

An Analysis of the Advantages and Disadvantages of Using a Multimodal Transport System in the Carriage of Goods

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Abstract: *Initially, carriage of goods used to take place only through sea voyage. However, during the era of containerization multimodal transport arrangements has become very important and the parties of the international contracts are preferring multimodal contracts over traditional international contracts such as F.O.B. and C.I.F. contracts. This article aims at having an in-depth look on the good and bad sides of using multimodal transport arrangements in carriage of goods so that the readers can have a proper idea of the rules relating to this area. In order to do so the basic difference between contract of carriage and multimodal transport has been showed. After that, the main advantages and disadvantages of using multimodal transport have been intensively scrutinized. Despite providing numerous benefits to the parties involved in international contract, the problem regarding multimodal transport system is that it has no single convention and different legs (e.g. sea leg, road leg) are governed by different rules. Therefore, this article makes a proper research and analysis on the conventions relating to multimodal contract such as The Hague Rules, Hague- Visby Rules, Hamburg Rules and CMR. Besides, ICC Rules for Multimodal Transport Documents 1992 has also been critically discussed. Rotterdam Rules is the only rule which covers all the modes of transport in multimodal contract. Therefore, to bring out the positive and negative aspects of multimodal contract, a comprehensive analysis of this convention has been made.*

Keywords: Shipping law, multimodal contract, multimodal transport arrangement, The Hague Rules, Hague- Visby Rules, Hamburg Rules, CMR, ICC Rules for Multimodal Transport Documents 1992, Rotterdam Rules.

1. INTRODUCTION

‘Since the advent of containerization the international community has sought to produce acceptable rules to govern the liability of carriers of goods who provide international services which combine more than one mode of transport.’¹

The significance of transport in international trade is very important. The rules relating to carriage of goods introduced during the time when the relevant contract of carriage used to involve only one sea voyage, where the carrier took responsibility from the moment the goods were loaded on vessel and his responsibility would last till discharge of goods. Such a process is known as ‘tackle to tackle’ or ‘alongside’ rule². It is to be noted that despite

¹ David A Glass, *Meddling in the multimodal muddle?—a network of conflict in the UNCITRAL Draft Convention on the Carriage of Goods [wholly or partly] [by sea]*, *Lloyds’ Maritime and Commercial Law Quarterly*.

² Simon Baughen: *Shipping Law* (6th edition, Routledge 2015) p-12.

importance of sea voyage in international contract, the role of multimodal transport has also become very crucial due to developments of containerization.³

In such a contract combined transport bill of lading is used for contracts of carriage and it will involve not only carriage by sea but also another or other modes of transport such as rail or road. In multimodal transport, the bill of lading generally will be a 'received for shipment' bill of lading instead of 'shipped' bill of lading.⁴ It is perhaps that multimodal transport is an extension of through carriage concept.⁵

Difference between contract of carriage and multimodal transport: 'The contract of carriage can be defined as a contract whereby the carrier agrees to transport goods from a certain place of delivery to a certain place of discharge, upon consideration of the payment of an agreed sum by the consignor.'⁶ This same definition goes for multimodal transport as well. But there is an exception exists with the contract of carriage and that is at least two modes of transport are used by the carrier.⁷

Again, there is certain difference exists between multimodal transport operator and freight forwarder. A multimodal transporter undertakes responsibility as principal for the carriage of goods throughout various modes of transport from one country to another.⁸ On the other hand, when it comes about freight forward contract, the consigner, by the freight forwarder acting as his agent, involves in a contractual relationship with carrier or carriers participating in the sea voyage.⁹ Furthermore, a unimodal carrier undertakes responsibility for only one part of the sea voyage and acts as agent for the other parts. Therefore, a contract between consigner and unimodal carrier will not constitute as multimodal transport contract.¹⁰

2. ADVANTAGE OF MULTIMODAL TRANSPORT

The traditional international contracts are based on port to port contract basis. For example, in C.I.F contract the carrier liability starts when the goods are loaded on the port of shipment. The liability of carrier remains till the discharge of the goods at port of destination.¹¹ Therefore, the seller has to arrange another carrier to bring the goods at port of shipment and the buyer also has to make other arrangements to take the goods from the port of destination to a particular store. On the other hand, multimodal contract is designed in such a way that carrier undertakes the whole modes of transport. Therefore, things become much easier for the seller and buyer. Because of multimodal contract seller do not have to worry about bring the goods at port and the buyer has not to make other arrangements as under multimodal contract the carrier takes responsibility of the whole journey regardless of different modes of transport. Indeed, multimodal contract mechanism is designed to provide door to door transport for the benefits of seller and buyer.

³ D A Glass and R Nair, *Towards flexible carriage documents? Reducing the need for modally distinct documents in international goods transport*, 2009, Journal of International Maritime Law.

⁴ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015) p-12.

⁵ Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016).

⁶ Manuel Franco, *Multimodal transport after the Rotterdam Rules: will it work this time?*, 2012, Journal of International Maritime Law.

⁷ HM Kindred and M R Brooks, *Multimodal Transport Rules* (Brill The Hague 1997) p-2

⁸ Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016).

⁹ Manuel Franco, *Multimodal transport after the Rotterdam Rules: will it work this time?*, 2012, Journal of International Maritime Law.

¹⁰ J F Wilson: *Carriage of Goods by Sea* (Longman Harlow 2008) p 246.

¹¹ Nicholas Ryder, Margaret Griffiths, Lachmi Singh: *Commercial Law Principles and Policy* (1st Edition, Cambridge University Press 2012).

Besides, in traditional contracts apart from sea carrier, the seller requires to hire other carriers as well to take the goods from the warehouse to port of shipment and the buyer also needs additional carrier which is pricy as they have to pay more than one carrier. However, in multimodal contract the whole journey is taken by one MTO that means it is economically beneficial.

3. PROBLEMS REGARDING MULTIMODAL TRANSPORT

There is no agreed single convention for the multimodal transport arrangements despite several attempts. For example, carriage by sea is covered by Hague- Visby rule, carriage by air is regulated by Warsaw Convention¹², carriage by road governed by CMR Convention¹³ and carriage by rail by the COTIF Convention.¹⁴ In case of goods are lost or damaged during transit of a multimodal contracts, it will be very difficult to identify in which mode of transport the unfortunate incident occurred. Thereby, in determining which sets of rules and exemption clauses will apply will become uncertain.¹⁵

Thus, currently the law regarding multimodal contract is fragmented, which could be described as a deficiency for smooth trade and transportation. There is argument that a uniform regime will promote more certainty and predictability as well as lower down unnecessary litigation and costs.¹⁶

Again, there is also a problem regarding the issue of document of title to goods. In common law only a bill of lading issued by sea carrier is considered as a document of title to goods. Therefore, documents which are issued before shipment, for example 'received for shipment' bills of lading and multimodal transport documents, will not signify as shipment on board which means that it will not constitute acknowledgement of receipt for sea carrier and undertaking by the sea carrier in order to keep the goods for the reigning holder of the bill of lading for constituting constructive possession of the holder of the bill of lading.¹⁷

Therefore, the holder of the bill of lading is not able to pass the document to new buyer under F.O.B. and C.I.F. contract as signifying the document of title. But, nowadays documents of multimodal contracts are considered by the parties as contracts of sale as a result of Article 19 of the UCP. Accordingly, the 1980 UNCTAD Multimodal Transport Convention¹⁸ declared Multimodal Transport documents issued in negotiable form.¹⁹ So, it may be said that the problem relating this issue has been solved.

Again, the Bills of Lading Act 1855 only dealt with a bill of lading issued by a sea carrier. This means that even in case Multimodal bill of lading were to be transferable, 'it would not operate to transfer to the consignee or indorsee the shipper's contractual rights against the multimodal transport operator.'²⁰

¹² Implemented in the United Kingdom by the Carriage by Air Act 1961.

¹³ Implemented by the Carriage of Goods by Road Act 1965.

¹⁴ Implemented by S. 103 of the Railway and Transport Safety Act 2003.

¹⁵ Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016).

¹⁶ Olena Bokareva, *Carriage of goods through multimodal transportation: in search of international and regional harmonization*, 2016, *Journal of International Maritime Law*.

¹⁷ *Ibid*

¹⁸ *Kum v Wah Tat Bank [1971]* 1 Lloyd's Rep 439.

¹⁹ Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016).

²⁰ *Ibid*

It is to be noted that this problem has been mitigated as Carriage of Goods Act 1924 repealed the Bills of Lading Act 1855. This newly enacted legislation has defined bill of lading in S. 1(2) as containing a received for shipment bill of lading.²¹

Sometimes in determining whether the document involved actually constitutes multimodal transport document may turn out be not an easy task to do. On this regard, 'the question whether the document covers the entirety of the transport operation or only part thereof is ultimately a question of interpretation of document itself.'²²

4. THE ISSUE OF HAVING NO SINGLE CONVENTION

As it has been stated earlier, there is no single convention which solely covers the whole multimodal transport. It is undoubtedly that sea leg is the most important and used part of the multimodal transport. As, 'although transportation of goods by air has made tremendous progress during recent years and even if there has also been improvement in the transportation of goods by road and rail, transportation of goods by sea is still the most economical means of transporting goods involved in international trade. In fact, the major part of international trade is still conducted through sea routes.'²³

It is to be noted that Hague- Visby rules and Hamburg rules cover the sea leg. On this regard an analysis upon these two conventions may help to bring out the advantages and disadvantages of the sea leg of multimodal transport contract.

5. HAGUE AND HAGUE- VISBY RULE

The Hague Rules tried to bring uniformity regarding the carriage of goods under bill of lading. In order to do so, the Rules attempted to make a balance between the conflicting interests of maritime nations and trading nations.²⁴

However, following amendments Hague Rules became Hague- Visby Rules. UK by virtue of Carriage of Goods by Sea Act 1924 incorporated the Hague- Visby Rules into the domestic law of UK. The Hague- Visby Rules can be applied either mandatorily which means as 'the force of law' or as 'clause paramount'. According to Art 1(b) the Hague- Visby Rules will apply in case the contractual document is a bill of lading or similar documents of title, in so far as such document relates to the carriage of goods by sea.²⁵ In order to clarify the meaning of 'covered by a bill of lading' in *The Happy Ranger*²⁶ the Court of Appeal held that the contract of carriage is only needed to contemplate the issue of bill of lading.²⁷

Again, Hague- Visby Rules refers to 'any similar document of title' to bill of lading. Perhaps it will depend on the fact of each case. In deciding whether the document is similar to bill of lading the custom of trade may play an important part.²⁸ However, it can be said that by using the term 'any similar document of title' is likely to include other bill of lading apart from 'shipped bill of lading. Therefore, this outcome also applies for regarding the submission of 'received for shipment' bill of lading in exchange for shipped bill of lading.

²¹ Ibid

²² Rose F. D.: *Benjamin's Sale of Goods* (9th edition, Sweet and Maxwell 2014).

²³ Ross Masud, *The emerging legal regime for multimodal transport*, 1992, International Business Law Journal.

²⁴ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015).

²⁵ Ibid

²⁶ *The Happy Ranger* [2002] EWCA Civ 694.

²⁷ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015).

²⁸ Ibid.

Again, if a bill of lading is considered as document of title at common law, it will qualify as a similar document of title under Art 1(b).²⁹

On the other hand, live animals and cargo which by the contract of carriage is written as being carried on deck fall outside the definition of ‘goods’ under Art 1(c). Here, the crucial issue is the bill of lading must have to say that goods are carried on deck.³⁰ A term in the bill of lading which gives liberty to carry on deck will not consider to an equal statement to ‘goods were carried on deck’ according to *Aktiebolaget Svenska Tractor v Maritime Agencies (Southampton) Ltd*³¹.

Therefore, it appears that the Hague- Visby Rules tries to clarify the controversy surrounding whether ‘received for shipment’ bill of lading (which is present in multimodal transport) qualifies as document of title. If ‘received for shipment’ bill of lading successfully able to qualify as document of title, the buyer under C.I.F. contract will surely be capable of passing the document as signifying the goods.

But the problem remains regarding goods carried on deck as they will not fall within the ambit of this rule and thereby, it will remain uncertain which rule will apply when it comes about sea leg of a multimodal contract if goods are loaded on deck and the bill of provides so.

6. THE HAMBURG RULES

It is to be noted that there is a very close relationship between Hamburg Rules and multimodal transport and the success of Multimodal convention is close related with the enforcement of Hamburg Rules.³² However, major trading nation can still be subject to The Hamburg Rules if the state of loading is a contracting party to The Hamburg Rules or the parties involve inject ‘paramount clause’ in their contract.³³

The Hamburg Rule is much flexible than the Hague- Visby Rules and applicable to sea carriage under, ‘any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another.’³⁴ It includes all contracts of carriage by sea except charterparties.³⁵ So, The Hamburg Rule will include waybills which fall outside the ambit of Hague- Visby Rules. Again, Article 1(7) provides that a bill of lading: “means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document.” So, all types of bill of lading including straight bill of lading will covered by The Hamburg Rules.³⁶

The two important developments made by The Hamburg Rules are that port of discharge has also become crucial and not only bill of lading but also other contractual

²⁹ Ibid.

³⁰ Ibid.

³¹ *Aktiebolaget Svenska Tractor v Maritime Agencies (Southampton) Ltd* [1953] 2 QB 285.

³² William Driscoll and Paul B. Larsen, *The Convention on International Multimodal Transport of Goods*, 1982, Tulane Law Review.

³³ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015).

³⁴ Art. 1.6

³⁵ Art. 2(3)

³⁶ Stephen Girvin, *Bills of lading and straight bills of lading: principles and practice*, 2006, Journal of Business Law.

documents are covered by this Rule.³⁷ It is to be noted that The Hamburg Rules replaces the dual standard of care owed by the carrier under Hague- Visby Rules.³⁸

Again, The Hamburg also deals with deck cargo. It treats deck cargo just like the same way it considers other cargoes. Art 9(1) states that either in complying with a contract with the shipper or the usage of a particular trade, the cargo can be carried on deck. In case of lost or damaged of unauthorized carriage of cargo deck Art 9(3) will come into play. Liability will strictly be imposed on the carrier for loss or damages which take place from the carriage on deck.³⁹

Therefore, it appears that The Hamburg Rules introduces some positive developments, such all bills of lading fall within the ambit of it or dealing with deck cargo or single test of liability for carrier, will certainly help to simplify the most important part of multimodal contract namely sea leg.

On the hand, this rule failed to go far regarding the realities of modern shipping practice. It also made no mention of the independent contracting party's involvement. Furthermore, at Hamburger Rules the issue of electronic document is dealt by only a limited extent under Article 14(3). Besides, disappointing part is that no major trading nation has enacted it yet.

7. CARRIAGE BY ROAD

Apart from the sea leg, carriage by road is also very important when it comes about multimodal transport. This is because very often goods are carried from warehouse to container freight station or container freight station to port of loading or port of discharge to container freight station through road. Therefore, in order to identify the positive and negative aspects of multimodal contract an analysis on carriage by road will be helpful.

Contract of carriage by road is regulated by CMR. The conditions are that the contract will have to be between two sovereign countries and one of them will have to be a signatory of CMR. In order to understand the application Of CMR the outcome of *Buchanan & Co v Badco Forwarding and Shipping (UK)*⁴⁰ will be helpful. In that case no international carriage took place. But the court held that CMR will apply.⁴¹ Therefore, it appears that irrespective of whether goods cross from one country to another, as long as the contract involves two sovereign states CMR will apply. This is certainly a positive side of this rule as there is always a chance that something will go wrong even before international carriage takes place. Again, where part of the contract is performed by sea leg, then except some limited situations the CMR will apply for the whole carriage provided that the goods are not unloaded from their trailer for the sea leg under Art 2.⁴²

A positive aspect of CMR is that despite of how many subcontracting parties involved, the consignee can sue the original carrier by virtue of Art 3.⁴³ Furthermore, regarding the issue of carrier's liability Art 17(3) provides that the carrier will also be held as absolutely liable for defects in the vehicle.⁴⁴

³⁷ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015).

³⁸ A.J. Waldron, *The Hamburg Rules - a boondoggle for lawyers?*, 1991, *Journal of Business Law*.

³⁹ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015).

⁴⁰ *Buchanan & Co v Badco Forwarding and Shipping (UK)* [1978] AC 141.

⁴¹ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015). P-174

⁴² *Ibid.*

⁴³ *Ibid.* P-176

⁴⁴ *Ibid.* p-183

Therefore, two positive sides of CMR Rules are that it will apply if two sovereign nations involve regardless of whether international carriage took place or not and the consignee can certainly bring charge against carrier even in case there involves subcontracting parties.

ICC Rules for Multimodal Transport Documents 1992 These Rules may be voluntarily incorporated by the parties into their contract. According to these Rules, they will prevail over other additional conditions of multimodal contract in case of any conflict. Under ICC Rules MTO takes responsibility to make sure that goods are delivered. Besides, MTO's responsibility starts from the time he takes charge of the goods and is liable in case of loss, damage or delays of delivery. However, the MTO can exclude liability if he can show that he or his agent has no fault in case of loss or damage.⁴⁵

Therefore, it seems that the Rules provide fairness upon both consignee and MTO. This is because the seller or buyer can sue MTO in case of any unfortunate incident and the law also provides justice for MTO as he will not be liable if he has no fault.

8. ROTTERDAM RULES

The conventions so far discussed above are dealt with some particular legs of multimodal. However, Rotterdam Rules is so far the only Convention which covers the whole multimodal. Therefore, an analysis on Rotterdam Rules and the positive and negative aspects of this rule will surely reflect the advantages and disadvantages of multimodal contract. Rotterdam Rules are designed to regulate any international carriage contract performed wholly or partially by sea.⁴⁶ So, it extends beyond sea leg.⁴⁷ However, it will not operate to contracts which have no provisions regarding carriage by sea.⁴⁸

Again, regarding the scope of the Convention, Article 5 provides that the Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different states, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States subject to Article 6.⁴⁹ According to this Article this Convention applies to 'contract of carriage' and it follows a 'contractual approach'.⁵⁰

Here, it is important to point out that this same contractual approach is followed by all existing unimodal conventions except the 1980 COTIF/CIM Convention. What it means is that this criterion may not be helpful in case of conflict of conventions as any contract of carriage has a chance to fall within the ambit of more than one convention.⁵¹

Again, Article 1(1) describes 'maritime plus' operation which means that a contract of carriage from one place to another which has sea leg. This signifies that the Convention will not only apply to port to port carriages but door to door contract but the condition is that there must have to be a maritime stage.⁵² Therefore, Rotterdam Rules is described as 'wet

⁴⁵ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015). P-171

⁴⁶ Manuel Franco, *Multimodal transport after the Rotterdam Rules: will it work this time?*, 2012, Journal of International Maritime Law.

⁴⁷ Paul Todd: *Principle of the Carriage of Goods by Sea* (Routledge 2016) p-364.

⁴⁸ Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016).

⁴⁹ Simon Baughen: *Shipping Law* (6th edition, Routledge 2015). P-141

⁵⁰ Manuel Franco, *Multimodal transport after the Rotterdam Rules: will it work this time?*, 2012, Journal of International Maritime Law.

⁵¹ Ibid.

⁵² Manuel Franco, *Multimodal transport after the Rotterdam Rules: will it work this time?*, 2012, Journal of International Maritime Law.

multimodal convention' which means that a multimodal convention with a narrower scope.⁵³ It was generally felt that the only practical way of addressing the multimodality issue was to include multimodal contracts involving a sea leg, irrespective of the relative duration or distance involved in that sea leg.⁵⁴ Besides, a contract of carriage that, as a whole, is international will not fall within the ambit of Rotterdam rules where its sea leg is not international as well.⁵⁵ Therefore, the problem remains as there seems to be no convention which covers the whole multimodal in case there is no sea leg involves.

There involves some confusions where the parties decided that at least part of the voyage is to take place by sea, but the carrier, by breaching the contract or as a result of an event of *force majeure*, does not perform the sea leg. On this regard it is likely that Rotterdam Rules will apply as the parties agreed that there will be a sea leg and here it is immaterial that maritime stage has not been carried out.⁵⁶ This appears to be a positive aspect of this rule as there might be some situations where despite the agreement, the maritime stage did not take place as a result the shipper or consignee may find themselves in trouble as this is the only Convention which covers whole multimodal contract.

On the other hand, it has been suggested that if Rotterdam Rules were to be applied in land carriage, perhaps they would not fit as appropriate. The reason behind is that this Convention is primarily designed for maritime stage. Therefore, according to some commentators although Article 26 reduces the risk of conflict of conventions, it does not eliminate it entirely.⁵⁷

'The risk is that the Convention will add to the existing complexity in so far as it creates another instrument which will have to operate alongside the existing legal regimes.'⁵⁸ Besides, FIATA which recommended it members to suggest their governments not to accept Rotterdam Rules as it is 'far too complicated'.⁵⁹ Therefore, the question remains whether Rotterdam Rules unifies the law on this area or it adds even more uncertainty.

Again, Article 26 and 82 will disapply this Convention where it seems to be conflict with another convention applying before loading or after discharge. Therefore, it is likely that Rotterdam reserves what is known as a 'network solution' which means that different regimes will apply in different modes of multimodal contract.⁶⁰

However, it is undoubtedly that one of the best contributions of Rotterdam Rules on multimodal contract is that it has provision⁶¹ which it makes for electronic transport documents.⁶²

9. CONCLUSION

In the end it appears that multimodal transport makes international contracts easier and more convenient for the parties involved and therefore, is very helpful in commercial context. However, this contract is not free from complexity rather it involves some

⁵³ Y Baatz (ed): *The Rotterdam Rules: a Practical Annotation* (Informa London 2009) p-16

⁵⁴ UNCITRAL Report of Working Group III on its 11th Session A/CN.9/526 p-67.

⁵⁵ Manuel Franco, *Multimodal transport after the Rotterdam Rules: will it work this time?*, 2012, Journal of International Maritime Law.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016). P-1144

⁵⁹ www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/FIATApaper.pdf

⁶⁰ Paul Todd: *Principle of the Carriage of Goods by Sea* (Routledge 2016). P-366

⁶¹ Article 36(1)

⁶² Ewan McKendrick (ed): *Goode on Commercial Law* (5th edition, Penguin Books 2016). P-1144

difficulties. The main is being that it does not have any convention which solely covers all modes of transport. On this regard, Rotterdam Rules can cure the problem. Rotterdam Rules also include electronic transport document which is definitely a positive inclusion. But for this Convention to play role, a sea leg is must. Therefore, this problem still remains in case of contract which involves no maritime arrangements.

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