LIABILITY ISSUES IN MULTIMODAL TRANSPORT OF GOODS

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Abstract

Multimodal transport comprises at least two different modes of transport on the basis of a multimodal transport contract. Liability issues in multimodal transport of goods are the legal issues for the international transport, since it may involve two legal systems or more. These issues can be solved by making of single carriage contract by their agreement. Issues are concerned with basis of liability, period of responsibility, exclusion of liability, limitation of liability, loss of right to limit liability, time bar for suit, liability of carrier for his agents and servants etc. The focuses of the paper is to present the possible issues and possible application of legal documents relating to international multimodal transport. Relating to the liability issues, existing unimodal conventions applicable to the separate legs of multimodal carriage, existing multimodal legal documents and Myanmar Laws are compared and analysed in this paper.

Keywords: Multimodal Transport Operator, Multimodal Transport Convention, Unimodal Transport Convention, International Conventions, Regional Agreements, National Law.

Introduction

International trade involves the transport of goods from one country to another. Such transport may be executed by sea, air, rail or road or by a combination of these modes of transportations. If it is done by only one mode of them, the international transport is unimodal transport. And if it is carried out by a combination of them, it is combined or multimodal transport. Nowadays, trade parties mostly used the multimodal transport system than unimodal transport system since multimodal transport system can be faster transit of goods and more efficient way of getting goods to market.

The term international multimodal transport means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from the place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country[2]. Therefore multimodal transport comprises at least two different modes of transport on the basis of single multimodal transport document.

When the goods are conveyed from one country to another by multimodal transport, containers are largely used. Thereupon, it may be incurred loss of or damage to the goods or late delivery of the goods. If such loss or damage could be localized, it would be applicable by relevant laws which is occurred the loss, damage or delay of the goods during the course of transport. It can be solved for only localized damaged, however, not for non-localized damaged or loss. If the loss could not be localized, it will be difficult to choose the applicable law. The multimodal transport contract needs the uniform applicable law such as CMR for the international transport. The United Nation Convention on Multimodal Transport of Goods was attempted by United Nations in 1980, but it not yet come into force. ASEAN Framework Agreement on Multimodal Transport was signed by ASEAN countries in 2005. Myanmar as being a member of ASEAN, she also has enacted Multimodal Transport Law of Myanmar in 2014. For example, liability for loss in sea transport is

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[2] Article 1 of United Nation Convention on International Multimodal Transport of Goods, 1980.

usually governed by The Hague or Hague-Visby Rules, liability for loss in land transport (which covers carriage by rail and road) is concerned by the CMR or CIM which is mainly applicable in Europe, and liability for loss in air transport is applied by Warsaw Convention. Therefore, liability issues may be treated by different legal systems and it may cause the conflict of laws problems.

Different Liability Issues

When the goods are suffered the damages, in carrying the goods by container, it cannot be known where the stage of damages occurred, since multimodal transport involves at least two different modes of transport. Thereupon it will be chosen the applicable law for the respective issue in order to solve that problem according to the private international law rules, since there is no uniform liability in their legal provisions. It can differ with regard to the liability requirement such as basis of liability, period of responsibility, exclusion and limitation of liability and time bar for suit.

1. Basis of Liability

Generally, basis of liabilities are almost the same. The carriers are liable for loss of or damage to the goods as well as delay in delivery if such events were caused while in his charge.

In the sea carriage, The Hague Rules and the Hague/Visby Rules are in force between a significant numbers of states. However, they do not regulate the multimodal carriage. The sea carrier is liable for damage resulting from loss of or damage to the goods as well as from delay in delivery if the occurrence which caused the loss, damage or delay took place while the goods were in his charge.[1] It is based on the presumed fault. Carriage of goods by road is covered by the CMR (Convention on the Contract for the International Carriage of Goods by Road). The CMR applies to every international contract for the carriage of goods by road in vehicles for reward; the road carrier is under a duty to perform the carriage of the goods safely and without delay. The vehicles used by the carrier for the carriage must be suitable and fit for its purpose. In case of total or partial loss of the goods during transit or in the case of delay in delivery, the carrier is presumed to be liable for the damage.[2] The COTIF/CIM (Uniform Rules concerning the Contract of International Carriage of Goods by Rail) should be the system of uniform law concerning the contract of international carriage of passengers and goods in international through traffic by rail, including complementary carriage by other modes of transport subject to single contract. Relating to the carriage by rail, the rail carrier is under a contractual duty to perform the carriage of goods by rail safely and without delay. In case of damage or loss of the goods during transit or delay in delivery, the carrier shall be liable.[3]As regards the carriage by air, the provisions regarding multimodal carriage in the Warsaw Convention and the Montreal Convention are quite similar. Article 31 of the Warsaw Convention provides that in the case of combined carriage performed partly by air and partly by any other mode of carriage, provisions of the Warsaw Convention apply only to the period of the carriage by air. Furthermore, the period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. The air carrier is obliged to make the

[1] Article 5(1) of the Hamburg Rules, 1978.
[2] Article 17 of the CMR, 1956.
[3] Article 36(1) of CIM, 1980.

performance of his contractual duty to carry safely and without delay. If he fails to do so and then the register of the goods was damage or loss and delay in delivery,[1] he is deemed to be liable.

In order to achieve uniform liability and avoid conflict of laws problems for multimodal transport, it was attempted by United Nations in 1980. This is United Nations Convention on Multimodal Transport of Goods, 1980. The UN Multimodal Convention promotes a uniform solution to the problem of defining the basis of liability undertaken by the multimodal transport operator (MTO). Subject to the few exceptions, the liability of the MTO does not depend on the segment of the transport at which the loss occurs. Consequently, as the basis of the MTO's liability concerns, there is no need to distinguish between "localised loss" and "unlocalised loss"[2]. The basis liability of MTO is based on the "presume fault or neglect". This is similar to the Hamburg Rules.

The liability of the MTO under the Rules is based on the principle of presumed fault or neglect. That is provided that the MTO is liable for loss of, or damage to, the goods and for delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge, unless he proves that no fault or neglect of his own, his servants or agents or any other person referred to in Rule 4 has caused or contributed to the loss, damage or delay in delivery. However, the MTO is not liable for the loss following delay in delivery unless the consignor has made a declaration of interest in timely delivery which has been accepted by the MTO.[3] If the multimodal transport involves carriage by sea or inland waterways, the MTO will not be liable for "loss, damage or delay in delivery with respect to goods carried by sea or inland waterways when such loss, damage or delay during such carriage has been caused by: - act, neglect or default of the master, pilot or the servants of the carrier in the navigation or in the management of the ship, fire, unless caused by the actual or privity of the carrier.[4]These defences, however, are made subject to an overriding requirement that whenever loss or damage resulted from unseaworthiness of the vessel, the MTO must prove that due diligence was exercised to make the ship seaworthy at the beginning of the voyage. The provisions of the Rule 5.4 are intended to make the liability of the MTO compatible with the Hague-Visby Rules for carriage by sea or inland waterways.

In order to harmonize the multimodal transport rules and regulations within the sub region, ASEAN has begun to negotiate since 1996. The ASEAN Framework Agreement on Multimodal Transport was signed on 17th November 2005 at Vietnam. The Framework Agreement is applied to all MTOs under the register of each competent national body and all contracts of multimodal transport, if the place for the taking in charge or delivery of the goods is located in a member country.

The MTO is liable for loss resulting from of, or damage to, the goods as well as from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge, unless he proves that he, his servants or agents, etc., took all measures that could reasonably be required to avoid the occurrence and its consequences. However, the multimodal transport operator shall not be liable for loss following from delay in delivery unless

[1] Article 18 and 19 of the Warsaw Convention, 1929.
[2] https://www.pravo.unizg.hr/_download/repository/Marin.pdf.p-8.
[3] https://unctad.org/en/PublicationsLibrary/tradewp4inf.117_corr.1_p-8.
[4] Rule 5 of UNCTAD/ICC Rules for Multimodal Transport Document, 1992.

the consignor has made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator[1]. Thus, MTO is not liable if he can prove any exclusion of liability

Myanmar has no law that specifically defined for multimodal transportation before 2014. When disputes arising out of multimodal transport operation will been governed by existing Myanmar laws. Nowadays the liability issues of MTO have been solved by Multimodal Transport Law in Myanmar 2014. Although this provision is nearly like to ASEAN Framework Agreement on Multimodal Transport, 2005, some provisions are differ to United Nations Convention on Multimodal Transport of Goods, 1980 and UNCTAD/ICC Rules, 1992.

The liability of the MTO under the Multimodal Transport Law is liable for the acts and omissions of his servants or agents, when any such servants or agents is acting within the scope of his employment, or of any other person of whose services he made use for the performance of the contract, as if such acts and omissions were his own[2]. It is based on the principle of presumed fault or neglect. However, the MTO is not liable for the loss following delay in delivery unless the consignor has made a declaration of interest in timely delivery which has been accepted by the MTO.

2. Period of Responsibility

With regard to the period of responsibility, each legal system is differed. Some are defined that "from the time of loading the goods to the time of delivering". However, some are defined that "from the time receiving for the carriage of the goods to the time of delivering".

Relating to the carriage by sea, the period of responsibility is that "from the time when the goods are loaded on to the time they are discharged from the ship"[3]. Therefore it cannot be responsible for that "before loading the goods ad after being discharge the goods from the ship". As a general rule the shipowner is only bound to deliver over the ship's side. This principle was covered in the case of Petersen v. Freebody & Co.[4] In this case, a cargo of spars was to be discharged "overside into lighters". The consignee provided lighters at the ship's side, but did not employ sufficient men in the lighters to take delivery within the time fixed for unloading. The shipowner sued for damages in respect of the delay. Held, by the Court of Appeal, that the shipowner was not bound to put the spars on board the lighters. His duty was simply to put them over the rail of the ship and within reach of the men on board the lighters. Consequently the consignee was liable for the delay in unloading. This responsibility is mean that tackle to tackle period. According to Article 4 of the Hamburg Rules, the period of responsibility was covered that "the period of during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge". This is construed as covering the "port to port" responsible. Therefore the carrier is responsible for the damages resulting in taken in his charge from port to port.

In road carriage, it is defined that "the place of taking over of the goods and the place of discharged for delivery"[5]. Therefore it may responsible from the time when they received the goods for the carriage to the time when they delivered the goods to the consignee. It is nearly like the

[1] Article 10 of ASEAN Framework Agreement on Multimodal Transport, 2005.
[2] Section 17 of Multimodal Transport Law, 2014 is similar Article 10 of the ASEAN Framework Agreement, 2005.
[3] Article 1(e) of the Hague-Visby Rules, 1968.
[4] Petersen v. Freebody & Co., [1895] 2 Q.B. 294.
[5] Article 1(1) of CMR, 1956.

Hamburg Rule. In rail carriage, it is provided that "from the forwarding station to the destination station"[1]. It may agree to define the place by making special agreement. It means that port to port responsibility as sea carriage under Hamburg Rules. The period of responsibility in carriage by air is that "the period during which the goods are in charge of the carrier".[2] It may be air port to air port responsibility.

Under the United Nation Convention on International Multimodal Transport of Goods, the period of responsibility of the MTO includes "the period from the time he takes the goods in his charge until the time of their delivery[3]. It is almost the same as the Hamburg Rule and CMR.

According to the ASEAN Framework Agreement 2005, the period of responsibility of the MTO covers the period from the time he taken the goods in his charge to the time of their delivery.[4] It is similar to the UN Convention.

As regard the period of responsibility of the MTO, section 16 of Multimodal Transport Law 2014 provided that "the period from the time he takes the goods in his charge until the time of their delivery. It is similar to ASEAN Framework Agreement.

3. Exclusion of Liability

Although goods have been lost or damaged whilst in the custody of the shipowner, he is not necessarily responsible, for his liability in respect of them may have been excluded by the rules of the Common Law or by the express terms of the contract or by statute.

Common Law exceptions comprise act of God, act of Queen's enemies, inherent vice in the goods themselves, the negligence of the owner of the goods and a general average sacrifice. If cargo damages were caused by any of them, the sea carrier is not responsible for it. The carrier is entitled to exclude his liability if he can prove that the loss, damage or delay in delivery is in the scope of "the exclusions of the carrier's liability" under special Rules.

Under the Hague-Visby Rules, exclusion of liability covered fault in both the navigation and management of the ship. The sea carrier is not liable for loss, damage or delay in delivery if the carrier can prove that the loss, damage or delay in delivery caused by;- (a) act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship,(b) fire unless caused by the actual fault or privity of the carrier, (c) perils, dangers and accidents of the sea or other navigable waters, (d) act of God, act of war, act of public enemies, (e) arrest or restrain of princes, rulers or people, or seizure under legal process, (f) quarantine restrictions, (g) act of omission of the shipper or owner of the goods, or his agent, (h) strike or lockouts or stoppage or restrain of labour from whatever cause, whether partial or general, (i) riots and civil commotions, (j) saving or attempting to save life or property at sea, (k) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice or the goods, (l) insufficiency of packing or marks, (m) latent defects not discoverable by due diligence, (n) any other cause arising without the actual fault or privity of the carrier, his agent or servants[5].

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[1] Article 27(1) of CIM, 1980.
[2] Article 18(2) of the Warsaw Convention, 1929.
[3] Article 4.1 of UNCTAD/ICC Rules for Multimodal Transport Documents, 1992.
[4] Article 7 of the ASEAN Framework Agreement, 2005.
[5] Article 4, Rule 2 of the Hague-Visby Rules, 1968.

According to Article 5 of the Hamburg Rules, in the carriage to live animals, the sea carrier is not liable for loss, damage or delay resulting from any special risks inherent in those kinds of carriage.

The road carrier will be relieved of liability if the loss, damage or delay was caused:- by the wrongful act or neglect of the claimant, or by the instruction of the claimant, or by inherent vice of the goods, or by unavoidable circumstances, or by one of the special risks. The special risks are the use of open, unsheeted vehicles, or the lack or defective condition of packing of the goods, or the handling, loading, storage or unloading of the goods by the sender, the consignee or its servants, or the vulnerable nature of the goods, or the insufficiency or inadequacy of marks or numbers on the package, or the carriage of livestock[1]. If the road carriage is performed in vehicles specially equipped to protect the foods from the effects of heat, cold, variation in temperature or the humidity of the air, the road carrier cannot claim the benefit of the special risks such as the vulnerable nature of the goods, unless he prove that all steps incumbent on him in the circumstance with respect to the choice, maintenance and use of such equipments were taken and he complied with any special instructions issued to him. To be able to rely on the exception for special risks, the road carrier must prove that he took all steps "normally incumbent on him in the circumstances" and that he complied with any special instructions given to him[2].

The railway that received the goods for carriage together with the consignment notes is not liable for the loss, damage or delay was caused by the owner of the person entitled to the goods, inherent vice of the goods, unavoidable circumstances, one of the lists of inherent special risks.[3]The air carrier is not liable if he proves that he and his servants have taken all the necessary measures to avoid the damage, or that he was prevented from taking them[4]. Further, the carrier proves that the damage was caused by the negligence of the injured person; he shall be wholly or partly exonerated from his liability[5]. In addition, the carrier is not liable if he can prove that the damage was caused by inherent defect, quality or vice of that cargo, defective packing of that cargo performed by a person other than the carrier or his servants or agents, an act of war or an armed conflict, an act of public authority.

Under the UN Convention, the MTO is not entitled to limit his liability if he proved that the loss, damage or delay resulted from a personal act or omission of the MTO done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result[6]. Thus, a distinction is made between the MTO's own behaviour and the behaviour of others, and the MTO does not lose his right to limit liability in cases where he is only vicariously liable for acts or omissions of' other persons.

According to the ASEAN Agreement, The MTO entitles to relieve from his liability if he proves that the loss, damage or delay was caused by any of the circumstances:- force majeure; act or neglect of consignor, the consignee or his representative or agent; insufficient or defective packaging, marking, or numbering of the goods; handling, loading unloading, stowage of the goods effected by the consignor, the consignee or his representative or agent; inherent or latent defect in the goods; strike, lock-out, work stoppage, total or partial restraints on labour; with respect to goods

[1] Article 17 of the CMR, 1956.
[2] Article 18 of the CMR, 1956.
[3] Article 36 of the CIM, 1980.
[4] Article 20(2) of the Warsaw Convention, 1929.
[5] Article 24 of Amended Warsaw Convention, 1955.
[6] Rule 7 of UNCTAD/ICC Rules for Multimodal Transport Documents, 1992.

carried by sea, or inland waterways, when such loss, damage, or delay during such carriage has been caused by; act, neglect or default of the master, mariner, pilot or the servant of the carrier in the navigation or in the management of the ship; or fire unless caused by the actual fault or privity of the carrier. However, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the multimodal transport operator can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage[1].

Under the Multimodal Transport Law 2014, the MTO entitles to relieve from his liability if he proves that the loss, damage or delay was caused by any of the circumstances:- act or neglect of consignor, the consignee or his representative or agent; insufficient or defective packaging, marking, or numbering of the goods; handling, loading unloading, stowage of the goods effected by the consignor, the consignee or his representative or agent; inherent or latent defect in the goods; strike, lock-out, work stoppage, total or partial restraints on labour; act of God or force majeure.

With respect to goods carried by sea, or inland waterways, when such loss, damage, or delay during such carriage has been caused by; act, neglect or default of the master, mariner, pilot or the servant of the carrier in the navigation or in the management of the ship; or fire unless caused by the actual fault or privity of the carrier.[2] However, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the multimodal transport operator can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

4. Limitation of Liability

According to Article 4(5) of the Hague Rules 1924, the sea carrier's liability for loss or damage to the goods is limited to 100 pounds sterling per package or unit. However this amount was amended in Article 4(5) of the Hague-Visby Rules1968 which is 666.67 SDR per package or unit or 2 SDR per kilogram of gross weight of the goods, whichever is the higher. According to annex I, article 6(1)(a) of the Hamburg Rules, liability limits were set at 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher. The liability of the sea carrier for delay in delivery is limited to an equivalent to 2½ times the freight payable for goods delayed but not exceeding the total freight payable under the contract. However, the sea carrier is not entitled to limited his liability if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with intent to caused such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result. If it is caused by his servants or agents, it cannot be limited to his liability. Under the Rotterdam Rules, liability limits were set at 875 SDR per package or unit or 3 SDR per kilogram of gross weight of the goods, whichever is the higher. This issue may be of crucial importance to the MTO if he falls within the definition of the carrier. It is also very important issue in cases when MTO, after paying damages to the cargo owner for the goods lost during the sea transport, brings recourse action against (maritime) performing carrier liable for the damage occurred. The (maritime) performing carrier also has the right to limit his liability according to the applicable conventions.[3]

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[1] Article 12 of ASEAN Framework Agreement on Multimodal Transport, 2005.

[2] Section 22 is similar Article 12 of ASEAN Framework Agreement on Multimodal Transport, 2005.

[3] Jasenko Marin, The Harmonization of Liability Regimes Concerning Loss of Goods During Multimodal

Under the CMR as amended by the 1978 Protocol, the carrier's liability is limited up to 8,33 SDR per kg of gross weight short. The sender has the option to declare the value of the goods in the consignment note in order to avoid this limitation. In addition, the carrier has to refund in full the carriage charges, customs duties and other charges incurred in respect of the carriage of the goods. In case of delay in delivery damages are limited that is not exceeding the amount of the freight.[1] It is not exceeding the carriage charges. In case of willful misconduct on the part of the carrier, the road carrier's liability is unlimited. The liability of the rail carrier is limited to fixed amounts. It is 17 units of account per kilogram of gross-mass short and refund of carriage charges and other amounts incurred in connection with the goods.[2] The liability of the air carrier is limited to a sum of 17 SDR per kilogram[3]. But if the damage resulted from an act or omission of the air carrier, his servants or agents, done with intent to cause damage, his liability is unlimited. In addition, if the air carrier accepts the goods for carriage by air, without issuing an air way bill in accordance with article 8 of Warsaw Convention, his liability is unlimited as well.[4]

According to Rule 6.1of the UNCTAD/ICC Rules for Multimodal Transport Document 1992, unless the nature and value of the goods have been declared by the consignor and inserted in the multimodal transport document, the MTO shall not be liable for any loss of, or damage to, the goods in an amount exceeding the equivalent of 666.67 SDR per package unit, or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher. A higher limit is provided for cases where the multimodal transport does not, according to the contract, include carriage by sea or inland navigation. In such a case liability of the MTO is limited to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged, without any reference to package limitation which is more appropriate for sea transport. This solution is inspired by the corresponsive solution of the CMR. If a case was delay in delivery of the goods, it is limited to an amount not exceeding the equivalent of the freight under the multimodal transport contract[5]. Additionally, in the cases of "localised loss" in respect of which an applicable international convention or mandatory national law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of the MTO's liability shall be determined by reference to the provisions of such convention or mandatory national law.[6]

Under Article 14 0f the ASEAN Framework Agreement on Multimodal Transport, the MTO shall in no event be liable for any loss or damage to the goods in an amount exceeding the equivalent 666.67 SDR per package or unit, or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher. However, the multimodal transport does not, according to the contract, include carriage by sea or inland waterways, the limits of liability of the MTO are increased to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged. The MTO's liability for loss resulting from delay in delivery, or consequential loss or damage is limited to an amount not exceeding the equivalent of the freight under the MT contract.[7]

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[1] Article 23 of the CMR, 1956.
[2] Article 40 of CIM, 1980.
[3] Article 22 of Amendment Warsaw Convention, 1955.
[4] Article 9 of the Warsaw Convention, 1929.
[5] Rule 6 of UNCTAD/ICC Rules for Multimodal Transport Document, 1992.
[6] https://www.pravo.unizg.hr/_download/repository/Marin.pdf.p-10.
[7] Article 18 of the ASEAN Framework Agreement on Multimodal Transport is similar Rule 6 of UNCTAD/ICC Rules for Multimodal Transport Document, 1992.

The aggregate liability of the multimodal transport operator shall not exceed the limits of liability for total loss of the goods.

The MTO, however, is not entitled the limitation of liability if it is proved that the loss, damage or delay resulted from his personal act or omission done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.[1]

According to Myanmar Multimodal Transport Law 2014, unless the nature and value of the goods have been declared by the consignor before the goods have been taken in charge by the multimodal transport operator and inserted in the multimodal transport document, the MTO shall in no event be or become liable for any loss or damage to the goods in an amount exceeding the amount of special drawing right imposed by rules issued under this law with reference to the international convention or the regional agreement related to multimodal transport for each package or for the gross weight of the goods lost or damaged.[2] If the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of MTO shall be limited to an amount not exceeding the amount of special drawing right for the goods lost or damaged with reference to the rules issued under this Law composed by the international convention or the regional agreement related to multimodal transport for each package or for the gross weight of the goods lost or damaged. The MTO's liability for loss resulting from delay in delivery, or consequential loss or damage is limited to an amount not exceeding the equivalent of the freight under the MT contract.[3] The aggregate liability of the multimodal transport operator shall not exceed the limits of liability for total loss of the goods. The MTO, however, is not entitled the limitation of liability if it is proved that the loss, damage or delay resulted from his personal act or omission of the MTO done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

5. Time Bar for Suit

According to Hague-Visby Rules, the term of limitation within which claims against the sea carrier must be brought, is one year from the day of delivery.[4] Under the Hamburg Rules, it is two year.[5] The term of limitation for claims arising out of the carriage of goods by road is one year from the discharge of the goods. If it is willful misconduct by the carrier, the term of limitation is three years.[6] The term limitation for bringing claims against rail carrier is one year. However, in case of willful misconduct or fraud by the rail carrier, the term of limitation is two years.[7] The onus of proving willful misconduct or fraud on the part of the rail carrier rests on the claimant. The term of limitation for action on the air carrier is within two years from the date of arrival at the destination or ought to have arrived or the carriage stopped.[8] The term of limitation for claims arising out of the carriage of goods by road or by rail is one year. This provision is similar to

[1] Ibid, Article 20 is similar Rule 7 of the UNCTAD/ICC Rules for Multimodal Transport Document,1992.
[2] Section 26 of Multimodal Transport Law 2014 is similar Article 16 of the ASEAN Framework Agreement, 2005.
[3] Section 30 of Multimodal Transport Law 2014 is similar Article 18 of the ASEAN Framework Agreement, 2005 and Rule 6.5 of the UNCTAD/ICC Rules Multimodal Transport Document, 1992.
[4] Article 3 (6) of the Hague-Visby Rules, 1968.
[5] Article 20 (1) of the Hamburg Rules, 1978.
[6] Article 32 (1) of the CMR, 1956.
[7] Article 58 (1) of the CIM, 1980.
[8] Article 29 of the Warsaw Convention, 1929.

Hague-Visby rules. For the air carrier, the term of limitation of action is within two years. This provision is similar to Hamburg Rules.

Under The UNCTAD/ICC Rules for Multimodal Transport Document 1992, limitation of action is provided 9 months.[1] Thus, the MTO will be relieved from liability unless the suit is brought within 9 months after delivery of the cargo, or of the date when the cargo should have been delivered.

According to ASEAN Framework Agreement 2005, limitation of action is nine months. The period commences from the time of delivery of the goods, or if they have not been delivered, the date they should have been delivered or the date the consignee would have the right to treat the goods as lost.[2]

Under Section 42 of Multimodal Transport Law 2014, limitation of action shall be in accordance with specific promulgations of any rules, notification, order, directive and procedures issued under this Law. Unless such provision is provided it shall be performed in accord with the provisions in existing Laws. If it differs to international convention and regional agreement, there were be issued related to multimodal transport operation.

Conclusion

This paper mainly focuses on the liability of multimodal transport operator on the basis of the comparative analysis are of the Multimodal Transport Convention, Unimodal Transport Convention and Myanmar Law. When the goods are suffered the damages, in carrying the goods by multimodal transport, it known where the stage of damages occurred. The judge or arbitrator has difficulty to find the location the place where it was caused. It is going to be used by only one contract from the beginning to the end. The separate convention of multimodal transport could not have a location problem.

In order to uniform liability provisions for multimodal transport, commercial parties enacted national and regional laws which are based on United Nations Convention on Multimodal Transport of Goods 1980, UNCT AD/ICC Rules for the Multimodal Transport Document 1992 and Convention on Contracts for International Carriage of Goods Wholly or Partly by Sea, 2009(The Rotterdam Rules), among them 1980 UN Convention and The Rotterdam Rules are not yet come into force. UNCT AD/ICC Rules for the Multimodal Transport Document was entered into force in 1992. Most of European Countries and China, India and ASEAN organization in Asia have enacted national law in line with Multimodal Transport Convention. Myanmar as being a member of ASEAN, she also has enacted law for Multimodal Transport in line with the ASEAN Framework Agreement on Multimodal Transport.

In order to avoid conflict of laws problem and the different liability issues relating to multimodal transport operation, the shipper and carrier may strictly express the applicable law when they made the multimodal transport contract or ratifying the international conventions/regional regulation for multimodal transport. They can make only single contract of carriage. If fail to do so, it will be treated the conflict of laws problems for the different liability issues. In my conclusion single contract for multimodal transport system is the best way to solve

[1] Rule 10. UNCTAD/ICC Rules for Multimodal Transport Document, 1992.
[2] Article 23 of the ASEAN Framework Agreement on Multimodal Transport, 2005.

the legal issue of liability in transport industry and it will help the development of the country's economy with less issue any form of international and regional legal instrument.

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