

UNITED NATIONS CONVENTION ON
INTERNATIONAL MULTIMODAL TRANSPORT OF GOODS

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Following seven meetings of the UN Inter-Governmental Preparatory Group (IPG) a UN Conference on an International Multimodal Transport Convention was held in Geneva from 12-30 November 1979. As the Conference was unable to complete its work a resumed session was held from 8-27 May 1980 at which a Convention was adopted by consensus.

The purpose of the Convention is to determine the conditions of liability under which multimodal transport operators (MTOs) carry goods in international trade and the nature of the through transport document under which the multimodal transport journey is accomplished.

During the drafting of the Convention there has been a conscious effort by most Governments to align the multimodal convention as far as practical with the provisions of the Hamburg Rules on the Carriage of Goods by Sea. For example, Part V on Claims and Actions follows closely the corresponding provisions of the Hamburg Rules.

The Convention which will enter into force twelve months after the Governments of thirty States have ratified or acceded to the Convention, will have mandatory application to all multimodal contracts for the international multimodal carriage of goods if the place of taking in charge of the goods or the place of delivery is in a Contracting State. However shippers will remain free to choose between a multimodal contract to cover whole journey and separate contracts for each stage of a multimodal movement.

In relation to the scope of application of the Convention, it is important to note that any multimodal operations covered by the dual mode provisions of the CMR and CIM Conventions are excluded from the scope of the Multimodal Convention. Where the CMR, CIM or any other unimodal Convention explicitly extends to another mode, such carriage would be outside the Multimodal Convention, eg under CIM regular road or shipping services which are complementary to rail. Additionally, the Convention

excludes carriage which involves a single mode together with pickup and delivery. Effectively this will exclude from the scope of the Convention most pickup and delivery operations covered under the Warsaw Convention. The application of the Convention to air transport will therefore be significantly reduced.

The scope of the Convention will also be affected by the inclusion of an article which is designed to avoid conflicts between the Multimodal Convention and other unimodal conventions. The Article which recognises States' rights and obligations under existing conventions provides that where judicial or arbitral proceedings are brought under the Convention in a Contracting State in a case relating to international multimodal transport subject to the Multimodal Convention and only one is a Contracting State but both are at the time of entry into force of the Multimodal Convention equally bound by another international Convention, the Court or Arbitral Tribunal may in accordance with the obligations under such Convention give effect to the provisions of that Convention.

The Multimodal Convention provides inter alia for a single liability regime to apply throughout the transport operations. However if the damage or loss is known to have occurred during one particular stage of the multimodal transport and a higher limit of liability is provided for under an applicable international convention or mandatory national law, then limit to the MTOs' liability will be determined by reference to the provisions of such convention or mandatory national law (but MTO will not be able to utilise defences provided in these Conventions or under national law). For example, if damage to goods was known to have occurred on an air leg which was part of an international multimodal movement, then the liability limits of the Warsaw Convention would apply.

Where the loss or damage to goods cannot be attributed to a particular mode (ie concealed damage) and a sea leg is involved the MTOs' liability will be limited to an amount not exceeding 920 units of account (\$A1055 per package or other shipping unit or 2.75 units of account (\$A3.15) per kilogram of gross weight of the goods lost or damaged, whichever is the higher. This liability limit is 10 per cent above the limits of the Hamburg Rules. A higher limit is provided where the international multimodal transport does not according to the contract include carriage of goods by sea or inland waterways. In such cases the MTOs' limit of liability will be increased to 8.33 units of account per kilogram of gross weight of the goods lost or damaged.

As you will be aware from the circulated paper on 'International Shipping and National Aspirations', the incorporation of "public law" matters in the Multimodal Convention were vigorously opposed by most developed countries who considered the Multimodal Convention should be limited to establishing a liability regime for multimodal transport operators and documentation rules for inclusion in multimodal contracts of carriage. While developed countries were able to significantly limit public law provisions in the Convention, developing countries' aspirations in this regard have resulted in some public law aspirations being reflected in the Convention.

In relation to documentation the developed countries' aim was for the multimodal transport document to contain only those details essential to a transport document and in this regard they were not completely successful. The Convention requires the multimodal transport document to contain inter alia the following particulars:

- . general nature of the goods
- . if applicable, the dangerous character of the goods
- . leading marks necessary for identification
- . number of packages or pieces
- . weight
- . apparent conditions of the goods
- . name and principal place of business of MTO
- . name of consignor and consignee, if named by consignor
- . place and date of taking in charge of the goods
- . place of delivery
- . place and date of issue of the multimodal transport document
- . intended journey route, modes of transport and places of transshipment if known at time of issue of document.

The Convention also states that when the goods are taken in charge by the MTO, he may issue a multimodal transport document which at the option of the consignor may be either negotiable or non negotiable and if the consignor agrees, a non negotiable transport document may be issued by use of any mechanical or other means preserving a record of the particulars on the multimodal transport document (eg EDP). In such a case however the MTO, after having taken the goods in charge has to deliver to the consignor a

readable document containing all the particulars and this document will be treated as a multimodal transport document.

The Convention also contains detailed provisions on Customs Transit. These provisions however will effectively act only as guidelines as national laws or regulations are to be given precedence.

An article on Regulation and Control also reflects the public law aspirations of developing countries. This article states that the Convention shall not affect or be incompatible with the application of any international convention or national law relating to the regulation and control of transport operations and that the Convention shall not affect the right of each State to regulate and control at the national level multimodal transport operations and MTOs. This includes the right to take measures relating to consultations, especially before the introduction of new technologies and services, between MTOs, shippers, shippers' organisations and national authorities.