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ECONOMIC –LEGISLATION FRAMEWORK OF MARINE INTERNATIONAL TRADING AND TRANSIT TRANSPORTATIONS IN UKRAINE

ЭКОНОМИКО-ПРАВОВОЙ МЕХАНЫЗМ ОРГАНИЗАЦИИИ МОРСКИХ ВНЕШНЕТОРГОВЫХ И ТРАНЗИТНЫХ ПЕРЕВОЗОК В УКРАИНЕ

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В статті розглядаються основні питання щодо розвитку в України економіко-правового механізму організації морських зовнішньоторгівелних та транзитних перевезень. Створення умов формування сучасного транспортного комплексу країни за допомогою впровадження розроблених Національних правил перевезення зовнішньотогівельних та транзитних вантажів у змішаному наземноводному сполученні.

Problem statement.

Today, the supply of transport complex services in Ukraine exceeds the actual size of its consumption of domestic and foreign clientele potential port capacity - on 20%, and almost on 80% of the capacity of onshore sections of transport corridors. Therefore, the most urgent problem today is to ensure growth of services offered by transport agencies and organizations by creating the necessary conditions, not only to the return existing, but also to attract new cargo flows, primarily due to improved and controlling pricing and process of hauling of goods by land and marine transport.

Lack of integrity, correspondence with up-today requirements of almost all components of the economic and legislation framework organization of multimodal transportations, the presence of the fundamental contradictions of points on absence of methodological basis for it's formation. It is obvious that the most important principles of formation of the economics and legislation mechanism should be the principles of consistency and uniformity, basing on the fact that the transport complex of Ukraine is not an isolated component of the national economy, and is a component of the international transport system and its functioning and development must be carried out according to the laws and tendencies of this system. At the current level of development of intermodal transportations, where, for example, a car carrier takes the goods, as is customary in international practice, with the full responsibility and from some point he becomes a client of maritime transport (ferry service), or the train (container transport), the entities which act with limited liability, of course, that the legal relations arising in the process of multimodal transport must not have differences due to improper acts of legislation and industry-level sectoral regulations. The principles of consistency and uniformity in this case include viewing of the transport process as a complete set of actions of various actors to achieve the necessary movement of goods and, from this point

of view, necessary of establishment of the general principles and conditions for the development of rules and regulations of the process. Beginning with the unification of definitions, procedures, agreements, their structure, the general conditions and pricing rules, sequences, procedures, transfer of responsibility, her level and distribution between the parties of transportation. In addition, the rapid growth of electronic trading and electronic document management in the world requires the establishment of transport appropriate legislation framework for their use and also provide appropriate legislation protection from all parties of transportation process.

The analysis of researches and publications

Attempt to solve these problems in the world was adoption in 2008 Rotterdam rules[1] which establish the procedure of partial carriage of goods in international trade and will come in force the same moment the 20th ratification brevet will be builded on the storage. However, the differences between the International Maritime Committee (IMC) and the European Council of cargo (ECC) on the division of responsibilities between the owner of the cargo carrier and inhibited their support by some states, including Ukraine. ECC position regarding increasing the liability of carriers in general and marine, to limit their immunity from the antitrust laws is common known. It is also known about their strong influence on the position of EU in these matters, which, however, does not contribute neither to prosper international trade, nor to make it cheaper. By trying to reduce the transport costs of cargo and simplify the organizational arrangements for transportation, they act exactly opposite. So in duty of the seller or buyer of goods in accordance with good international trade practice is to order an insurance for the period of transportation. So risks connected with transportation are passed on to the insurance company, and the actual cost of insurance is the Merchant expenses. What then is the need to increase the carrier's liability? On the contrary, the liability can reasonably reduce and cover only "negligence", "deliberate action" and other such violations of the carrier. Only this approach reduce freight charges can be seen, because the carrier removes part of the risk that he always tried, partially, to cover the freight charges. This approach will facilitate the development of international trade, together with special rules for the usage of trading and customs documents in electronic format will reduce the duration of the organizational processes and thereby reduce the obstacles to the free cargo promotion. So why are European cargos against it? Entering the EU are the bulk flow, for which more is required to insure against loss of environmental damage than the cargo itself. In fact, the elimination of the consequences of an accident with a filling of oil tankers with deadweight of 100 thousand tons to 300 times more expensive than the cost of the oil. Almost the same refers to ore, coal, sulfur, etc. And every year these costs increase, because of the increasing of amounts of anthropogenic impact on the environment. At the same time the carrier is put in terms of improving structural security vehicles (double-hull tankers, bulk carriers with reinforced bulkheads, etc.). For example all necessary actions were made by the carrier, expenses incurred and considerable, and if carrier conscientiously follows all of technological, technical specifications, rules and regulations regarding transportation, the losses and loss of cargo, damage and causing loss to third parties should not be attributed to the carrier. However, despite the fact that many of the existing statutes re liability of the carrier have

not been changed, some were made more strict and none mitigated, the ECC considers them insufficient to provide quoted normal procedures for international trading.

The output of the European Union are flows of finished goods of high value, which practically does not harm the environment, but also because of its high cost requires more insurance costs. So really why we have to pay for everything - European cargo owners ask. Let the carriers be fully responded the transportation. And make prices for transportations lower, and increase speed of transportation... So, instead of the balance of interests, on which all international norms are directed (WTO, GATS, the Convention about Code of Conduct of Liner Conferences), on the European market of transport services can be seen a clear domination of cargo owners interests. This is understandable, because that there are no transport and shipping companies in Europe today, but there are industrial transnational corporations. They lobby their interests at the detriment of balance, and equilibrium, as we know from economic theory is a main reson of sustainable consumption.

Basing on historical terms, it should be noted that the regulation of liability in international maritime transport of goods was based on the standards, which in recent decades became increasingly diversed. Many states were Contracting Parties of Hague [2] or Hague-Visby [3] rules. The United Nations Convention re the Carriage of Goods by Sea from 1978 (Hamburg rules[4]), which came into force in 1992, which was to replace the Hague-Visby Rules, but it is not widely recognized, and although the Hamburg Rules are currently operating in 34 states, none of the major maritime powers had not ratified the Convention. As a result, on international grade coexist three modes of binding responsibility: the Hague Rules, Hague-Visby Rules and Hamburg Rules. At the same time, the rapid growth of containerization and the associated with these changes in the organization of international transport and the requirements in this area made more necessary to adopt appropriate modern regulations. In the field of multimodal transport there is no single international regime, which has governing liability issues, and international legal frameworks are extremely complicated, because the liability is still governed by the existing conventions on different types of transport, as well as the increasingly diverse legislative norms and agreements at national, regional and sub-levels.

In this context, new Rotterdam rules were developed to become an updated complex of uniform international standards that provide commercial parties so the necessary legislation. Now states have to examine carefully accomplishments of the new Convention, and determine whether the Rotterdam Rules suet their expectations, both from their key positions and from position of their ability to ensure uniformity of regulations at the international level in this area.

The main work was done by a working group which was established for this purpose by YUNSITRAL. Along with a number of other intergovernmental and nongovernmental organizations, the UNCTAD secretariat participated in relevant meetings of the UNCITRAL Working Group as an observer and represented analytical comments on the substantive issues for consideration by the Working Group during the whole process of development agreements [5]. Although there is no possibility properly to consider the certain provisions of the Convention or to conduct a comprehensive analysis of its content [6, 7], below we can see an analytical overview of some of its main

aspects, in order to help policy makers in assessing the potential benefits of ratifying the new Convention. As shown below, many aspects of the new Convention could be submitted controversial, particularly from the standpoint of small and medium-sized shippers in developing countries [8].

The purpose of given article is development of position for conditioning for formation of a modern transport complex of country.

The main scope.

Rotterdam rules include 96 articles in 18 chapters combined. Many provisions are long and very complicated, which, unfortunately, makes possible the differences between countries in their interpretation and application, and the appearance of significant controversy [8]. Largely the Convention covers matters which are governed by the existing liability regimes in maritime transport, namely the Hague-Visby and Hamburg Rules, although it has significant differences in terms of structure, wording and content. In addition, several chapters are devoted to matters for which currently there is no unique international law, such as the delivery of cargo [9] and transfer of the right to control cargo and rights to claim. The new Convention also provides possibility of using of electronic communications and electronic alternatives on the same level as traditional paper documents, mostly due to the recognition of contractual obligations in this respect and to ensure the same status to electronic records, as well as for paper documents [10]. Two separate chapters contain complex rules regarding jurisdiction and arbitration. However, these chapters are optional, and their provisions will be mandatory only for those Contracting States which indicate that relevant provisions will be binding for them. In this situation, there may be parallel legal proceedings in different Contracting States with possible imposition of mismatched judgments.

Scope of application [11].

Rotterdam rules apply to contracts of carriage on which the place of receipt and place of delivery are in different States, if the contract includes the international maritime transportation, and if, according to the contract, the place of cargo reception, loading, place of delivery or port of discharge located in a Contracting State (Article 5). The rules do not apply to charter or "other agreements for use of the ship or any space on it," as well as to contracts of carriage in non-traffic, except in cases where "there is no charter or other contract between the parties on the ship, or any space on it, and issues a transport document or electronic transport record "(Article 6). However, in these cases, Rotterdam rules apply as between the carrier and the consignee or the holder of the controlling party, are not the original party of the contract, excluded from the scope of Article 6 (art. 7).

Multimodal transportations [12].

It is important to note that in contrast to the existing international regimes on maritime transport Rotterdam rules have broad scope of application and also cover multimodal transportations, including the area of international maritime transportation, regardless on used type of transport [13]. Although currently there are no applicable international conventions' governing multimodal transportations, the question of extending the scope of the Convention on multimodal transport, including maritime transport area, has been the subject of considerable controversy in the negotiations as well as the relevant provisions of the Rotterdam Rules. This was related to: a) concern about possible conflict with conventions governing the carriage of goods by individual modes

of transport, i.e. road, rail, air and inland waterway transport, and in many cases the provisions of these conventions also apply to damage that arose at a certain stage of multimodal transport; b) the desire some States to ensure further application of existing national legislation for multimodal transport, c) concerns about the further fragmentation of the law relating to international multimodal transport, and d) the fact that the substantive provisions of a liability regime based solely on the considerations and principles applicable to the sea, rather than multimodal.

It is important to note that in contrast to existing international regimes on maritime transport Rotterdam rules have broad scope of application and also cover multimodal transport, including area of international maritime transportation, regardless of what type of transport is predominant. The question of possibility of intersection of the new rules or incompatibility with existing international conventions in force in the field of transport by road, rail, air and inland waterway transport 24, to a certain extent governed by separate provisions (Article 82) which provide priority effect of these conventions as if their provisions are applicable outside the carriage of goods by road, respectively, rail, air and inland waterway. At the same time otherwise the rules relating to other modes of transport used, subject to loss, damage or delay of cargo, "just before it is loaded onto a ship or just after the time of his discharge from the ship," and only in the form of "mandatory provisions for liability of the carrier , limitation of liability and time for suit "provisions in any" international convention, application of which is mandatory "at that stage of the carriage on which the damage arose when a separate contract was signed, on the particular stage of transport (Article 26). In case of a requirement presentation in connection with cargo such obligatory positions should be applied in a context of other positions of Rotterdam rules that is a challenge for judicial bodies of the various countries and that, it is possible to assume, will lead to removal of judgments, not consisted among themselves at the international level. In all other cases i.e. when to the corresponding requirement positions of any international convention aren't applied, concerning a separate type of transport or when it is impossible to establish (precisely enough), at which stage of the mixed transportation there was a damage, positions of Rotterdam rules will be applied to definition of the rights of the parties and frameworks of any responsibility, i.e. as a matter of fact the mode of responsibility operating in the field of sea transportations. Existing national legislation in the field of multimodal transport will have no value in respect of contracts falling within the scope of the new Convention.

Carrier's Liability [14]

The carrier (and any maritime performing party, such as operator terminal) carries a number of obligations the violation of which entails responsibility for any loss, damage or delay in delivery of goods. The carrier's liability in accordance with the rules is limited to Rotterdam next financial limit (Article 59)[1], with the amount of limitation of liability

[1] See article 59, according to which "the carrier's liability for breach of its obligations under this Convention is limited to 875 [GPA] per package or other shipping unit, or 3 [GPA] per kilogram of gross weight of cargo, which is the subject of the claim or dispute, according to on whichever is higher, "except when it was declared a higher value of the goods has been agreed or a significant amount of the liability limitation. It should be noted that with respect to possible liability for delay in delivery provides a separate limit of liability, equivalent to 2.5 times the size of the agreed charter (Article 60). A similar limitation of liability provided for in the Hamburg Rules

provisions of the Rotterdam rules, higher than the amounts set forth in the Hague-Visby or Hamburg Rules[2] and established a two-year limitation period (Article 62), which may be extended by a declaration (Article 63). The carrier may lose the right on limitation of liability in case of gross negligence or intent to harm (Article 61). To the main obligations concerns the basic obligation of a carrier to transport cargo and to hand it to its consignee (article 11), a duty to show appropriate care of cargo in responsibility of a carrier, i.e. from the moment of reception by a carrier of cargo till the moment of its delivery (article 13 (1) and 12) and a duty to show appropriate discretion with a view of maintenance and maintenance of a seaworthy condition of a vessel (article 14 31); last includes maintenance of a seaworthy condition of the vessel, and also b) crew completion, equipment and supply of a vessel and) maintenance of an appropriate condition of cargo premises of a vessel. Unlike Gaagsko-Visbijsky rules the obligation, concerning maintenance of a seaworthy condition of a vessel, has constant character and remains throughout all transportation, thus it is not provided the general cancellation of a principle of burden concerning display of appropriate discretion (compare point 1 of article of IV Gaagsko-Visbijsky rules). Of responsibility of a carrier for loss, damage or a delay in cargo delivery in connection with the claim, concerning cargo, article 17 in which lists of the bases are relieving from a carrier of responsibility is defined has key value, thus a number of positions differs from the list containing in point 2 of article IV Gaagsko-Visbijsky rules, and the detailed and difficult rules, concerning burden of proof contain also.

In this regard a number of items of particular importance in connection with entering into contracts based on standard terms and conditions of the carrier. Firstly, the responsibility period (from the moment of reception of cargo till the moment of its delivery) can be defined in the contract (i.e. it is limited) and covered only by the period from the moment of initial loading till the moment of a definitive unloading according to the contract (article 12 point 3). Secondly, in the contract transfer by a carrier of some functions, such, as loading, processing, packing and an unloading of cargo to the consignor, the documentary consignor or to the consignee (article 13 point 2) can be provided. Thirdly, the contract of carriage may exclude or limit the liability of the carrier for transport special cargo or live animals (Article 81). Thus, the carrier can bear responsibility only from the moment of loading of cargo till the moment of their unloading and only concerning some functions of a carrier defined in the Convention. In addition, the Convention on the burden of proof [15], seems to differ from the provisions of existing conventions on liability in maritime transport in favor of the carrier, particularly in cases where improper seaworthy vessel resulted in damage [16]. In these cases, the Rotterdam Rules envisage proportional distribution of liability, whereas in conformity with the Hague-Visby Rules the responsibility entire responsibility of the carrier, unless he proves that some of the damage is not related to the breach of his obligation to provide seaworthy vessel. This means a significant shift in the distribution of commercial risks to the detriment of shippers.

Liability of the shipper [17]

[2] The Hague-Visby and Hamburg Rules provide for the following limits of liability, respectively: 666.7 SDR per package or per kg of cargo 2SPZ and 825 SDR per package or 2.5 SDR per kg of cargo.

Obligations and responsibilities of shipper are defined wider then in than the Hague-Visby Rules and they are quite detailed in a separate chapter (chapter 7).

They include obligations of the shipper in the preparation and delivery of the goods for transportation (Article 27) and for a wide range of information requirements and documentation (art. 29). These obligations, which infringement leads to responsibility occurrence, there can be especially actual in connection with the new requirements, concerning safety in the field of sea transportations. They also include strict liability (see paragraph 2 of Article 30) for damages resulting from shipping dangerous goods (Article 32) or damages arising from its backlog timely and reliable information on contract terms (art. 2, para 31). It is important to note that the relevant provisions concerning the burden of proof [15, 16], are more complex than in accordance with the existing liability regimes in the field of maritime transport, which may have important practical implications for the settlement of claims by carriers to shippers, particularly in cases where improper seaworthy ship may have contributed to the harm associated with the transport of dangerous cargo. Thus, under the Hague-Visby Rules, in cases where it can be shown that improper vessel Seaworthiness was a contributing factor, the shipper, in most cases be exempt from liability. According to the rules of Rotterdam on the shipper may be charged with full responsibility for any potentially large losses suffered by the carrier (including, for example, the loss of a ship, liable to third parties). In this context, it should be noted that the potentially very wide shipper's liability is not limited by any limits in terms of money. The final consignee, presenting claim based on the contract may also be liable for breach of any obligation by the shipper [18, 19]. In addition, the documentary shipper, is side, which is not the shipper, but that "agrees to be named" shipper "in the transport document or electronic transport record" (paragraph 9 of Article 1), such as the seller of goods on FOB is also responsible for any breach of obligations of the shipper in addition to the shipper (Article 33).

Delivery of cargo.

We should also note the existence of a separate chapter on delivery (Chapter 9), providing a new obligation on the consignee to accept delivery from the carrier (art. 43) and contains detailed rules regarding the delivery of the goods on the basis of different types of transport documents or electronic records. It is important to note that in this chapter also contains the complex new rules that provide actual transfer of risk associated with the delayed submission of the bill of lading from the carrier to the consignee: in cases where the consignee or endorsee final in carriage of goods by a negotiable transport document (is Bill of Lading), which is usually the one of the buyers at CIF [41] in the chain of contracts, shall be notified of the arrival of goods at destination, but a) does not require the timely delivery of goods from the carrier for whatever reason whatsoever, or b) still has no bill of lading, carrier may, under certain conditions, to deliver the goods without transferring the bill of lading (Article 47) or use a wide range of rights and dispose of them (Article 48). Thus, the final consignee or endorsee by paying the seller the goods under the contract on a CIF basis against a negotiable transport document, may remain empty-handed and without the possibility of a lawsuit against the carrier in connection with improper shipping. Provisions that appear intended to solve practical problems associated with delayed presentation of the negotiable bill of lading in the chain of international transactions involving different buyers and banks, could seriously

undermine the function of negotiable bill of lading as a document of title, which is essential for its use in international trade.

Binding nature of responsibility.

Article 79 contains general rules on the mandatory application of the liability regime. For example, if in the Convention provides otherwise, any provision of the contract is void if it is: a) exclude or limit liability or responsibility of the carrier or a maritime performing party, and b) excludes, restricts or extends the obligation or liability of the shipper, consignee, controlling party, holder or the documentary shipper (for example, the seller FOB). Thus, in contrast to the Hague-Visby Rules, the minimum standards of liability under the Convention shall apply to mandatory not only to the carrier, but the shipper (and potentially to any person liable for breach of obligations by the shipper, such as the consignee or documentary shipper). However, if the carrier's liability is limited to a certain financial limit may be extended by agreement, it is impossible in the case of shipper. It should be noted once more that in any case the mandatory responsibility of the shipper in accordance with the Rotterdam rules are not limited to any monetary limit.

Agreements on the organization of transport [20]

Although in general the minimum standards of liability shall apply to contracts falling under the Rotterdam Rules, there is one important exception. As regards the so-called "volume contracts", which are regulated first time by international convention, special rules apply, envisaging considerable freedom of contract. This is an important innovation that distinguishes new Rotterdam Rules from the existing conventions in this area and therefore is specially interesting. As background information useful to recall briefly the rationale for mandatory regulation of liability in any area where commercial parties enter into an agreement and so usually where the principle of freedom of contract acts.

All the existing international liability regimes in the field of maritime transport of goods (the Hague, Hague-Visby and Hamburg Rules) provide a minimum level of liability of the carrier, which is applied on a mandatory basis, is relevant substantive law concerning the liability of the carrier can not be changed by treaty to the detriment of the shipper or consignee· However, a possibility of increasing the liability of the carrier is allowed. The mandatory nature of the respective regimes also applies to contracts of carriage, which are not individually negotiated between the parties, and are based on standard terms and conditions of the carrier, as a rule contained in the bill of lading or other transport document issued by a carrier or validates such a document. The main purpose of this approach, which is common to all existing international liability regimes, is to reduce opportunities for abuse in connection with the agreements concluded on the basis of standard terms and conditions between the parties having different bargaining power. In the liner shipping a number of major liner carriers dominate the global market[47], and goods are usually shipped on the basis of bills of lading or other standard documents issued and signed by the carrier and, as a rule, made on terms favorable to the carrier, without the possibility of discussing the provisions particularly evident in the existence of opportunities for abuses associated with the unequal status of the parties in the contract. By establishing a minimum level of liability of the carrier, which is applied on a mandatory basis and can not be changed by treaty, the existing liability regimes seek

to protect the interests of consignors who do not have significant bargaining power, namely, small shippers and consignees who are not party to the contract of carriage, against unfair contract terms imposed unilaterally by the carrier with its standard terms and conditions of the contract. In such a way a key element of the existing international legal framework is to limit the freedom of contract to provide a normative order to protect small shippers and consignees against unfair standard contract terms.

In this context, the regulation of volume contracts in Rotterdam Rules, which provides the contracting parties broad discretion in concluding the contract, caused a considerable debate throughout the entire the drafting process. Volume contract is defined very broadly: "contract of carriage which provides carriage of a specified quantity of goods in a series of shipments during an agreed period. Such an indication of the quantity may include a minimum, maximum or a certain range" (art. 2, para 1). Parties to the volume contract may derogate from the provisions of the Convention (Article 80) under certain conditions and taking into account some of the regulatory restrictions on the right of derogation from the provisions of the Convention.

They include - by the carrier - the loss of the right to limit financial liability in case of gross negligence or intentional acts (Article 61), and the obligation in accordance with subparagraphs a) and b) of Article 14 of the securing and maintaining the ship seaworthy and properly manning , equip and supply the ship. In this context, no mention of the third aspect of the carrier's obligation to maintain the vessel seaworthy condition, namely an obligation to ensure and maintain the proper condition of the cargo spaces of the vessel (see paragraph c) of Article 14) so as not surprising, but in this respect may be derogated from provisions agreed by the parties. As for the duties and responsibilities of consignor then no derogation in respect of a) the obligation to provide information, instructions and documents in accordance with Article 29, and b) the obligations and (strict) liability in connection with dangerous goods in accordance with Article 32.

It is important to note that the shipper's liability, resulting from a violation of Article 29 and 32 - which may be significant, for example in case of death or delaying the ship, and is not limited to any monetary limit - can not be canceled, restricted or modified under the terms of contract. This means that the shipper always applies potentially large (or unlimited) liability in accordance with the Rotterdam rules for damages arising from transportation of dangerous goods or breach of an obligation to certain documents, information and instructions.

The exception volume contracts from the scope of the mandatory application of the liability regime based on the assumption that this kind of agreements is concluded between parties with potentially equal bargaining. However, the determination to the volume contract is very broad, and they do not set minimum quantities. Therefore, almost all types of contracts in liner shipping can be arranged as to the volume contract in almost complete freedom of contract. As in the liner trade dominant position takes a small number of global operators, there is concerned about the situation smaller consignors, who may face contractual conditions laid down unilaterally by the carrier. In this context, the key question is whether the regulations provide safeguards provided in Rotterdam rules, effective protection of small business side of using volume contracts as a contractual tools to bypass compulsory liability regime.

Agreement between carrier and shipper of derogation from the provisions of the Convention, as specified in the agreement on the organization of transport, is binding, even in cases where the contract was not agreed on an individual basis. Although the consignor should be able to conclude an agreement under the conditions provided in the Convention without any derogation, in practice, the consignor by the commercial necessity may be forced to conclude an agreement on the organization of transport, for example, if in case of disagreement can apply much higher tariff rate . Similarly, although third parties are bounded by departures only in the case of volume contracts, but if they expressly agreed to be bounded by such derogations[56], it is unclear whether it provides effective protection for small consignees who are not party to the contract transportation, and which in practice may find that the only commercially reasonable solution is to agree to these conditions. In such a way, depending on the approach that the courts will respect the relevant provisions, we still have to figure out whether the statutory protections are sufficient to prevent the use of a special category of volume contracts as a contractual tool to circumvent the provisions on liability, which otherwise would be applied on a mandatory basis, to the detriment smaller consignors or consignees.

Provisions relating to volume contracts, may, after the Convention enters into force, have important implications for both commercial treaty practice, and overall perspectives for the uniformity of international law in the field of cargo transportation. If in the future the practice of using volume contracts that allows changing the provisions of the Convention at the discretion of the contracting parties will become the norm, then, in the longer term, you may not realize the potential benefits associated with a predictable uniform international liability regime.

Concluding remarks

As in the case of any new international conventions, much would depend on how courts in different countries will approach the complex provisions of the new Convention and how they will interpret and apply them in practice. However, it follows from the above presented analysis, there are a number of areas, giving, perhaps, cause for concern, particularly in terms of small and medium-sized shippers and consignees in developing countries.

Provisions of Chapter 9, which under certain circumstances, permit the consignor to take the goods without presentation of a negotiable transport document to be new and possibly controversial, because they can disrupt the function of negotiable bill of lading as product distribution document, which is crucial for its use in international trade. Regulatory provisions Rotterdam Rules relating to volume contracts are also untested and may lead to a situation in which freedom of contract will become the norm and when the weight of the talks will be more important than ever since the adoption of the Hamburg Rules in 1924 . It causes special concern from the point of view of small consignors and consignees who owing to commercial necessity can appear the connected contractual conditions established unilaterally by one of not numerous large global companies of linear transportations. Larger consignors also should understand that their potentially wide responsibility according to Rotterdam rules concerning damage connected (at least partially) with transportation of dangerous cargoes can't be coordinated during negotiations even in case of contracts on the organization of transportations. As a whole wide use of contracts on the organization of transportations in the future commercial

contractual practice would mean actually decrease, instead of uniformity increase in the norms, concerning responsibility, at the international level.

Concerning regulation of the responsibility connected with mixed transportations, including a site of the international sea transportation, in the new Convention the approach which is difficult and which can lead to difficulties in its practical application is accepted. Financially-rule of law, concerning responsibility, differ depending on, whether can be established that the damage has arisen on a certain not sea site of the mixed transportations and from, whether the existing international conventions regulating transportation of cargoes by land or air transport if the separate contract concerning the given site of transportation has been concluded were applied. In brief the situation can be described as follows:

a) In cases where it is impossible to establish clearly on the part of the journey is what kind of transport has suffered damage that often occurs in container traffic, the rights and obligations of the contracting parties are determined mainly by the liability regime in force in the field of maritime transport and certain in Rotterdam rules, even if the transportation is carried out mainly by road;

b) A similar situation occurs in cases where the damage was caused during the carriage by road, but none of the existing international conventions on different types of transport, does not apply if a separate agreement has been concluded in respect of the onshore transport;

c) In those cases, it can be ascertained that the damage to part of the journey by another mode of transport other than maritime transportation area, and could be applied one of the existing conventions relating to certain types of transport (with a separate contract), the mandatory provisions of applicable carrier's liability, limitation of liability and limitations contained in the convention relating to this mode of transport, along with the rest of the provisions of the Rotterdam Rules. Mixing the substantive rules of international conventions, which the courts of different countries will have to contextually apply in such cases, complicating their task and is likely to lead to different results at the national level.

As a whole difficult character of positions of the Convention and existence of considerable possibilities for their interpretation mean that, probably, thorough proceeding for accurate understanding of new rules is required, thus courts of the various countries can accept potentially dispersing approaches at interpretation and application of corresponding positions[58]. The probability of carrying out of judicial proceedings incompatible among themselves and, finally, removal of judgments contradicting each other at the international level increases because as it has been noted above[59] even more, heads of the Convention devoted to questions of jurisdiction and arbitration, are facultative for the Agreeing states and consequently contractual positions about jurisdiction and arbitration can be valid on identical conditions only for some, but not for all Agreeing states. Thus, it can be demanded considerable expensive processes of proceeding before it will be possible to reach demanded degree of legal definiteness. Such a perspective is particularly unfortunate for a new international Convention, which aims to establish uniform rules on international level for the different legal systems, in addition, it can cause concern among commercial parties whose rights and obligations in the future, may be governed by the rules of Rotterdam.

In general, it seems, Rotterdam Rules are substantially more favorable to the carriers than any other existing international conventions in this field. For example, the provisions concerning the burden of proof would be more profitable for carriers than similar provisions in the Hague-Visby or Hamburg Rules, which may have important implications for the outcome of legal disputes between carriers and shippers. Besides, obligations and responsibility of the consignor which are much wider and are regulated in more details in comparison with existing modes of responsibility in the field of sea transportations, carry a binding character, and concerning responsibility of the consignor - unlike responsibility of a carrier - doesn't operate any restrictions from the point of view of a limit of financial responsibility. And this is correct, because the decision on the carriage of any goods made in view of the resulting economic benefits of the cargo, and not the carrier, the cargo owner and therefore it has to bear all the brunt of risk and responsibility for the consequences of his decision, and the carrier shall only carry out the established process requirements. At the same time, so important changes in the distribution of commercial risks caused concern among those who represent the interests of users of transport services will inevitably lead and already has led to counter the entry into force of Rotterdam Rules.

In this connection, it is necessary at the national level to implement all the progressive changes in Rotterdam under the rules that give practical and clarifying ambiguous and contradictory to the situation. Even before last we have developed national regulations for the transport of foreign trade and transit of goods in mixed land-water transport, which do not conflict with the Rotterdam and, in some provisions are more specific and practically implemented better. The main difference between our developed national rules is the legal regulation of aspects of transportation that were not displayed in the contract of carriage, or the same conflict of laws are in relation to national legislation or international conventions.

A finite aim of the rules developed by the National is to create conditions for the formation of a modern transport system of the country that meets the highest international standards in economic organization, legally and technically competitive in world markets for transport services, capable of providing freight independence Ukraine's foreign trade and the efficient export of transport services.

Conclusions. According to this, the objectives of national rules for the transport of goods are as follows:

- Modernization of the Ukrainian legislative and regulatory framework, bringing it into line with modern requirements, norms and principles of international trade;
- Setting of uniform conditions and standards of documentation, liability, the application of electronic transport documents and electronic signatures;
- Compliance with international obligations of Ukraine, including the General Agreement on Tariffs and Trade, as amended in 1994, which is an integral part of the package of WTO agreements;
- Removing barriers to free promotion of goods and organization of transport service entities of all forms of property and citizenship for the national treatment;
- Unification of documentation for foreign trade and transit cargo that pass through the sea and river ports of Ukraine;

- Creation of legal framework of coordination of transport, forwarding, agent, customs, border guard and other services for the transport of goods;

- Creation of legal conditions for Ukraine's integration into European and global transport network.

The subjects of legal regulation are administrative law and civil law relations that arise in the process of trade and transit of goods through sea and river ports of Ukraine.

The subjects covered by the applicable national law are subjects who perform domestic services or to perform any action flowing from the contract of carriage, according to which the place of receipt and place of delivery, port of loading and unloading port located in different states if:

a) the contract of carriage suggests that it has applied the provisions of these rules or national legislation the state of Ukraine, which puts them into action, provided that

b) place where the goods are stoked for carriage by sea or port of loading or the place of transshipment from one vessel to another vessel, as specified in the contract of carriage, or the contract, or an actual site located on the territory of Ukraine;

c) The place of delivery after a sea voyage or port of discharge or place of transshipment from one vessel to another vessel, as specified in the contract of carriage, or the contract, or an actual site located on the territory of Ukraine;

d) In all cases, when the carriage is performed on the basis of intergovernmental agreements to which Ukraine is a state and other laws of the countries parties to the agreement is not contrary to the rules specified by the National or they agree with their use. In case any of positions of the Specified rules contradicts the legislation of the countries of other parties of the agreement position of these National rules operate in that part in which they don't contradict the legislation, and position which contradict, there should be transportations settled in the contract. If the last it is not made, it is considered that the parties have agreed with application of positions of the given National rules.

Position of rules should be applied without a nationality of a vessel, a carrier, the executing parties, and the consignor under the contract, the consignee or any other interested parties.

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Аннотация

На сегодняшний день предложение транспортного комплекса Украина превышает реальные объемы ее потребления национальной и иностранной клиентурой по потенциальной пропускной способности портов - на 20%, по

пропускной способности сухопутных участков транспортных коридоров почти на 80%. Поэтому актуальным на сегодня является само обеспечения роста потребления клиентурой услуг, которые предлагаются транспортными учреждениями и организациями путем создания необходимых условий не только для возвращения стариков, а и для привлечения принципиально новых грузопотоков, прежде всего благодаря усовершенствованию правового регулирования ценообразования и процесса перевозки грузов наземными и водным транспортом.

Отсутствие целостности, соответствия современным требованиям практически за всеми составляющими экономико-правового механизма организации смешанных перевозок разными видами транспорта, наличие внутренних фундаментальных противоречий свидетельствует об отсутствии методологических основ его формирования. Очевидно, что важнейшими принципами формирования экономико-правового механизма должны быть принципы системности и однообразия, исходя из того что транспортный комплекс Украины не является изолированной составляющей национальной экономики, а представляет собой элемент мировой транспортной системы и его функционирование и развитие должны осуществляться по законам и тенденциями именно этой системы. При сегодняшнем уровне развития интермодальных перевозок, когда, например, автомобильный перевозчик принимает груз, как это принято в мировой практике, при условии полной ответственности и на определенном этапе транспортировки сам становится клиентом морского транспорта (паромные перевозки), или железнодорожного (контрейлерные перевозки), субъекты которых действуют с ограниченной ответственностью, разумеется, что правоотношение, которое возникало в процессе таких смешанных перевозок недолжны иметь разногласия вследствие действия законодательных актов отраслевого назначения (Закон О транспорте, О транзите грузов, О железнодорожном транспорте, О портах, Кодекс торгового мореплавания, и прочие) и отраслевых нормативно-правовых актов (Правила перевозки грузов по различным видам транспорта). Принципы системности и однообразия в данном случае предусматривают рассматривание транспортного процесса как законченной совокупности действий различных субъектов по обеспечению необходимого перемещения груза и, с точки зрения на это, необходимого установления общих основ и условий разработки правил и положений осуществления этого процесса, начиная с узаконивания определений, процедур заключения соглашений, их структуры, общих условий и правил ценообразования, последовательностей процедур перевода ответственности, ее уровень и распределение между участниками перевозок. Кроме того, стремительный рост объемов электронной торговли и электронного документооборота в мире требуют установления для транспорта соответствующей нормативно-правовой базы их использования и обеспечение соответствующей правовой защиты всех участников транспортного процесса.

Попыткой решения этих проблем в мире стало принятие в 2008 году Ротердамских правил, которые устанавливают порядок осуществления частично морской перевозки грузов в международной торговле. Однако расхождения между

Международным Морским Комитетом (ММК) и Европейским Советом Владельцев груза (ЕСВ) в отношении к распределению обязанностей между владельцем груза и перевозчиком затормозили их поддержку некоторыми государствами, в том числе и Украиной. Анализ позиций ЕСВ относительно стремления усилить ответственность морских перевозчиков и ограничить их иммунитет от антитрестовского законодательства общеизвестная. Известно также об их значительном влиянии на позицию Еврокомиссии в этих вопросах, которые, однако, совсем не оказывает содействие ни развития международной торговли, ни ее удешевления. Известно, что к обязанностям или продавцу, или покупателя товара в хорошей международной торговой практике входит и обязанность страхования товара на период его перевозки. Т.е. риски связанные с перевозкой перекладываются на сторону страховой компании. В чем же тогда необходимость увеличения ответственности перевозчика. Наоборот ответственность может быть обосновано уменьшена и охватывать только «небрежность», «намеренные действия» и другие подобные нарушения. При таком подходе можно говорить об уменьшении провозных платежей, поскольку с перевозчика снимается часть рисков, которые он всегда старался частично покрыть провозными платежами. Именно такой подход будет оказывать содействие развитию международной торговли, а вместе с применением специальных правил использования провозных и таможенных документов в электронном виде позволит уменьшить препятствия на пути свободного продвижения товаров. Для этого нами разработаны Национальные правила перевозки внешнеторговых и транзитных грузов в смешанном наземно-водном соединении, конечной целью которых, является создания условий для формирования современного транспортного комплекса страны, который будет отвечать высшим международным стандартам в экономическом, организационном, правовом и техническом отношении, конкурентоспособного на мировых рынках транспортных услуг, способного обеспечить фрахтовую независимость внешней торговли Украины и эффективный экспорт транспортных услуг

Согласно этому, цели Национальных правил перевозки грузов состоят в следующем:

- модернизация украинской законодательной и нормативно-правовой базы, приведение ее в соответствие современным требованиям, нормам и принципам международной торговли;
- установленные единых условий и стандартов из документального оформления, ответственности, порядка применения электронных транспортных документов и электронной подписи;
- выполнение международных обязанностей Украины, в том числе из Генерального соглашения по тарифам и торговле, в редакции 1994 года, которая является неотъемлемой частью пакету соглашений ВТО
- устранение препятствий на пути свободного продвижения товаров и организация транспортных услуг субъектами всех форм собственности и гражданства за национальным режимом;
- унификация документации на внешнеторговые и транзитные грузы, которые проходят через морские и речные порты Украины;

- создание правовых основ координации транспортных, экспедиционных, агентских, таможенных, пограничных и других служб в процессе перевозки грузов;
- создание правовых условий для интеграции Украины в европейскую и мировую транспорта сеть
- Предметом правового регулирования являются административно-правовые и гражданско-правовые отношения, которые возникают в процессе внешнеторговых и транзитных перевозок грузов через морские и речные порты Украины.

Субъектами, на которые распространяется действие Национальных правил являются субъекты, которые выполняют внутренние перевозки, или должны выполнять любые действия, вытекая из договора перевозки груза, согласно которым место получения и место сдачи груза, порт нагрузки и порт разгрузки, расположенные в разных государствах, если:

а) в договоре перевозки предполагает, что к нему применяются положения указанных Национальных правил или законодательство государства Украина, которая вводит их в действие, при условии, что

б) место приема груза к морской перевозке или порт погрузки, или место перегрузки груза с одного судна на другое, которые указаны в договоре перевозки, или в договорных условиях, или такое фактическое место расположенные на территории Украины или

в) место сдачи груза после морской перевозки или порт разгрузки, или место перегрузки груза с одного судна на другое судно, которые указаны в договоре перевозки, или в договорных условиях, или такое фактическое место расположенные на территории Украины или

г) во всех случаях, когда перевозка осуществляется на основе межправительственных соглашений, стороной которых является государство Украина и законодательство стран других сторон соглашения не противоречит указанным Национальным правилам или они соглашаются с их применением. В случае если любое из положений Указанных правил противоречит законодательству стран других сторон соглашения, то положение этих Национальных правил действуют в той части, в которой они не противоречат законодательству, а положение, которые противоречат, должны быть урегулированные в договоре перевозки. Если последнего не сделано, то считается, что стороны согласились с применением положений данных Национальных правил.

Положение правил должны применяться без учета национальности судна, перевозчика, исполняющих сторон, грузоотправителя по договору, грузополучателя или любых других заинтересованных сторон.