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MIĘDZYNARODOWE PRAWO DOTYCZĄCE MULTIMODALNEGO PRZEWOZU TOWARÓW: NAJNOWSZE TENDENCJE I PERSPEKTYWY

INTERNATIONAL LAW ON THE MULTIMODAL CARRIAGE OF GOODS: RECENT TRENDS AND PERSPECTIVES

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Streszczenie

Transport multimodalny to systematyczne połączenie różnych środków transportu, takich jak transport kolejowy, drogowy, wodny, lotniczy itp., w ramach którego wykorzystuje się zalety każdego z rodzajów transportu, tym samym osiągając wyższą wydajność. W niniejszym artykule przedstawiono przegląd zagadnień prawnych dotyczących multimodalnego przewozu towarów. Autorzy koncentrują się na ewolucji międzynarodowego prawa regulującego transport towarowy ze szczególnym uwzględnieniem zagadnień związanych z transportem multimodalnym. Na potrzeby artykułu przygotowano krytyczny przegląd istniejących konwencji międzynarodowych i ich postanowień dotyczących transportu multimodalnego oraz reżimu "morski plus" z reguł rotterdamskich. Ponadto, autorzy przedstawili problemy wynikające z braku jednolitego multimodalnego prawa przewozowego, a także propozycje dotyczące multimodalnego transportu towarów. Problemy te są omawiane poprzez analizę aktualnych ram prawnych w odniesieniu do przewozu multimodalnego oraz ocenę, w jaki sposób w ramach tych ram można znaleźć prawo dotyczące umów multimodalnych.

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Słowa kluczowe: multimodalny przewóz towarów, transport multimodalny, multimodalne umowy przewozu, przewoźnik multimodalny, odpowiedzialność, multimodalne dokumenty przewozowe, prawo międzynarodowe.

Abstract

Multimodal transport is a systematic combination of different modes of transport such as railway, road and water transport, aviation, and other traditional transport modes that can take advantages of each individual modes and achieve higher efficiency. This paper presents an overview of legal issues concerning the multimodal carriage of goods. The authors focus on the evolution of the international law regulations of the freight transportation with particular reference to the issues connected to multimodal transport. The critical review of existing international conventions and their provisions pertaining to multimodal transportation and the “maritime plus” regime of the Rotterdam Rules is provided. In addition, the problems generated by the lack of uniform multimodal carriage law are highlighted by the authors and the perspectives recommendations concerning multimodal transportation of goods are proposed. These problems will be addressed by means of an analysis of the current legal framework in relation to multimodal carriage and an assessment of how within this framework the law applicable to a multimodal contract may be uncovered.


Keywords: multimodal carriage of goods, multimodal transport, multimodal carriage contracts, multimodal transport operator, liability, multimodal transport documents, international law.

Introduction

Without the intricate contemporary infrastructure and transport systems, the world wide trade would be quite impossible. Apparently, the old adage ‘transportation is the lifeblood of commerce’ still rings true. Now maybe even more than ever before, as circumstances in the transport sector have vastly improved since the spice trading days of the efficiency of the international carriage of goods have increased rapidly. This is due, in part, to the augmented usage of the container (Glass, 2004, p. 1). In the 1950’s shippers began using containers as they provided significant operational and economic advantages (Nasseri, 1988). The introduction of the container enabled cargo handling processes to gain a high level of standardization and helped overcome many of the technical difficulties concerning the transshipment of goods. The container proved the means by which cargo could be transported by all modes with minimal adaptation of carrier technology. Thus the development of the container facilitated the emergence of operators that provide smooth ‘door-to-door’ transits. Historically, cargo carried from an inland location on one continent, such as a manufacturing plant,

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to an inland location on another continent, such as a retailer's warehouse, would travel under three separate contracts of carriage most likely concluded with three separate carriers. As a result, it would be unloaded and reloaded between the different modes of transport used. The cargo would first travel by land under a consignment note from the manufacturing plant to the port of loading. It would then travel by sea under a bill of lading to the port of discharge. After this, the cargo would then complete its journey by land under yet another transport document. Each of these three contracts of carriage would be legally distinct and thus subject to its own legal regime (Sturley, 2007). At present much of this 'door-to-door transport' is performed on the basis of a single carriage contract, and more often than not, this carriage contract allows for the utilization of more than one mode of transportation. The cargo is still transhipped but generally remains in the container throughout the entire carriage. Such door-to-door carriage has been designated multimodal carriage when the contract involves more than one mode of transport (Glass, 2004, p. 3; De Wit, p. 4). It should be noted here that although the container facilitated the emergence of multimodal carriage it is not a necessity. A contract involving carriage by more than one mode of transport is considered multimodal whether the cargo is stuffed in a container or not (De Wit 1995, p. 4; Hoeks M. 2009, p. 2). The connection between the container and multimodal transport is nonetheless obvious. It is also known as a combined carriage contract which is a slightly less precise term, since this could also indicate transport combinations in the same mode (De Wit 1995, p. 4). Another – less than adequate – synonym is mixed carriage, see (Schadee 1972, p. 1234). In the USA the term intermodal transport is in use, but this term does not entirely cover the same ground as the term multimodal transport (Glass 2004, p. 3). Multimodal transport is a legal concept while container transport is a technical concept (De Wit 1995, p. 4; Van Beelen 1996, p. 9. As Schadee states it, a container is nothing more than a 'loading box'; (Schadee 1972, p. 1234; Hoeks M. 2009, p. 2).

Hence, today major customers demand and private sectors initiative in multimodal transport development in advanced economies get a one window integrated, just in to one and efficient all inclusive door to door service at pre-determined price. One of the accomplishments of the involvement of the private sector

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in the multimodal transport is the institutionalization of the concept of „hub and spoke system“ in multimodal transport operations in developed countries. The „hub and spoke systems“ is a process whereby the inland move by carrier haulage between the oceans port and the hub (also called the trunk leg) is required to be made either by rail or inland waterways. Meanwhile, the inland move between the hub and the premises of the client (or the local leg) is usually made by road and is often offered or arranged by the hub operator. This concept is a typical illustration of the multimodal transport system practice in Europe, introduced by a liner shipping conference called Trans-Atlantic Conference Agreement (TACA).


Multimodal transport combines the railway transport, water transport, road transport, aviation, and other traditional modes of transport and has the potential to leverage advantages of various transport modes and enhance efficiency of transport.

Multimodal transport (also known as combined transport) is the transportation of goods under a single contract, but performed with at least two different means of transport; the carrier is liable for the entire carriage, even though it is performed by several different modes of transport (by rail, sea and road, for example). Considering the variety of cultures, languages and commercial practices at both ends of a trade transaction and the resulting complexity of assembling such an international transport operation, it is likely to appear reasonable to a trader to let one qualified operator organize and be responsible and accountable for the entire transport chain. The carriers in turn have developed transport systems over the years in order to fulfil their customers' requirements, offering competitive services (Hoeks, 2009, p. 3-4). The carrier does not have to possess all the means of transport, and in practice usually does not; the carriage is often performed by sub-carriers (referred to as "actual carriers"). The carrier responsible for the entire carriage is referred to as a multimodal transport operator. In practice, freight forwarders have become important multimodal transport operators; they have moved away from their traditional role as agents for the sender, accepting a greater liability as carriers.

Multimodal transport research is being conducted across a wide range of government, commercial and academic centers. Researchers have been investigating multimodal transport from various aspects, but mainly on multimodal

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transport planning, management, and sustainable development. Legal issues of multimodal transport system evolution have been investigated by Marian Hoeks, Michiel Spanjaart, Kurosh Nasser, Nadezhda Butakova, Sergio Carbone, Olena Bokareva and others. To sum up, grasping the multimodal transport system recent developments and legal issues has important significance.

The purpose of scientific research

By reason of the envisioned dimension of the research, the topic of discussion will be limited to multimodal transport of an international nature. The **purpose of this paper** therefore, is to highlight the legal issues, trends and perspectives concerning the multimodal carriage of goods with a view to encouraging similar experience in Ukraine.


Problem description

It should be noticed, that multimodal transport is essential to the development of commerce on a global scale. However, despite being one of the main types of transportation, contracts pertaining to the multimodal carriage of goods are not regulated at the international level (Franco, 2016).

The international transportation of goods by various modes of transport (air, rail, road and sea) is governed by national laws and international conventions designed to regulate unimodal transportation, i.e. the carriage of goods by one particular mode of transport. Therefore, land carriage is regulated by the Convention on the Contract for the International Carriage of Goods by Road (CMR) air carriage is regulated by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929 (Warsaw Convention) and the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999 (Montreal Convention); sea carriage is regulated by the Hague Rules, the Hague-Visby Rules and the Hamburg Rules (the Rotterdam Rules are still pending) (*The COTIF-CIM was updated by the Vilnius Protocol of 1999, the Warsaw regime is to be replaced by the Montreal Convention of 1999 and the Hague, Hague-Visby and Hamburg regimes are meant to be replaced by the Rotterdam Rules, the UNCITRAL Convention on the Carriage*

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of Goods Wholly or Partly by Sea of 2009.); rail carriage is regulated by the Convention concerning International Carriage by Rail (COTIF) and inland waterway carriage of goods is regulated by the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI).

Almost all of these treaties originated in the early part of the last century and have for historical reasons each developed their own different rules of law and procedures. Although most of them have been updated recently. The result of the combination of this unimodal international framework, the regional, subregional and national laws and the various standard term contracts vary greatly from case to case and give rise to uncertainty as to the extent of a multimodal carrier's liability in a given situation (Hoeks, 2009, p. 9).

Because of the lack of an international convention on multimodal carrier liability it is difficult to determine at the outset of a multimodal transport what – international and/or national – law will apply to the contract as a whole or to its various parts. Which regime is deemed applicable depends on a myriad of factors; the nature and the extent of the multimodal contract, which modes of transport have been accounted for in the contract and in what way, what documents have been drawn up, the addressed court's views on the scope of possibly applicable unimodal conventions, et cetera. Over the past century, mandatory minimum standards of liability were gradually introduced in the form of international conventions governing unimodal transport. Such safeguards are missing in multimodal transport however, since no such agreed international minimum standards are currently in force (Hoeks, 2009, p. 9).

Problems also arise when two legal regimes apply concurrently. Due to the many provisions in the uniform carriage conventions which regulate special types of multimodal carriage such as Article 2 of the CMR, Article 2 of the CMNI, Article 1(3) and (4) of the COTIF-CIM and Article 18(4) of the Montreal Convention, the concurrence of more than one system of uniform law is by no means unlikely in multimodal carriage. As there are no rules tailored to multimodal carriage that establish which of the applicable uniform regimes should be granted precedence, these situations have the potential to become legally challenging (Hoeks, 2009, p. 15).

Results

From a legal standpoint, multimodal transport creates several problems. The existing transport conventions deal with one specific mode of transport, such as sea, road, rail, air and inland waterways, while an international mandatory convention related to multimodal transportation is lacking. The previous attempts to create an international legal instrument to govern this type of carriage have not been successful (Thematic Research Summary on Multimodal transport, 2014).

On May 24, 1980, the Convention on International Multimodal Transport of Goods was adopted. It has been ratified by too few states to bring it into force and has very little governmental support. The Convention on International Multimodal Transport of Goods remains significant because it contains a set of model rules which be incorporated voluntarily as part of the operator's standard trading conditions. (Hoeks, 2009, p.17).


There is also an international convention directed to the operators of transport terminals (United Nations Convention on the Liability of Operators of transport Terminals in International Trade (Vienna, 1991), but has not yet come into force.

Due to the vacuum in uniform law concerning the multimodal transport contract one more transport convention was adopted in 2008 - "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" (The Rotterdam Rules). This Convention has introduced the new concept of "maritime plus", and thus will govern the whole of a contract of carriage, which comprises an international sea leg, including those segments that are to be performed by other transport modes. The controversies surrounding the "maritime plus" regime of the Rotterdam Rules have provided the impetus for the EU to instigate discussions on whether it needs to adopt its own legislation concerning multimodal transport and not just wait for an international solution. (Bokareva, 2015).

The Rotterdam Rules provide a legal framework that takes into account the many technological and commercial developments that have occurred in maritime transport since the adoption of those earlier conventions, including the growth of containerization, the desire for door-to-door carriage under a single contract, and the development of electronic transport documents. The Convention provides shippers

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and carriers with a binding and balanced universal regime to support the operation of maritime contracts of carriage that may involve other modes of transport.


All in all, it can be said that from a legal point of view the Rotterdam Rules are a far cry from being perfect. Their multimodal rules are complex, leave gaps and despite valiant attempts the Convention fails to prevent all envisioned conflicts with the existing uniform carriage law (Hoeks 2009, p. 385).

With no international convention applicable to contracts for the multimodal carriage of goods, such contracts are usually governed by the so-called 'soft law'; the United Nations Conference on Trade and Development and International Chamber of Commerce Rules 1992 are frequently referenced in multimodal carriage contracts. Some jurisdictions also have their own instruments which address the matter at a regional level, such as Decision 331/1993 of the Andean Community, which was later partially modified by Decision 393/1993 (collectively, the 'Andean Multimodal Regime') (Franco, 2016).

Three sets of model rules for the regulation of multimodal transport have been established by the international community since 1973. The International Chamber of Commerce (ICC) devised the first significant set of rules, The Uniform Rules for a Combined Transport Document which were issued in revised form in 1975 (ICC Rules 1975). ICC publications are not mandatory law but model contract terms. They cannot override existing law, such as the Unimodal Conventions in countries where they have been implemented. The ICC 1975 operates by voluntary incorporation by the multimodal operator into its standard trading terms. In Practice, the ICC Rules were accepted as the appropriate standard for the Model Combined Transport Bills Of Lading designed by such industry associations as the Baltic and International Maritime Council (BIMCO) and the International Federation of Freight Forwarders (FIATA). Other interested parties, notably cargo owners and governments of developing countries were not enthusiastic about the industry's terms and conditions of operation. Recently a fresh attempt was made to resolve the unsettled question about the allocation of risks and liabilities in multimodal transport. The new initiative was the combined effort of the secretariats of both UNCTAD and ICC, which developed a New Set of Rules for Multimodal Transport Documents (UNCTAD/ICC Rules

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1992). These rules are also voluntary and not mandatory. They have the advantages of being able to reflect a longer experience with multimodal operations (Legal Framework of Multimodal Transport Operators).


While some of these regimes are based on the Convention on International Multimodal Transport of Goods and the International Chamber of Commerce (ICC) Rules there are significant differences between the various regimes on points such as the basis of carrier liability, time bars and limitation of liability. The result is a rather inconsistent patchwork; the liability framework thus created is fragmented and complex and causes uncertainty as to what regime is applicable in a given situation (Hoeks, 2009, p.8).

Because of the lack of an international convention on multimodal transport it is difficult to determine at the outset of a multimodal transport what – international and/or national – law will apply to the contract as a whole or to its various parts. Which regime is deemed applicable depends on a myriad of factors; the nature and the extent of the multimodal contract, which modes of transport have been accounted for in the contract and in what way, what documents have been drawn up, the addressed court's views on the scope of possibly applicable unimodal conventions, etc (Hoeks, 2009, p.11).

A noteworthy example of the existing confusion surrounding multimodal contracts and the manner in which courts handle this legal jungle are the two instances of the English case known as *Quantum* (see *Quantum Corporation Inc. and others v Plane Trucking Ltd. and Another*, [2001]). In this case the claimants considered the CMR to be applicable. Under CMR rules, Air France's liability would – most likely – be unlimited on account of the wilful misconduct of the driver employed by their subcontractor Plane Trucking. In this localized loss scenario the prime question is one of scope; does or does the CMR not apply to a road stage as performed under the contract as concluded by the shipper and the carrier in question? Or looking at the bigger picture, does the application scope of the CMR as mentioned in Article 1 CMR cover stages of international road carriage performed under – or provided for in – a multimodal contract, a contract including other modes of transport besides the road carriage? This seems an obvious question to start with, since the CMR – like the

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majority of the international carriage conventions – has no need for intercession by national law to apply to a carriage contract. The CMR's rules are mandatory and it sets aside any inconsistent provisions in the contract or even any incompatible national regulations that may apply. The waybill ensured that such carriage fell within the terms of the contract by stating on its face: "All goods may be carried by any other means including road or another carrier unless specific contrary instructions are given hereon by the shipper, and shipper agrees that the shipment may be carried via intermediate stopping places which the carrier deems appropriate". Air France admitted liability for the loss, but also argued that the carriage by air subject to the Warsaw Convention ended at Charles de Gaulle airport and that, thereafter, its liability was to be determined by reference to its own terms and conditions. These contained a limit of liability of 17 SDR per kilogram which was more generous than the basic CMR limit of 8,33 SDR per kilogram, but no provision such as Article 29 of the CMR disentitling Air France from relying on that limit in the event of willful misconduct. The claimants on the other hand contended that, although there was only one contract of carriage, Air France had contracted not only for the carriage of goods by air to Charles de Gaulle (Hoeks, 2009, p. 25-26). It seems clear that differences in opinion such as these between the German, Dutch and English courts of law, and even between the courts of these countries among themselves, underline that the law which is applied to a multimodal contract is uncertain at the outset; it depends on which court is addressed and how the scope of application rules of the potentially applicable regimes are interpreted by said court (Hoeks, 2009, p.28).

The current legal landscape is rather fragmented when it comes to the multimodal carriage contract; the existing international carriage conventions focus on specific types of unimodal carriage and thus do not regulate typical multimodal carriage difficulties such as unlocalized loss. Because there is no international convention that regulates multimodal carriage specifically, it can be quite a task to determine which rules apply in case of a dispute stemming from this type of transport. Some of the carriage conventions have incorporated provisions dealing with multimodal carriage however. Therefore, it is possible that, under certain circumstances, one of the unimodal carriage conventions does apply to a claim

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stemming from multimodal carriage. Of course, if none of the carriage conventions covers the situation at hand, it becomes necessary to determine which national regime applies. Due to the vacuum in uniform law concerning the multimodal transport contract, courts of law currently tend to determine the liability of the multimodal carrier based on the international or national unimodal liability rules relevant to the stage of the transport to which a particular loss can be attributed. This system is called the network liability system. This system ‘knits’ different liability regimes together, which creates a colourful patchwork. The network system is also known as the ‘système réseau’ or the ‘chameleon’ system. The term chameleon perfectly describes the changing of the applicable legal regime depending on the environment the transported goods are in. variety of legal hues. The operative consensus seems to be that, unlike the uniform system, the pure form of this system can be applied without an international multimodal carriage convention being needed to provide it with legitimacy. The reason for this is that under the pure network system only those regimes are applied that according to their own scope of application apply to the loss (Hoeks, 2009, p. 43).

The two main alternatives are known as the *network approach* and the *uniform approach*. Due to the extremity of the consequences when these opposites are implemented in their pure form, most of the past efforts to create a treaty contained a compromise. This compromise is appropriately called the *modified approach*. The Convention on International Multimodal Transport of Goods that it has a ‘modified’ uniform basis since Article 19 of the Convention on International Multimodal Transport of Goods applies the network approach, but only in relation to the monetary liability limitations. However, due to the fragmented nature of the field of international carriage law, such a *uniform regime* – whatever its contents – would encounter a serious impediment in the form of the existing legal framework (Hoeks, 2009, p. 43).

A *network system* is not a structure which provides substantive or ‘material’ rules of its own; it merely links existing sets of substantive rules. Under a network based regime the multimodal transport agreement is divided into parts, one part per transport mode incorporated in the contract. The law applicable to each separate stage is determined as if it were a separate contract, concerning only that type of transport. Thus the multimodal contract becomes a chain of different regimes. In other words,

different regimes may apply to the separate parts of the journey as if the involved parties had drawn up separate contracts for each of them. Such a fictional contract as the basis for the rules that are to be applied in multimodal carriage can be found in the German legislation on multimodal transport (§ 452a of German Commercial Code) and in the new Rotterdam Rules (Article 26) (Hoeks, 2009, p. 53).


The *modified system* is a compromise between the uniform and the network system which tries to combine the best elements of both. A modified liability system essentially seeks to provide a middle-way between the uniform and the network approach. Various arrangements are possible, making a system more uniform or more network oriented. In practice, a great deal of use is being made of this kind of system in the form of contractual standard rules like the UNCTAD/ICC Rules.

In some systems the emphasis is on the uniform characteristics, like in the Convention on International Multimodal Transport of Goods Convention, and in some, such as the Dutch national multimodal regime, the network approach is more prominent, but in essence most systems are a combination of both. The denomination modified system covers the whole range of possibilities between a pure uniform and a pure network approach.

The *limited network system* as incorporated in Article 26 of the Rotterdam Rules is a tremendously complicated arrangement, which is unlikely to work without at least a few glitches. The foremost of these is probably the fact that it does not take views on the applicability of carriage conventions such as the CMR to international road stages of multimodal contracts which are adhered to by both the Dutch and the English judiciary into account. On the contrary, it is the German view which does not deem conventions such as the CMR applicable to parts of a multimodal contract, unless this is specifically established by the convention, that is followed by the new regime. Only with regard to carrier liability, limitation of liability and time for suit do the Rotterdam Rules grant precedence to the possibly applicable unimodal carriage regimes, if the damage or loss occurred during a non-sea stage. Unfortunately, the exact demarcation of these terms, especially the scope of the term 'carrier's liability', seems somewhat open to debate (Hoeks, 2009, p. 384).

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Countries worldwide have implemented a series of policies to encourage the development of multimodal transport. In 2011, the EU Commission claimed “Roadmap to a single European transport area - towards a competitive and resource-efficient transport system” to further promote the development of sustainable transport and improve the service of intermodal transport chain (White Paper, 2011).


The strategic document “Roadmap to a single European transport area - Towards a competitive and resource-efficient transport system” presents the Commission’s vision for the future of the EU transport system and defines a policy agenda by 2050. The European Union policy White Paper introduces the principles for the development of the European transport infrastructure. It defines a two-layer European transport network for the rail transport (separately for passenger and freight transport), road network, sea and inland waterways, air infrastructure and infrastructure for multimodal freight transport (bi-modal and tri-modal terminals). The key proposals concerning multimodal transport of goods (e-Freight) are as follows: to create the appropriate framework to allow for tracing goods in real time, ensure intermodal liability and promote clean freight transport: put in practice the concepts of ‘single window’ and ‘one-stop administrative shop’; by creating and deploying a single transport document in electronic form (electronic waybill), and creating the appropriate framework for the deployment of tracking and tracing technologies (RFID, etc.); ensure that liability regimes promote rail, waterborne and intermodal transport.

As for Ukraine, legal framework process concerning multimodal transport activities, multimodal transport operators and multimodal carriage contract, as well as the system of liability for multimodal transport operators is slow and facing many pitfalls both in the drafting of the law and its adoption. Lack of regulation of road and inland waterway transport is having serious impact on multimodality. Therefore, it is necessary to eliminate existing barriers to logistics and multi-modal solutions within the framework of national corridors and integration to TEN-T.

In 2014 the European Union and Ukraine signed an Association Agreement that constitutes a new state in the development of EU-Ukraine contractual relations, aiming at political association and economic integration. Chapter 7 of the Agreement includes provisions for transport cooperation in order to promote efficient, safe and

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secure transport operations as well as intermodality and interoperability of transport systems. According to Article 369 this cooperation shall cover development of sector strategies in light of the national transport policy (including legal requirements for the upgrading of technical equipment and transport fleets to meet the highest international standards) for road, rail, inland waterway, aviation, maritime transport and intermodality, including timetables and milestones for implementation; development of the multimodal transport network connected to the Trans European Transport Network (TEN-T) and improvement of infrastructure policy; promotion of the use of intelligent transport systems and information technology in managing and operating all modes of transport as well as supporting intermodality etc.

The major impact of the Association Agreement on multimodal transport development can be categorized as approximation Ukrainian standards and policies with EU policies; improving the movement of passengers and goods; increasing fluidity of transport flows between Ukraine, the EU and third countries; removing administrative, technical, cross border and other obstacles; improving transport networks and upgrading the infrastructure; the liberalization of transport market; extension of the TransEuropean Transport Networks TEN-T.


From a European perspective, the only uniform law relevant to multimodal carriage at this point of time is the framework of international carriage conventions. All of these conventions deal with the carriage of goods by only one specific mode of transport. But still the problems do not end there. The transition areas, the places where the regimes are stitched together, cause difficulties as well. When exactly for instance does the sea stage end? Is storage in the port area accessory to the carriage, is it absorbed by the carriage contract, or is it perhaps a part of the contract that is not covered by transport law at all (Hoeks, 2009, p. 28).

Conclusions

Summing up, multimodal transport is very profitable in general, since it reduces transport costs and enhances efficiency, but the current legal framework does not complement the technical progress made in this area. Modern day transport law has no adequate means to create certainty as to the legal consequences of any loss, damage or delay resulting from multimodal carriage when contracting parties are

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entering into a multimodal transport agreement. Unimodal transports are currently governed by different, often-mandatory international conventions that stipulate different bases for liability, different limitations of liability for the carrier etc. As of 2011, the solution to this problem has been the so-called network principle according to which the different conventions coexist unchanged; the carrier's liability is defined according to where the breach of contract has occurred. However, problems arise if the breach of contract is not localized.

As for Ukraine, unfortunately, despite being one of the main types of transportation, contracts pertaining to the multimodal carriage of goods are not regulated neither at the international level nor at national legislation level. Moreover, the draft transport law would be expected to establish the regulatory regime for multimodal transport by developing and adopting single law on multimodal transport, regulating the level of competition between operators within the same mode, for this is not the current practice in Ukraine today.


Thus, the core problem tackled by this study is the lack of certainty as to the law applicable to the multimodal contract of carriage. A thorough investigation of the existing framework of carriage law, the rules of private international law and the options provided by choice of law based on a contractual condition. In conclusion, the main recommendations tend to suggest a future development of the multimodal transport towards further integration.

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