which provide using the unified and harmonized transport tools.

2. Various regional studies and agreements recommend the development of multimodal transport, which increases the efficiency of transport in general, as well as reduces an empty mileage, reduces greenhouse gas emissions and increases the flexibility of transport operations.

3. Different countries and integration associations of the UN ESCAP region have different approaches to the development of multimodal transport. Programs for their development are at different stages of development and implementation.

4. To avoid the barriers and obstacles for the movement of goods within the UN ESCAP region due to different legal regimes for multimodal transport created within integration associations or individual countries that fall geographically within UN ESCAP, it is advisable to develop a single international agreement that will ensure equal, harmonized and unified rules for multimodal transport throughout the UN ESCAP region.

5. Taking into account the global trend towards digitalization in transport, the proposed international agreement on regulation of multimodal transport should imply the use of a single document for such transport in a digital format in future work, which will ensure transparency for all transport participants and competent authorities of States, reduce the probability of fraud and abuse, minimize the human factor and clearly solve the issue of transferring a transport document when changing the modality.
1. Additions of new legal instruments to regional laws in the field of multimodal transport. Although such an instrument could not erase all the difficulties, but adding the law applicable to a multimodal contract, it is possible to fill in the gaps in the current legal framework without creating all sorts of new conflicts with existing transport regimes.

2. Development of guidelines for harmonizing the understanding and application of multimodal transport processes within national legal systems. In the form of a Guideline or Model law for member States, that may contain a list of relevant provisions that may be incorporated into legal instruments at the national level in order to promote the harmonization of national rules and regulations relating to multimodal transport.

3. Developing the process of capacity-building or a new program designed to assist practitioners and officials in the uniform application of contractual obligations and multimodal transport rules based on existing recommendations.

4. Preparation and start of the process of negotiations between countries on a new legal instrument that can be:
   • Regional (with potential participation of all interested member States);
   or * Sub-regional (with the participation of member States belonging to a specific sub-region);
   or * Corridor (with the participation of member States along one or more international intermodal routes) within international transport corridors.
Many countries in the ESCAP region are not able to fully realize the potential of multimodal transport and simplify its implementation due to the different limits of carrier’s liability.

It is advisable to develop a single international legal instrument that will ensure harmonized rules and conditions for multimodal transport throughout the ESCAP region, including the development of a mutually acceptable single limit of carrier’s liability during the multimodal transportation.

The digitalization of a single multimodal transport document will ensure the transparency for all transport participants and competent authorities of countries, reduce the probability of fraud and abuse, minimize the human factor and unambiguously solve the issue of transferring a transport document when changing the modality.

We suggest to consider 2 options for the UN ESCAP common legal document on multimodal transport that is being developed:

- A single international agreement with participation of all states of ESCAP
- "Corridor" principle of development and implementation of a single legal document.

Particularly, the use of a single digital multimodal document can be implemented on separate multimodal routes that play an important role in the development of international trade in the ESCAP region.
THANK YOU FOR YOUR ATTENTION!

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