Conflict of Laws in Combined Transport

Zahra Tavakol and Mohammad Ali Alayee Fard

Department of Law, Meymeh Branch, Islamic Azad University, Meymeh, Iran.

ARTICLE INFO

Article history:
Received 25 September 2014
Accepted 22 November 2014
Available online 1 December 2014

Keywords:
Transport unit, Combined Transport, Conflict, the Convention on the multimodal transport of goods, Convention for rail transport, Convention on road transport, Convention on air transport, Convention Inland water transport

ABSTRACT

There are situations in international transport contracts so as to be used over a regime in its transportation. Liability limited nature of the transport operators involved in conflicts about the rights of transport unit under the uniform transport law regimes and differences in the documents. In other words, there are several conditions that are applicable to the contract of carriage in which more than one of these conventions and confidence limits are the responsibility of the carrier guarantees conflict. For example, rail and air transport regimes have imposed restrictions 17SDR per kilogram, it should be noted that the limitation of liability in the new regime in Montreal convention is unchangeable and regime change in rail transport. In contrast, under the Convention concerning International Carriage by Rail (COTIF), if it is proved that the loss or damage resulting from an act or omission so that the operator has the intention or recklessness (and with knowledge that such loss or damage may be occurring), he had no right to invoke the limitation of liability set forth in this Convention. Due to differences in transport regime in this case and those cases, if applying for more than one of them in a contract, conflict is likely. In this study, the differences and the differences between the regimes of transport of the Rotterdam Rules have been studied and solutions offered the combined traffic.

INTRODUCTION

In this article we will examine the various aspects of handling conflicts between conventions together (When used for combined transport) and the Rotterdam Rules Regarding transportation combined. First, consider a situation in which the use of a compact transport unit regarding contract of combined transport. In fact, most of the potential conflicts that arise as a result of an agreement on transportation combined transport units, substances that expand beyond the scope of the regime of transit transport so that the parties intend to set it, for example, Article 2 of the Convention and Article 18 of the Convention on road transport, air transport. An example of possible conflicts caused by simultaneous application of Article 2 of the Convention on road transport and Article 3 of the Convention 1 rail transport. If a contract is a contract requires the holder of the international «huckepack», in this case, the goods are unloaded from the arriving means of transport to the rail road but as exposed in railway vehicles and they are damaged. In this case, if the transport is carried out in the country, the rules of the Convention and the Convention on road transport, rail transport is applicable. As it is, the difference between the various provisions of the Convention, applied to each of the contracts, leads to a different result, therefore, we need to determine which are priorities [1, 2]. Article 30 of the Vienna Convention on the Law of Treaties numerous treaties reflect rules of succession to the same subject. According to the article, in the case of a treaty specifies that it is subject to a prior or subsequent treaty or that should be considered contrary the earlier treaty or later, provisions shall be other treaty (previous or next) (also referred to as the conflict between the provisions of a treaty). Although in theory the rules are capable of providing the transparency needed to determine the hierarchy of conflicting conventions, but only some transport conventions such as the Montreal Convention, Hamburg Rules, and new Rotterdam Rules have discussed the conflict between the provisions of a treaty [3]. Therefore, the solutions and the available options are examined, such as the provisions of the Vienna Convention.

MATERIALS AND METHODS

First Speech: Conflict of Article 2 of the Convention on International Road Transport contract goods CMR:

When it comes to conflicts of various transport conventions, the first is Article 2 of the Convention on road transport which has caused so much debate. The fact is that Article 2 of the Convention extends beyond the
limits of the exercise of road transport. But does this mean that if it is the off-road continuously on the road and on the international stage, it is equally covered by the regime of another unit that offers transportation organization in the continuous phase? The answer depends on two things: the first is the actions of the regime and the other is the transport unit does not matter which road transportation is added to the shipment in the off-road? The answer to this question is clear regarding shipment. Multimodal transport contract between the consignor and multimodal transport operator, the operator will have to shipments that have been provided by the sender and it does not matter that the contract related to the transport of one type to another, or from one type; the purpose of the contract without the sender of the goods transported by road and the motor vehicle is added to the contract for cargo transportation subsidiary curator and curator of the compound that has the responsibility under the subcontract. This means that there is no difference in the transportation of cargo by truck off-road because it is composed of sub-officer in charge of transport and it does not affect the relationship between the sender and the carrier compound. But the point of the exercise is slightly more complicated, because we must first determine whether article 2 of the Convention of transportation.

Where there is a requirement of international rail transport, even if the transportation contract is established in other ways, this means that rail transport international conventions apply to different types of properly at a freight train [4]. Thus, there may be a conflict between the provisions of rail and road transport (road transport and rail transport conventions). Another case is that of Article 20 of the Hamburg Rules for further limitation is placed on road transport to the Convention regime because it provides an opportunity for two years. Regarding Geneva conventions and rules of the Visby Rules Geneva, possible conflicts stemming from Article 2 of the Convention on Road Transportation in practice, it is more than possible conflict of rail and inland waters regimes and the Hamburg Rules. The reason for this is that Article 2 of the Convention on transport road transport involves a sea phase so generally it relates to short sea shipping (a form of transport that is not a bill of lading issued to it). So in practice, if combined transport bill of lading issued by the operator for the total combined transport, there is only possible to apply the Geneva regimes at sea [5]. However, in the absence of a bill of lading, not decrease the possibility of conflict between Article 2 of the new Rotterdam Rules. Article 82 is a provision related to the conflict rules of the Convention on Rotterdam and is seeking to eliminate conflicts between this Article and Article 2 of the Convention on road transport. To avoid conflict, Article 82 has given priority to road transport regime where Article 2 of the Convention on road freight transports to extend the rules to maritime transport. As these conflicts occur when the Convention on road freight transport exceed the scope of the Convention, so there is no conflict when damages or losses during the period of road transport and road transport in accordance with Article 2 of the Convention. Even in this case, Article 2 of the Convention on road transport makes it somewhat beyond the scope of the development regime prescribed in Article 1.

Also, road transport regime applied by Article 2 of the Convention road transport in the prior or posterior to transport from one type to another even if these are the internal, while non-Article 2, the road transport is not covered by international regimes such as the Convention on road transport. For this reason, the authors have attempted to increase the effectiveness of rail transport Convention the first step is to attach the internal transport international road or rail late stage based on the same contract. By the regime of unlimited rail in Article 1(3) to the local road, contract on the basis of Article 2 of the Convention provides road transportation conflict between the Convention therefore it involves transport Huckepack. Consequently, the possibility of conflict during most of the internal road transport from one type to another. Contrary to Article 2 of the Convention on road transport, article 1(3) of the Convention does not imply any limitation regarding exercise of rail freight transport by rail to the rules of the road and so, all other rules of the Convention can be applied at this stage.

Second Speech: conflict created by the Montreal Convention or Article 18 WC:

In this regard, one commentator has stated: "the Court of Appeal has refused to assess the risks of conflict between the Warsaw Convention and the Convention on Road Transportation regarding the international road transport compound that consists of both road and air transport" [6]. He has described the protest as: "If the Convention apply in the case of road transport or road transport and load to be delivered between airports, if the airport is close to the border and rejects the border road transport, it can lead to conflict". But the answer, it seems to apply to the Convention Regarding the transport and road transport can lead to conflict with the regime of aviation units. If you look at the article (3) 18 of the Warsaw Convention, which means that we look originally for air transport can not be generalized to other means of transportation out of the airport. But if the purpose of loading, delivery or transfer of such transport takes place according to the Air Transport Agreement, in case of damage, the damage is considered as an event of damage during air transportation, unless the contrary is proved. This means that if the airport is close to the border, many international road transports are subject to compliance with the Warsaw Convention. However, contrary to chlorine, this does not mean that regarding a particular event, both Conventions are applicable (road transport and the Warsaw Convention). Convention on road transport regarding the road trip compound (fixed) applies damage inflicted during a road trip. On the other hand, regarding transport, the Warsaw Convention applies only where it is not clear where the damage occurred. The result is that if you apply the rules of the Convention on road transport, the rules do not apply Warsaw and
vice versa. However, Article 18 of the Warsaw Convention and the Montreal without any conflict. Regarding issue of liability, aviation operator is only responsible for damage that may have occurred under the Convention on Aviation "regarding destruction, loss or damage to cargo damage caused when the incident occurred during air transport".

Since Article 18 of the Convention states that aviation term does not extend to transportation on land, sea or internal waters outside the airport, Transportation to the airport is not within range for air transport. If applied to road transport Convention regarding the international road, as relates to loading, delivery or transfer, transport and Road extended to the airport. Since comes less shipping or internal waters attached to air carriers and there is even less freshwater or marine located within an airport, possible conflict between the Convention and the Convention on maritime transport by road and air transport is also very low. On the other hand, Convention on rail transport may be a conflict with aviation treaties. This means that in theory and practice, the Convention for air and rail transport, this conflict may arise less than those of the Convention on road transport [7]. Two reasons can be cited for this issue. First, not all airports have railway station; on the other hand, all airports have access to roads. At the same time, the amount of goods that are transported by train, they are much less of the goods transported by road. In general, compared to goods that are mounted on a rail car, crowded airports are unsafe place for goods loaded Warsaw and Montreal Conventions overlap between different versions of the system can also be a source of conflict. For example, if both the Convention applies in the case of damage that is a result of intentional or willful misconduct of the officer, conflict will occur. In such circumstances, the Montreal regime allows the operator the responsibility to reduce to 17 units per kilogram, while the Warsaw regime does not charge the possible exception of the provisions of the Convention. Since these conflicts are not combined shipping, we will not discuss them here.

Third Speech: conflict arising from Article 1 of the Convention on Rail Transport:

A standard contract for rail-road, rail or inland waters, develop or extend the range 1(3) of the Convention may not be transported by rail to the conflict. Rail transportation Convention extends its range so that it includes transportation on inland waterways or internal roads and they do not carry any of the Convention in domestic transportation in normal conditions through internal waterways and road transport conventions to the development of rail transport regime, Article 1(3). Rail transportation Convention provides: "The same rules apply when the contract of international transportation as it is included on the inside track road transport or internal waters of a Member State as an appendix cross-border rail transport". In addition, Article 3 of the Convention carrying rail 1(3), Article 1(4) although it can also be the basis of conflicts in detail. This provision requires that, when transport by sea or rail freight transport across borders are sought in internal waters, rail transport rules will apply the Convention, however, if the transport by sea or inland water transportation is a service that is listed in the Convention. Conflict rules of the Geneva with Geneva- Visby it will not be.

Rail and maritime transport only when combined with the lines listed above the bill of lading is issued only to shipping, rail and maritime transport will be applied both regimes. Bill of lading are usually issued in short-sea shipping (Shipping not going to the ocean) all lines are recorded and may be related to this type of short-distance transportation by sea or internal waters. Conversely, the new regime would not have to Rotterdam Rules apply to marine transportation bill and a member of the Scandinavian countries and most European countries in the Rotterdam Convention, Freight Rail Transportation Sea Convention regime imposed on the Scandinavian and continental Europe, and a number of other points will be inconsistent with the rules of the Treaty. However, where Article 1 of the Convention rules governing the rail transport of freight-transport rail transport generalize the sea, Article 38 of the Rules of Rotterdam gives priority to rail transport, so we can say that this article is to prevent conflicts between the two regimes. In conflict with the rules of the Convention on transportation domestic water transport through internal waterways must be said that only two of the lines listed are relevant to this type of transport (Lines that passes between Germany and Switzerland Bodensee line that runs from Lake Van in Turkey) since Turkey is a party to the Convention to carry through internal channels this line is not related to cross-border transportation, conflict will only apply on line Bodensee. The relative conflict will continue as long as the government refuses to apply the Convention to carry water from entering the interior of the Convention to list through internal channels or the application of the Convention to carry through internal channels with the exception of Article 30 of the Convention listed in the internal waters.

Forth Speech: conflict arising from Article 2 of the Convention to carry through internal channels:

Shipping Convention is set apart from the issues of transport through internal waterways. Article 2(2) of the Convention to carry through internal channels is regarding a situation where the internal regime reaches waterways and maritime transportation. If the contract stipulates that the goods must be transported without the transfer of goods from one vehicle to another, provisions apply to transport by inland waterway of regarding total transport (on both the domestic water transport through the waterways where maritime regulations apply). In an assumption, the Convention does not apply to carry through internal channels as the marine bill of lading has been issued in accordance with maritime law and maritime travel distance is greater. The conflict seems to
be clear here. There is no possibility of conflict, despite dealing with the rules of the Geneva and Geneva-Visby (for those of lading has been issued in accordance with maritime law, be excluded from the application of this Convention), but there could possibly conflict with the provisions of Hamburg and Rotterdam Rules because the actions of any of the conventions mentioned, does not need to issue a bill of lading.

Fifth Speech: Conflicts between the Convention relating to the unit carriage and the Convention on multimodal transport:

According to article 26 of the Rotterdam-dimensional approach, these rules will be in conflict with existing transport regimes. For example, when the carrier undertakes to carry goods by sea and road so that the product is in a land vehicle during shipping, may conflict with the rules of the Convention on road transport, because they are able to apply it in Article 2 of the Convention on Road Transportation and the Rotterdam Rules. Due to predict the occurrence of such conflicts in the formulation of the Rotterdam Convention, the authors added that Article 82 of the Treaty, but this Article shall not prevent the outbreak of conflict it identifies priority issues through other transportation in applying the conventions governing the transport of goods. Conflict remains so until the court's legal interpretation of Article 1 of the Convention on road transport differently from what was intended by the authors of the Rotterdam Rules. It appears, based on the concept that the Rotterdam Rules System apart from Article 2 of the Convention on road transport can not be applied independently of any one part of a complex international transportation [6, 8-10]. The accuracy of this interpretation, there is no conflict with the Convention on road transport.

Of course alternative view, it is also equally popular in Europe [11-15]. According to judicial decisions in some legal systems, the Convention applies to road transport in the form of an independent international transportation [16, 17]. Although Article 26 of the Rotterdam where it goes back to the responsibility of the carrier, it is applicable, but the limitation of liability or the action it leaves openings for conflict. As stated in the conflict arising from Article 2 of the Convention on road transport, regulations may be less important cause major conflicts. Other non-maritime transport conventions to include might be in conflict with the Rotterdam Rules. In other words, if these conventions are binding on all matters pertaining to rules other than the operator's responsibility, limitation of liability and litigation do not conform to the rules of the Convention of Rotterdam. Unfortunately, it seems that regarding precise terms of the responsibilities incumbent, limitation of liability and the case plan, there is no clarity in this document and accordingly there is always the possibility of conflict. For example, the Convention on road transport, rail transport conventions and regulations contain provisions concerning air transport authority, however, due to the placement of the jurisdictional provisions of the Montreal Convention on the responsibility of the operator, it is clear that does it have priority rules on jurisdictional provisions Rotterdam or not. But such a thing happens regarding authority of the Convention and the Convention on the transport rail transport, because these materials have been stipulated in the part of the operator's responsibility.

RESULTS AND DISCUSSION

As a result, in addition to the above conflicts, there is also a conflict regarding competencies, in this paper did not find a chance to check it out, obviously, the current situation has created problems for traders and it provides confusion and wasting their rights, it seems, it is better due to the implementation of the Rotterdam Rules regarding Combined Transport, efforts to limit the scope of the Convention for the transport unit this mode of transport and transport of the compound placed under the Rotterdam Rules. Of course author acknowledges that due to the low number of members of the treaty and not shared with other members of the Convention, this is a very difficult operation and the only way to identify the conflicts and offering solutions to the case.

REFERENCES