Multimodal transport, the Rotterdam Rules and the EU

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Structure of the lecture

1. The multimodal transport (MMT) contract
2. The law applicable to MMT contracts
4. The Rotterdam Rules
5. EU plans
Santa Rosa (Arg) -- Buenos Aires (Arg) -- Rotterdam (NL) -- Frankfurt (Dld)
Multimodal carriage contract

• Single contract for carriage
• Provides for more than one mode of carriage (rail, road, air, sea, inland waterways)
What if the cargo is stolen somewhere between Santa Rosa and Frankfurt?
The applicable law

• International law; conventions
  – At present no MMT Convention

• National law

• Contractual provisions
<table>
<thead>
<tr>
<th>Service</th>
<th>Liability Limit</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hague Visby Rules (sea)</td>
<td>2</td>
<td>SDR (or 666,67 per unit/package)</td>
</tr>
<tr>
<td>Hamburg Rules (sea)</td>
<td>2,5</td>
<td>SDR (or 835 per unit/package)</td>
</tr>
<tr>
<td>CMNI (Inland Navigation)</td>
<td>2</td>
<td>SDR (or 666,67 per unit/package)</td>
</tr>
<tr>
<td>Rotterdam Rules (sea +)</td>
<td>3</td>
<td>SDR (or 875 per unit/package)</td>
</tr>
<tr>
<td>CMR (road)</td>
<td>8,33</td>
<td>SDR</td>
</tr>
<tr>
<td>Warsaw/Montreal (air)</td>
<td>17</td>
<td>SDR</td>
</tr>
<tr>
<td>COTIF-CIM (rail)</td>
<td>17</td>
<td>SDR</td>
</tr>
</tbody>
</table>
article 1 (1): every contract of carriage of goods by rail

article 1 (3): extends the scope to supplemental internal traffic by road or inland waterway.

article 1 (4): extends scope to carriage by sea or transfrontier carriage by inland waterway, when performed on services included in a certain list.
Inland waterway: CMNI

- article 1(1) and 2 (1): applicable to any contract to carry goods by inland waterway.

- article 2 (2) extends the scope to carriage without transhipment, both on inland waterways and in waters to which maritime regulations apply, unless:
  
  (a) a maritime bill of lading has been issued in accordance with the maritime law applicable, or
  
  (b) the distance to be travelled in waters to which maritime regulations apply is the greater.
Quantum v. Plane Trucking

Singapore → Paris → Dublin

Justice Tomlinson:

“It is a contract **predominantly** for carriage by air. This conclusion is underpinned by the circumstance that the place of taking over of the goods specified in this contract can only be Singapore.”
Article 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.
Justice Mance:

- Overall characterization is inconsistent with the general European approach.
- Contracts can by their nature or terms have two (or more) separate aspects.
- Thus: “The present contract was for carriage by road within art. 1(1) of CMR in relation to the roll-on, roll-off leg from Charles de Gaulle, Paris to Dublin.”

Air France's conditions are overridden to the extent that they would conflict with the CMR.
The Resolution Bay

Australia  →  Rotterdam  →  Antwerp

The Godafoss

Reykjavik       Rotterdam       Naples

Rb Rotterdam 11 April 2007, S&S 2009, 55 (Godafoss)
BGH 1987

Neunkirchen (Dld) → Rotterdam × → Belfast (Ierland) → Portadown (Ierland)

BGH 24 June 1987, TranspR 1987-11/12, p. 447-454
The M/V OOCL Bravery

Oconomowoc (US) → Chicago (US) → Montreal (Canada) → Antwerp (Belgium) → Geleen (NL)

Article 2 CMR: Ro-ro

Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage.

Provided that...
Article 31 WC/38 MC
1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

Article 18(3) WC/18 (3,4) MC
Defines and extends ‘carriage by air’:
1. within airport confines
2. unlocalized loss also if carriage outside airport concerns loading, delivery or transhipment
3. deviation without consent also deemed carriage by air
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...

Article I b

'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, ...
Pyrene v Scindia 1954

Justice Devlin:

“I think they attach to a contract or part of a contract. I say ‘part of a contract’ because a single contract may cover both inland and sea transport; and in that case the only part of it that falls within the Rules is that which, to use the words in the definition of ‘contract of carriage’ in Art. I (b), ‘relates to the carriage of goods by sea’.”

Rotterdam Rules

‘Multimodal’ scope:

• Article 1 : basic scope of application
• Article 26 : limited network
• Article 82 : conflict of conventions
‘Multimodal’ scope Rotterdam Rules

Article 1 (1)
“Contract of carriage” ... The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

Article 5
... this Convention applies to contracts of carriage ...
Article 26 - Carriage preceding or subsequent to sea carriage

...during the carrier’s period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that:

1. Would have applied if the shipper had made a separate contract with the carrier in respect of the particular stage of carriage where the loss or damage occurred

2. Specifically provide for the carrier’s liability, limitation of liability, or time for suit, and

3. Are mandatory
Article 82 - International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of (...) :

(a) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;
Article 82 - International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of (...) :

(b) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;
Article 82 - International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of (...):

(c) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail;
Article 82 - International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of (…):

(d) Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.
Remaining conflicts

- Jurisdiction/arbitration
- Transport documents
- Shipper’s liability
- Rights of control
- Delivery
- Transfer of rights

Article 30 ‘lex posterior derogat legi priori’
Article 25 Rome I

(Regulation 593/2008 on the law applicable to contractual obligations)

Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations.
EU plans

MMT Regulation or Directive?

• Questionnaire tren report may 2009 shows that industry prefers global regulation

• Invalid if inconsistent with:
  1. Conventions that Member State was party to before accession to EC (Warsaw 1929)
Article 307

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.
EU plans

• MMT Regulation or Directive invalid if inconsistent with:
  1. Conventions that Member State was party to before accession to EC (Warsaw 1929)
  2. When EU itself is party to unimodal convention (Montreal), and
     the nature and the broad logic of the convention do not preclude the review of the validity of the secondary EU legislation
EU plans

Good faith principle:
preferable if Regulation or Directive consistent with other unimodal conventions as well