Navigating the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the “Rotterdam Rules”)

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Compelling Reasons

• **Pursuit of Harmonization**
  - Hague Rules - 1924 outdated

• **Pursuit of Modernization**
  - Current regime seen as ill-fitting for modern container transport
  - Electronic commerce
Origin of the Convention: CMI & UNCITRAL

- **34th Session of UNCITRAL – 2001**

  Report suggested the following additional issues should be considered in any future instrument:
  - Scope of application – Chapter 2
  - Period of responsibility of the carrier – Chapter 4
  - Obligations of the carrier – Chapter 4
  - Liability of the carrier – Chapter 5
  - Obligations of the shipper – Chapter 7
  - Transport documents – Chapter 8
  - Freight – deleted – Art. 42 “freight prepaid”
  - Delivery to the consignee – Chapter 9
  - Right of control – Chapter 10
  - Transfer of rights – Chapter 11
  - Right of suit against the carrier - deleted
  - Time for suit – Chapter 13
Time frame and Stakeholders

• **Time frame**
  - 9\(^{th}\) Session of WG III (Transport Law), April 2002
  - 21\(^{st}\) Session of WG III, January 2008
  - 25 weeks of intergovernmental deliberations

• **Stakeholders**
  - UNCITRAL Member and Observer States
  - IGOs: UNCTAD, UNECE, European Commission
  - NGOs: CMI, ICC, IUMI, FIATA, ICS, Bimco, International Group of P&I Clubs, IAPH, Association of American Railroads, OTIF, European Shippers’ Council, el Instituto Iberoamericano de Derecho Marítimo, IRU, IMMTA
  - Domestic industry consultations
Adoption of the Convention


• Adopted – 11 December 2008– 63rd Session of United Nations General Assembly
  • Opened for signature 23 Sept 2008 in Rotterdam
  • Recommended Convention be known as the Rotterdam Rules
  • Called upon all Governments to consider becoming party to the Convention
Signatures – 23 September 2009

- 16 States: Congo, Denmark, France, Gabon, Ghana, Greece, Guinea, the Netherlands, Nigeria, Norway, Poland, Senegal, Spain, Switzerland, Togo, United States

- World Trade Volume: Over 25%
- Hamburg Rules – 34 Contracting Parties: 5%
Signatures – 23 September 2009

• Official Delegations but not yet in a position to sign or unable to sign because deficiency in Full Powers: United Kingdom*, Belgium*, Slovenia, New Zealand, China, Croatia, Bulgaria, Finland, Japan, Angola, Democratic Republic of Congo, Benin
Total Signatures To Date: 19

• Three more signatures since 23 Sept: Madagascar, Armenia, Cameroon
Main Innovations

• Scope of Application: Contractual approach
  • Hague and Hague-Visby: Bill of Lading
  • Hamburg: Contracts of carriage by sea
  • Rotterdam: ALL Contracts of carriage with an international sea leg

• Scope of Application: Door-to-Door Transport
  • Hague and Hague-Visby: Tackle to tackle
  • Hamburg: Port to port
  • Rotterdam: Door to door
    – Limited network principle (Art. 26)
    – Art. 82 – International conventions governing the carriage of goods by other modes of transport
Main Innovations

• Electronic Commerce

  • Hague, Hague-Visby and Hamburg: No electronic commerce provisions
  • Rotterdam: Provides legal infrastructure for e-commerce (Chapter 3)
Main Innovations

• Containerisation
  • Hague-Visby and Hamburg: Limited to “container clause” in the per package limitation provision
  • Rotterdam:
    – Door to door contracts of carriage
    – Due diligence obligation extends to carrier-provided containers (Art. 14(c))
    – Qualifying clause provision takes into account that carrier usually has no opportunity to inspect goods inside a container (Art. 40)
    – Shipper packing its own container must do so properly and carefully (Art. 27(3))
Main Innovations

• More Balanced Carriers’ Liability
  • Due diligence extended to an ongoing obligation (Art. 14)
  • Onus of proof clearly on carrier regarding cause of damage and that it was not caused by its fault (Art. 17(2))
  • Errors in navigation and management of the ship deleted as excuses for liability, and fire exception has been restricted (Art. 17(3))
  • Deck cargo no longer outside regime (Art. 25)
  • Increase in monetary amounts for limitation on liability (Art. 59(1))

• Direct Liability of Maritime Performing Party (Art. 19)
Main Innovations

- **Controlling Party, Right of Control and Transfer of Rights**
  - Not dealt with in previous maritime transport conventions
  - Important for providing instructions to carrier during the carriage
  - Decoupled from transport document – important key to e-commerce

- **Limitation amounts on carrier liability**
  - **Hague**: per package limitation only
  - **Hague-Visby**: 666.67 SDRs per package and 2 SDRs per kilo
  - **Hamburg**: 835 SDRs per package and 2.5 SDRs per kilo
  - **Rotterdam**: 875 SDRs per package and 3 SDRs per kilo
Main Innovations

• **Delivery of goods to the consignee**
  • Not expressly in current maritime transport conventions
  • Extensive rules on delivery in Chapter 9 of Rotterdam Rules to improve legal certainty

• **Identity of the carrier**
  • To assist in identifying the contractual counterpart of the shipper (Art. 37)

• **Shippers’ obligations**
  • Not new, but consolidated in a systematic and logical manner
Main Innovations

• **Time for Suit**
  - **Hague, Hague-Visby:** One year for cargo claimant to file before time-barred
  - **Hamburg:** Two years
  - **Rotterdam:** Two years

• **Jurisdiction and Arbitration**
  - **Hague, Hague-Visby:** No specific rules
  - **Hamburg:** Specific provisions
  - **Rotterdam:** Opt-in chapters (Art. 91 declaration)
Main Innovations

• Freedom of Contract
  • Only in volume contracts
  • Strong protection for the shipper:
    » Volume contract must prominently state that it derogates from the Convention
    » Must specify the derogations
    » Must be individually negotiated
    » Cannot incorporate the derogations by reference or in a contract of adhesion
    » Shipper must ALWAYS be given opportunity to contract without derogation
    » Some provisions are ‘super-mandatory’
Navigating the Convention

- Chapter 1 – General provisions
- Chapter 2 – Scope of application
- Chapter 3 – Electronic transport records
- Chapter 4 – Obligations of the carrier
- Chapter 5 – Liability of the carrier for loss, damage or delay
- Chapter 6 – Additional provisions relating to particular stages of carriage
- Chapter 7 – Obligations of the shipper to the carrier
Navigating the Convention

- Chapter 8 – Transport documents and electronic transport records
- Chapter 9 – Delivery of the goods
- Chapter 10 – Rights of the controlling party
- Chapter 11 – Transfer of rights
- Chapter 12 – Limits of liability
- Chapter 13 – Time for suit
- Chapter 14 – Jurisdiction – Opt-in
- Chapter 15 – Arbitration – Opt-in
Navigating the Convention

• Chapter 16 – Validity of contractual terms
• Chapter 17 – Matters not governed by this convention
• Chapter 18 – Final clauses
Conclusion

- Industry-driven project
- Comprehensive instrument
- Modernizes
- Harmonizes
- Preserves existing unimodal transport regimes
- Predictability
- Transparency
- Enhanced efficiency
- Reduced transaction costs
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http://www.uncitral.org/

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