
Economic and Social Commission for Asia and the Pacific

Working Group on Dry Ports

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Item 5 of the provisional agenda*

Development of intermodal transport corridors and multimodal transport operations in Asia and the Pacific

Harmonization of legal frameworks for multimodal transport operations in Asia and the Pacific**

Summary

As mentioned in Document ESCAP/DP/WG/2019/3, in September 2019 the secretariat launched the project entitled “Enhancing integration and sustainability of transport networks in Asia and the Pacific through development of legal frameworks for multimodal transport operations”. The project aims to develop a concept/guideline for harmonization or unification of rules which will cover the matters of relationship between the carriers of different modes of transport involved into the multimodal transport chains.

Since the Intergovernmental Agreement on Dry Ports contains an overall institutional framework for the development of interconnections between international transport networks through intermodal transport facilities (dry ports), the Working Group on Dry Ports established under this Agreement provides an appropriate intergovernmental platform where related policies and actions, including development of multimodal transport in the Asia-Pacific region, can be collectively defined and implemented.

This informal document was prepared for the consideration of the Working Group on Dry ports with a view to offer the relevant background information for the implementation of the project (section I), help define the scope of further study on the subject (section II) and present possible approaches to the matter of harmonization of legal frameworks for transport operations involving several modes of transport (section III).

It is expected that the Working Group will discuss the present document and will provide guidance to the secretariat by setting the direction for further research on the concept of unified multimodal transport rules, defining the thematic areas which it should cover, as well as the format of the desirable output.

* ESCAP/DP/WG/2019/L.1.

** This document is being issued without formal editing.

I. Background information on existing international legal instruments related to combined, intermodal and multimodal transport

1. There is no uniformity in the definition of the most generic type of transport operations involving several modes of transport. The terms “intermodal transport”, “multimodal transport” and “combined transport” are often used interchangeably and even arbitrarily. For the purposes of this document, the terms “multimodal transport”/ “intermodal transport” are being used to indicate any transport operation by two or more modes of transport. The term “intermodal transport corridor” indicates a transport corridor on which transport operations by two or more modes of transport are being affected.

2. So far, there exist no international treaty covering transport operations involving more than one mode of transport that would be in force and implemented. None of the previous initiatives have succeeded in establishing a set of international rules that would be based on an international treaty and would thus have the force of law. So far only agreements covering requirements for infrastructure for combined transport lines are currently in force. They are complemented by industry-led initiatives which promote a harmonized approach to multimodal transport documents and operations.

II. Global and regional initiatives on harmonizing rules on international multimodal transport of goods

3. The United Nations Convention on International Multimodal Transport of Goods, 1980, is not in force since the required number of Parties for its entry into force is 30, while the actual number of Parties to this Convention is 11, and there are no new accessions since 1996.

4. The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2009 (The Rotterdam Rules) cannot be considered as a legal instrument on multimodal transport, being primarily a maritime law instrument. It is an effort, however, to harmonize certain rules for “door-to-door” transport operations involving several modes of transport where the maritime leg is a core. This international treaty so far has also not entered into force, having 4 Parties out of 20 required to bring it into effect. It is worth noting, however, that the Rotterdam Rules provide a legal framework that takes into account the many technological and commercial developments that have occurred in maritime transport more or less recently, such as increasing containerization, growing demand for door-to-door carriage under a single contract, and the development of electronic transport documents.

5. In Asia and the Pacific region, the ASEAN Framework Agreement on Multimodal Transport, 2005 (AFAMT), has entered into force for 8 out of 10 ASEAN member States, but still cannot not be considered as a legal instrument that sees a full implementation.

Existing Agreements on combined or intermodal transport

6. There are two regional agreements which currently deal with the combined or intermodal transport.

7. European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) of 1 February 1991

8. An agreement developed under the auspices of the United Nations Economic Commission for Europe (UNECE) known as the “European Agreement on Important International Combined Transport Lines and Related Installations” (AGTC) was signed in 1993 by more than 20 European States. In this Agreement, minimum standards were set for international combined transport lines. These should be taken into account when existing railway lines are upgraded or when new lines are created.

9. The main purpose of this Agreement is to develop a common infrastructure quality standard for combined transport on the main European transport corridors.

10. European States that signed the AGTC agreed on a set of minimum standards for combined transport infrastructure, including both rail lines and terminals. The AGTC contains an annex that lists all the lines and corridors to which this minimum standard will apply. The annex is updated regularly in the light of the information received from the States concerned. Admittedly, the AGTC does not provide for a Pan-European high-quality combined transport network immediately. But it forms a common framework for transport infrastructure planning in almost all European States. The AGTC standards will be achieved on all the major European transport corridors as countries gradually modernize their infrastructure.

11. Agreement on Organizational and Operational Aspects of Combined Transportation between Europe and Asia of 4 June 1997

12. The agreement developed in the framework of the Organization for Cooperation between Railways (OSJD) defines the network of main lines for combined transportation and defines the main technical parameters of such lines. The agreement has been developed on the basis of European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) and is generally similar in the subject and structure.

III. Best practices and recommendations on multimodal transport operations

13. Pending the entry into force of the UN Convention on International Transport of Goods 1980, the Rules for Multimodal Transport Documents were jointly developed by the United Nations Conference on Trade and Development and International Chamber of Commerce (the UNCTAD/ICC Rules for Multimodal Transport Documents) and entered into force on 1 January 1992.

14. The Rules do not have the force of the law but are of purely contractual nature and apply only if they are incorporated into a contract of carriage, without any formal requirement for “writing” and irrespective of whether it is a contract for unimodal or multimodal transport involving one or several modes of transport, or whether or not a document has been issued.

15. Once they are incorporated into a contract, they override any conflicting contractual provisions, except in so far as they increase the responsibility or obligations of the multimodal transport operator. The Rules, however, can only take effect to the extent that they are not contrary to the mandatory provisions of international conventions or national law applicable to the multimodal transport contract.

16. The UNCTAD/ICC Rules for Multimodal Transport Documents have been incorporated in widely used multimodal transport documents such as the FIATA Multimodal Bill of Lading (FBL).

17. FIATA's multimodal transport documents (most notably, FIATA Multimodal Bill of Lading (FBL), FIATA Multimodal Transport Waybill (FWB)), as well as UNCTAD/ICC Rules for Multimodal Transport Documents play their important role in filling this gap through recommendations for the unification of contractual relationship; at the same time, these are not legal instruments but recommendations for transport and freight forwarding industry.

IV. Suggested scope of the study to define the possible content of the legal framework for multimodal transport for Asia and the Pacific

18. The ESCAP secretariat receives a growing number of requests from ESCAP member States to assist in strengthening of the legal framework for multimodal transport operations, which are rapidly developing in the region but are hindered by the lack of uniform rules defining important provisions for such type of carriage of goods.

19. In the light of the background information presented above, the following elements and options could be considered in defining the scope of the ESCAP study on this subject.

A. Terminology

20. There are a number of key terms that are used to describe carriage in which several modes of transport are involved, in particular, "multimodal transport", "intermodal transport", "combined transport", as well as a number of other derivative terms for specific types of such transport operations.

21. Despite the fact that a number of authoritative researchers and organizations have developed definitions of these concepts, there are also various definitions found in international legal instruments and in the national legislation of some countries; the proliferation of terms sometimes leads to misunderstandings and different interpretations, and therefore to difficulties in their application by the transport industry.

22. For example, the terms "intermodal transport", "multimodal transport" and "combined transport" are often used interchangeably and even arbitrarily.

23. With this in mind, a clear definition of terms applied for different types of transport operations involving more than one mode of transport could be developed.

B. Analysis of the existing legal frameworks

24. As briefly mentioned in the above section, so far there are only agreements covering requirements for infrastructure for combined transport lines that are currently in force.

25. At the same time, as regards the contractual relationship between the actors of a multimodal transport chain, there is no successful attempt until now to establish a set of international rules that would be based on an international treaty and would thus have the force of law.

26. In-depth analysis of the existing international treaties which are not in force should be, however, undertaken with a view to identify possible reasons pertaining to their implementation.

C. Analysis of legal relationship between the actors of multimodal transport chain

27. Legal relationship between the carriers of different modes of transport involved in a multimodal transport chain (maritime, railway, road, inland waterway), as well as between carriers and other multimodal transport actors (such as shippers, freight forwarders, multimodal transport operators, dry ports, etc.) should be scrutinized with a view to identify the critically important matters that should be covered by a potential new legal framework.

V. Modalities for harmonization of legal frameworks on multimodal transport in Asia and the Pacific

28. Based on the planned study, the following options should be considered in terms of the decisions or outputs to be endorsed by the Working Group.

A. Explore the possibility of developing an international legal instrument (with due consideration of existing legal instruments and recommendations on multimodal transport)

29. Based on the analysis of key issues of multimodal transport operations that remain not covered by the existing applicable instruments, the secretariat may prepare a concept of an international legal instrument on multimodal transport that could be subsequently discussed by the experts of ESCAP member States with potential involvement of relevant international organizations.

30. Depending on the readiness of particular member States to embark on the process of negotiations of a new legal instrument, it could be developed, optionally at:

(a) Regional scope (with the potential involvement of all interested member States); or

(b) Sub-regional scope (with the involvement of member countries belonging to a certain sub-region); or

(c) Corridor-based (involving member States along one or several international intermodal transport corridor(s).

31. Such concept legal instrument, whatever at regional, sub-regional or corridor level, should be mindful of the existing conventions, agreements (notably, the ASEAN Framework Agreement on Multimodal Transport, 2005 (AFAMT), as, probably, the most successful example of an international agreement concluded in Asia and the Pacific region), as well as practical recommendations being applied by transport industry (the UNCTAD/ICC Rules for Multimodal Transport Documents, FIATA multimodal transport documents, etc.)

B. Develop a guideline aimed at harmonization of national laws on multimodal transport or a model national law on multimodal transport

32. Taking due consideration of the key matters of multimodal transport operations, the secretariat may develop a draft guideline for the member States that could contain the list of related provisions that could be incorporated into legal acts at national level with a view to facilitate harmonization of national rules and regulations on multimodal transport. Under this option, in principle, a model national law on multimodal transport could be proposed to the member

States. Given that only a few countries of the region currently have national laws on multimodal transport adopted, the model law could help in the promotion of a unified approach to the matters of multimodal transport through adoption of relevant acts of national legislation.

C. Explore the ways of uniform implementation of existing instruments covering multimodal transport (the UNCTAD/ICC Rules for Multimodal Transport Documents, FIATA multimodal transport documents, etc.)

33. As mentioned above, the UNCTAD/ICC Rules for Multimodal Transport Documents, FIATA Multimodal Bill of Lading (FBL), FIATA Multimodal Transport Waybill (FWB) and other relevant documents are being widely used by transport industry worldwide through voluntary incorporation of their provisions into contractual documentation for multimodal transport operations which, in principle, can cover a wide range of matters for contractual relationship.

34. At the same time, interpretation of contractual rules based on application of these documents can be fragmented and not always consistent region-wide in different jurisdictions.

35. Under this option, the secretariat could develop a capacity building programme on the uniform application of contractual rules on multimodal transport, based on the existing recommendations, that could help the transport industry of the region achieve the benefits of full and consistent interpretation of contractual terms and conditions pertaining to multimodal transport.
