Multimodal Transport: Has a Sui Generis Contract Emerged?

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This paper addresses whether the multimodal transport contract, as the central legal instrument governing relations among participants in multimodal transport, has evolved into a *sui generis* contract with its own normative structure independent of existing contractual types. The principal methodology employed is doctrinal legal analysis, through which legal sources, in particular international transport conventions, national legislative frameworks, and judicial practice, are examined to determine the stage of development attained by the multimodal transport contract. This doctrinal methodology is complemented by a functional methodology, which is used to assess the purpose and economic objective pursued through the multimodal transport contract and thus to explain the distinction between the multimodal transport contract as a sui generis contract by virtue of its purpose and a sui generis contract possessing a normative structure distinct from those of other contractual types. The analysis proceeds in several stages. It begins with an examination of the reasons underlying the emergence of the multimodal transport contract, followed by definitions of multimodal transport, the multimodal transport contract, and the multimodal transport operator. The paper then considers the principal doctrines concerning the legal nature of the multimodal transport contract, namely the doctrine of absorption, the doctrine of combination, and the *sui generis* doctrine. In relation to these doctrines, it analyzes which of them is reflected in international and national legislative frameworks and which finds expression in judicial practice, together with the advantages and disadvantages associated with each approach. Following a detailed examination of these doctrines, the paper concludes that, at its present stage of development, the multimodal transport contract has not yet evolved into a *sui generis* contract possessing its own normative structure independent of existing contractual types.

KEYWORDS

~ Contracting carrier,
~ Multimodal transport,
~ Multimodal transport contract,
~ Multimodal transport operator,
~ UNCTAD/ICC Rules on Multimodal Transport Documents,
~ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,
~ United Nations Convention on the Multimodal Transport of Goods.

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1. INTRODUCTION

A contract of carriage is a specific type of service contract, characterized both by its subject matter – the transportation of goods or persons from one place to another (Asquini, 1957)—and by the involvement of a third party who, at a certain stage, usually upon arrival at the destination, acquires the right to take delivery of the goods that form the subject matter of the carriage and thereby enters into the contractual relationship (Cigoj, 1985). The development of the multimodal transport contract was driven by changes in production and consumption patterns, which became increasingly intensive and geographically dispersed across different parts of the world. Consequently, carriage performed by a single mode of transport was no longer sufficient, a reality that had already become apparent at the turn of the nineteenth and twentieth centuries, when the earliest discussions on multimodal transport emerged. It gradually became evident that maritime transport alone was insufficient to deliver goods to their final destination, making its integration with rail and road transport increasingly indispensable (Erhardsen and Skovbo, 2023). These developments created the need for a new type of carrier capable of transporting goods by multiple modes of transport while assuming responsibility for the transport operation as a whole. Although the essential elements of multimodal transport were relatively easy to identify at the time of its emergence, considerably more complex questions arose concerning the legal nature of the multimodal transport contract and the liability of the multimodal transport operator.

Awareness of the need to regulate issues relating to multimodal transport emerged at a relatively early stage. The conferences of the Comité Maritime International (CMI) held in 1911 and 1913 devoted considerable attention to the regulation of through carriage (De Wit, 1995). Efforts to develop a legal framework for the multimodal transport contract continued during the interwar period; however, the first significant initiatives in this regard emerged only after the Second World War within various governmental and non-governmental organizations. These developments were profoundly influenced by the containerization of cargo, which gained significant momentum during the 1960s. The advent of containerization further intensified the primary issue associated with multimodal transport, namely the determination of the multimodal carrier's liability in situations where it is impossible to establish on which leg of the transport operation the damage occurred. Among the various attempts to regulate the multimodal transport contract, particular mention should be made of the draft convention prepared by the International Institute for the Unification of Private Law (UNIDROIT) in 1961. This document represents the first legal instrument to introduce the concept of the principal carrier, responsible for the performance of the entire multimodal transport operation even where subcontractors are engaged in its execution. Significant regulatory initiatives were also undertaken within the framework of the Comité Maritime International (CMI). Draft Convention No. 1 of 1966 introduced a modified network liability system for maritime carriers in respect of loss or damage occurring before loading and after discharge. Under this system, the maritime carrier was liable on the same basis as its subcontractor would have been had the latter concluded a separate contract with the shipper for the inland leg of the carriage, namely in accordance with the provisions of the Convention on the Contract for the International Carriage of Goods by Road (CMR) and the Convention concerning International Carriage by Rail (COTIF-CIM). For loss or damage occurring during the maritime leg of the carriage, as well as for non-localized loss or damage, the maritime carrier remained liable under the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (the Hague Rules). A major turning point in the efforts to develop a convention on multimodal transport came with the Rome Rules of 1970, which resulted from cooperation between the CMI and UNIDROIT. These Rules constituted the first draft convention that was not confined to situations involving a maritime leg of carriage. Following the Rome Rules, the United Nations (UN) became actively involved in the preparation of a convention on multimodal transport. The final outcome of these efforts was the United Nations Convention on International Multimodal Transport of Goods (MT Convention). The most recent major attempt to regulate multimodal transport contracts is embodied in the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules). In contrast to the MT Convention, the Rotterdam Rules adopt a considerably more pragmatic approach and establish a significantly more fragmented regime governing multimodal transport contracts than that envisaged under the MT Convention.

2. DEFINITION OF MULTIMODAL TRANSPORT, THE MULTIMODAL TRANSPORT CONTRACT, AND THE MULTIMODAL TRANSPORT OPERATOR

In defining the multimodal transport contract, it is first necessary to clarify the concept of multimodal transport itself. By its very nature, multimodal transport may be understood as carriage performed by means of at least two modes of transport. This understanding is reflected in Article 1(1) of the MT Convention, which, in its opening sentence, defines international multimodal transport as carriage performed by at least two different modes of transport. It should be emphasized that the international character of multimodal transport is not a decisive criterion for its classification, since transport may still be regarded as multimodal even when performed entirely within a single country. The remainder of the first sentence of Article 1(1) of the MT Convention identifies a further characteristic of multimodal transport, namely that it is carried out pursuant to a multimodal transport contract from a place in one country, where the goods are taken in charge by the multimodal transport operator, to a place designated for delivery in another country. Accordingly, carriage qualifies as multimodal transport only where the consignor concludes a single contract with the multimodal transport operator for

carriage involving multiple modes of transport. Where the consignor enters into several separate contracts for the same transport operation, the carriage can no longer be regarded as multimodal transport.

The essential characteristics of a multimodal transport contract can already be inferred from the concept of multimodal transport itself, and these characteristics are reflected in a number of legal frameworks governing multimodal transport. The UNCTAD/ICC Rules on Multimodal Transport Documents (UNCTAD/ICC Rules) define a multimodal transport contract as a single agreement for the carriage of goods by at least two different modes of transport (Article 2.1 of the UNCTAD/ICC Rules). The elements of a single contract and carriage performed by at least two modes of transport are, in any event, indispensable for the definition of a multimodal transport contract. However, these elements must be complemented by a third characteristic, namely the responsibility of the multimodal transport operator for the performance of the entire transport operation (Ilešič, 1984). Although this element is not expressly reflected in the definitions contained in the MT Convention and the UNCTAD/ICC Rules, it follows clearly from their substantive provisions. Those provisions stipulate that the liability of the multimodal transport operator extends from the moment the goods are taken into its charge for carriage until the moment of their delivery (Article 14(1) of the MT Convention; Article 4.1 of the UNCTAD/ICC Rules). Accordingly, a multimodal transport contract may be defined as a contract under which a single carrier, acting as a multimodal transport operator, undertakes to carry goods by at least two different modes of transport and assumes responsibility for the performance of the entire transport operation, from the place where the goods are taken into its charge to the place of delivery (see also Ilešič, 1984; Wolf, 2013; Spanjaart, 2018; Lobianco and Stradella, 2023).

With regard to the concept of multimodal transport, and consequently the definition of the multimodal transport contract, the question arises as to how the term mode of transport should be understood. In defining a mode of transport, legal doctrine primarily relies on concepts developed within the field of logistics (Verheyen, 2018). These concepts are reflected in the Eurostat Glossary for Transport Statistics, which identifies three criteria for classifying modes of transport: (a) according to the medium used, namely water, air, or land; (b) according to the infrastructure employed, namely sea, inland waterways, road, rail, or air; and (c) according to the vehicle used, such as a train, truck, vessel, aircraft, and the like (Glossary for Transport Statistics, 6th ed., 2026, Eurostat, European Union). These classifications must, however, be applied with caution, as they may prove misleading if used without proper qualification. Even within the same transport medium, namely land transport, a distinction can be drawn between rail and road transport. Nevertheless, the combination of these two forms of carriage constitutes multimodal transport, since each is governed by a different legal regime.

The existence of at least two legal regimes governing the carriage operations performed under a single contract of carriage constitutes an important defining characteristic of a multimodal transport contract. In this regard, reference should be made to the German Commercial Code (Handelsgesetzbuch – HGB), which defines a multimodal transport contract as a single contract of carriage under which, had the parties concluded separate contracts of carriage for each stage of the transport involving a particular mode of transport, at least two of those contracts would have been subject to different legal rules (Article 452 HGB). Although this definition undoubtedly contains a useful distinguishing feature, it may also be inferred from other definitions of a multimodal transport contract, even where this feature is not expressly emphasized, that such a contract necessarily combines at least two modes of transport governed by different legal regimes. Otherwise, there would be no need for a distinct contractual framework for multimodal transport. The foregoing applies not only where a multimodal transport contract is assessed by reference to the individual unimodal contracts governing the respective stages of the multimodal transport operation, but also where the contract is subordinated to the legal regime governing the predominant mode of transport within the multimodal transport operation, or where an autonomous *sui generis* legal regime governing legal relationships arising from multimodal transport is established independently of existing contractual types.

With regard to the definition of multimodal transport and the multimodal transport contract itself, it is also necessary to define the carrier performing such transport. As noted above, a major breakthrough in regulating the legal status of the multimodal carrier was achieved through the 1961 UNIDROIT Draft, which introduced a carrier referred to as the “Principal Carrier”, who is responsible for the entire transport operation, even where subcontractors are engaged to perform parts of the multimodal transport. Today, the term multimodal transport operator is used to designate a carrier performing multimodal transport. In terms of its function, this concept does not differ from the “Principal Carrier” introduced in the aforementioned UNIDROIT Draft. The key defining characteristic of a multimodal transport operator is that it acts as a principal in its own name. The definitions of a multimodal transport operator also attribute a number of other characteristics to it; however, all of these stem from that defining feature. Specifically, a multimodal transport operator concludes a multimodal transport contract and assumes liability for its performance as a carrier (UNCTAD/UNCITRAL, Article 2(2)) or, as provided in the MT Convention, is a person who, acting in its own name or through another person acting on its behalf, concludes a multimodal transport contract and, in doing so, acts as a principal rather than as an agent of the consignor (MT Convention, Article 1(2)). The MT Convention expressly provides that a multimodal transport operator acts as a principal and not as an agent. In situations where a person acts in the capacity of an agent as a transport organizer, making contractual arrangements with the carrier and other entities involved in the transport operation, the cargo owner, rather than the organizer, is the actual party to the contract. Such contracts are generally referred to as “through transport contracts” (Schommer, 2005).

3. DOCTRINES DEFINING THE NATURE OF A MULTIMODAL TRANSPORT CONTRACT

With regard to the multimodal transport contract, the question arises whether it has developed distinctive characteristics to such an extent that it may be regarded as a *sui generis* contract, possessing its own normative structure independent of existing contractual types, or whether it is merely a contract through which the parties express their intention to perform carriage by several modes of transport, thereby pursuing an economic function that is not characteristic of other transport contracts. In the latter case, it would constitute a *sui generis* multimodal transport contract only with respect to the purpose pursued by the parties. It is this purpose that distinguishes the multimodal transport contract from existing transport contracts, even where the legal relationships arising under it are governed by rules applicable to established contractual types. To answer the above question, it is necessary to examine existing case law, legal doctrine, legal theory, legislation, and the various attempts undertaken to establish a legal framework for the multimodal transport contract. In the field of multimodal transport, case law plays an important role in resolving disputed legal relationships, although it often develops without broader systematic ambitions. Accordingly, a comprehensive analysis of case law is required, encompassing a substantial body of judicial decisions over an extended period to identify and synthesize the legal rules derived from them. Well-developed case law may provide a solid foundation for legal regulation where such regulation is built upon it. However, the development of multimodal transport has proceeded so rapidly that no body of case law has emerged at the global level that provides a sufficiently uniform and consistent set of legal rules governing relationships arising in the context of multimodal transport. As previously explained, attempts to regulate the multimodal transport contract can be traced back to the period preceding the First World War. Nevertheless, systematic efforts to establish a comprehensive legal framework for multimodal transport began only after the Second World War. To answer the question addressed in this paper, the multimodal transport contract will therefore be examined through the prism of three doctrinal approaches: the absorption doctrine, the combination doctrine, and the *sui generis* doctrine. In this regard, it should be noted that the legal instruments governing multimodal transport, including draft international conventions and documents issued by industry associations, often contain elements of more than one doctrinal approach.

3.1. Doctrine of Absorption

The doctrine of absorption derives from the notion that the dominant element of a contract determines the legal regime governing it, while the other, subordinate aspects of the contract are absorbed into that dominant element. Consequently, this doctrine can be applied only where, in a mixed contract, the various elements do not carry equal weight (Hoeks, 2009). In essence, at least from a theoretical perspective, it is a simple method that eliminates the difficulties involved in regulating contractual relationships in which different contractual types are intertwined. However, the method proves inadequate in complex and highly integrated contractual relationships, where it is difficult to identify the dominant elements of a particular contractual arrangement. From a historical perspective, the doctrine of absorption is the result of a misconception arising from the reception of Roman law. More specifically, substantive-law absorption came to replace the procedural absorption embedded in the procedural formulae of Roman law, while the differences between modern absorption and its Roman-law counterpart were overlooked (Grilc, 1996). Put simply, in Roman law, absorption was a procedural tool used in the formulation of legal actions, whereas in contemporary law it has become a substantive rule governing the rights and obligations of the parties.

When a multimodal transport contract is examined through the lens of the absorption doctrine, guidance may be drawn from both case law and legislative solutions. In this respect, two distinct approaches can be identified in the jurisprudence. The most significant line of authority subjecting multimodal transport to a single legal regime, applicable from the moment the goods are delivered to the carrier until their delivery to the consignee, has emerged in the United States. This development took shape around the turn of the millennium and was largely influenced by two landmark decisions of the Supreme Court of the United States. In Europe, no comparable trend has emerged to any significant extent. Instead, European courts have primarily addressed multimodal transport in the context of determining the legal regime applicable to ancillary transport operations, warehousing, and cargo-handling activities, which are predominantly carried out in ports and inland terminals between the completion of one mode of transport and the commencement of another within a multimodal transport operation. Where damage occurs during the transfer of goods from one means of transport used in one leg of the carriage to another means of transport used in a subsequent leg, the question arises as to which legal regime should govern the assessment of the multimodal transport operator's liability. Although multimodal transport is often described as "seamless" from a functional perspective, the phases described above are referred to in legal literature as "itching seams", since they represent points at which different legal regimes intersect and may potentially come into conflict (Bäckdén, 2019).

In the jurisprudence of the United States, one can observe instances in which transport operations exhibiting the characteristics of multimodal transport have been subjected to maritime law on the basis that maritime carriage constituted the predominant element of the overall transport operation. In Norfolk Southern Railway Co. v. James N. Kirby, Pty Ltd (2004 AMC 2705), the Supreme Court of the United States considered a transport operation involving both sea and rail carriage. A bill of lading had been issued containing a Himalaya Clause extending its protection to all subcontractors engaged by the

maritime carrier. The Court held that, although the damage occurred during the rail leg of the transportation, the legal relationship remained governed by the Carriage of Goods by Sea Act (COGSA), since the bill of lading retained a predominantly maritime character notwithstanding the combination of sea and rail carriage. Another landmark decision of the Supreme Court of the United States is Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp. (2010 AMC 1521). In that case, the carrier, acting through its agent, issued four bills of lading containing both a Himalaya Clause, extending the contractual benefits of the maritime carriage contract to all subcontractors, and a Paramount Clause, incorporating COGSA as the governing legal regime. After the goods had been discharged in the United States, their journey continued inland by rail. During this stage of the transport operation, the train derailed and the cargo was damaged. The Court concluded that the carrier's liability could not be assessed under the Carmack Amendment, which governs domestic rail transport in the United States, because the carrier had received the goods in China in its capacity as an ocean carrier. The Court further justified the application of COGSA by reference to the need to protect international maritime commerce. Such protection could not be effectively achieved if each segment of the transport operation were subject to a different legal regime. This consideration is particularly important in container transport, where it is often difficult to determine precisely when and where the damage occurred. Owing to the predominance of maritime carriage within the multimodal transport operation, United States District Courts likewise applied maritime law in Taisho Marine & Fire Insurance Co. v. Maersk Line Inc. (1993 AMC 705) and Fruit of the Loom v. Arawak Caribbean Line, Ltd. (2000 AMC 387).

In Europe, examples of such case law are considerably rarer. One notable example is the Danish Supreme Court's decision in The Salmon Roe (U.2008.1638H). In that case, the parties agreed on the carriage of fish roe by air from Denmark to Japan. However, the goods were damaged during their transport from Denmark to Frankfurt Airport. The carrier argued that its liability should be assessed under the CMR Convention. The Court, however, held that the contract, considered as a whole, was in substance a contract for air carriage and was therefore governed by the rules applicable to air transport. In reaching this conclusion, the Danish Supreme Court relied on assumptions similar to those underlying the approach adopted by United States courts, namely that the predominant mode of transport determines the legal regime to which the remaining segments of the transport operation must be subordinated.

As noted, with regard to the absorption doctrine, European courts have primarily dealt with cases involving the transition from one mode of transport to another within a multimodal transport operation, a situation that arises particularly during transshipment operations in ports and inland terminals.

The German Federal Court of Justice held in its judgment (TranspR 2006, 35) that transshipment activities carried out within the port area during the carriage of a field laboratory from Tunisia to Germany were subordinate to maritime carriage and that such carriage was not completed until the goods had been loaded onto the next means of transport by which they were to leave the port. The same Court adopted a similar approach in the well-known Mafi Trailer case (TranspR 2007, 473). In that case, however, it held that a transshipment operation carried out in the port, during which cargo was being loaded onto a truck following the completion of sea carriage and sustained damage in the process, formed an integral part of the subsequent road carriage. According to the Court, road carriage had already commenced when the loading of the cargo onto the truck began. Consequently, the carrier’s liability was assessed under the legal rules governing road transport. The Austrian Supreme Court (1995 3(10) Int. ILR G 199–200) likewise held that damage occurring during the unloading of goods from road vehicles for the purpose of loading them onto railway wagons in the performance of a multimodal transport contract should be assessed under the rules governing road transport rather than those applicable to rail transport. The Court reasoned that rail carriage would commence only once the sub-carrier had taken over the goods from the road carrier and begun loading them onto the railway wagons. These decisions of European courts indicate that the legal regime governing a particular leg of carriage within a multimodal transport operation extends to all activities necessary for the performance of that leg. In other words, transshipment operations are absorbed into the legal regime governing the stage of transport within which they are carried out (see also Niessen, 2017).

The principle of absorption is established not only through case law but also through binding legal instruments in which issues of multimodality undoubtedly arise, since a particular unimodal mode of transport is combined with other forms of transport to ensure its efficient performance. In such cases, this involves so-called “plus mode” transport, which is ancillary to the principal, or core, mode of transport. This system encompasses the CMR Convention, COTIF-CIM, the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), and the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI). Some scholars dispute the characterization of the above-described “plus mode” concept, as reflected in the aforementioned international conventions, as a form of multimodal transport. Their argument is that these conventions regulate unimodal transport and that any other modes of transport falling within their scope ultimately remain subject to the legal regime governing the mode of transport regulated by the respective convention (see Verheyen, 2019). Nevertheless, it cannot be denied that whenever unimodal conventions extend their scope of application so as to encompass and regulate other modes of transport within their own framework, this constitutes, at least from a technical perspective, the incorporation of elements of multimodal transport into a unimodal transport regime, thereby giving rise to corresponding legal issues.

One of the most frequently discussed forms of plus-mode transport within the framework of unimodal transport law conventions is road transport governed by Article 2 of the CMR Convention. This provision stipulates that where a vehicle carrying goods is transported for part of its journey by sea, rail, inland waterway, or air, and the goods are not unloaded from the vehicle, the Convention applies to the entire carriage. It follows from this definition that such carriage presupposes the existence of at least one additional transport leg alongside the road segment, whereby the road vehicle itself is carried by a means of transport belonging to another mode. In practice, the most common form of such carriage is roll-on/roll-off (ro-ro) transport, in which trucks are loaded onto ships. Some authors have argued that, by virtue of being transported on a means of transport belonging to another mode, the road vehicle becomes part of a specific type of multimodal transport and consequently undergoes a change in its legal status, effectively becoming part of the cargo itself or being reduced merely to the function of packaging (Hoeks, 2009).

The principle of absorption is also reflected in the COTIF-CIM. Under this Convention, in cases of international carriage governed by a single contract, its provisions also apply to road and inland waterway transport performed within the domestic territory of a Member State, provided that such transport supplements cross-border rail carriage (Article 1.3, CIM Uniform Rules). Furthermore, the Convention extends its scope to international carriage performed under a single contract that combines rail transport with sea transport or cross-border inland waterway transport, provided that the relevant routes are included in the lists of lines or services referred to in Article 24.1 of the Convention (Article 1.4, CIM Uniform Rules). In both situations, the essential elements of a multimodal transport contract are present, namely a single contract of carriage involving two or more modes of transport. Nevertheless, because the road, inland waterway, or maritime leg merely complements the rail carriage, the legal relationship remains governed by the CIM Uniform Rules.

Elements of the absorption principle can also be found in Article 18(4) of the Montreal Convention. At the outset, Article 18(4) expressly excludes carriage by land, sea, or inland waterway performed outside an airport from the scope of air carriage. However, the provision recognizes two exceptions. The first exception applies where such carriage is performed in connection with air transport for the purposes of loading, delivery, or transshipment. In such circumstances, any damage is presumed to have resulted from air carriage unless proof to the contrary is provided. Accordingly, carriage performed for the purposes of loading, delivery, or transshipment is deemed to constitute an integral part of the air carriage and is therefore absorbed into the unimodal contract of carriage by air governed by the Montreal Convention, provided that the damage cannot be localized (see Spanjaart, 2018). By contrast, road transport or any other mode of transport cannot be regarded as forming part of the air carriage where it constitutes a separate leg within a multimodal transport operation. Such a separate leg exists, for example, where goods transported by air from Tokyo to Paris are subsequently carried by road from Paris to Milan for delivery to the consignee under a multimodal transport contract. The second exception arises where the carrier substitutes the agreed air carriage with another mode of transport without the consignor's consent. This rule was incorporated into the Convention in order to protect the interests of air cargo users, since the Montreal Convention provides for relatively high limits of liability that carriers could otherwise circumvent by replacing air carriage with another mode of transport. In essence, the provision prevents carriers from avoiding the Convention's liability regime through the unilateral substitution of the agreed mode of carriage. In this way, the Convention ensures that its rules govern carriage possessing all the characteristics of multimodal transport where neither the express nor the implied terms of the contract allow for the combination of air carriage with other modes of transport.

Elements of absorption are also evident in the provisions of the CMNI. A distinctive feature of the Convention is that it extends its scope only to maritime transport, and even then subject to specific conditions. The Convention applies where a contract for the carriage of goods is performed, without transshipment, partly on inland waterways and partly on waters subject to maritime navigation rules, provided that either no maritime bill of lading has been issued pursuant to the applicable maritime law or the distance to be navigated on waters subject to maritime jurisdiction does not exceed the distance to be covered by inland waterway transport (Article 2(2), CMNI). The absorption approach adopted by the CMNI represents a pragmatic solution. The Convention does not extend its scope to transport modes other than maritime transport, while its limited extension to maritime carriage does not give rise to significant difficulties. In relation to the Hague Rules and the Hague-Visby Rules, which are the most widely adopted international maritime conventions, the CMNI does not give rise to any significant conflicts, since the CMNI does not apply whenever a bill of lading has been issued. More complex issues arise in relation to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). Unlike the Hague Rules and the Hague-Visby Rules, the Hamburg Rules do not require the issuance of a maritime bill of lading as a precondition for their application. Consequently, they may apply even where no such bill of lading has been issued. Nor do they exclude their application where maritime carriage is performed in combination with inland waterway transport, provided that the inland waterway leg exceeds the maritime leg in length. In such circumstances, conflicts between the two legal regimes may arise. This difficulty is, however, mitigated by the fact that the Hamburg Rules have been ratified by only a limited number of States. As regards the Rotterdam Rules, no conflict currently arises because they have not entered into force. Even if they were to enter into force, Article 82 of the Rotterdam Rules, as discussed below, contains specific provisions governing any conflicts that may arise in relation to the CMNI.

At first glance, the doctrine of absorption appears to be an effective mechanism for regulating multimodal transport, as it provides a uniform legal framework and eliminates uncertainties concerning the law applicable to the assessment of a multimodal transport contract. This is particularly important in cases of non-localized damage. Conversely, the doctrine is unsuitable where no predominant mode of transport can be identified within the multimodal transport operation. Its effectiveness is further limited by mandatory unimodal transport conventions, from which the parties cannot derogate by contractual agreement, as well as by situations in which the multimodal transport operator engages subcontractors whose liability limits are lower than those assumed by the carrier vis-à-vis its contractual counterparty. In such circumstances, the multimodal transport operator is exposed to significant risk, as it may be required to compensate its contracting party for a greater amount of damage than it can subsequently recover through recourse against its subcontractors. Although there can be no doubt that, within the framework of the doctrine of absorption, the multimodal transport contract cannot be conceived as a *sui generis* contractual type possessing its own normative structure, since it remains subject to the law governing the predominant mode of transport within the multimodal transport operation, it cannot be denied that such a contract nevertheless contains certain elements that distinguish it from other contractual types. These elements derive from the objective pursued by the contract, namely the performance of integrated carriage involving multiple modes of transport under a single contract. It is precisely this characteristic that constitutes the fundamental economic function of the multimodal transport contract and distinguishes it from other unimodal contracts of carriage, thereby supporting the view that the multimodal transport contract may be regarded as *sui generis* with respect to the purpose it is intended to serve.

3.2. Doctrine of Combination

The essence of the doctrine of combination lies in the proposition that the legal rules governing each contractual type forming part of a mixed contract must be applied concurrently whenever the contract exhibits a mixed character (Hoeks, 2009). Accordingly, a multimodal transport contract, when analyzed through the prism of the doctrine of combination, is treated as a mixed contract. More broadly, and from a historical perspective, mixed contracts constitute a developmental stage in the evolution of contractual forms (Grilc, 1996, p. 52). In the context of multimodal transport, the doctrine of combination is reflected both in judicial practice and in legislative instruments.

The doctrine of combination fundamentally embodies the network principle for determining the liability of the multimodal transport operator. At first glance, this system appears straightforward from a theoretical perspective, as it provides that the liability of the multimodal transport operator is governed by the law applicable to the particular segment of transport in which the loss or damage occurred, namely the relevant unimodal convention governing that stage of the carriage. This approach is also referred to as the "chameleon principle." In practice, however, the pure network liability system gives rise to considerable difficulties and disadvantages, to the extent that, in many instances, achieving a reasonable outcome becomes virtually impossible, particularly in cases involving non-localized loss or damage, gradual losses, and delays in delivery (De Wit, 1995). Although much of the academic and judicial debate has focused on the inapplicability of network liability in situations where the location of the damage cannot be determined, the problem is broader in scope. In cases of non-localized damage, none of the existing unimodal conventions governing individual modes of transport can be applied. When discussing the doctrine of combination, or the mixed nature of the multimodal transport contract in case law, reference should be made to the case of Quantum ((2002) 2 Lloyd's Rep. 25), which is widely regarded in Europe as one of the most frequently cited decisions and, in English law, as a leading authority on the liability of multimodal transport operators. In Quantum, the goods were transported by air from Singapore to Paris and subsequently by road from Paris to Dublin. During the performance of the latter leg of the carriage, the cargo was stolen. The Court of Appeal, unlike the court of first instance, held that, notwithstanding the fact that air carriage constituted the predominant mode of transport within the overall multimodal operation, the multimodal transport operator's liability was subject to the legal regime governing the segment of the journey in which the damage occurred. Consequently, the road carrier's liability was assessed under the CMR Convention, resulting in a liability limit of 8.33 SDRs per kilogram, rather than the limit of 17 SDRs per kilogram that would have applied under the Warsaw Convention.

Both before and after the Quantum case, the doctrine of combination was widely reflected in the case law of European courts. The German Federal Supreme Court (Bundesgerichtshof - BGH) held that where a carrier, in the course of an air carriage operation, substitutes a particular segment of the carriage with carriage by road, liability arising during the road leg is governed by the national law applicable to road transport (in that case, the carriage between Stuttgart and Frankfurt as part of the overall journey to Algeria), irrespective of whether the carrier was contractually entitled to substitute the mode of transport under the terms of the contract (TranspR 1990, 19). Similarly, in the Resolution Bay case, the District Court of Rotterdam (S&S 2000, 35) held that the CMR Convention applied to the road leg of the carriage of lamb meat from New Zealand to Antwerp, performed between Rotterdam and Antwerp after the cargo had been discharged from the vessel.

A departure from the above-mentioned line of case law in Europe began with the judgment of the German Federal Supreme Court (TranspR 2008, 365), which held that the CMR Convention does not apply to the road segment of multimodal transport. The Court based its decision on the finding that Article 1(1) of the Convention does not envisage its application to

multimodal transport. The only form of multimodal transport expressly regulated by the Convention is that referred to in Article 2, namely situations in which road vehicles are loaded onto means of transport used in other modes of transport. The Court further reasoned that the CMR Convention was not intended by the contracting states to govern multimodal transport, as they had undertaken, through a special protocol to the Convention, to regulate multimodal transport by means of a separate international convention. A similar position was adopted by the Supreme Court of the Netherlands in the Godafoss case (S&S 2012/95). It should be noted, however, that these decisions do not, from a broader perspective, signify a departure from the network liability system applicable to multimodal transport operators in Europe. Where the CMR Convention is not applied to determine liability, the relevant national law applies instead. These national rules are themselves based on the principle of network liability or, more precisely, modified network liability, as they also govern situations in which the location of the damage cannot be identified. This issue will be examined in greater detail later in this section.

The combination theory is not confined to European case law but is also reflected in the jurisprudence of certain Asian jurisdictions. In Jiangsu Xiuqiang Glass Art Co. Ltd v. Qingdao Wanjia Logistics Co. Ltd, Lianyugang Branch (Chinese Maritime and Commerce, 2024, Vol. 3, p. 34), the goods were damaged during rail transport in Mexico following their arrival in the country as a result of a train derailment. The Nanjing Maritime Court held that liability for the damage sustained during the rail leg of the carriage should be determined under Mexican railway law. A similar approach was adopted by the Shanghai Maritime Court in Mitsui Sumitomo Insurance Company Limited v. COSCO Shipping Lines Co., Ltd. (2016) Hu 72 Min Chu No. 288), where solar panels transported by sea from Asia to Europe were subsequently damaged in a train derailment. The court assessed the carrier's liability for the leg of the transport during which the damage occurred under the rules governing rail transport, specifically Greek law based on COTIF-CIM, as the derailment had occurred in Greece. Additional cases from the jurisprudence of Chinese courts could also be examined. However, Chinese case law is relatively consistent with respect to the network liability of multimodal carriers due to the provisions of the Chinese Maritime Code, which regulates multimodal transport on the basis of a modified network liability system.

With regard to multimodal transport, Indian courts have developed a substantial body of case law. However, these cases primarily concern issues relating to the limitation of claims and procedural matters, particularly arbitration clauses. Were Indian courts also to address questions concerning the law applicable to the particular leg of the transport during which the damage occurred, there would be strong grounds for adopting the combination theory. This is because Indian legislation governing multimodal transport, as will be explained below, is based on a modified network liability system. The potential applicability of the combination theory is illustrated by M/S Carborandum Universal Ltd. v. M.G. International Transport GmbH, in which the Madras High Court held that carriage under a "Negotiable FIATA Multimodal Transport Bill of Lading", involving both sea and road transport, constituted multimodal transport within the meaning of the Multimodal Transportation of Goods Act, 1993. Having subsequently found the claim to be time-barred under the same legislation, however, the Court did not specifically address the question of the law applicable to the assessment of the multimodal transport operator's liability. Had the claim not been barred by limitation, the Court would have had a sound basis for applying the combination theory in determining the liability of the multimodal transport operator in a case involving localized damage.

The combination theory is reflected not only in case law but also at the legislative level, both in international and national law. Among the international conventions currently in force that regulate multimodal transport, particular attention should be paid to the Montreal Convention, specifically Article 38. This provision stipulates that, in the case of carriage performed partly by air and partly by another mode of transport, the Convention applies only to the air transport segment, taking into account Article 18(4), which provides that carriage by land, sea, or inland waterway performed outside an airport does not constitute the period during which carriage by air is performed. It follows that the Convention does not govern the multimodal transport operation as a whole, but only the air leg of such transport. In this way, a network liability system is introduced into multimodal transport, at least with respect to the international air transport segment (Hoeks, 2009, p. 190). Article 38 thus serves to define both the scope and the limits of the Convention's application. It removes any doubt as to the applicability of the Convention in the context of multimodal transport. However, where the Convention applies, it governs only the air segment of the multimodal carriage. This wording also eliminates the uncertainties discussed above in relation to the CMR Convention, namely whether that Convention applies when determining the liability of a multimodal transport operator for the road leg of a multimodal transport operation.

With respect to the combination theory, particular attention should be paid to the Rotterdam Rules, which are primarily designed to regulate maritime transport. Among the existing unimodal transport conventions, the Rotterdam Rules have the broadest plus-modal scope, as they contain provisions applicable not only to maritime carriage but also to other modes of transport when these form part of a single contract of carriage (Verheyen, 2019). This is reflected in Article 1(1), which defines a contract of carriage as a contract under which a carrier undertakes to carry goods from one place to another, provided that the contract includes carriage by sea, although it may also provide for carriage by other modes of transport in addition to the maritime leg. Given the wording of Article 1(1), the question arises as to which law governs the non-maritime segments of carriage. Article 26 provides the answer. It stipulates that, for the purposes of determining the carrier's liability, including limitation of liability and time-bars, the Rules do not apply where the loss, damage, or event or circumstance causing

delay occurs during the period in which the carrier is responsible for the goods but before the goods are loaded onto the ship or after they have been discharged from it. In such circumstances, the applicable rules are those contained in the international instrument that would have governed the carrier's liability had the shipper contracted directly with the carrier for the particular segment of the transport operation concerned. Through this provision, the Rotterdam Rules introduce a network liability system for multimodal transport whenever the loss can be localized. In cases of non-localized loss, however, the carrier's liability is determined in accordance with the provisions governing maritime carriage under the Rotterdam Rules. Several considerations explain the adoption of such a liability regime for transport operations not performed exclusively by sea, of which two are particularly significant. First, it seeks to avoid the risks associated with a uniform liability system, which could bring the Rotterdam Rules into conflict with existing unimodal conventions. Second, it prevents inconsistencies between the liability regimes applicable to the contracting carrier and the actual carrier (Bäckdén, 2019). If the contracting carrier (i.e., the multimodal transport operator) compensates the consignor for the damage and subsequently seeks recourse against its subcontractors (actual carriers), there is no guarantee that it will be able to recover the full amount of the loss, or indeed any amount at all, where those subcontractors are subject to lower liability limits and shorter limitation periods (De Wit, 1995). The drafters of the Rotterdam Rules did not stop at Article 26. Recognizing that a number of unimodal conventions contain plus-modal provisions extending their scope to other modes of transport, including maritime carriage, they also incorporated Article 82 to address potential conflicts arising in such situations. Article 82 permits the continued application of international unimodal conventions governing carriage by air, road, rail, and inland waterways where those conventions extend their scope to maritime transport. Although it does not expressly identify the conventions concerned, its wording clearly indicates that it refers to the Montreal Convention, the CMR Convention, the COTIF-CIM Convention, and the CMNI Convention. The liability regime established by the Rotterdam Rules for transport operations that are not performed exclusively by sea reflects a considerable degree of pragmatism. This pragmatism is evident in the strong emphasis on avoiding conflicts with existing unimodal conventions and thereby promoting legal certainty, which was intended to facilitate the acceptance and ratification of the Rotterdam Rules by states. Nevertheless, such a regime does little to advance the unification of the law governing multimodal transport and, from the perspective of legal harmonization, may even be regarded as a step backward compared with the MT Convention.

In addition to the international level, the combination theory can also be found in certain national legal systems. In Germany, the HGB establishes a network liability system for localized loss, damage, or delay, supplemented by additional rules for situations in which localization is not possible. This means that the liability of the multimodal transport operator is based on a modified network system. As provided in Section 452a of the HGB, where the loss, damage, or event causing the delay can be localized to a particular stage of the transport, the multimodal transport operator's liability is determined in accordance with the provisions governing that specific stage. If localization is not possible, the provisions of Subsection 1 apply. This subsection contains general provisions governing contracts of carriage, which are largely modeled on the CMR Convention. The liability regime applicable to multimodal transport is likewise governed by these provisions. In practice, this means that if damage occurs during the maritime stage of a multimodal transport operation, maritime law applies. However, where the damage cannot be localized, the general rules governing contracts of carriage apply.

Dutch law likewise follows the combination theory in cases of localized damage, whereby each stage of a multimodal transport operation is governed by the legal rules applicable to that particular stage of transport (Article 8:41 of the Dutch Civil Code). However, the Dutch Civil Code also provides a fallback rule for cases of non-localized loss, damage, or delay, under which the liability regime offering the highest level of compensation to the cargo interests applies (Article 8:43 of the Dutch Civil Code).

The combination doctrine in the regulation of multimodal transport can also be found in legal systems outside Europe. Among such jurisdictions, particular mention should be made of China and India. A distinctive feature of the Chinese Maritime Code is that it defines a multimodal transport contract as a contract under which a multimodal transport operator undertakes to carry goods using at least two modes of transport, one of which must be maritime transport (Article 102 of the Maritime Code). The liability of the multimodal transport operator is determined in accordance with the liability regime governing the leg of the journey during which the loss or damage occurred (Article 105 of the Maritime Code). Where the loss or damage cannot be localized, the multimodal transport operator is liable in accordance with the rules applicable to a maritime carrier (Article 106 of the Maritime Code). Provisions reflecting the combination doctrine are also contained in the Indian Multimodal Transportation of Goods Act (IMTGA). A notable feature of this Act is that it defines multimodal transportation as the carriage of goods by at least two modes of transport under a multimodal transport contract, from a place of acceptance in India to a place of delivery outside India (Article 2(k) IMTGA). In cases of localized loss of or damage to goods entrusted to the multimodal transport operator, the applicable limitation of liability is that governing the particular stage of the carriage during which the loss or damage occurred. Any contractual provision to the contrary is null and unenforceable (Article 15 IMTGA). The Act also contains a specific provision addressing non-localized loss or damage. In such cases, the multimodal transport operator's liability is limited to 2 SDRs per kilogram of the gross weight of the lost or damaged consignment, or 667.67 SDRs per package or other shipping unit, whichever is higher. However, where the

multimodal transport operation does not include a maritime mode of transport, liability is limited to 8.33 SDRs per kilogram of the gross weight of the lost or damaged consignment (Article 14 IMTGA).

The combination doctrine represents a straightforward approach to the regulation of multimodal transport and the liability of the multimodal transport operator. It is even simpler than the absorption doctrine, as it does not require determining which mode of transport predominates within a multimodal transport operation. This doctrine practically precludes conflicts between the multimodal transport contract and the mandatory provisions of international conventions and national laws applicable to unimodal carriage. Despite these advantages, however, it suffers from one significant shortcoming: it does not provide a satisfactory solution in cases of non-localized loss or damage. Moreover, it is considerably removed from approaches that regard the multimodal transport contract as a *sui generis* contract possessing its own normative structure, since all unimodal transport contracts that form part of the multimodal transport contract fully retain their original legal characteristics. Nevertheless, the combination doctrine does not deprive the multimodal transport contract of its *sui generis* character from a functional perspective. Even under this doctrine, the economic purpose of the multimodal transport contract pursued by the contracting parties remains the performance of a single, integrated transport operation involving multiple modes of transport under one contract.

3.3. The sui generis doctrine

A multimodal transport contract, regarded as a *sui generis* contract, is based on the premise that it possesses characteristics distinguishing it from other transport contracts. Various arguments have been advanced in support of this characterization. According to one view, a multimodal transport contract extends beyond a mere contract of carriage by encompassing additional services that are intrinsic to multimodal transport, such as transshipment and, frequently, storage. It is therefore regarded not simply as a contract for the carriage of goods, but as a contract covering the organization of the transport chain as a whole (Hoeks, 2009). From this perspective, the multimodal transport operator assumes a significantly greater coordinating role than a conventional carrier and is therefore regarded not merely as a carrier but as an operator responsible for managing an integrated transport operation. In this capacity, the multimodal transport operator provides a range of services that would ordinarily be governed by separate contracts but are so closely interconnected that they form a single, integrated whole (Hoeks, 2009). Another argument supporting the *sui generis* doctrine is that unimodal transport contracts apply only where a single mode of transport is used. Once several modes of transport are combined within a single transport operation, the contract can no longer be associated exclusively with any one of the individual modes involved (De Wit, 1995). As noted above, German and Dutch courts have likewise adopted this approach, holding that the CMR Convention does not apply to the road leg of a carriage performed within the framework of a multimodal transport operation (BGH, TranspR 2008, 365; Dutch Supreme Court, S&S 2012/95).

Historically, the *sui generis* doctrine in relation to the multimodal transport contract developed primarily for practical reasons rather than from the perception of the multimodal transport contract as a distinct *sui generis* contract of carriage. Its development was driven by the need to devise solutions capable of avoiding conflicts with the conventions governing unimodal transport (Bäckdén, 2019). Regardless of how the multimodal transport contract is conceptualized, the highest stage in its evolution as a *sui generis* contract is reached when it acquires an autonomous normative structure independent of other contractual types. All other conceptions represent merely intermediate stages of development, including the understanding of the multimodal transport contract as a *sui generis* contract by virtue of its purpose, which reflects only the economic objective underlying its formation.

The development of the multimodal transport contract into a genuine *sui generis* contract possessing an autonomous normative structure independent of existing contractual types has long been an objective pursued by legal scholars and international organizations. Despite considerable efforts, this objective has yet to be achieved in practice. Among the various attempts to realize it, the MT Convention of 1980 arguably represented the most advanced step in that direction, although it never entered into force.

The Convention introduced provisions regulating multimodal transport largely independently of existing international conventions and domestic legal regimes. This autonomy is particularly evident in the field of liability. The Convention establishes a uniform basis of liability founded on the principle of presumed fault (Article 16(1)). It may also be regarded as establishing a uniform liability regime with respect to the limitation of liability, at least in cases of non-localized loss or damage, by providing for a limitation of 2.75 SDRs per kilogram of gross weight or, where the multimodal transport operation does not include a maritime leg, 8.33 SDRs per kilogram. However, in cases of localized loss or damage, this uniform liability regime is disrupted by Article 19 of the MT Convention (see Bäckdén, 2019). Under that provision, where loss of or damage to goods occurs on a particular leg of a multimodal transport operation and an applicable international convention or mandatory national law prescribes a higher limit of liability than the MT Convention, the provisions of such convention or mandatory national law prevail. A similar approach is reflected in the UNCTAD/ICC Rules for Multimodal Transport Documents, which regulate the liability of the multimodal transport operator in a largely uniform manner.

Nevertheless, Article 6(4) of the Rules provides that, in cases of localized loss or damage, any applicable mandatory international convention or national law shall apply. Unlike the MT Convention, however, the UNCTAD/ICC Rules give precedence to the limits of liability prescribed by such conventions or national laws even where they provide for a lower limitation of liability than that established by the Rules themselves.

It is evident from the provisions of the MT Convention and the UNCTAD/ICC Rules discussed above that the principal obstacle to establishing a truly uniform system of liability, and consequently to recognizing the multimodal transport contract as a *sui generis* contract with its own autonomous normative structure, lies in the provisions governing the limitation of liability in cases of localized loss or damage. More recent attempts to regulate the multimodal transport contract, such as the Rotterdam Rules, aim at a substantially lower degree of legal unification. Wherever possible, they rely on the legal regimes governing the individual unimodal modes of transport that form part of the multimodal transport operation. Consequently, the regulation of the multimodal transport contract under the Rotterdam Rules remains closely linked to the legal frameworks applicable to the constituent unimodal carriage segments.

From the foregoing, it is evident, on the one hand, that even the most recent attempts to regulate the multimodal transport contract cannot disregard the specific characteristics that distinguish this type of contract from other contracts of carriage. On the other hand, they reveal an increasing degree of pragmatism aimed at avoiding conflicts with existing unimodal transport conventions. In this respect, national legislation likewise contains no provisions capable of significantly advancing the multimodal transport contract toward the status of a *sui generis* contract possessing its own autonomous normative structure, independent of existing contractual categories. The German, Dutch, Chinese, and Indian legal regimes discussed above all rely on a pure network system in cases of localized loss or damage. For this reason, the multimodal transport contract may be regarded as a *sui generis contract* only from the perspective of its purpose, namely the attainment of the economic objective pursued by the contracting parties. Consequently, the individual unimodal contracts governing the respective legs of a multimodal transport operation retain their normative autonomy and preserve their essential legal characteristics. Similar views can also be found in the literature, which considers the multimodal transport contract a special type of contract which, while remaining a contract of carriage, does not qualify as a *sui generis* contract in the strict sense of the term (Koller, 2007).

It is undeniable that the multimodal transport contract has developed certain rules and legal concepts peculiar to it, which would not have emerged but for the specific challenges associated with both the contract itself and multimodal transport. One such concept is that of modified network liability, developed to address one of the principal challenges of multimodal transport, namely the multimodal transport operator's liability where the loss or damage cannot be localized. Similarly, the multimodal transport contract gave rise to the concept of the principal carrier, which subsequently evolved into what is now known as the multimodal transport operator. The multimodal transport operator assumes responsibility for the performance of the entire multimodal transport contract, even where the actual carriage is carried out by subcontractors. This concept is found in all multimodal transport contracts, regardless of whether they are based on the combination doctrine, the absorption doctrine, or the *sui generis* doctrine. However, although these concepts are among the most original legal developments associated with the multimodal transport contract, they are not sufficient to confer upon it the status of a *sui generis* contract possessing an autonomous legal content independent of existing contract types. The principal reason is that, at least with respect to liability rules, the multimodal transport contract continues to rely on established types of transport contracts. This suggests that the multimodal transport contract derives primarily from the parties' intention to conclude a single contract under which carriage is performed by means of several modes of transport, even though each of those modes may be governed by a different legal regime (Ilešič, 1984).

Against this background, the question arises whether there are, in practice, any examples of a *sui generis* multimodal transport contract that is independent of the existing types of contracts of carriage. The answer is in the affirmative. However, such cases remain exceptionally rare and can not be regarded as evidence of a developing trend in the field of multimodal transport contracts that would support the conclusion that a *sui generis* contract with its own autonomous normative structure is emerging. These are contracts that exhibit characteristics of multimodal transport contracts but are not governed by the legal rules applicable to contracts of carriage. Rather, they are subject to the rules governing service contracts. This aspect is particularly noteworthy because such contracts make it possible to avoid the mandatory provisions of international transport conventions and national transport legislation, which some authors identify as the principal impediment to the emergence of a *sui generis* multimodal transport contract with its own autonomous normative structure (Hoeks, 2009). An example of such a contract can be found in the judgment of the Belgian Supreme Court (Hof van Cassatie) in the TNT case ((2006) ETL 228). In that case, Sony entrusted TNT with the transportation of electronic equipment that was damaged in transit. The contract in question was an option contract, typical of the parcel delivery sector, under which the service provider enjoyed complete freedom to choose the mode of transport, or combination of modes of transport, to be used. The Belgian Supreme Court took the view that TNT's freedom to determine the mode or combination of modes of transport was incompatible with the nature of a contract for carriage by road. A contract for carriage by road, and consequently the application of the CMR Convention, would exist only if the parties had agreed in advance that

the transport would be performed by road. For this reason, the Belgian Supreme Court, like the lower courts before it, concluded that the contract in question constituted a *sui generis* contract for the provision of parcel delivery services, governed not by the rules applicable to contracts for carriage by road but rather by those governing mandate or agency contracts. What is particularly interesting about this case is that the Belgian courts characterized the contract as a *sui generis* parcel delivery contract not because the parcel delivery process itself involved such specific activities as to outweigh the transport element, but because the parties had not specifically agreed that the parcel would be transported by road, even though the transport was in fact carried out by road between Londerzeel in Belgium and Belm in Germany. In connection with this case, it is also necessary to note certain views that attribute to the multimodal transport contract the character of a *sui generis* contract with its own autonomous normative structure on the ground that it is not, strictly speaking, a contract of carriage, since the multimodal transport operator does not undertake to perform the carriage by means of a specific mode of transport or a predetermined combination of modes of transport (Remberg, 2005). If this view is accepted, it follows that a multimodal transport contract cannot be regarded as a *sui generis* contract with its own autonomous normative structure whenever the modes of transport to be used have been agreed in advance. Such an approach would imply that a multimodal transport contract qualifies as a contract of carriage where the modes of transport are predetermined by the parties, but ceases to do so where no such prior determination exists.

In addressing the question of whether a multimodal transport contract constitutes a contract of carriage, irrespective of whether the parties have agreed in advance on the modes of transport to be used, it is necessary to begin with the contract's causa. Causa is a teleological concept that expresses the fundamental reason for concluding the contract or, in other words, provides the answer to the question *cum contractum sit (causa finalis)* (Messineo, 1968). If the principal purpose of a multimodal transport contract is the performance of transportation, the contract retains its character as a contract of carriage, regardless of whether the modes of transport by which the multimodal transport operation is to be carried out are specified in the contract and irrespective of any additional services, such as transshipment and storage, provided that those services are merely ancillary to the performance of the carriage. Any contrary interpretation could lead to highly unusual results, as illustrated by the following example. A consignor initially entrusts the transportation of goods to a multimodal transport operator possessing sufficient expertise and experience to determine precisely which modes of transport will be used. It subsequently becomes apparent, however, that this operator is unable to transport all of the goods. The consignor therefore entrusts the remaining goods, destined for the same place of delivery, to another multimodal transport operator who, due to more limited experience, is unable to specify before the commencement of the transport operation which modes of transport will be employed. In such circumstances, it would be untenable to argue that a contract of carriage exists in the first case but not in the second. In both cases, the parties have concluded a contract of carriage, namely a multimodal transport contract, provided that the principal reason for concluding the contract is the performance of transportation.

A multimodal transport contract should not be confused with certain other contracts commonly encountered in the logistics sector which, although they may include transportation among the activities performed in their execution, are not concluded primarily for the purpose of carriage. The analysis of such contracts falls outside the scope of this paper; nevertheless, it is useful to briefly consider some of them. Among these, the logistics services contract occupies a particularly important position. The essence of this contract is the management of flows of goods in return for remuneration. More precisely, the service provider undertakes to perform logistics services within one or more activities, such as the storage, movement, or handling of goods, using its own organizational resources and at its own risk, in exchange for payment (Jerman, 2009; Casanova and Brignardello, 2012; Calini et al., 2000; D'Alessio, 2003). This type of contract is of considerable importance in modern manufacturing, as it enables the supply of goods required for production in the required quality and quantity, at the appropriate time and place. Within such a contractual framework, however, transportation constitutes merely one of the means employed to achieve that objective and not the purpose for which the agreement is concluded. The foregoing clearly indicates that the economic function of a logistics service contract is distinct from that of a multimodal transport contract. This economic function would remain distinct even if the logistics services contract were, under the doctrine of absorption, governed by the legal regime applicable to one of the contracts of carriage.

Although, for the time being, a *sui generis* multimodal transport contract possessing its own normative structure distinct from other types of contracts has not yet emerged, the question arises whether such a contract would contribute to greater legal certainty, a more efficient allocation of risks, and enhanced commercial predictability. The answer is straightforward: such a multimodal transport contract would contribute to the achievement of all these objectives. Efforts to develop such a contract arose precisely because of the significant shortcomings of the network liability system, under which the liability of the multimodal transport operator is determined exclusively by the liability rules applicable to each individual stage of the transport operation. The fact that a *sui generis* contract with its own normative structure has not yet emerged does not indicate any deficiency in the concept itself. The development of such a contract has been, and continues to be, hindered by various factors, including the mandatory application of international conventions and national legislation governing unimodal transport, as well as the risk that the multimodal transport operator may be unable to pursue recourse claims against contractual partners whose liability is subject to higher limits. The current situation necessitates a number of activities that would otherwise be unnecessary. One such activity is determining the location where the damage occurred.

In cases of non-localized damage, the modified network liability system serves as a corrective mechanism. As a general rule, where multimodal transport includes a maritime leg and the damage cannot be localized, the multimodal transport operator's limitation of liability is governed by maritime law, which typically provides for relatively low liability limits. This often results in lengthy judicial proceedings, as it is in the cargo claimant's interest to establish that the damage occurred not during the sea carriage but at some other stage of the transport operation. The multimodal transport operator also assumes risks where its subcontractors are subject to higher liability limits than those agreed with its customer. In such circumstances, if the operator is unable to negotiate equivalent liability limits with its customer, it must mitigate the resulting exposure. This generally requires obtaining additional insurance coverage, thereby generating additional costs. Risks and uncertainties also arise during the transitional phases of multimodal transport, when one leg of the carriage ends and another begins, while activities not governed by transport law, such as warehousing and transshipment, are carried out in the interim. Within the framework of multimodal transport, such activities are generally regarded as ancillary services. In these circumstances, the question arises as to which legal regime should apply if the loss or damage occurs precisely during this phase. As previously noted, some courts have addressed this issue by applying the rules governing the particular mode of transport with which the relevant ancillary activity was associated. However, there is no guarantee that all courts will follow such an approach. Moreover, it is not always possible to determine with certainty which mode of transport the loss is attributable to when it occurs during transshipment or storage operations carried out in a port or an inland terminal. In any event, a uniform legal regime governing a particular field is preferable to a collection of fragmented legal regimes that must be combined in an attempt to create a coherent whole. In this regard, the previously mentioned case of Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp. is particularly noteworthy. In that case, the Supreme Court of the United States, applying the doctrine of absorption, held that maritime law (COGSA) governed the entire transportation operation from China to the United States. One of the reasons cited by the Court for applying maritime law throughout the transport chain was that a uniform legal regime is of fundamental importance to the protection of international maritime commerce, an objective that cannot be effectively achieved where different legal regimes govern different segments of the journey.

4. CONCLUSION

The multimodal transport contract contains enough distinctive elements to set it apart from other types of contracts of carriage, at least with respect to its purpose. Its emergence did not result from theoretical debate, but from the practical need for a more complex form of transport capable of meeting the requirements of modern global production, in which a carrier operating exclusively by a single mode of transport is often unable to deliver goods to their final destination. The appearance of such a complex contractual arrangement gave rise to numerous legal and practical challenges, as well as a need for appropriate solutions, which in turn drove the development of the multimodal transport contract. Several approaches to conceptualizing the multimodal transport contract have developed, based on three doctrines: the doctrine of absorption, the doctrine of combination, and the *sui generis* doctrine. Although these approaches differ, they share the premise that a multimodal transport contract is a contract under which a multimodal transport operator undertakes, by means of a single agreement, to perform carriage using at least two modes of transport. All of these approaches therefore recognize and justify the same fundamental function of multimodal transport. Their differences lie solely in the legal regimes through which they seek to explain the legal nature of the multimodal transport contract and to address the issues and challenges that arise in regulating legal relationships in multimodal transport. Under the doctrine of absorption, legal relationships arising from multimodal transport are governed by the legal regime applicable to the predominant mode of transport. Under the doctrine of combination, each mode of transport forming part of the multimodal transport operation is governed by the legal regime specifically applicable to that mode. By contrast, under the *sui generis* doctrine, multimodal transport is governed by a special legal regime with its own normative structure that operates independently of existing contractual types.

One of the fundamental questions arising in connection with the multimodal transport contract, and indeed the central issue addressed in this paper, is whether a *sui generis* contract with its own normative structure, independent of the rules governing existing contractual types, has developed in the field of multimodal transport. The answer to this question is negative: such a contract does not yet exist. A multimodal transport contract may be regarded as *sui generis* only from the perspective of its purpose, reflected in the economic objective for which it is concluded. It is precisely this objective that distinguishes the multimodal transport contract from other contracts of carriage and from other types of contracts. Nevertheless, it must be acknowledged that certain legal institutions peculiar to the multimodal transport contract have developed within its framework. These include the concept of modified network liability, which addresses situations in which loss or damage occurring during multimodal transport cannot be localized, and the concept of the principal carrier, or multimodal transport operator, who assumes responsibility for the performance of the entire multimodal transport operation, even if it is carried out through subcontractors. Despite the existence of these distinctive institutions, the multimodal transport contract cannot be regarded as a *sui generis* contract with its own normative structure. In most cases, it remains based on a fragmented regulatory framework derived from existing contractual types governing the individual modes of transport and the individual legs of carriage performed by the multimodal transport operator. Departure from this fragmented system occurs only in cases of non-localized loss or damage. However, this exception is insufficient to elevate the multimodal transport contract to the status of a *sui generis* contract possessing an autonomous normative structure. Nor can the multimodal transport contract be regarded as a *sui generis* contract with its own normative structure when justified on the basis of the

doctrine of absorption. This approach appears less frequently in practice. Although, like the *sui generis* approach, it provides a uniform method for regulating legal relationships arising from multimodal transport, it does not establish a *sui generis* regime, since it is based on the legal framework governing the predominant leg of carriage within the multimodal transport operation. From this perspective, the absorption-based approach is closer to the doctrine of combination, as both approaches are characterized by the absence of a *sui generis* regulatory framework for the multimodal transport contract. Neither approach results in the creation of an independent normative structure that is autonomous from existing contractual types.

Against the background outlined above, the question arises whether the existing fragmented regulatory regime governing the multimodal transport contract can be regarded as legally coherent. The multimodal transport contract clearly constitutes a distinct and recognizable contractual type that, by virtue of its purpose, differs both from unimodal contracts of carriage and from contracts whose subject matter is not transportation. Given the clearly identifiable purpose and economic function of this contractual arrangement, it would not be particularly difficult, at least at a theoretical and academic level, to conceptualize a *sui generis* contract endowed with its own normative structure. In practice, however, significant obstacles prevent the establishment of such a normative structure, one that would most faithfully reflect the purpose and function of the multimodal transport contract. These obstacles arise from the fact that the regulation of legal relationships stemming from the performance of a multimodal transport contract cannot ignore the binding force of international conventions and national legislation governing individual unimodal transport operations, when those transports are incorporated into a multimodal transport operation. Furthermore, the multimodal transport operator would be exposed to excessive risks if, in pursuit of a uniform legal regime, it agreed with the shipper on lower limitations of liability or longer limitation and extinguishment periods than those applicable in its contractual relationships with subcontractors. These considerations constitute substantial barriers that continue to sustain the fragmented approach to the regulation of legal relationships arising from multimodal transport. It may therefore be concluded that the fragmented regulation of multimodal transport is not legally coherent. Nevertheless, it continues to exist because it is politically constrained, not least by the fact that the multimodal transport operator cannot easily avoid the application of binding rules governing unimodal transport operations.

In light of the conclusion that the multimodal transport contract does not currently constitute a *sui generis* contract with a normative structure distinct from existing contractual types, a further question arises, albeit beyond the scope of this paper, namely whether the emergence of such a contractual type may be expected in the future. The development of such a contractual type cannot be excluded. Historical experience suggests that the evolution of a new contractual type characterized by a clearly identifiable purpose and economic objective has frequently served as the basis for the emergence of a sui generis contractual type possessing its own normative structure.

CONFLICT OF INTEREST

Authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this paper.

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