Some legal aspects of multimodal transport and its applications in Benin

Bernadino Emilicio Do Sacramento

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SOME LEGAL ASPECTS OF MULTIMODAL TRANSPORT AND ITS APPLICATIONS IN BENIN

BY

Bernadino Emilicio, DO SACRAMENTO

BENIN

A PAPER SUBMITTED TO THE FACULTY OF THE WORLD MARITIME UNIVERSITY IN A PARTIAL SATISFACTION OF THE REQUIREMENTS FOR THE AWARD OF A:

MASTER OF SCIENCE DEGREE IN GENERAL MARITIME ADMINISTRATION

THE CONTENTS OF THIS PAPER REFLECT MY PERSONAL VIEWS AND NOT NECESSARILY ENDORSED BY THE UNIVERSITY.

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ABBREVIATIONS.

MT: Multimodal Transport.
CE: Conseil de l'Entente.
UN: United Nations
MTO: Multimodal Transport Operator.
MTD: Multimodal Transport Documents.
B/L: Bill of Lading.
ICC: International Chamber of Commerce.
CMR: Convention on the contract for the International Carriage of goods by road.
CIM: Convention concerning the Carriage of Merchandise by rail.
CMI: Comité Maritime International.
MTC: Multimodal Transport Convention.
OCBN: Organisation Commune BENIN-NIGER.
CNBF: Centre National des Bureaux de Fret.
CEAO: Communauté des Etats de L'Afrique de l'Ouest.
FIATA: Fédération Internationale des Associations des Transporteurs et Assimilés
SNCDV: Société Navale Commerciale Delmas-Vieljeux
BIMCO: Baltic International Maritime Council Organisation.
OBEMAP: Office Béninois de Manutention Portuaire.
ECOWAS: Economic Community of West African Countries.
UNCTAD: United Nations Conference on Trade And Development
From the time immemorial, people have been trading. They conveyed their own commodities and sometimes those of other people. At that time world trade consisted mostly of timber, coal, cotton and grain. With the industrial revolution in Europe, the system of trading had been improved. Vessels and vehicles became much faster. Traders became more experienced accordingly.

For liability resulting from such a trade, traditionally, carriers are reluctant to accept liability resulted from loss of or damage to the cargo. So, when a carriage is done by a chartered ship, the carrier asks the cargo owner, in case of damage, to refer to the shipowner. He does the same thing with stevedoring companies during transshipment of cargo.

The fragmented system regime hampers the owner of the cargo to succeed in his claim because it is difficult, mostly impossible for him to locate where the damage had occurred. The damage can happen during the pre-transport, the transport itself, the post-transport. Another problem for the fragmented carriage is the delivery of a lot of documents for the same goods to all carriers who are willing to transport them. But the activities of pre and post carriage are not covered by any document.

The multimodal transport contract is more secured than the unimodal one. The liability under the unimodal regime is replaced by the one given by the UNITED NATIONS CONVENTION on International Multimodal Transport. The Multimodal Transport Operator (MTO) is solely responsible under that convention for the whole multimodal transport governing by
the multimodal contract. All claims should be done before him and satisfied by him; it is up to him to sue his sub-contractors later on.

In Anglo-Saxon legislation, the carrier’s liability was a strict one and was not subject to any limitation. But due to freedom of contract, carriers have started reducing even excluding entirely their liabilities by introducing in the Bill of Lading (B/L) number of limitations and exemptions clauses.

It was in 1893 that HARTEL ACT in the USA reacted against all these clauses inserted in the B/L. Therefore, a minimum but compulsory liability is borne by any maritime carrier. That provision has been inserted in HAGUE RULES in 1924 which is still in force. Anyway, maritime carrier is still benefiting from 17 important exemptions such as error in navigation or in management of the ship, fire.

The following development will try to analyse the shade of multimodal transport system in BENIN; the problems its encounters by pointing out the weakness which hampers its improvement before having a look at the international regime to seek for elements which could better contribute to its improvement. Consequently, some general information on multimodal transport will be given; the legal structure of the system will be analysed; a comparative analysis between unimodal and multimodal systems will be carried out as well as multimodal documentation.
In BENIN, the combination of sea, road and railway transports is not called multimodal, combined or intermodal transport, but chain of transports.

Apart from the merchant marine code which is outdated and needs to be revised and a decree regulating haulage and not yet implemented, BENIN does not have any regulation specifically related to multimodal transport. As such, any legal and comparative analysis can not be carried out with the Multimodal Transport Convention in this chapter. In WEST-AFRICA, however, BENIN is signatory of two sub-regional conventions regarding inter-States transit of goods by road and inter-States transport by road (TRIE and TIE: Transit Routier Inter-États & Transport Inter-États). Both two conventions are in force but not yet properly implemented. All countries concerned with those conventions are trying to find out the appropriate way of inserting them in their national legislation. Reason why they are still having periodically meetings to harmonize their points of view upon some matters which are still left in abeyance. Their last meeting was held in Ouagadougou (BURKINA FASO) from 26 to 30 September, 1988. Recommendations issued from that meeting, in order to better improve the inter States road transport systems, will be given in the chapter related to the concerned matter.
As far as the Chain of Transports is concerned, maritime carriers who act as MTO in the country, as worldwide practiced, base their regulations upon the International Chamber of Commerce (ICC) or the Baltic International Maritime Council (BIMCO) rules and the parties agreements due to the fact that the Multimodal Transport Convention is still a paper law and not yet ratified by the required States members.

Many bodies intervene in the organisation of the Chain of Transports: Autonomous port of Cotonou, forwarding agents, freight forwarders, stevedoring company, customs, OCBN (Organisation Commune BENIN-NIGER) and CNBF (Centre National des Bureaux de Frets). Short description of all those organisms will be given as well as their role for a better understanding of the Chain of Transports before dealing with problems encountered by them and which hamper a bit an adequate functioning of the Chain of Transports.

1.1. Autonomous Port of Cotonou.

The Autonomous Port of Cotonou is a national, industrial and commercial public institution with a legal financial autonomy. It has the responsibility to maintain and operate the installations, manage the port area, carry out improvement and expansion works which may be required for traffic purposes.

Due to its exceptional geographic situation, Cotonou sea-port plays a major role at the sub-regional level: 115 kms and 135 kms separate Cotonou sea-port from Lome (TOGO) and Lagos (NIGERIA) sea-ports respectively. Cotonou sea-port has always been the first port of transit for the Republic
of NIGER and is also the nearest sea-port to Eastern MALI and BURKINA FASO. Finally Cotonou is the quickest port of call and transshipment towards NIGERIA.

1.1.1. Principal maritime axles for landlocked countries.

There are many maritime axles which link Cotonou sea-port to the landlocked countries like NIGER, BURKINA FASO and MALI.

For the NIGER Region.

- Combined rail/road link: Cotonou-Parakou-Porga-Fada N’Gourma: 1,056 kms for 438 kms by rail from Cotonou to Parakou and 620 kms from Parakou to Niamey by road.
- Road link:
  * Cotonou-Maradi in central NIGER: 1,454 kms.
  * Cotonou-Zinder in eastern NIGER: 1,691 kms.
  * Cotonou-Agades in north-eastern of the Nakel and the SAHARA: 2,162 Kms.

For the BURKINA FASO Region.

- Combined rail/road link: Cotonou-Parakou-Porga-Fada N’Gourma-Ouagadougou: 1,058 kms with 620 kms by road from Parakou.
- Road link
  * Cotonou-Savalou-Porga-Fada N’Gourma: 765 kms.
  * Cotonou-Ouagadougou: 1,006 kms.
  * Cotonou-Koupela: 873 kms.
For the MALI Region.

- Road link:
  * Cotonou-Azongo: 1,417 kms.
  * Cotonou-Gao: 1,516 kms.

1.2. Forwarding agents.

A forwarding agent is a delegated representative of different shipowners. His duty is to inform shippers and consignees for the movements of ships he represents and which interest them. He, thus, makes available necessary documents for their operations particularly the manifest.

1.3. OBEMAP.

OBEMAP (Office Beninoise de Manutention Portuaire) acts as a stevedoring company. It interferes between land transport (road and railway) and sea transport. Its role is mainly for loading and discharging goods to or from ships, transshipment and stowing of goods until the delivery to the consignee, holder of the original B/L. It reestablishes the continuity of carriage in case of multimodal transport directing the goods from lorries ashore to the ship or vice versa.

1.4 Freight forwarders.

A freight forwarder is an intermediary between buyers and sellers, nationals and foreigners. He is always dealing with administrations and users of the port (port authority, stevedoring company, customs and forwarding agents). As a result, he plays a great role in the development of a port traffic. His seriousness and
development of a port traffic. His seriousness and speediness to satisfy his customers' orders is of vital importance in the choice of a port. He looks like the regulator of all haulage coming in and going out of the port.

1.5 Port Customs.

Any cargo movement coming in and going out of the port can not be accepted without the port customs administration.

According to the port users, Cotonou port customs is one of the body which reduces the speediness of the transit movement of cargo. This matter will be analysed a bit further.

1.6. OCBN: bilateral railway organisation.

The railway system is operated by OCBN. The main line of the system runs north from Cotonou to Parakou with a total length of 438 kms. So, any trouble in this organisation has adverse consequences for the users. OCBN is the pin point of the Chain of transports particularly between NIGER and BENIN; organisation in which BENIN holds 63% controlling interest and NIGER holds 37% minority.

1.7. Weakness of those institutions.

The users of the Chain of transports complain of the inefficiency of the Chain. For them the transit between haulage and the port zone is not as smooth and fast as it should be. A rapid analyse of such problem will give a precise idea of what is going on in those institutions.
1.7.1. Autonomous Port of Cotonou.

According to the users of Cotonou sea-port, the port authority lacks a real authority upon all bodies which intervene in port traffic. Many users have complain about the numerous taxes in port of Cotonou and the mode of collecting them.

The procedure before the consignee receives his goods is too long and too complex.

1.7.2. Forwarding agent.

As shown in 1.2, the forwarding agent should make available the manifest for his client. The manifest should be handed over to them before the arrival of the vessel at the port of call in order to prevent from any delay. Despite that obligation, it is not so in BENIN. The manifest is only available at the arrival of the ship and it is delivered by the Master. Sometimes, it is missing on board the vessel. This careless, which is normally fined by customs administration, is not in Cotonou sea-port. This situation can be explained by the fact that the consignment was a monopoly owned by the State in the hands of the national shipping line: COBENAM (Compagnie Beninoise de Navigation Maritime)

The choice of a port is function of the efficiency and speediness of the forwarding agent. When these notions are not observed, customers suffer from that as well as the national economy.
To get a certificate of loss in BENIN from a forwarding agent who is responsible for the goods he is in charge of for shipment as a representative of the shipowner is very difficult. He is liable for any loss or damage to the cargo at the delivery towards the stevedoring company: OBE MAP. At the berthing of a ship, he must devote a particular attention to the handling of the goods to be sure of their number as well as their condition. From that checking, 72 hours after the departure of the vessel, he is able to ask the stevedoring company to be delivered a "differential statement" or in French "etat differentiel" which will enable him to seek for the loss in all ports of call of the concerned ship. After six months, when the search is unsuccessful, OBE MAP should deliver to the consignee a temporary certificate of non discharging. Six months later, the receiver may ask the forwarding agent for a definitive certificate in case the delivery is still unsuccessful. Such a time limit is not a regulation observed by forwarding agents in BENIN and it is not so easy to deal with all these formalities in Cotonou sea-port and also not easy for the users to be indemnified in case of or damage to their cargo. However, this awful situation has been evolving since three years after the establishment of private forwarding agents. There is no longer any monopoly by the state after a complete failure of the national economy.

1.7.3. OBE MAP

Following the above mentioned, OBE MAP should be responsible for any loss of or damage to the cargo due to the handling operations and during all the period it is
in charge of them. That is why contradictory checking is done at any handling point.

The bottle neck of the whole Chain is OBEMAP which is also a body owned by the State and has the strict obligation to follow public administrative regulations.

The functioning of OBEMAP gives rise to a lot of comment:
- loss or damage noticed in here is always due to bad handling and lack of handling equipment.
- liability in delivering the non discharging certificate.

As seen in 1.7.2, the forwarding agent will seek for the loss in all ports of call of the ship after receiving the definitive differential statement from the stevedoring company. With OBEMAP, the establishment of such a document takes time more than expected. This fact explains how difficult it is to settle conflicts in Cotonou sea-port. But, despite that slowness, the users have to pay their fees to OBEMAP without any delay. What a body!

1.7.4. Freight forwarder.

In BENIN, freight forwarders were owned by the State. The problems encountered by the users of Cotonou sea-port is more or less the same as just above mentioned.

In any case, the wind of free enterprise which has been blowing in BENIN since some time and which has already blown on some public enterprises, will blow on the rest of the bodies owned by the government to guarantee a better future for the national economy as well as for the population.
1.7.5. **Port customs.**

Customs is worldwide a public administration and it will be so for long time again. As a result, port customs officers are conspicuous by their absence. The delivery of a customs document which, normally, should lasts not more than 48 hours may be more than a week due to those absences. They leave their jobs either for official purposes or for their own businesses where the difference is not easy to make. It is not specific only for them but for the whole public administration because of the slow death of the national economy which leads the population to survive by all means.

1.7.6. **OCBN.**

This body has a branch inside the port. Its role is to deal with all cargo to be transported to the landlocked countries like NIGER, BURKINA FASO and MALI. It has also in Parakou a haulage pool system for the road transport from Parakou to Niamey, Ouagadougou and Bobo Dioulasso.

1.7.6.1. **Port OCBN.**

The role of OCBN branch inside the port is to put at the disposal of the customers appropriate wagons. But in practice, this function is not always achieved because of the state of the rails which, due to non maintenance, are rusted or not adequate to the new port. As a consequence, wagons can wait more than two days for towing machines. The personnel is limited to only two people who are conspicuous by their absence.
1.7.6.2. OCBN and the railway system.

As stated earlier, the length of the railway is only 438 kms and stops in Parakou. Some sections of the railway particularly between Save and Parakou are not in good condition and therefore very dangerous. So, the rapidity of the transit flow is a bit slowed down. The maximum speed of trains is between 45 and 55 kms/hrs due to the lack of ballasts and draining. Rails are straight put on the ground.

A part of the railway has been renovating by CCCE (Caisse Centrale de Cooperation Economique). The largest and dangerous part which is between Save and Parakou will cost about 10 billions. The financial sources are not yet found. The pavement of the road linking the aforesaid two points will render more efficient the Chain of transports and, for sure, will greatly compete with the railway system.

1.7.6.3. The haulage pool in Parakou.

The cargo, once arrived in Parakou, are discharged from wagons and reloaded on trucks which are based there for various parts of the country or for abroad to the Hinterland. This system is mostly used for door-to-door transport. A schedule of conditions named in French "cahier de charges" and dated from 1960 gives the required conditions for the hauliers of the pool and for those willing to enter the pool. A copy of the schedule conditions unfortunately written in French will appear in annex.
1.6. Centre National des Bureaux de Fret (CNBF).

CNBF, the National Freight Bureau Center, is a State owned institution. Its function is to implement the two main sub-regional conventions TRIE and TIE. Therefore, to achieve this objective all cargo discharged in the port, except those carried by OCBN to NIGER, is given to that Center for dispatching it among the haulers it has registered.

As seen, there is no appropriate regulations governing the Multimodal transport carriage in BENIN. That is why, I would like to analyse the existing situation to enable BENIN to see what benefit it could get from it in order to look for a future regulation with respect to Multimodal Transport,
CHAPTER II

ANALYSIS OF THE EXISTING SITUATION.

The doctrine is not precise about the content of combined transport notion and always refers to the terms successive, mixed, non mixed transport to designate the transport carried out by many carriers under several different regimes. Today, the terms intermodal, combined and multimodal are mostly used and are believed to have different shade of meaning by those who have preference for one or the other. The terms are interchangeably. For the purpose of this topic, the term multimodal transport will be used.

2.1 Multimodal transport.

A transport may be qualified multimodal not only as a technical point of view when modes of carriage are different but also as a legal point of view when transport is subject to many legal regimes. The technical and legal combination give the originality of multimodal transport which can be defined as:

"A transport carried out, in accordance with a unique ticket, either by several modes of transport subject to different legal systems or by several transport means subject to only one legal regime." (1)

From this definition, all unimodal transports and successive or homogenous transports are excluded from multimodal transport because the latter are executed by either one mode of transport subject to only one legal regime or by several transport conveyances with different
transport contracts.

It can also be defined according to the non ratified UNITED NATIONS CONVENTION on International Multimodal Transport of Goods as:

"a carriage of a good by at least two different modes of transport on the basis of a multimodal contract from a place in one country at which the goods are taken in charge by the MTO to a place designated for delivery situated in a different country."

Thus, any transport which is not carried out by a MTO and at least by two different transport means can not be considered as a multimodal transport.

2.2 Difference between Through Transport and Multimodal Transport.

A through transport is a carriage done nowadays by shipping lines, freight forwarders and in which the carrier agrees to perform or secure the performance of the entire transit and undertakes liabilities to certain extend only for his own segment of the movement then casts himself in the role through transport where more than one carriers is used whereas in the multimodal transport more than one type of carriage is used. Here, the carrier in accepting full responsibility for the entire movement, acts as principal with respect to the shipper and other carriers.

Before going further into the development of this subject, it is necessary to see the main factors which lead to a multimodal transport system.
2.3 The need for an international multimodal regime.

Since the industrial revolution in Europe, the system of trading has been improved and the pressure on the world market created the basis for a rapid change in technology. A drastic change has been observed after the Second World War which generated general trade cargo and increased the volume of trade. As a result, there were a heavy congestion in all ports. The capacity of ships was not enough to respond for the need of the market, in other words to meet the demands of international trade. To overcome this situation, a change has been done in cargo handling, in ship design and in port facilities. The system of transport has been also reviewed. Then, the multimodal transport system appeared. The new developed transport system put more emphasis on containerisation. Thus, the packing of commodities into containers and their successive transport is in no way revolutionary. Containers have become articles of transport equipment, essential parts of a freight forwarding concept which permits a door-to-door shipment, using all conveyances of transport, without intermediate handling of the cargo carried. It is then the objective of multimodal transport to perform the contract of carriage by "transferring goods in a continuous flow through the entire transport chain, from origin to the final destination, in the most cost and time effective way". (2)

As a consequence of the containerisation, the container manufacturing and service industry emerged as a new sub-industry. Container leasing, maintenance and repair have become important businesses. The use of container for transporting cargo has many advantages such as reliable
performance, faster transit of goods and protection of cargoes.

2.3.1 Reliable performance.

Two main reasons lead to that statement:
- container services achieve a high degree of port rationalisation and consequently to more predictable schedules.
- there is the smoothness and efficiency in handling cargo on and off container ships and across container berths.

2.3.2 Faster transit.

Container services do achieve faster door-to-door transit time and reduce greatly this time. The fundamental reason for that is the fact that the container services make fewer port calls.

2.3.3 Protection of cargo.

The ICC gave a good information about the protection of cargo by the use of container: "container can afford greater protection of cargo in the following way:
- the physical protection of the cargo from damage by crushing, scuffing etc is much greater;
- yet this can be achieved by the use of lighter packs.

Money is saved,
* on materials, by freeing labour, hitherto engaged in making up elaborate packs, for other tasks,
* on freight hitherto paid on crates, cases, etc
- the opportunities of pilferage are greatly reduced.
Where cargo is no longer in the system in loose form, the incidence of loss is greatly reduced. - the number of occasions on which the cargo is handled is usually reduced. This, in turn, reduces the opportunities of damage, delay, mis-sorting and pilferage."(3)

It should be borne in mind that the use of container is not the phenomenon of the twentieth century. It has been improved only at that time. Long time ago before Christ "bags of goats skin or Greek amphoras should be consider as the first container ever used in intermodal transport can be left to historians to decide. They will certainly also mention that in a Greek cargo ship about 280 Before Christ was discovered in the Mediterranean and that it held 8000 amphoras, each carried in a specially designated rack". (4)

The illustration on the next page found in 1911 in the American "National Geographic Magazine" shows us the first evidence of an existing freight movement in container. On this picture it is written:

"lift-vans can be provided for immediate loading in any city in the United States or in Europe. Their use insures a minimum of handling, security for small packages and least possible risk for damage". (5)

The need for an international multimodal regime can not succeed without regulating all modes of transport which
LIFT-VANS can be provided for immediate loading in any city in the United States or in Europe. Their use insures a minimum of handling, security for small packages, and least possible risk of damage.

Your courtesy in mentioning the Magazine when writing will be appreciated

Source: G Van Den Burg: Containers and containerisation

p 67
are used in multimodal transport system.

2.4 Multimodal carriage under the unimodal transport regime

There are five international conventions which regulate the carriage of goods non included the UN convention on international multimodal carriage. These conventions do not approach the problem of liability of the carrier which will be analysed in chapter 3 in the same way.

2.4.1. CMR Convention.

The convention on the Contract for the International Carriage of Goods by Road adopted in Geneva on 19 May, 1956, is generally known by the acronym for its French title: CMR (Convention relative au Contrat de Transport International de Marchandises par Route). This convention is one of the last types of transport subject to uniform law.

Multimodal transports carried out under the CMR are governed either by the provisions of the CMR or by the provisions of the other modes of transport. So, with respect to article 2 of that convention two situations prevail whether there is or not intermediate handling:

- when a vehicle is transported on a part of the journey by rail, sea, air, inland or waterway without any intermediate handling, each part of the journey is subject to the rules governing that part.
- in the contrary, when a vehicle is transported by rail, sea, air . . . on each part of the journey and is unloaded, the CMR governs that transport.
Nevertheless, an exception has to be made with the last principle when a damage occurs during a leg of a transport which is not road and without resulting from an act of or omission of the road carrier, it is the law of the leg of transport which should be applied.

That article is very important but too limited to be really useful in the way it does only apply when the goods are unloaded from the vehicle on which they are loaded.

2.4.2. Warsaw Convention

The Warsaw Convention is adopted in WARSAW in 1929 and is related to air transport. Article 31 proves that air transport is the basis of the convention. Before being combined transport, the carriage is firstly by air. The other modes of transport should be considered of secondary importance. It is clear that through this provision, the convention is only applied to the air stage. Thus, it provides

"1- in the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of the convention apply only to the carriage by air provided that the carriage by air falls within the terms of article 1

2- nothing in this convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this convention are observed as regards the carriage by air "
2.4.3. CIM Convention or BERNE Convention.

The CIM is known as the International Convention concerning the carriage of Merchandise by rail. It was signed in Berne on 25 October, 1952. It is known under the acronym for its French name: "Convention Internationale de Marchandises".

The CIM controls the making of the contract, its performance, liability of the carriers and their relation with one another . . . Article 2 of this convention points out the fact that the non railway carriage, which is considered of secondary importance, can only be done by agreement between States. The exemption clauses mentioned in article 63 and proper to maritime carrier may be used by the railway carrier.

Article 2 paragraph 4 allows the use of a ticket other than the direct consignment note and to avoid the CIM regime. Despite that, this convention does not give a full satisfaction to the multimodal carriage.

2.4.4. Hague Rules or Brussels Convention.(6)

Nothing in this convention is said about multimodal transport. The basic formula for application of the rules focuses on the documents covering the carriage contract rather than on the contract of carriage itself. Hague rules are rather applied to merchandise under B/L but not to charter party and only for the maritime stage. The convention is, however,applied to a charter party when a B/L is issued to govern the relation between the carrier and the holder of the B/L. So, the MTO as such seems
outside the rules unless brought in by contract.

For some time, the developing countries complained that the Hague Rules unfairly protected the shipowner, placing then too heavy burden on the shipper. Responding to their call for reform, the United Nations Commission for International Trade Law worked for several years on a new convention which was signed in March, 1978 and known as HAMBURG RULES.

2.4.5 Hamburg Rules

This new Convention presents a net improvement compared to Hague Rules. The purpose of the new Convention is to create an international code of maritime contract and it covers all maritime transport contract without any distinction. When speaking about B/L, it adds "or other document evidencing the contract of carriage by sea".

Hamburg Rules are designated not to complete the Brussels Convention as well as the 1968 Protocol, but to replace them. Consequently, any State which ratifies the convention should denounce the Hague Rules. This denunciation is compulsory. That provision is inserted to prevent the concomitant application of the non modified Brussels Convention and the 1924 Convention amended by the 1968 Protocol.

The regime of liability is completely modified and is more severe than that inserted in the 1924 Convention.

Hamburg Rules is still not yet in force for the simple reason that the traditional maritime countries consider it
as not in their favours. As a result, there is in existence three conventions for the international maritime transport:

1- Hague Rules
2- Hague/Visby Rules which has modified the Hague Rules
3- Hamburg rules

The fact that lawyers today have to consider and deal with three different conventions create a conflicted matter. Tribunals hesitate on what legal rules to apply to a transport of goods loaded in a signatory State of the 1924 Convention but which does not ratify the 1968 Protocol to a signatory State of the 1924 and the 1968 Protocol. Things will become more complex when Hamburg Rules will be operative. In such circumstances, in practice and in absence of real and applicable regulations to every operator, the operators get use to apply their own national law to the international carriage.

As seen, every portion of a multimodal carriage was traditionally governed by a different set of national and international conventions exposing multimodal shippers to substantial uncertainty with respect to the law governing the carriage in general, and particularly with respect to the limitation of liability which will be examined in chapter 3.


Since 1973, under the auspices of UNCTAD, some works have been done by an international team named "Groupe Préparatoire International (GPI)." in order to draft an international convention on multimodal carriage of goods.
That convention was adopted on 24 May, 1980 in Geneva by consensus by the UN Conference.

The aim of that convention is to cover an international carriage of goods by at least two modes of transport under a unique contract and unique transport document. It consists of eight parties:

1- General Provisions
2- Documentation
3- Liability of the Multimodal Transport Operator (MTO)
4- Liability of the Consignor
5- Claims and Actions
6- Supplementary Provisions
7- Customs matters
8- Final clauses

with an annex containing provisions related to customs matters.

2.6. Prospect for the ratification of the UN Convention on International Multimodal Transport.

After the adoption of the Convention by consensus, it was open for signature on 1 September, 1980. So far, out of 20 signatures required for its entry into force, only 14 States have signed it because of many unsettled problems:

- it was drafted under the auspices of UNCTAD and most of its provisions look like those established by Hamburg Rules especially the exemption cases. It is unlikely to be ratified unless Hamburg Rules enters first into force.

- the biggest problem which do not permit from the signature by some States is the insertion of public law regulations with regard to customs transit into the Convention (art 32).

- The convention is too complicated: after the
definition of Multimodal transport, it is stated that "the operation of pick up and delivery of goods carried out in the performance of a unimodal contract . . . shall not be considered as international transport". In fact, it is an interesting point but a bit ambiguous; ambiguous of the fact that a railway contract transport signed between two parties A and B for instance Gothenburg to Stockholm. The previous operation of pick up done, maybe, from Helsingør to Gothenburg by sea does not affect the initial contract. Nevertheless, it is necessary to mention that the pick up operation should be done by the Swedish railway authority; - for the scope of application, it is stated that the convention is applied if:

* the place for the taking in charge of the goods by the MTO . . . is located in a contracting State, or
* the for delivery . . . by the MTO . . . is located in a contracting State. So, some qualified MTO will be surprised by the application of a convention they never heard about to them.

Each line of the convention presents a new difficulty. The authors of it wanted to make it as much as clear and detailed possible. But, too much details create sometimes some problems which is the case of the 1980 UN Convention.

As stated above, the International Multimodal Transport Convention cannot be ratified unless Hamburg Rules become operative. For that purpose, on 20 April, 1989, in, France, it was decided during a meeting to form a committee which will try to find out all questions which block the ratification of the International Multimodal Transport Convention, analyse them and see what solution can be applied to them.
Regarding the coexistence of the Hague Rules and Hamburg Rules, the ICC has been working on that matter since 7 October, 1987. A special committee headed by Philipp von SCHOELLER, former manager of the ICC, has examined and submitted a statement to "the Transport Commission by Sea". The statement was adopted by that commission on 18 October, 1988. The same statement is now submitted to national committees for comment.

All our new expectation is now based on the work of those commission and committees, hoping that they will achieve a good result which will harmonize some rules.

After analysing the main topic dealing with generalities of multimodal carriage, the next chapter will refer to its organisation.
CHAPTER III

ORGANISATION OF MULTIMODAL TRANSPORT

The basic analysis of legal structure of any carriage contract leads to a legal establishment of responsibility in a legal system which allows complete freedom of contract.

3.1 Legal structure of a Multimodal Contract.

The legal structure of the multimodal contract is based on complete freedom of contract between a Consignor and a MTO who may sub-contracts with others carriers on the modes of transport chosen. Multimodal contract is not a contract by air, sea, road or rail although the use of these modes are required. The essence of that contract is not a carriage as such but a procurement of transport from the place of taking in charge the goods until the place of delivery.(7)

As seen in the previous chapter, the operations of pick up and delivery shall not be considered as an international transport. How that contract has evolved?

3.1.1 Unimodal contract.

Under the existing situation, the cargo owners sign contract with freight forwarders who act as simple agents but not as principals. The only link between them is a link of contract of agency. The freight forwarder is responsible for the proper selection of the carriage. So, he creates a lot of series of individual transport contracts with different carriers: rail, road, air and sea
carriers depending on the final destination of the goods. All these contract with independent carriers are governed by the relevant convention to each mode of transport. Thus, freight forwarders can easily exclude their liability for loss of or damage to the cargo during such carriages.

Another alternative is also applied. The shipper signs a contract with a freight forwarder/cARRIER who acts as a principal on one stage of the carriage. That carrier is entitled to sub-contract the rest of the transport for the shipper as his agent. So, each carrier is responsible for his own leg of transport and each contract is subject to the appropriate regulations governing that stage. In this case the consignor can not foresee what damages should be paid to him in case of loss or damage to the cargo. It will depend upon the transport stage the damage occurs. His situation will remain nearly the same as he concludes different contracts with independent carriers.

3.1.2. Multimodal contract.

A third possibility which is far the best one and commonly used today is to negotiate the overall transport with a MTO for a multimodal purpose. He is responsible for any risk to the cargo during the whole voyage irrespective of sub-contracts he may do with independent carriers on different modes of transport. There is no direct link between him and the carriers except the MTO who is not only solely responsible for any loss of or damage to the cargo, but also for the transshipment and during the period he is in charge of the goods. He is linked to the shipper/cargo owner by a contract which does not exist between him and the actual carriers of the goods.
Because of the absence of an appropriate convention governing the Multimodal transport - the Multimodal Transport Convention on Multimodal carriage appealed to settle the matter not being in force because of technical and political reasons - the ICC, the BIMCO have drafted forwards certain rules which are in use and inserted in any multimodal carriage documents especially the ones used by the "Fédération Internationale des Associations des Transitaires et Assimilés (FIATA). Nevertheless, parties to a multimodal contract may be free to insert any clauses they would like in the contract unless it is contrary to the public interest. It seems to be clear then that the contracting parties are not allowed to exclude the law or rules governing the contract. This is clearly stated in French judicature "tout contract international est nécessairement lié à la loi d'un pays" in other words any contract is related to a law of a country. Therefore, in case of any dispute arisen from the contract, it can be at any time referred to the appropriate law by common agreement and inserted in the contract. A copy of such a transport document will appear in annex.

Today, the control of the multimodal carriage is becoming a big struggle among the giants of the shipping:
- the shipping companies are trying to extend their power,
- the freight forwarders are trying to control the whole system of multimodal transport.
Both are considered as Multimodal Transport Operators (MTO).
3.2. Different types of MTO.

A MTO may be defined as "any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carrier participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract".

This is the stricto sensu definition given by the UN Convention on International Multimodal Transport of goods. In addition, there is another definition larger than the previous one according to which any person who organises a through carriage by using more than one mode of transport and who delivers a unique document of carriage for the whole operation is considered as a MTO.(8)

It is clear that both definitions are correct and from them derive at least four types of MTO

3.2.1. Vessel Operator - MTO (VO-MTO)

In general, the VO-MTO exploits vessels without being owner or operator of the transport means used apart from the sea leg carriage. He sub-contracts with independent carriers the other stages of the transport. In addition, he may sub-contracts stevedoring and storage services as well.

3.2.2. Non Vessel Operators - MTO (NVO-MTO)

Following the second definition given above, some people other than VO-MTO can offer their services for performing carriage of goods. They own their trucks and instead of
sub-contracting the road stage, they rather prefer to sub-contract the sea leg transport. These people are known as non vessel operators. They have representatives all over the world.

3.2.3. Freight forwarders.

Freight forwarders do not own any transport means. They sub-contract all operations related to the carriage of goods. They act most of the time as intermediaries.

3.2.4. Multimodal Transport Companies.

Sometimes, it happens to find companies which are created to procure multimodal transport services. Very often, they do not have their own vessels. Due to that fact, they are assimilated to the NVO-MTO.

In the future, this type of MTO could become the only MTO which could offer to developing countries a very good multimodal services. To achieve this noble aim, such companies should prevent spreading from investment between the different transport means except, maybe, haulage on very short distances. For the success of that objective, appropriate and economic modes of transport would be carefully selected and would save, by the way, money. Skilled personnel and a well organised structure are required as well as reliable carriers on the sub-contracting stages.
3.3. Problems encountered by the developing countries MTO

The listed problems which are mentioned hereby should not
be considered as the only ones;
- one of the major problems of developing countries
  MTO is how to gather money to start or to expand their
  business
- they are suffering from severe competition of
devolved countries MTO
- another problem which hampers their expansion is the
  lack of skilled and experienced personnel. The lack of
  that personnel will truly handicap the establishment of
  network agents, branches outside
- the non existence of a good communication system.

3.4. How the MTO can be organised?

The MTO should have an adequate organisation in the
country of its headquarter as well as a good care of its
own business. With respect to its size, it may establish
in many parts of the country agencies or branches; outside
the country, a network agencies with the assistance and
cooperation of foreign firm which have already at their
disposal competent agents.

The problem of competent agent may arise in the developing
countries but it can be solved by a regional cooperation
with transfer of know-how. Therefore, some training
institutions can be created under the auspices of the
regional UN Commissions to deliver specialised lectures on
techniques of management for multimodal transport.

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We hope with that organisation, the developing countries can master the multimodal carriage in the same way of developed countries.
CHAPTER IV

LIABILITY OF THE CARRIER.

(Comparative study of unimodal and multimodal regimes)

There is no real convention governing the multimodal transport nowadays. There are only international unimodal conventions which try to find appropriate solutions to that transport means but in fact, the solutions given are not really adequate to that matter. Therefore, the liability of a carrier varies unfortunately from one mode to another. For that reason, the "Institut Romain pour l'Unification du Droit Privé" (UNIDROIT) and the Comité Maritime International" (CMI) tried to settle an international regime related to multimodal carriage and based on "the network principle" or national law applicable to the stage of carriage where the loss of or damage to the cargo occurs. That principle is contained in "Tokyo Rules". Another alternative solution has been advanced: the uniform regime. The supporters of that regime argue that a single uniform regime of liability should be applied to the contract from the point of dispatch to the final destination.

Due to the fact of the absence of an applicable mandatory international convention, the parties to a multimodal contract, as mentioned earlier, are free to negotiate their own terms. The parties can agree upon the uniform regime through the transit period for the whole voyage on a specified stage of the carriage where an international convention is applicable. In most cases, the liability of the carriers depends on the location of the place where the loss or damage occurs.
The basis of the carrier's liability will lead to a better understanding of all matters related to that liability.

4.1 Basis of liability

The traditional legislation lies on the principle according to which only peril at sea should be borne by the shipper/consignor and the unseaworthiness by the carrier. For instance, with Hague Rules, the maritime carrier is obliged to ensure the seaworthiness of his vessel for the whole voyage. Nevertheless, he got 17 cases which do not engage his responsibility such as error in navigation, in management of the ship, fire, act of God, act of war. . . Except error in navigation, in management of the ship and fire, the basis of the maritime carrier's liability with the Hague Rules is near to the responsibility based on fault or presumed negligence. For the other transport means, it is a strict liability which is applicable except loss or damage resulted from the shipper's fault, from the nature of the cargo itself or "cas de force majeure". But the notion of "force majeure" is subject to debates. Some countries interpret it as a fact of sharing the risk even the carrier can prove that there is no negligence. This is so because it is considered as a part of his commercial activities. Other countries interpret it as a responsibility based on fault or presumed negligence. Hamburg Rules and Multimodal Transport Convention (art. 5 & 16 respectively), state that:

"unless the carrier proves that he, his servants or agents took all measures that could reasonably be require to avoid the occurrence and its consequences".

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It is necessary to mention that Hamburg Rules contain some special provisions related to loss or damage caused by fire and related to live animals as well in article 5 paragraph 4 & 5. Here, the burden of proof is for the claimant. In case of fire and for live animals the carrier is not liable if he can proves that he has taken all good care required for such cargoes. No provisions as such are inserted in Geneva Convention.

4.2 Carrier liable.

There are two ways of engaging the responsibility of the carrier:
- the location of loss or damage is known
- the location of the loss or the damage is not known.

In the former case, the solution is much easier to applied. When the location of loss or damage is identified, any unimodal international convention or mandatory national law governing that stage of carriage shall be applicable to that particular leg. It is known as "network principle". But when no international convention or mandatory national law should be applicable, the possibility is given to the parties to the contract to negotiate their own contract terms. In the latter situation, the solution to adopt is a bit complicated:

1- the last stage of the voyage is supposed the location of the loss or damage or

2- for the protection of the carrier, the contracting parties agree upon the extension of the existing liability regime. For instance, a B/L issued by the Swedish Lloyd contain a clause according to which non apparent damage is presumed occurred during the sea voyage and then subject to Hague Rules. Some
carriers draft their own terms while others use ICC rules.

The ICC rules are based on a true contract of multimodal transport which is neither a road transport contract nor a maritime or air transport contract. The MTO, who is in charge of the goods, is responsible for them during the entire voyage from the time of taking them into his charge until the time of delivery at destination including the transit time. He is also responsible for his servants or agents fault in the course of their employment, even for those whose services he uses like stevedores. But he can discharge his responsibility by bringing it within a specific list contain in the ICC rules.

Many reasons lead to the Uniform or extended regime: always from the fragmented regime, the claimant is the looser because of the fact that he can not locate the origin of the damage on a specific leg of the carriage. With the Multimodal Transport Convention (art. 4) the MTO is liable as long as he is in charge of the goods. The consignor does not need to reclaim from the actual carrier but from the MTO who, by recouping from the sub-contracting carrier who caused the damage, can get compensation paid to the cargo owner.

4.3 Limitation of liability for loss of or damage to the cargo

Most of the time the value of goods are unknown from the carrier. Therefore, it can not be taken into account for the quotation of the goods. According to article 6 paragraph 4 of Hamburg Rules and article 18 paragraph 4 of the Multimodal Transport Convention, the consignor is
allowed to declare the value of his commodities and in doing so he must paid an additional cost to the normal one in order to be indemnified completely without any limitation up to the declared value of the merchandise in case of loss or damage. However, in practice, that possibility is not observed. Consignors never declare the value of their goods but prefer to insure them. The limitation of the carrier's liability is accepted in that case unless it is proved that the loss or damage resulted from an intentional fault of the carrier.

When the liability is accepted, Hamburg Rules suggests a limit to "an amount of equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher" whilst the Multimodal Transport Convention gives a limitation of liability in the first case to an amount 925 units of account and 2.75 units of account in the second case. As seen, the limitation of liability varies from one convention to another.

In practice, there are clauses related to loss of or damage to the cargo and inserted in the B/L agreed upon by parties to the contract and which are applicable. So, in the case of "la PRESERVATRICE v SNCDV"(9), the tribunal has accepted to apply the clause inserted in the B/L to indemnify the claimant:

"whenever Hague Rules are applicable by contract and not by law, in determining the liability of the carrier, the liability shall in no event exceed a hundred pound (100) sterling lawful money of the UK per package or unit". 
**Facts:** Saint GOBIN vitrage Co Ltd has asked HESNAULT and SNCDV for shipping a container of 11 boxes of glasses from THROUROTE to ABIDJAN by sea and from there to BAMAKO by road to SOBANSKI Co Ltd.

The container was loaded on board M/S PATRCIA DELMAS in Rouen in accordance with a through B/L BAMAKO via ABIDJAN. The goods were transshipped on board a Malian truck which, through an accident, has caused a total loss of the cargo.

"La PRESERVATRICE FONCIERE", Saint GOBAIN's insurance company has completely indemnified its client. But it wanted to recoup from SNCDV the compensation paid to Saint GOBIN which amounts to 118,419.84 FF, all expenses included. The tribunal has condemned SNCDV only to a hundred pound (100) sterling which is the limitation of the liability inserted in the B/L and equivalent to 1161.60 FF for the fact that the container is considered as an unit not the number of packages in the container and required by the claimant.

It has to be borne in mind here that the damage was located in a specific stage of the transport.

The situation is more complex when it concerns non apparent damage, especially when the cargo is loaded in a container sealed in the customer's warehouse and the carrier does not have the possibility to check the content. He may then exclude his liability by stamping the B/L with a special mention.
4.4. Limitation of liability for delay

Any damage with regard to delay in most cases is located. When the legal regime governing the stage of damage does not have any provisions related to that matter, it is the common law of obligation which is applied. The claimant for the delay should be indemnified when he proves his damage unless it is inserted by the carrier in the B/L the non liability clause of delay which is recognised by jurisprudence.

4.5. Loss of the right to the limitation.

In maritime law, it is necessary to check properly the regulations governing the conditions required for the delivery of the goods to the consignee at the destination. It is mostly required to deliver the cargo against the presentation of the original of the B/L. If the carrier does not respect that principle and delivers it to another person, he is entirely liable without any limitation. The holder of the original B/L is entitled to require for the total financial loss. With respect to Hamburg Rules and the Multimodal Transport Convention (art. 8 & 21 respectively), the carrier is not entitled to the limitation when the loss or damage is due to a false information inserted in the B/L.

4.6. Claims in tort.

The multimodal transport contract is a performance of international multimodal transport. As a result, the MTO is entitled to sub-contract some parts of the journey. The problem here is to see if the consignor may sue the actual carrier for damaging his cargo before a tribunal.
The CMR and CIM declare all actual carriers conjunctively liable vis-a-vis to the shipper. The same liability can be reached by the means of cooperation among many air carriers. But the situation differs slightly with maritime transport. The claims should be introduced against each carrier.

For the international multimodal transport which is here our concern, the MTO is entirely and solely responsible for the overall voyage. Article 15 of the Multimodal Transport Convention has a very clear wording on that matter. Any claim cannot be raised towards third parties to the contract although the damage resulted from their act.

4.7. Period of claiming.

According to regulations, the consignee should notify his claim as soon as he notices the loss of or damage to his goods in writing form but "not later than the working day after the day when the goods where handed over to him".

In case of loss or non apparent damage, the consignee should notify that fact in writing form between 3 to 15 days. It is 6 and 15 days for the Multimodal Transport Convention and Hamburg Rules respectively according to article 24 paragraph 2 for the former and article 19 paragraph 2 for the latter. These articles give the opportunity to the MTO to notify the loss or damage to the actual carrier in case of sub-contract.

If the consignee institutes proceedings against the carrier, the legal limit time to do so is from one to two
years for the sea transport. Beyond this period his action shall be time barred. For the Multimodal Transport Convention and Hamburg Rules, it is two years.

In practice, that period is nine months for multimodal carriage and inserted in the B/L. For instance, from a B/L of SNCDV, it is stated:

"... the carrier shall be discharged of all liability unless suit is brought and notice thereof given to the carrier within nine months after delivery of the goods or date when the goods should have been delivered".

That time limit has been chosen from the practical point of view for the interest of the carrier not to be opposed the time limit of one year. The carrier can not strongly claim for that time before a court because it is not a legal one.

There is a lack of jurisprudence on that point because most of the cases are solved by amicable agreement. Up to now, there is only one case given by the Commercial Tribunal of Antwerp which has refused the period of nine months within which the proceedings have to be instituted.

4.8. Effect of the Multimodal Transport Convention on the traditional system.

By the means of the multimodal carriage, import and export of goods are much more secured and faster by the use of containers. The transit time is less as well. From the liability point of view, the MTO is solely responsible for loss of, damage or delay to the cargo on any stage of
The consignee, instead of spreading his effort by claiming against the actual carriers without a great success has only one contracting party against whom any claim should be done. But unless that Multimodal Transport Convention is ratified and entered into force, the liability of the carrier should always based on the "network principle".

The Multimodal Transport Convention tries to solve the main problems arising from the unimodal transport regime by fixing a scope within which the MTO should be declared liable for the journey of the goods. For that purpose, the use of appropriate documentation is of vital importance for all parties interested in carriage of goods.
CHAPTER V

MULTIMODAL TRANSPORT DOCUMENTATION (MTD)

With regard to article 1 paragraph 4 of the United Nations Conference on International Multimodal Transport, a multimodal transport document means:

"a document which evidences a multimodal transport contract, the taking in charge of the goods by the MTO, and an undertaking by him to deliver the goods in accordance with the terms of that contract".

Generally a B/L or a MTD carries printed clauses that are often difficult to read and are seldom read until some dispute arises. The rapid expansion of multimodal or intermodal transport, for instance the through movement of goods from the place of acceptance to the final destination by the successive use of more than one mode of transport, resulted in BIMCO deciding in 1971 to issue the COMBICONBILL (combined transport of B/L) as a means of facilitating documentary required in international trade. As far as the ICC is concerned, it published in 1973 a set of Uniform Rules for a multimodal carriage document. As a consequence, nowadays, many shipowners and container consortia issue B/L based on the ICC Rules.

A B/L or MTD, a transport documentation, is issued by the carrier or on his behalf once cargo has been accepted and shipped acknowledging that the goods have been received for carriage. Therefore, the B/L or MTD performs different important functions. It may constitute

1- a receipt for the goods which have been received for shipment or shipped,
2- an evidence of the contract for carriage of the goods and the delivery.
3- a document of title which is either negotiable or non negotiable.

5.1. B/L or MTD as receipt.

One fundamental function of a B/L or MTD is a receipt from the carrier of the goods shipped on board the vessel. It includes statements as to the quantity and description of the goods shipped together with the condition in which they were received by the carrier. In the absence of such statements, the consignee, who claims for receiving short delivered goods, has the burden of proving the quantity or the condition in which the goods have been delivered to the carrier.

5.2. B/L or MTD as evidence of contract of carriage.

The B/L or MTD, although, it is not a contract of affreightment itself, is evidence of that contract and can be issued without any formalities and enters into force as soon as the cargo is rendered to the maritime carrier. In the case of SEWELL v BURDICK, lord BRAMWELL stated as follows:

"To my mind there is no contract in it. It is a receipt for the goods, stating the terms on which they were delivered to and received by the ship, and therefore excellent evidence of those terms, but is not a contract. That has been made before the bill of lading was given".(10)

As the contract is concluded orally long before the carrier issues the transport document, in case of loss of
or damage to the goods before the B/L or MTD is issued, the shipper is not deprived of the right of claiming for such loss. Furthermore, when the terms inserted in the transport document are not in accordance with the terms of the contract concluded orally before the issuance of the B/L or MTD, the shipper is entitled to establish the precise terms of the agreement. This view was expressed by LUSH J as follows:

"A bill of lading is not the contract but only the evidence of the contract and it does not follow that a person who accepts the bill of lading which the shipowner hands him necessarily, and without regard to circumstances, binds himself to abide by all its stipulations. If a shipper is not aware when he ships them, or is not informed in the course of the shipment, that bill of lading which will be tendered to him will contain such a clause, he has a right to suppose that his goods are received on the usual terms". (11)

5.3. B/L or MTD as document of title of the goods.

It is commonplace that a document of title, which is a piece of paper, can stand for the goods to which it refers and so enables the holder of it to claim for the property in question. This title is very important in international contract. But let us bear in mind that as a document of title, a B/L or MTD does not confer automatically transfer of property in goods. Such an agreement depends on transaction between the seller and the buyer. For instance, when at the port of destination the holder of the B/L or MTD is an agent of the shipper, the right confers to him in transferring the B/L or MTD is only to claim for delivery of the goods but not for their
property.

As a document of title, a B/L or MTD is negotiable or non negotiable.

5.3.1. Negotiable B/L or MTD.

A negotiable B/L or MTD enables the holder to transfer the possession of the goods to another party when they are in transit. As above mentioned, the possession of that document is equivalent to the possession of goods. As it is possible to negotiate that document, it is considered as negotiable tool. This principle is evidenced by the concept according to which the goods can only be delivered to the holder of the original B/L or MTD which, at destination, should be rendered to the carrier against the goods. Consequently, the holder of the original B/L or MTD will be sure that the goods will not be delivered to a third party.

There are three purposes for which possession of the B/L or MTD may be regarded as equivalent to possession of the goods covered by it:

1- the holder of the bill is entitled to delivery of the goods at the port of destination;
2- the holder can transfer the ownership of the goods during transit merely by endorsing the bill;
3- the bill can be used as a security for a debt.(12)

The transfer of the B/L or MTD should operate not only as a transfer of the goods or title of the goods, but should also constitute a transfer of the contractual right which the consignor has against the carrier:

"Every consignee of goods named in a bill of lading
and every endorse of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all right of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading has been made with himself". (13)

Some problems may arise due to the fact that it is a common practice to deliver not only one original B/L or MTD. The shipper may ask for two or three original B/L or MTD. In such circumstances, the presentation of one original renders the others null and void. Obviously, the carrier is protected if he delivers the goods to the holder of the original B/L or MTD and need not to require to the title of the holder. He is, then, not responsible for a wrongful delivery of the goods unless he is aware of the defect in the title of the holder.

5.3.2. Non negotiable B/L or MTD.

A B/L or MTD is said non negotiable when it is drafted as an "order" bill which is a bill under which a carrier agrees to deliver the goods at destination to a named consignee. Consequently, it lacks the quality of negotiability.

5.4. Establishment of a B/L or MTD.

Despite the fact that the B/L or MTD stands for goods which value can amount to a great deal of money, usually, traders do not pay attention to the identity of the signatory and for whom it has been signed. The problem of appealing later on to the liability of the carrier is well
known by all those involved in practicing maritime law.

With regard to article 14 paragraph 2 of Hamburg Rules that problem is solved as follows:

"The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by a Master of the ship carrying the goods is deemed to have been signed on behalf of the carrier".

This article gives power to the Master to sign not only in the name of the shipowner but in the name of the carrier. The carrier is not only liable for the signature of the Master of the ship but also for the terms and conditions of the B/L or MTD.

The Multimodal Transport Convention does not say anything about the signature of the B/L or MTD by the Master of the ship. For that convention, the B/L or MTD, negotiable or non negotiable, should be signed by the MTO or his agent. Any means of signature is, however, accepted by that convention and Hamburg Rules:

"The signature of the multimodal transport document may be in handwriting, printed in facsimile, perforated, stamps, in symbols, or by any other mechanical or electronic means, if not inconsistent with the law of the country where the multimodal transport document is issued". (14)

The question of determining the authority who has issued the B/L or MTD may arise. Does a person using a mechanical or electronic means have authority to do so in the name of the carrier? From our point of view, the use of any means to sign a B/L or MTD should not create another problem. In the contrary, we think that it is of great importance
for simplifying documentation procedures as long as it is from the carrier.

5.5. Liability for misstatements or omissions on the B/L or MTD

When a misstatement is noticed on a multimodal transport document, it does not invalidate that document unless it does not correspond at all to the description of the goods for which it is supposed to cover. Invalidate a B/L or MTD would not be benefit for neither the shipper nor the consignee. Furthermore, the carrier does not loss any of his rights to the limitation of liability he may require with regard to Hamburg Rules or Multimodal Transport Convention.

5.6. Liability for intentional misstatements or omissions on the B/L or MTD

It is a new liability introduced by the Multimodal Transport Convention. When a MTO, with intention or wrecklessly with knowledge, inserts in the B/L or MTD false information or intentional omissions concerning the nature of the goods, their marks, their quantities or their apparent order to defraud, he is entirely liable without any possible limitation regarding the provisions of article 11 of the aforesaid convention. The severity of this article is for the benefit of any person who acts in good faith in basing himself on the information given on the B/L or MTD.

When it is the shipper who defrauds by giving false information on the B/L or MTD with regard to the nature of the goods - dangerous or not - their marks, their
quantities, that false information can not operate against third parties who act in good faith. The shipper is liable for any damage resulting from that intention. The MTO who forgets to insert any reservation in the B/L or MTD is deemed liable for that fact as well. Thus, the shipper and the MTO are conjunctively liable towards third parties. Although they assume such a responsibility, the shipper shall indemnify the MTO for the damage resulting from such a circumstance in accordance with article 12 paragraph 2 of the Multimodal Transport Convention:

"The consignor shall indemnify the Multimodal Transport Operator against loss resulting from inaccuracies in or inadequacies of the particulars referred to in paragraph 1 of this article".

5.7. Liability for the content of the B/L or MTD.

When a consignee receives at destination short delivery of his goods, he may ask the carrier for compensation as if the goods have been received by him and lost during their transit. Due to the fact that the carrier is not allowed to prove the fact that the quantities he has received is less than the one inserted in the B/L or MTD, he must be liable for that careless. But, he has the right to limit his liability. In fact, only the carrier or the MTO is not entitled to contest the information contained in the B/L or MTD. The consignee for his success before a tribunal, is allowed to sue the carrier in that way.

In practice, when the carrier does not have the possibility to verify the content of a container packed and sealed by the shipper, he may insert a reservation in the B/L or MTD just to prevent any further liability. Some B/L or MTD contain special provisions for such cases. The
French carriers get use to stamp the B/L or MTD as follows:

"Absence de moyens permettant un controle raisonable"

As an example, clause 9b of B/L of SNCDV states:

"If a shipper-Packed Container is delivered by the carrier with his original seal as affixed by the shipper intact, such delivery shall constitute full and complete performance of the carrier's obligations hereunder and the carrier shall not be liable for any shortage of goods ascertained at delivery".

5.8. Content of a B/L or MTD.

The content is almost the same in both Hamburg Rules and Multimodal Transport Convention. The B/L or MTD shall contain the following particulars regarding article 8 of the Multimodal Transport Convention:

a- The general nature of the goods . . .
b- The apparent condition of the goods;
c- The name and principal place of business of the MTO;
d- The name of the consignor;
e- The consignee, if named by the consignor;
f- The place and date of taking in charge of the goods by the MTO;
g- The place of delivery of the goods;
h- The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;
i- A statement indicating whether the MTD is negotiable or non negotiable;
j- The place and the date of issue of the MTD;
k- The signature of the MTO or a person having authority from him;
m- The intended journey route, modes of transport and places of transshipment, if known at the time of issuing of the MTD;

n- The statement referred to in paragraph 3 of article 8;

o- Any other particulars.

5.9. Other documents.

With regard to article 13 of Multimodal Transport Convention, the use of other documents which are in accordance with applicable international conventions or national laws are accepted besides the MTD. As a result, in practice, we observe the use of a B/L drafted by FIATA and a letter of indemnity.

5.9.1. B/L issued by FIATA.

Whereas many freight forwarders use their own domestic B/L, FIATA has drafted a standard combined B/L which is widely used. The issuer of that B/L accepts responsibility direct to the cargo owner for the entire movement of the goods, irrespective of whether recourse has been obtained against any liable contractor.

5.9.2. Letter of indemnity.

The function of a letter of indemnity is to release a cargo to the consignee without producing the original B/L or MTD when it has been lost. Letter of indemnity may be therefore issued in the following conditions:

- "Release of the goods when the original bill is lost by the receiver.
- The issue of duplicate bills when the original have
been lost by the shipper or mislaid in transit to the consignee.

- If a material alteration is required such as a change in the name of the consignee when the full set is not available.

- Some other amendments required by a shipper after issue of the bill and dispatch of the manifest to the discharge port. Carriers are frequently fined by Customs Authority abroad if documents do not agree.

- Delivery to a different consignee other than the one named in the original bills when for instance the first name is unobtainable due to civil disturbance and the goods sold to another buyer". (15)

A letter of indemnity must be handled with a great care because it can be used for defrauding. The use of letters of indemnity is put forward by article 17 paragraph 3 of Hamburg Rules and the conditions under which they can be used without losing the rights contained in them.

In the first part of this article, it is said that the letter of indemnity is valid as against the shipper. But it is also added that any fraudulent letter of indemnity is not valid and can not be utilised against the shipper. The carrier looses not only his rights of claiming basing on the letter of indemnity but also his rights to sue the consignor:

"Such a letter of guarantee or agreement is valid as against the shipper unless the carrier or the person acting on his behalf, by omitting the reservation referred in paragraph 2 of this article, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading. In the latter case, if the
reservation omitted relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier has no right of indemnity from the shipper pursuant to paragraph 1 of this article”.

After analysing the three main topic regarding the structure of a MTO, the liability the MTO and documentation in use or what should be used when the Multimodal Transport Convention and Hamburg Rules will enter into force, we, humbly, think that it is necessary to give some necessary recommendations for improving or having a better result for the Chain of Transport in BENIN.
OVERALL CONCLUSION.

Taking note of the role of the multimodal carriage in the worldwide trade, it is necessary to establish an international legal regime for that type of transport.

The ratification of the MTC is important to prevent from the issuance of various types of MTD with different liabilities as well. If the MTC comes into force, the MTO's liability towards maritime carriage will be more than the maritime carrier's. The consequence of such liability will be the expensiveness of the multimodal transport compared to unimodal transport. We hope that that competitiveness between the unimodal and multimodal carriages will reduce such matter.

The MTC gives full liability to the MTO for the entire journey of the goods. It recognises at the same time the right to the limitation of such liability in some circumstances and gives legal right for the use of MTD when it is a negotiable document.

In Hamburg Rules, specific rights for maritime carriers have been suppressed as well as in the MTC. If Hamburg Rules should replace Hague/Visby Rules, it is no more necessary to implement the "network principle". As a result, Hamburg Rules should be ratified at the same time as the MTC.

With regard to BENIN, it does not have a national regulation dealing with multimodal transport although it has plenty of paper laws. In this respect, the non
Implementation of regulations is the result of connection between Government members when those regulations are not profitable for their interests. It is the way it goes in BENIN. Thus, to try to solve the problem of paper law implementation of any regulation taken or which will be taken, the following suggestions should be considered by our politicians:

These suggestions will be made at two levels: national and sub-regional.

I. At the national level

First of all the principle of "the right man at the right place" should be observed not only in the Ministry of Transport but in all Ministries. The Heads of those Ministries should think about the national interest not about their own and about their friends'. The qualification of every person should be taken into consideration. Instead of appointing people who do not have the necessary background for a specific job and who has connections with the Minister, skilled personnel can be appointed. For instance, sometimes, a cadre whose knowledge is strictly related to agriculture is appointed as a managing director of the national shipping line and also a customs officer as a managing director of the port. The awful result is the breaking down of the whole system by nominating in return ignorant people like them as heads of the main departments in the concerned work instead of cooperating with the talented personnel working in the institution. What a mess after a short time! Our politicians should be educated in that respect in order to fulfil this first suggestion.
The next improvement should be made at various others levels mainly at the port, OCBN and the Ministry levels.

1. At the port level.

- Containerisation: with the development of containerisation, any MTO can not deal with multimodal transport without referring to containerisation. It is the most easy way to tackle the system. BENIN importers as well as the neighbouring countries importers mainly those from the Hinterland should be asked to use containers for their goods.

- Issuance of the differential statement in time from OBEMAP after the departure of the ship should be respected in order to attract more users of the port of Cotonou. It will be done for the efficiency of the port. Users can, therefore, rely on it.

- Port authority should try by all means to implement the necessary regulations required for such effectiveness and efficiency by having the authority to punish all infringements from port operators. Renewal of rails in the port in order to speed up the transit time of the goods is also required.

- Sealing of all trucks from Cotonou to the landlocked countries or from Parakou.

- Change of OBEMAP into free enterprise or liquidate it in order to give right to private port enterprises to get their own handling equipment.

- Search for the financial sources for ballasting the
section Save-Parakou, the most dangerous part of the railway transport. Short transit time can be properly made without solving that matter unless roads are used for that purpose. But there is another problem in the road transport system. The link between Dassa-Porga or Parakou-Porga to BURKINA FASO and MALI regions are not paved except for the link between Parakou-Malanville where just a small part is not asphalted. The link between Save-Parakou is being asphalted. When this work will be carried out, road carriage will be competing with the railway transport. That is why, it is of vital importance to find without any delay the financial sources to rebuild the critical railway section.

- Acquisition of handling equipment in Parakou where those which are in use are no more adapted to the new handling system. They are only used for loading and discharging containers and heavy goods to or from trucks and vice versa.

- Functioning of the haulage system based in Parakou needs to be updated with regard to the texts and the liability of the hauliers.

2. At the Ministry level.

To keep administration officers working in a responsible way, fringe incentives should be added to their wages which should be paid in time.
II. At the sub-regional level.

In WEST-AFRICA, BENIN belongs to three regional organisations: ECOWAS (Economic Community of West African States), CEAO (West African States Community) and CE (Conseil de l'Entente). The former is a regional body whilst the latter are sub-regionals. All countries belonging to CEAO or CE belong necessary to ECOWAS.

All these institutions have a common understanding about carriage of goods and persons through their borders.

Recommendations issued from the last meeting of CEAO held in Ouagadougou (BURKINA FASO) from 26 to 30 September, 1988, in order to improve the multimodal transport in general and road transport in particular, can be summarised as follows:

- The General Secretariat of CEAO has asked its members who do not belong to CE to ratify the amended conventions TRIE and TIE and participate in all the works of its CSTT "Comite Superieur des Transports Terrestres".

- The Executive Secretariat of ECOWAS has been asked to extend the implementation of the amended conventions TRIE and TIE to all its members States.

- Effective implementation of ECOWAS recommendations to reduce the numerous inter-States road checking points.

- Creation of freight bureau.

- 48 hours maximum at the destination to discharge goods from trucks to prevent from the waiting time.
Taking note of the feeble level of implementation of those conventions, despite the great effort of these three organisations, it has been recommended a periodical gathering in order to give more energy to the cooperation between the sub-region States in the concerned field.

Such suggestions at the national and regional levels, for sure, will contribute, sooner or later, to the improvement of the transport in general and multimodal in particular. The first suggestion will be the starting point otherwise, all efforts to achieve those objectives would be void.

OBEMAP, which is the bottle neck in the system, should be owned privatly in order to make the fluidity of goods through Cotonou sea-port more effective.
FOOTNOTES.

2- Yehuda Hayuth: Intermodality: Concept & Practice p.15
3- ICC: The development of International Container Transport: its application in Developing Countries p.7
4- G. Van Den Berg: Container & Containerisation p.66
5- " " " " " " " " " " " p. 67
7- Article 1 paragraph 1 of the Multimodal Transport Convention.
8- From a workshop document on multimodal transport held in Cotonou (BENIN) in January 1989: Le transport Multimodal p.1
9- Tribunal de Commerce of Paris: jugement rendered on 26 September, 1984 by the 3rd Chamber.
10- International law: Basic Principles p.303.
12- " " " " " " " " p. 144.
13- Bill of Lading Act 1885 Section 1.
14- Article 5.2 of the Multimodal Transport Convention.
15- Alan Mitchelhill: Law & Practice p.45-46
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I- BOOKS.

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2- MALCOLM A. CLARKE: International Carriage of Goods
   by road: CMR. 1982.
   1st edition 1966
4- G. VAN DEN BURG: Containerisation and other unit
   transport.
   Revised edition 1985
5- ALAN MITCHELHILL: Bills of lading: law and practice
   1982 Chapman and Hall Ltd
6- LAMY TRANSPORT: Commissionnaires de transport...
   1981
7- RENE RODIERE: Traité Général de droit maritime
   Affrètement et transports tome 2 Dalloz

II- GOVERNMENT & MISCELLANEOUS DOCUMENTS

1- United Nations Conference on a Convention on
2- Hamburg Rules 1978
3- Professor D C JACKSON: Carriage of Goods
   Combined Transport
4- Professor ZDZISLAW BRODECKI: Combined Transport between
   Poland & Great Britain
5- Dr WANDA NOWINA-KONOPCZYNA: The Contract of
International Multimodal
Transport of Goods

6- Séminaire sur l’état d’application des conventions en
matière de transport et de transit (TIE & TRIE) et les
directives visant à supprimer les excess de contrôles
routiers inter-états.
GENERAL PROVISIONS

1. The Carrier shall be entitled to the benefit of the limitation of liability provided for in the Convention for the Unification of Certain Rules Relating to International Carriage by Sea, 1924, and the Hague Rules, 1968, if applicable to any claim or action for damage arising out of the loss or damage to the goods, its value, or the carriage or delivery thereof, otherwise than where he has been proved negligent in accordance with the provisions of this clause.

2. The Carrier shall reserve the right to have the contents of the goods as so described in this B/L, and the liability of the Carrier shall be limited to the amount stated in this B/L.

Carriage Rates.

1. Carriage rates shall be understood to mean the rates in effect at the time the cargo is received

2. Such security including a cash deposit as the Carrier may consider necessary to cover the estimated contributions of the goods and any salvage and special charges thereon, shall be required, to be submitted in the Carrier prior to delivery of the goods.

VI. MISCELLANEOUS PROVISIONS

1. General Average.


3. The Bath-in-Basin Collision Case as adopted by BIMCO to be considered incorporated herein.
NEGOTIABLE FIATA COMBINED TRANSPORT BILL OF LADING

issued subject to ICC Uniform Rules for a Combined Transport Document (ICC publication 298).

<table>
<thead>
<tr>
<th>Marks and numbers</th>
<th>Number and kind of packages</th>
<th>Description of goods</th>
<th>Gross weight</th>
<th>Measurement</th>
</tr>
</thead>
</table>

The goods and instructions are accepted and dealt with subject to the Standard Conditions printed overleaf.

Taken in apparent good order and condition, unless otherwise noted herein, at the place of receipt for transport and delivery as mentioned above.

One of these Combined Transport Bills of Lading must be surrendered duly endorsed in exchange for the goods. In Witness whereof the original Combined Transport Bills of Lading all of this tenor and date have been signed in the number stated below, one of which being accomplished the other two to be void.

For delivery of goods please apply to:
**COORDINATED SERVICES**

North Sea - Channel - Atlantic / West Africa

ONLY THE CARRIER NAMED BELOW IS RESPONSIBLE FOR ALL OBLIGATIONS ARISING OUT OF THE CONTRACT OF CARRIAGE TO WHICH THIS BILL OF LADING RELATES AND FOR ALL OTHER CONTRACTUAL LIABILITIES Undertaken by it in connection with the service.

CARRIER

Place of Receipt (1)

<table>
<thead>
<tr>
<th>CONTAINER</th>
<th>STATUS</th>
<th>Forwarding up to door by ship's elevator</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCL/CL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Intended Vessel

Intended Port of Loading

Intended Port of Discharge

Place of Delivery (1)

Mark and Nos; Container Nos; Number and kind of Packages; description of Goods

Gross weight Measurement (cbm)

**ABOVE PARTICULARS AS DECLARED BY SHIPPER**

LAW AND JURISDICTION: Any dispute or dispute arising under this Bill of Lading, including third-party proceedings or those involving several defendants, shall be governed, except as herein otherwise provided, by the laws and regulations of the country where the carrier has its main registered office, i.e., the Tribunal de Commerce of Porte for SOCIETE NAVALE ET COMMERCIALE DELMAS-VIELJEUX or L. MARTIN S.A., the Courts of Antwerp for CMB, the Maritime Court of Le Havre for PORTVAL.

RECEIVED by the Carrier from the Shipper in apparent good order and condition (unless otherwise noted herein) the total number or quantity of Containers or packages or units indicated, stated by the Shipper to comprise the Goods specified above, by Carriage subject to all the terms hereof (INCLUDING THE TERMS ON THE REVERSE HEREOF AND THE TERMS OF THE CARRIERS APPLICABLE TARIFF) from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or the Place of Delivery, whichever is applicable. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its terms, conditions and exceptions, whether printed, stamped or written, or otherwise incorporated, of which the Merchant is fully aware notwithstanding the non-signing of this Bill of Lading by the Merchant.

Number of Originals Bills of Lading

In witness of the contract herein contained the number of original stated opposite have been issued, each one being of the same contents and date, one of which being accomplished the other(s) to be void.

THE SHIPPER

(1) APPLICABLE ONLY WHEN THIS DOCUMENT IS USED AS COMBINED TRANSPORT BILL OF LADING - (2) TICK AS APPROPRIATE

FOR THE CARRIER
DESCRIPTION OF GOODS

The Carrier is responsible for all goods,无论性质 and condition, whether dangerous or not, and for the payment of all amounts due to the Consignee or the Consignor, in respect of the goods transported under the present contract. The goods are to be loaded and transported in such condition as to be safe and secure, and the Carrier shall be liable for any loss or damage suffered by the goods while in transit, except in cases where such loss or damage is caused by the act or default of any person in the service of the Carrier.

IN CASE OF DISPUTES

If any disputes arise between the Carrier and the Consignee or the Consignor, the parties shall settle them by arbitration, the decision of which shall be final and binding on both parties. The arbitration shall be conducted in accordance with the rules of the International Chamber of Commerce. Any award made by the arbitrator shall be final and binding on both parties, and the Carrier shall comply with it forthwith.

CONDITION OF RECEIPT

The Carrier shall receive the goods in good order and condition and shall deliver them in the same order and condition, provided that the Carrier shall not be liable for any loss or damage suffered by the goods while in transit, except in cases where such loss or damage is caused by the act or default of any person in the service of the Carrier.

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The Carrier shall not be responsible for any loss or damage suffered by the goods while in transit, except in cases where such loss or damage is caused by the act or default of any person in the service of the Carrier. The goods are to be loaded and transported in such condition as to be safe and secure, and the Carrier shall be liable for any loss or damage suffered by the goods while in transit, except in cases where such loss or damage is caused by the act or default of any person in the service of the Carrier.

IN CASE OF DISPUTES

If any disputes arise between the Carrier and the Consignee or the Consignor, the parties shall settle them by arbitration, the decision of which shall be final and binding on both parties. The arbitration shall be conducted in accordance with the rules of the International Chamber of Commerce. Any award made by the arbitrator shall be final and binding on both parties, and the Carrier shall comply with it forthwith.

CONDITION OF RECEIPT

The Carrier shall receive the goods in good order and condition and shall deliver them in the same order and condition, provided that the Carrier shall not be liable for any loss or damage suffered by the goods while in transit, except in cases where such loss or damage is caused by the act or default of any person in the service of the Carrier.
LETTER OF INDEMNITY IN FAVOUR OF SOCIETEIVOIRIENNE DE TRANSPORT MARITIME
— SOCIETE D'ETAT — AND SHIPOWNERS, CAPTAIN AND AGENTS OF THE VESSEL

We, the undersigned (denomination and complete address):

presented by: Mr/Mrs ..............................................

being as: (1) □ Consignee or buyer of the goods

□ Shipper or actual consignor

knowing that your Shipping company wished to include on the above referenced bill(s) of lading the following reserve (write the entire text of the reserve)

that we have requested from your Shipping company to:

□ Issue a Delivery Order.

□ Deliver cargo without presenting bill(s) of lading.

□ Exceptionally sign clean bill(s) of lading for the above referenced cargo.

We expressly agree that such delivery or issuance of delivery order(s) without presentation of the originals of the bill(s) of lading is effected according to your Shipping company's instructions or the instructions of the shipper or consignor, and that it is agreed that the present indemnity shall remain in force until the restitutions in your hands of all the originals of the missing bill(s) of lading, that we undertake to give you as soon as possible, and in any case, at the latest in three months.

We, the undersigned, Bank:

represented by: Mr/Mrs ..............................................

with a registered office at: ..............................................

presented by: Mr/Mrs ..............................................

agreed and approved (3)

Name of the signer(s) for the Bank

Mr/Mrs ..............................................

Read and approved As guarantors (3)

Signature: ..............................................

Stamp of the Bank: ..............................................

(1) Cross the appropriate space, and complete if necessary.

(2) Complete with the name of the co-signatory (i.e. shipper or consignee).

(3) Such mention to be handwritten.
Letter of Indemnity in Favour of DELMAS-VIELJEUX and Shipowners, Captain and Agents of the Vessel

Delivery without remittance of the original (s) of the bill (s) of lading —

Date of receipt (1) : ........................................

Date of loading : ........................................

Date of discharge : ....................................

Number of lading no. : ................................

Description of the goods (number of packages, marks, numbers, weight and/or volume) : ........................................

It is agreed that such delivery or issuance of delivery order (s) without presentation of the originals of the bill (s) of lading is effected according to the powers conferred by

Expedited or consignor to the interpretation and/or fulfillment of the present letter of guarantee, shall be referred to the exclusive jurisdiction of the Commercial Court of Paris (Tribunal de Commerce de Paris), or, if you deem advisable, to any Court before which you will be summoned, which would consider itself as competent.

Signed at ............................................. on ..........................................

Name of the signer : Mr/Mrs. ..........................................

Read and approved (4)..........................................

Signature : .............................................

Stamp of Shipper/Consignee : .............................................

Stamp of the Bank : .............................................

Only in case of a combined transport. Cross the appropriate space, and complete if necessary. Complete with the name of the co-signatory (i.e. shipper or consignee).
Letter of Indemnity in Favour of DELMAS-VIELJEUX and Shipowners, Captain and Agents of the Vessel
— Issuance of new set (s) of bill (s) of lading —

(1) of the vessel: .................................................................
(2) of receipt (1): .................................................................
(3) of loading: .................................................................
(4) of discharge: .................................................................
(5) of lading n°: .................................................................
(6) of the bill(s) of lading: ......................................................
(7) description of the goods (number of packages, marks, numbers, weight and/or volume): .................................................................
(8) identification of the container(s): ........................................

undersigned (denomination and complete address): .................................................................

as: ........................................................................

(2) (1) Shipper or actual consignor
(2) Consignee or buyer of the goods

originals of the above-mentioned bill(s) of lading having been lost, ask you to kindly issue a new set.

expressly agreed that the issuance of new original bills of lading is effected according to clauses, conditions, and limitations inserted in the missing bill of lading that we declare to expressly accept.

hereby, agree to hold you harmless and indemnified against any claim or action that would be brought against you as the result of the issuance of original bills of lading, and particularly against any claim from the holder of the first set(s) of the original bills of lading.

undertake to guarantee you, upon first request, in freely transferable and convertible currency, for any amounts (including damages, compensations, fines, legal fees, counsel’s fees) you could have to pay, whether this payment be forced or amicable.

should only contest a voluntary and amicable settlement, in case it would have been obviously affected contrary to the laws and customs into force.

therefore, it is agreed that the present indemnity shall remain into effect till the restitution in your hands of all the original bills of lading firstly lost, that we undertake to give you, if and when they are found again.

(7) we undersigned, Bank: .................................................................

(8) a registered office at: .................................................................

(9) presented by: Mr/Mrs .................................................................

(10) according to the powers conferred by .................................................................

(11) perfectly aware of the above, we hereby guarantee irrevocably and inconditionally, jointly and severally with (3) .................................................................

(12) the fulfilment of the above undertakings.

disputes or litigations between all parties relating to the interpretation and/or fulfilment of the present letter of guarantee, shall be referred to the exclusive jurisdiction of the Commercial Court of Paris (Tribunal de Commerce de Paris), or, if you deem advisable, to any Court before which you would be summoned.

which would consider itself as competent.

Signed at: ................................................... on: .................................................................

me of the signer: Mr/Mrs .................................................................

Name of the signer(s) for the Bank
Mr/Mrs .................................................................

Read and approved As guarantors (4)
Signature: .................................................................

Stamp of Shipper/Consignee:

Stamp of the Bank:

(1) Only in case of a combined transport.
(2) Cross the appropriate space.
(3) Complete with the name of the co-signatory (i.e. shipper or consignee).
(4) Such mention to be handwritten.
COMMUNAUTÉ ÉCONOMIQUE DES ÉTATS DE L’AFRIQUE DE L’OUEST
DESTINATION ET PREPARATION DE LA LETTRE DE VOITURE

La lettre de voiture internationale comportera une liasse de quatre (4) feuillets destinés respectivement:

a) Consignataire
b) Transport

c) Consignataire

d) Livre

Les frontières doivent garder des registres dans lesquels seront enregistrés les renseignements sur le chauffeur, le véhicule et les marchandises.

Si les marchandises doivent être transportées par la route d’un État Membre à l’autre, l’agent mandaté doit remplir les quatre copies avec renseignements sur le chauffeur, le véhicule, l’expéditeur et sur le destinataire. Trois copies doivent être enlevées laissant la quatrième dans la Lettre de voiture.

Il donnera les copies (originale et duplicata) au chauffeur et la triplicate à celui qui loue le véhicule.

A son arrivée à chaque frontière de contrôle tout au long des routes déterminées, le chauffeur doit présenter les copies (originale et duplicata) aux autorités compétentes qui doivent vérifier les marchandises pour enregistrement. Enfin quand les marchandises arrivent à destination et qu’elles sont reçues par le destinataire, ce dernier signe les deux copies (originale et duplicata) de la Lettre de voiture faisant des observations au verso de la Lettre de voiture s’il constate une perte ou une dégradation aux marchandises.

Après avoir signé, le chauffeur doit remettre les deux copies et ramener l’original à celui qui a reçu les marchandises.

A son retour chez lui, le chauffeur doit remettre la copie duplicata de la Lettre de Voiture à son employeur pour archives.

ECONOMIC COMMUNITY OF WEST AFRICAN STATES
DESTINATION AND PREPARATION OF THE WAYBILL

A four-page Waybill shall be printed and distributed as follows:

a) Consignee
b) Transport

c) Consignor
d) Book

The Border check points shall keep Registers (Note Books) into which essential particulars of the driver, the vehicle and the goods are entered for record purposes.

When goods are to be transported by road from one Member State to another, the Clerk in-charge will prepare all four copies of the waybill showing particulars of the driver, the vehicle Consignor and the Consignee and then tear off 3 copies leaving the 4th in the waybill book.

He gives the original and duplicate copies to driver and the triplicate copy to the person who hires the vehicle.

At any border check points along the specified Routes, the driver shall present the original and duplicate copies to the appropriate authorities for the inspection of the goods and for the necessary entries to be made in their Record Books (Registers).

Finally when the goods reach their destination and the person to whom they are consigned receives them, the signs both the original and duplicate copies of the waybill making any remarks at the back of the waybills in case of loss or damage to any of the items carried by the driver.

After he had signed, the driver also endorses the two copies of the waybill and returns the original copy to the receiver of the goods.

On his return to base, the driver then surrenders the signed duplicate copy of the waybill to his employer and to be kept for record purposes.
CAHIER DES CHARGES
à l'usage des Transporteurs Routiers agréés par l'OCBN

TITRE I - DISPOSITIONS GENERALES

Article 1er - Objet du Cahier des Charges

Le présent Cahier des Charges a pour objet de préciser les obligations imposées à tout Transporteur Routier désirant souscrire à un accord de "Trafic direct Rail/Route" avec l'OCBN.

Article 2 - Définition du Trafic Direct Rail/Route


L'OCBN pourra conclure un accord de trafic direct Rail/Route sur toutes autres relations affluentes du rail.

TITRE II - CONDITIONS DE PARTICIPATION

Article 3 -

Pour participer au Trafic Direct Rail/Route, les Transporteurs devront adresser au Directeur de l'OCBN :

- un Contrat signé en quatre exemplaires comprenant la liste des véhicules engagés dans le trafic.

- une Fiche de Renseignements par véhicule - (Fiche vérifiée par le Chef d'Agence OCBN à Parakou, Niamey ou Maradi sur le vu des pièces présentées).

- un Exemplaire de la Police d'Assurance Marchandises le cas échéant.

Avant le premier chargement, ils devront en outre présenter au Chef d'Agence de Parakou la Patente, la Quittance de taxes fiscales, la Carte Grise et la Carte de Transporteur et l'inventaire des Agrès pour chacun des véhicules engagés ; la Police d'Assurance de leur véhicules

TITRE III - UTILISATION DU MATÉRIEL ROUTIER

Article 4 - Visite Technique

Les véhicules doivent être immatriculés au Niger ou au Bénin.

Ils devront avoir subi une visite depuis moins de 3 mois à la date de la signature du Contrat devant le Service officiel du lieu de leur immatriculation.

Article 5 - Assiduité

Une absence de plus d'un mois non justifiée pourra entraîner la radiation temporaire ou définitive du Trafic Rail/Route.
Article 5 bis - Capacité de chargement

La capacité de chargement d'un véhicule doit correspondre à la charge utile indiquée sur la Carte Grise.

En conséquence, l'OCM se réserve le droit dans certains cas de déterminer les possibilités réelles de chargement du véhicule au-delà desquelles il ne sera pas accordé de creux de charge.

La capacité minima offerte est calculée à raison de 400 kg au m³.

Exemple : Pour une semi-remorque de 20T la capacité de chargement minima doit atteindre 20 × 50 m³. Lorsque le chargement ne peut atteindre la charge utile 0,400 du véhicule, le creux de charge rémunéré correspondant sera déterminé suivant la capacité réelle du véhicule.

TITRE IV - PRISE EN CHARGE DE LA MARCHANDESE

Article 6 - Ordre de chargement

Tout Transporteur qui se présente au chargement à Parakou doit être porteur d'une Fiche de Chargement (comportant un numéro d'ordre) remise par le Chef d'Agence en 2 Exemplaires.

- un exemplaire est destiné au Chef Transit
- le second est destiné au Transporteur et lui permet de contrôler son chargement.

Article 7 - Acceptation des marchandises

Les Transporteurs devront accepter les marchandises qui leur seront remises à Parakou quels que soient leur nature, leur destination et le destinataire.

S'ils s'y refusent, ils perdront leur tour de chargement.

Les chargements seront répartis aussi équitablement que possible par le Chef d'Agence.

Article 8 - Reconnaisance

Le chargement et l'arrimage des marchandises sur camions à Parakou seront faits par l'OCM mais sous la direction, le contrôle et la responsabilité des Transporteurs.

Lorsque le chargement est terminé, le Transporteur :
- émarge la Fiche de Chargement que lui présente le Pointeur
- recueille émargement du Pointeur sur la Fiche en sa possession
- exprime ses réserves, le cas échéant, sur la Fiche de Chargement
- se présente à l'Agence où il remet sa Fiche de Chargement.
--- 2 ---

B/- DISPOSITIONS DIVERSES

a)- Parcours à vide

Le paiement d'un parcours à vide est effectué concurremment avec celui du parcours en charge correspondant - (retenue dans l'opération) sur la base de la charge utile du véhicule.

b)- Creux de chargement

Les creux de chargement supérieurs à 500 Kg sont rémunérés au même taux que les chargements acheminés sur le même parcours à l'exception des transports pour lesquels l'OCEN a prescrit une limitation par rapport à la charge utile du véhicule. Le creux s'évalue par rapport à la charge utile du véhicule.

c)- Franchise

Pour les dommages résultant d'accidents caractérisés, une franchise de 10,000 francs par chargement est laissée à la charge du Transporteur.

d)- Service non effectué

La feuille de tonnage forme un Contrat entre l'OCEN et le Transporteur. A partir du moment où ce dernier a donné décharge sur la FT, il est garant de l'arrivée des marchandises à destination.

Il résulte que le Transporteur ne pourra prétendre à une rémunération tant que la livraison n'aura pas été effective.
Article 9 - Feuille de Tonnage

En échange de sa Fiche de Chargement le Transporteur reçoit une feuille de tonnage en 6 exemplaires destinés à :

1 Transporteur
2 Gare destinataire
3 Douane Gaya
3 bis Douane Malanville
4 Destinataire de la marchandise
5 Douane destinataire.

Article 10 - Feuille de Réserve

Dans le cas où le Transporteur aura formulé des réserves lors du chargement, il lui sera délivré 1 exemplaire de cette feuille de réserve :

1 Transporteur.

Article 11 - Sécurité du chargement

Les Transporteurs devront disposer de tous les agrès nécessaires à la sécurité du chargement : cordages, filets, bâches, extincteur d'incendie etc..., effectuer eux-mêmes l'élingage et le bâchage du chargement.

Ils conserveront la responsabilité de toutes les avaries pouvant survenir au cours du transport en particulier du fait du chargement mal conditionné, non bâché ou résultant d'un bâchage défectueux etc...

Article 12 - Livraison

<table>
<thead>
<tr>
<th>DESTINATION</th>
<th>DISPOSITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1°- MARADI-ZINDER</td>
<td>Livraison au destinataire après passage au Bureau des Douanes</td>
</tr>
<tr>
<td>2°- NIAMEY</td>
<td>Magasin-douanes</td>
</tr>
<tr>
<td>3°- Autres localités que 1° et 2°</td>
<td>Destinataire</td>
</tr>
</tbody>
</table>
Article 13 - Déchargement

<table>
<thead>
<tr>
<th>RESPONSABLE</th>
<th>OBLIGATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Destinataire ou</td>
<td>Procède au déchargement et à la reconnaissance</td>
</tr>
<tr>
<td>Magasin-Douanes</td>
<td>contradictoire avec le Transporteur</td>
</tr>
<tr>
<td></td>
<td>Emarge les exemplaires n° 1 et 2 de la FT</td>
</tr>
<tr>
<td></td>
<td>Exprime ses réserves, le cas échéant, au verso</td>
</tr>
<tr>
<td></td>
<td>de la FT</td>
</tr>
<tr>
<td></td>
<td>Remet au Transporteur les exemplaires n° 1 et 2</td>
</tr>
<tr>
<td></td>
<td>des FT et conserve le n° 4.</td>
</tr>
</tbody>
</table>

TITRE V - DISPOSITIONS PARTICULIÈRES À LA PRISE EN CHARGE DES ARACHIDES

Le Transporteur se référera à l'Agent OCBN qui lui indiquera l'itinéraire à suivre pour l'élèvement des arachides -voir Annexe N° 3.

Article 14 - Chargement

Le chargement sera fait par l'expéditeur sous la direction, la responsabilité et le contrôle du Transporteur.

Article 15 - Reconnaissance

Lorsque le Transporteur constate que les sacs d'arachides chargés sur son véhicule sont en mauvais état, il doit souscrire des réserves sur les exemplaires 1 et 3 de la Fiche d'Enlèvement.

Article 16 - Délivrance des Certificats d'Origine

Fait l'objet de l'Annexe N° 3.

TITRE VI - DÉCHARGEMENT DES ARACHIDES

Article 17 - Ordre de stationnement

A leur arrivée à Parakou, les Transporteurs placent leurs véhicules chargés d'arachides dans la cour du Magasin " A " perpendiculairement à la ligne blanche et en commençant côté Magasin " A ".

L'ordre de stationnement conditionne, l'ordre de déchargement mais le Transporteur absent aux appels (8 h 00 et le cas échéant, 15 h 00) perd son tour et passe en fin de liste. Seul, le Transporteur appelé est autorisé à pénétrer dans le Bureau de l'Agence pendant l'établissement des Fiches de déchargement et de chargement.
Article 18.- Fiche de déchargement

Lors des appels, le Chef d'Agence annonce, un par un, le numéro minéralogique des camions. Le Transporteur se présente alors au Bureau et remet :

- soit un Certificat d'origine exemplaire bleu et une Fiche d'Enlèvement lorsqu'il aura chargé entre Gaya et Dosso exclus.

- soit, dans les autres cas :
  
  - un Certificat d'origine (exemplaire bleu)
  
  - une Feuille de Chargement (remise au départ par l'Agence ou Poste OCHN le cas échéant)
  
  - une FT 'exemplaire 1 et 2
  
  - un exemplaire du Way-Bill.

Le Chef d'Agence lui remet en échange de ces documents une Fiche de Déchargement, comportant un numéro d'ordre, le lieu de déchargement (Magasin ou wagon) et le nombre de sacs composant le chargement.

Le Transporteur qui ne présentera pas les documents indiqués au 2ème alinéa, ci-dessus, ne pourra prétendre au déchargement.

Article 19.- Déchargement

Le Chef Magasins reçoit du Chef d'Agence les exemplaires 1 et 2 des FT comportant les indications figurant sur la Fiche de Déchargement en possession du Transporteur.

Suivant la disponibilité des équipes de manœuvre, le Chef des Magasins procède à l'appel des Transporteur.

Le Transporteur qui ne se présente pas à l'appel perd son tour de déchargement.

Lorsque le déchargement est terminé le Pointeur émet les 2 exemplaires de la FT et le remet au Transporteur qui se présente au Chef d'Agence. Ce dernier vise alors les exemplaires et remet au Transporteur l'exemplaire N° 1 de la Fiche de Déchargement.

Article 20.- Reconnaissance

La reconnaissance des arachides a lieu contradictoirement entre le Pointeur et le Transporteur lors du déchargement.

Le Pointeur exprime ses réserves, le cas échéant, sur la FT.

Les sacs d'arachides mouillés ne seront acceptés que lorsque le Transporteur en aura assuré le complet séchage.

.../...
TITRE VII - DISPOSITIONS COMMUNES (Montée et Descente)

Article 21.- Indications portées sur les FT

<table>
<thead>
<tr>
<th>RESPONSABLES</th>
<th>DESIGNATION</th>
<th>SITUATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1°/ Transporteurs</td>
<td>Tonnage et nature de la marchandise</td>
<td>Chargement au cours d'un parcours à vide</td>
</tr>
<tr>
<td></td>
<td>Parcours effectué avec ce transport</td>
<td></td>
</tr>
<tr>
<td>2°/ Chefs d'Agences</td>
<td>Réserves éventuelles</td>
<td>Livraison en gare</td>
</tr>
</tbody>
</table>

Article 22.- Transports interdits

Les camions engagés devront être entièrement mis à la disposition de l'OCEH.

Durant les périodes d'attente, leur propriétaire pourra cependant les utiliser mais uniquement pour effectuer, sans que cela concurrence l'OCEH, des transports personnels et propres à son entreprise ou à son commerce ou pour des tiers après accord de l'OCEH.

Le propriétaire des camions engagés ne pourra pas, d'une part concurrencer l'OCEH sur les axes empruntés par celle-ci, d'autre part, effectuer des transports de toute nature (voyageurs et marchandises) sur l'axe Parakou-Cotonou et vice-versa avec d'autres camions lui appartenant non repris au Contrat d'Affrètement OCEH.

Article 23.- Pannes et Incidents

Au cas où une panne ou un incident survenant à un véhicule risquerait d'entraîner une immobilisation de plus de 24 heures, le Transporteur devra avertir dans les meilleurs délais le Chef d'Agence OCEH intéressé en précisant la nature et la destination du chargement ; les mesures nécessaires seront alors prises pour sauvegarder les marchandises et en assurer l'acheminement.

Article 24.- Fais du Service

Les Transporteurs doivent accepter les plis et documents de Service qui leur sont remis par les Chefs d'Agences ou les Chefs de Poste OCEH.

Article 25.- Heures d'ouverture des Agences et Postes

- Les Agences de Maradi et Niamey et les Postes de N'Exacoua et Dossou sont ouverts tous les jours de : 7 h 30 à 12 h 30 et de 15 h 00 à 17 h 00 sauf les Samedis après midi, Dimanche et jours fériés.

- L'Agence de Parakou est ouverte tous les jours de 8 h 00 à 12 h 30 et de 15 h 00 à 18 h 30 sauf les Samedis, Dimanche et jours fériés.

.../...
TITRE VIII - ASSURANCE DES CHARGEMENTS

Article 26.- Étendue de la garantie

Les Transporteurs doivent obligatoirement souscrire à une assurance garantissant leur responsabilité vis-à-vis des marchandises.

Toutefois, s'ils ne le font pas l'OCBN assure d'office les marchandises qui leur sont confiées moyennant une prime précomptée sur la rémunération du transport.

Article 27.- Dommages couverts

<table>
<thead>
<tr>
<th>DESIGNATION</th>
<th>DISPOSITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Accidents caractérisés de route résultant :</td>
<td>Dommages inférieurs à 25.000 Frs. à la charge du Transporteur.</td>
</tr>
<tr>
<td>. de la collision du véhicule ou de son chargement avec un autre véhicule ou un corps fixe ou mobile.</td>
<td>Le Transporteur doit :</td>
</tr>
<tr>
<td>. de chute de véhicule en rivière, fleuve, fossés, ravin ou précipices.</td>
<td>1°/— aviser par Message le Chef d'Agence intéressé.</td>
</tr>
<tr>
<td>. du bris de châssis, d'essieux ou de roues</td>
<td>2°/— faire constater la matérialité de l'accident par une Autorité ou par le Chef d'Agence.</td>
</tr>
<tr>
<td>. d'affaissement de route ou de chaussées.</td>
<td></td>
</tr>
<tr>
<td>. d'écroulement d'ouvrages d'art ou de bâtiments.</td>
<td></td>
</tr>
<tr>
<td>. de rupture de digues ou de murs.</td>
<td></td>
</tr>
</tbody>
</table>

Article 28.- Autres dommages

<table>
<thead>
<tr>
<th>DESIGNATION</th>
<th>DISPOSITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dommages occasionnés aux marchandises au cours d'un transbordement rendu nécessaire à la suite de l'immobilisation du véhicule pour les cas non repris à l'Article 27 précité.</td>
<td>Frais de transbordement et dommages éventuels à la charge du Transporteur.</td>
</tr>
</tbody>
</table>
A/ Facturation des transports

I/- Toutes les factures devront être établies en Trois (3) exemplaires par les Transporteurs, au nom de l'OCEM Cotonou.

II/- Ces factures seront envoyées pour règlement à :
M. le Comptable de l'OCEM (Section Rail/Route).

III/- Toutes les factures devront être : soit dactylographiées soit rédigées à l'encre. Leur montant sera arrêté en toutes lettres et elles seront signées par l'intéressé. Les factures établies au crayon ou non signées seront rejetées.

IV/- Il devra être établi :
- soit, une facture par feuille de tonnage "parcours en charge" éventuellement, complétée par la feuille de tonnage "parcours à vide" ou creux de charge correspondante.
- soit, une facture groupant plusieurs feuilles de tonnage. Dans ce dernier cas, la facturation devra être détaillée comme ci-dessus, c'est-à-dire par feuille de tonnage "parcours en charge" éventuellement complétée par la feuille de tonnage "parcours à vide" ou creux de charge correspondante.

Les dernières factures des transports devront être envoyées au plus tard dans le délai d'un mois après l'exécution du dernier transport sous peine de forclusion.

V/- L'exemplaire N° 1 de la feuille de tonnage (couleur jaune unique) dûment timbré par les Chefs d'Agences ou de Postes et émargés par le destinataire lorsqu'il s'agit d'une feuille de tonnage en charge, devra être obligatoirement fourni à l'appui de la facture. L'absence de ce timbre et de l'émargement du destinataire entraînera le rejet de la facture.

VI/- Seuls les transports du Trafic Direct Rail/Route devront figurer sur les factures établies à ce titre.

VII/- La facture sera faite en tenant compte que le montant de chaque feuille de tonnage sera arrondi au francs inférieur.
**PRESENTATION DES FEUILLES DE TONNAGE POUR LA FACTURATION**

<table>
<thead>
<tr>
<th>N°</th>
<th>Destination</th>
<th>Porte de Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1°</td>
<td>Parakou</td>
<td>à Maradi en charge</td>
</tr>
<tr>
<td>2°</td>
<td>Parakou</td>
<td>à Zinder en charge</td>
</tr>
<tr>
<td>3°</td>
<td>Zinder ou Maradi</td>
<td>à Parakou en charge</td>
</tr>
<tr>
<td>4°</td>
<td>Parakou</td>
<td>à Kandi et retour à Parakou en charge</td>
</tr>
<tr>
<td>5°</td>
<td>Parakou</td>
<td>à Tahoua en charge</td>
</tr>
<tr>
<td></td>
<td>Tahoua</td>
<td>à Madaoua à vide</td>
</tr>
<tr>
<td></td>
<td>Madaoua</td>
<td>à Parakou en charge</td>
</tr>
<tr>
<td>6°</td>
<td>Parakou</td>
<td>à Niamey en charge</td>
</tr>
<tr>
<td></td>
<td>Niamey</td>
<td>à Maradi à vide</td>
</tr>
<tr>
<td></td>
<td>Maradi</td>
<td>à Parakou en charge</td>
</tr>
<tr>
<td>7°</td>
<td>Parakou</td>
<td>à Niamey en charge</td>
</tr>
<tr>
<td></td>
<td>Niamey</td>
<td>à Doutchi-N'Konni ou Madaoua à vide</td>
</tr>
<tr>
<td></td>
<td>Madaoua-N'Konni ou Doutchi</td>
<td>à Parakou en charge</td>
</tr>
<tr>
<td>8°</td>
<td>Parakou</td>
<td>à Niamey en charge</td>
</tr>
<tr>
<td></td>
<td>Niamey</td>
<td>à Dosso ou Gaya à vide</td>
</tr>
<tr>
<td></td>
<td>Dosso ou Gaya</td>
<td>à Parakou en charge</td>
</tr>
<tr>
<td>9°</td>
<td>Parakou</td>
<td>à Dosso ou Gaya à vide</td>
</tr>
<tr>
<td></td>
<td>Dosso ou Gaya</td>
<td>à Parakou en charge</td>
</tr>
<tr>
<td>10°</td>
<td>Parakou</td>
<td>à Maradi à vide</td>
</tr>
<tr>
<td></td>
<td>Maradi</td>
<td>à Parakou en charge</td>
</tr>
</tbody>
</table>
DELIVRANCE DE CERTIFICATS D'ORIGINE

Tout chargement d'arachides doit être accompagné de Deux (2) exemplaires du Certificat d'Origine.

1 exemplaire bleu qui est remis à l'Agence de Parakou

1 exemplaire rose remis à la Douane à Gaya.

Le Transporteur doit se munir du Certificat d'Origine dans les conditions indiquées ci-après :

<table>
<thead>
<tr>
<th>Enlèvement des arachides</th>
<th>Service chargé de la délivrance des C.O.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dosso</td>
<td>Cercle Dosso</td>
</tr>
<tr>
<td>Konni</td>
<td>Cercle Konni</td>
</tr>
<tr>
<td>Madaoua</td>
<td>Cercle Madaoua</td>
</tr>
<tr>
<td>Takorka</td>
<td>&quot;</td>
</tr>
<tr>
<td>Malbaza</td>
<td>&quot;</td>
</tr>
<tr>
<td>Guidan</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>Chef Poste Madaoua par délégation du Chef d'Agence de Maradi.</td>
</tr>
<tr>
<td>Maradi</td>
<td>Chef Agence Maradi</td>
</tr>
<tr>
<td>Gazaoua</td>
<td>&quot;</td>
</tr>
<tr>
<td>Tessaoua</td>
<td>&quot;</td>
</tr>
<tr>
<td>Zinder</td>
<td>&quot;</td>
</tr>
<tr>
<td>Tchadaou</td>
<td>Chef Poste Tchadaou par délégation du Chef Agence de Maradi.</td>
</tr>
</tbody>
</table>

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AA/ -

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ANNEXE N° 4 AU AHIER DES HARGES

LITIGES

Pour éviter toutes contestations à l'occasion des retenues opérées sur les factures des transports pour pertes, avaries et manquants constatés par les destinataires lors de la livraison des marchandises qui leur sont destinées, les dispositions ci-après ont été prises :

a)- Les marchandises confiées aux Transporteurs par l'OCHN doivent être livrées par ceux-ci aux destinataires réels indiqués sur la feuille de tonnage, le cas échéant, à leurs Représentants qualifiés. Pour les FT rédigées : Destinataire FARNER ou SOCOPAO pour compte de X, les Transporteurs se présenteront d'abord chez le Transitaire désigné. Pour les marchandises destinées à Niamey, les Transporteurs doivent se présenter obligatoirement au Magasin Douanes.

b)- Le destinataire ou son Représentant qualifié procède en présence du Transporteur ou de son Chauffeur, à la reconnaissance et au comptage de la marchandise qui lui est destinée, donne la décharge sur la feuille de tonnage en faisant précéder sa signature de la date de livraison et de la mention "Reçu conforme".

c)- En cas d'avaries ou de manquants constatés contradictoirement, le destinataire prend des réserves et les mentionne sur la feuille de tonnage que le Transporteur ou son Chauffeur est tenu de signer.

Si une marchandise a été reconnue impropre à la consommation par suite d'avarie survenue au cours de transport, le destinataire n'en prend pas livraison, la remet au Transporteur ou à son Chauffeur qui en dispose ; la feuille de tonnage est annotée en conséquence.

d)- Les factures des destinataires pour avaries, pertes ou manquants qui seront présentées sans que les conditions de livraison définies ci-dessus aient été remplies, ne seront pas prises en considération par l'OCHN.
CONTRAT D’AFFRETEMENT

pour le transport des marchandises
du Trafic Direct Bénin-Niger

Article 1er - Souscription

Le Transporteur soussigné, demeurant à (adresse complète), après avoir pris connaissance des dispositions faisant l'objet du Cahier des Charges des Transporteurs agréés par l'OCBN, déclare souscrire à un Contrat d'Affrètement pour les transports à effectuer dans le cadre du Trafic Direct Bénin-Niger pendant la période allant du ....... au .........

Article 2er - Véhicules routiers mis à disposition de l'OCBN

Le Transporteur déclare mettre à la disposition de l'OCBN les véhicules routiers désignés ci-après (camion ou ensemble):

Article 3er - Engagement du Transporteur

Le Transporteur s'engage :

1° à mettre entièrement à la disposition de l'OCBN pour servir exclusivement aux transports qui leur seront confiés, les véhicules reprises à l'Article 2 précité.

2° à ne pas concourir l'OCBN sur les axes empruntés par celle-ci sans son autorisation et s'interdire tout chargement n'ayant pas fait l'objet d'un contrat de transport OCBN.

.../...
Toutefois, durant les périodes d'attente de chargement le propriétaire pourra utiliser ses véhicules mais uniquement pour effectuer, sans que cela concurrence l'OCBN, des transports personnels et propres à son entreprise ou à son commerce ou pour des tiers après accord de l'OCBN.

3° - à respecter les dispositions faisant l'objet du Cahier des Charges régissant le Trafic Direct Bénin-Niger.

4° - à prendre toutes les mesures nécessaires pour assurer dans les meilleurs délais l'acheminement des marchandises qui lui seront confiées et dans les conditions de sécurité requises.

Article 4.- Pénalité en cas d'infraction

Toute infraction aux clauses de l’Article 3 ci-dessus entraînera les sanctions suivantes :

1ère infraction : suspension des chargements pendant 15 jours
2ème " " " " 1 mois
3ème " " " " 45 jours
4ème " " " " 2 mois
5ème " " " " 3 mois
6ème " résiliation du contrat et radiation de la liste des Transporteurs affiliés par l'OCBN.

Article 5.- Conditions d'affrètement d'un véhicule

Le premier chargement d'un véhicule à Parakou ne peut s'effectuer que si les conditions suivantes sont remplies :

1° - souscription du propriétaire au Contrat d'Affrètement OCBN
2° - présentation au Chef d'Agence OCBN pour le véhicule considéré :
   a) - Carte grise et Carte de transport marchandises
   b) - Patente et quittance des taxes fiscales
   c) - Police d'Assurances
   d) - Inventaire des Agrès suivant la prescription de l'Article 11 du Cahier des Charges.

3° - sous réserve de présentation d'autorisation temporaire délivrée par le Ministre de l'Équipement et des Transports du Bénin et le Ministre du Commerce et des Transports du Niger, dérogation sera faite aux Transporteurs non dotés de titre de transport.
Nota important

En principe tout véhicule doit se présenter à l'Agence de Parakou pour effectuer son premier chargement.

Des dérogations peuvent être accordées dans le cas d'un chargement à effectuer au départ du lieu de résidence du véhicule, ou à proximité de ce lieu. En aucun cas, il ne peut être délivré un parcours à vide à un véhicule se rendant à Parakou pour effectuer une première rotation.

Article 6.- Assurances marchandises

L'OCBN assure d'office les marchandises confiées aux Transports moyennant une prime forfaitaire précomptées sur la rémunération du transport.

Toutefois, le Transporteur a la faculté de souscrire à une Assurance Marchandises, dans ce cas, il doit adresser un exemplaire de la Police à l'Agent Comptable OCBN sous le couvert du Chef d'Agence qui en prendra les références. Par ailleurs, une dispense d'assurance est prévue pour certains transports exceptionnels d'arachides faisant l'objet de l'Article 9 ci-après.

Article 7.- Engagement de l'OCBN

L'OCBN s'engage :

1°- à rémunérer les transports suivant les prix fixés à l'Article 8 ci-dessous

2°- à réserver exclusivement aux Transporteurs agréés le fret du Trafic Direct Bénin-Niger

3°- à mettre à la disposition des Transporteurs tous les moyens dont elle dispose pour faciliter et accélérer les rotations des véhicules.

Article 8.- Rémunération des Transports

La rémunération des transports est fixée d'après les taux suivants : 

.../...
1° Rotation sur l'Ouest du Niger (Dosso- Niamey- Dogon-Doutchi)
15,31 F la tonne kilométrique en charge
10,69 F la tonne kilométrique à vide ou en creux de charge

2° Rotation sur le Centre et l'Est du Niger (au-delà de Dogon-Doutchi)
14,40 F la tonne kilométrique en charge
10,69 F la tonne kilométrique à vide ou en creux de charge

3° Transports des secours alimentaires
12,73 F la tonne kilométrique en charge
10,69 F la tonne kilométrique à vide ou en creux de charge.

Article 9.- Transports exceptionnels d'arachides

Suivant les résultats du Trafic Direct, l'OCBN détermine mensuellement, en cours de campagne, les possibilités d'évacuer un certain tonnage d'arachides du Niger au moyen de véhicules partant à vide de Parakou. Les parcours à vide correspondants seront répartis aux Transporteurs volontaires. Le taux de rémunération de ces transports exceptionnels est fixé à :

10,38 F la tonne kilométrique à vide
10,38 F la tonne kilométrique en charge.

Pour ces transports, les Transporteurs sont autorisés à être leur propre assureur et mention en sera portée sur les feuilles de tonnage correspondantes.

Article 10.-

Le présent Contrat d'Affrètement est valable depuis la date de sa signature jusqu'au.......................................................... Il est établi en quatre (4) exemplaires qui seront adressés au Directeur Général de l'OCBN. Chaque exemplaire doit être revêtu de la signature du Transporteur précédée de la mention "Lu et accepté" suivie de la date.

COTONOU, LE

Le Transporteur,

LE DIRECTEUR GENERAL DE L'OCBN,
Décret N° 79-109 du 15 Mai 1979
réglementant les Transports Routiers en République Populaire du Bénin

LE PRÉSIDENT DE LA RÉPUBLIQUE,
CHEF DE L'ÉTAT, CHEF DU GOUVERNEMENT,

VU l'ordonnance n° 77-32 du 9 Septembre 1977, portant promulgation de la Loi Fondamentale de la République Populaire du Bénin ;

VU le décret n° 76-26 du 30 Janvier 1976, portant formation du Gouvernement et le décret n° 76-173 du 6 Juillet 1976 qui l'a modifié ;

VU le décret n° 76-46 du 19 Février 1976, déterminant les Services rattachés à la Présidence de la République et fixant les attributions des membres du Gouvernement modifié par le décret n° 78-174 du 6 Juillet 1978 ;

VU le décret n° 69-135/FM/FPFTPT du 7 Juin 1969, portant création de la Direction des Transports Terrestres ;

VU la Convention réglementant les Transports Routiers entre la République Populaire du Bénin et les Républiques de Côte d'Ivoire, de Haute-Volta, du Niger et du Togo signée à Niamey le 5 Décembre 1970 ;

SUR proposition du Ministre des Transports ;
Le Conseil des Ministres entend en sa séance du 18 Avril 1979,

D É C R É T E .

T I T R E 1

DES DISPOSITIONS GÉNÉRALES

Article 1er. - Le présent décret a pour objet de réglementer le Transport Routier de marchandises et de voyageurs en République Populaire du Bénin. Ses dispositions s'appliquant à tout transport public ou privé, de marchandises ou de voyageurs, effectué soit sur le territoire de la République Populaire du Bénin, soit à partir d'un point de la République Populaire du Bénin à destination d'un Pays tiers ou encore en provenance d'un pays étranger à destination d'un point de la République Populaire du Bénin.

Article 2. - Pour l'application des dispositions du présent décret, il convient d'entendre par :

"Véhicule Routier" non seulement tout matériel à moteur automobile, mais également toute remorque ou semi-remorque conçue pour être attelée à un tel véhicule.

"Conteneur" tout engin de transport (citerne, citerne ou autre)
1°/- ayant un caractère permanent et destiné à permettre un usage répété ;
2°/- conçu spécialement pour faciliter le transport de marchandises sans rupture de charge par un ou plusieurs moyens de transports ;
3°/- muni de dispositifs facilitant la manipulation notamment lors des transbordements ;
4°/- conçu de façon à être facile à vider et à remplir ;
5°/- d'un volume intérieur d'au moins un mètre cube.

**TITRE II**

DE LA RÉGLEMENTATION DES AUTORISATIONS DE TRANSPORTS

**Article 3.** Tout transporteur public de marchandises ou de voyageurs doit être muni d'une autorisation de transport délivrée par le Ministre chargé des Transports à la suite d'une demande adressée au Directeur des Transports Terrestres après avis de la Commission Spéciale prévue à l'article 8.

**Article 4.** Toute demande d'autorisation de Transport public de marchandises ou de voyageurs doit être établie par écrit en double exemplaires sur des formulaires fournis par la Direction des Transports Terrestres et accompagnée de toutes les pièces requises.

Il en est de même des demandes de modification de Transport ou d'autorisation temporaire ou spéciale.

Aucune demande d'autorisation temporaire ne sera prise en considération à moins qu'elle n'accompagne une demande d'autorisation permanente estimée complète par la Direction des Transports Terrestres et qu'elle ne soit appuyée d'une preuve établissant l'urgence du service demandé.

Une autorisation de Transport spéciale pourra être accordée pour répondre à un besoin exceptionnel ne requérant pas la délivrance d'une autorisation permanente.

**Article 5.** Chaque autorisation stipule la classe de l'autorisation, le service prévu, les restrictions et conditions, l'itinéraire.

A moins de stipulations expresses contraires, l'autorisation est en outre soumise à toutes les prescriptions du présent décret ainsi qu'aux règlements généraux régissant les Transports en République Populaire du Bénin.

**Article 6.** Les autorisations de transport public sont annuelles et sont renouvelables chaque année, avant le premier Juillet, sur demande établie à cet effet, accompagnée de toutes les pièces requises. Elles donneront lieu à la délivrance d'une carte de Transports.

Les Transporteurs effectuant des Transports Internationaux seront titulaires d'une carte spéciale, en Français et en Anglais, conformément aux dispositions de la Convention T.I.E.

**Article 7.** Les autorisations ne sont valables que lorsque le Transport est effectué par un véhicule immatriculé au nom du titulaire de l'autorisation sauf le cas où il est expressément autorisé par la Direction des Transports Terrestres à utiliser les véhicules de location.

**Article 8.** La Commission Spéciale prévue à l'article 3 ci-avant est composée comme suit :
- Le Ministre des Transports ou son représentant : Président
- Le Directeur des Transports Terrestres : Membre
- Le Directeur Général de TRANS-BENIN : Membre
- Le Directeur Général de l'Organisation Commune Bénin-Niger (OCBN) : Membre
- Le Directeur des Routes et Ponts : Membre
- Deux Représentants du Syndicat des Transporteurs Privés : Membre
- Le Secrétaire Général de la Chambre de Commerce et d'Industrie : Membre
- Un Représentant du Centre National des Bureaux de Frêt : Membre

TITRE III
DE LA LETTRE DE VOITURE OU CONNAISSANCE

Article 9.- Tout détenteur d'autorisation de Transport public de marchandises doit signer avec quiconque lui confie des marchandises à transporter, une lettre de voituré ou connaissance d'un modèle agréé par le Ministère des Transports.

Lorsqu'il s'agira de transports inter-État, cette lettre de voiture sera conforme à un modèle spécial rédigé en langue française et en langue anglaise.

Article 10.- Les Transports privés de marchandises feront l'objet d'une lettre de voiture de même que ci-dessus.

Article 11.- Tout conducteur de véhicule qui transporte des marchandises pour lesquelles des lettres de voiture ont été émises doit porter avec lui des copies de la lettre de voiture et tout autre document récapitulant le nombre de lettres de voiture émises pour les marchandises transportées.

Article 12.- Les copies de toutes les lettres de voiture émises doivent être conservées au Centre National des Bureaux de Frêt pour des fins statistiques.

Article 13.- Les lettres de voiture émises à l'occasion des Transports tant publics que privés doivent être conservées par leurs détenteurs (Transporteurs, expéditeurs et réceptionnaires) pendant un délai de 5 ans et doivent, sur demande, être mises à la disposition des représentants du Centre National des Bureaux de Frêt, de la Direction des Transports Terrestres ou de tout autre organisme officiel.

TITRE IV
DE L'EXPLOITATION DE L'AUTORISATION DE TRANSPORT

Article 14.- Le détenteur d'une autorisation de transport public ne doit utiliser que des véhicules immatriculés en son nom et conduits par lui même ou par ses employés sauf application des dispositions de l'article 15 et suivants ci-après.

Article 15.- Tout titulaire d'autorisation de transport public qui désire prendre en location des véhicules tracteurs pour l'exploitation de son Permis doit y être expressément autorisé par une décision du Ministre des Transports conformément aux dispositions de l'article 20 et suivants du présent décret.

Article 16.- Tout titulaire d'autorisation de transport public qui désire prendre en location des remorques et semi-remorques pour l'exploitation de son autorisation doit
article 17.- Tout titulaire d'autorisation de transport public peut agir comme un courrier en transport et demander des lettres de voiture couvrant un transport au-delà des limites de l'itinéraire qu'il est autorisé à desservir dans les conditions ci-après :

a) Les marchandises sont transportées en partie sur l'itinéraire qu'il desser.

b) Le transbordement des marchandises est fait conformément aux dispositions du présent décret.

c) Le transbordement est fait entre des véhicules appartenant à des transporteurs titulaires d'autorisation de transport public.

article 18.- Tout véhicule de transport de fret, (camion, tracteur, remorque, semiroulier ou autres) utilisé dans le cadre de l'exploitation d'une autorisation de transport public, doit avoir en permanence, affiché ou peint sur les deux côtés et en vue en lettre et en chiffre d'au moins cinq centimètres de hauteur, le nom de l'exploitant et le numéro de l'autorisation de transport (l'inscription de l'adresse du transporteur n'est pas obligatoire).

article 19.- Tout véhicule de transport de passagers, utilisé dans le cadre de l'exploitation d'une autorisation de transport public, doit admettre un nombre maximum de voyageurs déterminé par les normes suivantes :

- 40 cm de largeur par place de passager.
- 60 cm d'espacement entre les dossiers des sièges.
- 70 kg de poids moyen des passagers.

Pour les véhicules transportant plus de 9 passagers, il doit être prévu, sur les accès, un couloir central de 40 cm de largeur minimum.

Il est admis une franchise de 30 kilos de bagages par passagers.

Les enfants de 5 à 12 ans comptent comme demi passagers lorsque leur nombre dépasse pas six. Les enfants au dessous de 5 ans, n'étant pas pris en compte.

article 20.- A condition d'en avoir obtenu l'autorisation expresse et écrite de la Direction des Transports Terrestres, un transporteur titulaire d'une autorisation de transport public peut prendre en location des véhicules et les utiliser dans le cadre de l'exploitation de son autorisation sous les réserves suivantes :

a) le nombre total de véhicules, tracteurs ou tractées) ne doit pas dépasser 20 % de son propre parc.

b) le nombre total de véhicules tracteurs ne doit pas dépasser 20 % du nombre de véhicules tractés enregistré à la Direction des Transports Terrestres.

article 21.- En cas d'urgence, un transporteur routier titulaire d'une autorisation de transport public peut obtenir de la Direction des Transports Terrestres, l'autorisation de prendre en location à court terme (moins d'un an) des véhicules tracteurs pour l'exploitation de son autorisation à concurrence de deux véhicules à la fois.

article 22.- La demande écrite pour obtenir l'autorisation de location de véhicule tracteur doit être accompagnée du projet de contrat de location en 3 exemplaires dont sera déposé à la Direction des Transports Terrestres.
Article 23.- À moins de stipulation contraire, une autorisation de transport public ne couvre pas les Transports spéciaux tels que transports par fardier camion citerne, camion isotherme, camion blindé, véhicules spécialement aménagés pour le déménagement, ou pour le transport de véhicules automobiles ou pour le vrac solide, etc... qui doivent faire l'objet d'autorisations spécifiques.

Article 24.- Une autorisation de transport public confère à son titulaire le privilège à exploiter une Entreprise de Transport.

Cette exploitation doit se faire dans le cadre des textes législatifs et réglementaires en vigueur.

Article 25.- Une autorisation de transport public impose à son titulaire l'obligation de donner le service pour lequel il a été obtenu. Toute autorisation non exploitée pourra être retirée à tout moment par décision du Ministre chargé des Transports sur proposition du Directeur des Transports Terrestres.

Article 26.- Un titulaire d'autorisation de transport public ne peut conclure aucune entente ou aucun contrat avec un transporteur pour un transport nécessitant la possession d'une autorisation en dehors des conditions ci-après :

a) agir en qualité de courtier expressément autorisé à cet effet ;
b) dans les conditions prévues à l'article 17 du présent décret ;
c) y avoir été expressément autorisé par une décision écrite de la Direction des Transports Terrestres.

TITRE V
DE LA TARIFICATION ET DE LA CLASSIFICATION

LA TARIFICATION :

Article 27.- Tout titulaire d'autorisation public doit déposer à la Direction des Transports Terrestres en triple exemplaire les tarifs pratiqués ainsi que les classifications des marchandises.

Toute liste de tarif doit être datée et signée et doit en outre porter un numéro de série propre au transporteur.

Tarifs et classifications doivent être conformes aux dispositions en vigueur et faire l'objet d'une acceptation par la Direction des Transports Terrestres avant d'entrer en application.

LA CLASSIFICATION :

Article 28.- Les diverses autorisations de transport public sont réparties suivant les classifications ci-après :

1°/- d'après la nature des autorisations :
   a) - Transport Général
   b) - Transport restreint
   c) - Courtier en transport

2°/- d'après les services rendus :
   a) - Service local
b) Service moyenne distance

2°) Service longue distance

   i) Tous itinéraires sur le territoire national
   ii) International.

3°) d'après la fréquence :

   a) Service régulier
   b) Service irrégulier.

4°) transports spécialisés :

   a) Produits laitiers
   b) Produits dangereux
   c) Par fardier
   d) Par camion citerne
   e) Par camion isotherme
   f) Par camion blindé
   g) Par véhicule aménagé pour le déménagement
   h) Par véhicule équipé pour le transport de véhicule automobile.

Article 29. - Un transporteur routier peut être titulaire d'autorisation de classe différente, il devra se conformer à la réglementation définie ci-après pour chaque classe d'autorisation.

TITRE VI

DE LA SPECIFICATION DES AUTORISATIONS

L'AUTORISATION GENERALE

Article 30. - L'autorisation générale donne au titulaire le droit de transporter toutes marchandises diverses à l'exception de celles nécessitant une autorisation spéciale.

L'AUTORISATION RESTREINTE

Article 31. - L'autorisation restreinte ne concerne que certaines espèces de marchandises soit qu'elles nécessitent un équipement spécial soit qu'elles sont transportées pour le compte d'un ou de plusieurs expéditeurs spécifiques.

Toutes les autorisations spécialisées sont, par leur nature, des autorisations restreintes.

L'AUTORISATION DE TRANSPORT SUR CONTRAT

Article 32. - Cette autorisation permet le transport de marchandises pour le compte d'une personne ou d'une firme donnée, stipulée dans le texte de l'autorisation.

Elle n'est valable que pour la durée du contrat dont copie est déposée à la Direction des Transports Terrestres.
Lorsque l'opération dépasse la durée d'une année, ce contrat doit être renouvelé chaque année à l'occasion du renouvellement de l'autorisation.

La fin du contrat entraîne l'annulation de l'autorisation.

De tels contrats sont soumis à la surveillance de la Direction des Transports Terrestres qui doit vérifier si les tarifs prévus sont justes et raisonnables, il s'agit d'une opération économiquement saine et si cette opération a des répercussions anormales sur les services fournis par les titulaires d'autorisation générale.

L'AUTORISATION DE TRANSPORT PAR REMORQUAGE

Article 33. - Cette autorisation permet à une entreprise de transport possédant des tracteurs routiers de tracter une remorque ou une semi-remorque appartenant à un autre transporteur titulaire d'une autorisation de transport.

Les itinéraires sur lesquels ce remorquage est autorisé doivent être spécifiés dans l'autorisation.

La demande d'autorisation de transport par remorquage doit être introduite conjointement par les deux transporteurs et déposée en triple exemplaire.

Cette demande doit être appuyée du contrat conclu entre les deux parties sur ce genre de service.

Ce contrat doit être renouvelé annuellement à l'occasion du renouvellement de l'autorisation.

Les autorisations qui sont connexes prennent fin avec la fin du contrat.

L'AUTORISATION DE TRANSPORT VOYAGEURS

Article 34. - Tout transport public de voyageurs inter-urbain est sujet à une autorisation de transport.

TITRE VII
DE LA SPECIFICATION DES SERVICES

Le Service "Local"

Article 35. - L'autorisation pour service local concerne les opérations suivantes :

a) Service limité à la localité indiquée dans l'autorisation

b) Dans un rayon de (50 km) autour du lieu indiqué dans l'autorisation avec droit de chargement au retour.

c) D'un point quelconque à un autre pourvu qu'ils soient tous deux situés une distance de 50 km du lieu indiqué dans l'autorisation.

Une telle autorisation n'est accordée qu'à un transporteur qui a domicilié son entreprise au lieu mentionné dans l'autorisation ou à une distance de moins de 50 m de ce lieu.

Le service local peut être régulier ou irrégulier.
LE SERVICE "MOYENNE DISTANCE"

Article 36. - Cette autorisation concerne les transports effectués dans un rayon de 0 km du lieu d'implantation principale de l'Entreprise.

LE SERVICE "LONGUE DISTANCE"

Article 37. - L'autorisation de transport public longue distance comporte deux aspects :

a) transports publics longue distance nationaux, qui concerne les transports longue distance dont les points de départ et d'arrivée sont situés sur le territoire national au-delà de 200 km ;

b) tous transports publics longue distance internationaux, qui concernent tout transport dont le point de départ ou d'arrivée sont situés au-delà des frontières du territoire national.

TITRE VIII
DE LA SPECIFICATION DES FREQUENCES

Le Service "Régulier"

Article 38. - L'expression service régulier signifie que le transport autorisé doit être effectué à des heures, jours, semaines ou intervalles fixes ou déterminés, portés à la connaissance des usagers.

Le titulaire d'une autorisation de service régulier doit assurer le transport suivant la périodicité prévue quelque soit le niveau de remplissage atteint.

Le Service "Ir régulier"

Article 39. - L'expression service irrégulier s'applique aux transports qui ne sont pas obligés de respecter une régularité donnée.

Le titulaire d'une telle autorisation n'est obligé de mettre à la disposition du public que les moyens de transports prévus et d'effectuer le transport du fret qui lui est offert dans le respect de la tarification agréée.

TITRE IX
DES TRANSPORTS SPECIALISES

Article 40. - Chaque transport spécialisé doit faire l'objet d'une autorisation spéciale qui précisera les conditions particulières spécifiques à chaque cas.

Ces autorisations ne sont accordées qu'aux transporteurs qui sont en mesure de prouver qu'ils possèdent l'équipement adéquat et disposent d'une main-d'œuvre spécialisée.

LES MARCHANDISES DANGEREUSES

Article 41. - Nul n'a le droit de transporter des marchandises dangereuses s'il n'est titulaire d'une autorisation spéciale délivrée à cet effet et spécifiant la classe de la marchandise concernée.

.../.....
Le transporteur désirant obtenir une autorisation de transport de produits dangereux doit justifier qu'il possède le matériel spécialement adopté à ce genre de transport et du personnel qualifié pour l'utilisation de ce matériel.

Le transport d'explosif est en outre soumis à un permis spécial délivré par l'OBBEMINES en application des textes en vigueur.

Les matières dangereuses sont classées en 7 classes définies ci-après :

A.- LES MARCHANDISES SOLIDES
- Classe 1 : les marchandises sujets à explosion
- Classe 2 : les marchandises sujets à inflammation spontanée
- Classe 3 : les marchandises inflammables et comburantes
- Classe 4 : les marchandises toxiques
- Classe 5 : les marchandises corrosives
- Classe 6 : les marchandises infectes
- Classe 7 : Les marchandises radioactives.

B.- LES MARCHANDISES LIQUIDES

* Groupe B1 : Liquide ayant un point d'éclair inférieur ou égal à 21°C
* Groupe B2 : Liquide ayant un point d'éclair compris entre 21°C et 55°C
* Groupe C : Liquide ayant un point d'éclair compris entre 55°C et 100°C

TITRE X
DE LA POLICE D'ASSURANCE OBLIGATIONS ET SANCTIONS

Article 42.- Sous peine de se voir retirer les autorisations prévues au Titre III du présent décret, tout titulaire d'autorisation de transport public doit souscrire, conformément à la législation en vigueur, une police d'assurance couvrant les dommages au tiers et à la marchandise. Cette police d'assurance devra couvrir sans limitation de somme, dans le cadre des transports de voyageurs, les dommages causés aux personnes transportées lorsque le permis catégorie "Transport en Commun" est exigible pour la conduite du véhicule concerné.

Les titulaires d'autorisation de transport de voyageurs, exploitant des véhicules pour lesquels le permis "D" n'est pas exigé, devront contracter une police d'assurance sans limitation de somme couvrant les risques corporels pour la totalité des places offertes aux passagers.

TITRE XI
DES DISPOSITIONS FINALES

Article 43.- Le Ministre chargé des Transports fixera par arrêté les modalités d'application des dispositions du présent décret.