Multimodal transports in the US and Europe
– Global or Regional Liability Rules?

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Transport law has traditionally been regarded an international area of the law. The modern multimodal transport, combining different types of transports, has changed this. Multimodal transports are not regulated by any international conventions. In commercial practice, one liability model is preferred in Europe whereas another is preferred in the US. In this sense, modern transport law has become regionalized. The regionalization creates difficulties when goods are transported between the two regions. Neither the attempt to regulate multimodal transports in the new global UNCITRAL convention for Carriage of Goods, Wholly or Partly by Sea (The Rotterdam Rules), nor the EU proposal on multimodal transports will solve this problem.

I. Identifying the problem

The phenomenon of the global economy has increased trade across borders and the general tendency of businesses outsourcing productions to other countries. Not surprisingly therefore, the demand for international transport services has been steadily growing over the past decades. Although, in general, transportation of goods can be carried out in much safer ways today than was previously the case, it still frequently happens that goods are damaged during transport. This raises the question of the liability of the carrier performing international transports.

Historically, the law dealing with liability issues in relation to transports between different countries has been regarded one of the most international areas of the law. International uniformity has been achieved by the adoption of international conventions. The conventions establish different liability regimes for the different types of transport. For instance, the Hague Rules\(^2\) and the Hague Visby Rules\(^3\) establish international rules on ocean carriage. Likewise, the Warsaw convention\(^4\) and its successor the Montreal convention\(^5\) establish international rules on air carriage. The conventions on ocean transport and air transport have been widely adopted throughout the world. This reflects the fact that vessels and airplanes are used as means of transport all over the world and also between different regions of the world. In contrast, the rules on inland carriage (road and rail) vary from one region to another. The US rules on inland transport are different from the rules on inland transport adopted in Europe. This, of course, reflects the fact that - for obvious reasons - goods are not carried by road or rail from Europe to the US or vice versa. Consequently, there has been no need to have common, international rules regulating these types of transport. For instance, if goods were to be shipped from the US to an inland destination in Europe, the shipper would typically enter into one contract with the ocean carrier for the carriage across the Atlantic and enter into another contract with the European inland carrier for the inland on carriage. The ocean part of the transport would be

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4 Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw (1929)
regulated by international rules on carriage by sea and the obligation of the ocean carrier would terminate at the delivery to the port. The fact that the European carriage would be regulated by European inland rules would be of no concern to the ocean carrier and would hardly come as a surprise to the shipper.

However, with the rise of the multimodal transport, combining different types of transport, the differences in the inland liability rules have begun to create difficulties. Under a contract for a multimodal transport the contracting carrier - often the ocean carrier - assumes liability for the entire carriage and subcontracts the different stages of the transport to other carriers, including inland carriers. By undertaking liability for the entire transport, the contracting carrier assumes liability not only for its own part of the carriage but also for other parts of the transport performed by other carriers using different means of transport. For example, if goods are to be transported by sea from New York to Rotterdam and by road from Rotterdam to the final destination in Paris, a contracting ocean carrier under a multimodal contract will often assume liability for the entire transport from New York to Paris including the road leg from Rotterdam to Paris. Because of the inclusion of the road leg in the contract, the rules governing inland carriage may suddenly become relevant to the parties in new ways and to a much larger extent than was previously the case. For instance, the inland liability rules may affect the carrier’s liability towards the shipper and may also affect the extent to which the carrier can file a recourse action against the subcontracting inland carrier. Consequently, under the widespread use of the multimodal transport, the fact that the inland liability rules differ from one region to another pose a challenge to the goal of achieving sufficient international uniformity.

The multimodal type of contract raises the question of the liability of both the contracting carrier and the subcontracting carrier. These two questions are interrelated. Thus, when the contracting carrier assumes liability for the entire transport, it will be interested in being able to pass on the loss to the performing carrier responsible for the damage. However, to the extent that the contracting carrier and the performing carrier are subject to different liability rules, the contracting carrier may be prevented from filing a recourse action against the performing carrier. One of the central questions in relation to the multimodal transport is how to facilitate recourse actions in the chain of contracts. Obviously, the simple way to achieve this goal is to create uniformity or harmonization in the chain of contracts so that the contracting carrier and the performing carrier are subject to the same liability rules. As will be shown below, different liability models offer different solutions to this problem.

The multimodal transport also gives rise to another uniformity question. This is the traditional question of how to achieve international uniformity. Although some of the existing conventions partially touch upon the liability questions in relation to multimodal contracts, there is at present no convention dealing with them at a general level. Consequently, different jurisdictions have dealt with the multimodal problem in different ways.

Since around 80% of the world’s cargo is carried by ocean, this article focuses on multimodal transports which include an ocean carriage. In addition, it only addresses multimodal transports in which the ocean carriage is combined with an inland carriage since this is the most common combination. The combination ocean carriage/air carriage is less common, whereas the combination air carriage/inland carriage occurs. Likewise, combinations of different types of inland transport (rail/road) are common.
multimodal transport law up till now has become regionalized, rather than globalized in the sense that Europe has favoured one liability model to create harmonization in the chain of contracts whereas a different model appears to have become the more popular solution in the US (II and III). The article traces the reasons for this (IV), describes the difficulties that this development creates (V) and poses the question how the two systems may merge into a global system (VI).

II Statutory framework
1. Historic background
Today, different types of transports are regulated by different liability regimes. They are all based on the same liability model; the liability of the carrier is typically a fairly strict but limited liability. However, the details of the liability regimes vary. For instance, maritime liability is subject to special exceptions. In addition, different limitations on the amount of damages that can be claimed apply. Similarly, the different types of liability are subject to different time limitations. The differences exist primarily for historical and political reasons. Theoretically, it would most likely be possible to draft common rules for all types of transportation. In practice, however, this solution is not foreseeable as a realistic development in the near future. Consequently, dealing with the multimodal transport must be based on the fact that different liability regimes apply to different types of transport.

In both European law and US law, maritime law and the law of inland carriage have developed from different starting points. In both systems, maritime law proceeded from the concept of risk sharing, maritime adventures being considered dangerous. This in turn, fostered the tradition of exemption clauses in maritime contracts that were ultimately regulated by international conventions focusing on the content of the bill of lading. In other words, the focus was on the document. In contrast, when it comes to inland carriers, this type of carriage service was traditionally performed as a public service made available to customers at large often by state owned entities. The focus has traditionally been on the status of the carrier when regulating this sector. Thus, both in the European legal systems and the US legal system the inland carrier has to a wide extent been subject to regulatory provisions and to liability rules limiting freedom of contract. Although, when looking at it historically, there are these similarities between the two systems, today, there are also differences between the approaches taken. In particular, this is true of the rules governing inland carriage.

2. Maritime law: The common documentary approach in the US and in Europe
Under US law, the liability of the ocean carrier for international carriage of goods by sea is regulated by the Carriage of Goods by Sea Act (GOGSA) provided the ocean carrier is a common carrier. GOGSA is based on the Hague rules. In most European countries, ocean carriage is regulated, not by the Hague-rules, but by the Hague-Visby rules, or these rules in an adapted version. This means that at a general level the rules governing ocean carriage in the US and in Europe are very similar whereas there are some differences at a more detailed level.

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8 The article does not deal with other regions such as Asia of South America.
9 The most prominent example is the rule exempting the ocean carrier from liability for navigational errors.
Under both systems a clean B/L lading is prima facie evidence of the receipt of the goods in good condition, cf. the Hague-Visby rules article III, subsection 4, and GOGSA section 3, subsection 4. In other words, the starting point is that the carrier is liable if the goods are damaged. However, according to the Hague-Visby rules article IV and COGSA section 4, the liability of the carrier is subject to numerous exceptions. In addition, liability is limited. Under the Hague-Visby rules the limitation is the equivalent of 666.67 units of account per package or unit or units of account per kilo of gross weight of the goods lost or damaged, cf. article IV, subsection 5(a). Under GOGSA section 4, subsection 4 liability is limited to 500 dollars per package. Under both systems claims must be made within one year, cf. the Hague-Visby-rules article III, subsection 6 and COGSA section 3, subsection 6. Under both systems, also, the liability rules cover the carrier’s liability during the “tackle to tackle” period, cf. the Hague-Visby-rules, article 1(e) and GOGSA section 3(e). As a starting point, the rules are mandatory. However, the liability of the carrier may be extended by contract, cf. the Hague Visby article V and COGSA sec. 7. It is also possible to extend the maritime liability rules to cover the pre loading and post discharge periods of time.

As the Hague-Visby rules, GOGSA only applies to contracts of carriage covered by a bill of lading, cf. the Hague Visby rules article 1 (a) and GOGSA sec. 1. The rules regulate the legal relationship between “the carrier” and the holder of the bill of lading. According to the Hague Visby rules article 1 (a) and to GOGSA sec.1, the term “carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper”. However, in both systems the term carrier can apply to anyone who enters into a contract of carriage with the shipper. Accordingly, it is decisive for the application of the maritime liability rules described, not who enters into the contract, but that there is a bill of lading that evidences a contract for the carriage of goods by sea. In other words, the document is central to the application of the rules.

3. Inland carriage: Status v. contract

a. US law: The status approach

Whereas ocean carriage – apart from details - is regulated by fairly similar rules in Europe and in the US, there are fundamental differences between the approaches taken in the two systems when it comes to inland transport.

Under US law, inland carriage is governed by the so called “Carmack Amendment” The Carmack Amendment establishes what could be called a “semi mandatory” liability regime. The liability rules in the Carmack Amendment can in fact be varied by agreement but only if a special procedure is followed.

As a starting point, the Carmack Amendment imposes strict liability on the carrier. In addition, the carrier is liable for the “actual” loss, i.e. the full loss. Thus, as a starting point, the inland carrier cannot avail himself of limitations of his liability. This general rule however, is subject to modifications, since it is possible for the parties to agree to limitations of the liability provided the shipper is given the opportunity to choose between Carmack liability (strict and unlimited) and other – appropriate – combinations of tariffs and limitations, cf. 49 U.S.C. § 14706 (c) (1) (A)/ § 11706 (c). According to 49 U.S.C § 14706 (e) (1)/ § 11706 (e), there is a 9 months limit for filing suits against the carrier and a 2 years limit for filing a civil action. These time limits cannot – under any circumstances - be varied by contract.

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12 For countries that have ratified the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on 25th August 1924, as amended by the Protocol of 23rd February 1968 (the SDR-protocol), liability is also limited to 2 SDR pr. kilogram lost or damaged cargo. The carrier is free to choose the more favourable limitation.


14 The Carmack Amendment was an amendment to Interstate Commerce Act, 1887. The Carmack Amendment is now codified at U.S.C § 11706 ff and § 14706 ff. The history behind the Carmack Amendment will be described in more detail below at III.3.b.i.
The liability regime applies to the inland carrier provided the carrier is under the jurisdiction of the Surface Transportation Board (the Board). Thus, the status of the carrier is central to the application of the liability rules in the act. The status approach implies that as a starting point the Carmack Amendment liability regime applies to both contracting carriers and subcontracting carriers as long as they are subject to the jurisdiction of the Board, i.e. as long as they qualify as either rail carriers or motor carriers.

b. European law: The contractual approach
Under European law the carriage by road and rail is regulated by the CMR convention and the COTIF/CIM convention respectively. The rules in the conventions are mandatory. Notably, the CMR-convention is mandatory in an absolute sense. Not only can the liability of the carrier not be limited by contract, it also cannot be increased, cf. the CMR-convention article 41. In contrast, the present COTIF/CIM-convention allows for an increase of the liability of the rail carrier, cf. COTIF/CIM article 5.

Both conventions impose a nearly strict liability on the carrier, cf. the CMR-convention article 17 and the COTIF/CIM convention, article 23. However, the liability is limited. Under the CMR-convention article 23, subsection 4, liability cannot exceed 8 SDR and under the COTIF/CIM convention liability is limited to 17 units. As a starting point, claims under both conventions must be filed within 1 year, cf. the CMR-convention, article 32, subsection 1 and the COTIF/CIM convention, article 48, § 1.

As to the area of applicability, the CMR-convention on carriage by road and the COTIF-CIM convention on carriage by rail take a different starting point than do the US rules. Thus, both conventions make it clear that they govern “contracts” for the carriage of goods by road and rail respectively. According to article 1 of the CMR-convention, it applies to “every contract for the carriage of goods by road” Similarly, according to article 1, § 1 of the COTIF/CIM convention, it applies to “every contract of carriage of goods by rail”. The former COTIF/CIM convention contained the additional requirement that the carrier must be a railway. However, this has been changed by the 1999-protocol which substitutes the concept of the contracting carrier for railway. This reinforces the idea that under European law it is not the status of the carrier which is decisive but the type of contract entered into. Thus, today other types of carriers than rail carriers – for instance transport intermediaries - will be subject to the liability regime of the COTIF/CIM convention if they have entered into a contract for the carriage by rail. The contractual approach means that, as a starting point, the conventions only regulate the relationship between the shipper and the carrier and not the relationship between the shipper and the subcontracting carrier.

4. Conclusion

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15 Cf. 49 U.S.C § 14706 (a)(1)/ § 11706 (a)
16 Cf. 49 U.S.C § 13501/§ 1051 (a)(1)
19 Thus, COTIF/CIM 1980, article 11, subsection 1, reads: “The contract of carriage shall come into existence as soon as the forwarding railway has accepted the goods for carriage together with the consignment note”.
20 The new COTIF/CIM convention (as amended by the 1999 protocol) does provide for direct liability in article 27.In addition, both the CMR convention and the COTIF/CIM convention contain special rules regulation direct liability in the case of successive carriage, cf. CMR convention art. 34 and COTIF/CIM convention article 26. These rules however, have a very narrow area of applicability and are of limited practical importance.
Whereas maritime law is regulated by fairly comparable rules in the US and in Europe, there are fundamental differences in approach when it comes to the rules governing inland carriage of goods. Strikingly, under the US inland transportation liability rules, the status of the carrier is central. In contrast, European law is dominated by a contractual approach when defining the area of applicability of the inland transportation rules. As will be shown below, these differences in approach have impacts on the way the multimodal problem is solved in US law and European law. The different approaches also mean that different types of problems are in focus in the two regional systems.

III. Liability models and regionalization

1. The two models

It is common to identify two different models for solving the multimodal problem, “the network liability system” and “the uniform liability solution”.

Under the network system, the liability of the contracting carrier follows the liability of the performing carrier responsible for the damage. For instance, if the goods are carried by sea from New York to Rotterdam and carried by road from Rotterdam to Paris, the liability of the contracting carrier will be governed by the rules regulating carriage of goods by road if the damage occurred during the road transport, whereas it will be governed by the rules relating to carriage of goods by sea if the damage occurred during the sea leg of the transport. Seen from the point of view of the contracting carrier, the advantage of this system is that it assures that the liability of the contracting carrier will not exceed the liability of the performing carrier. Thus, the system simplifies the question of recourse actions between the performing carrier and the contracting carrier by achieving harmonization in the chain of contracts as to the liability questions. The liability regime that is applicable to the contracting carrier vis a vis the shipper is the same as the one that is applicable to the performing carrier vis a vis the contracting carrier. The obvious disadvantage of the system is that it presupposes that the damage can be localized. Since this is often not the case, any network liability system must be supplemented by default liability rules which regulate the liability of the contracting carrier if the damage cannot be localized. An additional disadvantage of the system is that it makes the question of liability less predictable for the shipper since the extent of the liability of the contracting carrier depends upon the place of the damage.

Under the uniform liability system, the liability of the contracting carrier is the same regardless of the place of damage. For instance, a uniform liability system could contain rules to the effect that one of the unimodal liability regimes (for instance the rules governing carriage of goods by sea) should govern the liability of the contracting carrier no matter where the damage took place. Alternatively, a uniform liability regime could introduce entirely new liability rules applying to the contracting carrier. Seen from the point of view of the contracting carrier, the disadvantage of this system is that the contracting carrier may not always be able to pass on the loss to the performing carrier responsible for the loss. Thus, the liability of the performing carrier vis a vis the contracting carrier may well be governed by other rules than the rules made applicable to the contracting carrier. Therefore, as a starting point, the uniform liability system does not create harmonization in the chain of contracts. The advantage of the uniform system is that it is simple and creates predictability since the liability of the contracting carrier is not dependent upon the place of damage.
As will be apparent, both liability models have advantages and disadvantages. This is reflected in a recent study conducted by UNCTAD showing that among Governments, industry representatives and others there seems to be an equal amount of support for the network principle (or a modified network principle) on the one hand and the uniform liability system on the other hand.  

2. The European network liability system

a. General

Often the multimodal problem is sought solved by applying the network liability model so that the liability moves with the goods. Thus, the most well known attempt to solve the multimodal problem, The MT Convention (1980), relies on a modified network system in that it provides for the application of different rules on limitation in the case of localized damage. Similarly, the UNCTAD/ICC Rules for Multimodal Transport Documents (1991) are based on the modified network system containing special provisions on limitation of liability in case of localized damage. Liability models based on the ICC-model have also been adopted in other standard documents such as the FIATA 95 document and standard documents provided by BIMCO (Multidoc 95).

Long before the adoption of the network liability system in these international instruments, however, the principle was already a preferred solution in Europe. In other words, the principle seems to have originated in this region.

b. The application in Europe

Historically, the network solution or the modified network solution has been the starting point for the regulation of the multimodal transport in Europe. It is found in the existing conventions (to the extent they deal with multimodal contracts), in national legislation and in agreed standard terms. Under European law, one may ask whether the network principle is simply prescribed by the existing unimodal conventions. Thus, as explained above, the existing conventions on unimodal transports do not have the transport activity in itself as the object of the regulation but focus on the type of contract which has been entered into. Under a multimodal contract the parties agree that the transport shall be carried out by the use of different means of transport. Consequently, it could be argued that the contract for a multimodal transport in fact contains a number of contracts for different types of transports each of which is regulated by its own set of liability rules (the “plurality of contracts” view). According to this school of thought, the contracting carrier is subject to different liability rules in relation to the different legs of the transport. For example, if the damage occurs during the road transport, the contracting carrier is liable according to the rules governing road transport whereas he is liable according to the rules governing carriage of goods by sea if this is where the damage occurs. But briefly, under the “plurality of contracts view” it simply follows from the existing conventions that the contracting carrier is subject to a network liability.

23 Baltic and Maritime Law Conference
24 In German legal theory, this view has been expressed by Herber, see Herber, TransportR 1990, 1, 8. Compare Koller, Quantum Corporation Inc. v. Plane Trucking limited, TransportR, 2003, 45, 49, critical of the theory of the multimodal contract as “Summe der Einzelverträge.”
25 The “plurality of contracts” view has more recently been endorsed by the British Court of Appeal in the Quantum case, cf. below under III.3.C.ii. The same view also seems to be underlying the adoption of the network work principle
As will be explained below under III 3.c.ii, it is uncertain to what extent “the plurality of contracts view” is accepted in the different European jurisdictions.

However, the network principle has also become inherent in the European tradition in other ways. Thus, most of the European conventions on unimodal transports contain special rules regulating specific types of multimodal transports. These rules are based on the network principle.

For example, according to the CMR-convention article 2 (1), the network principle applies to transports that are transports for the carriage by road in combination with some other means of transport if the goods are not unloaded from the vehicle (ro-ro transports) and the damage can be localized. Also the COTIF/CIM convention embodies the network principle. According to article 4, the rules in the convention are extended to apply to certain types of carriage by sea and inland waterway as a supplement to carriage by rail. However, article 38 provides for the application of special maritime law exemptions from liability that can be available to the contracting carrier if it proves that the loss or damage occurred in the course of the journey by sea. The network system was also embodied in the original COTIF/CIM convention. Also the Warsaw-convention article 31(4) proceeds from the network principle. The rule states that the Warsaw-convention is only applicable to the part of the transport being carried out by air. This implies that the convention is mandatorily applicable to the air part of the carriage. Thus, the convention does not allow for a uniform solution imposing a different type of liability on the contracting carrier as regards the air part of the carriage.

These rules seem to have influenced the approach to multimodal contracts in Europe, making the network principle the general starting point. Thus, today, the network principle is also embodied in the German national legislation on multimodal transports and in the Dutch national legislation. Likewise, the Nordic agreed document on freight forwarding (NSAB) is based on the network principle. Also in contractual practice, the network principle seems to have been the favoured liability model for a long period of time.

The contractual approach taken in the European conventions seems to have had an impact on the way the details of the network principle have been worked out in European law. Thus, as will be clear from the above, under the European understanding of the network principle, the focus is on the liability of the contracting carrier. The network principle implies that the liability of the contracting carrier is variable. It “follows the goods”. In contrast the network liability does not deal with the direct liability of the subcontracting carrier. It is tempting to assume that this has to do with the focus on the contractual relation under European law.

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27 It is not easy to explain how the rules on multimodal transports fit into the conventions applying to “contracts” for specific types of unimodal transports. The rules in the COTIF/CIM seem to proceed from the assumption that when the dominating part of the transport is a rail transport then there is a transport for the carriage by rail and other (minor parts of the transport) can be regulated by the rules in this rail convention. The CMR-convention only deals with a very special type of combined transport. Arguably, the rule extends the definition of the concept of a “contract for the carriage by road”. The Warsaw convention seems to presuppose that if there is a contract for a combined transport then this contract must be qualified as a contract for the carriage by air as regards this part of the transport (the plurality of contracts view).
28 See also Herber, “The European Legal Experience with Multimodalism” (1989), 64 Tul.L.Rev. 611, 618.
29 See the German HGB (Handels Gesetz Buch) §§ 452-452d. § 452 (a) adopts the network system for cases of localized damage.
30 See Herber, supra note 28, at p. 626 mentioning the application of the network principle by major European shipping companies such as ACL, NEDLLOYD and HAPAG LLOYD.
31 Thus, as the CMR-convention deals with “contracts” for the carriage of goods and regulates the liability of the contracting carrier vis a vis the shipper, so does the special provision in article 2 dealing with the so called roll on-roll
The contractual approach also has another implication. Since, in general, the unimodal conventions do not regulate the direct liability of the subcontracting carrier, the network principle cannot be formulated by reference to “the unimodal rules governing the liability of the subcontracting carrier”. Instead, reference must be made to the rules that would have governed the liability of the subcontracting carrier, had a direct contract been made between the shipper and the subcontracting carrier. In other words, the contractual approach necessitates the concept of “the hypothetical contract”. This is the approach taken in the CMR-convention by the wording: “…if a contract for the carriage of goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of the goods by that means of transport” A similar formulation is found in the German legislation. The concept of the “hypothetical contract” is complicated and it is not always clear what it means. When it comes to the details, it can become speculative which contract the shipper and the subcontracting carrier would have entered into had they made such a contract.

Despite its shortcomings, the network liability model achieves an important goal under European law. It achieves harmonization of the liabilities in the chain of contracts. Thus, although the direct liability of the subcontracting carrier vis-à-vis the shipper under a multimodal contract is not regulated by the existing conventions, the liability of the subcontracting carrier vis-à-vis the contracting carrier very often is. For example, if the contracting carrier has subcontracted the inland part of a multimodal transport to a road carrier and the inland transport takes place between two European countries which are both parties to the CMR convention then this convention regulates the liability of the inland carrier vis-à-vis the contracting carrier because there is a “contract for the carriage of goods by road” between these parties. The network principle achieves harmonization of the liabilities in the chain of contracts by ensuring that the liability of the contracting carrier vis-à-vis the shipper follows the liability of subcontracting carrier vis-à-vis the contracting carrier.

b. The application in the US

As of now, there are no statutes implementing the network principle under US law. However, this does not mean that the principle is unknown. As described above, many international standard agreements are based on the network principle. In addition, the network principle is sometimes incorporated into the B/L in a specific clause.

However, often the network principle under US law seems to be understood in a way that is different from the way it is understood under European law. In fact, under US law the network principle seems to take on a variety of forms in commercial practice. In US legal theory, one way of describing the principle is the following:

“..., a through bill of lading may provide for liability of carriers based on a “network system” whereby the applicable law (i.e., GOGSA or the Carmack Amendment) travels with the cargo; each carrier’s liability is limited to the transport segment that it performs... Each carrier involved is therefore potentially liable only for the part of the journey for off (ro-ro) transports. Similarly, under the Nordic agreed document, NSAB, the focus is on the liability of the contracting carrier. As explained above, the original COTIF/CIM convention also did not contain rules regulating the liability of the subcontracting carrier in general.
which it was responsible; the inland carrier must satisfy the relevant standards for inland carriage, while the sea carrier must satisfy those for sea carriage”.32

Strikingly, under this wording of the principle it deals not only with the liability of the contracting carrier but also with the liability of the subcontracting carrier. A contractual clause to this effect may potentially give rise to problems of privity of contract since as a starting point a contract between the contracting carrier and the shipper (the bill of lading) cannot regulate the liability of a third party. However, as long as a contractual network clause just refers to legislative rules that would have applied also in the absence of the contractual clause (inland rules made applicable to the inland carriage and maritime rules made applicable to the ocean carriage) these problems may not surface. The problem arises when the clauses go beyond this and purport to impose obligations on third parties. Surprisingly, even in this type of case it has been held that the through bill of lading controls the liability of all the carriers under the multimodal transport. Marine Office33 could be mentioned as an example. In this case, the ocean carrier’s B/L contained a network clause but in addition a provision seeking to protect the shipper by stating that notice need not be given to the rail carrier as prescribed in the inland rules but could instead be given to the ocean carrier. The rail carrier argued that it was not bound by this provision. However, the court made clear that “A through bill of lading applies to the entire transportation of goods and applies to connecting carriers even though they are not parties to the contract”.34 It does not seem clear how this exception to the doctrine of privity of contract is justified.

Another striking feature in relation to the version of the principle cited above is that liability seems to be segmented. Each carrier is liable only for the part of the transport that it performs. As a starting point therefore, there will be no through liability (although this term is sometimes used). The validity of the segmented liability clause has been debated in legal theory.

Hartford35 is illustrative of the problem. The wording of the provision was as follows:

Clause 4 (in relevant part):
“Each stage of the transport shall be governed according to any law and tariffs applicable to such stage. The care custody and carriage of the Goods during any period in which a Participating Carrier or its contractor or agent is in possession of the Goods shall be the sole responsibility of the Participating Carrier and not the Carrier”.

The court in Hartford in fact read the clause as meaning that the liability of the contracting carrier was to be governed by the rules governing the inland transport and left it to be decided on remand whether the contracting carrier could validly waive its liability for the inland part of the transport altogether. Generally speaking, it seems unclear whether a “through” B/L purporting to provide for

32 Schoenbaum (2004), supra note 13, at p. 526. Similarly, Palmer and DeGiulio, Terminal operations and multimodal carriage: History and prognosis, 64 Tul. L. Rev. 281, 327: “Under this scheme, the law applicable to each segment of the transportation (i.e., COGSA or the Carmack Amendment) governs the liability of each connecting carrier. Also the rights of indemnity and contribution between carriers are governed similarly. Under these circumstances, each carrier limits its liability to the segment that it performs and the applicable law is said to travel with the goods”.


segmented liability can in fact be described as a “through” B/L. Thus, when “each carrier’s liability is limited to the transport segment that it performs”, there is in fact no through liability.

Under a second version of the network principle in US law, the contracting carrier clearly assumes liability for the entire transport extending its own liability regime to cover the other parts of the transport as well, while leaving the subcontractors to be covered by their own liability regimes. This version of the network principle was adopted in the 1999 GOGSA draft.\(^\text{36}\) Obviously, this variation of the principle may pose problems in relation to recourse actions, since the subcontracting carrier will be subject to a liability regime that is different from the liability regime covering the contracting carrier.\(^\text{37}\) Moreover, the problem of seeking indemnity from connecting carriers has been pointed out by US commentators as a problem inherent in the network system.\(^\text{38}\)

Sometimes the network principle is understood in a third way - “the European way” - just described. Thus, one legal writer describes the network principle this way:

“…the through bill of lading provides that the liability of the carrier will vary as the cargo moves from mode to mode; e.g., the liability of the carrier will be determined under GOGSA and the tariffs filed with the F.M.C if loss occurs at sea, or under the Interstate Commerce Act if the loss occurs while in the hands of a carrier subject thereto”.\(^\text{39}\)

Under this understanding of the principle, the contracting carrier has assumed liability for the entire transport but its liability varies as the cargo moves from one means of transport to another. A number of recent cases have interpreted network clauses to this effect.\(^\text{40}\)

In sum, under US law there seems to be a less strong tradition for the network solution than in European law. There is no legislative tradition for it and because of the existing different versions of the network principle under US law this liability model does not always create genuine through liability and harmonization in the chain of contracts.

3. The US uniform liability model

a. General

When multimodal carriage is offered, the question of liability is often sought regulated by applying the uniform liability model. When ocean carriage and inland carriage are involved there seem to be two particularly obvious ways that the uniform model can be applied; either the inland liability regime is extended to cover the entire carriage or the maritime regime is extended to this effect.\(^\text{41}\)

If the contracting carrier is an ocean carrier it is not uncommon for the B/L to contain a paramount clause, ie. a provision to the effect that not only the ocean leg of the transport but also the road

\(^{36}\) US Senate GOGSA 1999, section 3 (b). The proposal has not yet (2009) been enacted. The provision is termed a network provision in Nikaki (2006), supra note 25, at p. 531-532.

\(^{37}\) In practice, this situation has occurred in cases in which the court has interpreted a Himalaya clause as not covering the inland carrier.

\(^{38}\) See for instance Palmer and DeGiulio (1989), supra note 32, at p. 327.

\(^{39}\) Sorkin, *Goods in Transit*, 3.15 [2a].


\(^{41}\) A third option would be to apply an entirely different liability regime. As to this version of the uniform liability model, see below under VI.2.b.on the EU proposal.
carriage leg should be governed by the rules regulating the ocean carriage, for instance the Hague Rules or the Hague Visby Rules. The clause purports to have the effect of regulating the liability of the contracting carrier toward the shipper for damage or loss occurring during the ocean part of the transport as well as during the road transport. In addition, the paramount clause is usually combined with a so called “Himalaya clause” This clause is a third party beneficiary clause that allows the subcontracting inland carrier to take the benefit of the maritime liability rules. For instance, under a Himalaya clause the subcontracting inland carrier may claim the benefit of the favourable maritime rules on limitation of liability. The extension of the maritime liability regime may seem an acceptable solution to all the parties involved; the ocean carrier is subject to its own, mild liability regime. The liability is extended to cover the inland part of the transport, but the ocean carrier can file a recourse action against the inland carrier, since it will be subject to the same rules on limitation by virtue of the Himalaya clause. The inland carrier becomes subject to a milder liability regime than the one prescribed by the inland rules by application of the Himalaya clause that allows the carrier to take the benefit of the maritime liability regime. The shipper cannot sue under the favourable inland liability rules but gets the advantage of having one contractual partner only, who has assumed through liability. Thus, the shipper is relieved of the burden of having to prove during what stage of the transport the goods were damaged.

If the contracting carrier is an inland carrier, on the other hand, it is natural to consider whether the extension of the inland liability regime to cover the maritime stage of the transport could be a solution. Nothing in the inland liability rules prevents such an extension. Furthermore, nothing in the existing maritime liability regimes would prevent an inland contracting carrier from assuming liability for the maritime part of the transport under the inland liability rules. However, when it comes to the ocean carrier, the starting point would be that its liability is regulated by the maritime liability regime in so far as a bill of lading covering the transport has been issued. As a starting point, the liability of the ocean carrier is limited according to the maritime liability rules and the liability of the ocean carrier cannot be further limited. In contrast, nothing in the maritime liability regimes prevents the ocean carrier from increasing its liability. Since the inland rules are generally less favourable to the carrier than are the maritime liability rules, the ocean carrier could choose to extend its liability by subjecting itself to the inland liability regime. However, it would not be possible for the contracting inland carrier to make applicable to the ocean carrier the inland rules on stricter and less limited liability through a “Himalaya” clause in its contract with the shipper. The reason for this is that this would not be conferring a benefit but rather a burden on the ocean carrier. This cannot be done through a third party contract. Therefore, the extension of the inland liability rules to apply to the ocean carrier requires the consent of the ocean carrier. However, most often the ocean carrier will have no incentives for giving this consent. Consequently, the liability of the ocean carrier will remain regulated by the maritime regime. Since this regime is often milder than the inland liability regimes, the contracting inland carrier may well end up not being able to file a recourse action against the ocean carrier. Consequently, the extension of the inland liability regime by contract may not be an attractive solution to the parties.

In commercial practice, therefore, the alternative solution of extending the maritime liability regime – as “the lowest denominator” - has become the preferred solution. However, the use of paramount clauses and Himalaya clauses in multimodal transports raises the question to what extent such provisions are valid under US law and European law.

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42 In return, the inland carrier may have to give up (if he can) beneficial inland rules such as the notice requirement vis a vis the ocean carrier.
b. The application in the US
i. General
Under US law the extension of the maritime law regime to cover the inland part of the transport is a popular way of solving the multimodal problem. Very often, this liability model is adopted in commercial practice. However, it might be asked whether the Carmack Amendment could form a barrier to this solution. As a starting point, the Carmack Amendment imposes strict and full liability on the inland carrier. Moreover, the liability rules under the Carmack Amendment are to some extent mandatory. Thus, at first sight this liability regime would seem to clash with the maritime liability regime imposing a milder and limited liability on the carrier.

According to COGSA the liability of the ocean carrier covers the tackle to tackle period. Presumably, this means that GOGSA applies by force of law to the liability of a contracting ocean carrier for damage that occurs during the ocean carriage even under a multimodal bill of lading. In contrast, GOGSA does not apply by its own force outside the tackle-to-tackle period. As a starting point, therefore, damage occurring during the inland portion of the transport is outside the reach of GOGSA. However, according to GOGSA sec. 7, GOGSA can be extended so as to cover the liability of the contracting carrier for this part of the contract as well. Although the extension is specifically provided for in COGSA, a paramount clause extending the maritime liability regime does not have the force of federal law. Consequently, if the clause is contrary to other federal law, such as the Carmack Amendment, it must yield.

The question of the possible applicability of the Carmack Amendment to international multimodal transports has been heavily debated. The problem is that it is unclear to what extent the Carmack Amendment applies to international shipments. In particular, it is unclear whether the Carmack Amendment applies in the absence of a separate B/L covering the inland transport. To understand the nature of this question it is necessary to look at the wording of the Carmack Amendment and the history behind the changes of the wording that have been made.

The Interstate Commerce Act (ICA) was introduced in 1887. It contained rules regulating different types of carriers in different respects, amongst other things as to questions of tariffs. A committee (The Interstate Commerce Commission (ICC)) was granted jurisdictional power in these matters. The Carmack Amendment to the ICA was introduced in 1906 (the Hepburn Act). It introduced liability rules applicable to the rail carrier (and later on also the motor carrier) as a supplement to the regulatory rules contained in the ICA. It was limited to purely interstate transports. At this stage, numerous cases rejected the application of the Carmack Amendment to international transports. J.H. Hamlen & Sons Co. v. Cent. R.R. Co., (1914) is an example. In 1915 the First Cumnis Amendment to the ICA extended the Carmack rules to cover some international transportation, namely transportation “…from any point in the US to a point in an adjacent foreign country”. The

43 Also the US draft for a new COGSA was based on this liability model, see further under VI.2.a.
44 This interpretation of GOGSA sec. 7 has been debated in US legal theory. In support of the above view, see Sturley, “Freedom of Contract and the Ironic Story of Section 7 of the Carriage of goods by Sea Act”, 4 Benedict’s Maritime Bulletin (2006) 201. For a (partly) contrary view see Force, COGSA v. CARMACK, (2009) arguing that section 7 would make no sense if a contractual extension of the maritime liability regime did not supersede the Carmack Amendment.
46 Hereby the scope of application of the Carmack Amendment was aligned with the regulatory power of the ICC also covering transportation “from any place in the US to an adjacent foreign country”. Apparently, the reason for not including transports from adjacent foreign countries was constitutional. It was thought doubtful whether Congress could
new wording introduced the discussion of the distinction between exports to and imports from adjacent countries.\textsuperscript{47} However, it seemed clear that international transports to and from non-adjacent countries were still not covered by the act.

Basically, therefore, it was still necessary to distinguish between international and interstate shipments. In this respect, \textit{Reider v. Thompsen} (1950)\textsuperscript{48} became an important case. It stated that the Carmack Amendment applied to the inland part of a carriage from Buenos Aires to Boston, because the inland part of the carriage was distinct from the carriage from Buenos Aires to New Orleans. Thus, there was no through bill of lading from Buenos Aires to Boston and the foreign portion of the journey terminated at the border of the United States, whereas the obligation of the inland carrier originated when it issued its through bill of lading at New Orleans.\textsuperscript{49} Therefore, the carriage from New Orleans to Boston was interstate carriage “squarely within the wording and meaning of the Carmack Amendment”\textsuperscript{50}. Thus, the case introduced the distinction between shipments to and from foreign countries carried out as one transport on a through bill of lading (the inland part of which is not regarded as interstate carriage and therefore not covered by the Carmack Amendment) and shipments to and from foreign countries carried out as separate transports (the inland part of which \textit{is} regarded interstate carriage covered by the Carmack). Case law after \textit{Reider} followed this way of reasoning and often the issuance of a separate bill of lading was regarded a requirement for the Carmack Amendment to apply.\textsuperscript{51}

However, in 1978 the wording of the Carmack Amendment was changed again. This was done in a codification bill. Apart from minor details, the 1978 wording is the same as the current wording. Thus, according to 49 USCA §§ 11706 (a) and 14706 (a)(1), the liability rules in the Carmack Amendment now apply to rail and motor carriers providing transportation or service subject to the jurisdiction of the Board under 49 U.S.C. §§ 10501 et seq. and 13501 et seq.\textsuperscript{52} According to these provisions, the jurisdiction of the Board applies inter alia to interstate transports (§ 10501 (a)(2)(A)/ § 13501 (1)(A)) and to transports “between a place in the US and a place in a foreign country to the extent the transportation is in the United States” (§ 10501 (a)(2)(F)/ § 13501 (1)(E)). Thus, according to the wording of these rules, there seems to be no doubt that international transports are now covered by the wording of the liability rules in the Carmack Amendment to the extent the transports take place in the US.

Consequently, it could be argued that at least after 1978 there should be no distinction between interstate transports and international transports. It could further be argued that pre-1978 case law constitutionally impose liability on foreign carriers initiating a carriage in a foreign country and then crossing the boarder to the US, see Johns, \textit{Carriers: applicability to shipments to, destined for, or from foreign countries, of the Carmack Amendment to Interstate Commerce Act (49 U.S.C.A § 20(11))}, 9 A.L.R.Fed 960 (1971 (orig. publ.), §5 (b).


\textsuperscript{47} As to this theme, see the account in \textit{Sompo Japan Ins. Co. of America v. Union Pacific R. Co.}, 456 F.3d.54 (2006), (Sompo I), at p. 13.

\textsuperscript{48} \textit{Reider v. Thompson} 339 US 113 (1950).

\textsuperscript{49} \textit{Reider}, supra note 48, at p. 117.

\textsuperscript{50} \textit{Reider}, supra note 48, at p. 119.

concerning the interpretation of the Carmack Amendment act must be irrelevant to the law as it stands today.53

On the other hand, however, the 1978- bill was a codification bill not intended to make changes in the law.54 In addition and confusing the matter further, the Carmack Amendment itself still mentions the distinction between adjacent and non-adjacent foreign countries in relation to the connecting carrier.55

Consequently, it is hardly clear whether case law decided prior to 1978 can be deemed irrelevant. Not surprisingly therefore, case law today is far from clear as to the question of the applicability of the Carmack Amendment to international, multimodal transports.

ii. Liability of the subcontracting carrier (the inland carrier)

In the US, by far the most cases concern the liability of the subcontractor. The question is whether the liability of the inland subcontractor is regulated by COGSA through the Himalaya clause in the through B/L or by the Carmack Amendment.56 This question has given rise to considerable doubt in case law.

On the face of it, the B/L extends the provisions in COGSA to the subcontractor by combining the paramount clause with a Himalaya clause. The paramount clause makes COGSA applicable not only to the ocean part of the transport but also to other parts of the transport. The Himalaya clause ensures that not only the contracting carrier but also third parties can take the benefit of this provision. As a starting point, therefore, the liability of the subcontracting carrier vis a vis the shipper would seem to be covered by COGSA if the Himalaya clause is properly drafted.

However, also the Carmack Amendment seems to govern the liability of the subcontracting carrier imposing a stricter and less limited liability on it. In relation to the performing carrier the status requirement of the Carmack Amendment does not give rise to problems. Clearly, the performing motor carrier classifies as a “motor carrier” under the act. The question is whether the act applies to

53 This point was made in Capitol Converting Equipment, Inc. v. Lep Transport, Inc., 750 F. Supp. 862 (1990) and in Marine Office, supra note 33.
54 Sompo I, supra note 47, at p. 64.
55 See 49 USCA §§ 11706 (a) and 14706 (a)(1) that state: “The liability imposed under this paragraph (subsection) is for the actual loss or injury to the property caused by (A) the receiving (...) carrier, the delivering (...) carrier, or (C) another (...) carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country...”. Although the passage just quoted presumably must be read as a passage that identifies the carriers whose causation of damage may give rise to an action against any carrier who is liable under the act, several legal writers make reference to this formulation as a basis for stating that, as a starting point, the Carmack Amendment does not apply to imports and does not apply to exports to non-adjacent foreign countries. Examples include Knebel and Blocker, United States Statutory Regulation of Multimodalism (1989), 64 Tul.L.Rev.543, 555, Wood, Multimodal transportation: An American perspective on Carrier Liability and Bill of Lading (1998), 46 Am. J.Comp. L. 403, 411, Palmer and DeGiulio (1989) supra note 32, p. 329, Sorkin, Limited liability in multimodal transport and effect of deregulation (1989), 13 Tul. Mar.L.J.285, 294 , Sorkin, Goods in Transit, p. 38 et seq.

56 In reality, there are two problems. Firstly, can the Himalaya clause be interpreted as covering inland carriers? Case law has answered this question affirmatively, provided the Himalaya clause is drafted sufficiently clearly (ref.). Secondly, does the Carmack Amendment prevent the extension of the maritime liability regime to the inland carrier? This article focuses on the latter aspect.
the liability of the inland carrier when the inland carriage forms part of a larger, international transport.

Although the distinction between international transports and other transports disappeared from the wording of the act in 1978, case law has for a long time still required the issuance of a separate B/L covering the inland transport for the Carmack Amendment to apply.

The first decision to tackle the changed language was the Swift-decision from 198757 handed down by the Eleventh Circuit. The case concerned goods shipped by Swift from Switzerland to La Grange, Georgia. The goods were carried from Switzerland to Hamburg, Germany. Here the ocean carrier issued a bill of lading showing Swift as the notify party in Savannah, Georgia. In fact, however, the goods were unloaded in South Carolina and trucked to Savannah under the ocean bill of lading. From Savannah the goods were trucked to La Grange under a separate bill of lading. During this carriage the goods were damaged. The question before the court was whether the Carmack Amendment applied to the liability of the inland carrier. The plaintiff relied on Reider and argued that since there was a separate bill of lading covering the transport in Georgia, this part of the transport should be regarded as a separate transport, not an international transport. And since this part of the transport was purely intrastate, it was not covered by the Carmack Amendment. The court rejected this argument. The court started out by citing the Carmack Amendment as applying to shipments “between a place in…the United States and a place in a foreign country to the extent the transportation is in the United States…”(the “continuation of foreign commerce” provision).

The Swift court then went on to state that “the nature of a shipment is not determined by a mechanical inspection of the bill of lading nor by when and to whom title passes but rather by “the essential character of the commerce” and that “it is well settled that, in determining whether a particular movement of freight is interstate or intrastate or foreign commerce, the intention existing at the time the movement starts governs and fixes the character of the shipment”58 - later known as the generally accepted “intent test”. The court further explained: “Thus, the critical inquiry is not whether the domestic leg of the shipment crossed a state border but rather it is whether the domestic leg of the shipment was intended to be part of a larger shipment originating in a foreign country. If it is part of such a larger shipment, then it is a shipment “between a place in…the United States and a place in a foreign country to the extent the transportation is in the United States,” 49 U.S.C. § 10521 (a)(1)(E), and the Carmack Amendment applies”.59 Thus, according to the Swift-court’s reasoning in the abstract, the issuance of a separate bill of lading covering the inland part of the transport would seem to be of no relevance as to the question of the applicability of the Carmack Amendment. Surprisingly, however, the Swift court then goes on to state: “We therefore hold that when a shipment of foreign goods is sent to the United States with the intention that it come to final rest at a specific destination beyond its port of discharge, then the domestic leg of the journey …will be subject to the Carmack Amendment as long as the domestic leg is covered by separate bill or bills of lading”.60 As has been noted, it is tempting to assume that what the court in fact meant was that the Carmack Amendment applies “even if” a separate bill of lading has been issued as opposed to “as long as” a separate bill of lading has been issued since only this formulation would be in accordance with the intent-test applied by the court. As it stands, it seems doubtful how the decision should be interpreted. To some extent, this doubt is also reflected in case law.

58 Swift, supra note 57, at 699.
59 Swift, supra note 57, at 701.
60 Swift, supra note 57, at 701.
Several circuit courts have relied on Reider and Swift in ruling that it is a requirement for the Carmack Amendment to apply that the inland part of the transport is covered by a separate bill of lading. This is true of the seventh circuit in Capitol Converting (1992), the fourth circuit in Shao (1993) and the sixth circuit in American Road Service Co (2003). Finally, the eleventh circuit has confirmed its position in Swift in Altadis (2006).

The result of this case law is that the Carmack Amendment is given a relatively narrow scope of applicability. This leaves room for the parties to regulate the questions of liability by contract. Consequently, all of the cases cited above have approved of the extension of the maritime liability regime to cover the inland carrier.

Recently, however, a new trend seems to have emerged in two other circuits. Thus, the ninth circuit decided in Neptune (2000) that the Carmack Amendment was applicable to the inland portion of an international transport although the inland portion was not covered by a separate bill of lading. Accordingly, the Himalaya clause extending the maritime liability regime to cover the inland carrier was void. Similarly, the second circuit court in Sompo (2006) reached the same conclusion, referring primarily to the language of the Carmack Amendment.

It has been heavily debated whether the two latter decisions and in particular Sompo, holding the Carmack amendment applicable to the liability of the inland carrier, conflict with the Supreme Court decision in Kirby (2004) allowing for the extension of the maritime liability regime to cover the liability of the inland carrier. Indeed, the facts of the two cases were virtually identical. However, as a procedural matter the question of the application of the Carmack Amendment was not raised in Kirby. Although the Supreme Court in Kirby stressed the desirability of having uniform rules in this area of the law as opposed to state law it is not possible to infer what would have been its position on the question of the applicability of the Carmack Amendment had this question been raised. The Carmack Amendment itself is federal law and the legislative history of the act greatly complicates the question. Consequently, there is not necessarily a conflict between Sompo and Kirby. So far, therefore, it would seem that in some jurisdictions the Carmack Amendment will apply to the liability of the inland carrier, whereas it will not apply in other jurisdictions.

### iii. The liability of the contracting carrier

The question of the liability of the contracting ocean carrier for damage occurring during an inland transport under a multimodal B/L has only been addressed in a limited number of cases. Even assuming that the Carmack Amendment is applicable to international transports in general, it might

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61 See Capitol Converting, supra note 53.
63 American Road Service Co. v. Consolidated Rail Corp, 348 F.3d 565 (2003), introducing the viewpoint that “The Board has jurisdiction only if a separate B/L is issued”.
66 Sompo I, supra note 47. At state level, the court in Berlanga v. Terrier Transportation, Inc., 269 F. Supp. 2d 821 (2003), reached the same conclusion.
67 The understanding that the inland portion of an international transport is covered by the Carmack Amendment Act whether or not there is a separate bill of lading is also endorsed by a current text book in Admiralty Law (Schoenbaum).
still be argued that it is not applicable to the liability of the contracting carrier since the act only applies to carriers with the status of being inland carriers.

A fairly early example of this line of reasoning is King Ocean in which case the following question was put before the court:

“Where an ocean carrier issues a through bill of lading which includes inland transportation in the United States by motor carrier, and which provides that the ocean carrier will be vicariously liable for any loss while the goods are in the custody of the inland motor carrier and the goods are lost while in the custody of the inland motor carrier who has issued a separate bill of lading, is the ocean carrier as a matter of law subject to the Carmack Amendment and the Carmack Amendment two-year statute of limitations for the inland leg of the journey, or is the ocean carrier’s liability governed by the Carriage of goods by sea act (COGSA), the terms of the bill of lading, and the COGSA one-year statute of limitations?”

The Supreme Court of Florida reached the conclusion that the Carmack Amendment did not apply to the liability of the contracting ocean carrier. The reason for this was that the Carmack Amendment by itself only applies to inland carriers subject to the jurisdiction of the ICC (now the Board). These carriers include motor carriers, rail carriers and freight forwarders whereas ocean carriers and other water carriers are not included. The court also observed that prior case law had not dealt with the applicability of the Carmack Amendment to the liability of the contracting ocean carrier but only to the performing inland carrier. Consequently, this case law was not relevant.

Also more recent case law has dealt with the concept of a “rail carrier” and a “motor carrier” under the Carmack Amendment. The complicated nature of the question is reflected by the fact that in one district court - the District Court for the Southern District of New York (S.D.N.Y.) - the question has been answered differently in different cases. The concept of a “motor carrier” is not defined in the Carmack Amendment but the concept of a “rail carrier” is. 49 U.S.C. § 10102(5) states that: “[A] “rail carrier” means a person providing common carrier railroad transportation for compensation”.

In Royal & Sun Alliance Insurance (August, 19, 2008), the District Court for the Southern District of New York followed the line of reasoning in King Ocean and rejected the application of the Carmack not just to an ocean carrier but also to an NVOCC on the grounds that neither of them qualified as rail carriers. Since the NVOCC had not contracted directly with the rail carrier it had not “provided” for rail transportation. As to the ocean carrier it had indeed contracted with the rail carrier. Nevertheless, on policy grounds the court found that the Carmack Amendment was inapplicable. The court reasoned as follows: “The Carmack Amendment was passed to protect American Shippers in an era before airplanes and before a major highway system. Without regulation, the American farmer was at the mercy of the railroad monopolist. How can it be said

69 In a recent case, Altadis, supra note 64, the appellant also initially argued that the Carmack rules governed the liability of the contracting carrier (Altadis at p. 1290). Later, however, this argument was given up and before the eleventh circuit court the appellant agreed that the liability of the ocean carrier for damage occurring during the inland transport was governed by COGSA as provided for in the bill of lading (Altadis at p. 1293).
70 King Ocean, supra note 68, at p. 512-513.
71 King Ocean, supra note 68, at p. 512, referring to Swift Textiles, supra note 57, and Capitol Converting, supra note 53, discussed below, and setting aside Harvest International Inc. v. Tropical Shipping and Const. Co. Ltd., 644 So.2d.112 (1994), relying on these cases.
that the foreign shipper – indeed, the foreign insurer of the foreign shipper – is in need of the same type of protection?...”

However, three other decisions, also from S.D.N.Y., reached the exact opposite result. Thus, in *Swiss National Insurance Company*73 (June 10, 2008), the Carmack Amendment was held applicable to an NVOCC. In this case, however, it was not argued specifically, that an NVOCC might not qualify as an inland carrier. In contrast, this argument was made in two even more recent cases. In *Mitsui Sumitomo Insurance Co.*74 (September 22, 2008) the court found that a contracting ocean carrier “in its capacity as intermodal shipper” qualified as a rail carrier, since the ocean carrier had “provided” for rail carriage by entering into a contract for rail carriage. Likewise, in *Sompo II*75 (September 24, 2008), the court found that an NVOCC that had contracted with a rail carrier for the inland transport of the goods qualified as a rail carrier under the Carmack Amendment. In the opinion of the court, the public policy underlying Carmack supported this view: “Congress passed Carmack “to relieve shippers of the burden of searching out a particular negligent carrier from among the often numerous carriers handling an interstate shipment of goods”…Shippers do not contract directly with rail transportation operators, and they expect the intermediary shipping companies (with which they contract) to be accountable to them”.

The *Rexroth Hydraudyne* decision handed down by the Second Circuit on November 6, 200876 and dealing explicitly with the S.D.N.Y. split.

The case concerned a transport from Rotterdam, the Netherlands to Denver, Colorado, via the port of Houston. The shipper had contracted with a NVOCC who in turn had contracted with the ocean carrier. The Ocean carrier had via its agent entered into a contract with rail carrier. Before the goods arrived in Denver, the NVOCC was instructed by the shipper not to release the goods to the consignee since the receiver had defaulted on financial obligations to the consignee. The goods arrived safely in Denver and initially held back but later improperly released by the ocean carrier to the consignee. Accordingly, the shipper suffered a loss and sued the NVOCC, the ocean carrier and its agent. The question before the court was whether the liability of these parties was limited according to COGSA as stated in the B/L or whether the Carmack Amendment applied.

The court reached the conclusion that the Carmack Amendment was inapplicable to all three parties sued since they did not qualify as rail carriers. The court found that the carriers in their capacities as an NVOCC and a VOCC were subject to the jurisdiction of the FMC (the Federal Maritime Commission), not the STB (the Surface Transportation Board), and consequently not subject to Carmack. The court specifically explained that the phrase “person providing common carrier railroad transportation” in the definition of “rail carrier” in 49 U.S.C. § 10102(5), as well as the phrase “rail carrier providing transportation” in the rail carrier liability provisions in § 11706 (a) cannot be interpreted as meaning that an NVOCC or a VOCC can be characterized as “rail carriers”. According to the court, the phrases must be interpreted “in reference to the object of those provisions, namely transportation”. Moreover, according to the court, the Carmack definition of “transportation” in §§ 10102 (9)(A), 10102 (9)(B), although broad, “references operational functions related to the actual movement or storage of property”. In other words, in order to qualify as a “rail carrier” the carrier must be involved in “the direct handling of the shipment at some time

from the receiving point to destination”. Therefore, an intermediary company that only makes arrangements for rail transportation falls outside the definition of a rail carrier under Carmack. The court further mentions that the definition of “brokers” (U.S.C. 13102 (2) and “freight forwarders” (U.S.C. § 1302 (8)) would become meaningless if someone arranging for motor carriage already qualified as a “motor carrier” under the rules.

At present, therefore, it would seem that the Second Circuit has resolved the S.D.N.Y. split to the effect that contracting ocean carriers and NVOCC’s do not qualify as rail carriers under Carmack even though they have assumed liability for the inland part of the transport. The reasoning clearly reflects the status approach adopted in the Carmack and its consequences for the application of the uniform liability regime under US law. Thus, according to the Second Circuit, Carmack does not bar the extension of the maritime liability regime to the contracting carrier as regards its liability for the inland portion of the transport under a multimodal contract. In contrast, in a recent decision from the Ninth Circuit the court reached the opposite result. In this case an ocean carrier had undertaken to carry goods from China to different inland locations in the US under a through bill of lading. The court found that the Carmack Amendment was applicable to the liability of the ocean carrier and its agent who had arranged for rail transport in the US. In reaching this conclusion, the court relied on the wording of the Carmack Amendment and found that the ocean carrier and its agent had “engaged in railroad transportation subject to the Board’s jurisdiction by providing Plaintiffs with continuous carriage by water and rail, utilizing intermodal equipment in connection with a railroad”, U.S.C. §§ 10102 (6)(A), 10501(a)(1)(B). The arguments presented by both the Second Circuit and the Ninth Court clearly illustrate some of the delicate questions of interpretation that a status approach gives rise to. Which line of reasoning will become the more dominating is yet to be seen.

iv. Conclusion
In conclusion, the law in this area seems to suffer from some confusion.

It seems clear that prior to 1978 international shipments to and from non-adjacent countries were not covered by the wording of the Carmack Amendment. Reider relied on this interpretation and introduced the concept of the separate bill of lading as a means of distinguishing between interstate transports that were continuations of foreign commerce and thereby not covered by the act and pure interstate transports that were covered by the act. After 1978, however, international shipments have in fact been covered by the wording of the act. Nevertheless, most courts have continued to refer to Reider in requiring a separate bill of lading covering the inland transport for the Carmack Amendment to apply to international shipments. The reason for this is not clear. Recently, however, some courts have taken a different stance and reached the conclusion that the Carmack

77 In the case discussed, the loss was caused by the premature releasing of the goods by the VOCC. Consequently, there was no basis for invoking vicarious liability. It could be asked whether the result might be different if the VOCC or the NVOCC were vicariously liable for acts by the rail carrier. Ocean King cited above seems to answer this question in the negative.
79 Notably, all of the courts applying the requirement of the separate bill of lading proceed from the correct, current wording of the Carmack Amendment. In contrast, some legal writers seem to proceed from the understanding that the wording of the Carmack Amendment still proposes a distinction between adjacent and non-adjacent countries as to the applicability of the act, see supra note 55.
Amendment is applicable to international shipments whether or not there is a separate bill of lading. As of yet, it is not clear whether this view will become the more dominating.

Most often the focus has been on the liability of the subcontracting, inland carrier since such a carrier clearly lives up to the status requirement under the Carmack Amendment. At the moment, it seems that a Himalaya clause extending the maritime limitation rules to the subcontracting carrier will be upheld as valid in most jurisdictions as long as there is no separate bill of lading covering the inland transport whereas it will be set aside as void in other jurisdictions whether or not there is a separate bill of lading.

Only recently, case law has started to also focus on the liability of the contracting carrier. Probably, the reason for this is that it is less clear whether the contracting carrier lives up to the status requirement in the Carmack Amendment. As of now, the Second Circuit has ruled on this issue deciding that neither an NVOCC nor a VOCC qualifies as inland carriers under Carmack. In contrast, the Ninth Circuit has reached the result that an ocean carrier can qualify as a rail carrier.

In conclusion, therefore, it would seem that at present the uniform liability model can achieve harmonization of the liabilities in some, but not all, jurisdictions in the US.

c. The application in Europe
i. General

As a starting point, the European maritime law regimes, like the US COGSA, cover the liability of the carrier during the tackle to tackle period. However, nothing in the maritime law rules prevents the extension of the regime to cover the liability of the contracting carrier for other parts of the transport as well. Consequently, the question is whether the CMR convention and/or the COTIF/CIM convention bar this solution. Thus, as described above, also under European law, the liability regimes covering inland carriage generally provide for a stricter liability of the carrier than does the maritime liability regime. In addition, the inland liability rules do not allow for limitation of liability to the same extent as do the maritime rules. Accordingly, under European law too, there is prima facie a clash between the two liability regimes.

The CMR convention applies mandatorily to “contracts for the carriage of goods by road” and likewise, the COTIF/CIM convention applies mandatorily to “contracts for the carriage by rail”. Surprisingly, as mentioned under III 2.b, both conventions also purport to regulate some types of multimodal transports.

Thus, the CMR-convention article 2, section 1 provides: “Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and ....the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage...”.

Similarly, COTIF/CIM article 1(4) provides: “When international carriage being the subject of a single contract of carriage includes carriage by sea or transfrontier carriage by inland waterway as a supplement to carriage by rail, these Uniform Rules shall apply if the carriage by sea or inland waterway is performed on services included in the list of services provided for in article 24, § 1 of the Convention”.

Interestingly, this provision seems to apply also in case of localised damage unless exemption grounds have been added by the member state according to article 38, § 1. In other words, article 1(4) seems to rest on the assumption that the parts of the carriage which are carried out as carriage by sea or carriage by inland waterway are not subject to other international conventions.
As will be seen, the provisions only purport to regulate very special types of multimodal contracts. Thus, the CMR-convention only deals with the so called roll on – roll off (ro-ro) transports leaving all other combinations of sea-road carriage unregulated. Similarly, the COTIF/CIM convention only regulates combined sea-rail carriage to the extent the sea carriage is a “listed service”.

As explained above under III.2.b, it is less clear how a convention the scope of applicability of which is confined to contracts for a specific type of unimodal transport can at the same time contain provisions dealing with multimodal transports. However, to the extent a multimodal transport is assumed to fall within the scope of one of these provisions, the parties will be barred from extending the maritime liability regime to apply to the contracting carrier in a way which is contrary to the provisions. The special provisions far from solve the multimodal problem. Due to the narrow scope of applicability of the provisions a large number of multimodal transports will not be covered by these rules. This raises the question of the applicability of the conventions in general to multimodal transports. Due to the contractual approach taken in the conventions, the central question is what constitutes a contract for a specific type of transport.

ii. The liability of the contracting carrier

The contractual approach in the European conventions naturally directs the attention to the liability of the contracting carrier. The question is how to qualify a contract between the contracting carrier and the shipper when the contract is for a multimodal transport. At present, the characterization of such a contract seems to be dealt with differently in the different European jurisdictions.

A much debated case is the English Court of Appeal case, Quantum Corporation Ltd. and others v. Plane Trucking and another. The case did not involve an ocean carriage but a combined air – road transport. Nevertheless, the case is of general interest in the field of multimodal transports because it deals with the interpretation of the CMR convention and the concept of a “contract for the carriage of goods by road”.

The case concerned a transport from Singapore to Ireland. The shipper contracted with AirFrance and AirFrance assumed liability for the entire transport. At the time the contract was entered into, the parties were assuming that the goods would be carried by air from Singapore to France and then transported by road (ro-ro) to Ireland. However, according to a provision in the agreement between the parties AirFrance was entitled to choose to have the road part of the transport carried out as carriage by air. As it turned out, AirFrance did not avail itself of this option and the last part of the transport was in fact carried out as a road transport. During this part of the transport the goods were stolen. The shipper sued Air France claiming damages according to the CMR-convention. AirFrance argued that its liability was governed by the Warsaw-convention and its own standard terms according to which liability was excluded. The English Court of Appeal found that the contract was a contract for the carriage of goods by road as regards the last part of the carriage.

The court went to some length to explain its position in more detail.

81 Thus, in order for the special rule in the CMR-convention article 2 to apply it would seem to be a prerequisite that the entire contract can be qualified as a contract for the carriage of goods by road although it involves other means of transport as well. Similarly, for the special rule in COTIF/CIM article 1(4) to apply it would seem to be a prerequisite that the entire contract can be qualified as a contract for the carriage by rail.

It noted that it was possible to identify four different types of situations in which a contract for the carriage of goods by road could be regarded as existing: “(a) the carrier may have promised unconditionally to carry by road and by trailer, (b) the carrier may have promised this, but reserved either a general or limited option to elect for some other means of carriage for all or part of the way, (c) the carrier may have left the means of transport open, either entirely or as between a number of possibilities at least one of them being carriage by road, or (d) the carrier may have undertaken to carry by some other means, but reserved either a general or a limited option to carry by road.” The court added: “there is much attraction in an … approach, according to which the application of CMR depends upon the occurrence of international carriage by road pursuant to contract”.

Thus, according to the court, as long as a contract allows for the transport to be carried out wholly or partly by road then there is a contract for the carriage of goods by road as regards the part of the transport which is in fact carried out by road. Accordingly, the liability of the contracting carrier will be governed by the CMR-convention as regards this part of the transport (the “plurality of contracts view”). Consequently, under English law it would not be possible to extend the maritime law regime to cover the liability of the contracting carrier for the inland part of a multimodal carriage.

However, the Quantum case has been much criticized in legal literature. It has been argued that a contract for the carriage of goods does not become a contract for the carriage of goods by road just because it allows for the performance by road. Moreover, in a case very similar to the English case, a French court reached the opposite result as did the English court. In Scandinavia, the same is true of a recent, Danish Supreme Court decision. In a comparable case, also a Belgian court rejected the view that the actual performance of the contract could be decisive when deciding what set of liability rules should apply. Consequently, it would seem that many European courts agree that as a starting point the actual performance of a contract is not a relevant criterion when characterizing a contract that wholly or partly leaves the carrier a choice as to the means of transport.

However, neither of the cases cited address the question how to qualify a multimodal contract in which the different types of transport means are agreed upon and specified in the contract from the outset. As explained above under 3.II.b, it could be argued that such a contract for multimodal carriage should in fact be regarded as consisting of a variety of contracts making the unimodal conventions applicable to the different stages of the transport (the “plurality of contracts view”). It must be assumed that this would be the approach in English law. However, there is some uncertainty as to how widespread this view of the multimodal contract is in Europe. Glass puts it this way:

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84 Secondly, it has been argued that it is a requirement for the CMR-convention to apply that the place of taking over for the goods and the place designated for delivery, as specified in the contract, are situated in two different countries and that this requirement is not fulfilled when the road leg is combined with a sea leg under a multimodal contract. Berlingieri has put it this way: “If there are two road legs, one before and one after the sea leg, the taking over and delivery are not related to the same road leg and if there is only one road leg, for example before the sea leg, delivery is wholly unrelated to a carriage by road”, Berlingieri, A New Convention on the carriage of Goods by Sea: Port-to-Port or Door-to-Door?, Rev.dr.unif. 2003-1/2, p. 265, 269. See counter arguments to this, Clarke, “A multimodal Mix-up”, JBL 2002, 210, 215, where it is pointed out that a carrier can become liable as a CMR carrier without any actual physical take over of the goods at all.
86 U 2008.1638 H (Danish Supreme Court decision, reported in the Weekly Law Reports, 2008, at p. 1638)
There exists some degree of uncertainty as to how far such rules will apply in the context of a contract which extends liability beyond a particular mode. Nevertheless where international carriage is involved there is, at least, the possibility that one or more international convention may apply to a transport utilising different modes.88

The uncertainty arises because the “plurality of contracts” view is not the only possible way to look at the multimodal contract. An alternative view is to regard the multimodal contract as a contract “sui generis” not regulated by the existing conventions. It is a common suggestion that multimodal contracts should be viewed this way.89 In some European legal systems this approach has led to the enactment of national legislation dealing with multimodal transports. Examples are the German and Dutch legislations on multimodal transports. In Italy, the multimodal contract is regarded a contract sui generis regulated by the general, Italian, law of transportation. To the extent that national rules are held to regulate multimodal transports, the national liability regimes may contain rules that bar the contractual extension of the maritime liability regime to cover the inland part of the road. In other European legal systems the notion of the multimodal contract as a contract sui generis has led to the understanding that this type of contract is subject to freedom of contract.90

Consequently, in the European legal systems, there will be different answers to the question whether an extension of the maritime liability regime to cover the liability of the contracting carrier for the inland part of the transport would be accepted.

iii. The liability of the subcontracting carrier

As a starting point, the direct liability of the subcontracting carrier is not covered by any of the existing conventions. Thus, as the conventions only regulate “contracts” for the carriage by road or rail, the liability of the subcontracting carrier vis a vis the contracting carrier is not covered as there is no contract between the parties.91 As the conventions do not cover the direct liability of the subcontracting carriers in multimodal transports, the liability of the subcontracting carrier is regulated by national law. In most European legal systems this means that the liability of the subcontracting carrier in multimodal settings is based on tort law.

In English law, it is relatively clear that tort actions are allowed as against subcontracting carriers.92 The same appears to be true under French law although for some time it seemed unclear whether the action could and – because of the doctrine of “non-cumul” – should be based on contract.93 Under German law, actions in tort are allowed. However, the subcontractor is allowed to rely on the claimant’s contract with the contracting carrier (“vertragliche Haftungsausschluss mit Wirkung für Dritte”).94 Under Dutch law, the position is not entirely clear. As a starting point, actions in tort are allowed. However, by virtue of some special rules the subcontracting carrier may be able to rely on either the contract between the claimant and the contracting carrier or the contract between the subcontracting carrier

90 In Scandinavia, this is presumably the case in Danish law, Vestergaard Pedersen, *Transportret*, 2008, p. 988, 1006, 1014, 1017. See also Ullbeck and Taiger Ivo, *Optioner og ansvar i transportaftaler*, Erhvervsjuridisk Tidsskrift, 2008, p. 337.
91 As to the special rules in the CMR convention article 34 and in the COTIF/CIM convention article 26 establishing direct liability in certain cases, these rules presuppose several successive road carriers or rail carriers. Consequently, they are not applicable in a multimodal setting where there is an ocean leg and an inland leg.
92 De Wit (2004), supra note 88, at p. 453
93 De Wit (2004), supra note 88, at p. 456-458
94 De Wit (2004), supra note 88, at p. 470-471
and the contracting carrier. Under Belgian law, a tort action against a subcontracting carrier is prohibited unless very stringent conditions are met.

Most often, this also means that no mandatory rules will prevent the subcontracting carrier from taking the benefit of the maritime law rules pursuant to a Himalaya clause in the contract between the shipper and the contracting carrier.

In English law, with its rigid upholding of the doctrine of privity of contract, the validity of the Himalaya-clause has been intensely debated. In German and French law, the Himalaya clauses pose no special problems. In contrast, in Belgium, the Himalaya clause will be superfluous as this legal system – as a starting point - does not accept tort based actions against a sub contracting carrier.

Thus, if the subcontracting carrier is sued directly it will most often be able to claim the protection of this clause. In contrast to the position under US law, there will be no issues of carriage liability rules applying mandatorily to the subcontracting carrier. This is because the carriage rules do not regulate the transportation activity in itself but only the contract for carriage.

In contrast, if the subcontracting carrier is not sued directly by the shipper but by the contracting carrier filing a recourse action, then the liability of the sub contracting carrier will often be mandatorily regulated by the rules in the CMR convention and/or the COTIF/CIM convention. This is because the conventions regulate “contracts” for carriage by road and rail.

To the extent that the liability of the subcontracting carrier vis a vis the contracting carrier is regulated by either the CMR convention or the COTIF/CIM convention the liability of the carrier is mandatorily regulated. Neither of the conventions regulating the liability for inland transport permits the carrier to limit its liability in a way that is contrary to the liability rules under the conventions. Consequently, if a Himalaya clause contains provisions to the effect that the liability of the inland carrier vis a vis the contracting carrier is to be regulated by the maritime law rules, then these provisions will be void.

Whereas the “problem” of mandatory rules blocking contractual solutions under US law has been solved by interpreting the area of applicability of the Carmack Amendment narrowly in the context of international transports, no parallel attempt has been made under European law. This is striking since it would seem that a similar line of argument could in fact be made.

Thus, the area of applicability of the European conventions can be described in a way parallel to the US way of describing the applicability of the Carmack Amendment. Just like the rules in the Carmack Amendment, the rules in the CMR convention and the COTIF/CIM convention only apply to certain international transports. Whereas the Carmack Amendment has been held to be applicable to international transports only in so far as they take place to an adjacent, foreign country, the European rules in the CMR-convention and the COTIF/CIM convention apply to international transports only in so far as they take place to or from member states (CMR) or to and from member states (COTIF/CIM). Thus, following the US line of reasoning that road carriage which is a

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95 De Wit (2004), supra note 88, at p. 458-470
96 De Wit (2004), supra note 88, at p. 442-447
97 De Wit (2004), supra note 88, at p. 493
99 De Wit (2004), supra note 88, at p. 493
100 De Wit (2004), supra note 88, at p. 439, Berlingieri (2003), supra note 84, at p. 270.
continuation of foreign commerce is generally not covered by the Carmack Amendment unless there is a separate bill of lading, it could be argued that if there is a multimodal transport from a country which is not a member of the CMR with a final destination in a country which is also not a member state then – unless there is a separate bill of lading covering the road transport - then the CMR should be held inapplicable also to the liability of the subcontracting carrier vis a vis the contracting carrier for the road part of the transport as this is a continuation of foreign commerce between countries that are not parties to the CMR. However, under European law there would be no doubt that the liability of the subcontracting carrier vis a vis the contracting carrier would be covered by the CMR convention in this situation whether or not a separate bill of lading was issued. Consequently, under European law it is not possible to achieve full harmonization of the liabilities in the chain of contracts by applying the uniform model.

iv. Conclusion
Under European law, the question that has given rise to most uncertainty is the question of the liability of the contracting carrier. The question is whether the existing conventions on inland carriage mandatorily regulate the liability of the contracting carrier as regards the inland portion of a multimodal transport. This question may be answered differently in different European legal systems. It is therefore uncertain to what extent a paramount clause extending the maritime liability regime to cover the liability of the contracting carrier for the inland part of the transport would be upheld as valid. In contrast, the direct liability of the subcontracting carrier vis a vis the shipper under a multimodal contract is not regulated by the existing conventions. Most often tort law will apply and most often a Himalaya clause will be upheld as valid. However, the liability of the subcontracting carrier vis a vis the contracting will be mandatorily regulated by the existing conventions on inland liability to the extent the inland transport is an international transport covered by the conventions. Consequently, it is not possible to obtain harmonization of the liabilities in the chain of contracts by applying the uniform liability model in European law.

IV. Reasons for the present state of the law
As described above, the network principle seems to have had its stronghold in Europe. In contrast, the uniform liability model seems to be the preferred model under US law. Several explanations can be given for this. In large part they are linked to the fact that the inland carriage liability rules rest on different approaches in the two systems; the contractual approach and the status approach respectively.

In Europe the network liability system has been the more popular way of solving the multimodal problem. The network solution is adopted in the existing conventions, in national legislation and in agreed documents. The choice of this principle has to do with the contractual approach taken in the European conventions on inland carriage.

Firstly, as explained above, the existing European conventions regulate “contracts” for specific types of carriage. The concept of a “contract for a specific type of transport” is not clear. Consequently, it is uncertain to what extent the existing conventions may partially regulate a contract for a multimodal transport (under the “plurality of contracts view”). The adoption of the network principle to regulate the multimodal transports eliminates the risk of conflicts of conventions since the principle incorporates the application of all of the existing conventions.
Secondly, as the existing conventions regulate “contracts” for specific types of carriage, the liability of the subcontracting carrier vis a vis the contracting carrier will often be regulated by one of the conventions. The adoption of the network liability creates harmonization of the liabilities in the chain of contracts by ensuring that the liability of the contracting carrier follows the liability of the subcontracting carrier.

In contrast, the uniform liability model does not achieve this goal under European law. Under European law, the extension of the application of the maritime law regimes to cover the inland leg of the transport gives rise to two problems.

Firstly, as the rules governing inland carriage apply to “contracts” for the carriage of goods by road and rail, it is unclear to what extent these rules cover the liability of the contracting carrier in a multimodal transport. Consequently, it is unclear to what extent a paramount clause extending the application of the maritime liability regime would be void under these regimes.

Secondly, although the direct liability of the subcontracting inland carrier vis a vis the shipper is generally not covered by the existing conventions, the liability of the subcontracting carrier vis a vis the contracting carrier is. This is true even when the inland transport forms part of a larger multimodal transport to or from countries that are not members of the conventions. It also makes no difference whether a separate bill of lading has been issued for the inland transport. Since the CMR convention and/or the COTIF/CIM convention regulate the contracts for road and rail carriage the relationship between the subcontracting inland carrier and the contracting carrier will be governed by these conventions to the extent the inland transport is an international transport. Consequently, under European law it is not possible to achieve full harmonization in the chain of contracts through the extension of the coverage of the maritime law regime.

All in all, therefore, the network solution has traditionally been seen as the more attractive solution under European law.

Under US law, the application of the network principle has been less popular than in Europe. For instance, there are no statutes or major agreed documents implementing the principle. One of the reasons for this is that under US law the principle is not necessary to avoid a possible conflict of conventions since the US is not a member of the European conventions. It could be argued that the Carmack Amendment gives rise to a parallel problem. Although the Carmack Amendment does not limit freedom of contract to the same extent as do the corresponding European rules, it still creates some restrictions in the sense that contractual provisions may be set aside if they have not been negotiated in accordance with the rules prescribed in the Carmack Amendment. However, this problem has only surfaced recently as some circuit courts have started to hold the Carmack Amendment applicable to international transports whether or not a separate B/L covering the inland transport has been issued. It is yet unclear whether this view will prevail. Even if it does prevail, the status approach in the Carmack Amendment may limit the applicability of the act so that it does not apply to the contracting ocean carrier or NVOCC. In general, therefore, the parties to a multimodal transport have been left with more freedom of contract under US law than under European law and in general, it has been possible to achieve harmonization in the chain of contracts by applying the uniform liability model.
Furthermore, the network liability concept - when applied - seems to be broader under US law than under European law. The network clauses applied in commercial practice do not rely on the concept of the “hypothetical contract”. There is no need for this concept under the status approach taken in US law. Instead, the network principle is often formulated very broadly, addressing the rules applicable to the different “stages” of the transport. This formulation leaves open several interpretation options. Sometimes the principle is understood as being concerned with the liability of the contracting carrier and sometimes it is interpreted as covering both the contracting carrier and the subcontracting carrier. Likewise, the broad formulation of the principle may sometimes leave room for interpreting it as establishing through liability or segmented liability. The lack of clarity as to the content of the principle may in itself be one of the reasons why the principle is less popular. In any event, the different versions of the network liability imply that under US law the concept does not always create harmonization in the chain of contracts and does not always create genuine through liability.

All in all, therefore, the uniform liability model has been the more attractive solution to the multimodal problem under US law.

V. Difficulties created by the regionalization

The differences in the way the multimodal transport is dealt with in the US and Europe create potential problems in relation to multimodal shipments between these two regions.

Firstly, the mere fact that the inland liability rules differ as to content in the two regions of course requires knowledge of foreign law in order for the parties to fully understand the possible implications of entering into a multimodal contract.

Secondly, the differences as to the preferred liability models in the two systems may pose difficulties when negotiating the terms of a multimodal contract between parties from the two regions. Whereas the uniform liability model may be the starting point for the US party to the contract the opposite may be the case with regards to the European party.

Thirdly, the fact that the effects of the two liability models differ in the two systems may come as a surprise.

Thus, if the uniform liability model is adopted it may come as a surprise to a US contracting carrier that a paramount clause purporting to extend the maritime liability regime to cover the liability of the contracting carrier also for the inland stages of the transport might be regarded as void under the European CMR convention or under the COTIF/CIM convention in some European legal systems.

In contrast, it may come as a surprise to a European shipper that the US inland rules may regulate the direct liability of the subcontracting inland carrier and void a Himalaya clause. It may come as a further surprise that what may be decisive in this regard is whether the subcontracting carrier has or has not issued its own bill of lading.
Similarly, if the network system is adopted the US shipper may not be aware that under the European understanding of the principle only the liability of the contracting carrier is regulated by the network clause. Likewise, the concept of the “hypothetical contract” will not make much sense seen from a US point of view. On the other hand, it may come as a surprise to the European shipper that under US law the network system is sometimes understood as covering not only the liability of the contracting carrier but also the liability of the subcontracting inland carrier.

Agfa-Gevaert is illustrative of the problems inherent in the application of foreign law. As mentioned, in this case the court decided that the plaintiff had not shown that the CMR – convention was compulsorily applicable. However, the court does not mention whether it is referring to the liability of the contracting carrier or the liability of the subcontracting carrier. Under the European interpretation of the convention this distinction is decisive. Thus, whereas there is no consensus in the European legal systems as to the liability of the contracting carrier, the liability of the subcontracting inland carrier vis a vis the contracting carrier is clearly regulated by the CMR-convention. It is tempting to assume that the reason why the US court does not make the distinction is that under US law the inland liability rules clearly do not apply to the contracting ocean carrier. Accordingly, under US law the question will always concern the liability of the subcontracting carrier.

Basically, the different liability rules make it difficult for the parties to the contract to foresee their legal positions. Most likely, the differences between the regions as to how the multimodal problem is dealt with also create transaction costs in relation to the negotiation of contracts. The differences must also be assumed to increase dispute solving costs, as it will often be unclear to the parties what rules should apply and whether the rules are the same or different in the two legal systems. Consequently, it is natural to consider the prospect for the future and ask whether the two systems could be merged into one global solution to the multimodal problem.

VI. Possible solutions and prospects for the future – globalization or continued regionalization?

1. The ideal solution
   a. What requirements must an ideal solution meet?
      The first question that could be asked is what requirements an ideal solution must meet. Ideally speaking, there would be two requirements. Firstly, the solution should be able to create harmonization in the chain of contracts. Secondly, the solution should create real globalization. In short this means that it should apply to all jurisdictions and eliminate the need to have knowledge of foreign law. However, under the described liability models these two requirements seem to be irreconcilable

   b. The two liability models revisited
      As regards the network liability model, this model has the ability to create harmonization in the chain of contracts (depending on the exact choice of network liability version). However, harmonization under this model seems to come at high price. In general, the model is too complicated and liability under the model is too unpredictable for the parties. More importantly, however, the network liability model does not achieve real globalization. Thus, even if the network liability system were adopted in all jurisdictions it would still not eliminate the need for the parties
(and their lawyers) to be acquainted with foreign law. On the contrary, the network liability system upholds and reinforces the basic idea that different types of transports are to be governed by different sets of liability rules which may in turn vary from one jurisdiction to another.

As regards the uniform liability system, this system has the advantage of being simple and of creating predictability as to questions of liability. It also has the potential of becoming a global solution in that it is not based on the incorporation of existing national legislation. However, in Europe the uniform liability model clearly lacks the ability to create harmonization within the chain of contracts since the liability of the subcontracting inland carrier vis a vis the contracting carrier is mandatorily regulated under the existing European conventions governing inland transport. Consequently, neither the network liability model nor the uniform liability model can - at present – achieve the ideal solution of creating both real globalization and harmonization in the chain of contracts.

c. The status v. contract approach revisited
In the US, it has been possible to achieve harmonization of the liabilities in the chain of contracts under the uniform liability model. Consequently, it is natural to ask whether the existing legal framework in the US better facilitates the adoption of a uniform solution to the multimodal problem than does the existing European legal framework. As described above, one of the reasons why different liability models are preferred in the two regions is a rather technical one; The contractual approach adopted in the European legal systems on inland transport seems to generate a preference for the network liability model, whereas the status approach adopted in the US under the Carmack Amendment may seem to allow for more room for the adoption of the uniform liability model. Theoretically, therefore, one could ask whether a convergence could be achieved by changing the basic contractual approach in the existing European conventions to a status approach. However, such change in approach would have wide reaching consequences within the regional system and is not likely to happen. In addition, as illustrated by recent US case law, the status approach is not without its problems. Thus, the Carmack Amendment may in fact be an obstacle to regulating the liability of the subcontracting carrier by the same rules as those covering the liability of the contracting carrier. Therefore, while the status approach in the Carmack Amendment may explain why – until recently - it has been thought unproblematic to extend the maritime liability regime by contract to govern the liability of the contracting carrier for the entire transport, the status approach cannot in itself explain the success of the uniform liability in the US. The real reason why this model has been so successful here is that it has been presumed that the inland liability rules were inapplicable to international, multimodal transports altogether, and that consequently, also the liability of the subcontracting, inland carrier was subject to freedom of contract. Under European law, there is no doubt that international transports are governed by the existing conventions. Consequently, the mere adoption of the status approach under European law would not solve the problem.

2. The prospect of further regionalization
One possible prospect for the future seems to be continued regionalization. This may come about in different ways.

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101 In fact, it cannot be ruled out that the Carmack Amendment may also regulate the liability of a contracting carrier who has arranged for inland transportation, although this seems more unlikely.
Up until now, the uniform liability model has been the preferred solution in US law, whereas the network liability model has had its stronghold in Europe. However, seen in the light of the recent developments in US case law, the uniform liability model may come under pressure in the US. Thus, the holdings by the Second and Ninth Circuits to the effect that the Carmack Amendment applies mandatorily to the inland part of a carriage regardless of whether a separate bill of lading has been issued or not may render the uniform liability model a less viable solution under US law. If it is no longer possible to achieve harmonization in the chain of contracts by adopting a Himalaya clause to regulate the liability of the inland carrier the uniform solution may become less attractive. Against this background, it could be asked whether the development in case law might give rise to a revival of the network principle under US law.102

Thus, the described development in US case law might seem to be pulling in the direction of the adoption of the network principle as a global solution. However, the network principle may not be standing on that solid ground in the European legal systems. Under European law, critical opinion of the network principle seems to be gaining ground.103 Often, the network liability model is being criticized for being too complicated and for creating too much unpredictability. The critical approach is reflected in the EU draft for common European rules on multimodal contracts.104 Strikingly, this proposal is not a continuation of the European tradition for favouring the network liability model. On the contrary, a uniform liability regime is proposed, subjecting the carrier to almost strict liability in line with the basis of liability found in CISG.105 The liability is limited to 17 SDR.106 The proposal is based on an opt-out model, so that the liability regime applies unless otherwise agreed by the parties. The draft only deals with the liability of the contracting carrier and consequently does not create harmonization in the chain of contracts. However, the problems in relation to recourse actions is said to be dealt with by “assimilation”. Thus, in the majority of the existing unimodal conventions, the basis of liability is also strict or variations of strict liability. Likewise it is argued that 17 SDR is the most common limitation of liability.

Ironically, therefore, whereas regionalization so far has meant the US favouring the uniform liability model and Europe favouring the network liability model, one future prospect would seem to be a shift in positions whereby Europe drifts towards a uniform liability solution whereas the US becomes more committed to the network solution.

Another future prospect, however, is the continuation of the present state of affairs. Thus, even if the new trend in US case law becomes dominant, there is the possibility that US commercial practice adapts to the new interpretation of the Carmack Amendment so that the parties lawfully contract out of the Carmack liability by applying the correct procedures for this. This would make possible the continued application of the uniform liability model in US law. In Europe, on the other hand, it may seem doubtful whether the uniform liability model in the EU draft proposal will be

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102 See Force, supra note 44, at p. (12) recommending the application of a network clause in response to the latest developments in case law.
105 Cf. article 8.
106 Cf. article 9.
able to become the dominating liability model as long as the existing unimodal conventions do not permit a contractual regulation of the liability of the performing inland carrier vis-à-vis the contracting carrier in accordance with the uniform liability regime. Consequently, opting out of the proposed liability regime and adopting the network solution to facilitate recourse actions may still be the preferred contractual solution in Europe. In this case, the overall picture of the US favouring the uniform liability model and Europe favouring the network liability model may continue.

3. The prospect of a “global” solution – the The Rotterdam Rules

For the time being, the new Rotterdam Rules represent the latest attempt to create what appears to be a global solution to the multimodal problem. In many ways, the Rotterdam Rules appear to be modelled over the proposal for a new US GOGSA from 1996.

In 1996, a proposal for a new GOGSA was drafted in the US. According to section 13 of the proposal, the new COGSA would apply to “all contracts that include the carriage of goods by sea covering transportation to or from the United States”. According to section 1(b), the term “contract of carriage” applies to all contracts for the carriage of goods either by sea or partially by sea and partially by one or more other modes of transportation. This means that the new COGSA would cover multimodal contracts to the extent that part of the transport is to be performed by sea. The draft proposal extends the coverage of the maritime liability regime beyond the “tackle to tackle” period. The new GOGSA would apply from the time when the goods are delivered to the carrier to the time when they are delivered to a person who is authorized to receive them. Accordingly, it would cover the liability of the contracting carrier also for damage that occurs during an inland transport. The proposed liability regime would also cover the liability of the performing carrier in that it provides for direct actions by the shipper against the performing carrier on the basis of the new liability regime. However, only maritime performing carriers would be covered. The inland carrier would still be covered by the applicable inland rules to the extent the inland carrier is the performing carrier, cf. section 1(a)(v) in the proposal. However, if the inland carrier is the contracting carrier, the inland carrier would be covered by the new liability regime. Overall, in relation to the multimodal problem the proposal seems to codify what has so far been the preferred commercial practice in the US, namely the extension of the maritime liability regime to cover other parts of the transport as well.

The Rotterdam rules go beyond the US GOGSA proposal and can be seen as an attempt to accommodate both the traditional European approach and the traditional US approach to solving the multimodal problem. This means that the Rotterdam Rules solve some problems but import others from the law as it is today.

Like the European unimodal conventions and the US COGSA-proposal, the Rotterdam Rules basically adopt a contractual approach to the liability issues. They regulate “contracts” for the carriage of goods. They also adopt the same broad approach as does the US COGSA proposal in that they propose to regulate not only contracts for the carriage of goods by sea but “contracts for the carriage of goods wholly or partly by sea”. In other words, the Rotterdam Rules regulate the same kind of multimodal contracts as does the US proposal for a new GOGSA.

Likewise, as under the GOGSA draft, the starting point in the Rotterdam Rules is the extension of a revised maritime liability regime. According to the Rotterdam Rules, this regime applies when

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damage cannot be localized or if damage has not occurred solely before or after the loading of the goods on to the vessel. Moreover, the Rotterdam Rules adopt the GOGSA approach in yet another respect. The rules regulate the liability of the contracting carrier and the performing maritime carrier, but not the liability of the performing inland carrier.

Overall, when damage cannot be localized it is the intention of the Rotterdam Rules is to have the maritime law regime extended regardless of the status of the contracting carrier and regardless or how the contract between the shipper and the contracting carrier would have otherwise been categorized.\textsuperscript{109} It applies as long as the contract provides for carriage by sea. This means that the convention to some extent purports to eliminate the need under European law to qualify a contract as a special type of contract. Put differently, categorization will become much easier under the Rotterdam Rules. To some extent the solution bridges the gap between the application of the status approach under US law and the contractual approach under European law.\textsuperscript{110}

To the extent that damage can be localized, the Rotterdam Rules rely on the European network liability, cf. article 26. According to subsection (a), the network principle is also based on the European concept of the “hypothetical contract”. Thus, the Rotterdam Rules “do not prevail” if rules of another international instrument “would have applied to all or any of the carrier’s activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred”.\textsuperscript{111}

However, the network principle only applies to a limited extent. It only applies in relation to the rules on liability, limitations of liability and rules on time for suit (paragraph b). It is also a requirement that the rules that are pointed to by the network provision are rules that are compulsorily applicable.\textsuperscript{112}

\textsuperscript{109} It could be asked whether the application of the maritime liability regime to a contracting inland carrier would not be considered contrary to the Carmack Amendment under the new rulings which require the application of the Carmack to any carrier with the status of an inland carrier.

\textsuperscript{110} On the other hand, it may be doubted whether there could still be an overlap with the CMR-convention, for instance if there is a contract for carriage first by road and then by ocean. The question is whether it would still be possible to argue that this is a contract for the carriage of goods by road and consequently, that the CMR applies to the liability of the contracting carrier. The provision in article 82 dealing with conflicts of conventions only seems to let the CMR-convention prevail to the extent the transport is a ro-ro transport, cf. article 82 (b). This leaves it unsettled what applies in relation to transports that are not ro-ro transports. In other words, it cannot be ruled out that the discussion as to when there is a contract for the carriage of goods by road will continue in European law and that European legal systems adhering to the English approach with regard to the interpretation of the CMR-convention may find that there is conflict of conventions as to this issue, see Clarke, The Line in Law between Land and Sea, JBL 2003, 525: “In short, it seems that, even if the DI comes into force, when CMR applies, the DI will not”.

\textsuperscript{111} It is not entirely clear what is meant by the expression “prevail”. This wording makes the provision sound like a provision dealing with the issues of possible conflicts with other conventions. This reading, however, does not correspond to the application of the “hypothetical contract”. Furthermore, the issue of conflicts of conventions is dealt with in article 82 of the convention. It is also not clear what is meant by the expression “direct” contract between the shipper and the carrier. The contract between these parties cannot be indirect (?). The expression would have made more sense had it turned on the relation between the shipper and the performing carrier.

\textsuperscript{112} Presumably, what is meant is that the rules would be compulsorily applicable as between the shipper and the contracting carrier had they entered into a separate contract regarding that particular stage of the transport.
When there is localized damage, harmonization in the chain of contracts is achieved by subjecting the contracting carrier to the liability regime of the inland carrier when this liability regime is prescribed in an “international instrument” Under European law there are at present two such instruments with regard to inland carriage (the CMR-convention and the COTIF/CIM convention), whereas under US law, there are no such “international instruments” governing inland carriage. Consequently, it would seem that the network liability in the convention will only be applicable to multimodal transports that include an inland transport portion in Europe.

In this case, on the other hand, the network principle would be compulsorily applicable to the liability of the contracting carrier. This means that it will not be possible to extend the application of the maritime liability regime to the contracting carrier for damage which has occurred during the inland part of the transport. Thus, harmonization in the chain of contracts would be achieved by applying the inland liability rules to the contracting carrier vis a vis the shipper as well as to the performing inland carrier vis a vis the contracting carrier.

If, on the other hand, the inland transport takes place in the US, the liability of the contracting carrier will be regulated by the maritime default rule in the convention. This will mean that it will still be desirable to attempt to regulate the liability of the performing inland carrier by inserting a Himalaya clause to the effect that the inland carrier can claim protection under the maritime liability rules. Thus, when the inland transport takes place in the US harmonization in the chain of contracts will – presumably - be achieved by applying the maritime liability regime to all the parties in the chain of contracts.

In other words, as regards localized damage, the convention would seem to have the effect of reinforcing the regionalization tendency by applying the network liability model to transports with an inland leg in Europe while applying the uniform liability regime to transports with an inland leg in the US. Moreover, the problems related to the application of the concept of the “hypothetical contract” will remain in Europe, whereas the uncertainty as to the validity of Himalaya clauses under the Carmack Amendment will remain under US law. These are problems that are “imported” into the convention from the law as it stands today. This also means that European shippers will still have problems finding out whether or not they could have a valid claim against the subcontracting carrier under the Carmack Amendment if damage has occurred during an inland transport in the US. Likewise, by virtue of the network principle in the convention, US contracting ocean carriers may find them selves being subject to European liability rules governing inland transport if damage can be localized as having occurred during an international, inland transport in Europe.

VII. Conclusion

Whereas transport law is normally described as an international area of the law, the fact is that the multimodal transport has changed this. Today, the law on multimodal transports is regionalized in several respects. Different liability rules apply to inland carriage in Europe and in the US and this has lead to the favouring of one liability model in the US and another one in Europe. Furthermore,

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113 In this sense, the convention would strengthen the network liability as the European liability model. Thus, whereas under the present state of the law it must be presumed that many European legal system will disagree with the approach adopted in the English Quantum case and find that the multimodal contract is a contract sui generis subject to freedom of contract as regards the liability of the contracting carrier vis a vis the shipper, this approach will not be possible under the convention.
the two liability models may have different effects under US law and under European law. The differences stem in part from different techniques in regulation (the status and the contract approach, respectively) but predominantly from the fact that the US legal system has been believed to allow for more freedom of contract in this area of the law. The differences must be presumed to create transaction costs when negotiating contracts for carriage from one region to another and the parties to the contracts may not be able to foresee their legal positions unless they get acquainted with huge bodies of rather complicated foreign law. Clearly, it would be desirable to find a global solution to the problem. However, this is not an easy task.

Recently, it seems that a legislative trend to prefer the uniform liability model has emerged. More specifically, there is at present a choice between global rules (The Rotterdam Rules) that rely in part on the uniform solution, in part on the network principle, and a regional solution (the EU proposal) solely based on the uniform liability model. However, neither of the proposals offers an ideal solution to the problem.

Not surprisingly, the present global proposal on the table does not offer the perfect solution. It upholds the regionalization tendency by adopting the extension of the maritime liability regime as the solution for transports with an inland leg in the US and the network principle as the solution for transports with an inland leg in Europe. In fact, in Europe the convention would have the effect of cementing the network principle making this liability model compulsorily applicable as the way to achieve harmonization of the liabilities in the chain of contracts.

The EU proposal also does not offer an ideal solution. First of all, it is a regional, not a global solution. Secondly, although the starting point is the uniform liability regime, it may seem doubtful whether a widespread adherence to this liability regime is a likely development as long as the existing conventions prevent the adaption of the liability of the inland carrier to the liability of the contracting carrier under the uniform liability regime. It does not seem unlikely that under the EU proposal, the parties would contract out of the uniform liability regime and adopt the network liability model to achieve harmonization of the liabilities in the chain of contracts.

Thus, under both proposals, the existing conventions – and under US law possibly also the Carmack Amendment - that apply mandatorily to the liability of the inland carrier form barriers to reaching a really satisfactory, global solution because the mandatory rules prevent the creation of harmonization of the liabilities in the chain of contracts. This raises the more basic policy question of the proper role of mandatory law in this area of the law. The US Carmack Amendment rules date back to the beginning of the 20th century and the purpose of the rules was to protect the shipper against discrimination and to facilitate the filing of actions by relieving the shipper of the burden of proving who of the carriers had actually caused the damage. Likewise, the mandatory rules in the CMR-convention and the COTIF/CIM convention were introduced to protect the shipper as the weaker party against unfair contract terms. Today, the market has changed. The shipper is no longer necessarily the weaker party in the contractual relation. On the contrary, today shippers often form large companies with the same bargaining power as the carriers. Consequently, it is at least arguable that that the time has come to consider whether there is a need to uphold the mandatory character of the inland liability rules, at least when the inland part of the transport forms part of a larger, multimodal transport in which the inland carrier most often will have the ocean carrier, and not the shipper, as its contracting party.
At present, there is no evidence what contractual solutions the parties would adopt to regulate multimodal transports were there no mandatory rules to take into account. Commercial practice in the US up until now might seem to suggest a preference for the extension of the maritime liability regime to cover the entire transport. In fact, this commercial practice seems to have strongly inspired first the proposal for at new US GOGSA and next the Rotterdam Rules. It is, of course, subject to debate whether the maritime liability rules are “deserving” of dominance when comparing the content of the rules with the content of other liability regimes. Some of the existing rules under the maritime liability regime are indeed hard to apply in non maritime areas and need to be modernized. An example is the exemption from liability in case of “navigational errors”. However, there is one good reason for allowing for some dominance of the maritime liability regime (or a modernized version of it) over the inland liability regimes; the maritime liability regime represents a much more international liability regime than do the “local” inland liability rules. Presumably, therefore, the extension of the maritime liability regime will always be a strong player in the competition to “win” the multimodal transports.\footnote{Likewise, it would make sense to allow for dominance of the international rules on air carriage over the inland liability regimes in multimodal transports that combine air carriage and inland carriage.} An alternative would be the adoption of a more “neutral” liability regime like the one embodied in the EU-proposal that builds on the basic principles of liability found in CISG. This is also a well known international liability regime. While both the Rotterdam Rules and the EU proposal may be seen as steps in the right direction in the sense that they push – wholly or partly - for the adoption of a uniform liability regime neither of the solutions will be able to become truly global solutions as long as different regional rules regulate the inland liability regimes mandatorily. Until this is changed, it seems we will have to live with the regionalization of multimodal transport law.