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**ECONOMIC COMMISSION FOR EUROPE**

INLAND TRANSPORT COMMITTEE

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**POSSIBILITIES FOR RECONCILIATION AND HARMONIZATION  
OF CIVIL LIABILITY REGIMES GOVERNING COMBINED  
TRANSPORT**

**Results of two expert group meetings (“hearings”) on civil liability regimes  
for multimodal transport**

**Note by the UN/ECE secretariat**

**A. MANDATE**

1. In accordance with the mandates given by the UN/ECE Inland Transport Committee and the UN/ECE Working Party on Combined Transport (WP.24), the UN/ECE secretariat has convened two informal expert group meetings with a view to considering the need and the possibilities for the reconciliation and harmonization of civil liability regimes governing multimodal transport operations and taking account of the views of the various governmental and non-governmental parties involved in this matter at the national and international level (ECE/TRANS/128, para. 86; ECE/TRANS/133, para. 70; TRANS/WP.24/83, paras. 31-36; TRANS/WP.24/85, paras. 32-37; TRANS/WP.24/87, paras. 34-36).

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2. The UN/ECE secretariat is summarizing below the main issues discussed by the expert group as well as the arguments brought forward by the various experts involved. The UN/ECE secretariat has also annexed to this document written viewpoints transmitted to the secretariat. Some of these transmissions have been shortened.

## **B. ATTENDANCE**

3. The first meeting of the group of experts was held on 24 and 25 January 2000 and the second meeting on 29 and 30 May 2000 in Geneva.

4. The meetings were attended by interested Government experts from Austria, Belgium, Germany, the Netherlands and the European Commission (EC). In addition, the following inter-governmental and non-governmental organizations as well as private sector interests attended the meetings: United Nations Conference on Trade and Development (UNCTAD); Intergovernmental Organization for the International Carriage by Rail (OTIF); The Baltic and International Maritime Council (BIMCO); International Rail Transport Committee (CIT); Comité Maritime International (CMI); European Conference of Ministers of Transport (ECMT); European Intermodal Association (EIA); European Shippers' Council (ESC); EUROCHAMBRES; International Federation of Freight Forwarders Associations (FIATA); Groupement Européen du Transport Combiné (GETC); International Association of Ports and Harbors (IAPH); International Chamber of Commerce (ICC); International Chamber of Shipping (ICS); International Express Carriers Conference (IECC); International Multimodal Transport Association (IMTA); International Road Transport Union (IRU); International Union of Marine Insurance (IUMI); International Union of Railways (UIC); International Union of Combined Road/Rail Transport Companies (UIRR); International Group of P&I Clubs; Through Transport Club (TT Club); German Road Transport Association (BGL); BASF; Deutsche Post AG; Nestlé and Volkswagen Transport AG.

## **C. CONCLUSIONS OF THE EXPERT GROUP MEETINGS ("HEARINGS")**

### **I. Current and envisaged activities on international civil liability regimes covering multimodal transport**

5. With a view to having a sound basis for its considerations and in order to achieve full transparency of what is currently being undertaken or planned to be done at national and international levels in the field of civil liability regimes, information was exchanged and

supplemented by written information collected by the secretariat from a wide range of sources. Unfortunately, some organizations, in particular the secretariat of the Organization for Economic Cooperation and Development (OECD), apparently did not share the view of the secretariat that transparency on current and planned activities in this field was important to allow for rational decision-making and for an efficient use of resources by Governmental authorities working or planning to undertake work in this field. Therefore, the collection of the relevant information by the secretariat was not always an easy task.

6. In addition to the current and envisaged activities already identified at earlier meetings of the UN/ECE group of experts (TRANS/WP.24/1999/1, paras. 3-5; TRANS/WP.24/1999/2, paras. 5-10), it was noted that civil liability issues are at present considered by several international organizations, such as the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Europe (UN/ECE), the OECD Maritime Transport Committee, the Comité Maritime International (CMI) and the International Chamber of Commerce (ICC).

7. In co-operation with UNCITRAL, CMI is currently working on a project on maritime transport legislation. This work is intended to cover door-to-door shipments, whenever a maritime transport leg is involved. It will thus address most interregional multimodal transport operations. The project extends beyond civil liability issues and, according to CMI, would offer an international harmonizing instrument that is responsive to the needs of trade in the twenty-first century. In this context, UNCITRAL and CMI will convene Transport Law Colloquia on possible ways of enhancing uniformity in the field of transport law, which will be held on 6 July 2000 in New York and in September 2000. CMI is also planning to submit draft provisions on several issues relating to international transportation law as well as a working paper on liability issues to the CMI International Sub-Committee on the Uniformity of the Law on Carriage of Goods by Sea to be held on 7 and 8 July 2000. A draft convention or another overall harmonising instrument may be available for approval at the CMI Conference in early 2001.

8. The OECD Maritime Transport Committee has apparently felt that it was important to identify areas of disagreement between the various cargo liability regimes covering maritime transport as well as ways and means to resolve them by establishing common rules. Extension of the project to other transport modes is being considered as is the possibility of engaging non-OECD member countries in the discussions. A Maritime Transport Workshop on Cargo Liability is planned for December 2000.

9. The International Chamber of Commerce (ICC) has established a group of transport experts that has completed a review and analysis of the status of multimodal transport liability regimes as a basis for consideration and comments by ICC transport members. The ICC Ad Hoc Working Group on Multimodal Transport Law and Practice concluded in this context that a revision of the United Nations Convention on International Multimodal Transport of Goods, 1980 (“MT Convention”) was not a feasible option and that harmonization of liability rules in this area could best be achieved through the incorporation of self-regulation rules into private contracts. It therefore recommended that the ICC transport members should further promote the UNCTAD/ICC Rules.

10. In accordance with the UNCTAD Bangkok Plan of Action, adopted in February 2000, the UNCTAD secretariat is currently analysing, at a world-wide level, the implementation of multimodal transport rules as well as national legislation regulating multimodal transport operations.

11. The UN/ECE who is administering the CMR Convention has completed in substance a Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI). This Convention is planned to be adopted at a Diplomatic Conference, held in cooperation with the Central Committee on the Navigation on the Rhine (CCNR) and the Danube Commission (DC), from 25 September to 4 October 2000 in Budapest. This international civil liability regime does not contain provisions on multimodal transport. It provides for levels of compensation based on maritime law (i.e. Hague-Visby Rules). Article 17 of the draft Convention stipulates that the carrier is responsible for omissions of his staff (ECE/TRANS/CMNI/Conf/2). This provision puts the new CMNI in line with the CMR and COTIF/CIM Conventions, but is in contradiction to the maritime regime under the Hague-Visby Rules. Derogation from this provision may however be allowed by Contracting Parties. In accordance with Article 32, States may, at the time of signing the CMNI, make a declaration, which would waive the above provisions of Article 17 vis-à-vis other States having made the same declaration.

12. The group of experts was also informed about the main features of the Dutch and German national laws governing multimodal transport that have been established or amended recently. It was also noted that the “Carriage of Goods by Sea Act (COGSA)” deals with multimodal transport. The new COGSA would apply inwards and outwards to contracts of carriage entered into in the United States or outside the United States for goods carried to or delivered in the United States by sea or through traffic.

## **II. Liability problems encountered in international multimodal transport operations**

13. It was stressed that multimodal transport operations encountered many problems in practice, such as the determination of the law to be applied to a specific transport operation whenever several transport modes with different civil liability regimes are used. Even transport operators do not always know which liability regimes apply to their operations.

14. Although the representatives of the insurance industry confirmed that difficulties in obtaining liability cover for multimodal transport operators (MTOs) usually do not exist, this situation appears to be quite different for transport operations to and from developing countries and regions without any or clear legislation in this field. Uncertainty with regard to the applicable legal rules in these cases seems to lead to higher transport prices as a result of higher insurance premiums.

15. Companies shipping large volumes have in general few problems in this respect as they are able to impose their general conditions working with a small number of selected carriers depending on the transport mode and the area the goods are shipped to. Nevertheless they also prefer a uniform, simple and cost-effective liability regime on a global scale which should be based on a liability regime such as the CMR regime. It was mentioned that, depending on the nature of the cargoes shipped, they might not need any liability insurance at all, if compensation limits and procedures were similar to those of the CMR. Also in times of out-sourcing and production on demand, even large companies often no longer ship large volumes at the same time in the same direction and are thus also forced to accept the liability conditions of transport operators.

16. Smaller companies have to accept very often unsatisfying conditions applied to their transport contracts. Small operators have to face the economical power of their counter parties which may force them to conclude contracts of carriage which are not favourable for them (i.e. ferry operators imposing their general liability conditions).

17. As multimodal transport increasingly takes place in containers, it becomes extremely difficult to assert during which leg damages have occurred. The question of liability for non-localized loss is so far not solved at the international level. To illustrate this: Trailers or swap-bodies transported in Germany on the road to a combined transport terminal, then transported by rail to Italy and afterwards by road to the client, are usually carried on the basis of the UIRR General Conditions which will only apply to the transport between the combined transport terminals. The UNCTAD/ICC Rules are not normally used for such transport operations. There would only be liability for non-localized loss if German national law which contains provisions to this effect can be applied.

18. On the one hand, each transport operator has an interest to establish that the loss has occurred during the transport operation to which the lowest liability limit can be applied, whereas the shipper is interested to provide that the loss occurred during the transport leg to which the highest limit applies. This could lead to long court proceedings. On the other hand, the existing provisions on the burden of proof are far from favourable for an uncomplicated and fast solution. As a result, shippers and transport operators therefore often tend to avoid court proceedings and settle compensation issues on a commercial basis. Apart from out-of-court solutions between the parties, it is common practice that the last carrier who delivers the goods to the customer will simply not receive payment in the case of damage or delay in delivery.

19. The group of experts noted that it is rather complicated to obtain facts and figures in this field. There is little transparency with regard to the number of claims and litigations as well as to the amount of compensation claimed. It appears, however, that the amount of damages to goods during multimodal transport involving road/rail operations is not very high. According to unofficial estimates, Kombiverkehr, the largest European combined transport operator, cashed out some 0,0025 % of its freight revenues for regulation of damages, both for cargoes and for loading units and might have in addition transaction costs in a similar level.

20. However, damages due to delay of delivery occur frequently. It was stated that the operator responsible for those delays could easily be traced down. Furthermore, damages also often occur during transshipment operations.

21. As far as sea transport is concerned, the existing international conventions do not provide for liability of the operator in case of delay in delivery. This does not seem to be acceptable for shippers and also for transport operators of other modes as it does not provide a level playing field among modes of transport and is not in line with modern requirements of just-in-time delivery.

22. Consignors and consignees need to know how long they have to bring an action and how to do it. Existing rules vary according to the forum and the regime applicable. In some instances the time bar is short which can make it difficult to bring a timely suit against the right carrier in the right forum. Contractual limitation periods, which are even shorter (for example, the nine-month limitation period in the FIATA FBL 6.1992, clause 17) may be misleading, as they are invalid in cases where a particular mandatory national or international legal regime applies.

23. Since the cargo owner has limited access to information about the origin of the damage, placing on him the burden of proving facts establishing the operator's liability is an improper impediment to the recovery of damages.

24. The group of experts also noted that the current civil liability regimes have some gaps. Some are even so large that the regime does not apply at all to movements which, if the drafters had addressed the question, would have been subject to the regime. For example, the Hague and the Hague-Visby Rules apply only to contracts evidenced by bills of lading, but do not apply to shipments evidenced by waybills in widespread use on short sea routes, such as in the North Sea and the English Channel.

25. While the carrier's liability is, to a large degree, subject to mandatory rules through various modal conventions, there exist periods during which the goods in multimodal transit are not subject to a mandatory regime. The negative consequences of those gaps in liability regimes may be serious because, according to estimates, most cases of lost or damaged goods occur not during the actual carriage, but during transport-related operations before or after the transport operation.

26. If goods are moved from one mode to another and damage occurs during transshipment between the train, lorry or boat, it is not always easy to establish which of the modal regimes will apply. There is, for example, uncertainty in case of damage occurring to goods in a LASH barge (Lighter-Aboard-Ship-Vessel) between shore and ship, whether that occurrence is governed by the local land regime, the local sea regime or by a different regime altogether. Also uncertainty exists, if a trailer being towed onto a Ro-Ro ferry is damaged when it strikes a bulkhead: is that occurrence governed by the road or the sea regime?

27. With regard to temporary storage, the problem transport operators encounter is the non-existence of a uniform liability regime. National legal systems governing the liability of terminal operators differ widely as to both their source and content. The rules may be contained in civil or commercial codes or in other bodies of law governing the deposit or bailment of goods. As to the standard of liability, in some legal systems the terminal operator is strictly liable for the goods, and he can be exonerated only if certain narrow exonerating circumstances are established. In other systems the operator is liable for negligence, i.e. if he did not take reasonable care of the goods the loading unit.

28. Further differences concern the burden of proving the circumstances establishing the terminal operator's liability. Under many systems some limited evidence put forward by the claimant is sufficient to establish a presumption of the operator's liability: it is then up to the operator to prove exonerating circumstances. There are, however, also legal systems in

which the claimant has to prove circumstances establishing the operator's liability. Disparities exist also in respect of financial limits of liability. In some legal systems the terminal operator's liability is unlimited, while in others limits are established.

29. Other differences concern limitation periods. In some legal systems these periods may be very long. The disparities may be further complicated by the fact that in some legal systems terminal operators are subject to different liability rules depending upon the nature of the services rendered. For example, storing goods in the operator's warehouse and loading of goods into the vessel's hold may be subject to different sets of rules.

30. If goods are stored before, during or after the movement, it is not clear whether that period of storage is ancillary to the regime and is thus governed by the regime, or whether it is outside its scope and governed by some other (e.g. national or even local warehousing) regime.

31. When the consignor hands over goods for carriage to a terminal operator, the carrier's liability may not yet begin and at the place of destination, the carrier's liability may end when the carrier hands the goods over to a terminal operator, which is usually before the goods are handed over to the consignee or to the next carrier.

32. The extension of the duration of carrier liability to the limits of the wharf or terminal is certainly recommended and seems reasonable in the light of modern transportation practice. Therefore, any solution in this field may also have to deal with a number of important aspects of warehousing contracts, including customer's obligations, such as paying the price for the services or, in the case of dangerous goods, giving the necessary instructions. The operator may also have the right to dispose of or sell dangerous goods.

### **III. Need for an international legal regime?**

33. Regarding the need for the preparation of a unified international legal regime, the group of experts expressed various opinions.

34. Several experts, representing mainly the shipping, freight forwarding and insurance industries, felt that there was no urgent need for another attempt to establish a convention on the international multimodal transport of goods, as they were satisfied with the present situation. They pointed out that new legal arrangements might lead to confusion and result in additional costs. Concern was expressed, however, about the proliferation of different regimes governing maritime carriage of goods in the world (at present already more than thirty) and that harmonization of these regimes would be required.

35. Some experts expressed concern about possible duplication of, or conflict with, other work, which is currently in progress. Therefore, they suggested that the UN/ECE should await the outcome of other ongoing work in this field. Others showed their high interest in multimodal transportation wishing not to destroy the balance of the existing systems. While admitting the feasibility of preparing a new international legal system, the desirability of it was questioned.

36. Some experts seemed to be satisfied with the existing private law arrangements, such as the UNCTAD/ICC Rules, the FIATA FBL and the BIMCO Multidoc 95 based on the UNCTAD/ICC Rules and the COMBICON Bill used by North Sea operators. They suggested that there was, at present, no need for a new regulatory system. With regard to the UNCTAD/ICC Rules, it should be noted that there are two competing systems used: FIATA members are using the UNCTAD /ICC Rules of 1980, shipowners and major container operators use the ICC Rules of 1975.

37. It must be recognized, however, that private law arrangements as well as general conditions, which differ considerably, cannot overcome existing international conventions and mandatory national law. They therefore do not provide for legal security for the parties involved. The only solution in this respect would be the establishment and acceptance of an international convention.

38. In this context, the question was raised whether it was not feasible to create an international convention containing similar features as contained in the existing private law arrangements. Such an approach seemed to appeal to some experts.

39. Others felt that the actual situation concerning civil liability issues was not satisfactory and tended to make multimodal or combined transport operations complex and thus less attractive than transport operations using only one mode. If there was no need for harmonized or even uniform solutions, why have so many international, both governmental and non-governmental organizations (European Commission, UN/ECE, UNCTAD, OECD; UNCITRAL/CMI, ICC) and national legislators (Netherlands, Germany, United States of America) been mandated recently to study these issues and to propose solutions ?

40. Experts representing, in particular, rail and road transport as well as customers and manufacturers, felt that work towards clarification and unification of existing international civil liability law governing multimodal transport should be pursued. It was felt that unification or harmonization of national and international regulations in this field provided a unique opportunity to promote multimodal transport and to facilitate door-to-door and just-in-time transport.

41. These experts felt that, in view of the present proliferation of different national legislations which have been or are at present implemented in 34 countries, it seems to be high time for the establishment of a unified international liability regime. Such an instrument would reduce uncertainty cost and increase efficiency in international multimodal and combined transport operations.

42. It was also pointed out that if a possible multimodal transport contract “sui generis” was based on CMR provisions, then maritime and inland water transport operators might have to take out higher liability insurance. The great advantage would, however, be the creation of clearer and predictable conditions in transport contracts for the clients.

43. The group of experts noted that most European Governments were in favour of promoting of combined transport, yet they were not making combined transport any easier. Some experts reminded Governments and international governmental organizations of their duty to protect weak actors in commercial transactions and to facilitate trade and transport through the establishment of a balanced and clear legal framework. Transport customers should be able to obtain high quality services. Therefore, trade barriers had to be reduced and the liability systems covering damages during the entire transport chain had to be made transparent.

44. For these reasons, experts representing the road and rail transport leg, ports and harbours, shippers, large and small enterprises as well as express carriers underlined the need for the establishment of a new international convention on civil liability. They stressed that existing problems had to be identified by clearly paying attention to the interests of the

industry and the customers. It was also emphasised that no time should be wasted in preparing such an instrument, as possible contradictory proposals originating from modal interest groups were under preparation.

#### **IV. Outline of a possible convention on the international multimodal transport of goods**

45. The group of experts also considered the outline of a possible convention on the international multimodal transport of goods which had been considered by a small UN/ECE group of experts. The objective of the small expert group had been to verify whether such a convention, if decided to be established, would pose new and not yet considered or resolved legal and administrative problems. The findings of the expert group clearly showed that this did not seem to be the case. The small expert group had also identified a number of likely controversial issues and important features that might be included into a possible legal instrument (Informal document No. 2 (2000)).

46. The discussion focused on the question whether such a new legal instrument should be based on the network principle, which would apply the provisions of the existing international unimodal conventions in cases of localized loss and with special provisions fixing liability limits in cases of non-localized loss or on an independent multimodal regime. As long as the network principle is applied, no real harmonization can be reached. The option of harmonizing the existing unimodal conventions would remain a long-term objective.

47. One advantage of the network system is that it favours shippers if they can prove that the damage happened during a transport mode providing for a high limit of liability.

48. The other option would be to treat multimodal transport operations as a special legal system based on a multimodal transport contract “sui generis” with a uniform set of liability for all modes involved wherever the damage, loss, or delay occurred. Many experts seemed to favour this option, i.e. the creation of a uniform civil liability regime for multimodal transport operations. Such a regime could be based on the provisions of the CMR Convention.

49. A single system with one uniform limit of liability would serve shippers’ need towards a transparent, simple and cost-effective regime. However, such a system has to solve the questions of burden of proof and exemption clauses. Therefore, the scope of the CMR regime might need to be extended and adapted to the specific needs of multimodal transport operations, including its application to containers, swap-bodies and other loading units.

50. Moreover, it was stated that, under such a civil liability regime, insurance premiums would be lower as the limit of liability would be raised in such a uniform system. This would be in the interest of the shippers. However, it might be possible that transport costs and freight rates may increase as mainly maritime transport operators may have to take out higher insurance cover.

51. The group of experts discussed in detail the advantages and disadvantages of voluntary and mandatory civil liability regimes some of which are outlined below. Most experts seemed to favour a mandatory regime, in spite of the importance of the concept of freedom of contracts. It was also recommended to prohibit a contractual deviation from liability rules whereas parties might deviate from other provisions.

52. With regard to allowing for a possible agreement between the parties fixing a higher limit of liability than the mandatory minimum liability in cases of non-localized loss, the group of experts was not unanimous. A representative of a large company warned of likely abuse of economical power by large transport operators, which might push for the highest limit of liability. Therefore, a mandatory and fixed limit of liability should be favoured. In addition, other experts representing the customers mentioned that imbalances between parties with different economical weights and power would need to be avoided. A uniform, transparent and predictable civil liability system would be needed by which small parties and users are protected. As an example, the situation of some ferry lines was mentioned which sometimes acted and operated in a monopolistic environment. In case of contractual deviations from limits of liability, provisions would need to be prepared stipulating that not the entire contract should be null and void.

53. A clear definition of the term “multimodal transport” would need to be given paying special attention to other existing terms such as “combined transport” and “intermodal transport” in order to avoid confusion with regard to the scope of application of the civil liability regime.

54. Taking account of the the different positions and the views of maritime interests, it was suggested by some experts to cover in a new international civil liability regime only road, rail, air and inland waterway transport. Such an instrument should indicate clearly if it includes short sea-shipping, Ro-Ro and ferry transport. A definition applicable in the European Community on European water transport could serve as a model in this respect. Such an instrument would be de facto restricted to inland and -coastal/short shipping. One expert even suggested restricting a definition of the term “multimodal transport” to rail and road transport only. Multimodal transport may also involve pipeline transport and the inclusion of this mode into the definition of multimodal transport would need to be studied.

55. The question would also need to be addressed whether liability concerning cargo stored in moving objects such as ships or lorries should be the same as liability in a static atmosphere such as warehouses. A clear definition of “temporary storage” should also be prepared as compared to long-term storage.

56. A provision on the inclusion of consequential loss might be an important element for harmonization as well as identification of the amount up to which consequential loss should be limited. The actual carrier should be liable in the same way as the multimodal transport operator (MTO). This could only be achieved if they were jointly and several liable as already stipulated in many international conventions. Other experts warned of problems which could be created if the actual carrier would be included. They felt that there should be no provisions on subcontractors as this could be covered by using a “Himalaya clause”.

57. There was opposition from experts representing the shipping industry to include provisions on liability for delay in delivery. This position may, however, be reviewed in the light of today’s trading requirements. CMI is, for example, already considering such a provision in the framework of its transport law project.

58. In addition to the exemption clauses in cases of specific risk, it was pointed out that there should be a provision covering liability for cases of incorrect packing. With regard to avoiding a “forum shopping” there should also be a jurisdiction clause. It was desirable to have rules on the compensation of damage of the MTO being liable for non-localized loss. Special attention should also be paid to the issue of time bar clauses as the contracting carrier is the one left opposed to the claim and also has to respect time bars if he wants to sue the actual carrier responsible for the loss.

59. One expert felt that it might be useful to cover in an international convention not only the liability of the carrier but also that of the consignor. Other experts, however, stressed that a transfer of liability obligations should be avoided, since the person liable for loss or damage

during the entire transport operation (the MTO) - having a right of recourse against the person actually responsible for the damage - should be entered in the consignment note or the bill of lading.

60. With regard to the contractual relationship between the MTO and the actual carrier and the party suffering from the damage or loss (consignor/consignee), attention was drawn to the fact that there are legal systems not recognizing the concept of third party damage.

#### **D. FOLLOW-UP ACTION**

61. The considerations in the expert group showed that experts representing mainly maritime interests, freight forwarders and insurance companies did not favour the preparation of a new mandatory legal regime covering civil liability in multimodal transport operations. Some of these experts, however, favoured harmonized civil liability regimes covering maritime transport only and prepared work to be undertaken in this respect only. Most of these experts seemed to be content with the existing civil liability provisions, mainly based on the provisions of the Hague-Visby Rules and the private law arrangements based on the UNCTAD/ICC Rules.

62. Concern was raised however by these experts about the proliferation of different national legislation in this field (e.g. COGSA) and about duplication of work at the international level. Therefore, they suggested that, if Governments took the decision to prepare a convention in this field, such an instrument should be applicable worldwide.

63. Experts representing mainly the road and rail transport industries, combined transport operators as well as customers and shippers felt, that work towards harmonization of the existing modal liability regimes should be pursued and a single international civil liability regime governing multimodal transport operations was required.

64. Those experts stressed the urgent need for a reliable, predictable and cost-effective civil liability system. Transport users needed simple and transparent provisions, covering also temporary storage and transshipment operations, which will facilitate just-in-time delivery and will, above all, eliminate the present uncertainties in cases of loss, damage and delay in delivery, including cases of non-localized loss or damages. They therefore supported the establishment of a mandatory and global regime. In case an approach would not be feasible, a regional approach should be taken to arrive at a solution in this field in due course.

65. It was also felt by some of these experts that any new convention in this field should be based, in principle, on the existing and well-functioning provisions of the CMR Convention, with special emphasis on the needs of multimodal transport operations, including transshipment and temporary storage operations.

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## Annex

### Information transmitted by Eurochambres

1. Eurochambres, the voice of business and transport users in Europe, composed of 34 national organizations of Chambers of Commerce and Industry (CCIs) from 34 European Countries which form a network of 1300 CCIs representing over 14 million Companies out of which 95% SME, welcomes the UN/ECE initiative for a new International Convention on MT Operations. Eurochambres appreciates the work done for the preparation of an international Convention governing the MT Operation and believes that such an international regulatory instrument is currently missing from the market.
2. The globalization of the market, the transport evolution and needs, the complexity of transport operations and the necessity of cost effective and efficient transport in international trade, involves a real chain of consecutive transport services offered by different operators, in different locations and of different characteristics. This creates a completely new transport environment requiring a simple and predictable regulatory system on a world-wide scale.
3. Nowadays, more that ever before, transport users require a door-door-transport that is reliable and cost effective. For them the particular transport mode used is not so important, if the time delivery is secured.
4. Taking into consideration the existing market situation concerning the MT operations, the increasing use of unitized shipments in long distance international transport, as well as the necessity for further use and development of MTO in regional and intra- European deliveries, the users require: a simple, predictable, transparent, uniform and cost effective liability system, that will cover the current and future MT evolutions, incorporate the transshipment and temporary storage activities, eliminate present uncertainty and cut costs associated with loss-recovery.
5. Therefore Eurochambres support the efforts of UN/ECE for the introduction and implementation of an international MT Convention of a **mandatory** character, based in the **global** application, using a **uniform** (mode-independent system) approach.
6. This approach represents clearly the best solution, the network approach being only the second best solution.

7. Eurochambres is confident that the implementation of the new international Convention on MT, that is now missing from the market, will regulate many uncertain and unpredictable factors on the actual execution of the MTO, and will eliminate costs and problems. It will give many benefits to international transport activities and trade, as well as to all the parties involved in the transport chain (clients, carriers, forwarders, ports and MT terminals, insurance industry).

8. Eurochambres believes that the issue is to be dealt with urgency, since the undergoing national, regional and other initiatives might make the situation more difficult in the future, and kindly request the UN/ECE Inland Transport Committee and the competent national and international authorities/bodies/organizations to proceed without hesitation to all necessary actions towards the implementation a new international Convention for MT Operations.

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#### **Information transmitted by the International Road Transport Union (IRU)**

1. Intermodal and multimodal transport cannot develop properly as long as contractual liability is based, as is currently the case, on two solid pillars (for rail and road) and two unstable ones (inland waterway and sea transport).

2. For road transport, the contractual liability of road transport operators is uniformly dealt with by the CMR Convention, which applies to the Eurasian continent from the Atlantic to the Pacific as well as to the Maghreb countries and to the Near and Middle East (covering a total of 45 countries). Road transport operators have no possibility to delete or modify the rules governing their liability as set by the CMR Convention, since these rules are binding. As for the railways, their contractual liability is uniformly dealt with by the COTIF Convention applicable in 39 countries. Rail transport operators have no possibility to delete or modify the rules governing their liability as set by this Convention, since these rules are binding. In the case of inland waterways, the Economic Commission for Europe has taken up the matter of the harmonization of contractual liability rules for transport operators using inland waterways (draft Convention on the Contract for the Carriage of Goods by Inland Waterway).

3. As for sea transport, the status of contractual liability of sea carriers is catastrophic. The only clear provisions in this field are established by EUROTUNNEL and by shipping lines recorded on the COTIF list and operated by the railways, since those shipping lines are subject to

the binding liability regime foreseen by the COTIF Convention. As for other sea carriers, their contractual liability is subject to a multitude of legal systems. The Hague Rules or Hague-Visby Rules are not binding as long as no bill of lading has been issued. In principle, no such bill of lading is ever issued for intra-European transport operations. Furthermore, the uniform application of these rules is non-existent! These rules are a vivid proof of failure in the process to harmonize transport law and commercial law.

4. Furthermore, the Hague Rules and Hague-Visby Rules do not apply to the transport of containers and road vehicles on deck (a frequent occurrence) nor to the transport of containers and road vehicles stowed in the ship's hold, but for which a Sea Waybill was issued instead of a bill of lading. Indeed, bills of lading are never issued for transport operations between European countries, even at the shipper's request. In such cases, sea carriers may deviate from or alter the Hague Rules or the Hague-Visby Rules, which they are indeed prone to do. They thus subject their own liability to haphazard rules, rejecting the full application of the Hague Rules or Hague-Visby Rules, and selecting the latter's provisions which suit their own purposes while rejecting those which do not.

5. Due to the unhealthy situation prevailing in sea transport, the problem of goods insurance has become particularly acute. Indeed, in case the goods have to be carried by sea, the rightful claimant of the goods has to insure them up to their total value since it is never clear - due to the multiplicity of the above-mentioned liability regimes - which regime shall apply or whether any compensation, and if so how much, is payable by the sea carrier in case of damage to or loss of the goods. In this respect, it should be noted that by resorting to rail or road transport, the rightful claimant of the goods does not need to take out any insurance for most of the goods. Indeed, the high liability limits prevailing in rail and road transport are quite sufficient to cover most losses or damages which may be inflicted by the carriers. Only for high-value goods may it be useful to insure the share of their value exceeding the liability limits foreseen by the rail and road transport conventions.

6. It goes without saying that the uncertainty prevailing in sea transport benefits insurance companies and often leads to over insurance of the goods carried.

7. The IRU therefore reiterates its proposal to restrict the work of UN/ECE to negotiating a convention on intermodal transport and - as is the case with the 1991 European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), of the 1985 European Agreement on Main International Traffic Arteries (AGC), and of the 1970 European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport

(AETR) - to restrict the scope of this future Convention to the European continent (including the whole of the Russian Federation) and to countries bordering the Mediterranean.

8. In attempting to harmonize unimodal transport with the intermodal system, the regime governing the contractual liability of intermodal transport operators should be based on the liability regime of the CMR Convention, since its geographical scope is the widest on the Eurasian continent and this Convention applies to 70 per cent of inland goods transport, as the role of inland waterway and sea transport is an ancillary one in trade between European countries. With this option, 100 per cent of intermodal transport operations and 70 per cent of single-mode inland transport operations will be subject to the same liability regime, applicable from the Atlantic to the Pacific.

9. It follows from the information provided above that the future Convention on intermodal transport should under no circumstances be based on the Hague Rules or Hague-Visby Rules, because:

- it would be unproductive to extend to intermodal transport a liability regime which has failed to be applied in a uniform way in sea transport, although it was specifically designed for this mode,
- the harmonization of liability regimes as sought in intermodal and unimodal transport would not be achieved. Indeed, although it is theoretically possible, through the new Convention on intermodal transport, to subject 100 per cent of intermodal transport operations to the Hague-Visby Rules, it is impossible to assess what percentage of sea transport operations would comply with them. As demonstrated above, the reasons for this are both objective (transport operations between several European sea countries are not subject to the Hague-Visby Rules, but rather to the Hague Rules, Hamburg Rules or simply to national legislation. Furthermore, the scope of the Hague-Visby Rules does not include transport on deck) and subjective (sea carriers fail to issue bills of lading, which enables them to depart from the binding application of the Hague-Visby Rules or of the Hague Rules. Moreover, several carriers who deliberately observe these rules cut out the "inconvenient" provisions of these rules via their Conditions of Carriage).
- it would go against the policy of the European Union which, for certain goods transport operations, favours the development of road-sea transport instead of road transport only if rightful claimants who, when using road transport, enjoy substantial liability limits of SDR 8.33 per kilo of damaged or lost cargo, should find themselves deprived of any

compensation (stowage on deck) just because they have resorted to sea transport for part of the journey, or

- exposed to haphazard rates unilaterally set by sea carriers (for operations without a bill of lading) and, in the best of cases, to an amount of SDR 2 per kilo of damaged or lost cargo (in case the Hague-Visby Rules are fully applied).

10. The future convention on intermodal transport should imperatively apply to any intermodal transport operation, including unimodal operations not subject to the binding regime of an international convention, and should also extend to ancillary operations (warehousing, handling).

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#### **Information transmitted by the International Association of Ports and Harbors (IAPH)**

1. Ports in general are not transporters. As transshipment and temporary storage are involved, a number of member ports of IAPH (e.g. tool ports) may be confronted with the consequences of a possible new liability regime. Moreover, due to the inclusion of transshipment and storage, the position of ports customers is involved, which directly influences the position of the ports.
2. The proposed outline for a convention states the liability between transport parties and damage to or loss of cargo as subjects. This raises the question whether damage to third parties resulting from e.g. spills is involved. If so, confusion may arise with the international arrangements concerning limited liability for tankers. This does not seem in the interest of ports and should not be covered. The normal arrangements of tort would suffice. This would be in conformity with the principle that the present liability arrangements apply in cases where the event of damage is clear.
3. If all means of transport are included, this could also involve pipelines (Crude Oil, ethylene, propylene, chlorine etc). In certain legal systems the question of property of pipelines could lead to the owner of the land being considered as a party in transport with liability. In other cases the owner of the pipeline would be involved.
4. Temporary storage and transshipment is included in the arrangements. Should liability concerning cargo in moving objects as ships or lorries be the same as liability in a static atmosphere as storage or not? The proposal would give rise to different liability regimes within

the activity of storage and handling of cargo in ports. A clear difference with e.g. longer-term storage cannot be given as regards the nature of risks or activities. Therefore difference in the regime would not be a logical development. It would cause greater discrepancies.

5. If knowledge of the differences in liability systems is the main problem, a simpler solution may be helpful; reference is made to the manual on arrest of ships, describing the main legal regime (regulations and practice) concerning arrest of ships in the most relevant countries.

6. As far as identification of the exact problems involved is necessary, it would be advisable first to elaborate a number of examples of transport chains and describe the liability regimes this transport would meet. Moreover, it should be decided whether there is a problem that deserves to be solved by a treaty, or that more simpler solutions such as the mentioned manual would already be helpful for the parties involved in transport. In any case, such inventory should be made before deciding on a treaty.

7. An earlier Working Party possibly came to a hasty conclusion. Further elaboration and fact-finding should be effected, before concluding that an instrument such as an international convention should be drafted. The above questions deserve clarification and, in case a convention will be drafted, should be decided upon. The main principle in this decision would be that the creation of new, possibly larger distortion should be prevented. In general clear liability arrangements are useful, but care should be taken not to involve parties that do not constitute parties effecting transport. Transshipment and storage are of a different nature from transport. Therefore, involvement of the transshipment and storage companies should be reconsidered in more detail.

8. Simpler and shorter-term solutions such as the composition by UN/ECE of a transport liability manual should be considered for Europe and maybe also for other UN regional commissions. The experts present at the meeting could well possess much of the knowledge needed for this as far as Europe is concerned.

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### **Information transmitted by the International Group of P&I Clubs**

1. In the view of the International Group of P&I Clubs a convention on the multimodal transport of goods is unnecessary as it will neither promote development of this mode of transport nor result in any additional practical or commercial benefits. It seemed clear from the meetings that this view is shared by the majority of the industry, including shippers and their cargo insurers, who expressed themselves generally satisfied with the present system, founded on private contractual arrangements; incorporating network liability based on unimodal conventions. Indeed the Secretariat when summarizing the discussion with shippers on specific liability problems arising out of multimodal transport, accepted that such problems as were encountered, were minor and not of a "key" nature. In light of the industry's views the time, effort and expense of formulating a new multimodal convention can not be justified.

2. It was acknowledged during the course of the meetings that were any multimodal convention to be developed, there was a very real likelihood that it would fail to attract widespread international support, as is the case with the 1980 MT convention. It was suggested that the proposed convention could therefore be regional in nature, directed towards use in Europe and Mediterranean States. The object of conventions is to encourage and promote international uniformity and harmonization and limit so far as possible the proliferation of national legislation. To proceed with a convention that is accepted at this stage, as likely to have limited international appeal would considerably detract from this object, given the large number of liability regimes which are already in operation throughout the world. The aim must be to restore uniformity in this field not produce further fragmentation.

3. In this connection, reference was made during the course of the meetings to the UNCITRAL/CMI initiative to draft an instrument designed to bring about uniformity in the carriage of goods by sea, which will probably apply to international multimodal transport which includes a sea-leg. This initiative has the support of the International Group, ICS, BIMCO, IUMI and the ICC has expressed interest. The work is well advanced and it is intended that a draft instrument incorporating a liability regime will be put before the CMI Assembly in February 2001 for adoption before passing it on to UNCITRAL. The International Group believes that it would be sensible to await the outcome of the CMI/UNCITRAL's efforts rather than to embark on further work on a multimodal convention at the present time, which may prove unnecessary. However, given UNCTAD's interest in this matter, it may be sensible for the CMI to report future developments not only to UNCITRAL, but also to UN/UNCTAD/ECE.

**Information transmitted by the International Multimodal Transport Association (IMTA)**

IMTA members from around the world have reported on the confused liability situation in many countries and regions when it comes to multimodal or door-to-door transport. IMTA has noted with growing concern the number of national and sub-regional multimodal transport laws which conflict with each other and which will increase the cost of door-to-door transport and inhibit the free flow of goods across borders. IMTA is therefore convinced of the need to harmonize civil liability regimes in door-to-door transport on a global basis and is ready to offer its constructive participation in the future work of the Informal Ad Hoc Group of Experts on Civil Liability Regimes on Multimodal Transport Operations.

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**Information transmitted by the International Union of Railways (UIC) and the  
International Rail Transport Committee (CIT)**

1. The International Union of Railways (UIC) is the largest world-wide railway organization. Its role is to promote co-operation among railway undertakings (RU) and its members also include Railway Infrastructure Managers (IM). The International Rail Transport Committee (CIT) handles all issues connected with transport law and, in this capacity, acts on behalf of transport enterprises that perform transport operations subject to the CIV or CIM.
2. The UIC and CIT are very interested in the activities conducted in the UN/ECE and give their support to these activities. They are determined to be involved in a suitable way and to play their part in finding adequate solutions. They are also conscious of the importance of adopting swift and effective working methods.
3. International rail transport is covered by the Convention concerning International Carriage by Rail (COTIF) dated 9 May 1980. The 39 member States recently ordered a revision of this Convention which was approved in early June 1999 in Vilnius. The new COTIF will probably come into force in the year 2003, provided two-thirds of member States have ratified, accepted or approved it at that stage.
4. According to the terms of Article 2, paragraph 2 of the COTIF, through international traffic using railway lines, surface transport and shipping lines and inland waterways are all subject to

the standard laws of the COTIF, provided that these lines have been registered by the member States concerned with the Central Office for International Rail Transport (OCTI) in Bern. In addition, internal transport operations carried out under the responsibility of the railway as a complement to rail transport as such are assimilated to transport on an officially registered line.

5. The new COTIF (Article 1, paragraphs 3 and 4 of the CIM) will slightly change this state of affairs. There is no longer any obligation regarding registration of railway lines. It will only be necessary to register shipping and inland waterway lines. In addition, the new text makes it clear that application of the CIM to road transport is contingent upon a cross-border rail section.

6. The provisions of the COTIF thus enable a single legal regime to apply in the case of multimodal transport. These provisions are however not sufficient in that they only cover certain eventualities as regards intermodal transport. With globalization of the economy, it is becoming essential to have rules that cover intermodal transport in its entirety and rail transport enterprises subscribe fully to such a development.

7. In the absence of full and uniform regulations, a host of different rules have emerged. Given their variety, they are more likely to divide rather than unite multimodal transport law. The UNCTAD/ICC Rules applicable to intermodal transport are admittedly of considerable value but they are not enough in that:

- they constitute contractual law but have no precedence over priority national or international legislation;
- liability conditions agreed take us further away from the uniformity sought by introducing alternatives for exoneration of liability.
- the same applies to the three-part division according to the type of transport that sets out demarcations for ocean shipping and inland waterway legs, stipulates a special status for traffic not involving a shipping/inland waterway leg and specifies a return to the network system if the place at which the damage occurs can be specifically identified;
- they do not stipulate the place of jurisdiction nor the legislation applicable.

**Information transmitted by the Freight & Logistics Leaders Club (F&L)**

1. Intermodal and Multimodal Transport are considered to be vital systems for the necessary development of mobility of cargo and constitute a pillar on which to build the continued improvement of economic performance. The new proposed convention, governing Multimodal Transport, which is necessary, must take care of the overriding interest of the cargo which is originating the transport in the first place, and not vice versa.
2. Legal frameworks which appear to have been adequate in the past will emerge as being inadequate in the future, as proven every day by the technological evolution. At the same time, one has to recognize that the establishment of a new liability regime will certainly not satisfy those interested parties and categories that have been in a position to benefit and capitalize on the diversity and uncertainty of the existing regimes, that constitute today a hindrance to the development of Multimodal Transport.
3. Diversity and uncertainty is the result of the non-recognition of the evolution in the field of transportation and their defence is seen to be against factual evidence.
4. For the above reasons and many others the recommendations made by the UN/ECE group of experts (Informal Document No.4 (2000)), are going in the right direction and must be supported. However, when the various features will be developed some difficulties could prove to be insurmountable, as indicated by some well-motivated observations. Of particular relevance appears to be the decision to be taken on the universality or not of the proposed convention.
5. If universality is a "must", there appears to be no doubt that compatibility with existing unimodal regimes would be necessary (complementary to) and in this connection simplification, cost effectiveness, uniformity will not be achieved. If regionality or interregionality could be accepted as a lesser ambitions objective, no doubt a number of key economical and operational benefits could be obtained.
6. A regional convention for Europe could indeed be applied on multimodal transportation, without major opposition. The application of the "SEA BRIDGE" concept to mainland, could convince those today not aligned to accept the overland liability as a guiding condition. This is bound to happen anyway for reasons of competition since in future shippers are likely to discriminate those operators that will not accept these liabilities.

7. An interregional convention between trading areas like Europe-United States of America could also prove to be practicable and provide the necessary motor for changes. During two official meetings between two delegations of the European Commission and the US Department of Transport, the multimodal liability regime was on the Agenda since the United States of America is trying to tackle exactly the same problem from the same angle.
8. This being the case, it appears obvious that the various actors in the transport chain feel that something has to be done to answer the new market requirements dictated by the technological and environmental evolution.
9. Moreover, electronic commerce will require uniformity of liability also in the presence of lack of documents because flows of information and goods will travel faster than papers. The advent of new actors like logistics operators will further bring an element of novelty on the scene, with new requirements being developed in the market place.
10. Those that will create obstacles to defend old rules and regulations will no longer be in line with the market.

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#### **Information transmitted by the International Chamber of Shipping (ICS)**

1. ICS advises that the shipping industry is satisfied with the present system, in particular network liability which is cost effective and generally serves industry needs. There is no consensus that the system needs to be changed and indeed, any new arrangements would only engender confusion and result in additional costs and wasted time as untried provisions were slowly tested through the courts. Consequently, ICS questions the need for another attempt at a convention on the international multimodal transport of goods.
2. An international convention on the multimodal transport of goods already exists – the MT Convention – and has failed to attract sufficient ratification to enter into force. The MT Convention failed mainly because it is largely based on the Hamburg Rules and follows the principle of uniform liability. Given this experience, any new convention containing these elements would not be capable of support by the shipping industry.

3. We note that the drafting group proposes that a new convention should include Hamburg Rules elements such as liability for delay and that Hamburg Rules terminology is used to describe the proposed liability regime. It is increasingly unlikely that the Hamburg Rules will ever be accepted as the international liability regime for the carriage of goods by sea, principally because they represent a radical departure from the traditional and well-balanced liability regime of the Hague and Hague Visby Rules which have been tested over many years and are understood by shippers and carriers alike. Any new convention including Hamburg Rules elements is unlikely to be ratified by the many States that have declined to ratify the Hamburg Rules and would not be capable of attracting world-wide support.

4. We further note that the drafting group feels that “a single and truly uniform (i.e. mode independent) system of liability governing multimodal transport operations would be highly desirable”. The network approach is seen as “a second best solution”.

5. The concept of a new convention on the international multimodal transport of goods might be considered to have academic appeal but does not stand up to practical scrutiny. In addition, we would strongly caution against channelling effort into a project for which there is no agreed need or justification. The present network liability system is cost effective and works well and we are not aware of any significant problems in practice. Unless sufficient radical change can be agreed to create fairness for carriers and shippers alike (and this can best be achieved through CMI which in co-operation with UNCITRAL is presently engaged in the project mentioned above) any thought of changing the system should be put to one side. History records how difficult it would be to create and promote a new international regime for multimodal transport.

6. Accordingly, ICS would encourage the UN/ECE to await the outcome of other work in this field which is currently in progress in order to avoid duplication and possible contradictory proposals.

7. In the meantime, ICS considers that industry driven solutions which apply multimodal liability rules on a contractual basis are the only effective and practical way of obtaining greater uniformity and clarity in this area.

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**Information transmitted by the Groupement européen du transport combiné (GETC)**

1. There is apparently a sort of conflict between global and regional approaches. However some facts have to be accepted:
  - Europe is, and will remain, a region.
  - Combined Transport is different from Multimodal Transport (Terminology on Combined Transport by ECMT).
  - Combined Transport is a Road – originated activity. To tangibly demonstrate that, we simply need to enumerate the equipment we use, which have no equivalent in Air – and Sea – Transport and therefore are not interchangeable:
    - 20’ and 30’ bulk and tank containers with 2.50 m width (non ISO)
    - 7.15 m, 7.42 m, 13.65 m long swap bodies – So far these units are not stackable
    - ROAD RAILERS
    - Piggy back equipmentNone of those could be loaded either in a cellular vessel or on a 747 Jumbo Cargo.
  - It proves that any temptation to establish a link between a Regional and a Global approach would not create a win – win option.
2. All modes of transport enjoy a specific transport convention (CMR, CIM, Hague-Visby, ...) which is mandatory. We need to understand why combined transport should not benefit from an equal treatment.
3. Road transport is the dominant mode in Europe. Governments of member States wish to better re-equilibrate road and combined transport where the second is effective.
4. Shippers and intermodal service providers could neither understand nor accept that this transfer would cause a gap by not replacing CMR.
5. Such a situation would be counter-effective. It would definitely generate an increase of claims, disputes, conflicts, extra costs, lawsuits, etc. which all of us can hardly accept.
6. All existing Conventions are mandatory. A “network approach” for combined transport would be counter-productive and could be regarded by shippers and intermodal service providers as “a desire to complicate and degrade” the use of an intra-European combined transport.

7. The Dutch approach. During the meeting in Geneva in February 2000, the Dutch delegation explained that their Government had to vote a law to cover a specific situation which was not satisfactorily controlled domestically generating a risk for the parties involved in combined transport. This demonstrates that a problem exists!
8. One can therefore admit that each of the 15 other member States today and possibly 30 members of the European Union tomorrow could behave similarly to eradicate comparable issues. We would then have to face a mosaic of laws being created for all players involved (shippers, operators, railway undertakings, insurers, lawyers,...).
9. Obviously a mandatory unified liability regime as part of a pan-European convention for combined transport would be the only sensible decision, and it seems to us that this issue needs to be tackled urgently.
10. GETC confirms once again its readiness to participate in all tasks related to this project.

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#### **Information transmitted by the International Union of Marine Insurance (IUMI)**

1. IUMI represents 54 national marine insurance associations from markets from all over the world which cover about 80 percent of the world premium in marine insurance. Marine insurers who are members of these national associations deal with the main branches' cargo, hull and liability insurance. Liability insurance especially comprises carriers' liability insurance and the insurance of forwarding agents. Protection and indemnity insurance cover is generally covered by P & I Clubs and not by marine insurers. Only collision liability is covered under the hull insurance policy.
2. The initial views of IUMI can be summarized as follows:
  - (a) IUMI sees no urgent need for a UN/ECE initiative on multimodal transport.
  - (b) In practice the current arrangements, especially the UNCTAD/ICC Rules for Multimodal Transport Documents which are increasingly used, work quite satisfactorily. The claims related to carriers' liability are handled in the insurance companies by experts in their legal fields.

Generally, in practice they do not face extraordinary difficulties in dealing with claims and identifying the applicable legal regime.

(c) Liability insurers provide insurance cover for multimodal transport operators. The statement that the insurance industry will and is in some cases no longer able to provide insurance cover for the operator (TRANS/WP.24/1999/2, para. 15) is certainly not justified. There is no indication that customers do not find the necessary insurance cover or that there is a lack of capacity.

(d) Because of the reasons mentioned above liability insurance cannot replace the tailor made cargo insurance (TRANS/WP.24/1999/2, para. 14). The change of the present situation, especially the extension of the liability of the multimodal transport operator and higher limits of liability will lead to higher liability insurance premiums. Because of the scope of cover, the cargo insurance premiums will not be reduced by the same percentage. So the economic effect will most likely be higher overall costs to the detriment of the consumer.

(e) At present there are initiatives of several other international governmental and non-governmental organizations as UNCITRAL, the EU Commission, ICC and CMI dealing with transport law. Especially the results of the work of CMI and UNCITRAL on issues of transport law should be awaited. CMI has the mandate to prepare the outline of an instrument designed to bring about uniformity of transport law and thereafter to draft provisions to be incorporated in the proposed instrument including provisions relating to liability.

(f) The Hamburg Rules and the MT Convention have failed. At present about 10 different legal systems exist in the field of maritime transport. A new multimodal transport convention will only add to the proliferation as States are not obliged to ratify a new convention and to denounce other conventions or to suspend national law.

(g) As UN/ECE is the United Nations Economic Commission for Europe, in the discussions of such a new draft convention as the working group is considering, non-European States as, for example, the United States, Japan, China or the developing countries would be involved. IUMI doubts very much that the non-European States will accept such a convention.

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**Information transmitted by the Baltic and International Maritime Council (BIMCO)**

1. For almost a century BIMCO has been involved in the pursuit of greater harmonization of maritime laws, rules and regulations for international shipping. BIMCO's membership encompasses almost 1,000 shipowners who own or operate around 70 per cent of the world's container tonnage. Consequently, BIMCO monitors with interest any initiative to create a single liability regime governing the multimodal movement of goods.
2. Any initiative to provide uniformity in legislation must be inspired by commercial imperative. The Hague Rules may serve as one of the most prominent examples of a liability regime which successfully brought about uniformity in carriage of goods by sea law. However, it is important to note that the Hague Rules were originally instigated by commercial interests themselves, who wanted a uniform and secure legal framework covering bills of lading so that they could be used in a safe way in international business.
3. As already mentioned, when the containerization era began there was no purpose-designed legislation covering multimodal transport. The commercial parties therefore considered existing unimodal liability regimes as a basis for commercially inspired multimodal transport documents covering their needs. In doing so, the industry was aware of the fact that, although multimodal transport was a new way of doing business, it did not necessarily warrant a multimodal liability system in its own right. As multimodal transport is made up of a number of unimodal liability regimes, the commercial parties develop their own private forms on the basis of the "network" principle.
4. This "network" principle has found its way into a number of well-known standard forms such as the "Fiatabill", and BIMCO's "Combiconbill" and "Multidoc 95". Whereas "Combiconbill" is based purely on the Hague-Visby Rules, the "Fiatabill" and "Multidoc 95" are based on the UNCTAD/ICC Rules.
5. As mentioned at the meeting, the usage of BIMCO's "Combiconbill" and "Multidoc 95" cannot match that of "Fiatabill" which accounts for around 600,000 copies per annum. Nevertheless, BIMCO's "Combiconbill" is being used to a large extent by Scandinavian owners and operators as a basis for setting up their own proforma contracts. It is beyond doubt that the existing standard forms of multimodal transport documents provide the commercial interests with an effective operating platform on which multimodal business can be successfully conducted.

6. Every year BIMCO handles a considerable number of enquiries from its members on a wide variety of topics and since “Combiconbill” was first issued in 1971 we have not received any indications from members or others suggesting that the present system, as embodied in the various standard contracts, gives rise to any concern from a legal or commercial point of view.

7. In general, we feel that the report does not substantiate some of the assumptions made and that it would benefit from further investigation into this matter before a final decision is made within the UN/ECE as regards whether yet another attempt should be made to develop a civil liability regime governing multimodal transports. It would be even better if the matter was stalled until the outcome of the CMI and UNCITRAL initiative to consider maritime transport law in the broader context, part of which will invariably involve multimodal transport issues.

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#### **Information transmitted by VOLVO**

The needs and wishes to have a global door-to-door liability are strong from the shipper's side. The development of intermodal systems is increasing and the split of liability between the different modes of transport in these systems is not only complicated but most unfortunate for future transports. Volvo has a strong demand from its organization to work out such a global intermodal or door-to-door liability regime and will support the work of the UN/ECE to find a solution.

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### **Information transmitted by BASF**

1. Multimodal transport operation is increasingly used in modern transport and trade procedures, particularly for containerized cargo. Such operations involve combined transport that means transport of goods by at least two different modes of transport under a single transport contract.
  2. For shippers this means:
    - several modes of transport and several sub-contractors are involved;
    - no knowledge about modes of transports;
    - estimated time of arrivals and no coverage for delay of delivery;
    - in case of incidents uncertainty as to which party is to deal with and where damages or loss have occurred.
  3. The result is a considerable uncertainty as to the applicable legal regime and to the ensuing financial consequences. Uncertainty about which liability regime is relevant and which party is responsible.
  4. BASF requires for multimodal transport operations an international uniform and mandatory legal regime. This has to be easily understandable, transparent, uniform and a cost-effective provision for all multimodal transport operations. This has to include transshipments and temporary storage, all operations between point of departure and the point of destination. In case of damage or loss or delay of delivery such regime should also allow a speedy and cost-effective handling of claims. It will help to reduce the amount of legal proceedings.
  5. A future convention on multimodal transport should be based on a liability regime like the CMR Convention. This will also favour the development of road-sea transport instead of road transport only within the European Union.
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