MULTIMODAL TRANSPORTATION LAW IN INDIA

*Chiranjeev Gogoi**

ABSTRACT

Multimodal transportation of goods is a phenomenon that is quintessential to the advent of the container system to facilitate trade across seas and national boundaries. It primarily deals with the transportation of goods which use more than one form of transportation. Though attempts had already been made in Europe to form concrete rules to govern this form of trade but there was a paucity of approving countries and the number of countries subscribing to the rules were few and far in between. But on the international forum, under the auspices of the United Nations, the UNCTAD was formed mostly due to the efforts of the under-developed countries. During the process of deliberation, the fact that the participating member countries were divided into four-groups highlighted the nature and the degree of conflict of interests of the countries. We can imply from the diverse and conflicting interests of the countries that settling on an amicable proposition proved difficult. The Government of India was also advised of the

*Chiranjeev Gogoi is a fourth-year student at National Law University and Judicial Academy, Assam (NLUJAA). The author may be reached at cgogoi04@nluassam.ac.in.

growing impact of multimodal transportation of goods in international trade and it realised the importance to codify certain rules to facilitate smoother functioning of the system and to keep up with the global market. Subsequently, the Multimodal Transportation of Goods Act, 1993 came into effect but this does not serve the issue of multiple legal regimes governing multimodal trade but only adds to it.

The parties to a multimodal transport contract are namely; the consignor, the multimodal transport operator and the consignee. A multimodal transport contract is drafted between these parties based on a multimodal transport document. An important aspect of multimodal transportation is the multimodal transport document which serves as a title document and also holds evidentiary value under the multimodal transport contract. In order to provide a platform for the seamless flow of business, it was pertinent that the interests of the above-mentioned parties be satisfied. With the recent surge in global trade, the countries must come to an amicable understanding to solve the problem of multiple legal regimes covering the aspect of multimodal transportation of goods which forms the most essential part of international trade and commerce. In these times of multifaceted economy, trade plays the most crucial role in defining the economic power of a country. Therefore, in order to establish a

stable and reliable system to ease trade flow across seas, universally accepted multimodal transportation of goods rules must be drafted and the countries must adopt the same in the international forum.

I. INTRODUCTION

International Multimodal Transportation of Goods means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.[1] Herein, the goods to be transported are taken in charge by the multimodal transport operator in one country and then delivered to another country on the basis of a multi-modal transport of goods contract which consists of at least two different modes of transportation. Since, international transportation of goods fall under the jurisdiction of different legal systems there is an urgent need for a uniform system of laws that shall apply to multimodal transport contracts notwithstanding the domestic laws of the country to which the parties may belong. But due to the disparity in the economic conditions and the differences in domestic laws and economic policies of different countries, such private international law is difficult to apply in a uniform manner. In addition to this, there has been gradual upsurge in international trade since the 1950s with the advent of containers and containerization of goods. Due to this factor, it is most pertinent that uniform rules governing the regulation of multimodal transportation of goods be brought under a uniform system of rules. Thus, in this research paper the researcher seeks to elucidate upon the historical

[1]Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art. 1(1), U.N. Doc. TD/MT/CONF/16.

development of Multimodal Transportation of Goods under the United Nations Convention on Trade and Development and the present legal provisions of India under the Multi-Modal Transport of Goods Act, 1993. The study also includes the present legal scenario supplemented with the instruments of an International multi-modal transportation contract along with the aspects of liabilities, claims and defences of multimodal transport operator under international transport of goods contract.

The parties in a multi-modal transport are *firstly*, the consignor who is any person by whom or in whose name or on whose behalf a multimodal transport contract has been concluded with the multimodal transport operator, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the multimodal transport operator in relation to the Multimodal transport contract and *secondly,* the consignee means the person entitled to take delivery of the goods. But, in cases comprising of operations of pick-up and delivery of goods carried out during the performance of a Uni-modal transport contract, as defined in such contract, shall not be considered as international Multimodal transport.[2]

A. Historical Development of Multi-modal transportation of Goods

Multi-Modal Transportation is a system of transportation which consists of more than one mode of transportation. The seventh session of the Commission on Enterprise, Business Facilitation and Development, held in Geneva from 24 to 27 February 2003, agreed on development of multimodal transport and logistics services as a topic to be studied at an Expert Meeting. Multimodal transport and logistics services are essential for the development of international trade. These services are not, however, widely available in developing countries, because local service providers tend to lack the capacity to

[2]United Nations, Report of the United Nations Conference on a Convention on International Multimodal Transport, TD/MT/CONF/12.

reach overseas markets, and because existing infrastructure, technologies, and the institutional and legal frameworks are often inadequate to allow efficient linkages with global operators. This document provides background information for the Expert Meeting, which will review and explore the impact of the latest developments in multimodal transport and logistics and the challenges and opportunities that these developments provide for developing countries, including small islands, landlocked and least developed countries. [3] In the General Agreement on Trade and Services negotiations, multimodal transportation of goods was described essentially as door-to-door services that include international shipping.[4] It consists of a multimodal transport operator which refers to any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract. The transportation of goods[5] is based on a multimodal transport contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport.[6] The United Nations in its conference on the convention on multi-modal transportation of goods recognized the need for an orderly expansion of world trade but keeping in mind the special interest and problems of developing countries. In this era of rapid economic growth there is a need to stimulate the development of economic and efficient multi-modal transport services which serve the requirements of the trade concerned. In order to ensure smooth flow of trade and services, it was necessary to determine certain rules

[3]Draft United Nations Convention on International Multimodal Transport of Goods, U.N. Doc. TD/B/COM.3/EM.20/2.
[4]UN GLOSSARY, https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm.
[5]Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art. 1(1), U.N. Doc. TD/MT/CONF/16.
[6]Draft United Nations Convention on International Multimodal Transport of Goods, 1980 art. 1(3), U.N. Doc. TD/MT/CONF/16.

and liabilities relating to the carriage of goods under international multi-modal transport contracts. The institutional arrangements presently governing the trade of international carriage of goods lacks uniformity and are less than perfectly efficient as the tools governing the trade are more or less the same that it has used since the 1950s.

The aim of the UN was to establish a fair balance of interests between developed and developing countries and to establish an equitable distribution of trade related activities between these groups of countries in the arena of international multi-modal transportation of goods. The parties at the conference agreed that the liability of the multi-modal transport operator under this convention should be based on the principle of presumed fault or neglect and that the shippers shall have the freedom to choose between multi-modal transport and segmented transport services. The UN convention was developed as an integral part of a long-term strategy on the part of the developing countries to realize maximum economic benefits from the international transport sector.[7] Until the late 1950s, rules governing international carriage of goods were not a necessity. By the late 1950's, there was an explosive increase in the use of intermodal containers which was beginning to revolutionize ocean shipping.[8] Increased containerization had resulted in multimodal transport of goods under a single transport document covering all modes of transport from the exporter's premises to the consignee's premises. Such multimodal transportation under a single document had a number of advantages like reduction in overall transport cost, reduction in delays, smoother and quicker movement of goods and improvement in quality of services.[9]

[7]New International Economic Order (NIEO), 6 GAOR (Special Session) Supp. (No.1),1974, U.N. Doc. A/9559, at 5.
[8]*Id*. at 195.
[9]Multi-Modal Transportation Of Goods Act, 1993, Chapter 23.

II. INTRODUCTION TO THE UNCTAD

The United Nations adopted the Convention on International Multi-modal Transport of Goods in May, 1980[10] after much debate and deliberation. The UN General Assembly Resolution 1915 (XIX) established United Nations Convention on Trade and Development (UNCTAD) and its permanent organ, the Trade and Development Board (TDB). The resolution prescribed that a certain number of States from described groups of countries should be represented on the TDB. These groups, in a modified form, have become the negotiating blocks in UNCTAD. They are Group B (Developed countries), Group D (Socialist Bloc), and the Group of 77 (Developing Countries). In regards to control and regulation of Multi-modal transportation under United Nations Convention on Trade and Development, the Convention shall not affect the application of any international convention or national law relating to the regulation and control of transport operations. It will not affect the right of each State to regulate and control at the national level multimodal transport operations and multimodal transport operators. Further, the multimodal transport operator shall comply with the applicable law of the country in which he operates and with the provisions of this Convention.

A. UNCTAD and Need for Multimodal Transport

The Group of 77: The Developing Countries: UNCTAD was created within the United Nations as a result of the developing countries demands for an organ that would be responsive to their desires to increase their share of industrial and commercial advances taking place throughout the world.[11] With respect to the principle features of the Convention, the developing countries' opposition to the network

[10] Draft United Nations Convention on International Multimodal Transport of Goods, 1980,U.N. Doc. TD/MT/CONF/16.
[11] UNCTAD, Establishment of Multimodal transport operators in Developing Countries, 1979, U.N. Doc. TD/B/C.4/183, at 16.

system and their early support of a uniform system of liability reflected a belief that the traditional principles of division of responsibility for cargo loss and damage were disadvantageous to their essentially shipper nature.

Group B: The Developed Countries: Although the countries of Group B were all "*developed market economy*" countries in UNCTAD, an inescapable fact bearing significantly on UNCTAD negotiations was the great diversity within the group. The spectrum of countries within the group extended from countries which were essentially shippers (Canada, Australia, New Zealand) to those that were traditionally heavy suppliers of shipping services (UK, Japan, and the Netherlands). The U.S was probably unique within the group because it was concurrently the world's largest international trader and a large supplier of shipping services. The principal effects of the economic and trading differences within Group B were of two kinds; with respect to the treaty negotiating process, long and difficult negotiations often were required within Group B to maintain as much unity as possible. From a substantive point of view, a clear-cut and permanent division existed as to the preferred liability regime for concealed damages and, to a lesser extent, with respect to such things as the scope of application and the mandatory/optional nature of the instrument.[12]

Group D: The Socialist Bloc and the People's Republic of China: The attitude of the Socialist bloc countries of Group D must be reviewed from two perspectives. In terms of economic and organization of multimodal transport service, the Soviet Union and its allies often tended to hold positions similar to those of the developed countries of Group B. Existing legal scenarios led them to differing views on certain aspects of claims and actions. On the other hand, on those issues on which they had not fixed positions, they acted predictably in

[12]Preparation and Adoption, for the Governments' comments on arts 9 &13, U.N. Doc. TDIMT/CONF/4 and Add.1 (1979).

aligning themselves with the Group of 77 to obtain whatever political advantages might flow therefrom.

The United Nations Conference on a Convention on International Multimodal Transport was held at Geneva from 12th to 30th November 1979 (first part of the session) and again from 8th to 24th May 1980 (resumed session). The United Nations adopted the Convention on International Multi-modal Transport of Goods in May, 1980.[13] The United Nations Multi-Modal Transport of Goods convention is the first convention to be brought under the auspices of UNCTAD. While the convention primarily deals with a kind of transportation supplied principally by developed market economy countries, many of the most significant provisions were crafted by shipper countries, pre-dominantly the third-world developing countries. Therefore, the convention helps to resolve several fundamental legal uncertainties in the area of liability, even though these uncertainties have not arrested the growth and development of multi-modal transportation. Interestingly, the convention represents a distinct departure from the earlier transportation liability conventions,[14] which were basically general and technical documents.

The initial steps towards the development of this private international law treaty addressing the liabilities and documentation aspects of multi-modal transport were taken by the International Institute for the Unification of Private Law (hereinafter referred to as

[13] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, U.N. Doc. TD/MT/CONF/16.

[14] International Convention for the Unification of Certain Rules Relating to Bills of Lading (Hague Rules), 120 L.N.T.S. 155 [hereinafter, Hague Rules];United Nations Convention on the Carriage of Goods by Sea, 1978, CONF.89/13, U.N. Doc. 1978 [hereinafter, Hamburg Rules]; Convention for the Unification of Certain Rules Relating to International Transportation by Air (Warsaw Convention),T.S. No. 876, 137 L.N.T.S. 11 [hereinafter, Warsaw Convention]; Montreal Protocol No. 4, ICAO Doc. 9148 (1975) [hereinafter, Montreal Protocol]; Convention on the Contract for International Carriage of Goods by Road (CMR), 1956, 399 U.N.T.S. 189 [hereinafter, CMR Convention].

"**UNDROIT**").[15] Subsequently, the Comite Maritime International (hereinafter referred to as "**CMI"**) began examining the maritime aspects of combined transport, emphasizing the problem of damage that could not be traced to a particular mode of transport. At present there existed two-sets of rules: UNIDROIT draft, CMI's "*Tokyo Rules*", focusing on the model of the 1924 Brussels Convention for the Unification of Certain Rules Relating to Bills of Lading (Hague Rules). After further negotiations in the United Nations, a diplomatic conference was convened and the Convention on International Multi-Modal Transport of Goods was adapted on 1980 which came into force after the ratification by the governments of thirty states.[16]

The need for multi-modal transport of goods extends back to the point when containerized transportation of goods became a reality. In the 1950s, there was an explosive increase in the use of inter-modal containers and at an early age users and suppliers of those services recognized that the application of a variety of documentation and liability rules to the uninterrupted movement of goods across international borders was likely to hamper the natural growth of this new kind of service.[17] In this era of globalisation and trans-border business there is an increased level of competition at the domestic as well as international level which means that the quality and profitability of trade must be preserved. We live in a constantly evolving world where harmonization is extremely important and the trade desperately requires an efficient and simple door to door liability system. This was one of the reasons why ICC and UNCTAD developed the new UNCTAD/ICC Rules for Multimodal Transport Documents.[18] A working ground was accordingly set up to examine

[15] *International institute for the Unification of Private Law,* XLII U.D.P. 1970 ETUDES, 39 (January, 1970).

[16] Economic and Commercial Implications of the entry into force of the Hamburg Rules and the Multimodal Transport convention, 1991,TD/B/C.4/315 (Rev.1).

[17] Maritime Admin., Dep't Of Transp., Inventory Of American Intermodal Equip. 42, 49 (1982).

[18] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art. 1(1), U.N. Doc. TD/MT/CONF/16.

the prevalent situation and to recommend a law which should clearly determine the responsibilities and liabilities of multimodal transport operators for loss or damage. In India, the new law on multimodal transport was enacted by issue of an ordinance in October 1992 and was later on replaced by the Multimodal Transportation of Goods Act 1993.[19] Yet, the Multimodal transport continues to operate in a climate which is characterized by multiple liability regimes with liability depending upon the leg of the journey in which the loss or damage occurs. In cases of dispute or uncertainty, the resolution of financial responsibility for loss generally will become a matter for negotiation and settlement between the underwriters involved in a particular occurrence. These rules were based on the principles contained in the TCM convention, 1970 and subsequently were adopted by certain steamship conferences and trade associations. However, the adoption of a standard bill was far from uniform. To date, a thorough document for the multi-modal carriage of goods has not been accorded formal inter-governmental recognition[20]. In November 1980, the UN Diplomatic conference began its work under a certain amount of pressure, not because of any commercial urgency for the solution, but because UNCTAD believed it was important for institutional reasons to conclude the Convention.[21]

B. Bill of lading

The bill of lading is a document of title of goods which is transferable by endorsement and is a receipt of shipping on the number of packages of a weight and particular brands and a contract to transport them to a port of destination mentioned in the same. Firstly, a bill of lading is a document generated by a shipping company or its agent, giving details of a shipment of merchandise. Alongside this main

[19]*Id.*
[20]Srinivasan V. & Thompson G. L., *Determining Cost vs. Time Pareto-Optimal Frontiers in Multi-Modal Transportation Problems*, 11(1) Transportation Science 1, 19 (1977).
[21]*Id.*

goal, the bill of lading also certify that the goods have been loaded on board a ship, assigns ownership of the goods, and requires the carrier to deliver the goods to the holder of the title or a named party in the destination port. In the case of, *Coventry v Gladstone,* Lord Justice Blackburn defined a bill of lading as "*a writing signed on behalf of the owner of the ship on which the goods were shipped, acknowledging receipt of the goods, and pledging to deliver it end of the voyage, subject to the conditions mentioned in the bill of lading. The bill of lading is a key document used in the transport of goods; it a document of title and, it is also an important financial instrument*."

An inland bill of lading is a document establishing an agreement between a shipper and a carrier for the transport of goods by land. Ocean bills of lading specify the terms between exporters and international carriers the freight for shipping to overseas locations. An air transport document is a bill of lading which establishes the terms of flights carrying freight. Goods may be transported, whether national or international. This document also serves as a receipt for the charger, demonstrating acceptance of haulage charger and agreement to bring these products to a specific airport. Inland and ocean bills of lading may be negotiable or non-negotiable. If the bill of lading is not negotiable, it is required that the transport vehicle to provide only the consignee named delivery in the document. If the bill of lading is negotiable, the person who owns the bill of lading has the right to ownership of property and the right to re-route shipping. This is sometimes called a bearer bill of lading.

Purposes of a bill of lading are:

• It serves as evidence of a valid contract of carriage, and may incorporate the full terms of the contract between the shipper and the carrier which may include payment terms, rates, description of the concerned products as well as other rights and obligations.

• This is a receipt signed by the carrier confirming whether goods matching the described in the contract have been received in good condition (see SLC below). The information could include pallet and / or number of pieces, weight, product description and classification.

• Once signed by the recipient, is a receipt of the goods received to provide final confirmation of the quantity and condition of the product received. A signature by the recipient is required on the examination of the goods after it is received as described in the Bill of Lading unless otherwise noted discrepancies at the time of Bill of Lading is signed.

A through bill of lading is a contract that covers the specific terms agreed between a shipper and the carrier when using more than one type of transport. This document may cover national and international transportation of export goods. It provides details of the agreed modes of transport between specific locations for a set monetary amount. Similar to this is the combined bill of lading. When a draft law combined shipping is issued as a Bill of Lading Combined Transport, it is multiple modes of transport from the place of receipt of delivery place and all these movements are carried out as a single contract various service providers on the use of the carrier. Carrier assumes no responsibility for any loss or damage to all transportation including the sea and the other mode of transport. This is the same as Bill Multimodal laws and regulations relating to Bills of Lading. In India is governed by Indian Law Bills of Lading 1856.

C. Liabilities under the UN Multimodal Convention

a) Basis Of Operator's Liability

The three groups (Group B, Group D and The Group of 77) agreed that liability should be based on the MTO's fault, and that the burden of proof would rest on him to prove that he had not been at fault in causing loss, damage or delay (reverse burden of proof).This regime

followed the Hamburg Rule[22] and the 1929 Warsaw Convention, which provided the familiar phasing that the MTO shall be liable for loss, damage or delay while he is in charge of the goods unless he proves that he took all measures that could reasonably be required to avoid the occurrence and its consequences.[23] The preamble to the Multimodal Convention further clarifies that the MTO's liability "*should be based on the principle of presumed fault or neglect*". Alternatively, the MTO may defend himself by proving that the consignor or the consignee caused the loss, damage or delay to the goods.[24] A very important safeguard for the application of modal regimes is found in the Convention's pickup and delivery exception to the definition of international multimodal transport. The exception provides in part that "*[t]he operations of pickup and delivery of goods carried out in the performance of a uni-modal transport contract, as defined in such contract, shall not be considered as international multimodal transport*.[25]

The question in regards to the imposition of liability in multimodal contracts was whether to hold the multimodal operator liable for all loss and damage to the goods while it's in his custody. For damage however caused, or to impose liability only for preventable loss or damage resulting from his lack of care and attention. In practise all regimes of strict liability excuse the carrier or the operator for a few uncontrollable causes of loss such as force majeure (Act of God) and inherent vice or defects of the goods themselves. The alternative standard of fault liability allocates to the operator only those risks associated with its own actions, leaving losses that arise from other

[22]United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), art.10,A/CONF.89/13, - U.N.T.S. - U.N. Doc. 1978.

[23] Convention for the Unification of Certain Rules Relating to International Transportation by Air (Warsaw Convention), art.20(1), T.S. No. 876, 137 L.N.T.S. 11.

[24] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, arts. 16-17, U.N. Doc. TD/MT/CONF/16 .

[25] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art 1(1), U.N. Doc. TD/MT/CONF/16.

sources to fall on the cargo owner. In practise, fault liability usually means the operator is only responsible for the consequences of negligent acts and omissions that are committed by itself or its employees and agents. The complementary element in ascertaining liability in cases of loss is the issue of burden of proof. If the operator is called upon to bear this onus, he must disprove his liability for the loss. If the cargo owner is made to do so, it must prove the operator's liability or it will have to absorb the loss itself. When the source of loss or damage is uncertain or the evidence is weak, the party that bears the burden of proof is unlikely to satisfy it and so will also bear the risk of the loss. If there was a negligent in some respect, it must go further in its proof and show that its negligence was not the cause of the loss or damage in order to be exonerated from liability.[26] The fundamental decision to be taken on the measure of compensation payable is whether the operator's liability shall extend to the full loss or in some manner limited. Typically, national law leaves this issue to the contracting parties. The law shall grant full compensation unless the parties exercise their freedom to contract otherwise. The parties frequently include clauses in their agreement to disclaim liability or limit liability, or both.

b) Quantum Corporation Ltd v. Plane Trucking Ltd And Air France, DMC/Sandt/03/02

In September 1998 Air France issued to the claimants, Quantum Corporation, an air waybill in Singapore, providing for the carriage of hard disk drives – to the claimed value of US$1.5 million – from Singapore to Dublin. The intended routeing was by air from Singapore to Paris and then from Paris to Dublin by road and sea over the Irish Sea. This was recorded in the master air waybill. A large number of similar consignments involving the same parties had been carried in this way previously.

[26]Ld. Atkin's opinion in the Ruapeha (1925) 21 LI. L.R. 310, at 315 (C.A).

For the trucking leg, the carriage was performed by regular contractors of Air France, Plane Trucking. Whilst the cargo was in the UK, in the custody of Plane Trucking, it was stolen by their employees. Plane Trucking admitted liability for the theft but was in liquidation at the time of the proceedings. Plane Trucking's liability insurers had purported to avoid the policy. Air France also accepted liability.

Air France maintained that its General Conditions were incorporated into the contract of carriage by means of terms in the air waybill. Under Article 11.7 of the Air France conditions, its liability was limited to the amount of SDRs 17 per kilo. Unlike the Warsaw Convention, the conditions did not disentitle Air France from relying on the per kilo limitation in the event that the loss 'resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Claimants maintained that Air France's liability, in relation to the Paris-Dublin leg, was subject to the Convention on the Contract for the International Carriage of Goods by Road ('CMR'). Article 1 of that Convention provided that the Convention applied to

> "*Every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting country.*"

France is a contracting country to the CMR Convention. For the purposes of Article 6(1)(d)) of the Convention, "*The consignment note shall contain the following particulars… the place and date of taking over delivery….*", the claimants submitted that the goods were taken over in Paris. Under Article 23 of the Convention, the carrier may limit its liability to SDRs 8.33 per kilo of the goods lost or

damaged. Under Article 29 of the Convention, however, the carrier is not entitled to take advantage of the limit set out in Article 23, where the loss or damage was caused by its wilful misconduct or that of 'the agents or servants of the carrier, or [of] any other persons of whose services [the carrier] makes use for the performance of the carriage'. Mance LJ delivered the judgment of the court. He defined the issue to be addressed as

> "*What constitutes a 'contract for the carriage of goods by road' within the meaning of Art.1 of CMR." He accepted that the issue could be approached on the assumption that although carriage by road from Paris to Dublin was Air France's intended mode of performance, Air France was not contractually obliged to carry the goods in that manner and, might, if they had so wished, have carried the goods on that leg by air. The contract recorded in the air waybill was clearly for two legs, the first to be performed by air, the second a trucking leg, unless Air France elected to substitute some other means of transport, as their Conditions permitted.*"

Differences in opinion 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. Two questions arose for decision:

1. To what extent the application of CMR depends upon a carrier having obliged itself contractually to carry goods by road (and by no other means). This depends upon the force, in context, of the word 'for' in the reference to a 'contract <u>for</u> the carriage of goods by road';
2. To what extent (if at all) a contract can be both for the carriage of goods by road, within Art.1 <u>and</u> for some other means of carriage, to which CMR does not apply?

c) *Period of Responsibility*

Liability upon loss or damage to goods during carriage is based on the period for which the operator is responsible. In general practise, the operator is considered to be responsible for the safekeeping of the goods till the time it is in their possession. This principle is spelled out in Article 14 of the Convention.[27] Therefore, the period of responsibility for the operator is considered to be between 'the time of taking in charge' of the goods from the shipper or person acting for the shipper until the 'time of delivery' to the consignee according to the local commercial usage, or as required by local law.[28] Acts of the MTO includes the acts of his servants or agents "*or any other person of whose services he makes use for the performance of the multimodal transport contract*."[29] Consequently, , article 15 provides that the MTO is liable for the acts or missions of his servants, agents and other person whose services the MTO uses for the performance of the contract, whenever they are acting within the scope of their employment or in the performance of their contracts with the MTO. However, this principle is subject to the possible loss of the right to limit liability under Article 21 of the Convention. Article 21(1) provides that the MTO may lose the right to limit the liability if it is proved that loss, damage, or delay was caused by an act or omission by the MTO done intentionally or recklessly and knowing that the loss, damage, or delay would likely result. Moreover, Article 21(2) provides that the MTO's servants, agents, and subcontractors may lose their right to benefit from the Convention's liability limits if it is proved that loss, damage, or delay was done by their acts or omission when done intentionally or recklessly and knowing that the loss,

[27] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art. 14(1), U.N. Doc. TD/MT/CONF/16.
[28]International Chamber of Commerce Rules, 1975, rule 5(e).
[29] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art. 15,U.N. Doc. TD/MT/CONF/16.

damage, or delay would likely result.[30] The relationship between article 15 and article 21 is not clearly expressed in the language of the two articles. It may be argued that a person of whose services the MTO makes use in performing the multimodal contract could lose the right to limit his liability when he causes loss or damage by his intentional or reckless acts, whereas the MTO's liability limit might prevail. Suppose deliberate or reckless loss or damage was caused byan underlying carrier but could not be imputed to the MTO because the MTO himself at all times acted prudently in accordance with article 21(1). In that case, it might be argued that the MTO's subcontractor would not have the benefit of limited liability under article 21(2), whereas the MTO's liability would be limited because it could not be proved that loss, damage, or delay resulted from an act of the MTO "*done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result*."[31]

Consequently, if the subcontractor's wilful or reckless act cannot be imputed to the MTO, the subcontractor might be liable for the difference between the limited recovery allowed by articles 18 and 19of the Convention and unlimited recovery. The question of liability of other parties carrying business upon receipt but before loading or after reaching the destination but prior to actual delivery is often widely debated. Therefore, the Convention has made an ardent effort to address the legal effect of the phrases such as ‘taking in charge’ by the operator and when they are to be treated as ‘delivered’ to the consignee.[32] Due to the absence of concrete definitions to establish the exact legal effect of the actions of the parties, the application of the provisions and allocation of liability becomes difficult.

[30] Draft United Nations Convention on International Multimodal Transport of Goods, 1980, art. 21, U.N. Doc. TD/MT/CONF/16.
[31]Larsen &DielmannDie, *Multimodal Konvention*, Versicherungsrecht, at 33 (1982).
[32]Multimodal Transport Convention, 1980, art. 14(2).
.

III. MULTIMODAL TRANSPORT OF GOODS

A. Multimodal Transport of Goods In India

The Multimodal Transportation of Goods Act came into effect on the 2nd day of April, 1993. It provides for the rules and regulations governing transportation of goods of one place in India to any place outside India, such transportation of goods must involve at least two or more modes of transportation on the basis of a single multimodal transport document. The provisions of the Act further provide that Multimodal Transportation of goods can be carried out only by person(s) registered under as a Multimodal transport operator (hereinafter, MTO) under the Multimodal Transport of Goods Act, 1993 and such registration as a MTO is valid for a period of 1 year and maybe renewed for further period of 1 year on time to time basis. The Association of Multimodal Transport Operators of India (AMTOI) represents the interests of the MTOs in India and ensures that there is a constructive dialogue between the authorities and the MTOs to further evolve Multimodal Transportation in India. It has been estimated that Indian Logistics sector will generate revenues amounting USD 200 billion by the year 2020. In order to realize this potential, the country will need to make effective use of its strengths in IT and look out for collaborations with experts in this field. In addition, the Director General of Shipping has the authority to prescribe a Multimodal Transport Document under Rule 3 of the Multimodal Transport Document Rules, 1994 after receiving prior approval from the Ministry of Surface Transport. It states that in a contract for Multimodal Transportation wherein, the Consignor and the Multimodal transport operator have entered into a contract for the Multimodal Transportation and the Multimodal transport operator has taken charge of the goods, he shall issue a document, a model of

which may be prescribed by the competent authority by a Special or General Order, with the approval of the Central Government.[33]

B. *Multimodal Transport Document as an Instrument of Exchange*

A person who has a document of title can lawfully transfer the goods covered by the offer or agreed to another person without any actual movement of goods. Once the multimodal transport operator assumes the role of the owner of the goods, the Principle in the process authorizes the MTO to exercise the rights as that of the owner for claiming damages etc. and for other purposes, whichever necessary. The issuance of a multimodal transport document confers and imposes on all interested parties the rights, obligations and defences set out in the Act. In this case, a document of title bill is a negotiable instrument because it only their delivery or endorsement can transfer the ownership of the goods from one person to another legitimately. The document is negotiable if the terms of the document state that the title of goods are to be transferred to the bearer, the holder of the document, to the order of the named party, or, where recognized in overseas trade, to named person or his or her assigns. The negotiability of MT Document was a major bone of contention during the discussions as the carriers did not want the burden of having to hold onto the goods while the MT Document is processed through banks.[34]

C. *Liabilities And Dispute Settlement Under The Act*

In cases of disputes arising out of breach of multimodal transport contract, any party to a multimodal transport contract may institute an action in a court which has jurisdiction and the competency to hear

[33]Multimodal Transport Document Rules, Multimodal Transport Document (Mtd) & It's Implementation in India,1994, Rule 3.
[34]Preparation and Adoption of Multimodal Transport Document, (1980), U.N. Doc. TD/MT/CONF/NGO/4 (1979).

the matter. In the given instance, a suit maybe filed in the a court having jurisdiction in the following places, namely:

a. the principal place of business, or, in the absence thereof, the habitual residence, of the defendant; or
b. the place where the multimodal transport contract was made, provided that the defendant has a place of business, branch or agency at such place; or
c. the place of taking charge of the goods for Multimodal Transportation or the place of delivery thereof.
d. Or, the case maybe filed in any other place specified in the multimodal transport contract and evidenced in the multimodal transport document.[35]

The parties also have the option to choose to use an alternate dispute settlement system.If the parties to a multimodal transport contract choose to provide that any dispute which arises out of such contract under the provisions of the Act maybe referred to arbitration.[36] The arbitration proceedings may be filed in any place as specified in the multimodal transport document and according to the procedure established therein.

a) *Liabilities of the Multimodal transport operator under ordinary circumstances:*

Under the provision of this Act, the multimodal transport operator shall be liable for loss resulting from any loss of or damage to the consignment. Section 13 states that any delay in the delivery of the consignment and any consequential loss or damage arising out of such delay while the multimodal transport operator was in charge of the consignment. But under the given circumstances, the multimodal transport operator can take up the defence that he exercised reasonable care and caution if he can prove that the loss, damage or

[35]Multimodal Transportation of Goods Act, 1993, § 25.
[36]Multimodal Transportation of Goods Act, 1993, § 26.

delay in delivery did not occur due to any fault on his part or on the part of his servants or agents. Further, in the course of ordinary business, any delay in delivery has to be subject to the time expressly agreed upon or else within a reasonable period of time and any liability for damage or loss arising out of a delay in delivery cannot be attributed to the operator unless the consignor can a declaration of interest in timely delivery which has to be accepted by the operator. A period of ninety days has been stipulated as the maximum limit of deference from the time agreed upon or reasonable time period of delivery.[37] Moreover, under extraordinary circumstances the liability of a multimodal transport operator shall be limited to the freight payable for the consignment so delayed. Lastly, any contract for Multimodal Transportation of goods entered upon by a multimodal transport operator has to be in accordance with the provisions of the Multimodal Transportation of Goods Act, 1993 and Section 28 of the Act states that any inconsistency with the said provisions of the Act will render such a contract to be void and unenforceable.[38] The period of responsibility of the multimodal transport operator for the goods under this Act shall cover the period from the time he has taken the goods in his charge to the time of their delivery.[39] In case of the consignor, Section 12 of the Act provides that multimodal transport operator shall be guaranteed against the adequacy and accuracy of the consignment at the time when the multimodal operator takes charge of the goods. Further, the consignor shall indemnify the multimodal transport operator from any inadequacy or inaccuracy but the proviso does not limit the liability of the multimodal transport Operator under any multimodal transport contract to any person other than the consignor.[40]

[37]Multimodal Transportation of Goods Act, 1993, § 13(2).
[38]Multimodal Transportation of Goods Act, 1993, § 14.
[39]Multimodal Transportation of Goods Act, 1993, § 20(4).
[40]Multimodal Transportation of Goods Act, 1993, § 13.

D. Defences to Liability

a) Limitation to Liability of Multimodal transport operator

Firstly, the liability of multimodal transport operator under the MMTG Act is not extensive in nature but rather it has been made subject to certain conditions and limitations. The operator's liability to pay compensation in cases where in the nature and value of the consignment has not been declared along and in situations, in which the stage of transport where the loss or damage occurred is unknown, shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged, whichever is higher. Secondly, if the multimodal transport contract does not include any carriage of goods by sea or by inland waterways, the liability of the operator shall be subject to 8.33 Special drawing rights per Kilogram of the gross weight of the goods lost or damaged. Thirdly, if the nature and value of the goods has not been declared beforehand by the consignor but the stage at which the loss or damaged occurred is known then the limit of the liability of the multimodal transport operator for such loss or damage shall be determined in accordance with the provisions of the relevant law applicable in relation to the mode of transport during the course of which the loss or damage occurred and any stipulation in the multimodal transport contract to the contrary shall be void and unenforceable.[41] Further, the liability of the operator in cases of total loss of goods shall not be greater than the amount greater than the amount for which a person can make a claim under the said Act.[42]

But, if there is an omission or an act on the part of the multimodal transport operator with the intent to cause such loss, damage or delay recklessly and with the knowledge that a loss, damage or delay would

[41]Multimodal Transportation of Goods Act, 1993, § 15.
[42]Multimodal Transportation of Goods Act, 1993, § 19.

result in the process.[43] Under the laws on limitation, the multimodal transport operator shall not be liable under any of the provisions of this Act unless action is brought against him within nine months of the date of delivery of the goods, or the date on which the goods should have been delivered, or from the date on which the period of ninety days has passed on which the party entitled to receive delivery of the goods has the right to treat the goods as lost.[44]

IV. CONCLUSION

Multimodal transportation of goods is a phenomenon that is quintessential to the advent of the container system to facilitate trade across seas and national boundaries. It primarily deals with the transportation of goods which use more than one form of transportation. Though attempts had already been made in Europe to form concrete rules to govern this form of trade but there was a paucity of approving countries and the number of countries subscribing to the rules were few and far in between. But on the international forum, under the auspices of the United Nations, the UNCTAD was formed mostly due to the efforts of the under-developed countries. During the process of deliberation, the fact that the participating member countries were divided into four-groups highlighted the nature and the degree of conflict of interests of the countries. We can imply from the diverse and conflicting interests of the countries that settling on an amicable proposition proved difficult. The Government of India was also advised of the growing impact of multimodal transportation of goods in international trade and it realised the importance to codify certain rules to facilitate smoother functioning of the system and to keep up with the global market. Subsequently, the Multimodal Transportation of Goods Act, 1993

[43]Multimodal Transportation of Goods Act, 1993, § 18.
[44]Multimodal Transportation of Goods Act, 1993, § 24.

came into effect but this does not serve the issue of multiple legal regimes governing multimodal trade only adds to it.

The parties to a multimodal transport contract are namely; the consignor, the multimodal transport operator and the consignee. A multimodal transport contract is drafted between these parties based on a multimodal transport document. An important aspect of multimodal transportation is the multimodal transport document which serves as a title document and also holds evidentiary value under the multimodal transport contract. In order to provide a platform for the seamless flow of business, it was pertinent that the interests of the above-mentioned parties be satisfied. With the recent surge in global trade, the countries must come to an amicable understanding to solve the problem of multiple legal regimes covering the aspect of multimodal transportation of goods which forms the most essential part of international trade and commerce. In these times of multifaceted economy, trade plays the most crucial role in defining the economic power of a country. Therefore, in order to establish a stable and reliable system to ease trade flow across seas, universally accepted multimodal transportation of goods rules must be drafted and the countries must adopt the same in the international forum.