

## **Characteristics of multimodal transport: Problems and trends**

**Deyan Dimitrov**

**Abstract.** This article discusses the characteristics of multimodal transport in the context of the existing international legal framework. In connection with the performance of various modes of transport, there is currently no international agreement covering transport operations that involve more than one transport mode. For this reason, a number of global and regional initiatives are under way to harmonize the rules for international multimodal transport of goods. The joint efforts of the international community are focused on finding less polluting and more energy-efficient transport solutions.

The legal relations between the participants in the multimodal transport chain (sea, rail, road, air, water), as well as between the carriers and the other participants in multimodal transport (freight forwarders, multimodal transport operators, dry ports, etc.) have their specific features. These relations should be covered by a potential new legal framework. The allocation of responsibilities between all participants is an issue characterized by its complexity and the need to harmonize the legal frameworks for multimodal transport operations and international legal regulation.

**Keywords:** intermodal transport, multimodal transport, combined transport, multimodal contract, transport of goods

### **Terminology issues**

With multimodal transport contracts the great variety of terms used at each separate stage of the transport is the main problem faced by the parties and subcontractors. For example, the terms “intermodal transport”, “multimodal transport” and “combined transport” are often used interchangeably and even arbitrarily (Hoeks 2010, 267). The situation is complicated by the availability of a multitude of conventions that regulate internationally the relevant mode of transport and the resultant responsibilities for the subcontractors under the multimodal transport contract.

## Forms of multimodal transport contracts

The development of international trade and the increased use of maritime transport of containers, bulk goods or passengers are conditioned by the preparation of the increasingly sought-after combined transport contract. Today's delivery contracts are based on the well-known "door-to-door" principle and include not only the use of various transport modes but also a wide range of different and independent of one another carriers. This type of contracts can have very different forms. A good example is the legal action performed by the freight forwarder as an agent of the consignor, who in turn creates a series of individual transport contracts between the carriers engaged in sea, rail, road or another mode of transport. It is important to point out that these contracts are independent of one another and are individually responsible for complying with the relevant national laws or conventions. In such cases, the freight forwarder usually seeks to exclude any personal liability for *loss* and *damage* during the transfer of goods from one mode to another and the risk is often at the expense of the owner of the goods.

Another option would be that the freight forwarder or carrier acts, at the first stage of the transport, as an agent of the owner of the goods and has the right to independently negotiate the transport with the carriers at the subsequent stages. This is how a sea carrier can also organize the rail transport of containers or a rail carrier can organize respectively sea or land transport, and there could be numerous examples here. In this version of the contract, each individual sub-carrier is responsible only for their own part of the transport, and each stage of the transport process is in accordance with the local requirements or legislation. But here, it is again possible for the risk of damage or loss of the goods to be transferred to the owner of the goods.

An additional option to the above-mentioned is to negotiate a contract for multimodal transport by a combined transport operator. In this option, the combined transport operator is solely responsible for the safety of the goods during the transport process. The combined transport operator has already made contracts with unimodal carriers, who act as subcontractors of the combined transport operator. The important thing here is that the owner of the goods does not have a direct agreement with the unimodal carriers, and his rights and obligations depend entirely on the terms of the general combined transport contract.

Attempts to produce a uniform multimodal transport regime have so far been unsuccessful. Progress in this respect was achieved as far back as 1975, when the International Chamber of Commerce developed Uniform Rules for a Combined Transport Document, which can be applied individually to any multimodal transport contract. In the absence of any international legal regulation, the modified versions of the rules of the International Chamber of Commerce may be applied as varieties of standards under the regulations of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed in Warsaw on 12 October 1929 (Warsaw Convention) (Tompkins 2010, 2-4) and the other related documents about the harmonization of international private air law, the Uniform Rules Concerning the Contract for Inter-

national Carriage of Goods by Rail (CIM) under the Convention Concerning International Carriage by Rail (COTIF), the Convention on the Contract for the International Carriage of Goods by Road (CMR), the Hague-Visby Rules of 1968, which are an amendment to the Hague Rules of 1924, the Hamburg Rules of 1978 (Bäckdén 2019, Chapter II).

The analysis of the existing international legal framework for the performance of the various modes of transport shows that at present there is no international agreement covering transport operations that involve more than one transport mode (Harmonization of legal frameworks 2019). The attempts of the international community to establish a set of rules that would regulate this type of relations have been unsuccessful and as a result, most of the agreements that are made in practice meet the requirements for combined transport lines. Furthermore, these agreements are supplemented by various initiatives led by the transport industry and promoting a harmonized approach in relation to multimodal transport documents and operations.

### **Global and regional initiatives**

There are a number of global and regional initiatives to harmonize the rules for the international multimodal transport of goods. Such initiatives are: 1) the United Nations Convention on International Multimodal Transport of Goods 1980 (UN Convention on International Multimodal Transport of Goods 1980), which has never come into force, because it failed to receive the necessary support. According to this convention, international multimodal transport involves at least two transport modes from a place in one country to a place of delivery in another country, performed by a multimodal transport operator; 2) the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules of 2009) (Hoeks 2010, 22-23). This international convention has not come into force either, and a number of researchers share the opinion that the convention is more relevant to the Law of the Sea rather than to multimodal transport; 3) the ASEAN Framework Agreement on Multimodal Transport 2005 (AFAMT) (ASEAN Framework Agreement 2005), which has become effective for eight of the ten ASEAN Member States but is still not perceived as a legal instrument that requires full implementation; 4) the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) of 1 February 1991 (European Agreement 1991). This agreement sets minimal standards for international combined transport lines. Its main objective is to develop common quality standards for combined transport infrastructure of the main European transport corridors; 5) the Agreement on Organizational and Operational Aspects of Combined Transport between Europe and Asia of 4 June 1997. This agreement has been developed within the framework of the Organisation for Co-operation between Railways (OSJD) and defines the network of main lines for combined transport, as well as the main technical parameters of these lines.

In connection with conducting multimodal transport operations, the rules for the preparation of multimodal transport documents, developed jointly by

the United Nations Conference on Trade and Development and the International Chamber of Commerce, are accepted as leading rules (the UNCTAD/ICC Rules for Multimodal Transport Documents - Uniform Rules for a Combined Transport Document) (Kindred, Mary, Brooks 1997, 35-36). These rules came into force on 1 January 1992. They are rather contractual in nature and are not legally binding before their inclusion as clauses in the transport contract. In this context, it should be noted that the rules determine the relationship framework between the parties in the performance of combined transport, but their legal commitment with respect to the participants derives from the contract concluded between the participants. That is why the Uniform Rules are perceived as standard contractual conditions for inclusion in multimodal transport documents rather than as an imperative norm of international law. This is due to the fact that each element of the multimodal operation consists of a combination of various transport modes (such as sea, road, rail or air), and each one of these modes is subject to the mandatory provisions of international conventions or the relevant national legislation that is applicable to the multimodal transport contract. The UNCTAD/ICC Rules are included in a number of documents such as the Negotiable FIATA<sup>1</sup> Multimodal Transport Bill of Lading (FBL), the Non-Negotiable FIATA Multimodal Transport Waybill (FWB), and others.

It is possible to identify two approaches concerning the attempts to create a uniform multimodal transport contract: 1) the supporters of the “uniform” approach recommend sole responsibility under the contract from the moment of dispatching the goods to the moment of arrival at the final destination and preparation of the contract by uniform legislation for all parties; 2) the proponents of the “network” approach argue that if it is possible to ascertain the transit stage at which the damage or loss of goods occurred, then the carrier’s responsibility must be governed by the relevant convention or national legislation applicable to the territory where the damage was done (Wilson 2010, 253-260). In this regard, it should be noted that most attempts to determine the contract form encounter conventionalities that are applicable or not entirely applicable in an international environment (for example, the Hague or Hague-Visby Rules are hardly applicable outside Europe).

The legal relations between the participants in the multimodal transport chain (sea, rail, road, air, water), as well as between the carriers and the other participants in multimodal transport (freight forwarders, multimodal transport operators, dry ports, etc.) also have their specific features. For this reason, it is necessary to examine these relations with a view to identifying the main issues that should be covered by a potential new legal framework. The allocation of responsibilities between all participants is an issue characterized by its complexity and the need to harmonize the legal frameworks for multimodal transport operations and international legal regulation.

It is necessary to identify the legal problems that arise in the formulation and interpretation of the multimodal contract for the carriage of goods. In the absence of an applicable international convention, for example, it is possible

---

<sup>1</sup> International Federation of Freight Forwarders Associations.

for the parties to a multimodal transport contract to negotiate their own terms and as a result, the carrier may be subject to equal responsibility throughout the whole period of transit. Even in cases where a relevant international convention is applicable to a certain transport stage (for example, the Convention on the Contract for the International Carriage of Goods by Road - CMR), the parties to the contract may again agree on equal responsibility for the rest of transit traffic. In most cases, however, the carrier's responsibility will depend on identifying the place where the damage or loss occurred. When the place is identifiable, a legal form (an international convention or national law) will be sought to determine the carrier's responsibility. In this case, it is extremely important what clauses are included in the contract.

In case it is not known at what transport stage the damage or loss occurred, the parties have the freedom to draw up their own contract. In this regard, a variety of different solutions are available. With a view to ensuring maximum protection for the carrier, in some cases, it is presumed that the loss occurred during the sea stage of transport and as a result, the Hague or Hague-Visby Rules are applied. In other cases, carriers establish their own code of responsibility or accept the UNCTAD/ICC Rules.

The greatest difficulties for the owners of goods are related to the fact that it is not possible to predict before the start of the transit operation whether there will be a situation in which the goods will suffer damage. It will all depend on the stage at which the damage or loss occurred and whether this stage can be identified.

By signing a multimodal transport contract the operator assumes full responsibility for the performance of transport. This responsibility includes both the operator's actions and those of the carriers involved in the various transport stages. The operator concludes contracts with individual carriers and service providers. The contract specifies the terms of delivery: CIF, Franco, FOB, FOR. This means that the seller charters the ship at their own expense, pays the transport costs, customs duties and insurance, and bears the risk of loss or damage of the goods until the goods are delivered. If something happens to the goods during the separate transport stages, the respective carriers are accountable to the operator. The operator should develop a functioning logistic system through which they can control the established multimodal transport system.

### **The European Union's position on the multimodal contract for the carriage of goods**

Apart from being a priority in the relations between public and private entities at the global level, the multimodal contract for the carriage of goods is a topical issue on the agenda of a number of regional organizations. This is how the European Union promotes combined transport through the Combined Transport Directive (Council Directive 92/106/EEC 1992). This directive is aimed at stimulating the choice of combined transport operations by removing the authorization procedures and quantitative restrictions related to combined transport operations. It also helps clarify the non-application of road cabotage

restrictions to road transport and provide financial support through fiscal incentives for certain combined transport operations. In order to comply with the provisions of the Combined Transport Directive, the movement of goods should meet a number of specific criteria regarding distances and the type of freight units (EU Mobility and Transport 2020).

In connection with the implementation of various EU policies (for example, Environmental Policy, the EU's Common Transport Policy, etc.), multi-modal relations are also supported by other EU secondary law instruments. An example is the Directive on maximum weights and dimensions (Directive (EU) 2015/719 amending Council Directive 96/53/EC), which provides that Member States may allow the movement of heavier intermodal freight units on the road, when road transport is used in combined transport operations (Directive (EU) 2015/719 2015).

The practice of applying EU law in the context of multimodal transport of goods from one Member State to another shows the importance of concerted action and, in particular, the introduction of uniform rules for multimodal transport operations and their regulation at the EU level. The numerous judgments of the Court of Justice of the EU (Judgment of the Court 2010; Judgment of the Court 2014; Judgment of the Court 2018) in relation to international jurisdiction regarding requests for the performance of combined transport prove that case-law in this area is becoming better and better and is created every day. For example, in its judgment of 11 July 2018 in Case Zurich Insurance plc & Metso Minerals Oy v Abnormal Load Services (International) Ltd. (Judgment of the Court 2018), the European Court of Justice held that in the context of a contract for carriage of goods, their place of dispatch is closely connected with the essential nature of the services resulting from that contract. The reference for a preliminary ruling itself concerns international jurisdiction in respect of a claim for contractual damages under the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 ('the Brussels I Regulation') (Council Regulation (EC) No 44/2001 2001), in a context entailing the multimodal transport of goods from one Member State to another.

### **Normative regulations in Bulgaria**

The existing legal framework at the national level in Bulgaria, which regulates combined transport, meets the EU development criteria. This mode of transport is regulated by Ordinance No 53/2003 on the performance of combined transport of goods, which fully meets the requirements of Council Directive 92/106/EEC. The favourable geographical location of the country creates good conditions for performing multimodal transport of goods through the sea and river ports of Bulgaria. This in turn contributes to generating higher added value and ensuring growth in the transport industry development.

## Conclusion

In conclusion, it should be noted that the international legal regulation of multimodal transport depends on objective real-life needs, in particular, on the needs of trade. In this regard, the interest of the international community in settling issues related to international transport activities for providing multimodal transport services is well-founded. The negative impacts of transport such as pollution, climate change, noise, congestion and accidents create problems for the economy, health and well-being of humankind. Therefore, the efforts of the international community should be focused on finding less polluting and more energy-efficient transport solutions.

Multimodality benefits from the strengths of different regulatory regimes such as convenience, speed, price, reliability, predictability, and others. Furthermore, when combined these strengths may even offer more efficient transport solutions for people and goods, which will help alleviate road congestion and will make the transport sector more environmentally friendly, safer and more economical.

## References

- ASEAN Framework Agreement 2005:** ASEAN Framework Agreement on Multimodal Transport, Signed in Vientiane, Lao PDR on 17 November 2005. Available from: <https://cil.nus.edu.sg/wp-content/uploads/2017/07/2005-ASEAN-Framework-Agreement-on-Multimodal-Transport.pdf> [Accessed: 6 November 2020].
- Bäckdén 2019:** P. Bäckdén. *The Contract of Carriage: Multimodal Transport and Unimodal Regulation*. Contemporary Commercial Law. New York, 2019.
- Council Directive 92/106/EEC 1992:** Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States. - Official Journal of the European Communities L 368, 17 December 1992, 38-42.
- Council Regulation (EC) No 44/2001 2001:** Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. - Official Journal of the European Communities L 12, 16 January 2001, 1-23.
- Directive (EU) 2015/719 2015:** Directive (EU) 2015/719 of the European Parliament and of the Council of 29 April 2015 amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic. - Official Journal of the European Union L 115, 6 May 2015, 1-10.
- EU Mobility and Transport 2020:** EU Mobility and Transport. Available from: [https://ec.europa.eu/transport/themes/logistics-and-multimodal-transport/multimodal-and-combined-transport\\_en](https://ec.europa.eu/transport/themes/logistics-and-multimodal-transport/multimodal-and-combined-transport_en) [Accessed: 6 November 2020].
- European Agreement 1991:** European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), Geneva, 1 February 1991. Available from: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XI-E-2&chapter=11&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-E-2&chapter=11&clang=_en) [Accessed: 6 November 2020].

- Harmonization of legal frameworks 2019:** Harmonization of Legal Frameworks for Multimodal Transport Operations in Asia and the Pacific ESCAP/DP/WG/2019/INF/1/Rev.1. Available from: [https://www.unescap.org/sites/default/files/ESCAP-DP-WG-2019-INF-1-Rev.1\\_Harmonization%20of%20Legal%20frameworks.pdf](https://www.unescap.org/sites/default/files/ESCAP-DP-WG-2019-INF-1-Rev.1_Harmonization%20of%20Legal%20frameworks.pdf) [Accessed: 6 November 2020].
- Hoeks 2010:** M. Hoeks. Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods. The Hague, 2010.
- Judgment of the Court 2010:** Judgment of the Court (Third Chamber) of 11 March 2010. Wood Floor Solutions Andreas Domberger GmbH v Silva Trade SA. C:19/09, EU:C:2010:137.
- Judgment of the Court 2014:** Judgment of the Court (First Chamber), 4 September 2014 Nickel & Goeldner Spedition GmbH v ‘Kintra’ UAB, C-157/13, EU:C:2014:2145.
- Judgment of the Court 2018:** Judgment of the Court (Third Chamber) of 11 July 2018 Zurich Insurance plc and Metso Minerals Oy v Abnormal Load Services (International) Ltd. C:88/17, ECLI:EU:C:2018:558.
- Kindred, Mary, Brooks 1997:** H. Kindred, M. Mary, R. Brooks. Multimodal Transport Rules. The Hague, 1997.
- Tompkins 2010:** G. N. Tompkins. Liability Rules Applicable to International Air Transportation as Developed by the Courts in the United States: From Warsaw 1929 to Montreal 1999. The Hague, 2010.
- UN Convention on International Multimodal Transport of Goods 1980:** United Nations Convention on International Multimodal Transport of Goods signed in Geneva, 24 May 1980. Records of the General Assembly, Thirty-third Session, Supplement No. 45 (A/33/45), p. 119.
- Wilson 2010:** J. F. Wilson. Carriage of Goods by Sea. Seventh Edition. Harlow, 2010.

**Chief Asst. Prof. Deyan Dimitrov, PhD**  
 Institute for the State and the Law  
 Bulgarian Academy of Sciences  
 4 Serdika Str.  
 1000 Sofia, Bulgaria  
 Email: dmdimitrov@abv.bg