

International regulation of liability for multimodal transport

International transportation of goods is increasingly carried out on a door-to-door basis, involving more than one mode of transportation. While there is little information on the overall proportion of cargo transported by multiple modes, data on the development of containerized traffic provide some highly significant indications, as containers are designed for door-to-door transportation by different modes.

Since the mid-1960s, there has been an exponential increase in containerized transport, which is forecast to continue well into the future: **world port container throughput**, i.e. the number of movements taking place in ports, grew from zero in 1965 to 225.3 million moves in 2000. Container traffic is forecast to more than double until 2010 to almost 500 million moves; this represents an annual growth rate of 9 percent. While globally the major container flows are between Asia, Europe and North America, there are significant flows within all regions. It is estimated that **world seaborne trade in containerized cargo** will more than double from 1997 to 2006 to around 1 billion tons. Most of this containerized cargo will be transported by more than one mode before reaching its final destination. In 1999, the **value of manufactured goods exported** globally (f.o.b.) had risen to more than US\$ 4.2 trillion out of a total of US\$ 5.5 trillion for all goods exported. The majority of these high value goods will be transported in containers and involve multimodal transportation.

The growth of containerized transportation, together with technological developments improving the systems for transferring cargo between different modes, has considerably affected modern transport patterns and practices. Shippers and consignees are often interested in dealing with one party (Multimodal Transport Operator, MTO), who arranges for the transportation of goods from door to door and assumes contractual responsibility throughout, irrespective of whether this is also the party who actually carries out the different stages of the transport. Frequently, goods are carried in (sealed) containers, designed for transportation by different modes from door to door. As a result, it is often difficult to identify the stage/mode of transport where a loss, damage or delay in delivery occurs. Under the present regulatory framework, however, both the incidence and the extent of a carrier's liability may depend crucially (a) on whether a loss can be localized and (b) on which of a considerable number of potentially applicable rules and/or regulations is considered to be relevant by a court in a given forum.

The current liability framework does not reflect developments that have taken place in terms of transport patterns, technology and markets. No international uniform regime is in force to govern liability for loss, damage or delay arising from multimodal transport. Instead, the present legal framework consists of a complex array of international conventions designed to regulate unimodal carriage, diverse regional agreements, national laws and standard term contracts. As a result, both the applicable liability rules and the degree and extent of a carrier's liability vary greatly from case to case and are unpredictable.¹

¹ See UNCTAD, *Implementation of Multimodal Transport Rules* (UNCTAD/SDTE/TLB/2 and Add.1), available on the www.unctad.org website.

Over the years, there have been several attempts at drafting a set of rules to regulate liability arising from multimodal transportation, but none of these has brought about international uniformity. In 1980, the United Nations Convention on the Multimodal Transportation of Goods (the MT Convention) was adopted, but it did not attract the necessary number of ratifications and has not entered into force. In 1992, a set of standard contractual terms was prepared for incorporation into commercial contracts (UNCTAD/ICC Rules for Multimodal Transport Documents). However, as these Rules are contractual in nature, they are by definition subject to any applicable mandatory law and are thus not an effective means of achieving international uniformity.

More than 20 years have passed since the adoption of the MT Convention. During this time, globalization, together with significant developments in technology and communication and resulting changes in demand, has led to increased emphasis on multimodal transportation. In response to these developments, and in view of the absence of international uniform regulation of liability, there has been at the same time, a proliferation of diverse national, regional and subregional laws, often based to some extent on the MT Convention or the UNCTAD/ICC Rules, but creating a trend of further "disunification" at the international level. Recently, an UNCITRAL Working Group started consideration of a "Draft Instrument on Transport Law"² and of whether the Draft Instrument, primarily designed to govern sea-carriage, should also apply to all multimodal contracts, that include a sea-leg.

Against this background and particularly in view of the continuing growth of international multimodal transportation, fresh consideration of the need for an effective international instrument to govern multimodal transportation may be appropriate.

² UNCITRAL documents A/C.9/WG.III/WP.21 and Add.1, available on the www.uncitral.org website.

TDN 932(2) SITE

Questionnaire on multimodal transport regulation

1. Given the continuing growth of multimodal transport

(a) Do you think that the existing legal framework is satisfactory?

Yes No

(b) Do you think that it is cost-effective?

Yes No

Further comments, if any:

.....
.....
.....
.....
.....

2. The 1980 Convention on Multimodal Transportation of Goods has never entered into force, although a significant number of its provisions have been enacted in various regional, subregional and national laws and regulations.

What, in your view, are the reasons why the Convention did not attract sufficient ratifications to enter into force?

.....
.....
.....
.....
.....

3. Do you think that an international instrument governing liability arising from multimodal transportation would be desirable?

Yes No

4. If so, which of the following approaches do you consider the most appropriate?

(a) A new international instrument to govern multimodal transport;

(b) A revision of the 1980 MT Convention;

- (c) The extension of an international sea-carriage liability regime to all contracts for multimodal transport involving a sea-leg;
- (d) The extension of an international road-carriage liability regime to all contracts for multimodal transport involving a road-leg;
- (e) Other.

Further comments, if any:

.....
.....
.....
.....
.....

5. If concerted efforts were made towards the development of a new international instrument, would you support these efforts?

Yes No

6. Should any possible instrument governing multimodal transportation cover liability for delay?

Yes No

7. Which of the following liability systems would you think is most appropriate in any instrument governing multimodal transport:

(a) Uniform system: The same rules apply irrespective of the unimodal stage of transport during which loss, damage or delay occurs. There is no difference between cases where loss can or cannot be localized.

(b) Network system: Different rules apply depending on the unimodal stage of transport during which loss, damage or delay occurs. There is an "alternative" or "fall-back" set of rules for cases where loss, damage or delay cannot be localized.

(c) Modified system: Some rules apply irrespective of the unimodal stage of transport during which loss, damage or delay occurs, but the application of other rules depends on the unimodal stage of transport during which loss, damage or delay occurs.

Further comments, if any:

.....
.....
.....
.....
.....
.....

8. If you have expressed a preference for 7(b) or (c), which types of provisions should vary depending on the unimodal stage to which loss, damage or delay may be attributed:

(a) Only the provisions on limitation of liability;

(b) Other types of provisions. Please provide further indications.

.....
.....
.....
.....
.....

9. Should liability for loss, damage or delay under any international instrument governing multimodal transport be:

(a) (i) Fault-based: liability only in case of fault;

(ii) Strict: liability irrespective of fault.

(b) In any event, liability should be subject to certain exceptions.

	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>

10. Please express any views you may have on the question of monetary limitation of a carrier's/MTO's liability for loss, damage or delay:

.....
.....
.....
.....
.....

11. Should any international instrument governing multimodal transport be in the form of:

(a) A convention, which applies on a mandatory basis (application may not be excluded by contract) and provides mandatory rules on liability which override conflicting contractual terms;

(b) A convention which applies on a non-mandatory basis (may be contracted into or out of), but provides mandatory rules on liability which override conflicting contractual terms;

(c) Other.

Further comments, if any:

.....
.....
.....
.....
.....

12. Under existing regional, subregional and national laws and regulations on multimodal transport the contracting carrier/MTO is responsible throughout the entire transport even if the performance of some or all parts of the transport has been sub-contracted to others. In your view, should any international instrument governing multimodal transport:

(a) Adopt the same approach;

(b) Allow the contracting carrier/MTO to contract out of certain parts of the transport or out of certain functions related to the performance of the contract by including a clause to this effect in the transport document (or electronic equivalent).

13. Which international convention(s) governing liability in the field of carriage of goods by sea, land and air have been ratified or acceded to by your country?

.....
.....
.....
.....

14. Additional comments (Please attach additional sheets if necessary):

.....
.....
.....
.....
.....
.....
.....

Completed questionnaire should be returned no later than 15 October 2002 to:

UNCTAD secretariat
Ms. Mahin Faghfour
Chief, Legal Section, SITE
Palais des Nations
CH-1211, Geneva 10