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**Logistics Contracts: Outdated International
Regulation?**

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Introduction

As the title suggests, the main issue of this paper is to raise the question of whether the current international legal framework is fitted to rule over Logistics Contracts (LCs)¹ or not, analysing its nature as a *Sui Generis*² one, with its own identity and distinct from other commercial contracts.

It is important to highlight the key role that UNCITRAL³ may have on the regulatory harmonisation process for LCs. It seems to be the natural institution to coordinate and boost the potential modifications over the current international legal framework regarding them.

In this paper, LCs will mean: *those commercial contracts by which logistics services providers perform “logistics services” such as transport, warehousing, handling of goods in general (among others) to cargo owners (usually producers of goods).*

Nowadays the international logistics services providers offer a wide range of services to meet the needs of international trading companies on a worldwide basis. Cargo owners need someone with expertise to treat their goods in an efficient way to enable the final delivery for consumption and as a consequence of that, logistics operators have become more aware of their clients' needs usually assuming the role of real partners in their businesses.

Within this document those companies moving freight around the world will be broadly called “Logistics Operator” (LO)⁴ with a focus on big LCs handling a significant number of goods.

In order to shed light on the potential need of specific international regulation and probably some harmonization as well, the first stage of the analysis will allow to assess whether or not LCs should be considered as *Sui Generis* contracts even when the doctrine and most of the national and international regulations do not give this special categorization to them.

The intention of this document is to highlight the importance of logistics as an economic activity in a global international trade context and to provide the reader with some key elements which might enable him to consider the LC as an independent commercial contract with a *Sui Generis* nature. It will take into account the potential inefficient or insufficient regulation for these contracts in some local jurisdictions and international conventions.

¹ Or “LCs” for plural.

² C. O. S Mawson, *Dictionary of Foreign Terms*, (2 ed., New York: Thomas Y. Crowell Company, ISBN 0-690-00171-1, 1975, p.328): “*Sui Generis*: Of its (his, her, or their) own kind; in a class by itself; unique”.

³ United Nations Commission on International Trade Law

⁴ Or “LOs” for plural.

Chapter 1: Logistics, Pure logistics services and LC concept

Section 1.1.: Logistics Concept:

Etymologically, the word “*logistics*” comes from “*logisticus*”⁵ (Medieval Latin) meaning “*of calculation*” and from the Greek “*logistikos*”⁶ (λογιστικός), meaning “*skilled in calculating*” while the Oxford dictionary on-line defines it as “*the detailed organization and implementation of a complex operation*”⁷.

Moreover, the European Logistics Association defines it as “*the organization, planning, control and execution of the goods flow from development and purchasing, through production and distribution, to the final customer in order to satisfy the requirements of the market at minimum costs and capital use*”⁸. The modern concept of logistics derives from the French “*logistique*”⁹ as France was one of the first countries to implement the term in the way it is recognized nowadays.

Within the commercial field, until the early 80’s, transportation of goods, their distribution and the different systems of warehousing, were organized in a relatively independent way.

As the world became more globalized, the different processes of production that had been implemented among different countries geographically located in distant parts of the planet ended up in a more cohesive reality.

Nowadays, it can be affirmed that logistics is the major enabler of our economy and lifestyle.

All the goods manufactured need to be located close to consumers and most of the time this task is usually a really complex one.

Furthermore, regarding the European Union countries, the 2015 Report of the European Commission, affirmed that the whole European logistics market size (including the EU28 countries) amounted to about € 878 bn in 2012.¹⁰

These brief references clearly show the importance of the logistics activity in the commercial markets of those jurisdictions considered in the present document.

⁵ Love to Know Corp. - Your Dictionary, ‘Logistic’ definition: <<http://www.yourdictionary.com/logistic>> accessed 30 July 2016.

⁶ E. H. Pflugfelder, *Communicating Mobility and Technology, a material rhetoric for persuasive for transportation*, (Routledge. Pg 87).

⁷ Oxford University Press - Oxford Dictionary, ‘Logistics’ definition: <<http://www.oxforddictionaries.com/definition/english/logistics>> accessed 30 July 2016.

⁸ Concargo Pty (Ltd), ‘Definition of Logistics’: <<http://www.concarga.com/client-lounge/definitions/logistics/>> accessed 30 July 2016.

⁹ Larousse Dictionary, ‘Logistique’ definition: <<http://www.larousse.fr/dictionnaires/francais/logistique/47678>> accessed 30 July 2016.

¹⁰ European Commission Report, ‘Logistics and Multimodal Transport’: <http://ec.europa.eu/transport/themes/logistics_multimodal/logistics/index_en.htm> accessed 30 July 2016.

Therefore, it is clear that during the last decades the concept of logistics has been modified in order to provide a comprehensive service to cargo owners.

The traditional services of carriage of goods and warehousing are no longer considered as individual services when a complex logistics operation system is implemented. Indeed there are much more tailor made services particularly linked to them and of a pure logistics nature that the LO performs in order to offer general handling of goods within a certain timeframe according to the requirements of the cargo owner.

Regarding the extension of this paper, the contracts of Carriage of Goods and Warehousing, which are almost always present on LCs, are not going to be discussed.

These are regulated contracts in the international framework and later on some brief references will be provided. Instead, pure logistics services will be described as follows.

Section 2.1: Pure logistics services: Brief overview

Sub-Section 2.1.1: Cross Docking¹¹

Cross Docking can be defined as a logistics service:

[W]here products from a supplier or manufacturing plant are distributed directly to a customer or retail chain with marginal to no handling or storage time. Cross docking takes place in a distribution docking terminal; usually consisting of trucks and dock doors on two (inbound and outbound) sides with minimal storage space. The name ‘cross docking’ explains the process of receiving products through an inbound dock and then transferring them across the dock to the outbound transportation dock.¹²

In order to implement this particular service as a logistics operation, it is important for the cargo owner to analyse how it will impact on the improvement of his business.

Some classic examples to implement this logistics model are cases in which food is involved. Food needs to be kept at a certain temperature and to be transported within a short time-frame. For cases involving already packaged goods which need to be delivered to certain clients of the cargo owner on a regular basis under specific instructions which are usually non compatible with normal storage of goods, Cross Docking is deemed as a really interesting logistics solution.

¹¹ Adaptalift, ‘Logistics and Materials Handling Blogs’ : [<http://www.aalhysterforklifts.com.au/index.php/about/blog-post/what-is-cross-docking-understanding-the-concept-definition>](http://www.aalhysterforklifts.com.au/index.php/about/blog-post/what-is-cross-docking-understanding-the-concept-definition) accessed 30 July 2016.

¹² Ibid.

Sub-Section 2.1.2: Material handling (picking)¹³

The material handling of the goods is an essential service in every logistics operation.

It means the general classification, allocation and particularly the way by which goods will be “collected” when dispatch is necessary.

There are different “systems” by which these tasks can be performed by the LO and certain software will be always necessary to implement them. It will depend on which software is available to determine which system can be implemented regarding each particular LC.

Sub-Section 2.1.3: Packaging, Inventory and Security

- Packaging: The cargo owner may not have the expertise to assume the role of “allocating” the goods to the correct path and it could be costly to prepare the goods either for consumption or storage.

The LO will contribute to allocated the goods either for storage or final consumption.

This service is usually associated with other logistics services and it is an important part of most LCs. The process of treatment of scrap is usually linked to this service of logistics operations.

- Inventory:¹⁴ Inventory costs are usually a big concern of every cargo owner and LO.

From the cargo owner perspective, he is trusting the LO to handle his goods during a certain period of time on a specific route and he wants to have total control of what is going on during the storage stage.

From the perspective of LOs, it is a big concern since he assumed the liability in case of any loss or damage and he will be interested in keeping a certain control over his stock.

Different software is used for these aims and details will depend on each single LC.

- Security: Security services are often being offered by LOs as a complement of the main logistics services since cargo owners are concerned about the security of their goods.

Even when the LO assumes his duty of care over the goods, there are some circumstances in which, even when insurance policies had been obtained for that specific purpose, the cargo owner will be happy to know that security services can strengthen the preservation of his goods.

Section 3: LC Concept

¹³ The Logistics Business Ltd., ‘Order Picking: How efficient is your system?’ : <<http://www.logistics.co.uk/order-picking-how-efficient-is-your-system/>> accessed 30 July 2016.

¹⁴ The Logistics Business Ltd., ‘Inventory Optimization’: <<http://www.logistics.co.uk/products/inventory-optimisation/>> accessed 30 July 2016.

As previously defined, the LC is as a commercial contract by which the LO agrees to perform certain logistics services in favour of the cargo owner for consideration.

Regarding the logistics services mentioned in the provided definition, it is important to highlight the fact that it will depend on the requirements of each cargo owner. Furthermore, there are some services that are mainly present on every LC: these are the traditional carriage of goods and warehousing services which are going to be discussed later on.

On the other hand, all those logistics services exclusively provided by the LO have been examined as well. Those services basically consist of the handling of goods in a certain way that permits to allocate them within a certain timeframe and way as already instructed by the cargo owner. It is important to mention that the scope of the services included in the LC is not always clearly described on it and sometimes certain issues can arise during the term of the contract related with certain common confusions usually from the cargo owner's perspective.

A good example could be within the service of warehousing¹⁵. Worldwide cargo owners usually consider that this service includes a comprehensive service of the handling of goods. It is an 'all inclusive' service since the goods stay at the warehouse up to the moment that they are picked up. On the contrary, for the LO this service means just the service of storage of goods. Additional services involving handling should be clearly provided on the contract in order to avoid any kind of misunderstanding.

Even when the LC is tailor made for every particular case, there are certain clauses that are always present on every single LC - or should be- and somehow these can be deemed as “mandatory” elements for any LC.

Considering the required limitations regarding the extension of this paper some of them will be just mentioned as follows: Minimum volumes, Liability for damages of the Goods clauses¹⁶, KPI (Key Performance Indicators)¹⁷, Contract term and termination clause¹⁸, Choice of law and Court clause¹⁹ and the Insurance clause²⁰.

¹⁵ DSV, 'Logistics Contract Negotiation': <<http://www.uk.dsv.com/logistics-solutions/Expert-Insights/Logistics-Contract-Negotiation>> accessed 30 July 2016.

¹⁶ See n 15.

¹⁷ Oxford University Press - Oxford Dictionary: 'Key Performance Indicator' definition: <<http://www.oxforddictionaries.com/definition/english/key-performance-indicator>> accessed 30 July 2016.

¹⁸ See n 15.

¹⁹ See n 15.

²⁰ See n 15.

Chapter 2: LC Regulation: International Overview

Section 2.1: International Approach

The LC can be analysed from a local approach within different jurisdictions but as there is usually an international element in every big logistics operation - even more when our work is focusing on big LOs – the relevant international legal framework will be highlighted in this section.

As Diplock LJ stated in the English *Fothergill* case²¹ supporting the idea that international conventions should be interpreted considering the international origins of the rules and not being limited by the rigid local legislations,²² regardless of the factual possibility of applying different legal approaches for international LCs, when analysing the international framework for LCs in detail, there is no direct reference to this contract among the current international conventions. Therefore it can sometimes be difficult to adapt certain legal concepts and rules extracted from regulations aimed to rule on different commercial contracts such as international carriage of goods.

Firstly, it is necessary to highlight once again the idea that, within most of the European countries the LC has not been considered as such by local regulations and somehow, as a result of that, international conventions are mostly not even applying the concept of “logistics”.

It is interesting to consider the Swedish approach in regards to this issue since the question of the possibility of applying international conventions on carriage of goods to LCs has been strongly debated in Scandinavian legal literature²³ and is yet unresolved by case law²⁴.

Within the European international context, two different legal conceptions seem to coexist when considering the nature of LCs.

According to one of them the LC is mainly a contract of carriage of goods with additional services and according to the other one the LC is a totally different contract from the carriage

²¹ *Fothergill v Monarch Airlines Ltd - House Of Lords* 2 [1981] AC 251; [1980] 2 All ER 696; [1980] 3 WLR 209; [1980] 2 Lloyd's Rep 295, (33 ICLQ 797): “*The language of an international convention has not been chosen by an English parliamentary draftsman. It is neither couched in the conventional English legislative idiom nor designed to be construed exclusively by English Judges. It is addressed to a much wider and more varied judicial audience than is an Act of Parliament that deals with purely domestic law. It should be interpreted as Lord Wilberforce put it in James Buchanan & Co*”.

²² M. Hoeks, *Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods*, (Kluwer International 2010, pg. 134).

²³ V. Ulfbeck: ‘Contracts of Logistics under the Rotterdam Rules’, (The journal of International Maritime Law, Vol. 17, 2011, p. 219).

²⁴ *Ibid* (p. 220).

of goods by which different logistics services are efficiently settled and performed following certain instructions of the cargo owner and in a certain timeframe.

The latter approach seems to be more comprehensive considering how the LC works in real legal practice nowadays. Furthermore, as will be described later, German Standard Terms for contracting usually apply a similar approach categorizing the LC under the concept of “mixed contracts”²⁵. Thus, rules for carriage of goods will apply for the actual performance of carriage under the scope of the LC and other specific regulations will apply for those other services considered under the LC such as warehousing, security, etc.

As mentioned above, within the international framework it is hard find even a brief reference to the “logistics” activity. This is the case since, even though this industry has become a key aspect of the international economic activity, most legal practitioners and LOs are still considering LCs either as a contract of carriage of goods and/or a warehousing one; and the lack of specificity in international regulations seems to reflect that.

Among the main international conventions that are nowadays applied to LCs the following regulations are usually considered:

- Hague Visby Rules²⁶ and Hamburg Rules²⁷: may apply to international carriage of goods by sea where LOs and/or cargo owners are based on signatories countries of these conventions depending the scope of each particular LC. The limits of liability stated on the Hague Visby Rules are usually taken into account by the parties when analysing pros and cons among other aspects.²⁸
- International Convention of Multimodal Transport 1980 United Nations Convention on International Multimodal Transport of Goods (Geneva, 24 May

²⁵ Ibid (p.221).

²⁶ The Hague-Visby Rules - The Hague Rules as Amended by the Brussels Protocol 1968. Article X: “The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if (a) the bill of lading is issued in a contracting State, or (b) the carriage is from a port in a contracting State, or (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract; whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person”.

²⁷ United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules") Article 2. Scope of application 1: “The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if: (a) the port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or (b) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or (c) one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or (d) the bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or (e) the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract”.

²⁸ See n 21.

1980) United Nations (UN) (ICMT): The ICMT seems to be the first international attempt to consider global and complex logistics operations by considering different means of transport for international carriage of goods contracts. Its art. 1 defines the “international multimodal transport” as: *“the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken over by the multimodal transport operator to a place designated for delivery situated in a different country”*.

Even though this convention is not taking a comprehensive approach in relation to international logistics, since it only refers to the international carriage of goods, it is necessary to recognize that, ruling on different means of transport, contributed to shed light on the legal framework of international logistics which usually includes more than one means of transport.

- Convention on the Contract for the International Carriage of Goods by Road (CMR) - (Geneva, 19 May 1956) United Nations (UN).²⁹ Regarding transportation of goods by road, the Convention for the CMR applies to almost all the transportation of goods within the countries of the EU.³⁰
- United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules 2009): The Rotterdam Rules need to be mentioned as part of this section since, even when they have not been enforced yet, it is the most recent convention aimed to govern the international carriage (totally or partly) by sea which is a key means of transport usually included in international LCs.

The inclusion of the possibility of warehousing on the Port Terminal³¹ can be considered as an important progress of ruling over LCs. It seems to be the first time that carriage of goods has not been regulated by an isolated contract as was the case on previous occasions. As a consequence the wording of this convention can be deemed to be a closer approach to logistics operations as they are actually performed nowadays.

²⁹ International Carriage of Goods by Road (CMR) - (Geneva, 19 May 1956) United Nations (UN): Chapter 1 - Scope of Application, Article 1 1: *“This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.”*

³⁰ B. Soyer and A. Tettenborn: ‘Carriage of goods by sea, land and air: unimodal and multimodal transport in the 21st century’, (Abingdon: Informa Law, 2014, pg.254).

³¹ Rotterdam Rules: Art. 1.7: *“Maritime performing party: A performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area”*.

Regardless of that, several problems have been detected regarding some mandatory rules that this convention imposes on the cargo owner/shipper such as “*delivery ready for carriage*”³² or the mandatory rule about providing information of the goods.³³ Therefore, if one of the main features of the Rotterdam Rules was to transfer liability from the cargo owner/shipper to the LO, these rules are likely to raise different legal issues especially in those cases where logistics services has been totally outsourced by the LO. Some examples are the lack of “necessary information” by the cargo owner/shipper for the general handling of the goods or the factual impossibility of the cargo owner/shipper to do the “delivery ready for carriage”³⁴ when all the packaging is undertaken by the LO.

Considering the required limitations regarding the extension of this paper, it is not possible to provide details of different local approaches. Regardless of that, jurisdictions such as France³⁵, England, Germany³⁶, Sweden³⁷ and Uruguay³⁸ have been researched and it is necessary to mention that there is currently no local legal system including a particular regulation on LC’s. Instead, the rules on the contracts of carriage of goods and warehousing will generally apply to LCs.

³² Rotterdam Rules. Art. 27: “Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property”.

³³ Rotterdam Rules Art. 29: “Shipper’s obligation to provide information, instructions and documents: 1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary: (a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and (b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires. 2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage”.

³⁴ See n 60 (p.221-222).

³⁵ Khezami S., ‘Le Contrat de Logistique’, (Centre de Droit Maritime et des Transports, Université de Droit D’économie et des Sciences D’Aix –Marseille); Kembeu J., ‘Le contrat de prestations logistiques, contrat complexe ou contrat sui generis? Etude de la notion et du régime du contrat de prestations logistiques’, (14ème Journée doctorale en transport, Ecole Nationale des Ponts et Chaussées) <http://afitl.ish-lyon.cnrs.fr/tl_files/documents/vie-association/journee-doctorale/presentations2009/Jacques_Kembeu.pdf> accessed 08 January 2017.

³⁶ DSLV – Deutscher Speditions- und Logistikverband e.V. (German Association for freight forwarding and logistics), ‘General terms and conditions of logistics-services providers’<<http://www.jcl-logistics.com/assets/PDF/AGB/LogistikAGBEnglisch.pdf>> accessed 08 January 2017

³⁷ Forslund H.: ‘Logistics service performance contracts: design, contents and effects’, (School of Management and Economics, Växjö University, Växjö, Sweden, Emerald 2008); Ramber J., ‘The Future of Transport operators and Service Providers’, (Heinonline, 46 Scandinavian Stud. L. 135 2004); Olander M. and Norrman A.: ‘Legal analysis of a contract for advanced logistics services’, (Lund University, Lund, Sweden, Emerald 2012).

³⁸ INALOG: <<http://www.inalog.org.uy/>> accessed 08 January 2017

Chapter 3: Specificity of the LC Object

As was mentioned previously there are different services included on every LC. At least either the service of carriage of goods or warehousing will be always present in a LC.

These are *modalities* of LCs and not contracts themselves when considering logistics operations.

Additionally, the LC should not be considered as a mere juxtaposition of logistics services; on the contrary it should be deemed as a really precise commercial contract which efficiently connects different services in a logistic way in order to make the supply chain work properly according to the needs of the cargo owner.

What is intended to be established is the nature of the LC and the analysis of *the specificity of its object* can help to determine it. As mentioned previously, there is a large variety of services that could be included under a LC: *carriage of goods, warehousing, material handling (Picking, etc.), inventory, packaging* and often *security*.

The real possibility of adapting the main object of the contract while the contract conserves its own identity as LC ; and more important, the fact that there are different services of a logistics nature which efficiently connect logistics services considering not only taking goods from “A” to “B” as the traditional models suggested, but also doing so in conformity with a certain schedule and with the particular rhythm of the cargo owner’s business, is what distinguishes this contract and renders it unique.

Regarding liability issues that may arise when the LC is tried to be adapted to carriage of goods or warehousing regulations, (among others) the extended liability of the LO over the goods seems to deserve a revision.

At a descriptive stage it is possible to assess that transportation liability rules and warehousing ones are not the same. They are directed to different contexts so the problems and solutions that may arise are distinctive.

The problem arises when the role of LO is defined as someone with real expertise on logistics who is going to carry, store and handle the goods.

It is at this point that it can be affirmed that the liability in LOs is extended. When providing transportation services, liability will not be terminated when the goods are delivered as is the case in a carriage of goods contract. This is because of the fact that it is the same LO who is formally taking the goods when the transportation service is over.

The same happens when analyzing the storage of the goods stage by a LO. Once the storage service is completed, the goods may be taken by the same LO who acted as warehouse man but who will be also acting as carrier.

However, if a situation is considered in which the obligation and liability of the LO is still active until the delivery of the goods is finalised - in regards to delivery for final consumption (even when other logistics services have been provided in between) the LO will be still liable for the goods but under the terms of the carriage of goods contract. So, what about any issue arising during the storage of the goods? In this case, strict liability (English law) under the contract of carriage of goods could be applied to the LO but it might not present a fair solution. Especially since among different regulations, the duties of the warehouseman are not usually deemed as an “obligation of result³⁹” (applied on Civil Law jurisdictions. But even when this concept is not usually applied under common law legal systems, “strict liability” sets up similar consequences). And what about those cases in which there is a regular supply chain provided by the LO to the cargo owner in which certain goods are taken by the LO, carried, stored, carried to another smaller warehouse and regularly part of these goods are delivered to final destinations for final consumption? This is usually the case of fast moving consuming goods (FMCG) owners who completely outsource their supply chain services. Should the first delivery of only a part of the goods be deemed as partial delivery or as a final one? In the last case, how should the liability be assessed in regards to those goods still stored under the control of the same LO? The duties of the LO should be deemed already covered? Even when a contract can consider several factual situations, the current regulation is not giving precise solutions to this kind of questioning since the LC is still tied to outdated models of law: mainly the traditional contracts of carriage and warehousing.

As mentioned previously, when researching different local regulations no references related to the issue of liability of LOs could be found. Not even the word *logistics* is usually mentioned among their rulings. Most of the local legal frameworks just directed their efforts solely to transportation and warehousing services.

Nonetheless, within the international legal framework, as already discussed, the attempt of the *Rotterdam Rules (2009)* seems to be an interesting approach as some logistics services were considered within its content.

One example is the definition of “*inland carrier*” in art. 1.7 already provided by which the following definition of “Maritime performing party” is stated: “*A performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier*”

³⁹ Result obligation: obligations to deliver a certain result.

is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area".

Therefore, the inland carrier will be someone who is providing services within the port terminal such as: *warehousing and general handling of the goods*; similar to the idea of a LO.

Additionally, this convention also presents an original feature regarding the previous conventions such as the Hamburg Rules⁴⁰ in regards to the period of liability of the carrier. Art 12.1 of Rotterdam Rules states: "*The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered*"

Moreover, in art. 13.1. It states that: "*The carrier shall during the period of its responsibility ... properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.*"

The terms "*keep*" and "*care for*" can allow thinking about a *warehousing service* provided by the "*carrier*" under the convention but it is necessary to bear in mind that the intention of the article is to examine the obligations of the "*carrier*" as defined in *art. 1.5*⁴¹ and even when storage is considered there is the limitation of art. 1.7 which has already been discussed.

This is an interesting approach to the idea of LOs considering the way logistics services are performed nowadays, but it is quite limited since the Rotterdam Rules do not consider the full logistic service that a LO is actually providing to cargo owners. Indeed the scope of the convention would be the main limit since it is aimed at *International Carriage of Goods (Wholly or Partly by Sea)*.

⁴⁰ Hamburg Rules Art. 4.1: "*The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge*".

⁴¹ Rotterdam Rules Art. 1.5: "*Carrier means a person that enters into a contract of carriage with a shipper*".

Conclusion

The specificity of the object of the LC, as was indicated in chapter 3 represents an essential particular element of this contract considering the multiple possible scopes it can encompass while keeping the same legal identity.

The fact that logistics services are no longer considered as merely moving goods from “A” to “B” as was regarded by the traditional conception, but as to consider the transportation and the storage of goods within a certain timeframe and according to very specific and detailed instructions from the cargo owner, makes the LC a comprehensive legal concept different from the mere transportation or warehousing contracts.

Notwithstanding this contractual uniqueness and the fast path growth of logistics activities in the past few decades, local and international regulations still seem to be reluctant to give the treatment LCs might deserve. Legal issues related with the liability of the LO seem to be one of the weakest points of most of the current legal frameworks ruling over commercial relations under a LC.

Despite of the unwillingness of legislators to acknowledge the growing importance of LC, as the supply chain approach has been shaped by the perspective of big cargo owners, the implementation of new logistics models gave the LC an extraordinary impulse to get a tacit and indirect recognition⁴² which cannot be denied nowadays.

Furthermore, as described in chapter 2, in most of the analysed jurisdictions, the current applicable regulations seem to be unfit for logistics processes and particularly dispersed. This is usually deemed as an obstacle for predictability for the contracting parties. The applicable legal framework will be determined considering the scope of each LC. Thus there seems to be an additional barrier for the LO and cargo owner.

Moreover, while this recognition still depends on the legislator, legal practitioners and contracting parties have moved forward negotiating and agreeing on terms usually based on the guidelines provided by Standard Terms for LCs (Logistics chambers).

An additional unexplored area regarding the functioning of the LC is the “qualification” of the LO by the inscription on public registries which should be developed as further research.

The reasoning behind this suggestion is that as nowadays logistics services are a key aspect of every economic structure, it should not be provided by any person or company just because they are able to offer or do so. The services offered under LC are (or should be) performed by

⁴² R. A Etcheverry, *Derecho Comercial y Económico, Obligaciones y Contratos Comerciales*, (Parte General, Astrea, Argentina pg. 114 et seq).

highly qualified LOs with real expertise in the logistics field. Even when intermediary parties are the ones actually performing the services, the LO is usually acts as principal and fully assumes liability under most local and international regulations. Hence, the inscription would be deemed as a guarantee of transparency of information for cargo owners applicable to all contracts (or only to those contracts dealing with certain goods when Public Policy reasons arise,) since an authority would be supervising and approving this “qualification”.

The intention of this work highlighted the existence and nature of the LC considering the relevant role of logistics within every economic system. Therefore, various elements allow defending the categorization of LCs as *Sui Generis*.⁴³

As the LC came to stand out as the *de facto* main contractual way to agree on terms for national and international logistics, legal provisions based on old concepts and business structures such as traditional contracts of carriage or warehousing are likely to become outdated.

Regardless of that, some legal modifications might be expected for the medium and long-term within some EU jurisdictions and the international legal framework and UNCITRAL seems to have a key role in this task.

⁴³ Oxford University Press - Oxford Dictionary, ‘Sui Generis’ definition: “*Different of all other...things*” <<http://www.oxfordlearnersdictionaries.com/definition/english/sui-generis>> accessed 30 July 2016.

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