# Contracting Parties in the International Successive Transport

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**Abstract:** Sometimes, the carrier, in order to accomplish the task of moving goods to its destination, he appeals to other carriers, for various reasons, concluding another contract of carriage, which circumscribes the initial contract and it entrusts the achievement of the entire transportation or only a part of it. Sometimes, there are precise stipulations in the main contract of carriage concerning this issue. Besides the movement of goods, which we may call traditional, defined as using means of transportation of the same kind, lately we can observe the proliferation of more complex operations, which have the generic name of successive transportation. In such shipments, the multimodal transport plays an important role. Thus, the present approach focuses on some features of the legal relationships which may arise between the contracting carrier, surrogate carrier, consignor and consignee, and also on the results from the analysis of the concerned international conventions.

**Keywords:** successive shipment; multimodal transport; the substitute carrier; bill of lading; obligation

## 1. The Carrier and the Substitute Carrier

By concluding a transport contract of carriage different from the substituted carrier, the carrier assumes specific obligations as a sender. At the same time, he remains responsible for the whole transport concluded initially with the sender. It does not matter if the substitute carrier has been designated after an empowerment of the carrier by the consignor to that effect, being contained in the contract clauses. In

any case, the carrier is obliged to inform the sender if it entrusts the execution of the transport or a part of the transport to a substitute carrier.[1]

The substitute carrier undertakes the responsibility not only towards the carrier, by their agreement, and also towards the sender for the assigned portion. By concluding the subsequent contract of carriage between the carrier and the substitute carrier, the latter not only undertakes full commitment to the carrier, but there is an imperfect delegation (article 1132, 1133 of Civil Code), whereby the commitment of the substitute carrier is added to carrier's. We have the so-called in solidum obligations assumed by the two carriers, solidarity, under separate legal relationships. It is therefore achieved a passive solidarity (carrier, substitute carrier), but also an active one (sender, carrier) compared with the characteristic performance, within the rights and obligations recognized to the sender and carrier, and the portion assigned to substitute carrier.

This analysis explains the relevant stipulations on the liability of the two carriers and why the substitute carrier is required only the care required by these stipulations, even if according to the contract of carriage, the carrier would have

[1] COTIF adopted at Berne in 1980, for *international rail transport*, it has been ratified by Romania by the State Council Decree no. 100/1983 and entered into force on November 1, 1985. Amendment to the Protocol of 3 June 1999 was ratified by GO No. 69/2001, approved by Law No. 53/2002 (Official Monitor no. 538/1 September 2001). CMR adopted in Geneva in 1956, international road transport, has been ratified by Romania by Decree 451 of 6 December 1972. The Convention was amended by the Protocol of July 5th, 1978 ratified by Decree no. 66/1981. "Hamburg Rules" adopted in 1978 for international shipping, has been ratified by Romania by the Decree no. 343 of 1981 (Official Monitor no. 95 November 28, 1981). Budapest Convention on contract of carriage of goods by inland waterways (CMNI) adopted on 3 October 2000 by representatives of the Danube Commission and the CCNR under the aegis of CEE-UNO has been ratified by Romania by Law no. 494 of 18 November, 2003, published in the Official Monitor, No. 854 of December 2, 2003. Convention signed on 22 June 2001 entered into force on 1 April 2005, with its ratification by the 5th state (Croatia) on December 7, 2004, in accordance with article 34. On that date the Convention was ratified by Hungary, Romania, Switzerland and Luxembourg; it has subsequently been ratified by Germany, the Netherlands and France, the last by Law No. 300, 5.03.2007. CMNI follows the principles that exist in other transport-related conventions such as the Hague-Visby Rules in 1968, Hamburg 1978 or 1956 CMR, the last being a true inspiration. Article 27 of COTIF: "When the carrier has entrusted, in whole or partially, the performance of transporting a substitute carrier, which will exercise or not a right that goes to the contract of carriage, the carrier, however, remains responsible for all transportation." All the provisions of Uniform Rules that determine the liability of the carrier also apply to the substitute carrier liability for its part of the transport. The provisions of articles 36 and 41 apply where is brought a legal action against the agents and all other persons whose services were used to execute the substitute carrier transport. When and to the extent in which the carrier and the substitute carrier are liable, their liability is joint. Article 40 of the 1999 Montreal Convention on the international air transport agreement: "Except as otherwise provided in this chapter, if a carrier wholly or partly carried on a carriage which, in accordance with the contract referred to in Article no. 39, is covered by this Convention, both the contracting carrier, and carrier actually obey the rules of this Convention, the first for the entire transport specified in the contract, at the latter solely for the carriage which he performs.

aggravated its liability, or why the substitute carrier may exploit all opposable objections that it may have in the contract of carriage.

## 2. The Actual Successive Transport

Moving goods or people on a particular route cannot always be satisfied by a single carrier with a particular means of transport (rail, road, sea or air). Lately it can be seen clearly the proliferation of more complex operations, collectively known as successive transport (Mercadal, 1990, pp. 367-384). They are very diverse, the main ones being the following:

a) Successive transport of carriers independent of each other. In this case, each of the carriers concludes separate contracts with the client, self-reliant, for each the fraction of the transport route that they have. Therefore, each carrier works on its own, without depending of each other. The immediate consequence is the fragmentation of the responsibility, especially when the damage can be localized in a particular point of the route. Depending on the stage of transport to which we relate to, the same customer enters into legal relationships with several different carriers. The principles of relativity for contract effects of the contract and of the compulsoriness of the contract will govern each contract, the result of distinct agreements. It is irrelevant that the goods are carried by different vehicles. For each route segment it will apply the legal regime appropriate to each used means of transportation. "There will be no contamination from one legal regime to another." (Pomegranates & Mercadal, 1990, pp. 367-368)

When the prejudice is found at the destination cannot be located under the aspect of its cause, the last carrier will usually take the responsibility for it. It can be absolved of liability, if he mentioned the necessary reserves that refer to the status of the merchandise, at the moment of taking the cargo from the previous carrier. In this way, using the effect of improper performance of cargo moving obligation, it switches to the previous carrier. In the same way, using specific procedural means (e.g. call in the guarantee from the previous carrier) it could result, indirectly from that carrier in the successive series, which route the prejudice occurred.

b) Successive transport through a commissionaire. The peculiarities and complexity of an operation to a safe movement of its own goods leads potential customers to increasingly call on specialized intermediaries carriers, in order to satisfy their interests; it involves a high degree of professionalization. Those whose goods will be dispatched will deal with a transportation commissionaire insuring the movement of the goods to their destination; in this purpose they will conclude

an expedition contract.[1] This time, the commissioner of the transportation is the sole contractor of the customer (the consignee), pledging to ensure safe transportation of goods to his client, for the entire route. The one who dispatches is no longer coming into direct and personal legal relation to the each carrier individually. Multiple and distinct transportation contracts, will be completed by the commissionaire (usually in their own name) with each carrier. Each carrier shall act as the holder of an independent contract of transport carriage, according to the distance that he is going to cross.

The customer will require the repair of the damage, regardless being located or not, from the commissionaire, which is bound to compensate him in accordance with the terms of the expedition contract (transport fee). Therefore, the client (the consignee) cannot sue any of its carriers, being the third party, according to their relation.[2] According to article 406 of the Commercial Code, "*the consignee has no*

[1] The expedition contract is a contract between the main consignee (supplier of goods) and the commissionaire under which the second is obliged to pay in return for ending its own behalf, but on behalf of the consignee, the necessary contracts with the third parties such as cargo transport and meet the preparatory and cooperation acts necessary to execute the movement. The expedition contract is not currently regulated uniformly, because of the different interpretation given in some legal systems. There are attempts to standardize it (1967 UNIDROIT), but they were struck by the reluctance of German expeditionary towards the liability system specific for the consignee *del credere* of the French system, under which they were obliged to respond to the main consignee for the acts of its subcontractors ("network liability"), in case of assuming the organization and completion of the transport. Moreover, they did not agree with their uptake carriers (a strict liability regime), where, for example, they organized expeditions "in groups", or required a global price. In 1996, at the initiative of FIATA, there have been adopted the Standard Rules on Shipping Services, which established the principle *del credere* liability according to the French law, mentioning that the expeditionary is held liable towards the consignor, according to the same rules that would apply if the client (the consignor) should be part of a separate contract covering the transportation or other services (deposit), in situations where he assumes the transport until its destination. In any event, setting a price fixed by the expeditionary, without the obligation to justify the establishment or organization of transport loads, they amounted to an "implied agreement" within the meaning of assimilating the expeditionary carrier. In the same rules, there were also established the rules of liability in connection with the personal services of expeditionary, which does not require the liability for the transport due to the expedition contract. We can only notice to what extent the Standard Rules are adopted voluntarily by shippers everywhere.

[2] The jurisprudence confirms this point. Therefore the decision no. 2833/09.27.2007, Q. CCJ, Commercial Division, the Suceava Court of Appeal confirmed the decision that was rejected the exception of lack of passive criminal quality of the defendant, but held, however, other basis than the court of appeal. Court of Appeal held that "the solution was correct but not under the provisions of article 421, 423 and 425 of the Commercial Code (the basis for contractual liability of carrier for subsequent carriers acts – s.n.) but according to article 406 paragraph 2 of the Commercial Code, under which the principal has no action against the consignor who contracted with the consignee or not they have any action against the principal. As the defendant is a shipping house, the contract signed by the applicant is, therefore, an expedition contract for the shipment of goods in combined transport, it is subject to provisions governing the commission contract with which it has a common core, the expeditionary being the commissionaire and the applicant the consignor.

*action against the persons who contracted with the commissionaire, nor does he have any action against the client*." But it is not excluded the cession actions against carriers, whose principal owner was the cessionary in favour of the consignee. In reality, the prejudice is repaired within the legal transport relations between the commissionaire and the successive carriers, parts of the transportation contracts concluded distinctly and separately by the transport commissionaire for each step integrated in the global process of moving goods, undertaken by him. Therefore, the damage for covering the loss, located or not, will ultimately be covered by the carriers in terms of the letter a). The peculiarity that the expeditionary may have cumulatively and the status of first carrier does not change the liability of the configuration system with other carriers, which they called to cover the rest of the journey.

c) Successive transport under a single transport document.[1] This time the legal relation is linked between customers and successive carriers under a single transport document (international waybill). It eliminated the plurality of transportation, although the successive carriers actually go through only certain segments of the itinerary. It is excluded in this case the presence of the transportation commissionaire of the client.

The transports from this category are divided into: homogeneous transport - made with the same kind of transportation throughout the itinerary; combined transport (multimodal), which involves the use of different vehicles. (Delebecque, 1998, pp. 528-537).

*Homogeneous Transport*. What we are interested is the way they will pass on the effects of not fulfilling the moving goods obligation of the Contracting Parties (successive carriers), considering that different carriers members adhere to the contract of carriage materialized in a single transport document.

[1] **Article 34 CMR:** If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note.
**Article 34 COTIF:** "When a transport is covered by a single contract of carriage and it is performed by several successive carriers, each carrier, taking the responsibility with the bill of lading and the merchandise, participate in the stipulations of the contract of carriage under the bill of lading and they assume their obligations arising therefrom. In this case, each carrier shall be responsible for enforcement of the transport on the entire route until the delivery."
**Article 1.3. of The Montreal Convention 1999** (air transport): "Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State."

In intern law, according to article 436 paragraph 1 of the Commercial Code "*any claim to recover damages should be directed to the first or last carrier. It may be directed also towards the intermediary carrier, when it is proven that the damage was caused at the moment the transportation was done*". In any case the defendant may be absolved of responsibility, calling in the guarantee of the previous carrier or the intermediate one, being guilty for the damage (article 436, paragraph 2 of the Commercial Code). Each carrier remains liable for the damage that occurred in its transport sector. Therefore, the solvens carrier will recover the paid compensation through a regress action from the assets of the guilty one. If damage cannot be located on a particular section of the route, it will be accused either the primary carrier (which concluded the contract of carriage), or the one who reached at the destination, if it fails to provide proof of exempting causes.

## 3. The Parties in the Multimodal Transport

The concept of multimodal transport is analysed in several works. (Ripert, 1952, p. 903) (Mercadal, 1986, p. 277) (Bonnaud, 1996) (Tilche, 1994, p. 323) (Gamka, 1993) Besides the movement of goods, which we may call traditional, defined as using means of transportation of the same kind, lately we can observe the proliferation of more complex operations, which have the generic name of successive transport. In such shipments, a multimodal transport plays an important role. Multimodal transport is defined by the movement of goods by two or more carriers, who use, in order to cover the distance from the starting point to destination, different means of transport on a certain portion of the agreed itinerary. (Pomegranates & Mercadal, 1990, p. 378)

Having multiple carriers in such transport generates multiple legal relations having the consequence of the reconfiguration of the contracting party status within the juxtaposed contracts group (covering the actual transport and also transport related operations), derived from the basic contract, the multimodal transport, whereby the overall operation of transport is assumed. The identification of participants and establishing their legal position in such a complex operation require a thorough analysis of legal relationships restricted to the multimodal transport.

Transportation is technical multimodal, if the movement of goods is done through two means of transport from the point of origin to the point of destination without unloading. In order to be multimodal from the legal point of view, a transportation requires a unique title of transportation - multimodal transport document and a link between the different way of transport. This connection will be performed by the multimodal transport operator IMT - issuer of multimodal transport document.

Under the Geneva Convention of 1980 on multimodal transport "*by international multimodal transport we understand the transport of goods carried out by at least*

*two different means of transportation, as part of a multimodal transport contract from a place in a state where the goods are taken multimodal by transport contractor to the location designated for delivery situated in another state.*"[1]

Council Directive 92/106/EEC of 7 December 1992 defines the multimodal transport as freight transport between Member States in which the vehicle used a road for the initial or final part of the route and for the other part the rail or road or a waterway sea when it exceeds 100 km in a straight line and it makes the initial or final road route: either from the point of loading the goods and the closest boarding train station to the original route between the railway station nearest landing and the unloading point for the final route; either or on a radius that not exceeds 150 km in a straight line from river or sea port of embarkation or disembarkation. The directive sets out the terms that must be included to meet the document's requirements of the definition. This definition refers to community multimodal transport, which benefit from tax incentives, in order to encourage him.[2]

In the multimodal transport it should not occur the opening of the cargo when transferring it from one means of transport to another. By opening the cargo it is understood the separation of the load of its content or unloading the container or trailer. In practice, we cannot have a multimodal transport when during the travel it occurs a separation between goods and its transport unit, according to the hypothesis where the organizer of transport has not issued a single transmission document. If, technically, the multimodal transport was facilitated through the container, legally, regulating a multimodal transport contract with an appropriate movement document remains limited.

### 3.1. The Regulations Applicable to the Multimodal Transport

So far, no international internal law succeeded in providing a legal framework to govern independently the multimodal transport contract. The difficulty lies in the fact that they cannot reconcile on the legal rules that make up the legal contract, which is different for each means of transport, being part of the multimodal transport chain. If the law would solve the problem by creating a single legal framework of the commercial contract for all means of transportation (land, air and sea), internationally speaking, achieving a uniform legal framework of international multimodal transport contract is almost impossible, despite the fact that most of the multimodal transport contract is for a cross-border movement.

[1] On 24 May 1980, it was adopted the International Convention on Multimodal Transport, initiated by UNCTAD.

[2] A study in this area at EU level, was materialized in Transport Research, APAS, *Intermodal Transport, Study for a Comprehensive International Research Program in Intermodal Operation*, European Commission, 1997.

This kind of transport, which often takes an international feature, is only incidentally regulated by international conventions on unimodal transport.[1] Due to the binding nature of the rules, especially those relating to carrier liability, international unimodal conventions do not admit organizing them by a convention on multimodal transport with their own regulations that are inconsistent with the depositions of the former. In reality the question of the legal framework for recovery action that introduces a multimodal transport operator, to whom it is applied a liability regime (multimodal), in order to recover damages paid to the consignor for localizing the damage, against the guilty subsequent carrier, submitted to another compulsory regime (of the unimodal transport). On the other hand, some consignees benefit from the unimodal regimes regarding the compensation, to which they will not give up by "melting" it in the legal multimodal regime. A direct action of the consignee against the guilty carrier, would create a conflict of Conventions, that the multimodal legal instrument will not solve it satisfactorily, imposing a regime to another. The sender or the guilty carrier may not agree to this fact, they would have preferred to be applied the unimodal legal regime.

[1] **Art 2.1. of CMR (road transport)** Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this convention.

**The Montreal Convention 1999**, **article 18, paragraph 4**: "The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air." **Article 38:** „In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of article 1; Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air."

Regarding the multimodal transport rules there are possible, theoretically speaking, two systems: the "network" and "uniform." The "network" is the system where the origin of the damage is localized, it will apply the liability regime specific to the means of transport during which the damage was caused. When the origin of the damage is not localized, it is applied the autonomous regime established by the contracting parties (sender and multimodal transport operator) in the transport document. It is called "network" because the multimodal transport contract is supported by the network subjacent to the rules applicable in the same transport modes integrated in this way. Uniform responsibility system is that in which it is applied the same level of responsibility, regardless the origin of the damage. These systems, specific to the multimodal transport under which the multimodal transport operator undertakes the entire journey to sending the entire trip, eliminating the "deliverer syndrome", which had to assume the responsibility in accordance with the transport regulations made by himself, no matter what happened in the earlier period, the goods travelled with other means of transport, of other nature.

### 3.2. Multimodal Transport Document - an Essential Element in Determining the Quality of the Party

A multimodal transport is characterized, as we have shown, using a particular transport document. This document allows regrouping under a single contract concluded between the carrier and the consignor and under a single legal regime having successive phases of a full transport (from one end to another). If we compare such a document with a unimodal transport document, we find several peculiarities of form and details. Because of these differences it can often be distinguished between a simple modal transport by an organized multimodal transport operator and an ETM. There are several models multimodal transport documents including a few standard models of FIATA (International Federation of Freight Forwarders Associations)[1]. If such a transport document is presented as a bill of lading, which is intended to cover all transportation (land stage as well), some difficulties may arise in connection with its commercial feature.

[1] FIATA, in Frenchh "Fédération Internationale des Associations de Transitaires et Assimilés", in German "Internationale Föderation der Spediteurorganisationen", was founded in Vienna/Austria on May 31, 1926. FIATA, is a non-governmental organisation, and represents an industry covering approximately 40,000 forwarding and logistics firms, also known as the "Architects of Transport", employing around 8 - 10 million people in 150 countries. FIATA has consultative status with the United Nations Economic and Social Council (ECOSOC) (inter alia ECE, ESCAP, ESCWA), the United Nations Conference on Trade and Development (UNCTAD), and the United Nations Commission on International Trade Law (UNCITRAL).

This document can be used in an entire transport from a consignment store of the sender to the recipient. At the same time, it may also be useful for a hybrid transmission, for example, from a river port to a place of final destination on land.

Issuing such a document, the multimodal transport operator undertakes to deliver the full transport, from the stage of receiving the goods until the place of destination. When receiving goods, ETM will issue a transport document which will have several features.

However, for the sender there are no other carriers than the ETM. The latter is then free to treat the material achievement of all or part of the transport. In the multimodal transport document it will not be mentioned the names of the ETM's substitutes. Between the ETM and the sender there is only one contract. Any contract that may be subsequently concluded between the ETM and subsequent carriers or other persons participating in the operation of removal of foreign goods is not part of the multimodal transport document.

In conclusion, this document materializes a contract, where the ETM assumes all the responsibility for the operation. The name of the multimodal transport document used by the contracting parties has no relevance in terms of the legal relations between them.

Depending on the wording in the transport document, it can decide whether it is a multimodal transport for which a carrier has assumed full responsibility from one end to another, or if the operation is reduced to a common transport. When courts faced with a situation where the ETM challenged the meaning of his duties, it had no other choice but to investigate the contents of the transport document.

The interesting specificities were particularly about the place of receiving the goods and the final destination.

Thus, in a decision of November 12th 1992[1], the Rouen Court of Appeal considered that it is not sufficient the only indication that the goods are subject to a multimodal transport, in order to decide who issued the quality and nature of a liability of the transport operator (carrier). The Court found that there was nothing mentioned on the box "place of delivery", and concluded that the operation should be reclassified. It was a sea transport, for which was really responsible the one who issued the document, but only for the sea route and not for the subsequent land transport.[2]

A similar solution was adopted and a decision of the Court of Commerce in Paris in 1995.[3] The judges estimated that it was not a transport document for multimodal

[1] Court of Appeal of Rouen, November 12, 1992, in *Dreptul maritim francez*, no. 531, p. 582.
[2] P. Bonassies, Dreptul pozitiv francez, 1993, in *Dreptul maritim francez*, 1994, p. 181.
[3] T.C. of Paris, November 29, 1995, in *Buletinul de transporturi*, 1996, p. 136.

transport because, in fact, it was referring only to shipping out between two ports, while the terrestrial stage was not mentioned.

In 1999, the Court of Cassation[1] has been called to assert their position on the importance of the terms in the transport document. It was, in that case, about the transport of containers from Mombassa to Antwerp, followed by a land stage to Ruges. The section "place of delivery" was the only one that had not been completed. Also, the Supreme Court decided that the classification of multimodal transport should be excluded. The solution was resumed in 2000 by the Court of Appeal of Aix-en-Provence.[2] For this jurisdiction, a Hong Kong transport to Marseille which stipulated that the goods must be delivered to "the bearer" or to place and it did not mention the final delivery is shipping. Using a transport document called multimodal transport document is not sufficient to transform the carrier in ETM if certain categories are not filled in.

A decision of the Court of Appeal of Paris is slightly different to the decisions cited above. It is a decision of 23 June 1999[3] given in a case where a carrier had agreed to organize the maritime transport from one end to another between Thailand and France. Boxes of combined transport document were filled in and therefore, the judges logically ought to infer a multimodal transport. But they added an additional criterion to distinguish the multimodal transport: the effective execution of the terrestrial phase. For the Court of Appeal of Paris, the qualification of transport did not depended only on the transport document, but on the real performance of the one that issued the multimodal transport document. This solution raised some reservations. The case was not subject to appeal in cassation.

The Court of Cassation, by decision of 4 July 2000, did not retake the material execution criteria of the multimodal transport contract, it only limited to studying the entries listed in the document. Also today, perhaps the jurisprudence distinguished the classic transport to the multimodal transport, by checking the presence of a cargo loading and a place for final destination different from the ports of loading and unloading. It is not about the name of the multimodal transport document, nor its format.

### 3.3. Multimodal Transport Bill of Lading. Implications on the Contracting Parties

The form of this document varies significantly by geographic origin of the bill of lading. For example, in Europe, it is commonly used the standard formula devised in April 1978 by the International Chamber of Shipping (ICS). Americans tend to

[1] Cass, October 26, 1999, in *Buletinul de transporturi*, 1999, p. 784.
[2] April 6, 2000, Huo Xing He in *Buletinul de transporturi*, 2000, p. 702.
[3] Court of Appeal, Paris, June 23, 1999.

opt for a quite different format - U.S. Standard Master for International Trade. The Japanese have developed a solution close to the European format: JSA Standard Form.

As mentioned above, in this matter there are similar documents showing the features of multimodal transport bill of lading, which were developed by some private bodies.[1] It will be included, for example, the bill issued by the NVOCC (Non Vessel Operating Common Carrier). It is reserved for "a multimodal transport contractor that has, in fact, no means of transport and it provides transport services to shippers from one end to another, subcontracting all moving operations of the cargo." This bill of lading is almost identical to the multimodal transport securities issued by traditional carriers. The only difference is that they have a special supplementary statement entitled "for delivery", "apply" or "agents to contact at destination." This statement is the fact that you must first ask the ETM agent to recover then the goods.

The kind of bill of lading is, undoubtedly, the most common type the FIATA bill of lading, abbreviated FBL (Forwarding Bill of Lading).

FBL was created in 1971 by FIATA, and it is defined as a multimodal transport bill of lading. Its use is reserved for professionals affiliated with the international organization through their national federations. FIATA bill of lading is a combined transport document, negotiable, covering the carriage of goods by at least two means.

Issuing this document, the *forwarding agent* becomes multimodal transport operator and he assumes responsibility for delivering goods to the consignee, and also the acts or omissions of subcontractors used in the execution of its total transport. The *forwarding agent* becomes a contract carrier in relation to the bearer of the document, while, at the same time the sender of the real sender remains in relations with the latter.

FIATA bill of lading remains a ETM which has the status a commissionaire (expeditionary), but it responds as a carrier, since, although it assumes the qualities of the carrier, for no other stage of the multimodal transport, in law is applied in relation to the owner of the bill of lading, the carrier's liability regime.

[1] In multimodal shipping BIMCO (Baltic and International Maritime Conference) it was published its first combined transport bill of lading codenamed combi-combil, which was revised in 1977, renamed *combidoc.*

### 3.4. The Relation of "Contractual Party", "the Relativity of Contract's Effects" and "Liability Regime" within the Group of Contracts delimited by the Multimodal Transport

When damage occurs in a classical transport is its record takes place when discharging the cargo at the port of discharge. The recipient receives the goods, and issues certain problems that are imposed by the apparent condition of the goods. In multimodal transport, the situation is quite different, especially when the cargo is in containers. Thus, intermediate carriers will not be able to check the cargo. If damage occurs during one of the first phase of transportation, the container with the damaged goods will continue to move from one carrier to another without any problems relating to those goods.

If we apply the classical system of transmitting problems for such transport, each carrier takes delivery of goods from the previous carrier without problems, it is acknowledged to have received accordingly. It results that almost all carriers of the transport chain are released because they have managed to send the container without problems. In fact, the last carrier is to be considered as the author of the damage. So when you deliver the goods to the final recipient, it will finally be noticed the damage. Since he is considered as receiving goods in perfect condition from a previous carrier, he is responsible for the losses caused to the goods. It is obviously unfair, since he is not the author of the facts which lay at the origin of the damages. Moreover, the last carrier intervenes at the end of the journey, he has transported the goods within a walking distance. The fact that the last carrier assumes full responsibility for the full transport it appeared the deliverer syndrome.

To put an end to this difficulty, the multimodal transport documents integrate a system of liability other than the one governing the unimodal transport. In multimodal transport, the terms of the transport mean a special responsibility regarding its foundation, limitations and exemptions. This document can also send a set of rules relating to the multimodal carrier's own responsibility: Rules CNUCED-CCI of 1992. Text rules CNUCED - CCI 1992 is contractual in nature. The operators are able to apply this text and at the same time, to amend certain provisions in order to adapt to the complexity of some transport operations. Multimodal transport document proposed by CNUCED - CCI is evidence, until proven otherwise, the existence and content of the transport contract and receiving the goods by the transportation contractor, as described in its content.[1]

The rules CNUCED - CCI do not require a system of responsibility and a unified model of transport document in an imperative manner. They can be applied to any

[1] Ph. Delebeque, Documentul de transport multimodal in *Transportul multimodal în transportul transmritim şi transaerian*; the new rules of CNUCED – CCI; documents of Mediterranean Institute of Maritime Transports, 1994, p. 157.

form of transport document, whatever its terms, unless it is found in that document a sufficient reference to its provisions.

The regime established by the terms of transport clauses. As we noted on the 24th May 1980, it was adopted the Convention on International Multimodal Transport, initiated by UNCTAD. This text was intended to order the regime of mandatory liability for multimodal transport. The Convention has not met the instruments of ratification and it may never come into force. In this context, the regime of responsibility of the transport operation, as a whole, remains to be governed only by the multimodal transport contract. It results that the principles of responsibility in this case depend on the terms of the transport document, which means it will be different from one document to another. The difference is enhanced by the fact that most of the documents contain similar clauses, inspired by the "Uniform Rules for a combined transport document" proposed by CCI in 1973, which formed the basis of the regular UNCTAD 1992.

***Who is responsible?***

In multimodal transport, there are more carriers. In case of damage to goods, the question is who was the one (carrier) that caused it. The solution will depend on the ability to isolate the modal phase during which the damage occurred. On the other hand, which will be the liability system of the guilty carrier? It would be possible the substitution of the mandatory legal regime established by the national law or the international convention governing the unimodal carriage, during which the damage occurred by the contractual liability regime determined by the terms of the transport document? Clearly the answer will be negative. Therefore, in a multimodal transport contract, it cannot be applied only one type of liability system "network", whereby the ETM will incur a contractual liability regime (for someone else's act) heterogeneity specific to a particular mode of transport, where the damage was localized.[1] For example, if it can be said that the container was damaged when it was on a ship, the carrier is responsible for river transport and there will be applied either the provisions of the Commercial Code relating to the contract of carriage or the rules established by CMNI,[2] if applicable. This solution is otherwise legally necessary because a contract of any kind, cannot exclude mandatory legal rules. In reality, the question does not refer to who is responsible, but rather to establish the legal regime governing the liability of the carrier.

[1] In this regard, the clause that usually appears in the multimodal transport documents is as follows: "When the transport phrase during which the loss occurred or the damage are recognized, the carrier's liability will be determined by the provisions of any international convention or national law that would be applied imperatively, if the sender has signed a contract directly with the carrier who performed the transport phase, during which occurred the losses or damage. (Lamy Transport, 2000, p. 233).

[2] Budapest Convention on contract of carriage of goods by inland waterways (CMNI).

Regarding clarifying the aspect of passive liability quality, it is clear that firstly, according to the contract the multimodal transport operator will be responsible to the consignor, even if the subsequent carrier is to blame (ETM answers for contractual liability for someone else's act). It assumed, as a contracting party of goods the entire transport, with no relevance to the shipper, the persons to whom he resorted, in order to accomplish the requirements.

Undoubtedly, then, the multimodal transport operator will use recourse to the action in reverse, concluded on the contract with the substitute carrier for that portion of the journey undertaken by the latter, in order to recover the damages from the guilty carrier. It is not excluded nor the transfer of shares from the subsequent transport contract in the favour of the sender (recipient) to directly act of one who is in fact guilty. The sender does not have a direct contractual liability action against the guilty carrier, with whom he does not have direct relations, as long as no legal provision does recognize this privilege. The lege ferenda, the recognition of such an action would amount to establishing a united responsibility regime of the multimodal transport operator with the guilty intermediate carrier for damages caused in the sector of the latter.

In most cases, it is very difficult to locate the damage. For the latest carrier not to be unfairly held liable, the multimodal transport document, which evidenced an appropriate transport contract, includes clauses that make the ETM responsible. This solution is advantageous for the sender, which will be able to pursue co-contractual partner – the ETM. He does not know the intermediary carriers and he often ignores the existence of substitute carriers.

Normally, the rules of its own responsibility will not apply in a private transport mode. However there will be applied, the rules determined by the terms of the transport documents that will define the meaning of ETM responsibility. For example, in a decision of 18 January 2000, the French Court of Cassation held that "maritime carrier that issues a document for a multimodal transport is responsible (sui generis) of the loss of the cargo when no element of the cause for generating prejudice can identify the transport stage in which the loss occurred."[1] The responsible for the overall operation, the ETM can, at the same time, as any carrier, exclude or limit its liability. The in the multimodal transport documents, we generally meet the same disclaimer or limitation of liability.

[1] Court of Cassation, 18 January 2000, *Scapel Journal*, 2000, p 160.

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****The Convention Concerning International Carriage*.

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