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INTERNATIONAL AND REGIONAL ORGANISATIONS

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EUROPEAN UNION

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APPARENT CONFLICT OF JURISDICTION BETWEEN THE CMR AND THE BRUSSELS REGIME ON CIVIL AND COMMERCIAL JURISDICTION

Jason Chuah

In the recent Case C-148/03 *Nürnberger Allgemeine Versicherungs AG v Portbridge Transport International BV* (28 October 2004) the ECJ was asked how a conflict between an international carriage convention and the Brussels Convention on Civil and Commercial Jurisdiction should be resolved, where the defendant refused to submit to jurisdiction. In that case, P, a company in the Netherlands, had contracted with N, a German company, for the carriage of goods by road from Germany to the UK. N sued P for loss caused to the goods. The claim was brought in Germany under the terms of the Convention on the Contract for the International Carriage of Goods by Road (CMR). It might be recalled that under Article 31(1) of the CMR:

In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

- (a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or
- (b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

P however contested the jurisdiction of the German court (Landgericht Memmingen) and did not submit any defence. P relied on Article 57(1) and (2)(a) of the Brussels Convention:

- 1) This convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
- 2) With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:
 - (a) this convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.

P contended that under paragraph (2)(a), the court had no choice but to apply Article 20.

The German court agreed with P and dismissed N's action declining jurisdiction. It held that, notwithstanding the rules on jurisdiction laid down in Article 31 of the CMR, pursuant to the second sentence of Article 57(2)(a) of the Brussels Convention, Article 20 of that convention must be applied where a defendant does not enter an appearance or refuses to submit any pleas on the merits of the case. Article 20 provides: 'Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court *shall* declare of its own motion that it has no jurisdiction unless its jurisdiction is derived *from the provisions of the Convention*' (emphases added). The German court was of the opinion that it could not be seised because there is no derivation of jurisdiction under the Brussels regime for the CMR action.

The question put to the ECJ for a preliminary ruling was whether Article 57(2)(a) of the Brussels Convention should be interpreted as meaning that a court of a Contracting State in which a defendant domiciled in another Contracting State is sued may base its jurisdiction on a specialised convention, to which the first state is also a party and which contains specific rules on jurisdiction excluding the application of the Brussels Convention, even where, in the course of the proceedings in question, the defendant does not submit pleas on the merits.

The court approached the matter first by looking at the original object of Article 57. Article 57 introduces an exception to the general rule that the Brussels Convention should take precedence over other conventions signed by the Contracting States on jurisdiction and the recognition and enforcement of judgments. The purpose of that exception was to ensure compliance with the rules of jurisdiction laid down by specialised conventions, since when those rules were enacted account was taken of the specific features of the matters to which they relate (see Case C-406/92 *Tatry* [1994] ECR I-5439). On that basis, the court was not prepared to adopt a literal approach to Article 20 and ruled that despite the fact that the claim for jurisdiction was based on the CMR and not technically the Brussels Convention, it should nonetheless be deemed as a matter under which jurisdiction for the German court was derived from '*the provisions of the convention*'. The German court should thus have jurisdiction to entertain the matter.

These provisions under the Brussels Convention are nonetheless important despite the fact that for many Member States, the Brussels Convention has now been replaced by Council Regulation No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. This is because the new Regulation has retained Articles 57 and 20 with minor consequential amendments in the new Articles 71 and 26.

It is obvious that Article 57 (and the new Article 71) suffers from the deficiency of uncertainty; the ECJ's ruling is thus welcome to the extent that it clarifies when the generalised Brussels regime could operate alongside the specialised international carriage regime. However, although the court has confirmed that a side-by-side existence and application could be justified, the approach taken by the court means that the full import and remit of Article 71 remains unclear. Further guidance by the ECJ on an area still fraught with difficulties (see for example, ship arrest in *The Anna H* [1995] 1 Lloyd's Rep II; *The Deichland* [1990] 1 QB 361; *The Prinsengracht* [1993] 1 Lloyd's Rep 41) would be useful.