

# International Transport, the Concept and Essence of Liability in International Freight Transportation in the Context of Supply Chain Management

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**Abstract**— There is a number of reasons that motivate commercial enterprises to ensure supply chain sustainability. The key issues are retaining existing customers and attracting new ones; these processes are inextricably connected with the observance of international principles of sustainable business. A production-based business strives to enter the international market; as a result, this involves import and export operations, freight transportation built on contractual relationships. The study discusses the legislative regulation of the liability of participants in international freight transportation relations as a component of supply chains, as well as the problems and prospects for its development. A review and analysis of the concept of multimodal freight transportation in the context of its application have been carried out; the shortcomings of the legal regulation of this type of transportation associated with the delimitation of the scope of various international acts and jurisdictions have been considered.

**Keywords**— *supply chain management, international transportation, international carriage contract, intergovernmental agreements, limit of liability, contractual liability.*

## 1. Introduction

The modern world economy is becoming increasingly globalized; it is turning into a single economic organism. First of all, globalization as a specific process is expressed through the internationalization of the economic and business life covering all life spheres [1]. The main role in the economic aspect of this process is being transferred from the state to large companies and corporations that are increasingly pursuing their trade policies without government regulation. Supply chain is one of the most important components of this activity and its key element.

In scientific sources, the concept of “supply chain” is defined as a set of three or more entities

(organizations or individuals) directly involved in the upward and downward flows of products, services, finances and/or information from the source to the client. In other words, a supply chain consists of several firms, both upstream (supply) and downstream (distribution), and the end-user [2].

In supply chain management, supply is a process carried out by the structural unit of an enterprise or a supply chain entity responsible for obtaining supplies of the required quality and quantity at the right time and at an affordable price, as well as for the management of suppliers; thus, this contributes to the competitive advantage and corporate strategy implementation [3].

Optimal supply chain management is aimed at minimizing costs and delivery time of material resources, as well as improving the quality of material resources and service. In the context of multiple links in the chain (producer - supplier - client), the liability of freight transportation participants is becoming an increasingly relevant issue.

Transportation is a rather complicated process, which involves a number of auxiliary and additional operations. To solve and regulate civil liability of transportation participants, it is important to find out whether the completion period for these operations falls within the carrier’s liability and whether the carrier should be liable for the cargo loss, shortage, or damage during these operations.

A common problem often associated with freight transportation is storage. Thus, in a number of cases, the carrier who received the goods does not send them immediately, but stores in a warehouse. This poses a question whether storage gives rise to the emergence of storage relations (since the independent storage relationship is formalized by the storage agreement and requires its conclusion) or it is covered by the concept of freight transportation; there are also some issues related to the legislative regulation of different transportation modes. National legislation does not

usually provide any exhaustive answers to these and other questions; therefore, their legal regulation is carried out by contractual and private international law. In addition, it should be taken into account that in the context of the settlement of disputes related to liability and compensation for damage, there may be a question regarding the nature of liability depending on whether there was a contractual obligation between the parties.

The fact that agreements for international and internal freight transportation do not have fundamental differences and relate to the contracts of the same type should be considered. The characteristics and structural elements of these contracts are basically the same. First of all, this applies to their subject, legal features, parties, and content [4].

The United Nations Convention on International Multimodal Transport (1980, UNCTAD) defines international freight transportation in the context of its implementation by various modes of transport. The definition is formulated as follows: “a multimodal transport document means a document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract” (Provision 3, Article 1) [5].

The relevance of the present study is determined by the increase in international freight traffic, the growing interest of business in multimodal transport in the context of supply chain management, the need to anticipate possible scenarios for the development of policies and legislative regulation in this area at different levels, and the need to secure the deal and, accordingly, ensure profit.

The research on this issue is limited due to the legislative changes in the international and national law, the lack of a comprehensive comparative analysis of legal enforcement in the transport law of different countries. In this regard, there is a need to update available developments in this research area. The purpose of the study is to determine the concept and essence of the liability of subjects of legal transport relations in international freight transportation in the context of supply chain management. To achieve this, the following tasks have been set: to analyze and generalize the regulatory framework of international freight transportation, as well as to review and identify trends and prospects associated with the liability management in the field of international freight

transportation in the context of supply chain management.

## 2. Methods and materials

The research is based on the study and analysis of the provisions of international (international conventions, UN Conventions, acts of the European Parliament) and national (in particular, the legislation of the United Kingdom, the United States, and EU countries) in the field of international freight transportation and its practical application.

The research methods include logical analysis, as well as historical and legal methods of scientific research. The changes in the current legislative framework, research trends, and the integration of scientific ideas into legislative norms were analyzed based on the above-mentioned methods. The analysis of the current legislative framework includes a study of international law, while national regulation of freight transportation issues is considered in the context of the international practice.

It should be expected that the development of legal regulation in the field of international freight transportation will become increasingly significant in the nearest future due to the international trade growth. Despite the availability of a complete regulatory framework and the fact that the issue of international freight transportation is given considerable attention by international organizations (in particular, the UN represented by UNCTAD, UNCITRAL, IMO, the International Chamber of Commerce, etc.), national government of various states, the study confirms the fact that a lot of legal relations in this area have not been properly regulated. However, it should be noted that there is a strong interest of the academic circles in these issues; the awareness of authorities and their willingness to make important political decisions should also be considered.

## 3. Results

Today, international freight transportation is regulated through a combination of two elements: domestic legislation and international regulative acts. In almost all types of freight transportation, the establishment of strict liability of the carrier is carried out conventionally based on peremptory norms and involves the conclusion of international agreements (mainly multilateral). The obligatory nature of these norms implies that the parties to a civil law contract are not entitled to agree on conditions incompatible with the liability regime established by the international

convention.

The liability system for various types of contracts makes the carrier greatly liable. The carrier is committed to ensure a safe and timely transportation. The carrier is exempted from liability when non-performance is through no act of his action and is caused by one of the force majeure circumstances prescribed by the law. However, the burden of proof lies with the carrier [6]

In global practice, delivery of goods is the primary responsibility of the carrier. The carrier is obliged to deliver the cargo to its destination within the time period specified in the transport laws and codes, and in the absence of such conditions - within a reasonable amount of time. The carrier is liable for the safety of the goods from the moment of their acceptance to the moment of their issue. The execution of operations for the delivery and acceptance of goods completes the implementation of the contract of carriage [7].

In the regulation of transport relations, great importance is given to industrial regulations. General conditions for the freight traffic activity and the liability of the parties are determined in the contract unless otherwise provided by the charters and codes, other laws and regulations issued in accordance with them [7].

In the era of containerization, multimodal transport arrangements have become particularly important, and the parties to international contracts prefer multimodal agreements to traditional international contracts, such as F.O.B. (buyer pays for transportation) and C.I.F. (seller pays for transportation).

Multimodal transportation makes international contracts easier and more convenient for the parties involved and, therefore, they are very useful in a commercial context. However, such a contract has some drawbacks and is associated with certain difficulties. The main disadvantage is that there is no common international act regulating multimodal transportation, despite several attempts to adopt it. For example, according to the United Nations Convention on International Multimodal Transport, when the loss of or damage to the goods occurred during a particular stage of the multimodal transportation, in respect of which an applicable international convention or mandatory national law provides a higher limit of liability than the limit that would follow from the application of the convention, the limit of the multimodal transport operator's liability for such loss or damage shall be determined by reference to the provisions of such

convention or mandatory national law [5].

Air transport is regulated by the Warsaw Convention; road transport - by the provisions of the Convention on the Contract for the International Carriage of Goods by Road, and rail transport - by the Convention concerning International Carriage by Rail (COTIF). In case of loss or damage to the goods during transit, the contents of multimodal contracts will make it very difficult to determine which mode of transport the accident occurred in. Thus, it will not be obvious which sets of rules and exclusion clauses should be applied. Currently, the legislation on multimodal contracts is fragmented, which could be considered as a drawback that hampers uninterrupted trade and transportation. There is an argument that a single regime will contribute to greater certainty and predictability, as well as reduce unwanted judicial proceedings and costs.

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) establishes a uniform modern legal regime governing the rights and obligations of shippers, carriers and consignees in accordance with a door-to-door transportation contract, which includes (but not limited to) an international sea leg. The Convention is based on earlier conventions related to the international carriage of goods by sea, in particular, on the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("The Hague Rules") and its Protocols ("The Hague-Visby Rules"), as well as on the United Nations Convention on the Carriage of Goods by Sea ("the Hamburg Rules"), and is their modern alternative [8]. The Hague, Hague-Visby and Hamburg Rules are primarily the conventions that make the carrier liable for the loss or damage to the goods unless he can bear the burden of proof. The Hague and Hague-Visby Rules ease the carrier's burden while the Hamburg Rules provide some additional measures to protect the interests of the cargo. Supply chain management can be divided into three main areas: procurement, production, and transportation. From start to finish, this includes decisions on the choice of the raw materials to be used, production output, inventory levels, distribution network configuration and transportation for both raw materials and finished products. Logistics management is a component of supply chain management that focuses on how and when to deliver raw materials, intermediate and finished products from their origins to destinations. In this context, the concept of multimodal transportation is of particular importance as it greatly facilitates all logistics processes [9].

Today, multimodal transportation is regularly carried out under a single through contract of carriage; however

the contract may be regulated by several different legal regimes - none of which has been adapted to the needs of modern multimodal transportation [10]. At the same time, as previously reported, internationally, the issue of multimodal transport regulation has a compromise solution expressed through the application of the provisions of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. It should be noted that the convention is of multimodal nature as evidenced by its name. In the context of multimodal transportation, there are two possible approaches to determining the scope of application of an international agreement in this area. The first approach provides for the full liability of the first carrier towards the cargo owner. In turn, the carrier has the right of recourse to the carrier within whose area of jurisdiction the goods were damaged. According to the second approach, each carrier is liable to the shipper for losses incurred in their area of jurisdiction in multimodal transportation. In case of bringing a recourse action, the carrier must understand that the legal regulation of different transportation legs depends on the type of transport; therefore, both the grounds and the liability limit of the carrier in different transportation legs can be different. However, in the second case, the shipper often finds it difficult to determine the carrier liable for the damage.

According to the definition of a contract of carriage described in Article 1 of the Rotterdam Rules, it is envisaged that although a contract shall provide for carriage by sea, it may also provide for carriage by other modes of transport in addition to the sea carriage. Freight transportation which involves partial carriage of goods by sea, but is not limited to it, is called "maritime plus" [11].

The EU law defines a carrier as a "company" which includes any natural or legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality, engaged in the transport of passengers, or any natural or legal person engaged in the transport of freight with a commercial purpose [12].

International transportation participants carry out certain actions and incur civil liability for them in accordance with the concluded agreements and regulatory legal acts. First of all, the liability of participants and subjects of international transportation follows from the provisions of the

international carriage contract, which is an important legal basis for the emergence of the obligation between the transport organization (the carrier) and the cargo owner (the client).

The relationship between the carrier and the cargo owner is formalized by the contract. Thus, in case of contract breach, liability rules may be of paramount importance; these rules do not apply to non-contractual (tortious) liability as the carriage conditions are described in the agreement and there is an obligation to transport the goods. In case of violation, and/or improper fulfillment of these conditions, contractual liability emerges.

Thus, the issue of carrier's liability should be considered as one of the main issues as the ultimate purpose of transportation is to deliver the goods to their destination. The cargo must be handed over to the carrier, who becomes the cargo owner during transportation.

According to the Convention on the Contract for the International Carriage of Goods by Road, the issue of carrier's liability may arise in the following cases:

1) delivered goods are not in a proper condition, which involves:

- total loss;
- partial loss (shortage);
- damage.

2) delivery delay, i.e. late delivery of goods that does not fall within the stipulated time-frame or missed delivery time [13].

3) violation of other contractual conditions, for example, failure to comply with the lawful instructions of the cargo owner, loss of carriage documents, and other cases [13].

General provisions on the carrier's liability described in the Convention on the Contract for the International Carriage of Goods by Road (Article 23) provide for the carrier's obligation to compensate for the damage caused by total or partial cargo loss. The amount of money to be reimbursed is determined based on the value of the cargo at the place and time it was accepted for transportation. The cargo value is determined based on the exchange quotation or, in the absence thereof, based on the current market price or, in the absence of both, based on the cost of goods of the same type and quality. However, the amount of compensation shall not exceed 25 francs per kilogram of gross weight short. Franc is a gold franc weighing 10/31 g of gold and being of millesimal fineness 900.

As for the Rotterdam Rules, it should be noted that the carrier is liable for any damage to the cargo if the plaintiff proves that the loss, damage, delay, or the event or circumstance that caused them or contributed

to them, took place during the carrier's liability period. In accordance with paragraph 1 of Article 12 of the Convention, this period begins when the carrier or a performing party receives the goods for transportation and ends when the goods are delivered; it is called "door to door" [11].

Thus, liability in international transportation is described as the obligation to compensate for the damage to transportation subjects caused by a transport offense, as well as by non-illegal actions (if this case is established by a special international agreement). In case of an international carriage contract breach, contractual liability typically arises, and the issue of compensation for damage is resolved by a contractual claim. This excludes the possibility of the cargo owner to protect their rights by filing a tort claim as this contradicts the content of relations based on the agreement between the carrier and the client. Therefore, it is important that the acts of international legal regulation of freight transportation provide for the rules that exclude the competition between contractual and tort liability.

#### 4. Discussion

To implement efficient logistics management in the supply chain, the company should lay the groundwork for a responsible and cost-effective transport network. A transport network allows an organization to make important strategic changes aimed at cost reduction and customer service improvement with minimal disruption to the overall flow of goods in the supply chain. It is logical to assume that the issue of liability is primarily found in the legal field, namely in the field of liability and dispute resolution. As a rule, a logistics chain originates in road transportation of goods. Therefore, the issue of road transportation in terms of supply chain management is its key aspect [9].

According to the Convention on the Contract for the International Carriage of Goods by Road, in all disputes arising out of transportation under this Convention, the plaintiff may take legal action in any court or tribunal of a contracting country designated by agreement between the parties in addition to any court of the country within whose territory the defendant's originally resident, has his head office, the branch or agency through which the contract of carriage was concluded, or the place of acceptance of the goods for carriage.

The Convention on the Contract for the International Carriage of Goods by Road stipulates that if carriage governed by a single contract is carried out by

successive road carriers, each of them shall be responsible for the whole operation, and the second carrier and each succeeding carrier becomes a party to the contract of carriage by reason of his acceptance of the goods and the consignment note under the terms specified in it (Article 34) [13].

Similar norms regarding the civil liability of parties to a freight transportation agreement are found in the national legislation of different states. For example, the civil legislation of Romania provides for the carrier's liability for the total or partial loss of goods due to their change or damage that occurred during transportation. The civil liability of the carrier arises when the general conditions of liability are simultaneously fulfilled: the existence of damage, the presence of the carrier's actions leading to damage, a causal relationship between the above components. The reasons excluding carrier's liability may include: lack of intent to cause damage, extreme circumstances, actions of a third party for which the carrier is not responsible, defective goods [14].

A written form of a transport contract is directly required according to the law to confirm the legal transaction and its conditions. In each particular case, transport documentation includes but not limited to the following documents: consignment note, luggage receipt, logbook, bill of lading, tickets or similar documents [15].

To put this in perspective, in the English legal system operating in the United Kingdom, the norms regulating freight transportation are not codified. According to the standard conditions for the carriage of goods by road (hereinafter the "Terms") that were developed by the Freight Transport Association and operate in the UK, the carrier is liable for any loss or damage to the goods indicated on the consignment note that occurred during transportation, as well as for any delay resulting from the negligence of the carrier. The liability of the carrier is limited to financial penalties established in accordance with the provisions of these Terms unless otherwise agreed in writing by the contracting parties before the commencement of transportation.

The Terms stipulate that the carrier is not liable for loss, damage, or delivery delay in case of transporting bullion, precious stones, money (in the form of banknotes or coins), securities, living things, without prior notice to the customer about the presence of such cargo before the commencement of transportation.

Force majeure circumstances exempt the carrier from any liability if loss, damage, or delivery delay result from a natural disaster, the consequences of hostilities, terrorist acts, requisition, arrest or confiscation in the course of a trial, etc. In addition, the carrier's liability is

excluded in case of an error, incorrect information provided by the client, the cargo owner or an authorized person, hidden defect or normal wear of the goods, etc. The carrier is also exempted from liability in the event of the detection of fraud on the part of the client, the shipper, the consignee or the owner or their servants or agents in respect of the whole cargo or its part [16].

Thus, common law countries generally adhere to freedom of contract and the precedent, while the resolution of disputes in civil law countries depends mainly on the binding legal provision rather than on the contract provision. The above thesis also applies to the Rotterdam Rules. On the one hand, there are supporters of the codified solution stipulated by the Rotterdam Rules, which may become the main liability regime governing the carriage of goods by sea. However, other transport law subjects, in particular in common law countries, may find this codification unnecessary as all issues regarding the applicability of the free-in / free-out conditions are clearly regulated in the precedent law [17].

According to the Rotterdam and Hamburg Rules, the carrier's liability for loss, damage or delivery delay is based on the carrier's guilt. The Rotterdam Rules do not oblige the plaintiff to prove a violation of the carrier. The carrier is presumed to be liable based on the evidence of loss, damage or delivery delay. However, if the absence of fault of the carrier or the persons he is responsible for, or the absence of a causal relationship between the actions and the consequences is proved, the carrier shall be exempted from liability. In this regard, the carrier is obliged to prove that he took proper and necessary measures to ensure the cargo safety [18].

As a rule, the norms of international conventions governing freight transportation are mandatory. However, when there is a freight transportation agreement, the carrier and the shipper are entitled to diverge from the peremptory provisions of the Convention if the transportation agreement directly indicates that the parties are entitled to derogate from the Convention; the contract was concluded on an individual basis and contains a direct indication of its provisions which provide for such derogations; the shipper has the possibility to conclude a contract of carriage under the terms of the Convention excluding derogations in accordance with the article on the contracts of carriage, and, at the same time, he is notified of such a possibility; derogations are not included by reference to another document or are not included in the contract on standard terms that are not the subject of the contract [18].

Some researchers also note some criticism of the Rotterdam Rules. Due to the specifics of the areas they regulate, it seems that they have been specifically designed for large shipping companies that have enough commercial facilities and infrastructure to cover the whole transportation chain. However, due to the expanded scope of the Convention, small carriers will be at much greater risk outside the sea leg, where they have little control over the situation. This means that such carriers are more likely to be liable for failure to fulfill their obligations related to the cargo; thus, the increased risk can be easily transformed into higher freight rates. It is a challenging task to predict a better alternative, but one thing is certain - there is no right choice [17].

A survey conducted at the end of 2017 revealed that shippers made serious claims about containerized cargo, including the lack of real-time visibility at any point in the supply chain, in particular in cases of cargo transshipment and multimodal transportation. Other complaints were the lack of a centralized distribution system, which is apparently handled by local offices, and the lack of a system for the quick adjustment of supply chain routes in the event of a failure at any point in the supply chain. These are issues of a legal nature; they also negatively affect the reputation and business position of the parties [19].

As for the legs preceding and following carriage by sea, they are regulated by other international acts. For example, CMR regulates international carriage of goods by road in most European and neighboring countries, while COTIF governs carriage by rail. However, the studies note that today this is a more serious problem than it was fifty years ago, when separate contracts regulated each stage of the trip and it was less surprising to have a separate legal regime for each stage. However, it goes without saying that the regulation of a single international carriage contract by various legal regimes has its drawbacks. According to the US Supreme Court, "if a given contract is regulated by several legislative acts, this will inevitably entail confusion and inefficiency." [10].

## 5. Conclusions

Today, international commercial transportation is a common phenomenon and any enterprise seeks for increasing its share on emerging markets. It may safely be said that goods are rarely consumed where they are produced, and freight transportation is the most important feature that unites all supply chain components. Competitive differentiation can start with effective supply chain management. Multimodal

transportation is a structural supply chain element that is gaining new positions in the modern world. This creates prerequisites for the creation of a single regulatory framework governing international freight transportation which will help minimize the gap and provide greater legal certainty and predictability, as well as reduce litigation costs. Based on the sources studied, it should be noted that the legislator is unanimous on the contractual nature of liability in international freight transportation, excluding tort liability, which is confirmed by the essence of international legal regulation. In the context of comparing modern sources of international law regulating the liability of freight transportation subjects, it is also noteworthy that despite the incompleteness and obsolescence of the Hague-Visby rules, many carriers, especially those using large multimodal lines, have already established relations with the clients by creating their own contractual tools. For this reason, it should not be expected that the Rotterdam Rules designed to replace them will be able to quickly gain the lead in the regulation of transportation as it is difficult for large carriers to change the established legal regulation.

The position regarding jurisdiction and arbitration is ambiguous. The sections of the Rotterdam Rules apply only to member countries that have declared such provisions to be binding. In addition, such a statement can be made and withdrawn at any time, which does not contribute to their harmonization with other legislation. It appears that the issues described in the study will create prerequisites for further research and legislative regulation of international freight transportation.

Responsible business is a precondition for the competitiveness of the company in global markets; it increases the number of investors who are ready to quit investing in companies with low sustainability indicators. In this regard, in supply chains, the liability of freight transportation participants is considered as a responsibility of a sustainable business that is as important as its own procedures and actions.

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