

Distr.
GENERAL

UNCTAD/SDTE/TLB/2003/1
13 January 2003

ENGLISH ONLY

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**MULTIMODAL TRANSPORT:
THE FEASIBILITY OF AN INTERNATIONAL LEGAL INSTRUMENT**

Report by the UNCTAD secretariat

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A. INTRODUCTION AND BACKGROUND

1. The current work of UNCTAD on multimodal transport arises from the Plan of Action (TD/386) adopted by UNCTAD X, held in Bangkok in February 2000. Following the preparation of a study of the implementation of the laws and regulations applicable to multimodal transport by the secretariat (UNCTAD/SDTE/TLB/2 and Add.1), an Ad Hoc Expert Meeting on Multimodal Transport was convened which reviewed the existing situation with regard to the regulation of multimodal transport. In view of the great diversity of regulation at the international level, the Meeting recommended that the UNCTAD secretariat study the feasibility of a new international instrument, taking into account the views of all interested parties, both public and private.

2. To this end the UNCTAD secretariat circulated a questionnaire to all Governments and industry as well as to interested intergovernmental and non-governmental organisations and a number of experts on the subject. The secretariat received 109 replies to the questionnaire, including 60 from the Governments of both developed and developing countries, and 49 from industry representatives and others. The replies received from industry representatives reflect the views of virtually all interested parties. They include the views of operators of transport services (maritime, road and rail), freight forwarders, providers of logistics services and terminal operators, liability insurers, cargo insurers as well as shippers and users of transport services.

3. This report presents the results of the secretariat's study. It is mainly based on the views and opinions expressed in the questionnaire, which are detailed in part C of this report. **A complete copy of the questionnaire is annexed and a breakdown of the responses received is presented in Table 3¹.**

4. The secretariat wishes to express its deep appreciation to all those who took time to reply to the questionnaire. Many of the respondents provided additional comments and information that has been extremely valuable to the secretariat in the preparation of this report. Every effort has been made to reflect all the comments received and, where appropriate, representative and noteworthy comments have been reproduced verbatim.

¹ Page 26. The table reproduces the questions in abbreviated form. Percentage values have been rounded to the nearest full unit.

B. INTERNATIONAL MULTIMODAL TRANSPORT AND CURRENT LEGAL FRAMEWORK

5. The world of transport has changed considerably over the last few decades. International transportation of goods is increasingly carried out on a door-to-door basis, involving more than one mode of transportation. While there is little information on the overall proportion of cargo transported by multiple modes, data on the development of containerized traffic provide some highly significant indications, as containers are designed for transportation by different modes.

6. Since the advent of the container in the mid-1960s, there has been an exponential increase in containerized transport, which is forecast to continue well into the future:

World port container throughput, i.e. the number of movements taking place in ports, has grown from zero in 1965 to 225.3 million moves in 2000 (Figure 1). Container traffic is forecast to more than double until 2010 to almost 500 million moves; this represents an annual growth rate of 9% (Figure 2). While globally the major container flows are between Asia, Europe and North America (Figure 3), there are significant flows within all regions.

World seaborne trade in containerized cargo is estimated to more than double from 1997 to 2006 to around 1 billion tons². Most of this containerized cargo will involve transportation by more than one mode before reaching its final destination. In particular the first and the last leg of any door-to-door transaction will usually involve transportation by another mode, such as road or, to a lesser extent, rail.

There has been significant growth in trade in manufactured goods, as a result of globalisation, leading to foreign direct investment in factories and assembly plants in regions with lower labour costs and good access to trade routes. In 2000, the **value of manufactured goods exported globally** (f.o.b.) had risen to 75% of all goods exported (~ 4.7 trillion US\$ out of a total of ~ 6.2 trillion US\$³, see Figure 4). The majority of manufactured goods moving by sea will be transported in containers.

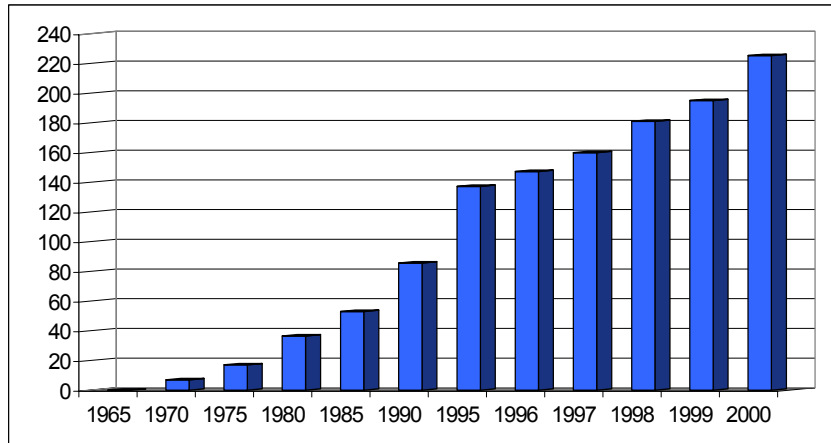
7. The growth of containerized transportation, together with technological developments improving the systems for transferring cargo between different modes has considerably affected modern transport patterns and practices.

8. Shippers and consignees are often interested in dealing with one party (Multimodal Transport Operator, MTO), who arranges for the transportation of goods from door to door and assumes contractual responsibility throughout, irrespective of whether this is also the party who actually carries out the different stages of the transport. For many transport users, delay in delivery has come to be of increasing importance in connection with efficient supply chain management.

² UNCTAD *Review of Maritime Transport, 1997*, 13.

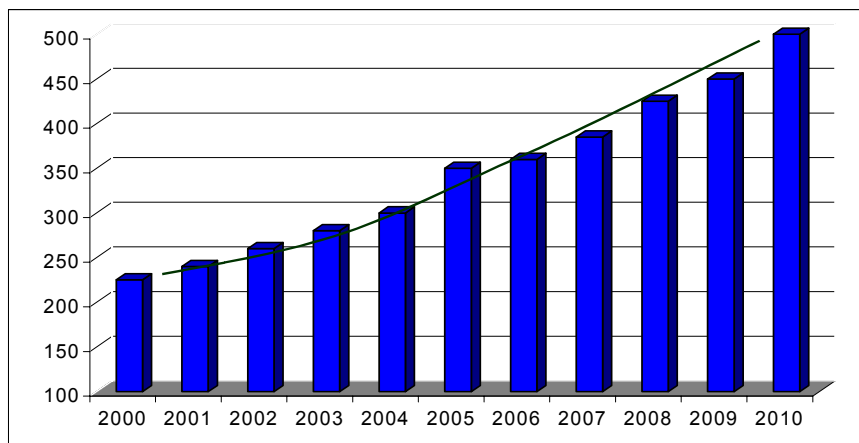
³ UNCTAD *Handbook of Statistics 2002*.

**Fig. 1: World Port Container Throughput
TEU's (millions)**



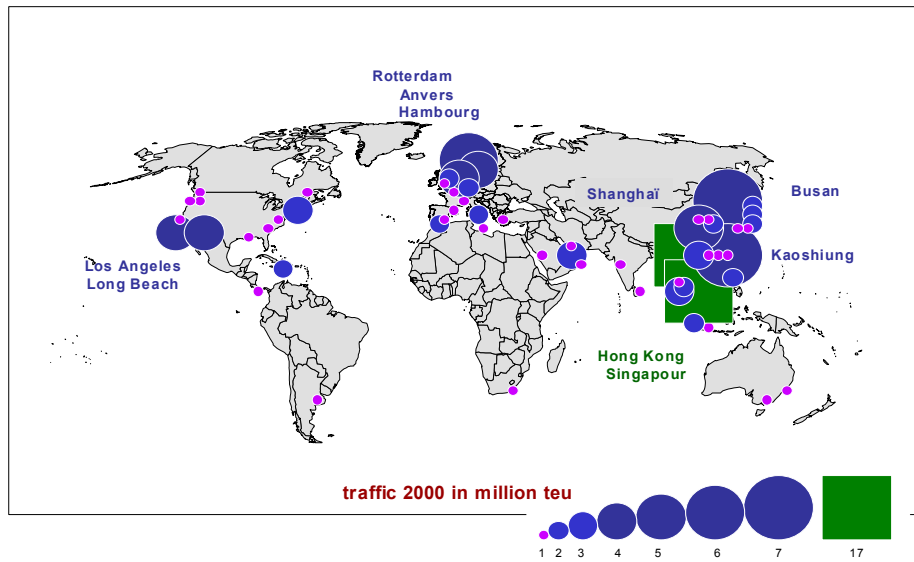
Source: Containerisation International Yearbooks

**Fig. 2: Forecast World Port Container Throughput
TEU's (millions)**



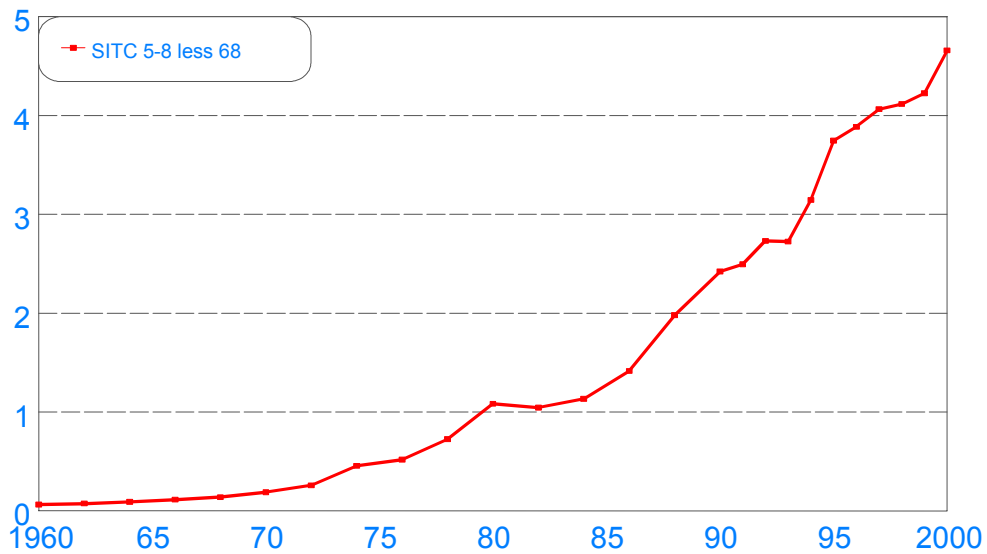
Source: ISL Bremen

Fig. 3: Container Traffic Hubs



Source: Containerisation International

Fig. 4: Value of Manufactured Goods Exported (trillion US\$ f.o.b.)



Source: UNCTAD Handbooks of Trade Statistics

9. At the global level, the main providers of multimodal transport services appear to be freight forwarders, who often do not themselves own or operate any means of transport, but arrange for the performance of individual modal stages of transport by traditional unimodal carriers. Increasingly, big liner shipping companies, some of which dominate the ocean trade involving container shipments⁴, are also expanding their services to offer transportation from door-to-door by engaging other carriers to perform different modal stages of a multimodal transaction.

10. Where goods are carried in sealed containers, it is often difficult to identify the stage/mode of transport where a loss, damage or delay in delivery occurs. Under the present regulatory framework, however, both the incidence and the extent of a carrier's liability may depend crucially:

- (a) on whether a loss can be attributed to a particular stage and mode of transport;
- (b) on which of a considerable number of potentially applicable rules and/or regulations is considered to be relevant by a court or arbitral tribunal in a given forum.

11. The current liability framework does not reflect developments that have taken place in terms of transport patterns, technology and markets. No international uniform regime is in force to govern liability for loss, damage or delay arising from multimodal transport. Instead, the present legal framework consists of a complex array of international conventions designed to regulate unimodal carriage, diverse regional/subregional agreements, national laws and standard term contracts. As a consequence, both the applicable liability rules and the degree and extent of a carrier's liability vary greatly from case to case and are unpredictable.⁵ The complexity of the situation is illustrated in Table 1, which provides in broad outline an overview over the framework for the determination of applicable liability rules in cases of loss and damage.

12. While there have, over the years, been several attempts at drafting a set of rules to regulate liability arising from multimodal transportation, none of these has brought about international uniformity. In 1980, the *United Nations Convention on International Multimodal Transport of Goods* (hereafter *1980 MT Convention*) was adopted, but it did not attract the necessary number of ratifications and has not entered into force. In the early 1990's, a set of standard contractual terms was prepared for incorporation into commercial contracts (*UNCTAD/ICC Rules for Multimodal Transport Documents 1992*, hereafter *UNCTAD/ICC Rules*). However, as these rules are contractual in nature, they are by definition subject to any applicable mandatory law and are thus not an effective means of achieving international uniformity.

⁴ In 2001, the leading 10 container service operators (in terms of number of ships and container carrying capacity), accounted for more than 40% of global capacity and the top 20 operators accounted for almost 60%. *UNCTAD Review of Maritime Transport 2002*, Table 34.

⁵ Further detail about the complex international liability framework is provided in the UNCTAD Report *Implementation of Multimodal Transport Rules* and the accompanying comparative table, which presents in overview the content of existing regional, subregional and national multimodal liability regimes; UNCTAD/SDTE/TLB/2 and Add.1, available on the www.unctad.org website.



MULTIMODAL TRANSPORTATION UNDER ONE TRANSPORT DOCUMENT:
Key for determination of applicable liability rules in cases of loss or damage

Scenario 1: Loss can be localized to a particular modal stage of the transport

Do all mandatory multimodal liability regime apply, in the relevant forum, to the claim?
Comparative table** for overview over existing legislation

Agreement with identified applicable regime

Agreement is likely to contain substantive elements of the 1980 MT Convention and/or UNCTAD/ICC Rules 1992
Comparative table for overview of substantive liability rules under 1980 MT Convention and UNCTAD/ICC Rules

Do international convention or national law apply, in the relevant forum, to the claim (geographical and substantive scope of application)?

For a brief overview over international conventions
Contracting States often based on international regimes with variations e.g. in relation to monetary levels of limitation

Conformity with identified applicable regime

Limitation of liability differs according to mode under international unimodal conventions in force:***

		ROAD	RAIL	AIR
Limitation (SDR/kg or 7/pkg)	HamburgR: 2.5 SDR/kg (or 835 SDR/pkg)	CMR: 8.33 SDR/kg	COTIF/CIM: 17 SDR/kg	WarsawC: 17 SDR/kg

Conformity with standard form contract terms

UNCTAD/ICC Rules:

Rebuttable presumption of fault

Limit of liability for (a) negligence in navigation/management of ship; (b) negligence resulting in fire on board a ship
Limit of claims: 9 months

According to mandatory law/convention providing another limit of liability, had separate unimodal contract been made
If no convention would have applied and contract includes carriage by sea or water: 2 SDR/kg or 666.67 SDR/pkg,
If no unimodal convention would have applied and contract includes no carriage by sea or water: 8.33 SDR/kg

Further excluded or limited contractually if UNCTAD/ICC Rules have not been incorporated (cf. national law)