RE: [Correspondence Group on Rotterdam Rules]

9. april 2011
11:33

Emne	**RE: [Correspondence Group on Rotterdam Rules]**
Fra	G.J.van der Ziel
Til	nifs-rr@jus.uio.no
Sendt	8. april 2011 16:06

Dear Erik,

I like commend the wisdom of the two Maritime Law Commissions that came to the very sensible results as outlined in your exposé. They have rightfully approached the problem of conflict of conventions from the practical angle.
Based on a some 40 year intimate involvement with the multimodal issue - as a young civil servant I represented my country already in the early seventies of the last century in the UN/ECE deliberations that were intended to lead to the 'TCM- Convention' - I have come to the conclusion that from theoretical point of view the problem of conflict of conventions cannot be resolved in a 100% watertight way, unless the scope rules of all transport conventions would be aligned in a coordinated way and preferably at the same time. And the latter belongs to 'Utopia'. (See also UNCITRAL WP33 that is intended to give a picture of Utopia.) In fact, what the RR did, is trying to solve the conflict of conventions issue in the best possible way, both from theoretical as well as from practical point of view.

First, I like to applaud that the Commissions have accepted the 'one regime for one contract' system. To apply two different conventions to (two different parts of) one contract of multimodal carriage, as the UK Quantum decision does, may create chaos in practice, particularly when to the one part of the carriage a negotiable document would apply and the other part a non-negotiable one.

Second, I fully concur to the way the Commissions handled your concern about the issue of the right transport documents. I must confess that I did not so much share your concern for a couple of reasons.
(1) From logistical and operational point of view the fact that a trailer will be unloaded or will remain loaded during a ferry transport requires in practice always pre-planning. (2) Also the price tag is quite different for the one or the other manner of operation. And shippers will normally know prior to ordering the transport what it will cost. (3) In practice, the two alternatives will, from maritime angle, always be short haul carriage. And for short haul container or trailer maritime carriage customarily no negotiable transport document will be asked by the shipper. In other words, both under the RR or under the CMR a similar type of document will be issued, which fact may limit practical difficulties. (4) Even if, after the event, it turns out that a 'wrong' document was issued, the application of the 'right' convention will not be affected. The RR deliberately refrain from labelling the types of document, meaning that a document with the heading "CMR Consignment Note" is under the RR defined as a non-negotiable transport document and is no obstacle for application of the RR. And, as to the CMR, it must be noted that the use of a certain document is not constitutive for the application of the CMR itself (as it was the case with the previous CIM conventions).

The third matter that you raise in your note is the issue of possibly remaining conflict issues. This is the real difficult one. For the drafters of the RR the problem was that they could not (and did not wish either) to address the scope provisions of other conventions. The only thing they could do is to be as clear as possible about the scope of the RR itself.
Hopefully, they succeeded in the latter. But it is to be realised that, if and to the extent the scope rules of the old unimodal conventions can be interpreted in various ways and if and to the extent same applies to the scope rules of the RR, there is always a possibility that in a certain jurisdiction a conflict of convention emerges. If I understand the view of the Maritime Law Commissions well, they

opine that in such case at national level the courts should try to avoid such situation by taking into account the facts of the case, the views in other jurisdictions on the matter at hand (cf. art 2 RR) and the impact that a decision on the scope of the one convention may have on the scope rule of the other convention. I share fully this opinion.

Finally, I like to thank you for giving me the opportunity to address your questions on these rather complicated matters. Being in a similar position as you - also we in the Netherlands come across matters of interpretation when we look at the RR in relation to our internal maritime law - it is good that, when desirable, we could assist each other a bit, so as to the benefit of uniformity of maritime law.

Best regards,

Gertjan van der Ziel

-----Oorspronkelijk bericht-----
Van: Erik Røsæg [mailto:erik.rosag@jus.uio.no]
Verzonden: woensdag 30 maart 2011 7:56
Aan: nifs-rr@jus.uio.no
Onderwerp: [Correspondence Group on Rotterdam Rules]

Dear Correspondents,

After the last round of correspondence in the group (http://folk.uio.no/erikro/WWW/RRcorr/), there has been a meeting between the Danish and Norwegian Maritime Law Commissions, hammering out the way forward in respect of the implementation of article 82 of the Rotterdam Rules. The result was a pragmatic compromise, which I have tried to express in the enclosed note. I would very my like to hear any comments or advice you may have.

Best regards,
Erik Røsæg

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