International Multimodal Transport: Regulation of liability

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International Multimodal Transport: 
\textit{Regulation of liability}

I. Multimodal Transport & its commercial significance

II. Regulation of liability: \textit{Current liability framework}

III. Attempts at achieving a uniform regime at international level:
   1. 1980 UN Convention on International Multimodal Transport of Goods
   2. 1992 UNCTAD/ICC Rules for Multimodal Transport Documents

IV. New \textit{UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules)}
I. Multimodal Transport & its commercial significance

Introduction & background

1. What is multimodal transport?
   - carriage by two or more modes of transport
   - door-to-door transport
   - one contract with one party assuming responsibility throughout
   - one document
   - terms also used: intermodal transport & combined transport

2. Growth in containerized trade & multimodal transport
Data for 2011 are estimated and data for 2012 and 2013 are forecast. Source: RMT 2012 (forthcoming) on the basis of data from Clarkson Shipping Research Services. Flows in TEUS (Left scale) and Annual percentage change (right scale).
II. Regulation of liability for multimodal transport

Current liability framework:

- **MT Convention 1980** is not in force
- **National, regional, subregional MT laws** (ALADI, Andean Community, MERCOSUR, ASEAN)
- Localized loss: **unimodal Conventions** on carriage by sea, road, rail, air
- Otherwise: standard term contracts (*e.g.* **FIATA FBL 92, BIMCO MULTIDOC 95**)
Current liability framework

Liability varies depending on:

• *Stage of transport where loss or damage occurs*
• *Applicable regime*
• *Causes of loss or damage*

Diversity of approach on key issues, e.g. limitation amounts vary from 2 SDR (HVR) to 19 SDR (Montreal Convention)
III. Attempts at achieving a uniform regime at international level


   - Has not entered into force but has provided *a basis for enacting laws on MT at national, regional and subregional level*

   - Convention applies mandatorily *to all contracts of multimodal transport* between Contracting States

   - *Liability rules uniform*, but limitation of liability may vary

   - *MTO responsible throughout* (from taking goods in charge to their delivery)
2. **UNCTAD/ICC Rules for Multimodal Transport Documents 1992**

- Need to be *incorporated into contracts*
- Apply subject to mandatory international convention or national law
- Basis of liability: *uniform, But*
- **Exceptions** to liability may **vary**
- **Liability limits vary**
- Widely used: incorporated in *FIATA FBL 1992 & BIMCO MULTIDOC 1995*
IV. The Rotterdam Rules

• Adopted by the *United Nations General Assembly* on 11 December 2008

• **Was opened for signature** on 23 September 2009 in **Rotterdam**, the Netherlands

• 24 States have signed the Convention, but only one State (Spain) has ratified it

• **20 ratifications required for the Convention to enter into force**
The Rotterdam Rules:

What is covered?

• Apply to contracts for *carriage of goods by sea* and *multimodal transport involving an international sea leg*

• Based on maritime concepts and existing maritime liability regime, but significant changes in structure and substance

• Covers issues not currently subject to uniform liability regime, e.g. delivery of goods, right of control
And

- Many of the provisions are lengthy and highly complex (96 articles, only 3 relate to MT)

- Substantive liability rules more favourable to carriers

- Shippers’ obligations and liability more extensive and mandatory

- Chapters on jurisdiction & arbitration: optional

- Permit freedom of contract for “volume contracts” in liner trade: highly controversial
The Rotterdam Rules: Multimodal application

Application to Int. contracts of carriage of goods wholly or partly by sea (highly controversial)

Central issues:

1. Liability system: “not uniform” (art.26)

If loss is localized:

- if there is any unimodal convention hypothetically applicable
- only certain provisions of the unimodal convention apply
- Plus remainder of the Rotterdam Rules
If loss is not localized, or if no unimodal convention would be applicable:

- *maritime liability rules of the Rotterdam Rules apply*
- *even if goods were mainly carried by land / air*

Note:
Containerized cargo: *loss often not localized*
Land transport conventions: not globally applicable
Burden of proof: on the claimant
2. One party responsible throughout?

A. Period of responsibility: receipt to delivery (art. 12(1))
   But: may be contractually restricted to cover:
   the period from initial loading to final unloading
   under the contract of carriage (art. 12(3))

B. Responsibility for certain functions, e.g. loading, handling,
   stowing or unloading may be contractually transferred to
   the shipper, documentary shipper or consignee (art. 13(2))

So: carrier may not be responsible throughout
Multimodal transport not involving a sea leg is not covered:

- Further fragmentation of the law governing multimodal transport
- Practical impact: MT document?

The Rotterdam Rules will provide no improvement over the existing system

There will not be

- one party responsible throughout, or
- no uniform liability rules applicable
Who else is covered? Maritime performing party

Terminal operators, stevedores, warehousemen, cargo terminals engaged in logistics operations...

- May be liable as **maritime performing parties**, and subject to same liability regime of sea carriers

- **Inland carrier**: a maritime performing party if performs or undertake to perform activities exclusively within a port

- **Non-MPPs** are excluded
Position of freight forwarders

Freight forwarders as:

- **Carriers**: vis-à-vis small shipper
  
  *subject to liability regime of carrier*

- **Shippers**: vis-à-vis unimodal carrier, e.g. ocean carrier
  
  *subject to liability regime of shipper*
The Rotterdam Rules: *some industry views*

Strong lobbying:

- *Carriers’ interests*, e.g. BIMCO, ICS, WSC, *express their strong support*

- *Shippers’ interests*, e.g. European Shippers Council, *express strong opposition*

- *Fright forwarders & MT interests*, e.g. FIATA, CLECAT, *express serious concerns*
Summary & conclusions

Multimodal transport

• Is becoming increasingly important & will dominate the market in the future

• Need for an appropriate **physical** & **legal** infrastructure for its development

• Rotterdam Rules do not address challenges of modern MT

• Existing national / regional MT laws mainly based on the MT Convention 1980 & to a very limited extend the UNCTAD/ICC Rules

• Similar approach could be adopted in Iran
Need for cooperation of all interested parties!

Thank you
For further information see:

**UNCTAD documents: (www.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)
- Commentary by the UNCTAD secretariat on early text of the Rotterdam Rules (UNCTAD/SDTE/TLB/4)
- Mahin Faghfouri: Int. Regulation of Liability for MT, WMU Journal, April 2006
- For the text of the Rotterdam Rules and statements by some industry representatives see, UNCITRAL website: www.uncitrals.org