

MULTIMODAL CARRIAGE OF GOODS: ASSESSING THE LIABILITY OF ACTUAL CARRIERS VIS-A-VIS THE CHAIN OF TRANSPORTATION

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Abstract

The practice of carriage of goods by no fewer than two different modes of transport up to a place designated for delivery situated in a different country is known as multimodal carriage of goods. By this practice, the massive growth in containerization which introduced modern concept of combined transport has moved the cargo delivery system from port to port to door to door. This research through doctrinal method examines the legal framework for transportation of goods under a single contract but performed with at least two different means of transport. It finds that multimodal transport becomes knotty because the consignee, consignor and multimodal transport operator (MTO) could be in different countries and the carriage is often performed by using sub-carriers known as actual carrier in legal parlance. The paper recommends flexibility of purpose to be able to respond rapidly to competition and market changes.

Keywords: Multimodal, Carriage, Liability, Actual, Carriers.

1. Introduction

Over the past decades the world has witnessed strategic considerable developments concerning the movement toward globalization. The trade liberalization paralleled by the revolution in information and communications technologies is continually advancing and significantly altering existing markets and triggering a race for the future. Apparently, a new economic era is materialising and driving more countries towards global economic integration. Also, partnering and forming alliances companies' best response, regionalism is emerging as countries' powerful option in the face of these on going global trends. National borders are increasingly disappearing and trade barriers are dismantled. Progressively, these developments required changes in the type and quality of transport and logistics services and infrastructure.

Therefore, new patterns of provision and management of transport have emerged. The massive growth in containerization which introduced modern concept of combined Transport has shifted the cargo delivery system from "port-to-port" to

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"door-to-door". Several industrial and agricultural companies have changed their production methods to be able to use containers for export and capture the advantages of combined transport.

2. Contextual Framework of Combined Transport

Combined transport (also referred to as Multimodal Transport) is the transportation of goods under a single contract but performed with at least two different means of transport. That is to say, the carrier (in a legal sense) is liable for the entire carriage even though it is performed with several different means of transport (e.g. rail, sea and road). The carrier, however, does not have to be in the possession of all of the means of transport and in practice usually is not. The carriage is often performed by using sub-carriers, in legal language often referred to as actual carriers. The carrier that is responsible for the entire carriage is referred to as a Multimodal Transport Operator (MTO).¹ It is a win-win situation for Multimodal Transporter.²

The U.N. Multimodal Convention (which has not entered into force and most likely never will) defines in multimodal transport as follows:

International multimodal transport' means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.³

This definition should be read in conjunction with the definition of the term "Multimodal Transport Operator" (MTO) which provides:

Multimodal Transport Operator means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the Multimodal Transport Operations, and who assumes responsibility for the performance of the contract.⁴

Simply, Multimodal Transport can be viewed as:

The chain that interconnects different links or modes of transport -air, sea, and land into one complete process that ensures an efficient and cost-effective door-to-door movement of goods under the

¹www.wikipedia.org/wiki/multimodal_transport assessed on 7th February 2010

²www.projectmanitor.com assessed on 8th February, 2010

³Article 1.1 of Multimodal Transport Convention of 1980. see also www.wikipedia.org/wiki/multimodal_transport

⁴Article 1(2) of Multimodal Transport Convention of 1980

responsibility of a single transport operator, known as a Multimodal Transport Operator (MTO), on one transport document.⁵

Thus, the main features of a multimodal transport are:

- a) The carriage of goods by two or more modes of transport, under one contract, one document and one responsible party (MTO) for the entire carriage.
- b) Who might subcontract the performance of some, or all modes, of the carriage to other carriers.⁶ The terms "combined transport" and "intermodal transport" are often used interchangeably to describe the carriage of goods by two or more modes of transport.⁷

3. Brief Evolution of Multimodal Transport

Multimodal transport evolved in connection with the container revolution during the 1960s and '70s. Today, these modes of transports have become the most important multimodal consignments. However, one must always bear in mind that multimodal transport is not the same with container transport and multimodal transport is just as feasible without any form of containers.⁸

Although, the practice might not be new, it evolved with the advent of containerization in the late 1950's. Since this period, certain important developments have influenced the modern development of multimodal transport. Governmental deregulation of different modes of transport in the late 1970s/early 1980s permitted the various modes to cooperate with one another and to coordinate their operations in meaningful and innovative ways. Other important developments include the removal of transport restrictions and the privatization of state-owned transport enterprises in various parts of the world in the late 1980s.⁹

It merits mentioning that with the present dynamism in markets and increasingly changing technologies, however, companies must be flexible to respond rapidly to

⁵ Sufian Atallah Al-Muhaisen, Vice-President of IMMTA World Free Zone Convention IZMIR 2005 Int'l Conference 22nd April 2005 "Overview of Trends in Multimodal Transport".

⁶ The glossary of the terms used in combined transport and related field issued by the United Nations Economic Commission for Europe (UN/ECE), defines "multimodal transport" as "carriage of goods by two or more modes of transport." The glossary is intended for the work of the three intergovernmental organizations, namely the European Community, the European Conference of Ministers of Transport (ECMT) and the UN/ECE. It is, however, specified that the "definitions are not applicable in their strictest sense to the legal and statistical fields, whose relevant documents of reference exist already." See document:

TRANS/WP.24/2000/1.

⁷ "Intermodal Transport" has been defined as "the movement of goods in one and the same loading unit or road vehicle, which uses successively two or more modes of transport without handling the goods themselves in changing modes." "Combined Transport" is defined as "intermodal transport where the major part of the European journey is by rail, inland and waterways or sea and any initial or final legs carried out by road are as short as possible." See document TRANS/WP.24/2000/1.

⁸ Ibid.

⁹ Ibid.

competition and market changes. In the couples of past two decades, just-in-time competition led business cycles to develop various management tools and techniques to survive. Quality management, time-based competition, benchmarking, outsourcing and change management are all examples of such instruments which were used to achieve the competitive or comparative advantage. The ultimate goal was to "deliver greater value to customers or create compatible value at a lower cost, or do both".¹⁰

Consequently, it was realized that differences in cost derive from the large number of activities performed from creating the product or service up to delivering it to the customer; that is the supply chain. The search to reduce costs and improve customer service resulted in the integration of all activities in the supply chain, including the transport chain.¹¹ Therefore, whoever manages these activities and their flow more effectively and efficiently will gain the cost advantage and then the competitive lead. With this development of logistics and supply chain management as a competitive strategic management tool, which enables enterprises to achieve the cost leadership, multimodal transport gained increased importance being the facilitator of a global supply chain.¹²

In practice, freight forwarders have become important MTOs as they have moved away from their traditional role as mere agents for the sender and accepting a much wider liability as carriers. Also large sea-carriers have evolved into MTOs as they provide their customers with so-called door-to-door services, i.e. the sea carrier offers transport from the sender's premises (situated somewhere inland) all the way to the receiver's premises (also often situated somewhere inland) instead of just offering more traditional tackle-to-tackle services or pier-to-pier services. MTOs that are not in the possession of a sea vessel (even though the transport includes a sea-leg), are in common law countries, in the United States especially, referred to as Non Vessel Operating Carriers (NVOCC).¹³

4. Multimodal Carriage: Legal Complexity in Sight?

In relation to legal regime, multimodal transport creates several difficult problems. Unimodal transports are regulated by different International Conventions. These conventions stipulate different basis for liability and of course different limitation of the liability for the carrier. Presently, the way out to this problem has been the so-called "network principle". By this principle, the different Conventions exist unchanged side by side, and hence, the carrier's liability is defined based on where the breach of contract has occurred (e.g. where the goods are damaged during the transport). But problems tend to arise if the breach of contract is not localized. The difficulty in sight concerning multimodal transport includes the followings:

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ www.wikipedia.org/wiki/multimodal_transport assessed on 7th February 2010

4.1 Legal Pluralism

It is no doubt that multimodal transport represents the carriage by at least two different modes of transport based upon one single contract. If the transport of good is performed domestically, the questions of rights, duties and liabilities will surely be resolved by reference to national legislation of the given state. But where international multimodal transport is involved, the situation becomes knotty because the consignee, consignor and Multimodal Transport Operator (MTO) could be in different countries.¹⁴

Hence, during the past decades, there were attempts to establish an international framework to govern this process. For instance, in 1973, set of rules were created by the International Chamber of Commerce (ICC) and in 1980, the UN Multimodal Transport Convention was signed. Although, the UN Multimodal Transport Convention allows for the creation of a new entity known as Multimodal Transport Operator (MTO), which could offer to shippers an optional door-to-door system of liability applying to multimodal transport document, but this convention has so far received little support. Whereas, the Convention was billed come into force, if 30 nations ratify it, up to 2004 only ten nations had. For this reason, in 1990, the situation compelled commercial parties jointly with UNCTAD to replace the ICC 1973 Combined Transport Rules by the UNCTAD/ICC Rules for Multimodal Transport Documents. Though, these rules have become commercial practices,¹⁵ they are of a contractual nature and therefore not a suitable means of achieving international uniformity.¹⁶

Importantly, the United Nations Commission on International Trade Law (UNCITRAL) in 1996 initiated a comprehensive international convention on multimodal transport that would be ratified and adopted into law by a majority of nations. To this end, at its 34th meeting in 2001, the Commission established a Working Group and entrusted it with the task of preparing legislative instrument on issues relating to the international carriage of goods to wit; the scope of application, obligations of the carrier, the period of responsibility of the carrier, obligations of the shipper, liability of the carrier and transport documents". In recent time, the Working Group began consideration of a "Draft Instrument on Transport Law" to apply to multimodal transport involving a sea leg. This is an issue of utmost importance which no doubt requires the attention of all entities interested in facilitating global trade. It was the belief of the International Multimodal Transportation Association (IMTA) that it is crucial that all countries, particularly the developing ones to participate in the deliberations to ensure their interests are taken into account.¹⁷

¹⁴ Sufian Atallah Al-Muhaisen, "Overview of Trends in Multimodal Transport" World Free Zone Convention-IZMIR 2005 Int'l Conference 22nd April 2005 available at www.wfzconvention.org.

¹⁵ That is new FIATA FBL, new BIMCO COMBIDOC, IMMTADOC.

¹⁶ Ibid.

¹⁷ Ibid.

4.2 Procedural Bottlenecks

There are many procedural bottlenecks militating against multimodal transport. Multimodal transportation is faced with the challenges of customs clearance, tax and licensing. At present, Multimodal Transport Operators (MTOs) are allowed to move their cargo from one Container Freight Station (CFS) to another. However, they are allowed to transport goods from the Inland Container Depot (ICD) to the Port. For instance, in India where customs do inspect goods at the Port thereby delaying the delivery of goods at the appropriate time.¹⁸ However, measures should be made to tip the economies of scale in favour of multimodal transporters. This will check pilferage, reduce procedural hassles and speed up the movement of goods. It has been stated that instead of examination of goods by the Customs, the government should have better intelligence to track the culprits.¹⁹ The government should also permit the movement of goods from one CFS to another in order to ensure the consolidation of cargo at one location and help economies of scale.

Essentially, procedural bottlenecks like Customs clearance, sales tax and licensing should be removed and where this is done, it will reduce the transit time for transportation of goods by 40-50 per cent. The load bearing capacity of transport vehicles should be increased.

5. Mandatory Application of Regulation and Control of Multimodal Transport

While considering the applicability of the Multimodal Transport Convention of 1980, it is important to consider the place for the taking in charge of the goods by Multimodal Transport Operator as stated in the Multimodal Transport contract located in a contracting state. It is also essential to take into account the place for delivery of goods by the Multimodal Transport Operator as provided for in the multimodal transport contract located in a contracting state.²⁰ After the conclusion of this Convention,²¹ and nothing shall affect the right of the consignor to choose between Multimodal Transport and segmented transport.²² However, the Convention allowed the compatibility of other international convention or national law relating to the regulation and control of transport operation. The Convention provides thus:

This Convention shall not affect, or be incompatible with, the application of any international convention or national law relating to the regulation and control of transport operations.

¹⁸ <http://www.projectsmonitor.com/detailnews.asp?newsid=7569>.

¹⁹ Ibid.

²⁰ Article 2 of Multimodal Transport Convention of 1980.

²¹ Article 3 (1) of Multimodal Transport Convention of 1980.

²² Ibid (3)

²³ Article 4(1) of Multimodal Transport Convention of 1980.

This Convention shall not affect the right of each State to regulate and control at the national level multimodal transport operations and multimodal transport operators, including the right to take measures relating to consultations, especially before the introduction of new technologies, and services, between multimodal transport operators, shippers, shippers' organizations and appropriate national authorities on terms and conditions of service; licensing of multimodal transport operators; participation in transport; and all other steps in the national economic and commercial interest.²⁴

The multimodal transport operator shall comply with the applicable law of the country in which he operates and with the provisions of this Convention.²⁵

6. Documentation of Multimodal Transport Contract

When the goods are taken in charge by the Multimodal Transport Operator, he shall issue a Multimodal Transport Document which, at the option of the consignor. The Multimodal Transport Document shall be signed by the Multimodal Transport operator or by a person having authority from him. The signature on the multimodal transport document may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if inconsistent with the law of the country where the multimodal transport document is issued.²⁶ Thereafter, the Multimodal Transport Operator, after having taken the goods in charge, shall deliver to the consignor a readable document containing all the particulars so recorded, and such document shall for the purposes of the provisions of this Convention be deemed to be a multimodal transport document.²⁷

The Multimodal Transport Document shall contain the following particulars:

- i. The apparent condition of the goods
- ii. The name and principal place of the Multimodal Transport Operator.
- iii. The name of the consignor
- iv. The consignee, if named by the consignor;
- v. The place and date of taking in charge of the goods by the Multimodal Transport Operator;
- vi. The place of delivery of the goods;
- vii. The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;
- viii. A statement indicating whether the multimodal transport document is negotiable or non-negotiable;
- ix. The place and date of issue of the multimodal transport document;

²⁴ Article 4 (2) of Multimodal Transport Convention of 1980.

²⁵ Article 4 (3) of Multimodal Transport Convention of 1980.

²⁶ Article 5 (1-4) of Multimodal Transport Convention of 1980.

²⁷ *ibid*

- x. The signature of the multimodal transport operator or of a person having authority from him;
- xi. The freight for each mode of transport, if expressly agreed between the parties, or the freight including its currency, to the extent payable by the consignee or other indication that freight is payable by him;
- xii. The intended journey route, modes of transport and places of transshipment if known at the time of issuance of the multimodal transport document;
- xiii. The statement referred to in paragraph 3 of article 28;
- xiv. Any other particulars which the parties may agree to insert in the multimodal transport document, if not inconsistent with the law of the country where the multimodal transport document is issued.²⁸

The absence from the multimodal transport document of one or more of the particulars referred to in the above shall not affect the legal character of the document as a multimodal transport document provided that it nevertheless meets the requirements set out in paragraph 4 of article 1.²⁹

7. Basis of Liability: Presumed fault or Neglect?

The liability of the Multimodal Transport Operator (MTO)³⁰ for loss of, or damage to, goods as well as delay in delivery is based on the principle of "presumed fault or neglect." That is to say that the MTO is liable if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge, unless the MTO proves that he, his servants or agents or any other person of whose services he makes use for the performance of the contract, took all measures that could reasonably be required to avoid the occurrence and its consequences.³¹

A key issue in the context of establishing the liability of the MTO for loss of, or damage to, goods has been the choice between the "uniform" or "network" system of liability.

Under the "uniform" system the same liability regime is applied to the entire Multimodal Transport, irrespective of the stage at which the loss or damage occurred.

Under the "network" system, the liability of the MTO for localized damage (i.e. damage known to have occurred during a particular stage of transport) is determined

²⁸ Article 6 (1)(b-c) of Multimodal Convention of 1980.

²⁹ *Ibid*.

³⁰ Article 1 (c) MT Convention defines "MTO" as "any person who on his own behalf or through another person acting in his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignee or of the carriers participating in the multimodal transport operations, and assumes responsibility for the performance of the contract."

³¹ Article 16 (1) of Multimodal Transport Convention of 1980. See also Rules 5(1) of UNCTAD/ICC. This provision is modelled on article 5 (1) of the Hamburg Rules.

by reference to the international convention or national law applicable to the Unimodal stage of transport during which the damage occurred.

The Convention adopts a uniform system of liability of the MTO for both localized and non-localized damage,³² except that in cases of localized damage the limits of liability are to be determined by reference to the applicable International Convention or mandatory National Law which provide a higher limit of liability than that of the Convention.³³ This approach, which is not entirely the "uniform", is known as the "Modified Network" system.

The period of responsibility of the MTO includes the entire period during which he is in charge of the goods, that is from the time he takes the goods in his charge to the time of the delivery.³⁴ The MTO is also liable for the acts and omissions of his servant or agent or any other person of whose services he makes use for the performance of the contract.³⁵

8. Delay in delivery

This occurs when the goods have not been delivered within the time expressly agreed upon or in the absence of such agreement, within the time which it would be reasonable to require of a diligent MTO, having regard to the circumstance of the case.³⁶ If the goods have not been delivered within 90 consecutive days following the date of delivery determined according to Article 16(2), the claimant may treat the goods as lost.³⁷ However, notwithstanding this provision, the MTO is not liable if he proves that the loss, damage or delay in delivery was caused by one or more of the following:

- a. Act or neglect of the consignor, the consignee or their representatives or agents;
- b. Insufficiency or defective packing of the goods, their marks or numbers;
- c. Handling, loading, unloading and stowage of the goods effected by the consignor, the consignee or their agents;
- d. Inherent vice or defect in the goods;
- e. Strike, lock-out, stoppage or restraint of labour beyond the control of the MTO.³⁸

9. Limitation of Liability

There are limitations to the liability of the MTO. The MTO's liability for loss of or damage to goods is to be limited to an amount not exceeding 920 units of account per package or other shipping unit, or 2.75 units of account per kilogram of gross

³²(Article 16 (1)) of Multimodal Transport Convention of 1980.

³³(Article 19) of Multimodal Transport Convention of 1980.

³⁴(Article 14) of Multimodal Transport Convention of 1980.

³⁵(Article 15) of Multimodal Transport Convention of 1980.

³⁶Article 16(2) of Multimodal Transport Convention of 1980.

³⁷Article 16(3) of Multimodal Transport Convention of 1980.

³⁸Rule 5.4 of the UNCTAD/ICC Rules on "defences of carriage by sea or inland waterways."

weight of the goods lost or damaged, whichever is the higher. If, however, the multimodal transport does not, according to the contract, include carriage by sea or by inland waterway, the limitation amount is raised to a higher level of 8.33 units of account (identical to that of the CMR) per kilogram of gross weight of the goods lost or damaged, without alternative package limitation.³⁹ The limitation of liability of the MTO for loss resulting from delay in delivery is calculated by reference to the rate of freight that is an amount equivalent to two and a half times the freight payable for the goods delayed, but without exceeding the total freight payable under the multimodal transport contract.⁴⁰

It should be noted however that MTO is not entitled to limit his liability if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the MTO done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result. The Convention provides thus:⁴¹

The multimodal transport operator is not entitled to the benefit of the limitation of liability provided for in this Convention if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the multimodal transport operator done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Notwithstanding paragraph 2 of article 20, a servant or agent of the multimodal transport operator or other person of whose services he makes use for the performance of the multimodal transport contract is not entitled to the benefit of the limitation of liability provided for in this Convention if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant, agent or other person, done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Another area in which Multimodal Transport Operator will not be entitled to limitation of liability is if he intentionally gives false information in respect of documentation of the goods with intention to defraud. The convention provides:

When the multimodal transport operator, with intent to defraud, gives in the multimodal transport document false information concerning the goods or omits any information required to be included under paragraph 1 (a) or (b) of article 8 or under article 9, he shall be liable, without the benefit of the limitation of liability provided for in this Convention, for any loss, damage or expenses incurred by a third

³⁹ (Article 18 (1) and (3) of Multimodal Transport Convention of 1980.

⁴⁰ (Article 18 (4) of Multimodal Transport Convention of 1980.

⁴¹ (Article 21) of Multimodal Transport Convention of 1980.

party, including a consignee, who acted in reliance on the description of the goods in the multimodal transport document issued.⁴²

10. Period of Responsibility

The period of responsibility of the multimodal transport operator for the goods under this Convention covers the period from the time he takes the goods in his charge to the time of their delivery.⁴³ For the purpose of this provision, the multimodal transport operator is deemed to be in charge of the good from the time he has taken over the goods from:

- a. The consignor or a person acting on his behalf; or
- b. An authority or other third party to whom, pursuant to law or relations applicable at the place of taking in charge, the goods must be handed over for transport;

However, the liability arises where he has delivered the goods:

- a. By handing over the goods to the consignee; or
- b. In case where the consignee does not receive the goods from the multimodal transport operator, placing them at the disposal of the consignee in accordance with the multimodal transport contract or with the law or with the usage of the particular trade applicable at the place of delivery; or
- c. By handing over the goods to another third party to whom, pursuant to law or regulations applicable at the place of delivery, the goods must be handed over.⁴⁴

11. Liability of the Multimodal Transport for his Servants and Agents

The MTO will also be vicariously responsible for acts and omissions of his servants or agents, when acting within the scope of their employment, or of any person of whose services he makes use for the performance of the contract, as if such acts or omissions were of his own.⁴⁵

12. Notice of Loss, Damage or Delay

Except notice of loss or damage which specifies the general nature of such loss or damage, is given in writing by the consignee to the multimodal transport operator not later than the working day after the day when the goods were handed over to the consignee, such handing over is prima facie evidence of the delivery by the multimodal transport operator of the goods as described in the multimodal transport document.⁴⁶ Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within six consecutive days after the day when the goods were handed over to the

⁴² Article 11 of Multimodal Transport Convention of 1980.

⁴³ Article 14 (1) of Multimodal Transport Convention of 1980.

⁴⁴ Article 14 (2) (a-b) of Multimodal Transport Convention of 1980.

⁴⁵ Article 15 of Multimodal Transport Convention of 1980.

⁴⁶ Article 24 (1), Multimodal Transport Convention, 1980.

consignee.⁴⁷ If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties or their authorised representatives at the place of delivery, notice in writing need not be given of loss or damage ascertained during such survey or inspection.⁴⁸

Consequently, in the case of any actual or apprehended loss or damage the multimodal transport operator and the consignee shall give all reasonable facilities to each other for inspecting and tallying the goods. There shall be no compensation payable to the claimant for loss resulting from delay in delivery unless:

- i. Notice has been given in writing to the multimodal transport operator within 60 consecutive days after the day when the goods were delivered by handing over to the consignee: or
- ii. When the consignee has been notified that the goods have been delivered in accordance with paragraph 2 (b) (ii) or (iii) of article 14.

13. Assessment of Compensation

In order to assess the compensation in relation to the liability of the operators of the multimodal transport, articles of the UNCTAD/ICC and MT Convention in providing for the compensation for loss or damage to the goods to be assessed by reference to the value of the goods at the place and time of their delivery to the consignee or at the place and the time when they should have been delivered in accordance with the MT contract. The value of the goods is to be determined according to the current commodity exchange price or if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

14. Time-Bar for Legal Proceedings

Although, multimodal transportation allows for arbitration,⁴⁹ the Multimodal Transport Convention provides for a period of two years within which legal proceedings relating to international multimodal transport have to be instituted in order to prevent the claim from being time-barred.⁵⁰ However, it is very important to note that if notification is not made in writing, stating the nature and main particulars of the claim, within six months after the day when the goods were delivered or, where the goods have not been delivered, after the day on which they should have been delivered, the action shall be time-barred at the expiry of this period.⁵¹

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ As to the place of arbitration, the options available to the claimant for jurisdiction are also available in case of arbitration. See Article 27 of Multimodal Transport Convention of 1980.

⁵⁰ Article 25 (1) of Multimodal Transport Convention of 1980.

⁵¹ Article 25 (1) of Multimodal Transport Convention of 1980.

For the purpose of calculating the time bar, the limitation period commences on the day after the day on which the multimodal transport operator has delivered the goods or part thereof or, where the goods have not been delivered, on the day after the last day on which the goods should have been delivered.⁵² The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.⁵³

Thus, a recourse action by the MTO for indemnity against sub-contractors is possible even after the expiration of limitation period, provided that it is permitted under the law of the State where proceedings are instituted and that it is not contrary to the provisions of another applicable international convention.⁵⁴

The Convention includes extensive provisions on documentation covering negotiable and non-negotiable multimodal transport documents, their contents, reservations and evidentiary effect.⁵⁵

The parties, especially has a wide option to institute an action for claims relating to international multimodal transport whereby the plaintiff could sue in one of the following places:

- i. The principal place of business or residence of the defendant;
- ii. The place where the Multimodal Transport contract was made;
- iii. The place of taking the goods in charge or the place of delivery; or
- iv. Any other place agreed upon and evidenced in the Multimodal Transport document.⁵⁶

15. Conclusion

This paper attempts to provide an overview of the laws and regulations concerning multimodal transport which have been ratified at the international level. As it is crystal appears from the discussion, some jurisdictions have adopted the network liability system making the liability of the MTO (in case of localized damage) subject to the provisions of mandatory international convention or national law applicable to the particular stage of transport during which the loss or damage occurred. Hence, the liability of the Multimodal Transport Operators changes depending on where the loss or damage takes place. In case of non-localized damage the MTO's liability is often made subject to general provisions of the law, which may not be easily determined in every case. A number of legislations, following the approach of the MT Convention, adopt modified network liability system based on presumed fault or neglect. These laws derive extensively from the provisions of the MT Convention and of the UNCTAD/ICC Rules for Multimodal Transport Documents.

⁵² Article 25 (2) of Multimodal Transport Convention of 1980.

⁵³ Article 25 (3) of Multimodal Transport Convention of 1980.

⁵⁴ (Article 25) of Multimodal Transport Convention of 1980.

⁵⁵ (Articles 5 to 10) of Multimodal Transport Convention of 1980.

⁵⁶ (Article 26) of Multimodal Transport Convention of 1980.

In general, these laws and regulations apply to multimodal transport contracts when the place of taking in charge, or delivery, of the goods is located in the country enacting the law. That is to say that such laws and regulations have a much wider scope of application and are not confined to the particular country or the region. The enacted laws and regulations are in general of mandatory nature and often specifically provide that any contractual stipulations to the contrary are null and void. Thus, standard terms and conditions may not be used to derogate from these laws.

Clearly the desire to reach uniformity of the law governing multimodal transport is far from being achieved. The present situation may be characterized by uncertainty as to the law applicable to multimodal transport operations. The lack of a uniform liability regime in force, diverse national laws and regulations including varying approaches on central issues such as the liability system, limits of liability, time-bar, etc., make it difficult for the parties to assess in advance the risks involved. The problem also arises if the loss is not localized and the stage of transport where the loss or damage occurred is not identified. In practice, standard terms documents which include varying liability provisions are normally used, but since these are contractual, they are usually subject to mandatory and divergent national laws and regulations. The situation is even more complicated where the damage has occurred gradually and during the entire process of transportation.

The present dis-unified and highly unsatisfactory situation regarding cargo liability regimes in general and multimodal transport in particular, has prompted a number of organizations to initiate investigations into possible measures to improve the situation. The solutions proposed vary from the preparation of a new set of model laws, to a mandatory international convention or a non-mandatory international convention, similar to the UN Convention on the International Sale of Goods 1980, to apply by default. It is recognized that model laws applicable by parties' contractual agreement or a non-mandatory international regime would be more widely acceptable but they would not be effective in promoting uniformity. While a mandatory international convention would, in principle, be the best means of creating international uniformity, experience has shown that international conventions are difficult to negotiate and very slow to enter into force. After twenty years, the UN Convention on International Multimodal Transport of Goods has not entered into force and is unlikely to do so in the near future, although a significant proportion of its provisions have been used in the preparation of a number of national and regional/sub regional legislation.

Importantly, the nature and scope of any possible course of action would need to be decided at a global level and with the involvement and participation of all interested parties. International coordination and cooperation are essential in order to arrive at a widely acceptable solution. The adoption of individual national or regional solutions would contribute to already existing uncertainty and lack of uniformity and thus work to the detriment of the international community.