Transport and Logistics Chain Intermediaries

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This is the IRU
Evolution of IRU Membership

1948: eight founder countries

2014: 170 Members in 75 countries

...and CRIPA: 27 Members + FESARTA in 38 countries
IRU Secretariat General

1948 – IRU founded in Geneva

1973 – IRU Permanent Delegation to the European Union in Brussels

1998 – IRU Permanent Delegation to Eurasia in Moscow

2005 – IRU Permanent Delegation to the Middle East and Region in Istanbul

2012 – IRU Secretariat for Africa in Geneva

Commissions

• Social Affairs
• Economic Affairs
• Customs Affairs
• Legal Affairs
• Technical Affairs
• Road Safety
• Services to Transport Operators

Working Parties

• Dangerous Goods
• Intermodal Transport & Logistics
• Taxis and hire cars with driver
Objectives

• Observe and analyse the legal environment of the international road transport of passengers and goods, in order to inform the people in the profession and boost the legal structure of road transportation through opinions, recommendations and conclusions addressed to the IRU bodies;

• Contribute to the facilitation of the contractual relationships between road carriers and their partners.

Working Programme

• Contribute at a global level to the elaboration and harmonisation of international road transport law, to the simplification of procedures related to this transport mode;

• Organise biennial symposia on a legal issue of interest to the actors of international road transport;

• Cooperate with the international governmental organisations such as the UN and the European Union and the non-governmental organisations such as FIATA and ICC, to achieve the above-mentioned objectives.
• Transporting goods is complex, especially when crossing several countries. It often involves several unconnected carriers using various modes of transport. Most of the time, a transport chain implies intermediate reloading and crossing borders that require storing the goods and transmitting documents. Therefore, third parties have the role of connecting the different stakeholders; a generic term to define them is **intermediaries**.

• They are called differently in different countries and traditions.
Instead of multiple contracts with operators, the shipper will replace them by a single contract with an intermediary, a transport organiser, who is capable of selecting operators, appraising risks, drawing up the contracts, following up their performance, etc.

Transaction costs for the shipper are limited to finding the intermediary and writing up only one contract, with the additional payment of a commission. However, the amount of the commission is less than the transaction costs they would have to pay if they did not outsource the selection of operators involved in the transport chain.

The Intermediation thus appears as a means to:

- pass on to the intermediary the transaction costs involved in selecting multiple contractors,

- reduce costs - for companies that outsource this provision of services to drawing up a single contract.
The word intermediation comes from the Latin ‘intermedius’ (‘between two, in the middle’). It is an ancient phenomenon that has developed through the multiplication and specialisation of human activities.

However, there are different categories of intermediaries, and they must be differentiated from carriers, i.e., those who « carry out » the transport. As the result of observation in different countries three broad categories can be defined:

- The broker
- The forwarding agent
- The freight forwarder
The broker

• The broker’s main obligation consists of finding a co-contractor for the client placing the order and facilitating the conclusion of the final contract. Hence, he/she must assure the identity, capability and seriousness of the prospective third party, as well as the latter’s creditworthiness. He/She must also inform third parties of the details and arrangements of the future contract. He/She is also responsible for providing advice and even giving warnings.

• As a simple intermediary, the broker is not the guarantor of the performance of the final contract; he/she remains outside the realm of the performance itself of the contract.

• Example in French law: the maritime freight broker who must guarantee that the vessel he/she suggests is suitable for accepting the cargo but is not responsible for damage to or loss of the goods.
The Forwarding Agent

- The intermediary who undertakes the legal and material operations required for the goods to go through transit.
- Liaison agent between two modes of transport (maritime and rail, for example). He/She receives the goods, sometimes stores them, processes them for customs clearance and sends them on to their destination as per the instructions received. The agent may also organise, monitor and coordinate transport operations, and make reservations with transport operators for the freight, or the packing and unpacking of containers.

As the legal representative/agent, the forwarding agent’s functions are defined by his/her mandate.

- The agent acts on behalf of and in the name of the client.
- The agent’s obligations and responsibility in general ensue from the rules of the mandate; therefore, the agent is only liable for his/her personal proven errors or wrongdoing, but not for those of the transport operator which preceded or followed the agent’s action.
• In line with this definition (even if not all the functions are practiced) are, for example:

• In France: Airfreight Agent
• In England: Freight Forwarder
• In Belgium: Commissioner-Shipper
• In Germany: Spediteur
• In USA: Broker

They are only liable in the event of error or wrongdoing - in the selection of the person they have chosen to replace them, for example.
The Freight Forwarder

• The person who organises and has goods transported by means and modes of his/her choice on behalf of his/her client under his/her responsibility and in his/her own name.

• Vis-à-vis the client, the freight forwarder is under the obligation to produce a result, and is accountable for bad performance of the transport, whether this is the result of his/her own personal fault or of the persons who are his/her substitutes in the performance of the transport.

• This particular type of case is known in France and Luxembourg, for example.
Difficulties affecting the work of the intermediary

- Terminology is different in different countries
- Different legal frameworks exist
- The same operator can perform several functions
- Lack of a prior contract or a badly written contract between the principal, the forwarding agent and the transport operator
- Lack of an international legal framework
• For the shippers: in the event of a dispute, they do not always know if they should sue the transport operators or the intermediaries, nor which is the legal framework governing the liability of the intermediaries.

• For the intermediaries: if the principal and the intermediary are settled in two different countries, then which law is applicable?

• For the transport operators: they could be directly liable for damage without being aware of it, and who should they file a legal action against for payment?
Now that the transport contract has been well defined and is subject to specific regulations at both national and international levels, do the functions of intermediaries need to be standardised?

In regard to the first text, if the intermediary’s contract is analysed as a contract for provision of services, then it is governed by the law of the service provider’s habitual residence (Art.4 § 1). If it is seen in the light of the transport contract, as it would appear if considered according to n° 22 of the preamble to the regulation (contract whose main aim is the carriage of goods), it would be interpreted as including the intermediary’s contract, thus implicitly subjecting it to Article 5 § 1, in whose terms « In the absence of choice in accordance with Article 3, the applicable law for a contract of transport of goods is the law of the country where the carrier has his/her habitual residence, provided that the place of loading or delivery or the habitual residence of the sender is also in that country. If these conditions are not satisfied, the law of the country of the place of delivery agreed upon by the parties shall be applicable ». 

In regard to the Hague Convention, the applicable law for a commission contract is in accordance with Article 6 § 1 and in the absence of choice of the parties « the internal law of the Member State in which the intermediary has his/her professional domicile, or in the absence of such, his/her habitual residence, at the time of setting up representation relations ».
• An attempt at international standardisation was made by Unidroit, resulting in adoption of a draft Convention in 1967. However, due to the hostility of the professional freight forwarders’ and forwarding agents’ associations, and also given the then ongoing preparatory work on standard rules for multimodal transport which would indubitably affect the forwarding agent’s status, the project was never submitted at a diplomatic conference.

• Writing an international Convention is a long project that is fraught with obstacles and it could also be no more that a worthless piece of paper if not ratified. In addition, exactly what kind of intermediary would be the object of such a text?
• Setting up codes of good conduct, models of contracts or of general terms by the players themselves, with the help of the professional bodies that represent them, for example:

• Writing up model contracts: the FIATA model rules concerning the « Freight Forwarder services » contract.

• IRU General Conditions for the International Carriage of Goods by Road and Logistic Services (3 Nov. 2011).

• Applicable law of an international contract: the Hague Convention of 1978 should prevail regarding the different actions carried out by intermediaries connected with transport activities. Indeed, in terms of standards hierarchy, it is more specific to the contract at issue here than the Rome I Rule.