A Multimodal Transport Perspective 2003

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Note: This “Perspective” will be updated soon, to include the effect of the eventual ratification of the Rotterdam Rules and some thoughts about its pros and cons.

As national and regional economies become globally interconnected, “door-to-door” and “Intermodal” Transport begin to receive more and more attention, both from private parties and Governments. The objective is not only to use the most economical combination of available transport-systems, but also the one that causes least damages to the environment. In the industrialized countries this topic receives a great deal of attention these days and there are abundant studies about the total transportation costs, which take into account not only the direct costs, but also the hidden costs, such as congestion, pollution, noise and other questions. In order to arrive at a well-functioning system of “door to door”, intermodal or multimodal” transport of cargo, two different problems have to be solved: the operational part, where infrastructure and the transport policies of the countries and regions play the main role and the contractual part, that has to do with documents and responsibilities. In both fields there are still many problems, because there are many opposed interests, all of which need to be attended and it seems that it will take a long time before acceptable solutions will be reached.

In this paper we shall try to give a picture of the problems related with the contractual part of the question.

Most of the big shippers now demand simple rules for the hiring of “door to door” transport, which they want to apply not only in the industrialized countries, but on a world-wide basis. However, before new proposals for “simple rules” can be made, the existing problems should be analyzed, as recent studies made in Europe and the United States, demonstrated that many big shippers, who can be considered leaders in the industry, have little or no idea of the existence of the different ”Liability Regimes” that govern the different modes of transport in the world, which stand in the way for “simple rules”. It may well be that this lack of knowledge is the underlying reason that, after 30 years of deliberations and notwithstanding all the efforts made by international bodies, it has not yet been possible to establish acceptable rules for all the interested parties in the transport chain, that some call the stakeholders:

The Owners of the merchandise (shippers)
The Freight-Forwarders,
The Carriers,
The Insurers (those that insure the cargo, cargo insurance, as well as those that insure the carrier, liability insurance).
The ”sub-stakeholders”, mainly the Terminal Operators, that have an important function in the connection among the different modes of transport.

The big question seems to be, how to merge the interests of all these “stakeholders” in an International Convention? In this respect, completely opposed opinions are heard and we seem to be further away from an
understanding than we were in 1980, when the Convention on International Multimodal Transport of Goods of the United Nations was made, but which unfortunately proved to be impractical, apparently because insufficient people had a good knowledge of the real problems. In this sense it seems that little progress has been made since then and publications in Europe and the USA indicate that it is not easy to have access to technical information on the real obstacles, especially on how the different “Carrier liability regimes” affect those that participate in an international logistical chain. Apparently there is no clear information available for the users, mainly the shippers, prepared by jurists but easily understandable for all, giving a global idea of the difficulties that arise with the application of “door to door” multimodal transport contracts. Two United Nations Organizations, UNCTAD, and UNCITRAL, together with the CMI, are working hard to find solutions. As we can see in Part III, UNCITRAL formed a working-group that received a mandate to work together with the CMI, for the time being on a new “port to port”-convention, to replace the Hague-, Hague-Visby - and Hamburg Rules in maritime transport. The UNCITRAL Working Group has been suggested that it should perhaps also look for a “door-to-door” solution for Multimodal Transport where a sea voyage is involved and several meetings have already taken place to decide whether or not a request will be made to give the UNCITRAL WG an extended mandate, to continue working together with CMI on a “door to door “ proposal.

The intention of this paper is to explain in an understandable manner the main problems as they are observed by a “non-lawyer”, without pretending to give legal details that in many cases depend on the different jurisprudences of the countries included in the logistical chain, through which the cargo has to cross in an international transport. Information is given on the existence of regional Multimodal Transport Agreements and M.T.-Laws of some countries, and the efforts that are being made to arrive at a more uniform legal system.

Abstract of the presentation:
PART I: INSTITUTIONAL
In this part a brief explanation is given of national laws and international agreements that exist in international transports, how the integration of the transport-chains evolved, from Segmented Transport to “Combined- or Intermodal Transport”, to end finally in Multimodal Transport and how the different “Carrier Liability Regimes” or “Cargo Liability Regimes” are applied in an international transport chain. Some information is given on the different limits of liability of the different transport modes, according to the different international agreements and according to the laws of some countries. Also some existing “network-systems” are explained and how these were included in 1975 in the ICC Rules 298 for Intermodal Transport, which were replaced in 1992 by the UNCTAD / ICC Rules for Multimodal Transport Documents.
(In theory ICC Rules 298 should no longer be used, but in fact they are still used very often. See Part III).
A short description is given of how the UNITED NATIONS CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS was arrived at in 1980 and why that agreement does not work in practice, because of the resistance of maritime carriers and insurance companies.

The following UNCTAD definitions are used in this paper:

**Intermodal transport:**
In this case a transport company or intermediary (the Operator) organizes a “door-to-door” transport, but WITHOUT accepting the responsibility for the whole chain and several transport documents are used, or one document, in which the Operator declares to act in certain parts which he subcontracts, “as agent” only and not as a “principal”. The Transport Document that is used in most cases for this type of transport-contract is the “Combined Transport Bill of Lading”, or the “Intermodal Bill of Lading”. (Under ICC Rule 298 the “FIATA-thru B/L” was created and therefore many Americans and Freight Forwarders speak of “Through Transport”. Under UNCTAD/ICC Rules of 1992, the “FIATA-thru B/L” was officially replaced by the Fiata MTD, although the conditions of the old rules are still maintained by many freight-forwarders). There can be several responsible parties in this type of contract and there are big differences of jurisprudence, in different countries. Many are of the opinion that this “opting out” by including clauses “as agent only”, should be replaced by clear liability rules. Others maintain that this is a question of contractual liberty and that the parties should be allowed to enter in this type of agreement.

**Multimodal transport**
One can only speak of Multimodal Transport (M.T.), when the transport involves at least 2 transport modes, but with a single contract of carriage, the multimodal transport contract. In this case, a transport is hired from origin to destination, with the carrier accepting the full responsibility in the whole chain, under one single transport document, the Multimodal Transport Document. In turn, the contracting carrier can sub-contract the services of others that become the “effective” or “performing carriers”.
In synthesis: M.T. = more than one mode of transport, but a single contract, a single document and a single party liable towards the owner of the goods or the rightful claimants.

**PART II: REGIONAL AGREEMENTS ON MULTIMODAL TRANSPORT / COUNTRIES WITH MT LAWS.**
A brief description is made of MT Agreements in South America, and the confusion that these are generating. At the end, the examples of Germany and the Netherlands are given, which totally adapted their old unimodal laws to the new situation, including rules when the transport is part of an international
multimodal transport, without making a separate Multimodal Transport Law. On the ground of this inclusion, both Governments claim they actually have a law that covers MT.
Also the special case of the United States is mentioned that, in view of the lack of worldwide advance on this topic, is looking for a unilateral solution by means of the modification of US-Carriage of Goods by Sea Act = COGSA1936, that seeks to extend the application of this Law to land transports, if there is a “door to door contract” involving a “sea-journey”. Because this project invades other countries' jurisdictions, it finds serious resistances all over the world.

PART III : INTERNATIONAL EFFORTS TO ARRIVE AT UNIFORMITY
A brief account is given about the efforts that important International Organizations are making, some together with United Nations Commissions, to arrive at a better uniformity in Multimodal Transport Laws and Agreements. Within these, special mention is made of the work done by UNCITRAL, together with the CMI. Reference is also made to an interesting study of the European Commission on the additional costs that the lack of uniformity of laws causes, especially in insurance, which they call “Friction costs”, that seem to be higher in the case of traffics with “developing countries “ than between the industrialized countries.

PART IV REGIONS WHERE MT IS FUNCTIONING
In this part the Intermodal Transport Systems of the USA, (the “seamless-transport-chains) and the traffic between the USA and Europe are briefly considered. It shows what the real advantages of “Intermodal Transport” are and some of the causes why for the developing countries so few maritime carriers and Freight-Forwarders offer “door to door” services (with Intermodal or Multimodal B/L’s)
SOME ABBREVIATIONS
UNCTAD = U.N.Conference on Trade and Development
UNCITRAL = U.N.Commission for International Trade
CMI = Comité Maritime International, a centennial international Association of Marine Lawyers, created in July 1896, with headquarters in Antwerp Belgium, that defends the interests of ship-owners / maritime carriers, insurers, average adjusters, bankers and others with interests in maritime laws)
ICC = International Chamber of Commerce of Paris.
ICC (USA) = Interstate Commerce Commission Eliminated in 1995 by law that created the Surface Transportation Board.
FIATA = International Federation of Forwarding Agents' Associations, Asoc.
M.T.O. = Multimodal Transport Operator
M.T.D. = Multimodal Transport Document
ECLAC = UN-Economic Commission for Latin America and the Caribe
C.M.R. = Convention for Road Transporte, "Convention relative au contrat de Transport International de Marchandises par Route" of 1956.
C.M.N.I. = Convention on Transport on Inland Waterways, Budapest 2000
COGSA = Carriage of Goods by Sea Act (USA)
NVOCC = Non-Vessel-Operating-Common-Carrier,
VO-MTO = Vessel Operating Multimodal Transport Operator
NVO-MTO = Non-Vessel Operating Multimodal Transport Operator
OECD = Organization for Economic Cooperation and Development
IUMI = International Unión of Maritime Insurers
ICS = Intern. Chamber of Shipping
IAPH = Internacional Asociation of Ports and Harbours
WCO = World Customs Organization

Some interesting websites:
UN-REPORT Implementation of MT Laws

White Paper European Transport 2010

Towards improved Intermodal Transport between the USA and Europe.Eno-Transportation Foundation

OECD Cargo Liability Regimes
http://www.oecd.org/pdf/M000013000/M00013662.pdf

Informe Reunión UNCITRAL Viena sept.2002

PART I. (INSTITUTIONAL)
LAWS AND AGREEMENTS APPLICABLE IN A MULTIMODAL TRANSPORT.
Terminology.
When talking about “multimodal transport” a great confusion arises, not only in South America, but in the whole world. A lot of people mix the term with a simple transport in containers, which is completely mistaken. This was demonstrated when we made the following question to a well-known Canadian lawyer of the FIATA: “Does Multimodal Transport really lower the costs of transport?, to what he responded: “The Government of Canada did studies over two decades ago that affirmed that container transport (which I equate with Multimodal Transport) does lower the cost of transport. And, as anecdotal evidence, do just ask any forwarder if there has been a decline in freight rates over the last three decades?
This is a good example of an erroneous interpretation that is very common.

It seems to be in place to begin with the definition of “Multimodal Transport”, of the UNITED NATIONS CONVENTION ON MULTIMODAL TRANSPORT of 1980, which is considered internationally as the only correct one, although the Convention itself never entered in force, for reasons that we will explain later on.

INTERNATIONAL MULTIMODAL TRANSPORT: “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 located in a 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.”

MULTIMODAL TRANSPORTS OPERATOR (M.T.O.)
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 consignee or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

MULTIMODAL TRANSPORT DOCUMENT (M.T.D.)
Means a document which evidences a Multimodal Transport contract, the taking in charge of the goods by the MTO and an undertaking by him to deliver the goods in accordance with the terms of that contract.

One can only speak of Multimodal Transport, when the transport involves at least 2 transport modes, but with a single contract of carriage, the multimodal transport contract. In this case, a transport is hired from origin to destination, with the carrier accepting the full responsibility in the whole chain, under one single transport document, the Multimodal Transport Document. In turn, the contracting carrier can sub-contract the services of others that become the “effective” or “performing carriers”.
In synthesis: MT = more than one mode of transport, but a single contract, a single document and a single responsible party.
Although it is true that in the great majority of those “Multimodal Transports” a container is used, in fact this is not a requirement and it may well be that goods are transported loose in ship’s holds, like for instance a factory that is sold on a turn-key basis and where the shipper makes one contract, with one responsible party for the whole transport, from origin to destination, under a single document, something which is very common. One could even make a Multimodal Transport contract with bulk-cargoes that are transported successively by train in tank-cars and later by ship or ducts, although the present legislation still does not foresee this.

On the other hand it is completely true that the possibilities that the container offers to be transferred, with the use of mechanical elements, from one transport mode to another, without breaking up the unit load, whilst providing adequate protection to the goods, makes it a very appropriate element for the integration of the transport chain. Practically all the “general cargo” that is transported by sea, goes inside containers and most containers continue with their load intact until the final destination in the interior of the countries. Thus, in fact it is true that in the immense majority of Intermodal and Multimodal transports, containers are used.

In a circuit of international transport, the merchandise will be in the custody of different operators and subject to different Laws and Conventions that govern the “Responsibilities of the Carriers” and of the “Terminal Operators”, with their eventual “Monetary Limits of Liability”, which are called “Carrier Liability Regimes” or “Cargo Liability Regimes”. Almost all these have different bases of responsibility, limits of liability, different documents with different legal values, and different time-bars (periods of prescription of claims). Later, by way of example, we shall show a possible chain for an export of a container with Argentinean wine, from San Rafael in the province of Mendoza to Frankfurt in Germany: The container may travel by truck from the vineyard to the intermodal terminal of Palmira, near the city of Mendoza, for its transfer to a rail-car that takes it to the intermodal terminal of Buenos Aires (Retiro), from where it is transported by truck to the port, to be embarked in a ship that discharges it in a port terminal in Rotterdam, from where it is transported by train to an intermodal terminal in Cologne (Germany), from where it is taken by truck to its final destination in Frankfurt.

As we will see later, our example of a transport-chain can be performed in 3 forms: 1) As Segmented Transport, 2) Intermodal / Combined or 3) with a real Multimodal Transport Contract.

Note: There should be conformity between the Contract of Carriage and the Purchase / Sales Contract and the corresponding INCOTERMS should be used. INCOTERMS 2000 are uniform rules of interpretation published by the International Chamber of Commerce (I.C.C.) with headquarters in Paris, with respect to the commercial terms that govern the rights and obligations between sellers and buyers, according to the different Purchase - Sale contracts. They define, among other things, the points where the responsibility over the merchandise passes from the seller to the buyer. That is
to say: The INCOTERMS are applied between sellers and buyers and speaking in absolute terms, they don't have anything to do with the terms of the Contract of Carriage that is made between the shipper (that can be the buyer, the seller or a middleman) and the carrier. What is important, is that the points of passage of responsibility between seller and buyer, and who bears the different costs, should be fully compatible with the Contract of Carriage, to allow for eventual inspections and comply with ICC rules UCP500 and now also UCP 500e.

Before continuing with the consideration of what passes in the chain of our example, it is necessary to clarify first which are the other correct terms that should be used, in order not to fall in the confusion that reigns in the entire world, for which we will use the Multimodal Transport Handbook of the United Nations / UNCTAD.

We shall begin with something that doesn't give many problems and on which nearly everybody agrees: the meanings of “modes” and “means” of transport.

The “modes” are the methods that are used to transport people or cargo:
- Transport by air
- Transport by water
- Transport by lorry
- Transport by railroad
- Transport by ducts

The “means” of transport are the individual vehicles that are used:
- The airplane, the helicopter, the Zeppelin etc.
- The ship, the barge, the boat, the raft, etc.
- The truck, the rail-car. *

In ducts cargo is pumped or transported by conveyor-belts or by gravity.

The “types of means” give specifications, for example “a tank-truck”.

* (A special case is the Road-Railer [truck-train] that was invented in the United States already in the 60’s, and that is now used in all the continents. This vehicle can move over the roads on normal tires, and for transport by railroad it is placed on a special bogie).

Further we shall repeat some other definitions of the Multimodal Transport Handbook of the United Nations / UNCTAD:

Unimodal transport: the transport of goods by one mode of transport, by one or several carriers. If there is only one carrier, he issues his own transport document, for example an airwaybill, consignment note or Bill of Lading, etc. If there is more than one carrier, for example in a transport from a port via another port to a third port, with transshipment at an intermediate port, one of the carriers may issue a “Through bill of lading”, covering the complete transport. Depending on the clauses at the back of the “Through bill of lading”, the issuing carrier may accept the responsibility for the complete transport.
from the first port until the last port or only for that part which takes place on board its own ship, acting in the other parts as a mere agent of the shipper.

Intermodal transport; the transport of goods by several modes of transport where one of the carriers ORGANIZES the complete transport from one point or port of origin via one or more interface points to a final port or final point. Depending on how the responsibility for the entire transport is shared, different types of transport documents are issued: They can be “Intermodal Transport Documents” or “Combined Transport Documents.”

In this case a carrier organizes a "door to door transport", but WITHOUT accepting the responsibility for the whole chain and there are several documents of transport or a single document, where the Carrier declares to act in certain stages which he subcontracts, as an agent and not as a principal. There are 2 international organizations that have done very much trying to introduce uniformity in the texts of the Bills of Lading and Transport Documents: BIMCO- and FIATA.

BIMCO is the Baltic and International Maritime Council that groups important shipping-lines and shipping agents. Based on the Rules for Combined Transport ICC 298 of 1975, at the time BIMCO drafted the CombidocB/L (called Combiconbill or Combined Transport Bill of Lading) and the BIMCO - Intermodal B/L. (Although this document is no longer supported by BIMCO, which instead is promoting the Multidoc95, it is still frequently used). FIATA is the International Federation of Forwarding Agents' Associations. Based on ICC Rule 298, at the time FIATA published the FIATA-THRU B/L. Therefore the Americans and Freight Forwarders speak of “Through Transport”. There can be several responsible parties, although there are great differences in jurisprudence in different countries as to the validity of certain clauses in these Bills of Lading (B / L). (Important note: Although the ICC Rule 298 has been suppressed and superseded by UNCTAD/ICC Rules of 1991 for Multimodal Transport Documents, with the FIATA-FBL and -MTD forms, many Freight-forwarders still apply the conditions of the old FIATA-thru Bill of Lading. See P III).

The term Segmented Transport is used when the carrier that organizes the transport, takes responsibility only for the part that he performs himself. When ICC made the “Rules for Combined Transport” in 1975 and BIMCO gave the name “Combined Transport B/L” to its well-known “Combidoc”, they did not pay attention to the correct definition of Combined Transport which is: “The transport of goods in a single loading unit or vehicle by a combination of road, rail and inland-waterway modes.” That is to say a truck with its load that it is transported on a ferry-boat or a truck on a rail-car that is very usual in United States ( called TOFC or piggyback) and in Europe (Rollende Landstrasse).

Until here we gave the definitions that the UNCTAD recommends to use, although these still are not respected in an universal way and it is also telling that UNCTAD has to admit that it has not been able to correct the error of ICC and BIMCO, when they started using the name “Combined Transport” where in fact “Intermodal Transport”, should have been the correct name. As a result,
now there are great contradictions between the definitions for Combined Transport. (This creates a certain confusion, especially in Europe, where the UIIR and the EU-Conference of Ministers of Transport officially use even a third definition of Combined Transport), which we do not describe as it creates still more confusion.

With the following narration we shall try to clarify the topic of the different Laws and Conventions that govern the “Responsibilities of the Carrier”, the “Monetary Limits of his Liability” and “the rules on the Burden of Proof”, that together form the base of the “Carrier Liability Regimes” that cause so many headaches to the Multimodal Transport Operators and to the users, and that, according to studies made by the European Union, have a direct relationship with the costs of Insurance.

It is a known fact that in all transports risks exist and losses may occur. Each mode of transport has its peculiarities and own risks. There are also big differences in the average values of the goods that are transported in each mode. For example, the goods that are transported by railroad are generally of a lower value than those that are transported by truck and the goods that are transported by air are those of the highest value. This is the reason that for each mode of transport, different rules were developed. For transport by sea and by air, which are almost always of an international character, International Conventions were made at the beginning of the twentieth century, that are of application in most parts of the world. Historically, it has been considered that maritime transport presents bigger risks than land transport and it is for that reason that diverse rules were formulated about the compensation for eventual damages or losses. These rules determine in which situation the carrier cannot be considered responsible (exonerations) and how he can limit an eventual compensation for losses or damages (monetary limits of liability). Also an important point in those rules is who has the “Burden of Proof” in the allegations. The carrier cannot limit his liability unilaterally, because there are International Conventions and National Laws that govern the rules on “exonerations” and limits of liability that the carrier can include in his transport-contract. Usually, the carrier takes an insurance to cover his exposure to the risks for claims that can be formulated for losses or damages. The premium he must pay to his insurance company depends basically on 3 things: the responsibilities that he himself accepts in his contract of transport, those that are imposed on him by the International Conventions, and the way the national laws are applied in the countries in which he carries out his traffics.

The cost of insurance is (reportedly) an important item for all carriers and, therefore, the rules about compensations for damages and losses (as adduced by carriers) have a lot to do with the total costs of transport. One thing is sure: For countries that don't have clear rules, which are generally also those with the highest amounts of accidents or robberies, the insurance premiums are higher than for countries with clear laws.

There is a well-known International Convention that dates from 1924, that is applicable in the great majority of transport by sea in the whole world, called
How was this International Agreement arrived at? Historically, the maritime carriers have tried to reduce their exposure to claims and inserted in their Bills of Lading (that amongst others is the evidence of the terms of the contract of transport), all kinds of exonerations and limitations of liability (generally in small letter).
To put an end to the exaggerations, in 1924 an International Convention was made in Brussels, that described the obligations of the maritime carrier and established rules regarding his responsibility for compensation of damages or losses, that received the name of “the Hague Rules”. (With the time, almost all the maritime countries adhered to this International Convention and Argentina ratified the Agreement in 1960, when it passed its Law 15.787, Adhesion to the International Convention of Brussels on Marine Rights / International Convention for the Unification of Certain Rules relating to Bills of Lading). Later on, some adjustments were made to the well-known “ Hague Rules” by the Hague-Visby Rules (1968) and the SDR protocol of 1979. According to these rules, the maritime carrier is responsible only for the sea transport, which is considered to commence at the moment that the goods are hooked-up for loading in the loading port, until they are unhooked in the discharge port. (From “Tackle to Tackle”) (In the USA COGSA-36, which is based on the Hague rules, maintains a part of the Harter Act, which holds the carrier liable from the moment he takes the cargo in his custody, till the moment he delivers it to the rightful consignee. According to the Argentinean Law of Navigation, the responsibility of the carrier continues until the delivery of the goods to the consignee in Direct Dispatch, or to the Custom’s warehouse, or in a place in the jurisdiction of the Customs). The Hague rules apply only when a Bill of Lading (B/L) is issued.

*SDR In a moment of great inflation in the world, it was decided to create a special monetary unit to express the maximum values of compensations for loss or damage. This unit, which is included in most of the International Conventions, is based on a basket of currencies, the SDR (Special Drawing Right) of the International Monetary Fund. This basket took into account the value of the US-dollar, the UK-pound-sterling, the German mark, the French franc and the Japanese yen. (The German mark and French franc have been converted to Euros). In March 2001 one SDR was approximately US $1,27. This part of the convention is only applied in the Hague/Hague Visby rules if the country of shipment is a signatory and has ratified it by a national law or if the rules are incorporated by private contract, i.e. it says in the transport document that this or that convention applies. The Hague Rules and The Hague-Visby Rules are recognized universally and they are applied to more than 80% of all marine transports in the world that are carried under Bills of Lading(B/Ls).
(Notice: they are not (automatically) of application if a Sea-Waybill is issued, which is a document that was developed in the 70’s. This produces serious inconveniences in intermodal transport in Europe which includes a sea transport, because most short-sea-shipments move under waybills. See Part
with the years an ample jurisprudence has been formed, and the interpretation of The Hague Rules and of The Hague-Visby Rules, are relatively well-established everywhere in the world and this gives a certain security to the carriers and their insurers. However some points, especially the exoneration in the case of error in navigation (nautical fault) and the definition of the period of the responsibility of the carrier, receive great criticisms from the owners of the cargo. For that reason in 1978 a new Maritime Convention of the United Nations was made, known as the “Hamburg-Rules”, that however was ratified by 28 countries only and has a relatively small application in the world. According to this Convention the responsibility of the carrier begins at the moment that he takes the goods under his custody and it finishes when he makes the delivery in the discharge port to the authorized person. It doesn’t contain the exoneration for errors in navigation and there are differences in the burden of proof. Many believe that there are few possibilities that the majority of seafaring nations will ever adapt the use of the Hamburg Rules. However the attacks of the owners of the goods on the Hague Rules and the Hague-Visby continue and many consider that the moment of its modernization has arrived: for that reason in February 2001, the CMI that represents the interests of carriers, began studies, together with UNCITRAL (United Nations Commission on Trade Law), to arrive at new rules that will form the base for a new Convention to replace the Hague, Hague-Visibly and Hamburg Rules. In the preparatory discussions, it was taken into account that with the massive use of containers in sea transport, more and more intermodal and multimodal contracts are made, and for that reason there are pressures not to limit the scope of application of the new Convention to the sea-transport-leg only, but to extend its scope to apply from “door to door”. There are already preliminary discussions on rules that include the land transports, previous and/or subsequent to a sea-transport. The responsibility of delivery in the agreed term (in case the shipper wants this) will also be taken into account. Furthermore the advance of Computer Science Technology (Information Technology and e-Commerce) and the fact that rarely general cargo is being sold during the marine transport, for which the B/L serves, form part of these discussions.

Another International Convention that is also of universal application, is for Transport by air, the Warsaw Convention of 1929 and its protocols of 1955 and 1975 and the Montreal Convention of 1999.

In land-transports and in transfer terminals, where the cargo passes from one mode of transport to another, there are no Conventions that are applied worldwide and the monetary limits of liability (maximum compensations) for eventual damages or losses, vary greatly from country to country, or region to region. (However, in Europe and some surrounding countries, the CMR and the CIM/COTIF conventions on road and rail transport originally intended for European use only have now been opened for ratification on a global basis, and many non-European countries have if not ratified them then at least written them into their national legislation).
A Convention of the United Nations which took place in 1991 in Vienna on the Responsibility of the Operators of Transport Terminals in International Trade, that limits the responsibility of these Operators, including ports, airports and land-based intermodal terminals, still has not been ratified by enough countries and is not yet of application).

In general it can be said that there is a great disparity in the legal regimes concerning land-transports and transfer terminals.

In this respect in some countries laws exist and, in others, the conditions established by the transport companies themselves are accepted. For example: for the transport by truck in Japan, the government approves the standard-contracts and in the United Kingdom the conditions of the contract published by the Road Haulage Association, are applied.

The land transport in Argentina is governed by the norms of the Commercial Code (that has its origin in 1889 and that still speaks of horses and carts!!!) and moreover by a law of 1996, Law 24.653 “Transport of Cargo by Truck” or “Motor Carrier Act”, which does not annul contradicting parts of the former law, which creates confusion. The Commercial Code doesn't recognize any limitation of liability of the carrier. The Law of “Transport of Cargo by Truck” confuses this panorama and, in its Article 10 says that, the owner of the cargo should take an insurance with a non repetition clause against the carrier, what could be understood to free the carrier from all responsibility.

However, such a clause in the insurance-policy means an increase of the insurance premium of 25% and, many owners of the cargo, refuse to accept this additional expense, considering that the Commercial Code of Trade prevails over the Law of 1996, what is considered to be correct by the great majority of the lawyers.

In the United States, the Carmack Amendment gives certain flexibility to the parts of a contract of land transport (shippers and motor-carriers), to agree on the maximum liability of the carrier, that is related with the value of the freight-rates. If no special agreement is made, the carrier has no limit of liability. However, it is allowed that the carrier limits his liability in agreement with the shipper, who declares to accept a lower limit of liability against the payment of a reduced freight-rate. (Released value rates: where the shipper assumes part or all the responsibility for damages or losses during the transport, in compensation for a more favorable freight-rate. This commitment should be written and signed by the shipper and the carrier). Also all the land-transport-conventions of Europe that we will describe next, have limits of liability of the carrier, something which is strongly resisted in Latin America.

It seems that there are strong arguments that demonstrate that a limitation of the liability of the carrier and terminal-operators could reduce the costs of insurance and finally the costs of transport. Already in 1983 the UN/ECLAC. prepared a study (G 1223) for the First International Congress of Latin American Transport that took place in that year in Buenos Aires, advising, among other things that in order to make multimodal transport viable in the region, a regional agreement should be made to limit the civil liability of the land-transporters/carriers, in order to create an appropriate legal infrastructure for the direct transfer of the goods. (It said that this should be applicable to all
transport-contracts, not only International or Multimodal, but for all the land-transports, both related with Foreign Commerce as well as with the Internal Trade of the Latin American countries).

In Europe, three Regional Agreements were made with uniform rules for the international land-transport, and for the international transport in the inland waterways, all with their respective limits of liability:
"Convention relative au contrat de Transport International de Marchandises par Route »
This is of application in almost all countries of Europe, some countries of Asia bordering with Europe and in the north of Africa. In total these are 45 countries and it is applied to 70% of the cargo that is transported in Europe.

C.I.M. / CIM COTIF (Convention for Transport by Railroad)
"Convention International concernant le Transport des Marchandises x Chemins de Fer", taken place in Berne in 1970, and modified in 1980 and 1999. (This last revision must still be ratified by 2/3 of the members of the agreement to enter in validity, that is expected for 2003. This Convention is applied in 39 countries of the region)

C.M.N.I. (Convention for the Transport of Merchandise by Inland Waterways)
Celebrated in Budapest in the year 2000 and awaiting ratification.

All these mentioned international agreements have established a limit of liability of the carrier, expressed in Special Drawing Rights or SDR’s, according to the following comparative chart:

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<tbody>
<tr>
<td>Per package or freight-unit *</td>
<td>100 Pounds sterling gold [the &quot;gold&quot; is debatable]</td>
<td>666,666 SDR’s</td>
<td>835 SDR’s</td>
<td>400 pesos Argentinos gold</td>
</tr>
<tr>
<td>Per kilogram *</td>
<td>N/a **</td>
<td>2 SDR’s</td>
<td>2,5 SDR’s</td>
<td>N/a **</td>
</tr>
</tbody>
</table>

*Whatever is higher  ** N/a = it is not applied

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<tr>
<th></th>
<th>US-COGSA ‘36</th>
<th>US-Cogsa draft 99</th>
<th>Warsovia</th>
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<tbody>
<tr>
<td>Per package or freight-unit *</td>
<td>US $500,--</td>
<td>666,666 SDR’s</td>
<td>N/a **</td>
</tr>
<tr>
<td>Per kilogram *</td>
<td>N/a **</td>
<td>2 SDR’s</td>
<td>17 SDR’s</td>
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<tr>
<th></th>
<th>C.M.R.</th>
<th>C.I.M / COTIF</th>
<th>CMNI</th>
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<tbody>
<tr>
<td>Per package or freight-unit</td>
<td>N/a **</td>
<td>N/a **</td>
<td>666,666</td>
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A comparison of these values in US $ in March 2001 shows:
(on 23 / 3 / 2001, 1 SDR was $1,268,. Now it stands around US$ 1,32)
Limit per package in the USA : US$ 500.-
Hague-Visby: 666,666 SDR´s is US $ 853,23
Hamburg-rules: 835 SDR´s US $ 1,068,80.
Limit per package in Argentina: US $ 7.500. - ($400 pesos Argentinos gold)

Applying these different rules to our container that goes from Mendoza (Argentina) to Frankfurt (Germany), we obtain the following panorama:
To the transport by truck: both the Commercial Code of 1889 and Law 24.653 Motor-carrier Act of 1996. (Remember the contradicting and highly doubtful rules about carrier’s liability)
In the terminal in Palmira: Commercial Code (without limits of liability)
Transport by truck in Buenos Aires: as before.
In the B.A.-Port terminal: Commercial Code, until the moment that the container is hooked for loading on board the ship, when the Hague Rules or the Hague Visby-rules for the maritime transport commences to apply.
(There can be a limitation of liability for the Operator of the Terminal, if a certain clause, the so-called Himalaya clause in the carrier’s B/L, is of application.)
To the sea-transport: the Hague Rules or the Hague Visby that apply until the moment that the container is unhooked in the discharge operation in the port of Rotterdam. (See also above).
In the Port terminal of Rotterdam: the rules of the Terminals of Rotterdam,
In the transport by railroad from Rotterdam to Cologne: the CIM/COTIF
And finally in the Transfer Terminal in Cologne and during the transport by truck in Germany, the German Transport Law Reform Act of 1998, based mainly on the CMR.

With this complicated panorama, no carrier dared to enter into a transport-contract from origin to destination with loose or conventional cargoes that had to go through the several different legal systems we described above. Each mode of transport has its own laws with its basic principles: in which case is the carrier considered to be responsible for damages or losses, when can he exculpate himself, which are his maximum limits of compensation for damages, what value of evidence is given to the different documents that are used, who can make a claim and what are the different periods of prescription to present claims (time-bars) etc. Under these circumstances, it was very difficult to obtain appropriate insurance for a transport of “loose goods”.

<table>
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<tr>
<th>freight-unit</th>
<th>SDR’s</th>
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</thead>
<tbody>
<tr>
<td>Per kilogram</td>
<td>8,33 SDR’s</td>
</tr>
</tbody>
</table>
However, the container offers more protection to the cargo and when its use became massive, many transport companies took courage and dared to take the great step and started making “door to door” contracts. In fact the legal situation didn't change much and the underlying questions have not been solved. The container even contributed a very big disadvantage: often it cannot be verified in which part of the transport-chain the loss or damage was caused and because of this it cannot always be established which is the liability-regime that should be applied. However, under the pressure of the trade that demands more and more “door to door-contracts” that cover the complete transport chain, the carriers went ahead, supposing that, after the “economic solution”, the “legal solution” would follow and that, with time, the laws would be adapted to the new reality.

We will see now how the integration of the transport-chains started, with the change from Segmented transport to Intermodal / Combined transport, arriving finally at Multimodal Transport. The first step in this sense was made by some important shipping-lines with totally "containerized“ services. They felt that they could intervene in the negotiation with the inland-transporters and offer a very big transport package and, for that reason, obtain better rates for the land-haulages, which under a “port to port bill of lading”, are for the account and risk of shippers and consignees. Considering that they could take this great package in their hands, these shipping-lines began to offer services for inland transports, as agent of the shipper or consignee, which they called “Carrier's Haulage”. This should not be confused with Combined or Intermodal transport, because it is a segmented transport, with separate contracts, each one with its own document of transport. The shipping-line acts as an agent for the land leg. The name of the owner of the merchandise (not that of the shipping-line) figures in the contract or consignment note. The land carrier (or inland-waterway-carrier) is directly liable towards the owner of the cargo for the corresponding leg. The shipping-line doesn't intervene in an eventual claim for non marine parts of the journey and is only responsible for the sea-transport covered by the Port to Port B/L. (The Hague / or Hague-Visby Rules). For the different legs of the transport (separated by maritime and land-) the different laws and international Conventions are applied, corresponding to each one.

This first step of the shipping-lines to take charge of inland transports, received a prompt replica from the freight-forwarders. Worldwide these are very important participants in transport and they have had a considerable intervention in the integration of the transport-chain and the development of Intermodal and Multimodal Transport.

We will briefly describe the way the Freight-forwarders operate. In practice, they can act in two completely different ways:
I. As Agents for the owner of the cargo and hire transport on his behalf.
II. As Contractual carriers.
I. When the Freight-forwarder acts as an agent to contract (hire) a transport, his principal, the shipper, figures as shipper in the contract with the carrier. The forwarder can also act as an agent and figure for “an undisclosed principal”. In this case, the services of the Freight-Forwarder generally are: the preparation for the shipment, packing and preparing all the documentation (customs etc), arrange for pick-up transport, intermediate storage, timely delivery to the terminal in the port etc. The responsibility of the Freight-forwarder is limited to the good execution of his function and, for example, he doesn't have responsibility for claims for damages that are caused during sea-transport, provided he has not chosen a “sub-standard-shipping-line”. The claims are settled between the claimant and the shipping-line / sea-carrier. (The latter is at the same time the “contractual” and the “performing” carrier).

II. After the shipping lines began to extend their activities on land with contracts for land-transports (own or sub - hired) the freight-forwarders made their counter-attack and they began to offer packages of integrated transports from origin to destination. They commenced to extend their own B/L’s or Way bills and they began to subcontract the services of shipping-lines for the “sea-leg”. When a freight-forwarder acts as “contractual carrier”, he celebrates a contract of transport with the “shipper” or “owner” of the cargo, not as an agent but as a principal and, in turn, he subcontracts the services of other(s), the “performing carriers”. In the contract with the shipper, the freight-forwarder figures as the carrier and assumes the liability towards the shipper and the consignee. In the laws of the United States, in this case, the Freight-forwarder no longer belongs to this category and becomes a carrier or NVOCC, Non-Vessel-Operating-Common-Carrier. If there are claims, the Freight-forwarder / NVOCC must respond to his client according to the conditions of his contract and he must repeat the claim against the “performing carrier” (effective transport company) whose services he has subcontracted, this time under the conditions of the contract between him and the shipping-line, which can be different.

In answer to this initiative of the Freight-forwarders / NVOCC’s to start taking control of the whole transport-chain, some big shipping-lines began to do the same thing. This is how “Combined Transport”, as it was called initially, was born.

In the beginning, these integrated transport-contracts were made under the most diverse conditions, that were or were not, reflected in the resulting documents, which caused a legally very confused situation. The lack of uniformity of the documents complicated (and - still does) the action of merchants, insurance-companies and banks. For this reason, International Organizations tried to establish more uniform rules: the first step was taken by UNIDROIT in 1963, later by the CMI (International Maritime Committee) in Tokyo in 1969 and in 1970 a joint effort of both was made with a single text UNIDROIT / CMI, (Rome Draft). Finally in 1975, the ICC International Chamber
of Commerce published “The Rules for Combined Transport” (publication ICC 298) that are of voluntary application between the parts, and which soon after began to be used universally in the contracts that cover the transport from origin to destination, including a marine – and a land transport. (Although in 1991 the UNCTAD / ICC produced new rules that have substituted the use of ICC 298, these are still in use, as we will see). The ICC rules only have effect in so far as they do not contradict International Conventions or national Laws and there are different jurisprudences in the world about their application.

Although with ICC 298 a little more uniformity was obtained, these rules didn’t change the complicated panorama of the different responsibilities, and the United Nations began to take charge of the topic and after eight years of deliberations, in 1980, the UNITED NATIONS CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS was approved. (For reasons that we will explain later on, this agreement was ratified only by ten countries, mostly of Africa and it is not of application in any international traffic, in the form in which it was approved in Geneva in 1980).

In 1989 it was finally realized that the Convention of 1980 didn’t work in practice, due to the resistance of the carriers and the insurers. In view of the urgency to advance to a system with clearer rules of responsibilities in the contracts, UNCTAD was requested to organize a meeting with the Committee of Marine Transport of the International Chamber of Commerce (ICC Transport Committee) to look for an agreement on a model of rules acceptable to the carriers, based on the existing liability regimes. Finally the new rules were based on The Hague and Hague Visby Rules, whose application, as we already said, is predominant in sea-transport in the whole world. In June of 1991, the International Chamber of Commerce and UNCTAD published new Rules (UNCTAD / ICC Rules for Multimodal Transport Documents), that began to be used as of January 1º 1992, with the intention to do so until a new International Convention can be agreed upon. Neither this is an international (binding) agreement, but this is also a model of voluntary acceptance among the parts.

As far as BIMCO and FIATA are concerned these rules have totally replaced ICC Rules of 1975, the before-mentioned Rules for Combined Transport (ICC publication 298, and it is no longer possible to obtain copies of these from ICC). Based on UNCTAD / ICC Rules for Multimodal Transport Documents of 1991, BIMCO drafted their “Multidoc 95” and FIATA its “FBL 6. 1992”, the FIATA MULTIMODAL B/L.

(However, in traffics to the East Coast of South America, for transports that are organized with a single B/L from origin to destination, many shipping-lines still use “Combined Transport B/Ls” and also many Freight-Forwarders still use the conditions of the old FIATA H/H thru bills of lading”)

When the shipping line contracts for a Multimodal Transport, it is called a Vessel Operating Multimodal Transport Operator (VO-MTO)
Remember, when a Freight-forwarder acts as a principal, he is no longer a Freight-forwarder, but becomes a carrier (Non-Vessel Operating Multimodal Transport Operator (NVO-MTO) or Non Vessel Operating Common Carrier (NVOCC in the United States).

Now we shall see briefly how these different contracts are applied in practice:
The basic differences among the two types of contracts used by shipping-lines and freight-forwarders when they make a Combined / Intermodal or a Multimodal Transport contract, have to do with the rules on the limits of liability that are applied in the total chain.

There are two NETWORK-SYSTEMS in use:
I. One is based on the Project Convention 1970 of UNIDROIT and the rules of the International Chamber of Commerce 1975 (I.C.C 298)
The application is split for “localized” and “not-localized” damages:
a) in the case of a “localized” damage (this means when it can be determined in what segment of the transport it was caused), one of the following applies:
1) the International Convention governing the mode in which the damage was caused.
For example: The Hague / Hague Visby Rules for transport by sea; the Convention of Warsaw for air transport; C.I.M. / C.M.R. for transport by rail or road transport in Europe, etc.
2) mandatory laws of the country where the claim is formulated.
(Norms of public order)
b) Not-localized Damage, (when it cannot be determined in what segment of the transport it took place):
the conditions specified in the Bill of Lading in question are applied.
These can be different in each contract. For example: the Bill of Lading of the FEFC limits the liability of the carrier in this case to two SDR per kilo of lost or damaged merchandise.

NOTICE: In this NETWORK-SYSTEM, the M.T.O. cannot rely on the clauses of the contracts that he has with his sub-contractors.

II. " TIE-UP-SYSTEM " (Subsystem of a Network-system)
Used by many shipping-lines that assume their liability towards the shipper, in the same manner as would have been the case if the shipper himself had hired directly (individually) with each carrier. In other words, it becomes simpler for the shipper to hire the full transport chain, but he doesn’t advance in the complicated legal questions in cases of losses or damages. In this case, the carrier / VO-MTO or NVO-MTO, assumes the same responsibilities that he, in turn, can claim from his subcontractors.
Again the application is split:
in the case of “localized” damage:
1) the applicable International Convention of the mode in which it happened.
2) mandatory laws of the country where the claim is formulated
   (Norms of public order)
3) The conditions of each one of the contracts that the Multimodal Transport Operator makes with his subcontractors.

“No-localized damage“: It is supposed that it happened during the marine transport and the limitations of liability of the Hague Rules are applied (or the Hague Visby).

PERIOD OF DELIVERY: usually, there is no specific arrangement on the delivery term in any of the two systems.

For each case (each B/L) of the “Combined or Intermodal” or even “Multimodal”-contract, a study of the conditions is required.
There is no uniformity and this situation doesn't satisfy the owners of the cargo, which put pressure that more uniform rules be formulated.

Caution:
After reading this, it will be clear that great care should be taken when the term Combined or Intermodal Transport is used and that the text of the B/L should be read carefully in order to know exactly what responsibilities the carrier is accepting in the different stages of the chain. (The B/L is evidence of the Contract of Carriage). As we said, many B/L's are still in use, based on the no longer valid “Rule for Combined Transport ICC Publication 298.” There are even cases of B/L's where the carrier pretends to accept only the responsibility for the transport he carries out with his own means of transport and acts as an agent in the segments that are made with third-party transport-equipment, without accepting responsibility in these. According to such a contract, in cases of damages or losses, the owner of the cargo (or his insurance-company in the event of subrogation), will have to make their claim directly to the “effective” or “performing carrier”. In traffics to Argentina in most cases the B/L refers to a “Combined Transport or Intermodal Transport” and the “Combined Transport Operator” assumes before the shipper the commitment of organizing the total transport between two points that are mentioned in the Transport Contract, using more than one mode of transport, assuming the responsibility (and limiting the same) according to the rules mentioned in his contract, that do not necessarily cover the whole chain. (Remember, in some parts he might pretend to act as an Agent, like the Tourist Agency that sells a ticket for an airline). The C.T.O in turn can subcontract certain segments of the transport chain. It should be noted, that for instance the Argentinean courts do not accept that a carrier declares to act as an “agent only” and in all cases that he extends his own bill of lading, it is understood that, as a carrier, he takes responsibility for the whole chain, and will hold him fully responsible. This is not so in other parts of the world and only a Multimodal Transport Document extended with a written reference to the Rules of UNCTAD-ICC
1991, or with the stamp of the ICC, gives the guarantee that it is really a contract for a Multimodal Transport, and that the "Carrier" accepts the responsibility for the whole chain, that is to say, not only the part that is made with his own transport equipment, but also that which possibly is made with third-party equipment. Many reliable transport companies use B/L`s that have the stamp of the ICC, proving that this organization has controlled that the conditions contained therein agree with their rules of 1991. In this case the Multimodal Transport Operator (MTO) assumes before the shipper of the cargo the commitment to perform the total transport between two points that are mentioned in the Multimodal Transport Contract, using more than one mode of transport, assuming the full responsibility (and limiting the same), subject to the rules and condition established in his contract. The MTO can subcontract, in turn, certain segments of the transport chain, but he remains liable towards the shipper or rightful owner of the cargo. Still, with a transport under a Multimodal Transport Document based on the Rules of UNCTAD-ICC 1991 the "tie-up"-system and "network-system" are applied and we are still far away from the uniform application sought in the International Convention of the United Nations that is described next.

**CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS OF THE UNITED NATIONS 1980**

On May 24th of 1980, after eight years of debate, basically between the representatives of the "industrialized" or "developed" countries on one side and the "developing" countries on the other, a UNITED NATIONS CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS was approved by consent in Geneva.

**OBJECTIVE**

To replace the dispersed legal norms that are applied in different countries to the different modes of transport (Problems of applicable law), for an uniform legislation for the whole transport chain (land, sea and air) if this is carried out under a multimodal transport contract.

To such an effect, the definitions were established that were transcribed at the beginning of this paper.

With this system, a Multimodal Transport Operator, (M.T.O.) that is not necessarily a shipping line, makes a single contract of transport from origin to destination, in at least two modes of transport, covered by a single document (M.T.D), not a segmented transport.

The M.T.O. can subcontract services and the emission of a Multimodal Transport Document doesn't exclude the possibility to issue partial documents, subject to the M.T.D.

These partial documents can also be needed to fulfill laws of some country involved in the transport. What is necessary to have clear is that, with this type of contract, before the owner of the merchandise there is only one responsible party for the condition and for the timely execution of the transport and this is the Multimodal Transport Operator. If the M.T.O. subcontracts services of third parties in some of the different transport-legs, he must claim the damages or losses from the “actual” or “performing carrier” (the third
party), but he continues to be the only party directly liable towards the owner of the goods.
After reading about the complications of the network-system and the tie-up-system, the objective of setting uniform norms for the whole transport-chain seems to be very praiseworthy, one could say, almost ideal. However, arduous discussions took place between the developing countries on one hand and the industrialized countries, historically “maritime countries”, on the other,(except for the Scandinavian countries that grouped with the developing countries).

The “maritime countries”, supported by the International Chamber of Commerce, bankers, and the insurers that participated in the deliberations, proposed rules that would take the existing conventions into account. But the other group wanted to establish new "ideal" rules without taking the existing conventions into account.

The main conflicts were:
  a) How to proceed in cases of not localized damages.
  b) How the Rules of Liability of the M.T.O. would be with respect to its Limitation, who could claim and what the rules on the “Burden of Proof” would be.

POSITION of the different participants in the Convention:

I. NETWORK SYSTEM
This position was supported by the Maritime Countries.
In the event of Localized Damage the contract would be subject to:
  a) existent International Conventions for the corresponding transport mode.
  b) Mandatory Laws of the countries.
  c) For cases of “not localized Damage”, the Convention should set new norms.

II. UNIFORM SYSTEM (UNIFORM SYSTEM)
Project of developing and Scandinavian countries:
Proposed completely new rules establishing the responsibility of the carrier with uniform limitation of liabilities in all modes. These rules would not take existent International Conventions into account, normally applicable to the mode of transport.
Finally by “consent”, an “adapted-Uniform-system” was adopted for the Convention on Multimodal Transport. That is to say, based on the proposition of the Uniform System, with only small adjustments.
Immediately after the Agreement was approved in Geneva in 1980, the delegates from Argentina, Spain, United States, France, Greece, Holland, England, Japan and the Soviet Union, expressed their points of view opposed to the accepted text, which they considered to be inapplicable.
The fact that the Convention, after more than twenty years, (up to October 31st of 2002), has been ratified only by Burundi, Chile, Georgia, Lebanon (1 June 2001) Malawi, Mexico, Morocco, Rwanda, Senegal, and Zambia, and signed by Norway and Venezuela, says a lot about the lack of support it has generated. (see < www.untreaty.un.org >).

If in theory it seemed that the introduction of a Uniform System would facilitate things so much, one should wonder: why has it not been possible to put this Convention into practice? The answer, according to the opinion of the representatives of the ship-owners and the insurance companies, is, that there is a very big distance from theory to practice and that, in order to make laws that can be complied with, it should be kept in mind how things work in practice. They give several reasons why they think that the Agreement is impracticable, one of which is as follows: the M.T.O. must assume personally (legally) all the obligations deriving from the contract and is responsible for the result of the whole Transport Chain. If the damage occurs during transport by a subcontracted party, the MTO will have to pay the claims to the (rightful) owner of the cargo. In theory, he can recover these damages by repeating against the “performing carrier”, which in fact, is the final responsible person. But this “performing carrier” responds to the claim of the MTO under the conditions of the unimodal agreements they made: e.g.: in case of an accident due to nautical fault (error in navigation of the master or mariners) and fire, during sea-transport, the maritime carrier has exonerations and will not pay anything. He will not respond to claims for grounding or sinking of the vessel, which are generally enormous. That is to say, that the MTO has to pay the claim to the shipper, but he cannot make recourse against the subcontracted (performing) carrier, that rejects the claim based on the Unimodal Agreements.

There will also be practical problems for a shipowner: he could perform in the same ship transport contracts under two different (conflicting) liability regimes: for “port to port Bs/L” (F.C.L.-containers) the unimodal conditions of the Hague Rules and for multimodal-contracts, the application of the United Nations MT-convention. As a result he would have, in the exploitation of the same ship, completely different responsibilities.

All this translates in problems of insurance. These are some of the reasons why no carrier in the world agrees to make a transport contract under the conditions of the United Nations MT-convention and they continue to use the rules ICC 298 of Combined / Intermodal Transport (1975) or Multimodal-transport with the Rules of UNCTAD-ICC (1991), which were described before.

PART II. REGIONAL AGREEMENTS ON M.T:
In the early 90’s, a strong current was formed in several countries of South America, who believed that they could find a solution by adopting Regional Agreements on Multimodal Transport.

According to a Report of UNCTAD of June 27 2001, “Implementation of Rules on Multimodal Transport”, these are:
1. ANDEAN COMMUNITY (Bolivia, Colombia, Ecuador, Peru, Venezuela)
   The first Regional Agreement on M.T. was developed in the Andean Community in 1993 and was adopted by Decision 331 of March 4 1993 and later modified by Decision 393 of July 9 1996. This Agreement is based mainly on the UNCTAD/ICC Rules for Multimodal Transport Documents. On the other hand, as is the case in most South American Regional Agreements and local Laws on M.T., it puts a strong accent on the requirements that the Multimodal Transport Operator must fulfill, in relation to insurance, and the necessity to be registered in a regional register. These demands seem to produce serious problems in practice in several countries. (According to information from Colombia, the high insurance that is required, prevents that the Agreement is put into practice).

2. MERCOSUR / COMMON MARKET OF THE SOUTH.
   (Argentina, Brazil, Paraguay, Uruguay)
   These countries signed an Agreement of Facilitation for Multimodal Transport on April 27 1995, that must be ratified by the 4 Houses of Parliament in order to take effect. Up to now this was done by decrees in Brazil, Paraguay and Uruguay. However a Uruguayan Court (Tribunal Contencioso Administrativo) suspended the application on November 9 1996. Argentina didn't ratify the Agreement at all yet.
   When this Agreement takes effect, it will be of application for contracts where the country of reception or delivery is in one of the member-countries, provided the parts make reference to the Agreement in the Multimodal Transport Document. (Voluntary agreement). Also in this case, insurance and the inscription of the Multimodal Transport Operator is regulated. The formation of the regional registers in each country, seem to be a practical obstacle.

3. ALADI / LATIN AMERICAN ASSOCIATION OF INTEGRATION.
   (Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay, Venezuela).
   Agreement on MT by Resolution 23 of the Ministers of Transports, Communications and Public Works signed in Montevideo November 8 1996, mostly based on the rules of UNCTAD/ICC 1992. The same as in the case of the Mercosur Agreement, the inscription of the Multimodal Transport Operator in a regional register is required and insurance policies are regulated. This Agreement requires ratification by 6 members and until November of the 2001, only 3 did so: Bolivia, Peru and Venezuela.

4. ASEAN. (ASSOCIATION OF SOUTHEAST ASIAN NATIONS)
   (The member-countries of ASEAN are: Brunei, Cambodia, Indonesia, Lao's People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.)
   Asean studied the examples of Regional Agreements of South America and formulated its own Agreement that took much of the ALADI Agreement. It is expected that this Agreement will be approved during 2003.
LAWS OF MT OF SOME INDIVIDUAL COUNTRIES:
Apart from Regional Agreements, several individual countries of South America made their own Multimodal Transport Laws, that in many cases differ substantially from the former.

ARGENTINA: Law 24.921 on MT published on January 12 of 1998, that in general follows UNCTAD/ICC Rules of 1992. This Law is of application for National Multimodal transport, (with origin and destination in the country) and for International MT if the place where the MTO should deliver the cargo, is in the Argentine Republic (that is to say for Imports). Also in this case the inscription of the Multimodal Transport Operator in a national register is required and certain insurance policies are regulated. In December 2002 the government announced that the rules for execution of this Law will be published soon.

FEDERATIVE REPUBLIC OF BRAZIL. Approved Law 9.611 MTL on February 19 1998. 2 rules for execution were made for this Law, the first one in 2000 on the Registration of Operators and another in 2001 on Insurance. However neither this Law has yet been put in practice, because of problems of State Taxes charged on transport in each individual State. (ICMS Impostos de Circulação de Mercadorías e Serviços).

COLOMBIA AND ECUADOR implemented the Agreement of the Andean Pact in their legislation, which however according to information from some sources, does not have any practical effect.

CHILE: Ratified the UN CONVENTION ON MT OF 1980.

EGYPT: MT Law in elaboration.

INDIA has its own MTLaw from 1993, that is only applied for Multimodal Transports that have their origin in a place inside India and their destination outside of India (export only, in contrast with the Argentinean MTL that is only for import). This Law doesn't accept the exoneration of the carrier because of nautical fault or error in navigation and it is not clear how the exact period of responsibility of the MTO is. It also demands Multimodal Transport Documents that differ from B/L’s which are normally used internationally. In the year 2000 some changes were introduced, but according to reports in Fairplay magazine, when the Minister of Transport attempted in 2001 to put this Law into practice, he found big resistances from the shipping-lines, partly because the mentioned problems were not solved and partly because of the difficulties in the way that operators have to be registered. Now the government is working on a new adaptation.

MEXICO promulgated the text of the UNITED NATIONS CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS of 1980. In 1982 it published the Regulations for Multimodal Transport that had as the main objective "to preserve the Mexican nationality of the lenders of the services in
the national territory” and refers to “insurance and rates related with the International Multimodal Transport.”

**PARAGUAY** applied the Agreement of the Mercosur by decree 16.927 of April 16 1997

**CHINA** has also made its own Regulation of Multimodal Transport.

**Note 1:** As can be observed, several countries of South America are party to different regional agreements that contain clauses that differ from each other and besides some promulgated their own MTLaws. All these legal instruments have certain differences amongst them, what will probably cause big complications, if at some moment they end up entering all in validity.

The United Nations have expressed their concern for this development in the already mentioned report of June 27 2001: The lack of a widely acceptable international legal framework on the subject has resulted in individual governments and intergovernmental bodies taking the initiative of enacting legislation with the intention of overcoming the doubts and problems that persist until the moment. Concern has been expressed regarding the proliferation of individual, and possibly divergent legal approaches, that would add more confusions and legal problems to those that already exists in the legal regime of Multimodal Transport.


**Note 2:**
These legal actions of the South American countries have demanded big efforts and much time and money has been spent on them. Therefore it seems appropriate to formulate the question, if they have had the wanted effect: that is to say did they foster the Multimodal Transport in the region? Several people related with transport in these countries have been asked to give their opinion, and of the received answers one could deduce that up to now (January 2003), none of all these Agreements has had any practical effect. It is also telling, that in the studies of experts of the OECD and UNCTAD on “the Possibility of Harmonization of the Civil Responsibility in Combined Transport Regimes” (UN/ECE July 3 2000), no mention is made at all to the South American experiences on the topic of MT, what could also be an indication that there are no movements of MT of a certain importance from/to the South American countries, whether it be under their own Laws or Regional Agreements, or under ICC 298 or UNCTAD/ICC rules of 1991.

Some experts say that instead of promulgating MTLaws, the countries of the region should evaluate if it would not be more necessary to revise their old Unimodal Transport Laws. A special case seems to be Argentina, which we mentioned already.
(It is quite probable that better results would be obtained if these countries followed the example of Germany, that made a modern Code of Transport that gathers all their legislation on transport, forwarding and warehousing and couples the movements under international multimodal contracts to their internal Law. These Rules follow closely the conditions of the CMR. See below).

**THE CASES OF GERMANY AND THE NETHERLANDS:**

**GERMANY.** Many say that Germany gave the best example to remove certain legal doubts that have arisen with the advance of Intermodal and Multimodal Transport: in July 1998, it replaced all their old laws that governed different modes of transport, storage and the operation of middlemen, with a single new Law of Transport for all these activities, that is based mainly on the rules of CMR.

The Law embraces the performance of freight-forwarders, warehouse operators, and transport companies of all modes (road, rail etc). The Law does not differentiate whether the contract of carriage agreed among the parties is unimodal or multimodal. For the simple fact that one law is made that is applied to all the sectors that together form the multimodal chain, it is considered by many as the German Law of Multimodal Transport. However, the law was not made specifically for multimodal transport and nowhere is it mentioned that the intention was to make a Multimodal Transport Law. In other words, Germany didn’t invent anything specific for multimodal transport, but it adapted all the rules of the whole chain in a single law that is applied as much to an entirely domestic transport, as to a transport leg in Germany which is part of an international multimodal transport. In this way, the confusion is avoided that reigns in Brazil and in Argentina, where seemingly the new laws generate more doubts than answers and that create different rules for one and the same action, depending whether the contract is for a unimodal or a multimodal contract, that will probably give problems in cases of litigation and of repetition of the Multimodal Transport Operator against the “performing/effective” transport companies, to recover the damages made by the sub-contractors.

**NETHERLANDS:** In 1994 a new Code of Trade was enacted that also replaced all the old laws of transports, where the 1975 ICC 298 Rules for Combined Transport were inserted (It seems strange that they have not changed these rules for UNCTAD/ICC 1991 Rules for Multimodal Transport Documents, which were already in wide use when the law was enacted).

**THE CASE OF THE UNITED STATES:**
The biggest economic power, with the biggest Foreign and Internal Commerce in the world, doesn’t have a Multimodal Transport Law. However it is by far the country where Intermodal and Multimodal Transport work better then anywhere else. The following may be some good reasons for this: The USA has good Unimodal Transport Laws, which are structured to foster effective Intermodality, especially between road and rail transport. These laws leave
much of the liability questions to market-forces, although some small shippers may complain about this. There is an excellent infrastructure in place, where much attention was given to interconnectivity between modes of transport, with good transfer terminals and last but not least, there is a good National Security in place. All in all cargo losses or damages are a very small percentage of the total transports. A review of the way this was built up, certainly contains many lessons for almost all countries in the world. Since 1967, when the Department of Transport was created, constantly studies have been made about the economics in transport, which are so important in the overall economy. In these studies, representative bodies of the Private Transport Operators had an active participation, together with AASHTO, the Association of State Highway and Transportation Officials. But most important has been the active participation of the US Congress, and since 1976, when the National Transportation Policy Commission (NTPSC) was created, transportation laws were studied in an overall way, and no longer mode by mode as had been the case before. It is worthwhile reading the recommendations that were given in 1979 by this Commission after 3 years of studies, the “National Transportation Policies through the year 2000”, which are being pursued since then and which have greatly advanced the practice of Intermodality in the USA. The 8 highlights are:

Multimodal Systems planning rather than an intra-modal approach,
Reduced Government economic regulation,
Equal treatment on the part of the Government for the different modes of transport
More competition and improved efficiency, by placing maximum reliance on market forces, Subjecting policies to Economic Analysis,
More stream-lined government organization,
Greater coordination of Government efforts,
Maximum use of the private sector.

After that a series of laws were enacted which constantly introduced improvements on Intermodal Transport. “Deregulation” started in 1980, when the first 2 Laws were enacted:
The Motor Carrier Act and the Rail Act, called Staggers Act. These laws fostered an even competition among the modes, but on the other hand they allowed mergers and innovations in the land transport. The Staggers Act reduced the (excessive) regulations of the Interstate Commerce Commission ICC. (According to a report of the ENO Transportation Policy Forum 1999, since the implementation of the Staggers Act, the railroads have 35% less tracks, 32% less locomotives, 60% less employees, but they transport 48% more cargo than in 1980. The productivity tripled and 80% of this improvement was transferred to the users by means of discounts of the rates. In 1982, the Surface Transportation Assistance Act was passed by Congress and in 1991 the Intermodal Surface Transportation Efficiency Act, (ISTEA) that had as its declared purpose to foster combined transport and intermodal transport, by encouraging improved intermodal connectivity, reliability and flexibility. In 1995, the Interstate Commerce Commission was eliminated and in its place the Surface Transportation Board was created. In 1998, when I.S.T.E.A. expired, the Transportation Equity Act (T.E.A.) was passed, that puts
even more accent on intermodal connections and promotion of intermodal transport, with a budget of more than 200 billion dollars over a 7 year period. One Transport Law that was not revised inside that first group, because of its international character, was the US Carriage of Goods by Sea Act 1936, that is based on the The Hague Rules. Possibly tired by the little progress that has been made in World-organizations to improve Multimodal Transport Rules, in 1996 the American Maritime Law Association, decided to propose new rules and in 1998 presented a draft bill in the Congress of the United States, with the intention to replace US-COGSA 1936. A very big portion of maritime transport is carried under Intermodal or Multimodal contracts and for that reason, the AMLA decided not only to introduce changes in the purely maritime part, but also to include in this bill, the land transports previous to or subsequent to a sea-transport, if the contract of carriage is for “door to door transportation”. For that reason many call this initiative, (Senate COGSA 1999 that is before Congress in the United States), a bill of Multimodal Transport, which in fact is not the main objective. (As it invades jurisdictions of foreign countries, this bill finds great resistances, especially from the European Union, one of the most important commercial partners of the U.S).

PART III. EFFORTS OF INTERNATIONAL ORGANIZATIONS TO ADVANCE IN NEW WORLD-WIDE LEGISLATION FOR MARITIME TRANSPORT AND FOR INTERMODAL OR MULTIMODAL TRANSPORT.

In the last few years studies have been made everywhere in the world by numerous bodies on the different “Cargo Liability Regimes”, from Universities to important International Organizations, with the objective of arriving at a greater clarity in questions of liability of carriers and other transport intermediaries, in order to formulate proposals to arrive at a greater uniformity and advance towards a new International Convention, acceptable by Governments and the Industry. In these studies the big pressures were noticed that are being exercised by the cargo-interests, to fill the “gaps” in existent legal regimes and to modernize the Hague Rules and the Hague Visby rules. Especially new rules are demanded for the period of responsibility of the carrier and the elimination of exoneration clauses, such as error in navigation (nautical fault) and fire. Another important failure of the Hague and Hague Visby rules, according to the cargo-interests, is that they are only applied to maritime transports covered by Bills of Lading, while now more and more use is made of “Sea-waybills” instead of B/L’s.

U.S.DEPARTMENT OF TRANSPORTATION CARGO LIABILITY STUDY.

One of the first such studies, was carried out in 1997 / 1998 by the D.O.T. of the United States, under a Congressional mandate. The report of this study, which repeated and complemented an earlier DOT-study made on the same subject in 1975, was published in a very extensive publication in August 1998. Although it analyzes in principal the situation in the USA, some of the findings of this work and the questions treated in this study, are similar in other parts of the world and the conclusions should be read together with the conclusions of the worldwide studies which we refer to below. See http://www.dot.gov/
ENO TRANSPORTATION FOUNDATION POLICY FORUM.
This private US-organization brought together a group of high-level industry and government representatives to discuss ways to improve intermodal transport between Europe and the USA. Since 1997, with the sponsor-ship of the U.S.-D.O.T. and the European Commission (DG VII Transport) yearly meetings are held, in which Legal and Regulatory Issues in Intermodal Transport are considered, as well as infrastructure aspects. The results of these meetings, called TOWARD IMPROVED INTERMODAL FREIGHT TRANSPORT BETWEEN EUROPE AND THE USA are published by ENO. The views expressed in this yearly Forum by industry leaders and Government representatives, are very important and certainly should also be read together with those of the ongoing studies of other bodies. See http://www.ops.fhwa.dot.gov/freight/pp/eno.pdf http://www.enotrans.com/

OECD or OCDE (Organization for Economic Cooperation and Development). This important International Organization commissioned a Consultant (Mr. Roger Clarke) in July 2000 to analyze a range of existing regimes and identify those issues where there is still considerable disagreement. The Consultant prepared a wide-ranging document with his findings and also information on the initiatives on cargo liabilities that are presently in progress, such as that of the European Commission, UN/ECE and (especially) UNCTRAL/ CMI / UNCTAD. The Consultant reported to have maintained close contact with CMI and made several (personal) recommendations in his report that OECD’s Maritime Transport Committee should support the CMI’s draft instrument on several points. (see http://www.oecd.org/dsti/transport/sea/index.htm).

The report was analyzed by an OECD / Maritime Transport Committee "workshop" in January 2001, where matters of general agreement were registered as well as those points where there is still divergence. (It is understood that the Consultant advised the OECD work-group to support the idea of an extension of the mandate so far given by the UN-Commissions to UNCITRAL / CMI in order to deal with a proposal for “door to door rules” rather than “port to port-rules”, with the support of UNCTAD. However from OECD’s report of February 2001, it cannot be concluded that in fact it was decided to make that recommendation for extension).

UNITED NATIONS / EUROPEAN COMMISSION: UN/ECE INLAND TRANSPORT COMMITTEE.
In the year 2000 the UN/ECE Inland Transport Committee made similar studies and organized workshops that were assisted by all the sectors involved in European and world-wide transports. Many participants, at the same time, were also taking part in other study groups, for example those of OECD, ICC and CMI, which is working together with UNCITRAL on several topics which are shared by all. Although the European legal system is fairly clear, also there many problems arise about the applicability of the different liability regimes, especially if it cannot be established in which mode the loss or damage occurred. Problems that were mentioned: 1) In the intra-European maritime
transports, (short-sea-traffic), mostly Sea-way-bills are used, to which the Hague / the Hague Visby Rules are not applicable, 2) The lack of uniformity in legislation related to intermediate storage and interfaces (intermodal terminals) between modes of transport, and that it is not always clear in which regime or inside which mode these are considered to be included, 3) The application of liability rules of the Hague / Hague Visby that go from "tackle to tackle" 4) Confusion in the use of terms like “Combined Transport”, “Intermodal” and “Multimodal” Transport, 5) Persistent use of Bills of Lading under Rules 298 of the ICC for Combined Transport of 1975, that should have been replaced totally by the ICC/UNCTAD 1992 Rules for Documents of Transport Multimodal.

Many experts said that it would be convenient to establish a Regional Convention which would unify all the Transport-regimes (Short-sea, Road, Rail, Inland Waterways and Air). Such a Convention should establish clearly that it includes short-sea-traffic, Ro-Ro and Ferries and should clarify the legal liability of terminals and intermediate storage. During these meetings, the representatives of the insurance companies manifested that there are no problems to obtain appropriate insurance for Intermodal/Multimodal transports that are performed in Europe, but that the situation is very different for transport contracts from or towards “developing countries ” that generally do not count with clear legislations. It was concluded that the lack of clarity in the applicable rules, results in higher costs of insurance and higher costs of transport. See www.unece.org

EUROPEAN COMMISSION
Several years ago, the European Commission (European Union) started its policy to foster Intermodal Transport, mainly to take cargoes away from the congested roads. Therefore study and development programs were established, like PACT was. (Program of Action for Combined Transport) that finished in December of the year 2001, to make place for a more ambitious program, Marco Polo. This program looks after finance for the necessary infrastructure in a public-private program, where the State makes part of the investment but the operation remains in private hands. The legal aspects of Intermodal Transport also receive full attention. In June of 1999 the European Commission commissioned a study to 2 specialized companies, to prepare a report on “Intermodality and Intermodal Freight Transport” and the responsibilities of the carriers in intermodal transport.

It was considered that also in Europe there are areas of superfluous costs caused by the lack of transparency and uniformity of the rules on responsibility of the carriers in Intermodal or Multimodal Transport, such as higher costs of insurance due to lack of clarity or higher costs in the administration of claims, that they call “Friction Costs”. Later on, the same 2 companies “IM TECHNOLOGIES Ltd” (of England) and SGKV (of Germany) received an order to make estimates in this respect. The report published in February 2001 contains some interesting conclusions . “SGKV = StudienGesellschaft fuer den kombinierten Verkehr e.V” (See Annex II).
ICC (International Chamber of Commerce).
Practically at the same time that UNCITRAL / CMI, OECD, the EUROPEAN COMMISSION and others, made their studies, the ICC did its own. One of the conclusions was that the revision of the United Nations Convention on Multimodal Transport of Goods of 1980, was not a viable option and that the harmonization of the liability-rules could be obtained with the incorporation of self-regulating provisions in the private contracts and it recommended a bigger promotion for the use of the UNCTAD / ICC 1991 RULES FOR MULTIMODAL TRANSPORT DOCUMENTS.

COMBINED STUDIES OF UNCITRAL / CMI:
In the General Assembly of the United Nations, of December 16 1996, a Model Law on Electronic Commerce was approved. The General Secretary took advantage of this opportunity to recommend UNCITRAL to continue the contacts it had had with CMI in the course of its preparation, and to consider in what areas of Transport Law, that now are not covered by an International Liability Regime, they can work together in order to arrive at more uniformity. In the first instance UNCITRAL received a mandate to formulate a proposal to replace the Hague and Hague Visby rules, in order to bring them up to date and take into account among others the advance of e-commerce and the use of Waybills. (In previous meetings of Uncitral it had been noticed that many legal gaps exist in national laws and International Agreements that constitute obstacles to the free flow of goods and increase the costs of the transactions. The development of multimodal transport and electronic trade require reforms of the liability regimes, independently whether the contracts are for unimodal or multimodal transport and irrespective if the contract is written or electronic. The necessity that the Vienna Convention of 1990 on Transfer Terminals in International Transport, should be ratified, had also been noticed). In answer to the General Secretary's suggestion, UNCITRAL requested the cooperation of the CMI, that at the same time was also working in its International Sub-committee on a new legal framework to replace the Hague / Hague Visby and Hamburg rules and many of the same important topics that UNCITRAL was considering, such as: how to formulate concrete definitions of the role, the rights, the obligations and responsibilities of all the parts, the field of application of the new legal instrument, period of responsibility of the carrier, clear definitions of when it is considered that the delivery of the merchandise has been consummated, obligations of the carrier, responsibilities of the carrier, obligations of the shipper, documents of transport, freight, delivery to the consignee, rights of control of the interested parts over the cargo during the transport, transfer of the rights on the merchandise, to define the interested part that is entitled to begin an action (claim) against the carrier and the time of prescription of the actions (timebar) and to identify the legal terms in case it cannot be established in what part of the transport the damage took place. (Originally the topic of Jurisdiction was not mentioned). Perhaps impelled by the actions that took place at that moment in the United States, the idea arose in the meetings of UNCITRAL / CMI to request an extension of UNCITRAL’s mandate and work together on a proposal for a new Convention that, as the example of the US-bill for COGSA 1999, would include
land transports previous to or subsequent to transport by sea, in case of a “door to door” contract. For that reason UNCITRAL requested CMI to write a proposal, to be elevated to the Commission of the United Nations, together with the request for an extension of UNCITRAL’s mandate, to propose rules for a new Maritime Convention to be applied for “door to door” transport, which would also embrace the land parts that are supplementary to the sea-voyage, if the parties wish to do that. After 4 years of discussions a group of experts of the CMI-ISC (International Sub-committee in Questions of Transports) that had listened to the opinions of all the commercial sectors related with maritime transport, drafted a Document with a Proposal (the Outline Instrument of CMI / ISC). The consulted organizations included FIATA, ICC, IUMI (International Union of Marine Insurers), ICS (International Chamber of Shipping / Shipowners) and IAPH (International Association of Ports and Harbours), besides other non-governmental organizations already mentioned before. From April 14 till 25 2002, UNCITRAL held a meeting in New York, and in September 2002 in Vienna, in which many international organizations participated, in order to decide if it would request the UN-Commission an extension of its mandate and continue together with the CMI with the studies to formulate a new Maritime Agreement that would include “door to door”-transport as explained above. No decision was made and most probably new meetings will have to be held, before a definition will be reached. Here we arrive at a fundamental point of this paper: There are enormous differences of opinion whether UNCITRAL should be given an extended mandate (“door to door” in case of Multimodal transport,) or if it should be restricted to a revision of the Hague / Hague Visby / and Hamburg-Rules. (“maritime rules” only). In the globalized world enormous divergences exist of how it will be possible to overcome the legal problems that arise in an international transport chain, because of the existence of the different “carrier liability regimes” that were briefly described. The great question is: how will it be possible to conjugate the interests of the main actors (stake-holders) that we mentioned at the beginning: The owners of the merchandise (shippers) The Freight-Forwarders, The Carriers The Insurers (those that insure the cargo, cargo insurance, as well as those that insure the carrier, liability insurance). The “sub-stakeholders”, for instance the Operators of Terminals, that have an important function in the connection among the different modes of transport. The CMI- draft (the"Outline Instrument"), has received strong criticisms from all parts and there is not doubt that a lot of time will pass before it will be able to arrive at a text that is acceptable to be put for the consideration of a General Assembly of the United Nations. However, keeping in mind that the great majority of the contracts of Multimodal Transport contracts in the world include a sea-journey, it seems that, for practical reasons, UNCITRAL’s mandate should be extended. This would have better possibilities to arrive successfully at an acceptable legal instrument in the short term, then trying to establish a new Multimodal Convention, which in all the studies mentioned
here, hardly receive any possibilities in the short term, and is branded as “utopian” by many of those that were consulted, who point at the experiences of the 30 year-old debates.

See <http://www.uncitral.org/english/workinggroups/wg3/acn9-525e.pfd> 

Also it should be taken into account that US-COGSA is “dormant but not dead” as a very well-known Canadian Law Professor, Dr. Tetley wrote not long ago, and that it might well be that the United States would take unilateral action, modifying COGSA-1936 with their own rules, if no international solution is arrived at soon.

See <http://tetley.law.mcgill.ca/cmiissues.htm>. Therefore it seems that for practical reasons, the final proposal of the UNCITRAL / CMI should include “door to door” transport and should receive the support of all.

PART IV: REGIONS WHERE INTERMODAL / MULTIMODAL TRANSPORT REALLY WORKS:

There is no good knowledge what proportion of all the transport contracts in the world are Intermodal or Multimodal. It is obvious that the biggest transport flows under Intermodal or Multimodal contracts take place inside the United States and Europe, and among these 2 economic blocks, that more than others have taken advantage of the advance of the container. (Not only the maritime version (ISO), but also the “land-containers” or “swap-bodies”). From the previous descriptions it will be clear that this is the result of the correct political decisions that were made and the way constant studies were carried out, what should be done to introduce improvements. After political positions were defined, the programs to reach the objectives of the studies were generally executed. There is no doubt that the container has been the motor of the great expansion of world trade, and produced a unit-load that can easily be transferred from one mode of transport to another with the use of mechanical elements, in a quick and secure way, without handling the merchandise itself. Around this transport-element a complex integrated system has been formed, not only in the industrialized countries but also in the “developing” world. Its global functioning depends on a group of elements whose main components are:

Specialized ships, constantly bigger in size
Ports with appropriate facilities and handling equipment, trained people and organizations to be efficient links between the modes of transport: Sea, Road, Rail and Inland Waterways,
Well developed internal transport-systems, highway, rail, roads, inland waterways and sometimes air- transport,
Inland Clearance Depots (ICDs) or “Dry Ports”.
Transfer Stations in the transport nodes, also with appropriate facilities and handling equipment, trained people and organizations to be efficient links between the modes of transport: Road, Rail and Waterways.
Depots to store empty containers, with repair-shops for repair and maintenance of containers, including refrigerated ones.
Electronic systems of Logistics and of Pursuit of the containers, with E.D.I, electronic exchange of data among the participants.
And very importantly, an appropriate administrative frame-work, with clear and flexible Custom-rules.

In the countries where Intermodal or Multimodal transport really function, the bank’s credit systems have adapted to these rules and the seller can collect his letter of credit against surrender of the Multimodal Transport Document, or a “Received for Shipment” Bill of Lading, immediately after delivery of the goods to the carrier in some place in the interior of the country or in the port. This is not the case in many countries in South America, where much is still sold FOB and the seller has to wait until the merchandise has been loaded in the ship and he receives the “On Board Bill of Lading”. Many times this can mean a difference of 5 or more days.

Regrettably in the South American countries a lot still lacks. Seldom proper information and/or trustworthy statistics are available, and it is difficult to make similar studies as the ones mentioned before. It is very difficult to know the percentage of the freight that moves with Intermodal or Multimodal contracts, although everything indicates that this is very low. It seems correct to say that in the countries that have Multimodal Transport Laws there is much less real Intermodal Transport and everything indicates that they should look for other, more effective solutions.

EU-FRICTION COSTS-STUDY:
A study was made by the European Union, to estimate the economic impact on freight costs, as a consequence of the diversity of “carrier liability regimes” in a multimodal transport.
This study has analyzed what is calls the “Friction-Costs” of all the interested parties in the transaction, mainly the additional costs related with the system of claims administration and insurance.

<table>
<thead>
<tr>
<th>Definition of “Friction” Cost</th>
<th>Costos de Fricción (Definición)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Loss, damage, delay (actual losses)</td>
<td>a) Pérdida, daño ó demora (Pérdidas efectivas)</td>
</tr>
<tr>
<td>b) Admin. costs related to the supply of insurance and handling of claims applicable for each stakeholder.</td>
<td>b) Costos administrativos relacionados con la provisión de seguros y el manejo de reclamos, aplicables para cada interesado en el “evento”</td>
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</tbody>
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<tr>
<th>2) Stakeholders</th>
<th>Jugadores (Los que participan en el evento)</th>
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<tbody>
<tr>
<td>Shipper (Cargo interest)</td>
<td>Sender</td>
</tr>
<tr>
<td>Receiver</td>
<td>Embarcador</td>
</tr>
<tr>
<td>Intereses de la Carga</td>
<td>Receptor</td>
</tr>
<tr>
<td>Freight-Forwarder &lt; carrier)</td>
<td>Agent</td>
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<tr>
<td></td>
<td>Agent</td>
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<td></td>
<td>Cargo</td>
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<td></td>
<td>Liability</td>
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<tr>
<td>Sub-stakeholders</td>
<td>Sub-jugadores</td>
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<tr>
<td>Friction Cost Carrier in % of Freight Charges:</td>
<td>Costos de Fricción del Porteador en % del Flete</td>
</tr>
<tr>
<td>National Transp.</td>
<td>6,3% of Freight Charges</td>
</tr>
<tr>
<td>Intra-Europe</td>
<td>3.9 %</td>
</tr>
<tr>
<td>Extra-Europe</td>
<td>2,4 %</td>
</tr>
<tr>
<td>Friction Cost Carrier is less than 0.2% of consignment value</td>
<td>Costos de fricción de los Porteadores es menor que 0.2% del valor de la consignación.</td>
</tr>
<tr>
<td>4) Cost of Cargo Insurance and shipper’s experience of the level of loss and damage and insurance cost.</td>
<td>El costo del seguro y las experiencias de los embarcadores del nivel de perdidas y daños /costos del seguro.</td>
</tr>
<tr>
<td>a) Cost of Cargo Insurance is low, often below 0.1% of value of the cargo</td>
<td>a)El costo del seguro es bajo, a menudo bajo 0.1% del valor de la carga</td>
</tr>
<tr>
<td>b) 75% to 80% of European shippers insure their cargo</td>
<td>En Europa el 75% a 80% de los embarcadores aseguran su carga.</td>
</tr>
</tbody>
</table>
| c) only 20% to 30% of cargo insurance claims is recovered from the carrier insurance (often same insurance company cover both cargo) | b) Solamente el 20% / 30% de los reclamos se recupera de las compañías de seguro de las compañías de seguro de los
<table>
<thead>
<tr>
<th>Mode</th>
<th>Value</th>
<th>Liab. Regime</th>
<th>SDR</th>
<th>Modo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air-Cargo</td>
<td>E$ 1.62</td>
<td>Warsaw Conv</td>
<td>17.00</td>
<td>Transporte aéreo</td>
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<tr>
<td>Road-Freight</td>
<td>E$ 0.90</td>
<td>CMR</td>
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<td>T. carretero</td>
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<td>17.00</td>
<td>T. ferroviario</td>
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<tr>
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<td>E$ 0.80</td>
<td>CMNI</td>
<td>8.33</td>
<td>T. Nav. Interior</td>
</tr>
<tr>
<td>Waterways</td>
<td></td>
<td>HV (if B/L)</td>
<td>2.00</td>
<td>Nav. Mar. Cabotaje</td>
</tr>
<tr>
<td>Short Sea</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In the column “value” the average cargo-value is mentioned. In the SDR column the liability limits according to corresponding Convention, expressed in Special Drawing Rights. 8,33 SDR is Euro$ 11.--- . En la Columna SDR figura el Limite de responsabilidad en Derechos Especiales de Giro, por kilogramo de carga. (Special Drawing Rights ) 8,33 DRS son aprox. Euro$ 11.---

<table>
<thead>
<tr>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 75%</td>
<td>0.10%</td>
</tr>
<tr>
<td>&lt; 5%</td>
<td>&gt; 1%</td>
</tr>
</tbody>
</table>

Reportedly descending

<table>
<thead>
<tr>
<th>Knowledge about Liability Regimes</th>
<th>Conocimiento de las reglas sobre resp.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shippers do not know about different liability regimes.</td>
<td>Dadores de carga no saben mucho sobre “Regimenes Legales de Responsabilidad”</td>
</tr>
<tr>
<td>Low level of litigations: &gt; 90% of shippers report that less than 1% of claims led to litigation Carriers / insurers concur.</td>
<td>Bajo nivel de litigios. &gt; 90% declaran que menos que 1% de los reclamos terminan en litigios. Transportistas y aseguradores concuerdan con esto.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8) Participación de los diferentes “modos”</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation of different modes:</td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mode</th>
<th>Revenue</th>
<th>Por peso</th>
<th>Por valor</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRA EUROPE</td>
<td>0.1%</td>
<td>4.0%</td>
<td></td>
</tr>
<tr>
<td>EXTERNAL EUR. EXPORT</td>
<td>0.9%</td>
<td>24.5%</td>
<td></td>
</tr>
<tr>
<td>Mode</td>
<td>INTRA EUROPE</td>
<td>EXTERNAL TRADE</td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>--------------</td>
<td>----------------</td>
<td></td>
</tr>
<tr>
<td>EXTERNAL EUR. IMPORT</td>
<td>0.3%</td>
<td>23.5%</td>
<td></td>
</tr>
<tr>
<td>INLAND WATERWAYS</td>
<td>12.9%</td>
<td>1.1%</td>
<td></td>
</tr>
<tr>
<td>INTRA EU. IMPORT</td>
<td>12.9%</td>
<td>0.9%</td>
<td></td>
</tr>
<tr>
<td>MARITIME</td>
<td>29.7%</td>
<td>23.1%</td>
<td></td>
</tr>
<tr>
<td>RAIL</td>
<td>5.1%</td>
<td>4.2%</td>
<td></td>
</tr>
<tr>
<td>RAIL</td>
<td>5.3%</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>RAIL</td>
<td>4.1%</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>ROAD/ CARRETERA</td>
<td>42.1%</td>
<td>60.0%</td>
<td></td>
</tr>
<tr>
<td>EXTERNAL TRADE EXP.</td>
<td>18.1%</td>
<td>25.0%</td>
<td></td>
</tr>
<tr>
<td>EXTERNAL TRADE IMP.</td>
<td>5.5%</td>
<td>19.0%</td>
<td></td>
</tr>
</tbody>
</table>