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**THE 1980 CONVENTION ON MULTIMODAL TRANSPORT
TWENTY YEARS LATER!***

by

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The 1980 Convention on Multimodal Transport twenty years later!

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The 1980 Convention on Multimodal Transport twenty years later!

Introduction

I am pleased to have this opportunity to speak to so many Government delegates and representatives of UNCTAD on the subject of Multimodal Transport. I acknowledge the helpful document prepared by UNCTAD for the benefit of attendees in which the importance of logistics is emphasized and its association with Multimodal transport clearly demonstrated.

In 1983, when Canada was considering the 1980 Multimodal Transport Convention, the Canadian Government requested me to study and report on the preparedness of Canadian traffic service providers to work under the Convention. At the time I recognized that although these providers could adapt their services to the requirement of the Convention, there was no enthusiasm for its introduction into Canadian law. I concluded that despite the many positive features of the Convention, ratification held no advantages for Canada until Canada's principal trading partners ratified the Convention, or at least signaled their intention to do so. Still the Convention was in many respects based on sound principles that should be the foundation of any future international law in this area. I will be touching on those principles, after first considering the feasibility of any Multimodal Convention, given the legal environment and circumstances in which Multimodal services are now offered to participants in international trade.

For the last fourteen years I have been a partner in Paterson, MacDougall, a law firm in Toronto, Canada, specializing in transport and insurance law. My clients have been primarily freight forwarders, who appreciate practical solutions to complex legal problems, which some forwarders seem to attract. In preparing this paper, I have also relied on my years of association with organizations that represent the freight forwarding industry, starting with the Canadian International Freight Forwarders Association (CIFFA). I am now Chairman of the FIATA Advisory Body Legal Matters. However, my remarks do not represent the position of either CIFFA or FIATA, but are my personal views on the issues. Nothing in my presentation today is to be attributed to them. I have also relied upon the views of the Editors and contributors to Forwarderlaw, a Website on the International Forwarding Industry that I and twelve other international lawyers who specialize in transport law make available to the Web

public. In concluding this resume of my professional curriculum vita, I wish to stress that I have not written this paper for lawyers, but for an informed lay audience.

An overview of the development of Multimodal Transport

The Present: Containerization is driving Multimodal Transport

You all probably know that containers will soon account for carriage of close to 95% of international shipments, excluding bulk and other specialized cargos. This enormous growth of container traffic is the consequence of many factors including:

- The efficiencies of handling containers as opposed to break-bulk shipments,
- The ease of transfer of containers between different means of transport,
- The reduction in loss or damage to cargo shipped in containers, and
- The general efficiencies of scale that containerization makes possible.

In practical terms, containerization is responsible for the growth of modern Multimodal transport. The UNCTAD Background paper says as much:

"In particular, the growth of containerized transport, together with technological developments improving the systems for transferring cargo between different modes, has considerably affected modern transport patterns and practices." (TD/B/COM.3/EM.20/2 15 July 2003, Paragraph 3)

The concept of modern Multimodal transport is clear, but the identification of parties who should be subject to any international law governing Multimodal Transport is more complex. In this paper I first note how this complexity has affected the formulation of principles in a Convention on international Multimodal Transport. I also trace the influence of freedom of contract on the development of Multimodal services, and how this freedom continues to shape the characteristics of international Multimodal Transport law today. Finally I consider the prospects for a Convention and the principles on which it should be based.

The Through Bill of Lading - the First "Multimodal" Transport Document

Carriage of goods to an agreed destination using successive modes of transport, a predecessor to Multimodal transport, has been going strong for over a century. The cotton trade from the Southern United States to Western Europe is an early example. Beginning in the nineteenth century, ocean carriers received cargos from cotton plantations to be moved by rail carrier to a loading port, from there by vessel to a discharge port, and from there by land carrier to the receiver's mill. Ocean carriers issued bills of lading covering the entire transport, known as "through bills of lading", an appropriate description as cargo moved through the port of loading and through the port of discharge to the final destination.

The through bill of lading is a single document that evidences more than one contract of carriage. An ocean carrier issuing a through bill of lading represented that the goods had been received for carriage at an inland location, and accepted responsibility for ocean carriage, but it did not accept responsibility for land carriage at either the initial or final stage of transport. For those stages, the ocean carrier committed only to arranging contracts for the necessary land carriage without responsibility for its actual performance.

Ocean carriers negotiated terms of service and freight charges with land carriers they engaged. Land carriers rarely negotiated a contract of carriage directly with cargo interests. Instead the through bill of lading generally included a clause that appointed the ocean carrier as the cargo owner's agent with authority to agree on behalf of the cargo owner to the land carrier's usual terms of carriage. So when a land carrier accepted cargo covered by a through bill of lading a contract of carriage arose through the ocean carrier acting as the cargo's owner's agent. The ocean carrier collected freight for the complete transport from the cargo owner, and assumed responsibility for payment of freight due land carriers. The land carriers had rights of retention and lien against the cargo in the event they did not receive payment of the freight owing by the ocean carrier.

Shippers appreciated the commercial convenience of the through bill of lading, despite practical problems created by its use. One of these problems concerned damage caused prior or subsequent to the ocean voyage, often referred to as "country damage", that could not legally be recovered from the ocean carrier, and not easily from a land carrier operating in another country. Unrecoverable damage of this sort was tolerated as cargo interests could insure their goods against this risk. A

more troublesome commercial problem arose when an insolvent ocean carrier did not pay the inland freight. The land carrier would then exercise rights against the cargo, and the cargo owner, who had already paid the full freight, had to pay part of the freight a second time to get the cargo. Fortunately this problem did not occur so frequently as to destroy the utility of the document.

The Through Bill of Lading and freedom of contract

In legal terms "through bills of lading" were a success, and from their introduction they rapidly gained acceptance, surmounting legal questions that might have discouraged their use. As early as 1905 the English Court of Appeal gave its seal of approval to the edifice of transport contracts created by an ocean carrier exercising its authority as the cargo owner's agent under a through bill of lading. In 1921 the British Privy Council agreed that the Bills of Lading Act, an important piece of legislation assuring the transferability and negotiation of bills of lading, applied to through bills of lading. The legal success of the through bill of lading consolidated the importance of freedom of contract in Multimodal transport.

A parallel from the field of computer technology may shed light on the slow progress towards the development of international Multimodal law. The utilization of the newest and most efficient information technology is often slowed by the existence of a "legacy system". Companies that have made an investment in earlier information technology, which gets the job done, are reluctant to incur the costs of a new technology. The legacy of the old technology is an obstacle to the adoption of the new. Equally the "old technology" of through bills of lading is an obstacle to the adoption of a new Multimodal Transport bill of lading governed by an international convention that imposes obligations on an ocean carrier for the entire transport.

1980 Multimodal Transport Convention

At a theoretical level, the 1980 Convention might have forced Multimodal carriers, referred to as Multimodal Transport Operators ("MTO's"), to assume obligations imposed by the 1980 Convention. The practical problem was that there was no business entity that could be clearly identified as an MTO. Ocean carriers owned ships, or chartered them and used them for the carriage of cargos. Land carriers had

rolling stock or trucks. Air carriers operated airplanes. What distinguished Multimodal carriers?

Multimodal Transport is for the most part offered by ocean carriers and Non-Vessel Operating Common Carriers (NVOCC's). By 1980 a variety of businesses, including air lines, air consolidators, road carriers, freight forwarders, and others had swelled the ranks of NVOCC's. Faced with this multitude of commercial suppliers, some of whom owned, operated or provided the means of transport, and some of whom did not, the 1980 Convention could not target a type of business, or owner of transport equipment. The application of the 1980 Convention had to depend upon a different criterion: it only applied where a carrier agreed to deliver cargo to a destination in a different country under a single contract contemplating transport by more than one mode. Article 3 1. of the Convention provided:

When a multimodal transport contract has been concluded which according to article 2 shall be governed by this Convention, the provisions of this Convention shall be mandatorily applicable to such contract.

Article 3.2 of the 1980 Convention confirmed a basic principle that shippers had freedom to chose between multimodal and segmented transport services. But freedom to choose could not be one sided to shippers - it had to be matched by an equal freedom to carriers to undertake only the performance of unimodal transport. The Convention did not expressly govern the type of documents that carriers could issue, thus tacitly sanctioning the continued use of through bills of lading. If the carrier issued a through bill of lading evidencing distinct contracts of carriage, each contract governing only one of the modes of transport, the 1980 Convention did not apply.

There is a well-recognized precedent in international maritime law for making the application of an International Convention turn upon the form of the service offered by a carrier. The Hague Rules of 1924, and their successor, the Hague- Visby Rules of 1968, (which I collectively refer to as "the Rules") apply only to a contract of carriage covered by a bill of lading. As of 1924 negotiable bills of lading had a vital importance in international trade. A well-established market demand forced ocean carriers to issue bills of lading and as a consequence accept the responsibilities the Rules imposed.

Contractual Basis for Application of Multimodal Law

The UNCTAD Background Document correctly identifies the fundamental role of contract in Multimodal Transport. It states:

"Shippers and consignees often prefer to deal with one party (the Multimodal transport operator), who arranges for the transportation of goods from door to door and assumes responsibility throughout, irrespective of whether this is also the party that actually carries out the different stages of the transport." (TD/B/COM.3/EM.20/2 15 July 2003, Paragraph 3)

Since 1980, a development, also referred to in the UNCTAD Background Document, is entrenching Multimodal Transport into a contractual relationship.

"Multimodal transport is an increasingly indispensable element of customized logistics services, which link up both domestic and global production and market places through the interconnectivity of and between modes of transport." (TD/B/COM.3/EM.20/2 15 July 2003, Paragraph 40)

The reality of logistics contracts services today is more than simply a port-to-port or even a door-to-door undertaking. Third, fourth and fifth party logistics providers bundle Multimodal Transport as one service in a multi-service contractual relationship. It is hard to define what qualities of service demand that a logistics provider be treated as an MTO by international law, unless the provider expressly agrees that its undertaking to provide multimodal transport be subject to the 1980 Convention. The logistics provider and its customer negotiate on many important matters that are not subject to compulsory international law. Why should international law not equally respect their agreement regarding Multimodal transport?

Through bills of lading are still used, but less frequently than before, as they are being replaced by a generic bill of lading covering Multimodal Transport subject to the 1992 UNCTAD/ICC Rules on Multimodal Transport. The UNCTAD/ICC Rules are not mandatory, and only apply if they have been accepted by the shipper and carrier as applicable to the contract of carriage. The UNCTAD/ICC Rules take the responsibilities of the carrier a step beyond the through bill of lading, as they obligate the carrier to accept responsibility for the entire transport, including transport by contractors it has engaged for land carriage.

Under the UNCTAD/ICC Rules, if the transport involves sea carriage, a carrier has the same level of liability for loss or damage as in the Hague-Visby Rules, namely 2 SDR per kilo or 666.67 SDR per package, whichever is the greater. The Hague-Visby limitations were chosen as they are generally acceptable to shippers, providing an indemnity adequate for approximately 90% of the goods shipped by ocean. The UNCTAD/ICC Rules also provide for an "alternative" limitation amount of 8.33 SDR per kilo where the Multimodal transport does not involve sea carriage. If the loss or damage occurred during a stage of transport that is subject to mandatory law, the provisions of that mandatory law determine the liability of the carrier. Assuming damage can be localized, meaning pinpointed to a particular stage of the total transport, the carrier accepts liability for the actions of its subcontractors on the basis that its liability is governed by the same mandatory laws that apply to its right of recourse against a sub-contracted carrier who is responsible. As forwarders like to put it, the liability of the issuer of a bill of lading incorporating the UNCTAD/ICC Rules is "back-to-back" with the liability of the actual carrier. There is little doubt that this feature, based on the network system of liability, is one reason for the popularity of the UNCTAD/ICC Rules with the forwarding industry.

International shippers generally seem satisfied with transport documents based on the UNCTAD/ICC Rules. Conversely, there is no identifiable demand for a Multimodal Bill of Lading subject to the 1980 Convention. If there were, pressures to adopt the 1980 Convention would have probably resulted in more ratifications than now exist among developed countries.

Carrier's liabilities under the 1980 Convention

A second factor persuaded ocean carriers to accept the burden of the Rules after their adoption by an International Conference in 1924. The Rules confirmed the entitlement of ocean carriers to exemptions and limitations that assured them of defences that were not well established according to the national law of several important trading countries. Compare this situation with today. What incentive do ocean carriers who are currently providers of Multimodal transport in one form or another have to voluntarily bring their services within the 1980 Convention? Equally, what incentive is there for NVOCC's to accept the liabilities imposed by the uniform system of liability adopted by the 1980 Convention, and lose the "back-to-back" recourse against the actual carrier that they so prize?

Looking only at the issue in terms of liability, there is none. An MTO is subject to a greater level of liability under the 1980 Convention than an ocean carrier subject to the Rules. An MTO cannot defend a claim by invoking express exemptions, such as peril of the seas, as an ocean carrier can under the Rules. The liability of the MTO is based upon the principle of presumed fault or neglect, meaning that the MTO is liable unless it proves otherwise. To avoid liability, the MTO must show that all measures that could reasonably be required to avoid the occurrence and its consequences were taken, both on its part and on the part of any other carrier whose services it used to perform the Multimodal transport. Contrast that obligation with the more complicated provisions dealing with burden of proof under the Rules that in general terms benefit carriers.

Insurance costs under the 1980 Convention

Just as important, an MTO who cannot discharge the burden of exoneration has a much-reduced chance of recovery against the actual carriers it has engaged. These rights of recovery are exercised by means of a lawsuit in which the MTO is the claimant and independent carriers or terminals who carried or handled the container are the defendants. Although a cargo owner can recover from the MTO if cargo outturns in a damaged condition from a container, the MTO has to localize the place where the damage occurred before it has any possibility of recovery from an actual carrier. Even if it succeeds in doing so, its recovery from that carrier will probably be less than the level of its liability under the 1980 Convention.

This difficulty is a disadvantage for an MTO who is competing against traditional through bill of lading services. Insurers of the world's NVOCC industry spend much time with numerous small claims occurring in Multimodal transport that cannot be successfully or effectively localized to a particular stage of carriage. Frequently the claims are so small that the expense of a more extensive investigation to attribute the ultimate responsibility cannot be justified. Not that the place of damage could not be identified by a thorough inquiry - it is just not worth the expense. The natural inclination of all parties is to let the loss lie where it falls - which, in the case of the 1980 Convention, is on the MTO.

These claims have an impact on the cost of insurance. Because of a worsening claims record, insurance premiums of NVOCC's who issue Multimodal transport

documents based on the UNCTAD/ICC Rules have escalated in the past several years. But by common consensus they are moderate compared with the estimated premiums that adherence to the 1980 Convention would bring. I will return to insurance considerations under the 1980 Convention in the next Section of this paper.

Advantages of a Multimodal Convention

Expected Benefits of the 1980 Convention

As Multimodal transport is now successfully offered on contract terms, is there merit in pursuing a Multimodal Convention? To answer that question requires a review of the benefits expected from the 1980 Convention. These benefits included:

- (b) . . . the development of smooth, economic and efficient Multimodal transport services adequate to the requirements of the trade concerned;
- (d) the desirability of determining certain rules relating to the carriage of goods by international Multimodal transport contracts, including equitable provisions concerning the liability of Multimodal transport operators;

The continuing importance of these objectives has been confirmed by responses to a recent UNCTAD Survey of governments and individuals in private industry as to the utility of a Convention on Multimodal Transport. The responses to the Survey show substantial agreement that the present patchwork of transport conventions is not efficient and a high percentage of parties responding indicated that they would be willing to participate in continued efforts to achieve a Multimodal Convention. The responses also generally confirm the opinion that a Multimodal Convention is the best way of bringing uniformity to international law applicable to Multimodal Transport.

Efficiency of Claims Administration under a Multimodal Convention

The efficiency of Multimodal transport reflects in part the efficiency of the liability system that resolves claims for loss or damage occurring during transport. One Survey question concerned which of the two systems of liability would be most appropriate for any Convention governing Multimodal transport: the uniform or the network system. The uniform system establishes a level of liability that applies from

beginning to end of the transport. Under the network system, the level of liability varies as the goods are transferred from one mode of transport to another. Theoretically the uniform system is superior. Regardless of the place where damage occurs, a claimant whose goods outturn from a container in a damaged condition recovers a fixed amount, unless the MTO can prove absence of fault. Under a uniform system, all parties know where they stand and the costs of the administration of claims at the level of cargo claimant/carrier are reduced. In the network system, the legal regime applicable to the carrier who had possession at the time of the damage determines the level of compensation available to the claimant from the MTO. In most cases, this amount is below the level fixed by the Convention. In a network system, a shipper's interest in reliable compensation is "undermined" if there has to be an investigation of the circumstances of the claim to determine where the loss occurred to fix an amount recoverable. The amount recoverable is probably below the level for claims where the damage cannot be localized.

Why isn't the efficiency of claims administration sufficient to nudge shippers and carriers into acceptance of a Multimodal Convention? In my view, the totality of claims administration under Multimodal transport is not just to be judged by regarding the shipper/carrier claims situation.

An insurer who pays its insured's loss or liability to a claimant is subrogated, meaning it is a successor in law, to the rights of the insured against third parties whose negligence or breach of duty has caused or contributed to the claimant's loss. Insurers recover significant amounts from third parties through the exercise of rights of subrogation. In adjusting premiums insurers estimate the anticipated amount that these recoveries would bring. Where new laws are introduced that may affect the expected recoveries on a global basis, this estimation must be prudent. For the liability insurers of an MTO, these recoveries come from the actual carriers engaged by the MTO. So the cost of liability insurance for the MTO will increase as insurers factor in reduced recoveries against the actual carriers. The MTO must build these costs into its freight rates, which would put its services at a competitive disadvantage against other enterprises providing Multimodal transport using other commercially acceptable bills of lading.

In theory any improvement in total claims administration favours the long term efficiency of multimodal transport. The prospect of improvement should outweigh

any negative influence from reduced recoveries in recourse actions against the actual carriers, so that on balance recoveries will be a less significant factor in the total cost of insurance than at present. Still, to the question "Why isn't the efficiency of claims administration sufficient to nudge shippers and carriers into acceptance of a Multimodal Convention?" the answer is that carriers are very reluctant to espouse any system that presents a disadvantage, even in the short term, of an uncertain nature.

Establishing uniform principles of law by Convention

Certainly a single international convention subscribed to by a great majority of countries that imposes fair obligations and becomes the commercial standard for the service is the ideal. Clearly, the respondents to the Survey who support continuing efforts to establish a Multimodal Convention are concerned with proliferating national laws that make uniformity a more remote prospect. Ironically the circumstances that create the need for uniformity are a barrier to its accomplishment: the more countries that have enacted differing national laws, the greater the need for a Multimodal Convention, but the greater the barriers to countries reaching agreement on its substantive contents. As the cycle continues, the question is how can a uniform law be best achieved, assuming that achievement is possible.

The United Nations Commission on Trade Law (UNCITRAL) is attempting to develop consensus on a convention applicable to Multimodal transport involving sea carriage. The process towards consensus started with efforts over many years by a private international law association, the Comité International Maritime (CMI), to develop a maritime law convention that would supersede the Hague, Hague-Visby and Hamburg Rules. Recognizing the reality of transport of containers, UNCITRAL has provisionally adopted draft articles by which the Convention will also govern door-to-door transport. If it succeeds, the project will end up being a Multimodal Convention, applicable only where the carriage involves ocean transport. There is little doubt that the success of this initiative will make the 1980 Convention irrelevant, and will have a large impact on any future efforts to establish international Multimodal law of any sort.

Whatever reservations there may be regarding this initiative, there is general recognition that the UNCITRAL/CMI process has been a valuable contribution to the

analysis of principles that at least could be included in a Multimodal regime. For example, articles in the UNCITRAL Convention support the deployment of electronic commerce practices in ocean transport. Another feature, with, in my view, more positives than negatives, is the UNCITRAL Convention's coverage of issues from both the sale of goods and their transport. The scope of the UNCITRAL Convention goes well beyond the traditional areas governed by the Rules, which focus on carriers' obligations, exemptions and limitations of liability, and now addresses such matters as rights of lien, payment of freight, and transfer of rights in goods in transit. One particular benefit is that the UNCITRAL Convention will eliminate an outdated exemption from liability where damage has been caused by error in the navigation and management of the ship.

The consultative process followed by UNCITRAL/CMI ensured that parties engaged in the maritime industry, especially ocean carriers, played a large part in the formulation of principles to which it would be subject. This industry can be expected to view the ratification of the UNCITRAL Convention as a desirable step. The current round of bargaining among UNCITRAL Delegates reflects the lobbying of pressure groups within the maritime community, who have had the support, tacit or otherwise, of their governments in the "horse-trading" that has occurred as the legal text has been finalized.

One objective of ocean carriers is that the UNCITRAL Convention should recognize freedom of contract. The US Government has supported a proposal, first advanced by ocean carriers and their largest customers, that parties to an Ocean Liner Service Agreement should be able to negotiate liability terms different from the provisions of the UNCITRAL Convention. As the US Government stated in its submission to UNCITRAL:

"When the needs of commerce so require, however, commercial parties should be free to structure their transport arrangements as they see fit, which includes an agreement to derogate from the Instrument."
(A/CN.9/WG.III/WP.34, Para. 25)

UNCITRAL has now tentatively incorporated provisions in its current draft that give considerable scope to the "freedom of contract" proposed in the US submission. The recent Article 89 reads:

Notwithstanding chapters 4 and 5 of this instrument, both the carrier and any performing party may by the terms of the contract of carriage

(b) exclude or limit their liability for loss or damage to the goods if the character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that ordinary commercial shipments made in the ordinary course of trade are not concerned and no negotiable transport document or negotiable electronic record is or is to be issued for the carriage of the goods.

Should this proposal be accepted, any future Multimodal Convention would have to allow parties the right to exercise a similar freedom to negotiate terms inconsistent with its provisions.

Close consultation with the ocean transport industry may be regarded as the price to be paid for any Convention that will ultimately have a good chance of being accepted. Other transport industries that will be affected by the door to door scope of the UNCITRAL Convention, who have been outside the process until relatively recently, are not in favour of its door-to-door application. FIATA has consistently said that UNCITRAL should stick to the original objective of reaching international consensus on a new maritime convention to replace the Maritime Conventions currently in effect, the Hague and Hague-Visby Rules and the Hamburg Rules. If achieved, this objective would bring many benefits to world trade. If it had been resolutely pursued, the project might well have resulted in a Convention before now, leaving the way open for a Multimodal convention applicable to all modes, and not just to sea transport with inland places of origin and destination, if that is the true wish of Governments. My colleague, Professor William Tetley of the Faculty of Law, McGill University, Montreal, has expressed this point of view in words that are worth repeating:

"One may well ask whether it would not render a greater service to the international community if the drafters of the Instrument abandoned the pretension of covering "door-to-door" transport and gave the proposed new convention a purely "port-to-port" or "tackle to tackle" scope of application, which is what it really is."

As with any such large undertaking, there are unresolved difficulties. The process of extending any Convention door to door requires close consideration of other international conventions that govern inland transport. A number of potential conflicts with other modal Conventions have been identified, much as happened with the Multimodal Convention. In some cases a solution to these conflicts has not been found that satisfies the other transport industries concerned, which may well lessen the resolve of some countries to adopt the UNCITRAL Convention.

As a way of "bridging the gap between the port-to-port and door-to-door approaches", Canada proposed that the operative articles of the UNCITRAL Convention be divided into a Chapter whose provisions govern port-to-port activities only, and a second chapter whose provisions govern both port-to-port and door-to-door. Countries can ratify the UNCITRAL Convention but limit their ratification to only the port-to-port Chapter. Countries who prefer a door to door scope can ratify the second chapter.

This proposal has the diplomatic advantage that the UNCITRAL Convention will be ratified more quickly, but it has the disadvantage that different countries may adopt different "versions" of the same Convention. As the Canadian Note to UNCITRAL says:

"Effectively, there would be two separate conventions in a single instrument, sharing those provisions that would be common to both Chapters. "

Canada hopes that the entry into force of the UNCITRAL Convention would be a factor that would induce countries that initially ratified only the port-to-port provisions to move more quickly to adopt the full Convention.

There is a precedent for the situation that would probably result if Canada's proposal were accepted. I refer to the experience with the international Convention governing carriage by air, the Warsaw Convention and its amending Protocols that introduced important changes to the Warsaw Convention. Some countries ratified and implemented only the Warsaw Convention, which established the basic regime of air transport laws, while others went further and ratified Protocols. Depending upon what legal instrument has been ratified, the law of air transport varies from country to country. The result is unsatisfactory, as air carriers have had difficulty identifying

documentation or procedures that complied with the laws of the countries they serviced.

The result of following Canada's proposal may very much resemble the state of the Warsaw Convention as amended by the various protocols: the existence of a patchwork of laws. As each country applied whatever version of the Convention/Protocol it had adopted, the result in an individual case depended upon which court was seized of the claim, an environment that encouraged forum shopping. The air transport industry is finally on its way to overcoming the patchwork of laws by the Montreal Convention of 1999, which is on the verge of entering into force. Given the number of current ratifications of the Montreal Convention, the process will not be immediate.

UNCITRAL seems favourable to the segregation of port-to-port from door-to-door provisions. The proponents of this measure should demonstrate that the difficulties this method of ratification may bring are minimal or can be avoided by appropriate drafting. Otherwise countries wishing to foster an environment for the operation of MTO's should be wary of approving a ratification process leading to inconsistencies between laws based on the same Convention as adopted by different countries.

Principles that should be adopted in a Multimodal Convention

I have stated that certain principles incorporated in the 1980 Convention have considerable merit. I will close my brief remarks with a list of some of these principles that should be basic to any international law.

First, any Multimodal Convention should apply to all forms of Multimodal transport, whatever modes of successive transport might be used. Further analysis is necessary to see what accommodation is necessary or appropriate with existing transport conventions that incorporate provisions giving a modal convention a limited Multimodal scope.

Secondly, the basis of the MTO's liability should be expressed in general terms, and does not incorporate numerous specific exemptions from liability that I call pigeonhole defences. A principle stating a general basis of liability is much easier to apply to Multimodal carriage than pigeon holes that are necessarily modal in operation.

Thirdly, Article 31.4 of the 1980 Convention does provide directions how ratifying states can maintain the real value of the units of account applicable to limitation of liability. Even with the introduction of the Special Drawing Right as the unit of account, problems of currency devaluation are acute, so this direction should be incorporated in any Convention.

Fourthly, the burden of exoneration from liability should be upon the MTO, as it is in the 1980 Convention.

Conclusion

My conclusion as to where the future of Multimodal transport law lies is based upon remarks by Professor Emeritus Jan Rambergs, one of my predecessors as Chair of the FIATA Advisory Body Legal Matters, who is a contributor to Forwarderlaw.

" . . . the need is stressed to achieve: "an international legal régime providing easily understandable, transparent, uniform and cost-effective liability provisions for all relevant transport operations, including transshipment and temporary storage, from the point of departure to the point of final destination". It is hard to disagree with that objective."

I concur. The countries of the world should adopt these clear principles as the basis of the international rule of law for Multimodal transport. UNCTAD still has an important role to play in the support of these principles.