Some peculiarities of legal regulation of multimodal cargo transportation in Uzbekistan

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SOME PECULIARITIES OF LEGAL REGULATION OF MULTIMODAL CARGO TRANSPORTATION IN UZBEKISTAN

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Annotation: This article studies the legal regulation of cargo transportation by various modes of transportation, it is noted that international trade and the improvement of transportation technologies have greatly contributed to the growing popularity of multimodal transport, and although they are recognized as the transportation mode of the future, the legal framework governing this type of transportation has not been still formed. It is justified in the article that despite the fact that Uzbekistan provides support for business logistics, the lack of a legislative framework for multi-modal transportation greatly complicates the process of international transportation of goods.

Keywords: multimodal cargo transportation, international cargo transportation, law, contract, development.

Nowadays Uzbekistan pays a great attention to the development of foreign trade and the issues of transportation cannot left out of focus in this regard. As a result of the large-scale work done, trade with...
border countries is growing at a perceptible pace, and today the growth is 140%, which places increased demands on the development of the transport and communications complex. According to the results of 2017, the total volume of international cargo transportation by railway, automobile and air in Uzbekistan amounted to about 33 million tons. The share of transport services in total GDP was 6.6%. We are interested in forming a developed network of transport corridors of regional significance [1] stated Minister of foreign trade on International Conference on the development of transport and transit potential of the Central Asian region: “Central Asia in the system of international transport corridors: strategic prospects and untapped opportunities.” This conference was held to make a dialog in resolving problems of transportation.

The sharp increase in the international carriage of containerized cargo by two or more different modes of transport has led to a sharp emphasis on the practical importance of applying international regulations governing this particular type of transport. Currently multimodal cargo transportation has become very popular. Transport is a considerably important element of modern world economy, because it supplies the delivery of cargo to any place. However, the location of some destinations makes it impossible to provide delivery only by one mean of transport, so that multimodal transportation’s role exceeds. According to Convention on International Multimodal Transport "International multi modal transport" means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multi modal transport operator to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as international multi modal transport [2].

The role of multimodal cargo transportation in international trade is determined by its participation in improvement of foreign economic relations’ effectiveness.

Competition between different modes of transport in international traffic leads to a gradual equalization of legal modes of transportation, mainly the responsibility of carriers. The unification of international transport law remains a strategic goal, but the gradually expanding use of multimodal transport of goods contributes to the trend of such unification. Currently, when the technical capabilities to ensure timely and safe delivery of goods are at a high level, objective economic prerequisites have been formed for the formation of its single unified legal regime. In this sense, intermodal transportation of goods can be considered as a preliminary model and the first step towards achieving this goal. Efficient organization of multi modal cargo transportation is a highly important feature of mobilization of investment in our economy. Creation of legal base on development of multi modal cargo transportation will undoubtedly ease trade-transport operations done by two and more means of transport basing on one document. Also electronic exchange of documents has a great importance in work harmonization of MTO, carriers, state entities, banks, insurance companies [3, 79].

Maria Anna Ida HenritteHoeks states the existence of 2 main two specific conditions a contract has to meet for it to be considered multimodal. The first condition is that the carriage should be based on one single contract between a consignor and a carrier. When a multimodal carrier accepts a consignor’s business, he agrees to be responsible for the complete movement of the goods even though in general it is unlikely that he will carry the goods with his own vehicle or vessel for more than one stage. The second essential characteristic of the multimodal contract of carriage is that it prescribes – or allows for – the use of more than one mode of transport in the performance of the contract. The Genoa Draft Convention on International Combined Transport of 1967 for example defined international combined transport as the “transport of goods which according to the contract consists of at least two stages, one of which is by sea and the other(s) by air, road, rail or inland waterways, between two countries” [75, 10].

Legal regime of multimodal transportation is an order of regulative influence on social relationship between multimodal transport operator and consignor. The regime determines the proceeding of entering into a contract, its fulfilment, change, amendment, cancellation and other features. Currently multimodal legal relationship is mostly regulated by contracts, legal regulation is greatly lag in both national and international level. It is a proven fact that the base of multimodal cooperation should be a legal civil contract. As there is no law regulating multimodal transportation, the main document adjusting relationship in this area becomes contract.

Multimodal contract is a bright example of organizational agreement, because it includes the clause on subject of the contract constituting from two parts: the first one states the conditions of cargo transportation from the beginning of the route till the end; the second one is functional, which determines the measures to be taken in order to get the economic aim of the contract – to deliver the cargo.
Multimodal transportation is done by a big transportation company (or expeditor) which is called multimodal transportation operator, it concludes transportation contract with consignor and then deals with different carriers. MTO becomes responsible for goods and then obtains the right to regress the claim against the carrier that was blame for the loss. During multimodal transportation each carrier gets cargo from the previous one and fulfills its obligation to deliver the goods till appropriate destination at stated part of the way, this agreement has been concluded by the first company. By awarding the contract transportation company of the place of departure acts also on behalf of other carriers, moreover it agrees with their participation in the contract by signing a waybill where all transshipping points are clearly identified. So that each carrier becomes a party of the contract.

However, the basic rule of privacy of contact doctrine [4] states that only a party to a contract may sue, or be sued on it. It is obvious that a third party can neither sue nor be sued, however it may be closely connected with the contract. Third parties are also prevented from benefiting directly from any exemption clauses or defenses in the contract. The basic rule of privacy of contract is that only the parties to a contract may sue on it. The Rule applies to the multimodal transportation contract. In form, it is the consignor who contracts with the MTO, and when he does, he is therefore competent to sue for breach of contract. In reality, however, the consignor who has contracted with the MTO is usually not the person who suffers the loss when the goods are damaged during carriage and he thus has no claim against the MTO [5, 132]. Christine Besong considers that the multimodal transport operator will contract to carry the goods to their final destination irrespective of actual carriage on his part. He takes on himself the physical and legal responsibility to ensure that the goods are carried to their final destination [6, 39].

At the same time, article 713 of Civil Code of the Republic of Uzbekistan states that collaboration between transportation organizations for transportation by various means of transport is done according to one document, and the organization of such kind of transportation is regulated according to the legislation on direct combined (mixed) transportation. However, the norms established by this article do not fully covers the legal peculiarities of combined transportation, the biggest gap here is that the article do not state the legal position on MTO. Moreover there is no any legal definition of multimodal transport operator, what leads to various misunderstandings in transportation process. With regard to international transportation, the concept of “operator” was introduced in Uniform rules on multimodal transport documents issued by International Chamber of Commerce in 1973. Mandatory availability of this subject in transportation activity is mentioned in the definition of such transportation proposed by United Nations Convention 1980.

There are two systems to establish the carrier’s liability in the loss or damage of goods, namely the uniform and network system of liability. Under the “uniform” system, the same liability regime is applied to the entire multimodal transport, irrespective of the stage at which the loss or damage occurred. Under the “network” system, the liability of the multimodal transport carrier for localized damage (i.e. damage known to have occurred during a particular stage of transport) is to be governed by reference to the international convention or national law applicable to the unimodal stage of transport during which the damage occurred [7].

Basing on abovementioned it is to be considered that multimodal contract is a type of civil contract according to the legislation of the Republic of Uzbekistan, however, there is no single approach to it. The main issue on regulation of multimodal transportation is creation the construction of this contract and its legal support. Cargo transportation can be fulfilled basing on contract of multimodal transportation and its single elements such as contract on organizing the transportation, freight forwarding agreement. According to the content of the contract, it is the service contract. All these is necessary to make a good sample of the contract taking into consideration contract subject and carrier’s liability.

Christine Besong stated that the MTO can contract to do both: Carry and Procure. In this case he will carry over part of the carriage contract and procure the parts that he does not carry to others, but at all times being responsible for the goods under the contract until they are delivered at destination.

In international law exists sui generis doctrine which is a Latin term which means ‘being the only example of its kind’, or ‘constituting a class of its own’, ‘unique’. Those who adhere to the sui generis doctrine pertaining to the multimodal contract [11] find justification for their views in the fact that the multimodal contract does not simply comprehend the agreement for carriage, but also the important additional services inherent to multimodal transport such as transferral and – frequently – storage. They do not consider it a mere contract for the carriage of goods. They deem it a contract which encompasses...
the complete organization of the transport chain, which results, in their view, in far more obligations for
the multimodal carrier than a pure addition of the obligations of the unimodal carriers involved [12].

It is a highly debated question, are the second and subsequent carriers the parties to the contract or
they are third parties involved in the performance of obligations? [8, 39] On this issue, there is an active
discussion, a number of authors believe that all participating carriers are independent participants of a
single relationship for the carriage of goods, so everyone is responsible for his own fault in the improper
performance of obligations. Other authors express the position that the initial carrier is responsible for the
subsequent carrier to fulfill the carriage to the end [9, 36].

For example Yu Zhang considers that the multimodal transport contract between the consignor
and the MTO defines the responsibility undertaken by the MTO. Thus a MTO may undertake to
carry goods from A to B, although he knows that he will not perform the work himself and although
he will not have possession of the goods for the whole or even part of the journey. In this way a
contract of carriage can amount to an assumption of responsibility on the part of the MTO or
carrier [5, 48].

In our opinion, the multimodal transportation contract should be qualified as an agreement on
imposing obligations on a third party. In this way only the first carrier who already involved third parties
in fulfillment of its obligations becomes responsible. Also the responsibility of the operators is
determined as if he had concluded a separate contract for the corresponding stage of transportation for a
certain type of transport. The operator will also have the right of recourse to the direct harm taker - the
actual carrier. In large part, this contractual construction is similar to a regular contract of carriage, the
difference will be the subject, since the obligation to deliver the cargo rests with several carriers.

Currently with the development of technical capabilities in society delivery of goods is at a high
level and allows to combine different types of transport. We consider it necessary to work out and
consolidate on legislation unified concept of a multimodal contract, as well as establish its single plan.
There is a high necessity to adopt a law “On direct mixed cargo carriage” because the absence in Uzbek
legislation legally formalized construction of multi modal cargo carriage contract with mentioning duties
and rights of MTO is a major obstacle to integration of our country in the system international cargo
transportation. Moreover, it would create conditions for the development of modern ways of cargo
transportation and increase the quality of transportation services and diminish the expenses on cargo
transportation, also prevent environmental pollution. This law will for sure regulate laps in the legislation,
in particular, relationship between carrier and MTO, resolve the issues on the liability and other very
important points of direct combined cargo transportation.

Currently the issues on regulating the activity of various means of transport are still actual and
there are some, which do not concern any of them. For instance, some challenges of carriage by
containers, swapbodies, collaboration and property liability of interacting companies in traffic centers
haven’t been regulated be the legislation. Issues of liability of the parties in combined cargo
transportation, compensation for damage from the non-safety of cargo and rolling stock, mutual
settlements, execution of shipping documents, customs requirements, rights and duties of multimodal
transport operators are not sufficiently regulated in the legislative acts of Uzbekistan.

To sum up, it is necessary to draw attention to the fact that the lack of a legal framework governing
direct mixed (combined) transportation has a negative impact on the solution of theoretical aspects as well
as on judicial practice, the lack of uniformity in which, no doubt, can be called one of the essential
problems of their functioning and development. There is a high necessity to unify the norms of uzbek
legislation regulating combined transportation and it is also very important to enlarge the norms of civil
code concerning this kind of transportation.

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