

Hakemli Makale

**ROTTERDAM RULES' SCOPE OF APPLICATION IN
THE CONTEXT OF MULTIMODAL TRANSPORT**

Dr. Selim Ciger*

ABSTRACT

Door to door transport contracts are becoming increasingly prevalent in modern liner transport. However, these contracts are largely falling outside the ambit of existing international legal instruments, in the absence of an international legal regime specifically governing multimodal transport. The Rotterdam Rules intend to change the status quo by extending their application to door to door transport, covering not only the sea voyage but also the carriage by another mode preceding or following the sea voyage under a contract of carriage. To realize this goal, the Convention omits documentary requirements and adopts a flexible definition for the contract of carriage. This ensures that the most liner contracts currently being used will fall within the ambit of the Convention, including those concluded on door to door basis. However, there are also certain contracts of carriage, referred as non-mode-specified carriage contracts, under which the carrier is entitled to choose the method or the mode of carriage. The language of article 1.1 does not elaborate whether these type of contracts would also fall within the

* Suleyman Demirel University, Faculty of Law, Commercial Law Department / Süleyman Demirel Üniversitesi Hukuk Fakültesi, Ticaret Hukuku Anabilim Dalı, LL.M, Ph.D (Bristol), correspondence address: s.ciger@outlook.com.

ambit of the Convention. In light of the preparatory work, this article argues that the article 1.1 should be read as applying to non-mode-specified contracts, subject to the condition that the contract provides for sea carriage either explicitly or implicitly. It is submitted here that this is the most faithful interpretation of article 1.1 to both the text and its spirit, though it would be preferable had the Rotterdam Rules elaborated the issue with a specific provision regarding such contracts.

Keywords: *Rotterdam Rules, Scope of Application, Door to door transport contracts.*

ROTTERDAM KURALLARI'NIN MULTİMODAL TAŞIMALARA MÜTEALLİK UYGULAMA ALANI

ÖZET

Günümüzde, kapıdan kapıya taşıma sözleşmeleri tarifeli (liner) taşıma uygulamasında giderek önem kazanmaktadır. Fakat multimodal taşımaları düzenleyen bir uluslararası hukuki rejimin eksikliği sebebiyle, bu tür sözleşmeler mevcut uluslararası düzenlemelerin uygulama alanı dışında kalmaktadır. Rotterdam Kuralları, uygulama alanını deniz yolu ile yapılan taşımaların yanı sıra bir deniz yolculuğunun öncesinde veya sonrasında kara, demir yolu, iç suyolları ve hava yolları gibi diğer taşıma modları ile gerçekleşen taşıma faaliyetlerini de içerecek şekilde genişleterek, kapıdan kapıya taşıma sözleşmelerini de kapsamayı amaçlamaktadır. Bu amaca ulaşmak için, Rotterdam Kuralları uygulama alanına girecek sözleşmelerde herhangi bir şekil şartı aramamakta ve son derece esnek bir taşıma sözleşmesi tanımını esas almaktadır. Bu niteliklerin bir sonucu olarak, mevcut tarifeli taşıma seferlerine ilişkin pek çok navlun sözleşmesinin Konvansiyon'un uygulama alanı içerisine gireceğini söylemek mümkün olacaktır. Bununla beraber, uygulamada taşıyanın yükü uygun gördüğü taşıma türü veya metodu ile taşıma serbestisine haiz olduğu, modu belirlenmemiş taşıma sözleşmesi olarak adlandırılabilir taşıma sözleşmelerine de rastlanmaktadır. Konvansiyonun birinci maddesinin ilk fıkrası bu tür sözleşmelerin Rotterdam Kuralları'nın uygulama alanına girip girmediği konusunda yeterince açık değildir. Bu makalede, Konvansiyon'un hazırlık aşamasındaki tartışmalar ışığında, sadece

sözleşme açık veya zımni bir biçimde deniz taşımasını öngördüğü sürece bu tür sözleşmelerin Rotterdam Kuralları madde 1.1'in kapsamı içinde değerlendirilmesi gerektiği görüşü savunulmaktadır. Her ne kadar, Rotterdam Kuralları'nın bu meseleyi açıkça düzenlemiş olması çok daha yerinde olacaksa da, kanımızca yukarıda anılan görüş madde 1.1'in lafzına ve ruhuna en uygun düşen yorumdur.

Anahtar kelimeler: *Rotterdam Kuralları, Uygulama Alanı, Kapıdan Kapıya Taşıma Sözleşmeleri*

I- Introduction

Whilst the multimodal transport operations are by no means novel¹, the volume of goods carried via multimodal transport has rocketed following the advent of containerisation in 1970's.² It is difficult to ascertain the total volume of goods being transported via multimodal transport; however, a somewhat recent European Commission (EC) report suggests, in European Union (EU) alone, volume of total combined transport operations reached nearly 27.9 million TEU in 2011.³ Furthermore, the increase in volume of containerised cargo, most of which are moved via multimodal transport operations⁴, also serve as an indication regarding the prevalence of multimodal transport: since 2000 container cargo volume loaded has almost been tripled from 598 millions of tonnes to 1578 millions of tonnes in 2013.⁵ The container trade accounts for 16 percent of global maritime trade by volume (as of 2012) and more than half by value (as of 2007).⁶

¹ In fact the first attempts to regulate the multimodal transport rules date back to the 1910's, see de Wit, Ralph, "*Multimodal Transport*", (LLP, London 1995), para 2.172; Erling Selvig, "The Influence of Hamburg Rules on the Work for a Convention on International Multimodal Transport", in "*Bill of Lading Conventions Conference*" (LLP, London, 1978), 3.

² UNCTAD, "*Report on Multimodal Transport: The Feasibility of an International Legal Transport*" (2003), UNCTAD/SDTE/TLB/2003/1, para 6, found at <unctad.org/en/Docs/sdtetlb20031_en.pdf> (accessed, 30/03/16).

³ European Commission, "*Analysis of the EU Combined Transport*", 30 found at <<http://ec.europa.eu/transport/themes/strategies/studies/doc/2015-01-freight-logistics-lot2-combined-transport.pdf>> (accessed, 30/06/16).

⁴ Kindred, Hugh M., and Brooks, Mary R. "*Multimodal transport rules*" (Martinus Nijhoff Publishers, London, 1997), 11.

⁵ UNCTAD, "*Report on Review of Maritime Transport*" (2013), UNCTAD/RMT/2013, 7, <unctad.org/en/PublicationsLibrary/rmt2013_en.pdf> (accessed, 30/06/16).

⁶ UNCTAD/RMT/2013, 22.

Yet, there are no mandatory rules governing multimodal transport contracts on an international scale. There have been several unsuccessful attempts in the past to establish a uniform multimodal transport regime.⁷ Although the most recent of these, the 1980 United Nations Convention on International Multimodal Transport of Goods (MTC) has been finalized and opened to signature, it has failed to enter into force. There are also two sets of model rules created by International Chamber of Commerce (ICC) and UNCTAD however these are entirely contractual and voluntary.⁸ In the absence of an international mandatory regulatory framework, some states have taken the lead and created their own set of rules on multimodal transport, and these are differing considerably from each other on numerous issues.⁹ Furthermore, if it is accepted that multimodal transport is consisted of unimodal transport stages, then unimodal transport conventions also may become applicable to multimodal transport contracts and, indeed, some of these conventions even include specific provisions to that effect.¹⁰ Therefore, in modern liner transport practice, carriers become subject to a plethora of legal principles that might, potentially, be applicable to the contract of carriage and

⁷ See further de Wit, 147-160.

⁸ “The ICC Uniform Rules for a Combined Transport Document”, ICC Publication No. 298; “UNCTAD/ICC Rules for Multimodal Transport Documents”, ICC publication No. 481.

⁹ For example see Dutch Civil Code, BW articles 8.40 to 8.52; German Commercial Code, HGB §§ 452 to 452d HGB, see, Trappe, Johannes, “The Reform of German Transport Law”, [2001] LMCLQ, 392, 401; Hoeks, Marian, “*Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods*” (Kluwer Law International, The Netherlands, 2009), non-commercial edition found at <<http://hdl.handle.net/1765/17470>, 367> (accessed, 30/03/16); Faghfour, Mahin, “International regulation of liability for multimodal transport” (2006) 5.1 WMUJMA 95, 100; also see the recently amended Turkish Commercial Code (no: 6102), arts. 902-905.

¹⁰ Asariotis, Regina, (*et al.*), “*Intermodal Transportation and Carrier Liability*” (European Commission, Luxembourg, 1999), 14

regulate their liability in part or on the whole.¹¹ This results in considerable fragmentation and uncertainty regarding the rules governing the carrier's liability, not to mention the lack of a level playing field concerning the rights and liabilities of the parties involved.¹²

The problems, mainly instigated due to the lack of an international liability regime governing multimodal transport contracts, are not, merely, observed on a theoretical level; but, also being experienced in practice with extra costs and expenses caused by necessity of acquiring separate cargo insurance cover, higher insurance premiums and litigation costs.¹³ Not surprisingly, there

¹¹ See example given by Pontoppidan, Knud, "Shipowners' View on UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea", 2009 *CMI Yearbook*, 282, 284.

¹² "noting that shippers and carriers do not have the benefit of a binding and balanced universal regime to support the operation of contracts of carriage involving various modes of transport", see, Rotterdam Rules' (hereafter referred as RR in footnotes) preamble; also see further on the problems caused by lack of uniformity and legal certainty: Sturley, Michael F, "Uniformity in the law governing the carriage of goods by sea" (1995) 26 *JMLC* 553; Clarke, Malcolm, "The Transport of Goods in Europe: Patterns and Problems of Uniform Law" [1999] *LMCLQ* 36; Marten, Bevan, "Multimodal Transport Reform and the European Union: A Treaty Change Approach", (2012) 36 *TMLJ* 741; Chhina, Ramandeep, "Uniform International Legal Regime for Multimodal Transport: Unarguable Need but No General Acceptance", (2013) 19 *JIML*, 516; Bokareva, Olena, "Carriage of goods through multimodal transportation: in search of international and regional harmonisation" (2015) 21 *JIML* 368.

¹³ Clarke, Malcolm A., "Multimodal transport in the new millennium" (2002) 1.1 *WMUJMA* 71, 73; Asariotis (*et al.*), 20; UNECE report on "Possibilities for reconciliation and harmonization of civil liability regimes governing combined transport" TRANS/WP.24/1999/2, para 16, found at <<http://undocs.org/TRANS/WP.24/1999/2>> (accessed 30/03/16); UNCTAD/SDTE/TLB/2003/1, para 14. A 2001 survey made by EC suggests that the harmonisation of legal rules regarding multimodal transport may result in decreasing costs involved with multimodal transport and amount to a saving of up to

seems to be consensus amongst the industry participants that the current regime governing multimodal transport is unsatisfactory: in a 2003 UNCTAD questionnaire, the majority of respondents expressed dissatisfaction with the current regime and remarked that it was not cost effective.¹⁴ Moreover, 92 percent of respondents stated that an international instrument governing the carrier's liability is desirable.¹⁵ The same position is echoed in a recent study carried out for the EC, which also found that the majority of participants were not satisfied with the current liability regime and it was stated that the considerable costs involved in transferring between modes were discouraging the multimodal transport.¹⁶ Similarly, the vast majority of the respondents to the EC survey were of the view that the liability should be harmonised for multimodal transport.¹⁷ Therefore, the industry seems to acknowledge that the legal framework regarding the multimodal transport needs to be improved.

The calls for reform were not ignored by the drafters of the Rotterdam Rules. Indeed, the preamble of the Convention explicitly states that “the current legal regime governing the international

50 Million Euros per year, see EC, “The economic impact of carrier liability on intermodal freight transport”, (European Commission, 2001), 39-40, found at:

<http://ec.europa.eu/transport/themes/strategies/studies/doc/2001_11_22_intermodal_transport.zip>, (accessed, 30/03/16). The potential savings would, arguably, amount to a greater sum now, considering the market share of container trade which is realized mostly via multimodal transport have almost tripled from 2000 to 2013, see UNCTAD/RMT/2013, 7.

¹⁴ UNCTAD/SDTE/TLB/2003/1, para 21.

¹⁵ UNCTAD/SDTE/TLB/2003/1, para 27.

¹⁶ European Commission, “Report on Details and added value of establishing a (optional) single transport (electronic) document for all carriage of goods...” TREN/CC/01-2005/LOT1/LEGAL ASSISTANCE ACTIVITIES, 113, found at <http://ec.europa.eu/transport/themes/strategies/studies/doc/2009_05_19_multimodal_transport_report.pdf> (accessed, 30/03/16).

¹⁷ TREN/CC/01-2005/LOT1/LEGAL ASSISTANCE ACTIVITIES, 155.

carriage of goods by sea... fails to adequately take into account modern transport practices, including containerization, door-to-door transport contracts..." and "that the adoption of uniform rules to modernize and harmonize the rules that govern the international carriage of goods involving a sea leg would enhance legal certainty, improve efficiency and commercial predictability in the international carriage of goods and reduce legal obstacles to the flow of international trade among all States".¹⁸ Accordingly, the Convention has been designed so as to extend its application to door-to-door transport, applying not only to the sea voyage but also to carriage by another mode that may precede or follow it. The Rules provide continuous application to the carriage contract, including unlocalised losses but may not apply in certain circumstances stipulated by Articles 26 and 82, opening possibility for application of other international instruments.¹⁹ Admittedly, this is not a fully-fledged multimodal liability regime as the Convention will not apply to multimodal transport contracts lacking a sea leg. However, considering that at least eighty percent of world trade is carried by sea²⁰, it is without doubt that a significant portion of multimodal

¹⁸ See, RR preamble.

¹⁹ It is not the intention of this article to evaluate the multimodal liability regime under the Rotterdam Rules, on which subject much ink has already flowed in the recent years, see, de Wit, Ralph, "Minimal music: multimodal transport including a maritime leg under the Rotterdam Rules", Ch. 5 in Thomas, Rhidian D (ed), "*The Carriage of Goods by Sea under the Rotterdam Rules*", (Lloyd's List, London, 2010), para 5.105, (hereafter, *de Wit-2*); van der Ziel, Gertjan, "Multimodal Aspects of Rotterdam Rules", 2009 *CMI Yearbook* 301; Haak, Krijn, "Carriage Preceding or Subsequent to Sea Carriage under the Rotterdam Rules" (2010) 2 *EJCLL* 65.

²⁰ See UNCTAD/RMT/2013, xi; a contemporary IMO report puts the figure higher, at %90, see IMO, "International Shipping Facts and Figures – Information Resources on Trade, Safety, Security, Environment", (2012), 7

transport operations is expected to fall within the ambit of the Convention.

At this juncture, it seems beneficial to examine the scope of application provisions of the Rotterdam Rules in connection with the Convention's application to the multimodal transport contracts. This article concentrates on articles 1.1 and 5, with a view to assessing whether the Rotterdam Rules cover multimodal transport contracts that are frequently encountered in modern liner transport. The article will start with briefly discussing the rationale behind the Convention's scope of application rules by drawing support from the *travaux préparatoires*. The article will continue with an evaluation of the Rotterdam Rules' provisions regarding the scope of application, namely the articles 1.1 and 5. Then, the article will consider the Convention's applicability to certain types of multimodal transport contracts that are currently being used in modern transport practice, including the contracts in which the mode of transport is not specified. Finally, the article will conclude with a view on whether the Rotterdam Rules succeed in realizing its goal of modernising the rules that govern the international carriage of goods involving a sea leg and providing a legal regime that take into account modern transport practices, including containerization and door-to-door transport contracts.

<<http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/TheRoleandImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20Figures.pdf>> (accessed, 30/03/16)

II- The Convention's application to multimodal transport contracts

The Rotterdam Rules Article 5.1 states that:

“Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:

- (a) The place of receipt;
- (b) The port of loading;
- (c) The place of delivery; or
- (d) The port of discharge.”

As can be presumed from this formulation, in contrast with the Hague - Visby Rules which only applies to bills of lading²¹, the Rotterdam Rules do not stipulate any documentary requirements for its application.²² Instead, the Rotterdam Rules apply to international²³

²¹ See HVR Articles I.b and X, on the prospects of the HVR's application to multimodal transport documents, see Ozdel, Melis, “Multimodal Transport Documents in International Sale of Goods”, (2012) 23 ICCLR 238, 249.

²² Therefore, there seems to be no substantial problems regarding the RR's application to multimodal transport documents. However, although issuance of a transport document is not required for the Convention's application, it nevertheless include detailed provisions on transport documents. Unless dictated by custom or agreed by parties otherwise, a transport document will be issued and these will be subject to ch. 8 of the RR. Instead of using existing terminology regarding transport documents such as bill of lading, waybill etc, the RR simply divides them into two main groups: (a) non-negotiable and (b) negotiable transport documents. The latter group will also be subject to ch.11 of the RR which deals with transfer of rights, see Sturley, Michael F, Tomotaka, Fujita, and van der Ziel, Gertjan J., *The Rotterdam Rules: the UN convention on contracts for the international carriage of goods wholly or partly by sea*, (Sweet & Maxwell, 2010), ch. VII; Thomas, DR, “A comparative analysis of the transfer of contractual rights under the English Carriage of Goods by Sea Act 1992 and the Rotterdam Rules”, (2011) 17 JIML 437, 445.

contracts of carriage of goods, wholly or partly, by sea. As clarified by Article 1, as long as they include a sea leg, multimodal carriage contracts are within the ambit of the new convention. This extended scope of application is aptly described as “maritime plus”²⁴, which emphasizes the Rotterdam Rules’ maritime roots and indicates that the Convention is not a comprehensive multimodal instrument.²⁵

Although the Convention was originally planned as being limited to port-to-port transport, the extended application to other modes of carriage had been envisaged from the early stages of the Working Group discussions.²⁶ Whilst, the UNCTAD survey on Multimodal Transport demonstrates that support for the “maritime plus” approach was markedly low throughout the industry respondents²⁷, this did not seem to curb the Working Group’s enthusiasm; it was agreed in the eleventh session that the

²³ Subject to art. 5, below, text preceding fn. 32.

²⁴ UNCITRAL, “Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] - General remarks on the sphere of application of the draft instrument”, (A/CN.9/WG.III/WP.29), para 8, found at <<http://undocs.org/A/CN.9/WG.III/WP.29>> (accessed 30/03/16); UNCITRAL, “Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] - Proposal by the Netherlands on the application door-to-door of the instrument” A/CN.9/WG.III/WP.33, para 2, found at <<http://undocs.org/A/CN.9/WG.III/WP.33>> (accessed 30/03/16); Glass, David, “Meddling in the multimodal muddle? A network of conflict in the UNCITRAL Draft Convention on the Carriage of Goods [wholly or partly][by sea]” [2006] LMCLQ 307, 308; the extended scope is also hinted in the official name of the convention: “the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea”.

²⁵ Sturley (*et al.*), para 4-007.

²⁶ UNCITRAL, “Report of the Working Group on Transport Law on the work of its ninth session” (A/CN.9/510), para 26, found at <<http://undocs.org/A/CN.9/510>> (accessed 30/03/16).

²⁷ UNCTAD/SDTE/TLB/2003/1, para 34; Nikaki, Theodora, “The UNCITRAL draft instrument on the carriage of goods [wholly or partly] [by sea]: multimodal at last or still all at sea?” [2005] JBL 647, 653.

Convention's extended scope of application should be maintained.²⁸ One reason for this seems to be that, though the method was open to question, the support for a new instrument dealing with multimodal transport was undeniably strong.²⁹ Another reason is that the extended application to other modes of carriage was seen as a vital feature that might increase the attractiveness of the new instrument.³⁰ Consequently, it is probable that the drafters had believed the existing differences on the subject could be resolved over the course of drafting sessions.³¹

III- Applicability criteria

As was mentioned above, the Convention applies to contracts of carriage. The definition is given in Article 1.1: "a contract in which a carrier against the payment of freight, undertakes to carry goods from one place to another." Furthermore, the article continues by stating that "this contract shall provide for carriage by sea and may additionally provide for carriage by another mode of transport". However, according to Article 5, the Convention only applies to such

²⁸ UNCITRAL, "Report of Working Group III (Transport Law) on the work of its eleventh session" (A/CN.9/526), para 240, found at <<http://undocs.org/A/CN.9/526>> (accessed 30/03/16).

²⁹ UNCTAD/SDTE/TLB/2003/1, para 27.

³⁰ A/CN.9/510, para 28; UNCITRAL, "Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] - Proposal by Italy" (A/CN.9/WG.III/WP.25), para 1, found at <<http://undocs.org/A/CN.9/WG.III/WP.25>> (accessed 30/03/16).

³¹ Nevertheless, extended scope of application remained controversial until the very end of the working group discussions, see UN GA, "UNCITRAL Compilation of comments by Governments and intergovernmental organizations" (A/CN.9/658/Add.11), paras 3-5, found at <<http://undocs.org/A/CN.9/658/Add.11>> (accessed 21/07/15); UN GA, "UNCITRAL Summary record of the 877th meeting" (A/CN.9/SR.877), pages 3-8, found at <<http://undocs.org/A/CN.9/SR.877>> (accessed 21/07/15).

contracts of carriage, if the place of receipt/delivery and the port of loading/discharge are in different states, at least one of which is a member to the Convention. These two articles provide the two primary tests for the Convention's application to multimodal transport contracts.

The first to be considered is the test of internationality: the Rotterdam Rules only apply if both the sea voyage and the carriage as a whole is of international character and it is not sufficient that, only, the sea voyage is international.³² For example, the Rotterdam Rules do not apply to a contract of carriage by road from Ourense, Spain to Porto, Portugal and then by sea to Valencia, Spain. However, the additional voyage by another mode of transport can be domestic as long as it is part of an international carriage contract.³³ Therefore, the Convention would, for instance, apply to the domestic road legs under a contract of carriage from Reading to Paris via Felixstowe and Le Havre ports. Nationality of the vessel or the carrier etc. is immaterial for the Convention's application.³⁴

The second, and more problematic, test is whether the contract of carriage falls within the ambit of the Rotterdam Rules. The Convention applies to contracts of carriage within the definition provided in Article 1.1. According to this, the sea voyage is a must for the Convention's application to be triggered but the Rotterdam Rules equally apply to other modes of carriage in the same contract

³² A/CN.9/526, para 243; Thomas, Rhidian D, "The Emergence and application of the Rotterdam Rules", in Thomas, Rhidian D (ed), *The Carriage of Goods by Sea under the Rotterdam Rules*, (Lloyd's List, London, 2010), para 1.34; Baatz, Yvonne, (et al.) *The Rotterdam Rules: a practical annotation* (Informa, London, 2009), para 5-04; Sturley (et al.), para 2-037 et seq; Franco, Manuel, "Multimodal transport after the Rotterdam Rules; will it work this time?", (2012) 18 JIML 208, 214.

³³ Sturley (et al.), para 2-039.

³⁴ RR, art. 5.2.

regardless of them being supplementary³⁵ or an independent leg.³⁶ What matters here is the contractual carriage, not the actual carriage:³⁷ for example, the Rotterdam Rules would apply to carriage from Singapore to Felixstowe, UK, where the contract provides for sea transport but the goods are in fact carried by air and road in breach of contract. Similarly, the Rotterdam Rules would not apply to carriage from Hong Kong to Hamburg, Germany, where the goods were originally agreed to be carried by air and road, but the carrier changed the mode of transport without permission and transported the goods by sea. Therefore, if the contract provides for sea carriage, the Rotterdam Rules shall apply even though the actual carriage is undertaken by another mode; but, it does not apply to actual sea carriage if it was not provided for in the contract.³⁸

³⁵ See CIM, art.1.3&1.4; MC art. 18.4.

³⁶ A/CN.9/526, para 242; Diamond A, "The Rotterdam Rules" [2009] LMCLQ 445, 451.

³⁷ UNCITRAL, "Report of Working Group III (Transport Law) on the work of its fourteenth session" (A/CN.9/572), para 89, found at <<http://undocs.org/A/CN.9/572>> (accessed 30/03/16); UN GA, "Report of UNCITRAL 41st Session", (A/63/17), para 24, found at <[http://undocs.org/A/63/17\(Supp\)](http://undocs.org/A/63/17(Supp))> (accessed 30/03/16); UN GA, "UNCITRAL Compilation of comments by Governments and intergovernmental organizations" (A/CN.9/658), para 16, found at <<http://undocs.org/A/CN.9/658>> (accessed 30/03/15); Diamond, 451; van der Ziel, 302; Sturley (*et al.*), para 2-024.

³⁸ Diamond, 452; Berlingieri, Francesco, "Revisiting the Rotterdam Rules", [2010] LMCLQ 583, 585.

IV- Application to non-mode-specific carriage contracts

Since, the Convention, per Article 6, normally applies to liner transportation³⁹, where the ports of loading and delivery or the name of the vessel will be specified in the carriage document, focusing on the contract of carriage to determine whether the Convention applies or not will hardly raise any questions in most cases. However, there also exists certain contracts of carriage in which the mode of carriage is left open and the carrier is allowed to choose the mode(s) of carriage.⁴⁰ It is not clear whether the Rotterdam Rules apply to this latter group of contracts.⁴¹ The question is significant because if the answer is given in the positive, then the Convention could apply to non-maritime multimodal transport, in stark contrast with its “maritime-plus” rationale. On the other hand, if the answer is given in the negative, then the sea carriage performed under non-mode-specific contracts would fall outside the ambit of the Convention.

The issue was extensively discussed in the Working Group, and in twelfth session a proposal was made to ensure that the Convention applies in such cases if there is an actual sea carriage⁴²;

³⁹ Which was defined as “a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates” under the Rotterdam Rules, see art. 1.3

⁴⁰ Described as “fleximodal”, Verheyen, Wouter, “Fleximodal Contracts and CMR: the Belgian Approach”, (2012) 18 JIML 364, 364-365; or non-mode-specific, UN GA “UNCITRAL Compilation of comments by Governments and intergovernmental organizations” (A/CN.9/658/Add.13), para 10, found at <<http://undocs.org/A/CN.9/658/Add.13>> (accessed 30/03/16); most standard form multimodal transport contracts allows this practice, see MULTIDOC 95, c.6; FIATA 92, cl.11.

⁴¹ Diamond, 452; Nikaki, Theodora and Soyer, Baris “New International Regime for Carriage of Goods by Sea: Contemporary, Certain, Inclusive and Efficient, or Just Another One for the Shelves.” (2012) 30 BJIL 303, 313.

⁴² UNCITRAL, “Report of Working Group III (Transport Law) on the work of its twelfth session” (A/CN.9/544), para 68, found at <<http://undocs.org/A/CN.9/544>>

however, this was ultimately rejected on the ground that it was unnecessary.⁴³ The Working Group's decision is regrettable, as the proposed modification would have provided a clear solution to this problem.⁴⁴ The UK delegation had proposed re-consideration of the modification in the final stages of the preparatory work on the Convention, however, this was rejected once more.⁴⁵ The UK position was that, even without the proposed amendment, the Rotterdam Rules would apply if the goods were actually carried by sea, where the contract permits such carriage.⁴⁶ The US delegation explained that the Working Group assumed most courts would read Article 1.1 this way.⁴⁷ However, the problem with this view is that it sits at odds with the Convention's clearly professed logic of applying to the contract instead of the actual carriage.⁴⁸ Had the abovementioned proposal⁴⁹

(accessed 30/03/16); UNCITRAL, "Transport Law: Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea] - Provisional redraft of the articles of the draft instrument considered in the Report of Working Group III on the work of its twelfth session (A/CN.9/544)" (A/CN.9/WG.III/WP.36), para 6, art.2.1bis, found at <<http://undocs.org/A/CN.9/WG.III/WP.36>> (accessed 30/03/16); UNCITRAL, "Transport Law: Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea] - Scope of Application Provisions", (A/CN.9/WG.III/WP.44), para 2, found at <<http://undocs.org/A/CN.9/WG.III/WP.44>> (accessed 30/03/16).

⁴³ UNCITRAL, "Report of Working Group III (Transport Law) on the work of its fifteenth session", (A/CN.9/576), para 33, found at <<http://undocs.org/A/CN.9/576>> (accessed 30/03/16).

⁴⁴ Treitel, Guenter H QC, Sir and Reynolds, Francis MB, QC, *Carver on bills of lading*, (3rd Ed., Sweet & Maxwell, London, 2011), 778, (hereafter, *Carver*); *de Wit-2*, para 5.105.

⁴⁵ UN GA, "UNCITRAL Summary record of the 865th meeting" (A/CN.9/SR.865), para 36 *et seq.*, found at <<http://undocs.org/A/CN.9/SR.865>> (accessed 30/03/16).

⁴⁶ A/CN.9/658/Add.13, para 11; also see Berlingieri, 585 and *Carver*, 778, though the latter express some doubt.

⁴⁷ A/CN.9/SR.865, para 43.

⁴⁸ "...in any event, the key for determining the scope of application of the draft instrument was the contract of carriage, not the actual carriage of the goods."

been accepted, this could have been justified as an exception to the contractual approach adopted in the Rotterdam Rules and the actual carriage might have been sufficient for the Convention's application. But, as it stands, such interpretation of Article 1.1 is clearly in conflict with the drafters' intentions in the larger context.

Nevertheless, this is not to say that non-mode-specific contracts are entirely excluded from the Convention's ambit: whilst some commentators read the rejection of the above mentioned proposal to this effect⁵⁰, it must be remembered that the proposal was rejected because it was found unnecessary.⁵¹ Two reasons were given for this: first was that one way of reaching the same outcome could be via reading the word "*provide*" in a broader manner.⁵² In the context of Article 1.1, the word "*provide*" might mean both "*stipulate*"⁵³ and "*allow*"⁵⁴. If it is read as the latter, then it is possible to argue that any contract which permits carrier to carry by sea will fall under the ambit of the Convention. However, as was argued, this potentially brings the undesirable consequence of making non-maritime carriage contracts subject to the Rotterdam Rules. For instance, a contract of carriage under which the carrier is entitled to choose any reasonable method of transportation would be subject to the Rotterdam Rules, even if the

A/CN.9/576, para 33; Nikaki & Soyer, 313; above, fn. 37; but see *Quantum Corporation v Plane Trucking*, [2002] 1 WLR, 2678, para 14-F.

⁴⁹ Above, fn. 42.

⁵⁰ Verheyen, Wouter "Forum clauses in carriage contracts after the Brussels I (bis) Regulations: procedural (un)certainty", (2015) 21 JIML 23, 31. (hereafter, *Verheyen-2*)

⁵¹ Above, fn. 43; similarly Glass, 316.

⁵² A/CN.9/576, para 33.

⁵³ Shorter Oxford English dictionary, (5th Edition, OUP, 2002), 2382; Collins English Thesaurus Home Edition, (HarperCollins Publishers, 2009), 556.

⁵⁴ Oxford Compact Thesaurus, (2nd Edition, OUP, Oxford, 2001), 684; or "*to make possible*", Collins English Dictionary, (HarperCollins Publishers, London, 2009), 603; also see Diamond, 452, who points out that it may be read as "sanction".

actual carriage takes place from Florence, Italy and Bremen, Germany via railway on European Rail Freight Corridor (RFC) no. 3⁵⁵. This would be an unprecedented extension of the Convention's scope of application, which could, surely, not have been intended by the drafters given the clear emphasis on sea carriage.⁵⁶ Therefore, it seems difficult to support the view that the word "provide" could be read in that way.

The second reason was that "a contract could implicitly provide for carriage by sea", so that a contract may fall within the application of the Convention even though the sea carriage was not explicitly provided for.⁵⁷ In most cases, this can be determined with consideration of various features of the contract such as geographical scope of carriage, type of goods, freight rate, agreed time of delivery and customary transport methods.⁵⁸ Naturally this would mean leaving the matter to the courts, so that the application of the Convention to an actual sea carriage under a non-mode-specific contract of carriage is to be decided on case-by-case basis.⁵⁹ Although this introduces a significant deal of unpredictability regarding the Convention's application to sea carriage under non-mode-specific carriage contracts, the courts may eventually be able to produce general formulations to determine whether the parties envisaged sea carriage from the

⁵⁵ See Rail freight corridors under The Regulation concerning a European Rail Network for Competitive Freight (Rail Freight Regulation 913/2010) <<http://www.rne.eu/rail-freight-corridors-rfcs.html>> (accessed, 30/03/16).

⁵⁶ See Berlingieri Francesco, "Multimodal aspects of the Rotterdam Rules", (CMI Colloquium of the Rotterdam Rules, 2009), 2 found at <<http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf>> (accessed, 17/07/15) (hereafter, *Berlingieri-2*); *de Wit-2*, para 5.8; Glass, 313; Sturley (*et al.*), para 4-007.

⁵⁷ A/CN.9/576, para 33.

⁵⁸ Sturley (*et al.*), para 2-028-2-032.

⁵⁹ A/CN.9/544, para 72; Sturley (*et al.*), para 2-031; Franco, 215.

circumstances of the case.⁶⁰ Of course, such generalisations cannot successfully conclude that the contract implicitly provides sea carriage in every possible case; however, in certain cases it must be possible for the courts to deduce that the parties must have contemplated carriage by sea. For example, where the possibility of air transport can be ruled out (either because the freight rate is too low, or the goods in question are too bulky to be carried by air), it would be natural to hold that a contract of carriage from Atlanta, Georgia-US and Birmingham, UK implicitly provides for carriage by sea. Perhaps, provided that the air carriage can be ruled out again, the same would also not be implausible when the carriage operation is one that typically involves sea transport, e.g. carriage of ten TEU containers from Paris to Hong Kong. However, it will be immediately obvious that such formulations cannot be relied on if there are viable inland routes –which will be the case in a considerable number of such movements.

Therefore, it is submitted that while leaving the matter to the courts is the most suitable solution to both the letter and spirit of the Convention in line with the contractual approach adopted therein, this is clearly at the expense of legal certainty. Furthermore, even though the ambiguity regarding the Convention's applicability would eventually be alleviated through litigation, the interpretation of Article 1.1 will inevitably generate different opinions, considerably prejudicing prospects of uniformity.⁶¹

⁶⁰ But see Verheyen, 368-370, who argues, in context of CMR's application to non-mode-specific contracts, an implicit choice of transport mode based on contract terms is very unlikely.

⁶¹ Nikaki & Soyer, 314.

V- Conclusion

This article has aimed to consider to what extent the Rotterdam Rules achieved its goal of providing a legal regime that take into account modern transport practices, including containerization and door-to-door transport contracts. To realize this goal, the Rotterdam Rules adopts a flexible formulation of contract of carriage which, coupled with the lack of any documentary requirements, ensures that the Convention applies to multimodal transport contracts as long as they include a sea leg. Whilst this means that non-maritime multimodal transport contracts fall out of the Convention's ambit, it would seem somewhat unfair to criticise this as an inadequacy since the Rotterdam Rules were designed with mainly liner contracts in mind.⁶² Consequently, the Convention is likely to achieve its professed goal of regulating contracts for the carriage of goods, partly or wholly, by sea –covering most traditional contracts used in liner carriage as well as those concluded on door to door basis.

Unfortunately, the same cannot be said regarding the non-mode-specific carriage contracts. There is considerable uncertainty on the Convention's application to the carriage contracts under which the mode of transport is not specified. As was demonstrated above, it seems possible to construe the language of article 1.1 in more than one way and, accordingly, transport by sea under a non-mode-specific contract could fall within the ambit of the Convention or not, depending on which interpretation is adopted. This article has taken the view that the most faithful interpretation of the article 1.1 to the text and its spirit, is that the Convention should apply to such carriage as long as it could be established that the contract implicitly provides

⁶² Similarly, see Beare, Stuart, "The Rotterdam Rules – Some Controversies", 2010 *CMI Yearbook*, 516.

for carriage by sea. However, it must be admitted that this is likely to introduce a great deal of unpredictability regarding the Convention's application, as the parties will, frequently, feel the need to bring the question before the courts.

Ultimately, the examination of the Rotterdam Rules' scope of application provisions in the context of multimodal transport contracts yield mixed reviews. On the one hand, the Convention acknowledges the modern transport practices and extend its application to the liner carriage contracts that have been concluded on door to door basis. On the other hand, the Convention omits specific provisions for sea transport performed under non-mode-specific carriage contracts and results in significant ambiguity. Therefore, the legal certainty promised by the Rotterdam Rules regarding the regulation of liner carriage that includes another mode of transport, will inevitably be marred given the prevalence of non-mode-specific contracts in multimodal transport. Nevertheless, considering the current lacuna in international transport law regarding the liner carriage contracts that include another mode of transport, the treatment of the subject under the Rotterdam Rules is to be welcomed, despite the certain blemishes that the Convention may have.

BIBLIOGRAPHY/KAYNAKÇA

Asariotis, Regina, (*et al.*), “*Intermodal Transportation and Carrier Liability*” (European Commission, Luxembourg, 1999)

Baatz, Yvonne, (*et al.*) “*The Rotterdam Rules: a practical annotation*” (Informa, London, 2009)

Beare, Stuart, “The Rotterdam Rules – Some Controversies”, 2010 *CMI Yearbook*, 516.

Berlingieri, Francesco, “Revisiting the Rotterdam Rules”, [2010] *LMCLQ* (Lloyds’ Maritime and Commercial Law Quarterly) 583

Berlingieri Francesco, “Multimodal aspects of the Rotterdam Rules”, (CMI Colloquium of the Rotterdam Rules, 2009), 2 found at <<http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf>> (accessed, 30/03/16) (*Berlingieri-2*)

Bokareva, Olena, “Carriage of goods through multimodal transportation: in search of international and regional harmonisation” (2015) 21 *JIML* 368.

Chhina, Ramandeep, “Uniform International Legal Regime for Multimodal Transport: Unarguable Need but No General Acceptance”, (2013) 19 *JIML* (Journal of International Maritime Law), 516

Clarke, Malcolm A, “Multimodal transport in the new millennium” (2002) 1.1 *WMUJMA* (World Maritime University Journal of Maritime Affairs) 71.

Clarke, Malcolm A, “The Transport of Goods in Europe: Patterns and Problems of Uniform Law” [1999] *LMCLQ* (Lloyds’ Maritime and Commercial Law Quarterly) 36

Collins English Dictionary, (HarperCollins Publishers, London, 2009)

Collins English Thesaurus Home Edition, (HarperCollins Publishers, London, 2009).

de Wit, Ralph, “*Multimodal Transport*”, (LLP, London 1995)

de Wit, Ralph, “Minimal music: multimodal transport including a maritime leg under the Rotterdam Rules”, Ch. 5 in Thomas, Rhidian D (ed), “*The Carriage of Goods by Sea under the Rotterdam Rules*”, (Lloyd’s List, London, 2010) (*de Wit-2*)

Diamond A, “The Rotterdam Rules” [2009] LMCLQ (Lloyds’ Maritime and Commercial Law Quarterly) 445

Erling, Selvig, “The Influence of Hamburg Rules on the Work for a Convention on International Multimodal Transport”, in “*Bill of Lading Conventions Conference*” (LLP, 1978)

Faghfour, Mahin, “International regulation of liability for multimodal transport” (2006) 5.1 WMUJMA (World Maritime University Journal of Maritime Affairs) 95.

Franco, Manuel, “Multimodal transport after the Rotterdam Rules; will it work this time?”, (2012) 18 JIML (Journal of International Maritime Law) 208.

Glass, David, “Meddling in the multimodal muddle? A network of conflict in the UNCITRAL Draft Convention on the Carriage of Goods [wholly or partly][by sea]” [2006] LMCLQ (Lloyds’ Maritime and Commercial Law Quarterly) 307

Haak, Krijn, “Carriage Preceding or Subsequent to Sea Carriage under the Rotterdam Rules” (2010) 2 EJCLL (European Journal of Commercial Contract Law) 65

Hoeks, Marian, “*Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods*” (Kluwer Law International, The Netherlands, 2009), non-commercial

edition found at <<http://hdl.handle.net/1765/17470>> (accessed, 30/03/16)

Kindred, Hugh M., and Brooks, Mary R. “*Multimodal transport rules*” (Martinus Nijhoff Publishers, 1997)

Marten, Bevan, “Multimodal Transport Reform and the European Union: A Treaty Change Approach”, (2012) 36 TMLJ (Tulane Maritime Law Journal) 741

Nikaki, Theodora and Soyer, Baris “New International Regime for Carriage of Goods by Sea: Contemporary, Certain, Inclusive and Efficient, or Just Another One for the Shelves.” (2012) 30 BJIL (Berkeley Journal of International Law) 303

Nikaki, Theodora, “The UNCITRAL draft instrument on the carriage of goods [wholly or partly] [by sea]: multimodal at last or still all at sea?” [2005] JBL (Journal of Business Law) 647

Oxford Compact Thesaurus, (2nd Edition, OUP, Oxford, 2001)

Ozdel, Melis, “Multimodal Transport Documents in International Sale of Goods”, (2012) 23 ICCLR (International Company and Commercial Law Review) 238.

Pontoppidan, Knud, “Shipowners’ View on UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea”, 2009 *CMI Yearbook*, 282

Shorter Oxford English dictionary, (5th Edition, OUP, Oxford, 2002)

Sturley, Michael F, “Uniformity in the law governing the carriage of goods by sea” (1995) 26 JMLC (Journal of Maritime Law and Commerce) 553

Sturley, Michael F, Tomotaka, Fujita, and van der Ziel, Gertjan J., *The Rotterdam Rules: the UN convention on contracts for*

the international carriage of goods wholly or partly by sea, (Sweet & Maxwell, London, 2010)

Thomas, Rhidian D, “A comparative analysis of the transfer of contractual rights under the English Carriage of Goods by Sea Act 1992 and the Rotterdam Rules”, (2011) 17 JIML (Journal of International Maritime Law) 437

Thomas, Rhidian D, “The Emergence and application of the Rotterdam Rules”, in Thomas, Rhidian D (ed), “*The Carriage of Goods by Sea under the Rotterdam Rules*”, (Lloyd’s List, London, 2010)

Trappe, Johannes, “The Reform of German Transport Law”, [2001] LMCLQ, (Lloyds’ Maritime and Commercial Law Quarterly) 392

Treitel, Guenter H QC, Sir and Reynolds, Francis MB, QC, *Carver on bills of lading*, (3rd Ed., Sweet & Maxwell, London, 2011), 778, (*Carver*)

van der Ziel, Gertjan, “Multimodal Aspects of Rotterdam Rules”, 2009 *CMI Yearbook* 301

Verheyen, Wouter, “Fleximodal Contracts and CMR: the Belgian Approach”, (2012) 18 JIML (Journal of International Maritime Law) 364

Verheyen, Wouter “Forum clauses in carriage contracts after the Brussels 1 (bis) Regulations: procedural (un)certainty”, (2015) 21 JIML (Journal of International Maritime Law) 23. (*Verheyen-2*)

“UNCTAD/ICC Rules for Multimodal Transport Documents”, ICC publication No. 481

EC, “The economic impact of carrier liability on intermodal freight transport”, (European Commission, 2001), 39-40, found at: <http://ec.europa.eu/transport/themes/strategies/studies/doc/2001_11_22_intermodal_transport.zip>, (accessed, 30/03/16).

IMO, "International Shipping Facts and Figures – Information Resources on Trade, Safety, Security, Environment", (2012), found at <<http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/TheRoleandImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20Figures.pdf>> (accessed, 30/03/16)

Rail freight corridors under The Regulation concerning a European Rail Network for Competitive Freight (Rail Freight Regulation 913/2010) <<http://www.rne.eu/rail-freight-corridors-rfcs.html>> (accessed, 30/03/16)

The ICC Uniform Rules for a Combined Transport Document", ICC Publication No. 298

UN GA "UNCITRAL Compilation of comments by Governments and intergovernmental organizations" (A/CN.9/658/Add.13), para 10, found at <<http://undocs.org/A/CN.9/658/Add.13>> (accessed 30/03/16)

UN GA, "Report of UNCITRAL 41st Session", (A/63/17), found at <[http://undocs.org/A/63/17\(Supp\)](http://undocs.org/A/63/17(Supp))> (accessed 30/03/16)

UN GA, "UNCITRAL Compilation of comments by Governments and intergovernmental organizations" (A/CN.9/658), found at <<http://undocs.org/A/CN.9/658>> (accessed 30/03/15)

UN GA, "UNCITRAL Compilation of comments by Governments and intergovernmental organizations" (A/CN.9/658/Add.11), found at <<http://undocs.org/A/CN.9/658/Add.11>> (accessed 30/03/16)

UN GA, "UNCITRAL Summary record of the 865th meeting" (A/CN.9/SR.865), para 36 *et seq*, found at <<http://undocs.org/A/CN.9/SR.865>> (accessed 30/03/16).

UN GA, “UNCITRAL Summary record of the 877th meeting” (A/CN.9/SR.877), pages 3-8, found at <<http://undocs.org/A/CN.9/SR.877>> (accessed 30/03/16).

UNCITRAL, “Report of the Working Group on Transport Law on the work of its ninth session” (A/CN.9/510), found at <<http://undocs.org/A/CN.9/510>> (accessed 30/03/16)

UNCITRAL, “Report of Working Group III (Transport Law) on the work of its eleventh session” (A/CN.9/526), found at <<http://undocs.org/A/CN.9/526>> (accessed 21/07/15).

UNCITRAL, “Report of Working Group III (Transport Law) on the work of its fourteenth session” (A/CN.9/572), found at <<http://undocs.org/A/CN.9/572>> (accessed 30/03/16)

UNCITRAL, “Report of Working Group III (Transport Law) on the work of its twelfth session” (A/CN.9/544), found at <<http://undocs.org/A/CN.9/544>> (accessed 30/03/16)

UNCITRAL, “Report of Working Group III (Transport Law) on the work of its fifteenth session”, (A/CN.9/576), found at <<http://undocs.org/A/CN.9/576>> (accessed 30/03/16).

UNCITRAL, “Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] - General remarks on the sphere of application of the draft instrument”, (A/CN.9/WG.III/WP.29), found at <<http://undocs.org/A/CN.9/WG.III/WP.29>> (accessed 30/03/16)

UNCITRAL, “Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] - Proposal by the Netherlands on the application door-to-door of the instrument” A/CN.9/WG.III/WP.33, found at <<http://undocs.org/A/CN.9/WG.III/WP.33>> (accessed 30/03/16)

UNCITRAL, “Transport Law: Preparation of a draft instrument on the carriage of goods [by sea] - Proposal by Italy”

(A/CN.9/WG.III/WP.25), found at <<http://undocs.org/A/CN.9/WG.III/WP.25>> (accessed 30/03/16).

UNCITRAL, "Transport Law: Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea] - Provisional redraft of the articles of the draft instrument considered in the Report of Working Group III on the work of its twelfth session (A/CN.9/544)" (A/CN.9/WG.III/WP.36), found at <<http://undocs.org/A/CN.9/WG.III/WP.36>> (accessed 30/03/16)

UNCITRAL, "Transport Law: Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea] - Scope of Application Provisions", (A/CN.9/WG.III/WP.44), found at <<http://undocs.org/A/CN.9/WG.III/WP.44>> (accessed 30/03/16).

UNCTAD, "*Report on Multimodal Transport: The Feasibility of an International Legal Transport*" (2003), UNCTAD/SDTE/TLB/2003/1, para 6, found at <unctad.org/en/Docs/sdtetlb20031_en.pdf> (accessed, 30/03/16)

UNCTAD, "*Report on Review of Maritime Transport*" (2013), UNCTAD/RMT/2013, 7, <unctad.org/en/PublicationsLibrary/rmt2013_en.pdf> (accessed, 21/07/15).

UNECE report on "Possibilities for reconciliation and harmonization of civil liability regimes governing combined transport" TRANS/WP.24/1999/2, para 16, found at <<http://undocs.org/TRANS/WP.24/1999/2>> (accessed 30/03/16)