Multimodal Transport in the New Millennium

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Abstract

Consignors of goods in international trade want their containers to move door to door whether by land, sea or air - smoothly, seamlessly and at predictable cost. What they actually get from the law is at best a jerky roller coaster: a series of contracts, one for each mode or stage of the journey, contracts with various people and with liability that varies too. All agree that the law should change but attempts to agree on an entirely new multimodal regime have failed. Recently attempts have been not to start again but to expand an existing and established regime. The latest of these, the UNCTRAL draft, is essentially maritime: it applies to the sea phase but and goes further to apply door to door except when its path is blocked by compulsory unimodal law. Has Venus at last arisen from the waves? And what will happen when Beauty meets the Beast in the form of CMR? This article addresses the problems that will be encountered by an ambitious amphibious instrument of this kind. - problems of integration, of compatibility with local legal culture, and of methodology.

1 Patterns of Trade

All over the world trade is increasingly conducted by way of multimodal transportation.1 This reflects the use of units of cargo notably containerized cargo. Moreover, consignors often leave the decision about mode, route and carrier to someone else, a specialist better placed to make the decision.2 Indeed, many consignors prefer to deal with one such person, the multimodal transport operator (MTO), who is responsible to the consignors for (what most concerns them) whether goods arrive safely and on time. They do not want to end up with a series of (unimodal) contracts, one for each mode or stage of the journey and with different people. That is a practice of the past that no longer meets the reasonable expectations of the market today.3

By these changes of practice and preference the law has been left behind. Consignors can easily find an MTO with whom to conclude a single contract; but may not be aware that it is a contract of many parts, as many as there modal stages in the journey with rights that differ from stage to stage. Goods are carried across the world in the same immediate envi-

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1 The terms ‘intermodal’, ‘combined’ and ‘multimodal’ transport are used interchangeably. The meaning is any carriage of goods involving more than one mode of transport. Generally, see UNCTAD Review of Maritime Transport 1997 (UNCTAD/RMT (97)/l), paragraph 5 at p. 13. Also Bon-Garcin in ‘Etudes offertes a Barthelemy Mercadal’ (Paris 2002), p 407.


3 See Intermodality and Intermodal Freight Transport in the European Union, COM (97) 243 final (29.5.1997) chapters 2 and 3.
environment, the container, but the law applicable changes with the vehicle (lorry, train, ship or plane) and where it is. No uniform regime governing liability for loss or damage is in force.\(^4\) Instead there are a number of international conventions designed to regulate particular modes of carriage, as well as national laws and standard term contracts. This is not only confusing but wasteful: “enormous sums, which would be better applied commercially, are spent in legal disputes as to whether the contract terms or a Convention and, if so which Convention, should apply to govern relations between contracting parties”.\(^5\)

2 The Quantum Case

A recent illustration of the problems that can arise is provided by *Quantum v Plane Trucking*.\(^6\) Air France contracted to carry valuable goods from Singapore to Dublin: by air from Singapore to Paris and from there, via AF’s depot in Manchester, to Dublin on a road vehicle operated by AF. The vehicle crossed the English Channel by ferry, reached the Manchester depot and left for Dublin but was the goods were then stolen. The question was which terms governed the (admitted) liability of AF. If ever there was a case that should be governed by one of the international conventions on transport law, it was surely this. But which? Everyone agreed that the Warsaw Convention on carriage by air (WSC), which applied between Singapore and Paris, did not apply to the movement between Paris and Dublin.\(^7\) What did? The claimants argued that it was the CMR\(^8\). Indeed, it was not seriously disputed that, if the carriage to Dublin had commenced in Paris, it would have been be subject to CMR; but the Commercial Court in London insisted on looking at the entire movement from Singapore to Dublin. “Essentially” and “predominantly”, it said, a contract for carriage by air;\(^9\) considered that what was true of the whole was true of the parts; and concluded that, although the WSC did not apply to the movement from Paris to Dublin, CMR did not either. There being no international convention applicable the Court applied AF’s own contract. The decision was later reversed by the Court of Appeal\(^10\) but why so much time and expense to reach a sensible outcome? The answer lies ultimately in the lack of a single clear legal regime for multimodal transport.

\(^4\) A report and a comparative table have been prepared by the UNCTAD Secretariat: www.unctad.org/en/docs/posdttlb2a1.en.pdf.
\(^5\) Faber, 518.
\(^6\) 2002 EWCA Civ 405; [2002] 2 Lloyd’s Rep 24 (CA).
\(^7\) Ancillary landside movements subject to the Warsaw Convention are limited, generally speaking, to movements within the airport. See Art. 18(3) of the Warsaw Convention; applied, for example, in the USA in *Read-Rite v Burlington Air Express*, 186 F 3d 1190 (9 Cir, 1999).
\(^9\) [2001] All ER (Comm) 916, para 19.
\(^10\) [2002] EWCA Civ 350