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WORLD MARITIME UNIVERSITY

Shanghai, China



**Study on the effect of Rotterdam Rules to
multimodal transport of China under the Belt and
Road Initiative**

BY

Qin JINGYA

China

A research paper submitted to the World Maritime University in partial fulfilments
of the requirements for the award the degree of

MASTER OF SCIENCE

ITL

2016

Declaration

I certify that all the material in this research paper that is not my own work has been identified, and that no materials are included for which a degree has previously been conferred on me.

The contents of this research paper reflect my own personal views, and are not necessarily endorsed by the University.

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Abstracts

Title of Research paper: **Study on the revelation of Rotterdam Rules to multimodal transport of China under the Belt and Road Initiative**

Degree: **M.Sc.**

With the wide use of the containers and other mature technical conditions, the multimodal transport breaks through the geographic restrictions and uses more than two modes of transportations to meet the needs of transportation. The Rotterdam Rules is a latest attempt to integrate international stipulations on carriage of goods by sea, and the expansion of its application indicates the possibility of its being applied with respect to international multi-model transportation that includes carriage of goods by sea.

This thesis mainly conducts research on the legal and management system of multimodal transportation of China, develops comparative analysis on international legislations and the latest stipulations in the Rotterdam Rules, and makes efforts to summarize certain suggestions on the legislation in China.

New development of multimodal transport can be seen under the Belt and Road Initiative; Chinese government also came up with a great number of projects to implement this strategy. However, China does not have a set of unified multimodal transport regulations, which need contains private law relationships, public law relationship and government regulations, in order to provide sufficient legal protection of marine and inland transportation under the Belt and Road Initiative.

KEYWORDS: the Belt and Road Initiative, multimodal transportation, legal and management system, practice of Sea-rail multimodal transport in China.

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Chapter1. Introduction

Along with the globalization of the world economy, it is urgent to build effective an logistics management system in this increasingly complex international market. This makes multimodal transport which uses two modes of transportation from production to final consumption becomes more and more important. As a more efficient transportation system, multimodal transport is not only beneficial for improving customer service, but also can reduce storage and logistics costs such as transport costs. The proportion of international multimodal transport is increasing rapidly due to the development of transportation technology、 information and communication technology. However, there is no uniform law multimodal transport and different legal norms are applied in different sections of the transport industry, so it increases the uncertainty of the applicable laws for parties to multimodal transport contracts. It also increases transportation insurance, damage compensation program, legal consultation and related transaction costs, which hindered the development of multimodal transport.

When Chinese President Xi Jinping visited Central Asia and Southeast Asia in September and October of 2013, he raised the initiative of jointly building the Silk Road Economic Belt and the 21st-Century Maritime Silk Road. According to The Belt and Road initiative, developing the East Asian economic zone and the developed European economic zone will be linked by Eurasia and the Silk Road on the Sea. The Belt One Road aims to promote the connection between Asian, European and African continents as well as their adjacent seas, establish and strengthen partnerships among the countries along the Belt and Road Initiative, set up all-dimensional and composite connection networks, and realizes diversified, independent, balanced and sustainable development in these countries. The Belt and Road initiative involves 65

countries and regions. 46 of them could link by sea; the rest of them could depend on railway transportation merely.

In 2015, Chinese major ports container throughput is 188 million TEU; Sea-rail multimodal transport is 763.9 thousand TEU, accounting for 0.45%¹. China did not enter into any international convention of multimodal transport. It only depends on the Maritime Code of the People's Republic of China and Chinese contract law to deal with international multimodal transport issues. This new change brings challenge to Chinese existing rules system. Maritime Code of the People's Republic of China has been twenty years when came into force. In Code only five clauses mention multimodal transport (C4, artical8). Those multimodal transports must involve in carriage by sea. China also has contract law to regulate multimodal transport, but only five clauses mentioned. It is not clearly for participants' obligation and right. Except those two laws, China also has many administrative regulation rules, these rules also not aim for multimodal transport. Authorities are different lead to that the specific provisions are conflict sometimes. So we need to have a unit rule to deal with multimodal transport issue. Especially, in Sea-rail multimodal transport aspect.

The Rotterdam Rules is an international treaty published by UNCITRAL (United Nations Commission on International Trade Law), which regulate a new system about multimodal transport. It is not just about carriage by sea, also about "Maritime-plus approach". This is exactly what Chinese lacks. The Rotterdam Rules use many clauses and concept to build multimodal transport system, for example: "door to door ", "minimal network responsibility" and "performing party and maritime performing party", And the most advanced is that 'electronic document'.

¹ The Shanghai Shipping Exchange web site give further information on course(The <http://www.sse.net.cn/>)

Those concepts and clauses regulate multimodal transport activity more detail. We could take experience from this advanced regulation to form a set of unit regulation rules for multimodal transport under Belt and Road.

Methodology

In this research paper, I will use data studies, qualitative analysis, deductive reasoning and comparison to analyse the current situation of Chinese multimodal transport and the advanced rules from Rotterdam Rules, then analyse the important changes in Rotterdam Rules to multimodal transport and to find the drawback and shortage of current rules. Afterwards, I will make comparison between current regulations rules and the Rotterdam rules from two aspects: multimodal transport operator liability and multimodal transport documents. International convention cannot instead of national law or rules, so I will learn experience from other regulations to modify domestic law. After that, I will mention the Belt and Road Initiative of China, and under this background, Chinese government carry out several projects to implement that strategy, especially in sea-rail multimodal transport. Those projects are faced some problem about multimodal transport, most of them is lack of uniform regulations to ensure projects operate smoothly. Finally, I could combine the Rotterdam rules experience with Chinese current situation to make suggestions about form a set of unit regulation rules for multimodal transport under the Belt and Road Initiative respectively.

Chapter 2. Literature review

The literature of this issue had been divided in three parts in this review.

The first part is current situation of China on multimodal transport.

In this part, I mention the literature based on the current situation of Sea-rail multimodal transport in China. In China, multimodal transport is not a new vocabulary, but it is develop slowly. We could find a lots of reason about that, for instance technology reason, legal reason, infrastructure cannot keep pace with transport needs, inadequate regulatory.

Geng Yanbin mentioned in The Problems and Suggestions for the Key Port Railway Development. He analyse the key port railway development present situation, including facilities, operation, investment, construction and management situation. The proportion of Sea-rail multimodal transport is very low. In Chinese major ports container throughput is 180 million TEU, sea-rail multimodal transport is accounting for less than 1%. Sea-road multimodal transport is more flexible and more brisk in China. (Geng Yanbin, The Problems and Suggestions for the Key Port Railway Development, 2016)

Ge Rui mentioned in study on Existent Problems and Countermeasures of China's Container Sea-railway Combined Transportation. He analyse the Sea-rail multimodal transport development present situation. He more focuses on technology reason. Such as, the size between sea containers and rail containers is different. Sea-rail transport regulations are not clearly, which makes Chinese Sea-rail transport rapid

slowly. (Ge Rui, Study on Existent Problems and Countermeasures of China's Container Sea-railway Combined Transportation, 2007)

Zheng Ping mentioned in Development Bottlenecks and Key Points of China's Sea-Rail Container Multimodal Transport. He comes up with the bottleneck from four aspects. First one is system problem, which is the shortage of regulations and related laws. Chinese supports policies are pursue economic scale, government want to use monetary support to get successful in the short-term. Second one is organization problem. Third one is infrastructure investment is shortage. Last one is technology problem. (Zheng Ping, He Xuejun & Yang Canyu, Development Bottlenecks and Key Points of China's Sea-Rail Container Multimodal Transport, 2012)

Lv Qi in Study on the legislation mode of multimodal transport in China mentioned that from the point of view of the external form of the legislative models for multimodal transport in China, China dose not have a uniform legislation about multimodal transport, the relevant provisions and regulations are scattered in the part of the laws, administrative rules and regulations. It is belongs to the decentralized legislation. From the point of view of the internal structure of the legislative model of multimodal transport, the existing legislation does not form a t model of multimodal transport system in the standard setting, there are some deficiencies in the specific system, and some important system has not been standardized in the legislation. (Lv Qi, Study on the legislation mode of multimodal transport in China, 2015)

Du Xinyi mentioned in consideration on the development of international multimodal transport in China, she said compared with developed countries, China in this area still exist big gap with developed countries. Such as railway transportation

capacity is tight and price expensive, it is can not provide the guarantee of service quality for multimodal transport of the inland transport part. In the whole multimodal transport links, there is too much participants and process. It is not conducive to the reduction of cost and the improvement of competitiveness. (Du Xinyi, & Wang Minchao, Consideration on the development of international multimodal transport in China, 2014)

The second part is the importance of Rotterdam Rules to multimodal transport.

Before Rotterdam times, shipping, aviation, railways and other modes of transport, there is more than one international convention in force. In the field of carriage goods by sea, there are three international conventions that come into force at the same time.

"China which was not participates in three international conventions; our domestic legislation is a complex system. There is not a set of unified regulation or law about international cargo transportation. This situation affects the development of international trade and international freight transportation at some extent". This view mentioned by Professor Si Yuzhuo in China Maritime .(2009)

When the Rotterdam rules came up, the Rotterdam Rules has adopted a "carriage by sea plus other" model to redefine the door to door transportation. In article 5(1) *This Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States.* And in article 26 *When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before*

their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument. From those articles, we could know 1) Rotterdam rules is the adjustment of international shipping or international multimodal transport contract. 2) Rotterdam rules use of network liability system. 3) The application of the convention excludes domestic law, which makes Rotterdam rules become minimal network responsibility.

How to use the change of Rotterdam Rules to Sea-rail multimodal transport to support Chinese multimodal transport activity is a problem. Because the different of legal and regulation system between China and other countries. So research from other countries can not apply to Chinese situation directly. We could analyse important change of Rotterdam Rules to multimodal transport. Through analyse three international conventions: Hague-Visby Rules regulate bill of lading and transport document merely. Hamburg Rules add sea way bill and other form of transport document which could as proof of contract into regulation.

The Rotterdam rules did not mention bill of lading, just use transport document instead of it. From WILSON J F. Carriage of goods by sea (London; Longman, 2008), we could find related concept. Moreover the Rotterdam rules add electrical document into regulation. From Manuel Alba Electronic Commerce Provisions in the UNCITRAL convention on Contracts for the International Carriage of Goods wholly or partly by Sea, we could know the regulation of unique transport document from the Rotterdam rules.

Si yuzhuo mention in Study on the Rotterdam rules: The Rotterdam Rules use many clauses and concept to build multimodal transport system, for example: "door to

door", "minimal network responsibility" and "negotiable transport documents and non-negotiable transport documents". Those concepts and clauses regulate multimodal transport activity more detail. (Si yuzhuo, Study on the Rotterdam rules, 2009)

In terms of the multimodal transport operator liability system of Rotterdam rules, according to view from Lu Peng in Effects of "Rotterdam rules" to the multimodal transport operator liability, he said the Rotterdam Rules adopted the completely fault-based liability principle in which the carriers' period of responsibility has been extended to 'door to door'. As a result of the carriers' navigational fault exception being eliminated in the Rotterdam Rules, the carriers increased limitation amounts and liability has added more reasonability to them than ever before. The limitations of multimodal transport operator liability are directly related to the system of multimodal transport operator liability. In international convention, there are two type of liability system, one is uniform liability, and the other one is network liability. (Lu Peng, *Effects of the Rotterdam Rules of multimodal transport operator liability to our country*, 2012)

Ding Zhilian mentioned it in Doctoral dissertation. Uniform liability system is that regardless of damage or loss occurred in which a section of transport, multimodal transport operators are applicable to the provisions of the contract or the legal liability. The actual carriers in goods damaged section are applicable to the provisions of legal liability in that section. Network liability system is that multimodal transport operators are applicable to the provisions of the legal liability in goods damaged or lost section, same as the actual carriers. The network liability system could be divided into categories, pure network liability and modified network liability. The former one is that when the occurrence of damage or loss of goods transport section can be determined, the multimodal transport operators and the

actual carriers in goods damaged section are applicable to the provisions of legal liability in that section. But it does not solve the problem of the application of law for unlocalized damage. (Ding Zhilian, Study on international multimodal transportation operator responsibility system, 2014)

According to Simon Baughen view mentioned in Shipping Law. In the modified network liability, when the damage or loss of goods occurred in the section of the transport can be determined(localized damage), the multimodal transport operators and the actual carriers in goods damaged section are applicable to the provisions of legal liability in that section.(Baughen, S, Shipping law. 2012)

If damage or loss of goods occurred in transport section cannot be determined (unlocalized damage), the multimodal transport operators are applicable to the provisions of the contract or the legal liability stipulated in relevant international conventions or domestic law (Simon Baughen, Shipping Law, 2009, p184).²

The new convention adopt minimal network system will promote unification of international maritime law. In a study on the major changes of the carrier's obligations in the international shipping industry by the Rotterdam rules, Shang Zhixia think the great breakthrough of carrier's obligation that they must deliver goods based on negotiable document in Rotterdam rules. (Shang Zhixia, Study on the major changes of the carrier's obligations in the international shipping industry, 2012)

² Simon Baughen,Shipping Law,4thed, Cavendish, 2009, p184.

The third part is under the Belt and Road Initiative, advice for current situation of Sea-rail multimodal transport of China.

Li Zhiwen in Thinking of China's legislative construction of the multimodal transport under Belt and Road strategy said, current legal system of multimodal transport in China is uncoordinated and divorced from practice. Considering the needs of multimodal transport development under "Belt and Road "Strategy and existing legislative conditions a unified multimodal transport law should be carried out. The unified multimodal transport law mainly contains private law relationships but also incorporates public law relationships, in order to provide sufficient legal protection of marine and inland transportation under "Belt and Road "Strategy. (Li Zhiwen, Thinking of China's legislative construction of the multimodal transport under Belt and Road strategy, 2016)

Hu Zhengliang think China ratify the Rotterdam Rules is not possible, but the some rules of Rotterdam Rules are reasonable and advanced. When Maritime Code of PRC altered, we could absorb and learn from that rules.

Wu Xingxing in the Countermeasures of China's sea-rail transportation under the Belt and Road Initiative said the new strategy bring challenge and opportunity for Chinese sea-rail multimodal transportation. The government promote a large number of projects to implement the new strategy. At the same time, China's railway department and railway logistics enterprises are also actively involved in the development of international convention and the improvement of the regulations of container management. It will create the condition for Chinese railway logistics enterprises enter into international competition of container railway transportation. (Wu Xingxing, Countermeasures of China's sea-rail transportation under the Belt and

Road Initiative said the new strategy bring challenge and opportunity for Chinese sea-rail multimodal transportation, 2013)

Chen shi in the importance of the Rotterdam rules on the Belt and Road Initiative mentioned that the three existing maritime conventions can not apply to the activity outside of port area. If any loss or lost of the cargo are incurred during from the inland container yard to the port area, the carriers could not liable for that. At present, there is no universally accepted international convention on multimodal transport in the world. (Chen shi, the importance of the Rotterdam rules on the Belt and Road Initiative, 2016)

According to Fu Xiaoman in the theory review of the legal definition of multimodal transportation under the Belt and Road Initiative, she said that China has a lot of regulations about single mode transportation, but it is lake of the uniform regulations about multimodal transportation. The Belt and Road Initiative strategy need to have a legal system of multimodal transportation to support. (Fu Xiaoman, the theory review of the legal definition of multimodal transportation under the Belt and Road Initiative, 2015)

Chapter3. The Belt and Road Initiative, current situation of multimodal transport in China

3.1 The Belt and Road Initiative

According to China's Belt and Road, East Asian economic zone and European economic zone will be linked through Eurasia and the Silk Road on the Sea. The network of international carriage of goods by sea in Belt and Road, starting from Chinese coastal ports, will highly internationalize China's maritime transport and diversify its modes. According to the practice of multimodal transport in China, generally reflect from all aspects the primary problem of the currently multimodal transport development is that railway, highway, waterway, and aviation transport have their own independent develop planning, which is lack of co-ordination. Resulting in poor compatibility of various transport, it is unable create good infrastructure support to multimodal transport development. For example, the railway transportation is controlled by national government, which is a monopoly market. The railway companies are both of governor and enterprise. Some ports lack of seamless transitions from maritime transport to special railway line, which need to through the highway transportation as drayage. In this way, it will increase transportation costs and reduce transportation efficiency. After two rounds of institutional reform from the State Council, the mechanism of comprehensive transportation system has been basically built up. In the preparation of a comprehensive transportation system will take the cohesion between highway, railway, water, air and other transportation into consideration as an important premise.

At present, multimodal transport of China is still in the stage of exploration and innovation. There is the lack of the standard specification of document of transport and the requirement of multimodal transport service ability for multimodal transport operator. It brings obstacles to the development of multimodal transport and engaging in multimodal transport operations. Based on the domestic multimodal transport development existing problem and development needs, we could learn from the experience of international multimodal transport development.

The special legislation of multimodal transportation is still blank in China. There is no clear legal legislation about multimodal transport service rules and service standards. The standard specification and exist system are not unified about loading of cargo, transloading, document of transport, information sharing and claim management in railway, highway, waterway and air transport. The multimodal transport operator is also according to their own situation signed contract made by their own (commissioned book) with single mode carrier. The clauses of contract (commissioned book) are not same. In order to standardize market order of multimodal transport and guide the healthy and standardized development of multimodal transport, the legislation in China should be clear about the service rules and service standards of multimodal transport.

In terms of the training of Chinese multimodal transport operators behavior, Chinese business enterprise engaged in multimodal transport, which is diversified, including traditional freight forwarders, port logistics company, traditional intermodal enterprise , traditional container transport companies, shipping companies owned freight forwarding companies. But these companies rarely have capacity to provide the door to door service. Usually they use shuttle bus service to distribute cargos to destination by way of commissioning to other highway company. In this stage, the

multimodal transport operators, who does not have enough service ability to provide the multimodal transport. Based on the current situation of China in multimodal transport services, the scope of enterprise is small, and competitive power is weak. The regulation of multimodal transport in China should encourage the extension of the scope of services, expand business network, expand business scale, innovate and optimize the organizational model and business model, increase the competitiveness of enterprises. Those regulations will encourage the transformation from traditional enterprises to modern multimodal transport operators. The multimodal transport operator is the bridge and link in the multimodal transport business. The multimodal transport operators sign the contract with the actual carriers and the shippers through power of attorney. The positions of the multimodal transport operators are vital. The most of countries in the Belt and Road Initiative are connected by seaway and rail. Therefore, we need to set up regulations to set out the requirements of operators, such as they shall strictly abide by legislation, which stipulate the rights and obligations.

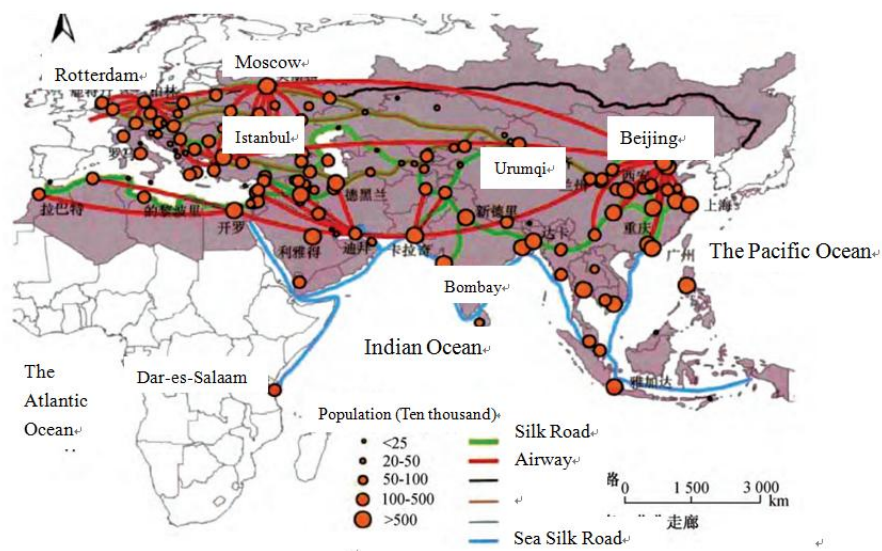


Figure 1 the map of Belt and Road

Source from: Dong Suo cheng, Huang Yong bin, Li Zehon, 2014, p.2452-2453

In the construction of Belt and Road concept, the ‘maritime-plus approach’ can be improved efficiency, safety and adaptability in the process of transportation; it is also can reduce transportation costs to a certain extent (WEI Hang, LI Jun, LIU Ning-zi. An algorithm for shortest path with multi-modal in time-varying network[J]Chinese Journal of Management Science, 2006).³ The main channel of Bangladesh, China, India and Myanmar economic corridor (China- Myanmar railway from Kunming to the Sittwe port) and the main channel of China Pakistan economic corridor (China-Pakistan railway from Kashgar to Pakistan Gwadar Port), When those two railway are completed, the Silk Road Economic Belt will connected with major hubs of the maritime Silk Road through international railway (WANG Wei. Railway contributes to the construction of One Belt and One Road, 2015).⁴ The cross-border logistics through Belt and Road, the international carriage of goods use rail import and export cargo to costal port and dry ports use rail to do transportation work of import and export cargo. It will achieve sea-rail transportation. It will enhance the comprehensive transportation of the country along the Belt and Road Initiative.

The Belt and Road Initiative in Europe mainly based on transport by sea, China-Europe Land-Sea Express Route as an important link from Piraeus port (Greece) to Budapest (Hungary), via Skopje (Macedonia) and Belgrade (Serbia) (The future prospects of China-Europe Land-Sea Express under the Macedonia crisis, Retrieved 4July 2016 from <http://opinion.haiwainet.cn/n/2015/0527/c3541310-28775304.html>).⁵ For a long time in the past, Chinese goods enter the Europe continent which need to across the Indian Ocean, round the Cape of Good Hope, across the South Atlantic and through the west sea shore of Africa. Port of

³WEI Hang, LI Jun, LIU Ning-zi.(2006)An algorithm for shortest path with multi-modal in time-varying network[J]Chinese Journal of Management Science, 14(4) : 56 (in Chinese)

⁴WANG Wei. (2015,October,23)Railway contributes to the construction of One Belt and One Road. Retrieved 4July 2016 from <http://epaper.comnews.cn/news-1102212.html>. (in Chinese)

⁵ The future prospects of China-Europe Land-Sea Express under the Macedonia crisis, Retrieved 4July 2016 from <http://opinion.haiwainet.cn/n/2015/0527/c3541310-28775304.html>. (in Chinese)

Piraeus as the largest port in Greece, it is known as the southern gateway to Europe. A ship loaded with Chinese goods container ships can directly across the Red Sea and the Suez Canal to unload cargos on Port of Piraeus, then using railway sent goods directly to the hinterland of Europe. It is reduce a lot of time by railway to import and export goods to European.⁶ The Belt and Road Initiative also requires a new organizational model of traditional shipping. Multimodal transport as a practical model of international transportation, sea-rail multimodal transportation will play an important role in Belt and Road strategy.

3.2 Flow process of sea-rail multimodal transport document in China

Container sea-rail transport business process includes lots of documents, and the process of them is complex. Each department has their own operation process, as a whole, container sea-rail multimodal transport is an advanced form of transportation of goods. It was comprised by the railway transportation, shipping companies, cargo loading and unloading in the port area, highway transportation, customs declaration, inspection and quarantine and other several interdependent dynamic elements, which constitute huge transport system. Transport system involved many departments and units. Such as shippers, freight forwarders, Railway Bureau, container company, river shipping companies, ports, railway stations, customs, inspection and quarantine, etc. Information exchange is not smooth in each unit, and the documents of different unit are not uniform.

⁶ The extention of Piraeus Port has been approved, Retrieved 4July 2016 from http://www.gov.cn/xinwen/2014-12/22/content_2794779.html. Html.(in Chinese)

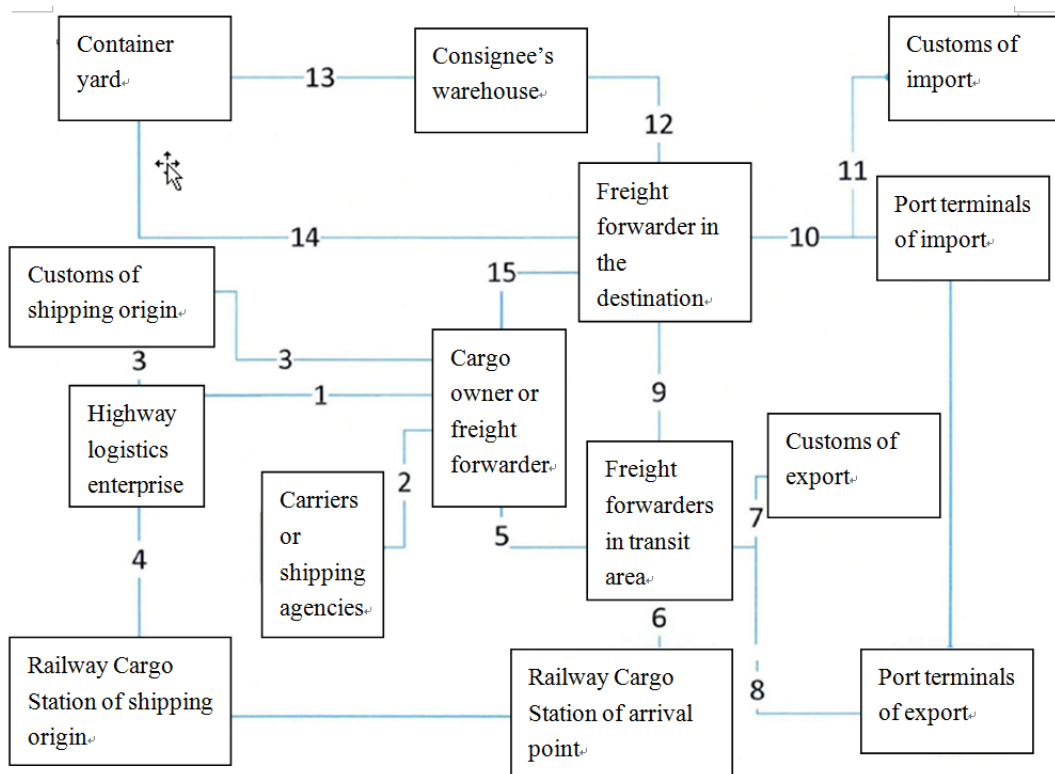


Figure 2 Flow process of container sea-rail transport document

Source from: Cui Yanping, & Cheng Cheng, Research on business process and sharing information of container sea-rail transportation, 2013, p11⁷

Table 2 List of documents

Serial Number	document name	issuer	receiving party	document type	remarks
1	Cartage order	Cargo owner	short-haul transport company	document of company	Not unify
	Container Release Order	China Railway Container	Cargo owner or freight	document of railway	

⁷Cui Yanping, & Cheng Cheng (2013). Research on business process and sharing information of container sea-rail transportation, Railway freight, 31 (12), 10-16.

		Transport Corp.	forwarder		
2	Booking Note	Cargo owner or freight forwarder	Carriers or shipping agencies	document of company	Not unify
3	declaration for exportation and so on	Cargo owner or freight forwarder	Customs of shipping origin	document of custom	
4	Railway bill	Railway	Cargo	document	
	delivery order	Cargo Station of shipping origin	owner or freight forwarder	of railway	
5	delivery order	Cargo owner or freight forwarder	Freight forwarders in transit area	document of railway	
	Customs Declaration			document of custom	
6	delivery order	Freight forwarders in transit area	Railway Cargo Station of arrival point	document of railway	
	Railway container delivery	Railway Cargo Station of	Freight forwarders in transit	document of railway	

	receipt	arrival point	area		
7	Document of customs transit	Cargo owner or freight forwarder	Customs of export	document of custom	
8	Dock receipt	container yard of export	Freight forwarders in transit area	document of company	Not unify
8	Bill of lading	Carriers or shipping agencies	Freight forwarders in transit area	document of company	Not unify
9	Bill of lading	Freight forwarders in transit area	Freight forwarder in the destination	document of company	Not unify
	Railway container delivery receipt			document of railway	
	Document of customs transit			document of custom	
10	bill of lading	Freight forwarder in the destination	Carriers or shipping agencies	document of company	Not unify

11	declaration for importation and so on	Freight forwarder in the destination	Customs of import	document of custom	
12	notification of arrival	Freight forwarder in the destination	Consignee	document of company	Not unify
13	Railway container delivery receipt	Freight forwarder in the destination	Container yard	document of railway	
14	Railway container delivery receipt and Container Release Order	Container yard	Freight forwarder in the destination	document of railway	
15	Railway container delivery receipt and Container Release Order	Freight forwarder in the destination	Cargo owner or freight forwarder	document of railway	

Transfer documents have been the core issue of sea-rail container transport. It is an involved multi-subject, multi-industry complex system project. From above the circulation of documents can be seen, the current sea-rail container transportation management are mutual separate with each unit. It is just rely on all kinds of freight forwarding enterprise to connect with them. The more important thing is all documents of company do not have a unit standard. Moreover, each functional department, carrier, customs supervision and other units are not deep involved to realize the sharing of resources and information. It is rise the cost of whole process of sea-rail container transportation, reduce the efficiency of sea-rail container transportation, and weaken the market competitiveness of the sea-rail container transportation.

Section four of chapter four of Maritime Code of PRC "transport document", those provisions are completely about the bill of lading. Because the scope of Maritime Code is limited in the carriage goods by sea, it is not including domestic transportation (roadway and railway) and inland water transport. In shipping and trade practices, there are various types of transport documents adapted to the sea-rail multimodal transport. So, it is necessary to add other transport documents in the maritime law of china.

3.2 The legal framework of China in the multimodal transport operator liability system

China is one of the few countries in the world to make special provisions for multimodal transport (Zhu Li, Study on International multimodal transport operator

liability, 2004, 36-40).⁸ But there is no special legislation of multimodal transport in China. China's legislation of multimodal transport scattered in Maritime Code of PRC and Contract Law of the People's Republic of China. It is only 10 provisions mentioned about multimodal transport. Maritime Code of PRC to adjust the multimodal transport must include shipping, and Contract Law of the People's Republic of China made special provisions in the multimodal transport contract. Multimodal transport in contract law, it is does not require multimodal transport operators shall bear the responsibility of transportation must including shipping. It is could be two mode transport combined together. Regulations about multimodal transport in Maritime Code of PRC is special law, regulations in Contract Law of the People's Republic of China is general law. The relevant provisions of these two laws constitute the basic framework of the legislation of multimodal transport in China.

The most important provisions of Chinese domestic law about the legal application of contracts involving foreign interests are article 145 in General Principles of the Civil Law of the PRC and article 126 in Contract Law of the People's Republic of China. These Provisions have established the principles of the legal application of contracts involving foreign interests, which are priority to Parties' Autonomy, most significant relationship as supplement. In October 1, 1997, the Ministry of Railways and the Ministry of communications jointly promulgated the regulations on multimodal transport of international containers. The rules are referring to United Nations Convention on International Multimodal Transport of Goods (1980). It is comprehensively discusses the rules of the law applicable to multimodal transport, multimodal transport operator liability, limitation of liability and prescription of action, etc. The rules can be compulsorily applicable to international multimodal transport, which including waterway, roadway and railway. Its level is relatively low, when the content is conflict with the Contract Law of the PRC and General

⁸ Zhu Li. (2004). Study on International multimodal transport operator liability, Pearl River Water Transport (11), 36-40.

Principles of the Civil Law of the PRC, it will be attributed to invalid.

Since the international multimodal transport is made up of a number of single transport segments, shippers and carriers can not only choose the law applicable to the whole multimodal transport contract, but also can be used to select the law applicable to the single mode of transport under the multimodal transport contract. At present, the international law and the domestic law have the relevant provisions of the international multimodal transport contract, but there is no mandatory applicability. In the Convention on the adjustment of the international single carriage of goods, some of which have been in force and some of them China has joined. For instance, as railway aspect, Agreement on International Railroad through Transport of Goods, as air transport aspect, Warsaw Treaty, Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air (Hague protocol) and Convention for the Unification of Certain Rules for International Carriage by Air. For these different international transport conventions, these conventions are typical private law. Autonomy of private law is basic principle of private law. Therefore, most of the treaties of international private law stipulate that all or part of the rule of law can be excluded by the party's autonomy. Some conventions, such as the international conventions in the field of international air transport stipulate that the Conventions shall be prior to the applicable provisions. Nevertheless, the parties can still be free to choose apply and for which convention. When the dispute submitted to the court to solve the problem, the choice of the parties can be admitted by the court, these questions eventually decided by the rules of private international law.

3.3 existing problems in the legislation of multimodal transport liability in China

The relevant multimodal transport legislation in China is too simple, operability of them are not flexible. The articles in Civil Law of the PRC and Contract Law of the People's Republic of China are not clear enough. It is difficult to solve the complex legal relationship between multimodal transport operators and the shippers. For example, Maritime Code of PRC stipulate the multimodal transport operator liability period of clearly defined to accept the goods until the delivery of the goods. Although the provisions reflect the rules of door to door mode transport, compare with article 12 in Rotterdam rules about multimodal transport operator liability period is too simple and not enough practice. The regulations for place of receiving cargos and place of delivering cargos, as well as the time of receiving cargos and delivering cargos are not explicit in practice. It could lead to disputes in real case.

In the Maritime Code of PRC given the parties to a freedom of contract, it is could explicitly allows for both of parties are free to make an agreement about the time or place to receive and deliver the goods. However, we need to limit the carriers' abuse of dominant position to shorten the period of responsibility of them. If agreed responsibility period is shorter than from receiving the goods from shippers to deliver goods to receivers, the agreed responsibility period is without legal binding force. To prevent the carrier's liability period is shorter than the door to door and then damage the interests of shippers and receivers. Delivery and receiving goods in accordance with the laws or regulations of the place of delivery and the goods received, that is, the fulfilment of the goods receipt and delivery obligations. Otherwise, when the party there is no agreement to the place of receiving or deliver

goods, the Maritime Code of PRC need to stipulate that. Contract Law of the People's Republic of China need to explicit stipulate the multimodal transport operator liability period, and the time or place to receive and deliver the goods.

Maritime Code of PRC uses incompletely fault liability system, which is completely fault liability plus exemption clause. This responsibility system has long been criticized by shippers. It is partial to marine carrier. The basis of liability of the multimodal transport operator is depending on section of damage. If damage could identify in particular stage, in accordance with article 105 in Maritime Code of PRC and article 321 in Contract Law of the People's Republic of China, it is applied to law of unimodal transport in that section. If damage can not identify in particular section, it will apply to Maritime Code of PRC and Contract Law of the People's Republic of China to take responsibility for damage to or lost of goods. The Maritime Code of PRC tends to protect the carrier. Therefore, it stipulates the limitation of liability is very low. It is unfair for shippers and receivers. The unbalance between the interests of the carrier and the merchant will not maintain long-term stability. Whereas, Contract Law of the People's Republic of China pays more attention to fairness, it is stipulate the principle of strict liability to protect the interests of the merchant. Although, it is in line with the trend of developing the responsibility principle of the multimodal transport operator, it is too radical for current situation of the development of China's transportation. It is difficult to reconcile the two extreme liability systems in the practice of multimodal transport, which is not conducive to the development of multimodal transport in China.

Some Maritime Code of PRC and Contract Law of the People's Republic of China regulations about Liability System are mutual contradiction and unreasonable. Relates to the sea transportation under international multimodal transport contract,

which is can not determine the damage occurred in the specific transport section. The multimodal transport operator has the right in accordance with the provisions of Chapter 4 of the Maritime Code of PRC enjoy limitation of liability, the doctrine of liability fixation is incomplete fault liability. In contrast, if international multimodal transport contract is not involved in carriage goods by sea, when it is can not determine the damage occurred in the specific transport section; the multimodal transport operator liability is strict liability. The strict liability is clearly increased the legal liability of non-maritime multimodal transport operator.

If in multimodal transport can not identify damage to or lost of goods in particular section, we will apply to Maritime Code of PRC and Contract Law of the People's Republic of China to judge the liability of the multimodal transport operator. In Maritime Code of PRC, the multimodal transport operator's limitation of liability is that The compensation for loss of or damage to the goods under Maritime Code of PRC is limited to 666.67SDR of account per package or other shipping unit, or 2SDR of account per kilogram of the gross weight of the loss of goods, whichever amount is the higher. However, under the Contract Law of the People's Republic of China does not require limitation of liability. As a result, the multimodal transport operator does not add shipping into multimodal transport operations will bear more responsibility, this is undoubtedly unfair. And the limitation of liability provisions of the Maritime Code of PRC is lower than other legislation. The multimodal transport operator in order to obtain the benefit, they may would circumvent the application of other transport convention. In addition, the Maritime Code of PRC and Contract Law of the People's Republic of China are lack of corresponding provisions about the multimodal transport operator delay delivery.

Summary

China wants to develop the logistic, not only depend on port cargo throughput and container throughput, China's port cargo throughput and container throughput for six consecutive years ranked first in the world. But also depend on the construction of the hardware and the software. In the world of international multimodal transport get more and more widely used, especially in the developed countries. Under the Belt and Road Initiative, China still has a great space to develop. From the legal aspects for the construction of a unified and coordinated international multimodal transport legal system, it will provide a more powerful help for the development of multimodal transport in China.

Chapter4. The analysis of the importance of Rotterdam Rules to multimodal transport

4.1. Analysis of Rotterdam Rules

The Rotterdam Rules is an international treaty published by UNCITRAL (United Nations Commission on International Trade Law), which regulate a new system about multimodal transport. It is not just about carriage by sea, also about "carriage by sea plus other".

With the changes of the situation, bills of lading has encountered lot of difficulties in the reality of maritime practice, More than one issued original bill of lading, the guarantees take delivery of goods without the original bill of lading etc. all of them are seriously impact the shipping order.

In the "Rotterdam rules", the bill of lading is replaced by "transport documents", which is divided into negotiable document, and not negotiable document and electronic transport records (Zhang min, Wang yanan, the influence of "Rotterdam rules" on the bill of lading system, 2010).⁹ The scope of "transport documents" is far greater than the range of bills of lading stipulated in the three conventions. The bill of lading must be a transport document, but transport document is not necessarily belonging to bill of lading. The difference between the documents is mainly reflected in bill of lading could be a document title of goods. Because of this unique function,

⁹Zhang min, Wang yanan. The influence of "Rotterdam rules" on the bill of lading system [A] Wuhan University of Technology 2010(8)

bill of lading could be negotiable in international trade. Holders of bill of lading could claim their goods from carriers. Bill of lading also could be used into documentary letter of credit. Bill of lading has even been regarded as an important method of financing, which is an indispensable part of the current international trade system. The bill of lading has greatly promoted the transfer of international goods and property, thus promoting the smooth development of international trade transportation. "Rotterdam rules" in place of the bill of lading to transport documents is determined by the scope of conventions, this modification is in line with its scope of application.

By comparing the Rotterdam rules with the three international conventions in force currently, I think it is rational for the Rotterdam rules to define the period of carrier's responsibility as "door to door", because this regulation response to the development of container trade. At the same time, "Rotterdam rules" increases the liability of the carrier and to re-construct the basis of the carrier's responsibility. The basis of carrier's responsibility in Rotterdam rules was defined as complete fault liability system to re-balance the requirements between shipper and carrier. The carriers are responsible for the burden of proof that he is not negligence in Care for Cargo. If carriers inability to provide evidence, they shall assume compensation liability. However, within the provisions of the exemption, the claimant's responsibility for providing evidences that the carrier has a fault. If the claimant inability to provide evidence, it is presumed that the carrier has without negligence. The carrier could invoke the exemption clause to avoid liability for compensation.

To promote the development of international trade and international shipping is the ultimate goal of this Convention. The Rotterdam Rules emphasizes on the beginning of its preamble, which convinced that the progressive harmonization and unification

of international trade law, in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation all States on a basis of equality, equity and common interest, and to the well-being of all peoples.’¹⁰In order to promote convention unity and avoid conflicts with other transport conventions, Rotterdam rules regulate in article 26. Such as when loss of or damage to goods occurs during the time is before lading onto ship and after discharge from the ship, the international convention of shipping, aviation, railways and other modes of transport is prevail over Rotterdam rules. This article maximum avoids conflict between Rotterdam rules and other transportation convention, which is conducive to international trade and shipping. I think the new convention adopt minimal network system will promote unification of international maritime law.

To sum up, the international carriage goods by sea has been a revolution, because of the advent of the container. The Rotterdam rules are could be a set of good example for international multiple transportation regulations.

4.2. Analysis of important change of Rotterdam Rules to multimodal transport

4.2.1. Analysis of Multimodal Transport Documents

At recent years, International Cargo Multimodal Transport (MT) becomes more and more popular among the global transport business. As one of its indispensable components, multimodal transport document also attracts people’s attentions.

¹⁰ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

Compared with the ocean shipping, multimodal transport actually makes the cargo shipper more convenient to complete his job, and also improves the transport efficiency. It's well-known that the ocean bill of lading is the most important one among all kinds of transport documents due to its special function in the international transport operations. Interestingly, the characteristic of the multimodal transport document seems to be very similar to be the one of bill of lading.

Although the multimodal transport document is a new form of documents, it has a close relationship with the ocean bill of lading. This is mainly determined by the important position of the carriage goods by sea in the international transportation industry. According to statistics, shipping accounted for about 70% of the total world transport, international multimodal transport shipping also occupy a major position (Ballou, R. H. Basic business logistics: transportation, materials management, physical distribution. 1978, P130).¹¹ As is known to all, traditional bill of lading, because of its unique function and role in all the documents occupies the core status. It is generally believed that it has three basic functions: evidence of the contract of carriage of cargo receipt and delivery certificate. As is known to all, traditional bill of lading has unique function and role in sea transportation. So it occupies the core status all the related documents. It is generally believed that it has three basic functions: the proof of transport contract, cargo receipt and document of title.

The bill of lading is not the transport contract itself. It is a supplementary to the transport contract (Chen Huiting, The legal function of bill of lading in international trade, 2004, P84).¹² The contents of the bill of lading from contents of contract, which is the carrier and the shipper reached (Si YuZhuo, The monographs of the

¹¹ Ballou, R. H. (1978). Basic business logistics: transportation, materials management, physical distribution. .B338.

¹²Chen Huiting.(2004).*The legal function of bill of lading in international trade*. Journal of Fujian provincial Party School of the CPC (12), 81-84.

maritime law, 2007, P158).¹³ When the content of the bill of lading is inconsistent with the contents of the contract, the bill of lading shall be subject to the content of the contract of carriage, and the bill of lading only serves as a supplementary proof of the relationship between the rights and obligations under the transport contract. It is proved that the parties have rights and obligations under the contract, and this kind of legal relationship is bound by the rules of the bill of lading.

If the shipper has been transferred bill of lading to third party after accepted it, although there is no relationship between the third party and the carrier, the assignee is based on the right of the bill of lading, and finally make the bill of lading become the basis of the legal relationship between the carrier and the assignee. The bill of lading is no longer a proof of the contract of carriage between the carrier and the bill of assignee. It could be a transport contract. At this point, the legal relationship between the assignee and the carrier no longer subject to prior carriage contract adjust. It is directly subject to the terms and conditions recorded on the bill of lading. At the same time, the contents of the bill of lading contain the rights and obligations in the process of transportation, so it also has the characteristics of transport contract.

Bill of lading as a transport document, it can be used to prove that the goods are received by the carrier or have been accepted by the carrier. The carrier issued this document in accordance with the requirements of the shipper. Usually three items are recorded in the bill of lading: the quantity or weight of the goods; the condition of the surface of the goods; the main mark of the goods. Therefore, bill of lading in the maritime link also bears the function as a receipt for goods. When disputes arise from goods is damaged, the shipper and carrier could use bill of lading as evidence of the damage of goods. The bill of lading is the primary evidence between the carrier and

¹³Si YuZhuo (2007).*The monographs of the maritime law*. China Renmin University Press,158

the shipper (Hu Yuehui. On the role of bill of lading, P133).¹⁴The carrier received the goods by the shipper delivered. The carrier has obligation to appropriate audit related documents of goods, and has right to require the shipper issued bills of lading as a receipt of goods. The bill of lading has conclusive evidential effect between the carrier and third party. The carrier does not have legal relationship with bona fide transferee. When bill of lading is transferred to third party, the bill of lading has become a conclusive evidence to prove goods received by carrier. The transferee of bill of lading shall have the right to require goods from carrier, which is recorded in the bill of lading.

Last but not least function is document of title. At the port of destination, holder of bill of lading could require goods from carrier. This function shows that the bill of lading is not only a proof of transportation contract and goods receipt, is also an important delivery certificate.

The Rotterdam rules did not mention bill of lading, just use transport document instead of it. The transport documents are clearly defined under the Rotterdam rules.

In article 1 (1) “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.’ In article 1 (14) “Transport document” means a document issued under a contract of carriage by the carrier that: (a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and (b) Evidences or contains a contract of carriage.’¹⁵

¹⁴Hu Yuehui. (2009), on the role of bill of lading. Legal system and Society (1),133.

¹⁵United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

According to this clause, the transport document is the carrier issued documents under the contract of carriage. And it also has two functions, one is the function of goods receipt, which can prove that the carrier or the performing party has been received the goods in accordance with the contract of carriage. The other function is a proof, which is could prove the existence of a contract of carriage, or transport document contains the contract of carriage. In article 1 (16) (17) the transport documents can be divided into three categories: negotiable transport document, non-negotiable document and electronic transport record. The electronic record also could be negotiable.

The "Rotterdam rules" stipulates that the carrier is the person who has made a transport contract with the shipper. In this concept, the carrier means a person that enters into a contract of carriage with a shipper. The scope of carrier no longer limited into carriage of goods by sea, also can be the multimodal transport. This trend reflects the traditional shipping mode transfer to the mode of modern logistics. The Rotterdam rules established maritime performing party system. Actual carrier of carriage goods by sea and inland carrier who undertakes to perform its services exclusively within a port area also are maritime performing party. According to the meaning of the concept and practice of view, sea way bill, air way bill and railway bill also could be into the Rotterdam rules adjustment.

4.2.2. The multimodal transport operator liability system of Rotterdam rules

4.2.2.1 The legislative status of the international multimodal transport operator liability

The international community has been working to promote the unification of the legislation of international multimodal transport of goods, reached the following four results. United Nations Convention on International Multimodal Transport of Goods (1980), Uniform Rules for a Combined Transport Document (ICC 1975), UNCTAD/ICC Rules for Multimodal Transport Documents (1992) and Rotterdam Rules (2008).

United Nations Convention on International Multimodal Transport of Goods (1980)

United Nations Convention on International Multimodal Transport of Goods is modified uniform liability system. In the whole multimodal transport, whether or not clearly damage occurred in which transport section, the multimodal transport operator are based on the unified responsibility assume liability to pay compensation. If we can identify the damage or lost occurred in particular stage of carriage, and the limitation of liability provisions of an international Convention or mandatory national law applicable to this section above the convention for the unification of the limits of liability, it should be applicable according to the limitation of liability in this section of the Convention or mandatory national law provisions. On the basis of the unified responsibility system, the Convention's responsibility of compensation is implement network liability system. Based on liability principle, the responsibility system of fault presumption is the same as the "Hamburg Rules".

United Nations Convention on International Multimodal Transport of Goods did not come into force. The negotiations about formulates the Convention a process of balance of interests. The ratification of the Convention is the result of the measurement of the interests of all countries, and they will not harm their own interests in order to promote the unification of international multimodal transport legislation. It can be said in the seventies and eighties of the last century developed a unified world of international multimodal transport convention is not a good time, the multimodal transport development in developed countries tend to mature, but developing countries under the initial stage of the multimodal transport, which has heavy concerns on the multimodal transport. The concerns of the developing countries is multimodal container transport would bring the unemployment rate increase and the multimodal transport operator would trend to monopoly, affecting the development of the air transport industry. The multimodal transport operator is rare in developing countries, so they are restrictions to the multimodal transport operator rights.

In 1980, the United Nations Convention on International Multimodal Transport of Goods reference to UNCITRAL (United Nations Commission on International Trade Law) drafted new Convention on carriage of goods by sea to a large extent, which is the Hamburg Rules. In addition to special provisions relating to multimodal transport, the terms of the Hamburg Rules basically can found in the new Convention on multimodal transport. The Convention absorbed the views from many developing countries, and it has a lot of disputes in multimodal transport liability system. The developed countries and the transport powerful nations have no doubt opposed the Convention, and they would rather make their own multimodal laws to regulate the multimodal transport rather than the ratification of the Convention. While the views of developing countries have been reflected in the Convention, they are unable to

eliminate the doubts of multimodal transport. Convention approved has binding force to all countries, so all countries treat it more cautious. The countries are ratification of the Convention is not enough. Burundi, Chile, Georgia, Lebanon, Malawi, Mexico, Morocco, Rwanda, Senegal, and Zambia approved convention, but their influence on economics and politics are small (Yang Yuntao. research on the legal relationship of international multimodal transport. 2006, P36).¹⁶ In the end, the United Nations Convention on International Multimodal Transport of Goods can not come into force.

Uniform Rules for a Combined Transport Document (ICC 1975)

Uniform Rules for a Combined Transport Document is the first set of norms for international multimodal transport. The International Chamber of Commerce made and revised it in 1975 (Yang Yuntao. research on the legal relationship of international multimodal transport. 2006, P36)¹⁷. Uniform Rules for a Combined Transport Document is just a method of demonstration, it is not a mandatory law. When the parties of the multimodal transport contract agreed to adopt the rules into contract, these rules could be in force. In effect, it also can not shake the mandatory provision from variety conventions and domestic legislations in different countries. However, the rule is a great experience on the legislation and practice of multimodal transport.

The rules adopt network liability system. When the damage or lost occurred in the particular stage of carriage, the multimodal transport operators will undertake liability from conventions and Mandatory law in different countries. When the damage occurred in the unknown section, the multimodal transport operators will

¹⁶Yang Yuntao. (2006) research on the legal relationship of international multimodal transport. China communication press, P36

¹⁷Yang Yuntao. (2006) research on the legal relationship of international multimodal transport. China communication press, P37

implement fault presumption. Liability is limited in accordance with 30 francs per kilo of gross weight of the goods lost or damage. The multimodal transport operators and shippers can be negotiated in advance to declare the value of the goods and recorded in the multimodal transport contract. The amount of compensation liability can exceed the limits of the provisions of the value of the goods. Uniform Rules for a Combined Transport Document does not regulate compensation responsibility for loss of or damage to the goods due to delay. If the loss of or damage to goods due to delay could identify into particular stage of carriage, multimodal transport operators could accord to provision of such international convention or mandatory national law would have applied to all or any of the carrier's activities in that stage (Hu Zhengliang, & Zhao Yang. Study on International air multimodal transport operator liability system study. (2009).)¹⁸.

UNCTAD/ICC Rules for Multimodal Transport Documents (1992)

United Nations Convention on International Multimodal Transport of Goods (1980) can not come into force, because countries are ratification of the Convention is not enough. In order to build a unified international multimodal transport operator liability system, United Nations Conference on Trade and Development (UNCTAD) and International Chamber of Commerce formulated a the model rules, that name is UNCTAD/ICC Rules for Multimodal Transport Documents, which is built on the United Nations Convention on International Multimodal Transport of Goods(1980) (Pan Yinying, Study on coordination of liability system of international multimodal transport operator, 2012).¹⁹

¹⁸Hu Zhengliang, & Zhao Yang. (2009). Study on International air multimodal transport operator liability system study. (Unpublished doctoral dissertation, Xiamen University, Xiamen).

¹⁹Pan Yinying. (2012). Study on coordination of liability system of international multimodal transport operator. Unpublished Doctoral dissertation, East China University of Political Science and Law, Shanghai

Compared with the Uniform Rules for a Combined Transport Document (ICC 1975), both of the two sets of rules are not have legally binding, shippers and carriers could use them voluntarily. The difference between them is that UNCTAD/ICC Rules for Multimodal Transport Documents (1992) did not regulate carriage must be international multimodal transport, furthermore, it did not regulate contract form and issuing combined transport document. Carriers and shippers could bring rules into carriage contract in oral or writing form. No matter whether the contract has two or more modes of transport, the rules will be applicable. In content, article 5 of UNCTAD/ICC Rules for Multimodal Transport Documents (1992) said multimodal transport operator could not take responsibility to loss of or damage to the goods due to delay. But there is an exception, carrier accept declaration of interest from shippers for timely delivery of goods. This clause is a great improvement compare with Uniform Rules for a Combined Transport Document (ICC 1975) (Yang Yuntao, research on the legal relationship of international multimodal transport, 2006,P38).²⁰

In contrast with the United Nations Convention on International Multimodal Transport of Goods (1980), the main content of the UNCTAD/ICC Rules for Multimodal Transport Documents (1992) is more clear and concise. It can be applicable to domestic multimodal transport, and it is not a mandatory instruction. So that shippers and carriers more easily accepted and used it. In practice, the rule is accepted by the Baltic and International Maritime Conference (BIMCO) and International Federation of Forwarding Agents' Associations (FIATA) as well as other transportation associations. It is useful for international multimodal transport (Yang Yuntao, research on the legal relationship of international multimodal transport, 2006, P38)²¹.

²⁰Yang Yuntao. (2006) research on the legal relationship of international multimodal transport. China communication press, P38

²¹Yang Yuntao. (2006) research on the legal relationship of international multimodal transport. China communication press, P37

In terms of liability system, UNCTAD/ICC Rules for Multimodal Transport Documents (1992) reconciles the Uniform Rules for a Combined Transport Document (ICC 1975) with United Nations Convention on International Multimodal Transport of Goods (1980). It is adopted a modified network liability system. In the field of limits of liability, it is lower than United Nations Convention on International Multimodal Transport of Goods (1980). The compensation for loss of or damage to the goods under this Convention is limited to 666.67SDR of account per package or other shipping unit, or 2SDR of account per kilogram of the gross weight of the loss of goods, whichever amount is the higher. If the multimodal transport contract did not include in carriage goods by sea or inland water transport, the compensative limitation should be increased to 8.33SDR of account per kilogram of the gross weight.

UNCTAD/ICC Rules for Multimodal Transport Documents (1992) adopted incomplete fault liability system from Hague Rules and Hague-Visby Rules. On the basis of the principle of presumption of fault, the provision regulated two exemptions, first is the negligence or default in the navigation, and second is the fire. It can be said that is a compromise to the wide application of the incomplete fault liability in practice (Lu Peng, Effects of the Rotterdam Rules of multimodal transport operator liability to our country, 2012)²².

The Rotterdam Rules (2008)

The original intention of the United Nations Commission on Trade Law is to formulate a unified legal document to solve the existing legal problems in the

²²Lu Peng. (2012). Effects of the Rotterdam Rules of multimodal transport operator liability to our country. (doctoral dissertation, Dalian Maritime University).

carriage goods by sea. Along with the progress of the work, international maritime committee found increased problem exist in current legal framework. Such as, The Hague Rules, Hague-Visby Rules and Hamburg rules have different scope of application and responsibility system of carriers. There are many new problems come into being in practice. Especially, the law issue from door to door and application of e-commerce. There is a challenge for traditional international transport legislation framework. The drafting of the Convention ultimately includes the carriage by sea and other modes of transport, the essence of that is an international convention on multimodal transport of goods.

Compared with United Nations Convention on International Multimodal Transport of Goods (1980), the scope of application of the Rotterdam rules shall include the carriage goods by sea. No matter what the distance of maritime transport or whether or not the maritime transport is main mode of transport in whole procedure, shippers and carriers could apply Rotterdam rules into their contract. It is a relatively narrow scope for international multimodal transport. Therefore, the Rotterdam rules are not only the Convention on the carriage of goods by sea, but also the Convention on multimodal transport.

To sum up, the comparison between four international conventions of the international multimodal transport operator liability.

Table 2 the comparison between four international conventions

Convention	Multimodal transport operator liability.
United Nations Convention on International Multimodal Transport of	Modified uniform liability system

Goods (1980)	
Uniform Rules for a Combined Transport Document (ICC 1975)	Network liability system
UNCTAD/ICC Rules for Multimodal Transport Documents (1992)	Modified network liability system (limits of liability is lower than 1980's convention)
The Rotterdam Rules (2008)	Modified network liability system

4.2.2.2 Analysis of minimal network liability system

Rotterdam rules use the limited network liability system to solve the multimodal transport operator liability problem in practice. Limited network liability system is a kind of modified network liability system. It can be interpreted as a condition to be applied the provisions of another international instrument and excluded the application of the domestic law. To be specific, limited network liability system means when you need to apply another international instrument, you need to satisfied three conditions. First, it must be in the case of the occurrence of section where the damage to or loss of goods could be determined. Meanwhile, in the event of the loss of or damage to goods due to delay could be identified in a period of time, which is the carrier or the performing party to receive the goods before their loading onto the ship or after their unloading from the ship. It is means that this period of time belongs to non-maritime section. Second, the scope of application is limited for the provisions of another international instrument. It is could merely apply the carrier's liability, limitation of liability, or deadline for suit. The rest of legal issues during transport, there are still apply the Rotterdam rules. Three, the provisions of another

international instrument could just be used to resolve the issue to the conflict among the expansion of unimodal applicable to other non-maritime forms of transportation and the Rotterdam Rules. In Rotterdam Rules, we need to identify when and where the loss of or damage to goods happened, or causing a delay in their delivery. It is important to determine the multimodal transport operator liability.

Article 26 of the Rotterdam Rules stipulate *when loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument*²³.

In this article, shippers and carriers could use other non-maritime transportation conventions into in the legal system of multimodal transport. When it meets other non-maritime transportation conventions own conditions, it does not need to rely on any specific interpretation of that convention in the particular stage (Ziel, G. V. D. Multimodal aspects of the Rotterdam Rules, 2009, 14(4), 981-995.).²⁴ Therefore, there is no limited on the preferential application of other transport conventions, including provisions of convention has entered into force and the provisions of the convention will coming into force. It is just apply the carrier's liability, limitation of liability, or deadline for suit. In article 26, it is regulate Rotterdam rules do not prevail over other non-maritime transportation conventions. If in a situation, there is no non-maritime transportation convention could be used to adjust carriers' liability, they could still use Rotterdam rules.

²³ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

²⁴ Ziel, G. V. D. (2009). Multimodal aspects of the rotterdam rules. , 14(4), 981-995.

Article 82 of the Rotterdam Rules regulated *Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods:* (a) *Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;* (b) *Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;* (c) *Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail;* or (d) *Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea. Supplement to the carriage by rail;* or (d) *any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.*²⁵

If there is the conflict between the expansion of non-maritime forms of transportation conventions and the Rotterdam Rules, carriers could apply to other non-maritime transportation conventions. For example, air convention provisions apply to any part of the contract of carriage. It is means that if any land, sea or inland water transports process is in order to perform the air transport contract to loading, delivery or re-transport goods, in the absence of a proof to the contrary, any loss caused could be

²⁵ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

treated as air transport caused. Carriers and shippers could apply air convention provisions. If carriers use other modes of transport instead of air transport without the consent of the shipper, the other modes of transportation shall be deemed to be carried out during the period of air transport. So, Carriers and shippers could apply air convention provisions as well.

As my view about article 26 and article 82, I think they are complementary to each other. They are all the terms of the settlement of the conflict of laws. There were only slight differences between them. The core of Article 26 is determined that If it is could identify damage occur in a particular section of whole procedures, and that particular section is belong to non-maritime section, it is could apply the conventions of unimodal transportation in that particular section. It is just apply the regulations for carrier's liability, limitation of liability, or deadline for suit. These rules are prevailing over Rotterdam rules. When it is can not identify the damage occur in which section, they could still use Rotterdam rules.²⁶ These provisions of Rotterdam rules are known as minimal network liability system. The purpose of article 26 is to formulate the responsible network liability system of all parties in multimodal transport contract. The goods are used containers to transport. It is difficult to determine the damage of the goods took place in which section of whole transport procedures sometimes. And it could be appeared that it is hard to indentify risk transfer between the seller and the buyer, it is hard for a number of carriers to share responsibility for the damage to or loss of goods, as well as the application of the international conventions of which mode of transport to determine the carrier's liability. The intent of the article 26 is that when it is can not identify the damage occurs in which section, they could still use Rotterdam rules. This is reason for the high proportion of damage section cannot be determined. In most cases, the damage

²⁶ UNCITRAL Report of the working Group on Transport Law, Twenty-first session, A/CN.9/645,para.204

of containerized goods are unable to determine the harm occurrence section or damage cause, so this "network responsibility system" is very important for liability of the multimodal transport operator.

Article 26 use instrument instead of convention, compare with them, instrument has wider range than convention. The former one can include not only the convention entry into force before Rotterdam rules, but also could contain the new regulations of the regional economic institutions after Rotterdam rules come into force. However, the conflict between the applicable mandatory national law and Rotterdam rules is excluded from the scope of the application of the article 26 (Diamond, A.) The Rotterdam rules. 2009,P 445-536).²⁷ That is to say, the conflict with the mandatory national law does not apply to the provisions of article twenty-sixth. In other words, the Rotterdam rules rule excluded the application of the domestic law. In addition, when the Rotterdam Rules apply to non marine transport section, it is adjusting the relationship between the carrier and the cargo owner. It is does not adjust the relationship between the cargo owner and the non maritime performing party as well as the carrier and non maritime performing party. That is to say, in the non maritime transport sector, the non maritime performing party fulfil the obligation of the carrier are not subject to the Rotterdam rules constraints in any case.

In the initial draft, Article 26 is as a conflict of convention provision in Rotterdam rules. However, in the end, the Article 26 became the provisions to regulate the carrier's responsibility of before and after the maritime transport section, the actual conflict of convention provision are borne by article 82 (Hancock C, Multimodal transport and the new UN Convention on the carriage of goods, 2008, p. 493)²⁸.

²⁷ Diamond, A. (2009). The rotterdam rules. *Lloyds Maritime & Commercial Law Quarterly*, volume 2, págs. 445-536.

²⁸ Hancock C (2008), Multimodal transport and the new UN Convention on the carriage of goods, 14 JIML, p. 493

4.2.2.3 Maritime performing parties in Rotterdam rules

In Rotterdam rules article 1 (6) *“Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control. “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier*²⁹.

According to definition, there is a clearly understanding of the performing parties in front of us. First of all, Maritime performing parties are not carriers, neither a party of a contract of carriage of goods. They do not have direct contractual relationship with shippers. Secondly, the performing party shall bear the liability of the carrier, perform or undertake to perform the obligations of the carrier under the contract of carriage. Thirdly, the maritime performing party need to fulfill the obligations including receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods. Fourthly, maritime performing party directly or indirectly entrusted by the carriers, so the maritime performing party to fulfill the obligations must be directly or indirectly under the requirements of the carrier, supervision or control. Last one, the performing party could enjoy the rights of the carrier's, for instance, right of defense and limitation of liability. The maritime performing party could be stevedoring company, truck drivers, contract carrier, port operators and terminal operator, etc (Chen, Y. (2010). On regulations for the performing party in rotterdam

²⁹ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

rulesl, 2010, P 75-78.)³⁰. The performing parties include almost all the persons who perform the contract obligations under the transport mode of "port to port" or "door to door". In this way, the liabilities of port operators and stevedoring companies are clearly, it is improved main responsibility system of international multimodal transport.

In Rotterdam rules, the performing parties are entrusted by the multimodal transport operators to undertake part of the obligation of carriage of goods as segment carrier, or other services providers. The performing parties perform or undertake to perform any of the multimodal transport operators' obligations under a contract of carriage.

The performing parties are separated into maritime performing parties and non-maritime performing parties by Rotterdam rules. Their responsibility also distinguished. Maritime performing parties shall enforce the provisions of the Rotterdam rules. Non-maritime performing parties still apply to international convention in that particular stage. This distinction could adapt to current situation of multimodal transport law. It is a good way for non-maritime performing party bears the obligations under the Rotterdam Rules, avoiding conflict with other international transport conventions or mandatory provisions.

Maritime performing party shall be the carriers during goods arrived at port of loading of a ship to goods depart from port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area (Article1 of the Rotterdam Rules)³¹. There are some difficulties in defining the port area to distinguish the maritime performing party and the non maritime performing party. Due to differences in national conditions and

³⁰ Chen, Y. (2010). On regulations for the performing party in rotterdam rules. Law Science Magazine. (08), 75-78.

³¹ Article1 of United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

geographical conditions, it is hard to describe the specific scope of a port area. So, the methods of describing the port area are wide differently in different countries. Even though the port area could be described clearly, there are still some problems can not be solved. If the port operators use trailer transport goods from outside of the port area to inside of port area, it is hard to say whether the port operator is a maritime performing party (Li Zhangjun, research on the system of carrier's liability in international maritime transport, 2006.P372).³²

4.3 China's non-acceptance of Rotterdam rules: is it desirable?

The scope of the application of the Convention combined with wide view of Chinese development of foreign trade, when Rotterdam rules come into force, China will involved in application of Rotterdam rules.

According to article 5, *Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States. Meantime, the contract of carriage, any one of the following places is located in a Contracting State: (a) The place of receipt; (b) The port of loading; (c) The place of delivery; or (d) The port of discharge.*³³

That is to say, as long as it is an international transportation contract that includes: the place of receipt, the port of loading, the place of delivery or the port of discharge. Any of them is located in contracting states. The contract could apply to Rotterdam rules. In Hague Rules, when the port of loading is located in contracting

³²Li Zhangjun. (2006) research on the system of carrier's liability in international maritime transport. Law Press.P372

³³ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) (A/RES/63/122), 2 February 2009

states, the contract is under Hague Rules Jurisdiction. The Rotterdam rules could apply to the place of delivery or the port of discharge, when the port of loading is located in contracting states. If China is not a contracting state to the Convention, carriers deliver goods to Chinese port from contracting states. In Chinese courts is not mandatory application of Rotterdam Rules. However, if the parties sued to courts that are located in contracting states, the courts will be forced to apply the Rotterdam rules.

For now, China's most important trading partners are the United States and the European Union has basically accepted the Rotterdam rules. Although most of China's trading partners has not acceded to the Convention. As a developing country, China could choose do not accept the Rotterdam Rules before China is more powerful in shipping area. However, with increasing number of contracting states, China will be involved in Jurisdiction of Rotterdam rules.

4.4 Rotterdam rules: an incentive to improve legislation on multimodal transport operator liability system

Although the Rotterdam Rules unlikely effective implementation in the next few years, especially, all of the major international shipping and trading countries all approved the rules is not possible. But the rules are rational, mature and advanced, when Maritime Code of PRC is revising, we should absorb and learn from Rotterdam Rules in the future. Such as sea performing party, goods of international multimodal transport, transport documents and electronic transport records, control of the provisions. And even the carrier's liability system. We could modify Maritime Code

of PRC to realize the modernization of the law system of carriage of goods by sea.

1. Drawing on the provisions of the Rotterdam Rules about period of responsibility, to clarify the place and completion time of the transfer of the goods in the multimodal transport contract.

Under Rotterdam Rules, as long as meet condition that “before loading goods or after deliver goods”, the parties could be agreed upon receipt and delivery of the goods at the time and place, to confirm the period of liability of the carrier, which could be agreed "hook to hook "or" port to port ", but can not less than" hook to hook ". This arrangement is given the parties a freedom of contract, and prevent the carrier abuse of dominant position shorten their responsibilities period, which will damage to the shippers and carriers of interest, it is worth to reference.

2. International multimodal operator liability system could reference the rules of completely fault liability.

We could learn experience from Rotterdam Rules to modify Chinese liability system. We can introduce the complete fault liability system of Rotterdam Rules for the multimodal transport operator. Through the increase of the carrier responsibility, to improve the allocation of the burden of proof, we could introduce the regulations that about the burden of proof for carriers and shippers into Chinese legal liability system. Let the enterprises that are have huge risk out of this industry, survival of the fittest. In order to reduce international multimodal transport operator's legal risks and prevent China international multimodal transport operators take responsibility too harsh to reduce its international competitiveness.

3. Increasing the limitation of liability of multimodal transport operators.

Unified the limitation of liability of international multimodal transport operator is very difficult. First of all, we need to determine the limits of liability for international multimodal transport of goods, and try to make the multimodal transport operator limit of liability rational unified in the specific amount. Under Rotterdam Rules, it is regulate 875SDR of account per package or other shipping unit, or 3SDR of account per kilogram of the gross weight of the loss of goods. Compared with Hague-Visby rules and Maritime Code of PRC were increased by 31% and 50% respectively. Under the Belt and Road Initiative, Chinese government encourages developing the Sea-rail multimodal transport.

In Railway Law of the People`s Republic of China, which revised in 2015, according to article 17(2) *Indemnity for goods conveyed not in the manner of insured transport of valued articles shall be on a par with the actual loss but not exceeding the liability limit laid down by the competent department in charge of railways under the State Council. If the loss is caused by deliberate action or grave fault on the part of the railway transport enterprise, the above-stated liability limit shall not apply but the indemnity shall be made in conformity with the actual loss Any shipper or passenger may, on voluntary basis, enter into insured transport of valued goods or buy insurance policy for transport of goods, or may do without. No shipper or passenger shall be compelled in any manner to enter into insured transport or buy transport insurance policy (Railway Law of the People's Republic of China 1990 (2015Amendment))*³⁴.

The Rotterdam rules for the scope of liability of the carrier are not only the loss or damage to the goods, but also including all the losses caused by the breach of

³⁴Railway Law of the People's Republic of China 1990 (2015Amendment)

contract. It is more extensive than the Railway Law of the People`s Republic of China. In regulations for railway freight traffic of China, it is stipulate that insured transport of goods, the maximum compensation can not more than the goods insured amount. Only a part of goods encounter loss or damage, according to the proportion of damage to or loss of the goods multiplying the proportion of insured amount. Not insured transport cargo, which is not according to the number of packages only according to the weight of cargo, the maximum limited of liability is ¥100 per ton. Not insured transport cargo which is depend on the number of package and the weight of cargo, the maximum limited of liability is ¥2000 per ton. The maximum limited of liability of individual shipper`s luggage is ¥30 per 10kg. If actual loss is lower than above compensation limited of liability, the price of compensation is according to actual loss (Regulations for railway freight of China (1991)).³⁵ Obviously, the limit of liability of the carrier of railway transportation in China is not only lower than the provisions of Maritime Code of PRC; this limitation is far below the provision of Rotterdam Rules. At present, China railway transportation limit of liability is not adapted to the level of development of the economy in China, which will hinder the long-term development of the railway transportation in China. Therefore, we could reference the Rotterdam Rules and combined with the situation of China, to do an appropriate adjustment for railway transport liability limitation. Carriers could through invest the insurance to transfer the increased responsibility. Thereby, increasing the cost can be transferred to the merchant by improved the freight. It will be achieved a new balance between carriers and merchants about rights and obligations. Shipper also could invest the insurance to guarantee their rights when encountered damage to or lost of goods due to delay. Such as, in line with article 17(2) in Railway Law of the People`s Republic of China. *Any shipper or passenger may, on voluntary basis, buy insurance policy for transport of goods at an*

³⁵Regulations for railway freight of China(1991). article 56

*insurance agency and the insurance agency shall be liable for indemnity in conformity with the agreement as stated in the insurance contract.*³⁶

Summary

Rotterdam Rules is a good example for multimodal transportation. It is use network liability system. It is convenient for the multimodal transposition operators to take responsibility for shippers. Although the Rotterdam Rules can not resolve its conflict with domestic law, it is only deal with conflict with the non maritime convention. This regulation is useless for China, because China did not enter into all kinds of international conventions. The Rotterdam Rules provide a good way to unify multimodal transportation. China could learn from it to form own regulations about multimodal transportation. The limitation of multimodal transport operators, completely fault liability, the period of responsibility, those three aspects are lack of the current situation of China. Whatmore, the transport documents in China are so complex, we need to form a uniform standard. It will boost the development of Chinese multimodal transportation. Under the Belt and Road Initiative, we could establish effective international multimodal transportation management system in accordance with the "Rotterdam rules" principle.

³⁶ Railway Law of the People's Republic of China 1990 (2015Amendment)

Chapter5. The practice of Sea-rail multimodal transport in China

5.1. Tax rebate from Place of departure

Different from the traditional export tax rebate mainly using the control rebate rate to achieve the goal of macroeconomic regulation and control, tax rebate of place of departure is indirectly achieve the goal of government economic policy by innovation tax refund procedures. The essence of the tax rebate of place of departure is a measure of the reform in the international export tax refund procedures. To be more specific, in the traditional way, when the goods are shipped to the port of foreign trade export and clear the goods for export, the shippers could have tax rebate of place of departure. In nowadays, when the goods have not yet reached the transshipment for port of foreign trade export, it is considered have been exported and it is could apply for procedures of tax refund. So that, the time of foreign trade export goods of the export tax rebate in advance greatly.

Current situation of tax rebate of place of departure, treasury department regulate Shanghai port will be the first export port for tax rebate of place of departure in China. The port of departure are port of Nan Jin Long Tan, port of Su Zhou Tai Cang, port of Lian Yun Gang, port of Zhu Jia Qiao, port of Jiu Jiang, port of Qin Dao Qian Wan, port of Wu Han Yang Luo, port of Yue Yang Chen Ji. The containers are from port of departure to do export declaration, through waterway to transit containers to Shanghai Yang Shan free trade port zones, then departure to other country. Those containers are implementing the tax rebate of place of departure. After the implementation of the tax rebate port of departure, the goods from other city in China transit goods to Shanghai port. Those goods could apply for procedures of tax refund,

export tax rebate settlement time points are in advance to the goods leave the port of departure. In the past, those goods need to ship to the Shanghai port and clear the goods for export, then apply to export tax rebate. It is waste time. In nowadays, export tax rebate from port of departure not only conducive to the promotion of international trade, but also save time for shipper.

We could learn experience from export tax rebate from port of departure to build a system for export tax rebate from place of departure. The export tax rebate from port of departure is limited in waterway transport. Through Sea-rail multimodal transport to export goods, it is can not use export tax rebate from port of departure. Under the Belt and Road Initiative, we need to encourage the development of Sea-rail multimodal transport. However, according to current policy and current technology, the cost of using waterway transport is cheaper than rail way. So, if one place has port could through inland river to transit goods to Shanghai port and enjoy export tax rebate from port of departure, the company of that place could not use railway to transit. In case of the companies of inland city want to export goods, it is still not convenient for them. They need to transit goods to Shanghai port and clear the goods for export, after those procedures, they could have export tax rebate. It is waste time and it is not fair to inland city. The economic gap between inland city and coastal city still exists. Under the Belt and Road Initiative, we could build a system for export tax rebate from place of departure to encourage the development of western inland city.

5.2. Dry port

Dry port is in the inland area, which has convenient traffic. In accordance with relevant laws, regulations, treaties and conventions, the coastal ports are established

in the inland feeder ports or local governments and investors to establish the modern logistics operating platform, it for the economic development of the inland areas provide logistics services. Chinese dry port planning and construction derived from national strategy for regional development. Inland areas looking for economic development, coastal port expect to improve the competitiveness as well as the pace of building traffic infrastructure is accelerate, especially the construction of railway container center station provides an important basis for dry port development. There are two ways for the development of dry port in China. One is coastal ports expect to improve the competitiveness about volume of goods to set up inland port in inland areas. At present, relying on railway construction operations or under planning of inland dryports is about more than fifty in China area. The other one is the logistics zone through the upgrading of service functions to develop into a dryport.

Table 3 Inland dry ports rely on railway construction

Coastal ports	Inland dry port
Port of DaLian, Port of YingKou	Shen yang, Chang chun, Ha Er Bing, Ji Lin, Si Ping, Tong Liao, Yan Ji
Port of Tianjin	Bei Jing, Shi Jiazhuang, Xi An, Zheng Zhou, Tai Yuan, Lan Zhou, Urumq, Hu He Hao Te, Bao Tou.
Port of Qindao	Zi Bo, Zhen Zhou, Xi an, Hou Ma
Port of LianYungang, Port of Rizhao	Lin Yi, An Yang, Luo Yang, Xi Ning, Yin Chuan
Port of Ningbo	Jing Hua, Yi Wu, Shao Xing, Yu Yao, Qu Zhou, Yin Tan, Shang Rao
Port of Xiameng	San Ming, Wu Yi Shan, Sha Xian, Long

	Yan, Nan Chang, Ji An
Port of Shenzhen	Gan Zhou, Da Lang, Shao Guan, Li Ling, Chang Sha
Port of Guang Zhou	Kun Ming
Port of Guang Xi	Nan Ning

Source from: YANG Jing-shuai,SUN Zheng-yi, Restrictive factors and supporting conditions for the development of dry port,2012, P69 ³⁷

Dry ports are depending on the development of sea-rail transport. Inland customers can be more convenient to the realization of transportation handover, and then unified coordination the container transport between dryport and harbor, using efficient transportation network w, providing to the shippers and the carriers more accurate delivery.

China is generally believed that the dry port is the hub of inland container transport network. It is set for a goods distribution center and connecting point between road transport and road-rail transport. Dry port provides distribution, handling, customs inspection and other short-term storage and related services for import and export containers.

There is a certain difference between the dry port and the coastal port, the inland dry port is not suitable for the Port Law of The People's Republic of China. While with the inland dry port rapid construction and development at the same time, the country has not introduced the relevant strict laws, regulations or unified specification to regulate behaviors. Countries are lack of unified dry port multimodal transport

³⁷ YANG Jing-shuai,SUN Zheng-yi. (2012). Restrictive factors and supporting conditions for the development of dry port. Railway Transport and Economy, 34(11), P68-71

regulations and policies, support policies for dry port construction and multimodal transport market related regulations as well. Those drawback are lead to the lack of coordination of regional development, uneven, restricted the development of the whole process.

5.3. " Five fixed " trains

In order to adapt to the development of market economy, Chinese railway develop a new system of direct express freight train, named "five fixed " trains. That means the freight trains with "scheduled station, scheduled train number, scheduled route, scheduled time and scheduled price". As a new product of cargo transportation, the "five scheduled" trains participate in the competition of freight transportation market, and provide high quality transportation service for the society, meet the demand of railway transportation as well.

At present, the national railway has built up more than 90 lines for "five fixed " trains (Luo Kai, the development and Countermeasure of coastal port sea rail transport, 2013, P10)³⁸. In addition, Chinese major port enterprises have also set up logistics companies for container sea-rail multimodal transport. If "Five fixed trains" connect with railway station in port area, it will be greatly improved the efficiency of container transport, reduced the truck transportation between port railway station and terminal, reduced transport costs, optimize the structure of sea-rail container transportation. It is undoubtedly an important advantage of sea-rail multimodal container transportation; it is also a contribution for encouraging hinterland economy.

³⁸Luo Kai. (2013) the development and Countermeasure of coastal port sea rail transport. Port economy (10), 9-13.

The station can not get rewards from organising “five fixed ” trains. It is affecting the enthusiasm of each station to organise “five fixed ” trains (Jiang Fei, Study on the development strategy of "Five scheduled" trains, 2004, P57).³⁹ Because of the organisation of “five fixed “trains is not directly linked to the economic benefits of schedulers. It is also affecting the enthusiasm of each scheduler to organise “five fixed ” trains. So, we should regulate rewards for stations and schedulers to organise "five scheduled" trains. We need to make clear the responsibilities and cooperative relationship between the various departments of the railway system, and joint advantages to organize the “five fixed ” trains.

Summary

Under the Belt and Road initiative, the Chinese government carries out lots of multimodal transportation programs, but all of them need to involve all departments of transport to coordinate to develop. Cooperation with all departments needs to have uniform regulations to realize. Unfortunately, it cannot form a whole uniform regulation in short time, so I suggest that we could develop several regulations to ensure the cooperation between two departments of transport.

³⁹Jiang Fei. (2004). Study on the development strategy of "Five scheduled" trains. China Railway, (5), 56-58.

Chapter 6. Conclusion

The Belt and Road initiative promotes economic and trade between China, Europe, Asia and African countries. It brings both opportunity and challenge for China. It will not only promote economic development and International multimodal transportation development, but also require the law and regulation to provide better protection for the development of multimodal transport. Under the implementation of the Belt and Road Initiative strategy background, it is necessary and urgent to explore the construction of China's legislation for International multimodal transportation.

At present, the existing effective international conventions can not standardized international multimodal transportation, and it is difficult to set up a new international multimodal transportation rule now. "Rotterdam rules" has become the best choice for the Belt and Road Initiative strategy at this time. We could learn from Rotterdam rules to form a new set of maritime rules system for our multimodal transportation. The Rotterdam Rules in an effort to find some rational and uniform rules to address today's global maritime law legislation system generally lagged behind in the practice of maritime law. So Rotterdam rules meet the practical needs (MO Shijian, Discourse on the Rotterdam Rules [J] Journal of International Economic Law, 2012, p253).⁴⁰The Maritime-plus approach of Rotterdam Rules is an example to solve practical problems from international multimodal transportation. It stipulates standards of the whole or part of carriage involving sea and part of other modes of transport to coordinate shipping rules and other modes of transportation.

In the process of ratifying a new international convention, sovereign states like China need to follow the new trends of globalization and the general laws of globalizational

⁴⁰Mo Shijian. Discourse on the Rotterdam Rules[J] Journal of International Economic Law, 2012,19(2) :253-254 (in Chinese)

times. Meanwhile, we need to effectively protect the interests of our country. The difference between country's maritime law and international maritime law can not easily eliminate within a short period of time. China not only has the shippers, but also has the cargo owners. So, we need to take into account both the interests of the shipper and the cargo owner. Therefore, we need to set up new rules about transport documents to coordinate the trend of international multimodal transportation. Under "Belt and Road" background, China has carried out a lot of practical projects about multimodal transportation. Such as, sea-rail multimodal transportation, those projects also need law and regulation to protect the interests of the parties, and ensure those projects are operating smoothly.

At present, in order to ensure the success of "Belt and Road", we could establish effective international multimodal transportation management system in accordance with the "Rotterdam rules" principle or as basis to frame bilateral treaties with the other countries along the routes.

In terms of limitations of this paper, when I discuss about the Rotterdam Rules and other international conventions, I just use data analysis and comparison to describe the problem. I do not have enough practical experience about multimodal transport in the world, so my research paper just mentioned we need to establish a set of management rules and a uniform legislation through compared with advanced rules. I can not figure out accurate clause on this topic. And when I mentioned multimodal transportation in China just forces on sea-rail, not full type of multimodal transportation in China, this is a drawback for my research paper. I hope I could add some details in the future.

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