International Regulation of Liability for Multimodal Transport

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I. Commercial significance of multimodal transport

What is multimodal transport?

• No single authoritative definition
• Carriage of goods by two or more modes of transport
• Door-to-door transport
• Often under one contract with one party assuming responsibility throughout
• Terms also used: intermodal transport, combined transport
Global containerized trade, 1996-2019
(million 20-foot equivalent units (TEUs) and percentage annual change)

Source: MDS Transmodal, World Cargo Database 23. 07 2020
Key characteristics of containerized transport

• Consolidation of goods in sealed unit(s)
• Carriage of goods by two or more modes of transport
• Difficult to localize loss/damage
• Important for cargo interests: liability of one party under one contract throughout/door-to-door; adequate levels of liability
• Liner shipping industry highly consolidated
• MT transport document – standard form/contract of adhesion
II. Current international liability framework

- No Multimodal Transport (MT) Convention in force

- National/regional/sub-regional MT regime (e.g. ASEAN Framework Agreement on Multimodal Transport (AFAMT) 2005) - if applicable;
  - Often based on 1980 MT Convention and/or UNCTAD/ICC Rules 1992

- Localized loss: unimodal Conventions on carriage by sea, land, air (if applicable)

- Otherwise: standard term contract (e.g. FIATA FBL, MULTIDOC)
Loss or damage in the course of transportation from point to point
Simplified scheme of liability limits under unimodal Conventions

1 SDR = approx. 1,41 USD
III. Problems

- Liability varies in incidence and extent depending on
  - Applicable liability regime
  - Modal stage where loss or damage occur
  - Causes of loss or damage

- Diversity of approach among unimodal conventions on key issues, e.g. liability basis, delay, limitation and time-bar

- Liability is fragmented and cannot be assessed in advance

- Current regulation of liability is complex and not cost-effective

- Proliferation of national solutions may further add to complexity
IV. Attempts at achieving a uniform regime at international level

1980 UN Convention on Multimodal Transportation of Goods

➢ has not entered into force (but has provided a basis for enacting laws on MT at national, regional and subregional level)

➢ liability not genuinely uniform = ‘modified system’

- Convention applies mandatorily to all contracts of multimodal transport between Contracting States
- MTO responsible throughout (from taking goods in charge to their delivery)
- Liability rules uniform, but limitation of liability may vary
IV. Attempts at achieving a uniform regime at international level

1992 UNCTAD/ICC Model Rules for Multimodal Transport Documents

➢ need to be incorporated into contracts
➢ apply subject to mandatory law

• Liability not uniform = ‘modified system’
• Exceptions to liability may vary
• Liability limits vary
Loss or damage in the course of transportation from point to point
Simplified scheme of liability limits under unimodal Conventions and existing multimodal regimes

A
--- Road ---
CMR
8.33 SDR/kg

B
--- Road ---
CMR
8.33 SDR/kg

--- Sea ---
HVR
2 SDR/kg or
666.67 SDR/pkg

--- Rail ---
COTIF/CIM
17 SDR/kg

--- Road ---
CMR
8.33 SDR/kg

[N.B. Same limit for air transport under Warsaw Convention;
Montreal Convention 19 SDR

MTC
2.75 SDR/kg or 920 SDR/pkg
8.33 SDR/kg
limit of unimodal Convention if higher
⇔ if no carriage by sea/water
⇔ if loss/damage localised

UNCTAD/ICC
2 SDR/kg or 666.67 SDR/pkg
8.33 SDR/kg
Rules
(Multidoc 95 FIATA FBL)
limit of unimodal Convention
⇔ if no carriage by sea/water
⇔ if loss/damage localised
IV. Attempts at overcoming the impasse

- European Commission
- UNECE
- UNCTAD


- UNCITRAL

*Rotterdam Rules* (UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008)

- to date 5 ratifications (out of 20 required for entry into force)
Summary:

- Existing legal framework for MT unsatisfactory 85%
- It is not cost-effective 76%
- An international instrument for MT desirable 92%
- Willingness to participate in a concerted effort to develop a new international instrument 98%
- **Support for extension of sea carriage regime to MT contracts involving a sea-leg** 13%
- Support for “Uniform System” 48%
- network and modified systems respectively 28% & 24%
- **Support for one party responsible throughout** 76%
Rotterdam Rules – suitable for multimodal transport?

• Modelled on maritime liability regimes (HVR and Hamburg Rules) but with considerable differences; lengthy and complex

• Changes to traditional commercial risk-allocation between carrier shipper/consignee

• Applicable to all multimodal transport that includes an international sea-leg

• Existing international unimodal Conventions are given precedence, to the extent that they apply, according to their own provisions, beyond pure unimodal transportation by road, rail, air and inland waterway, respectively (Art. 82)

Otherwise...
If loss is localized (solely before/after sea-carriage, Art. 26):

- Only **certain provisions** (on carrier liability, limitation of liability, time for suit) of any **hypothetically applicable** international unimodal convention apply

- **together with the remainder of Rotterdam Rules** (96 articles)
  - e.g. shipper liability, documentation, jurisdiction, volume contracts
  - National laws on multimodal transport do not apply

Extremely challenging task for courts in different jurisdictions

- Likelihood of extensive costly litigation
- Further fragmentation of internationally applicable rules on multimodal transport
- No legal certainty for contracting parties
If loss is not localized (e.g. containerized cargo) or if no international convention would have been applicable:

- Exclusively maritime liability regime of the Rotterdam Rules applies
  - including complex provisions on *carrier and shipper liability, documentation, jurisdiction, volume contracts* ...
  - *Liability limits*: 3 SDR per kg. & 875 SDR per pkg (art. 59) - higher than existing maritime conventions but much lower than conventions for land and air transport

- Irrespective of how short the sea leg and how long the land leg may be

- No account is taken of principles/rules on liability pertaining to other modes of transport or national law on MT

- Carrier may not be liable from *door-to-door*
Conclusions?

- Potential for international uniformity of law?

- Substantive liability regime: commercial risk-allocation between carrier and shipper?

- Suitability for multimodal transport?

- Way forward - Options?
  - Business as usual?
  - New international Convention?
  - Revisit/revise MT Convention?
  - Regional approach?
  - Consider non-mandatory liability regime, providing full compensation (invoice value + 10%) for loss or damage? (see e.g. EC Study 1999)
Thank you!
For further information, see also [https://unctad.org/ttl/legal](https://unctad.org/ttl/legal)

- **Implementation of Multimodal Transport Rules** (UNCTAD/SDTE/TLB/2 and a comparative table: UNCTAD/SDTE/TLB/2/Add.1)
- **Multimodal Transport: The Feasibility of an International Legal Instrument** (UNCTAD/SDTE/TLB/2003/1)