

# ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ



## ΤΜΗΜΑ ΝΑΥΤΙΛΙΑΚΩΝ ΣΠΟΥΔΩΝ ΠΡΟΓΡΑΜΜΑ ΜΕΤΑΠΤΥΧΙΑΚΩΝ ΣΠΟΥΔΩΝ στην ΝΑΥΤΙΛΙΑ

### THE NEW ROTTERDAM RULES

Πουλιάση Σοφία

Διπλωματική Εργασία

που υποβλήθηκε στο Τμήμα Ναυτιλιακών Σπουδών  
του Πανεπιστημίου Πειραιώς ως μέρος των  
απαιτήσεων για την απόκτηση του Μεταπτυχιακού  
Διπλώματος Ειδίκευσης στην Ναυτιλία

Πειραιάς

Αύγουστος 2014

### Δήλωση αυθεντικότητας / ζητήματα Copyright

Το άτομο το οποίο εκπονεί την Διπλωματική Εργασία φέρει ολόκληρη την ευθύνη προσδιορισμού της δίκαιης χρήσης του υλικού, η οποία ορίζεται στην βάση των εξής παραγόντων : του σκοπού και χαρακτήρα της χρήσης (εμπορικός, μη κερδοσκοπικός ή εκπαιδευτικός) της φύσης του υλικού, που χρησιμοποιεί (τμήμα του κειμένου, πίνακες, σχήματα, εικόνες ή χάρτες) του ποσοστού και της σημαντικότητας του τμήματος, που χρησιμοποιεί σε σχέση με το όλο κείμενο υπό copyright, και των πιθανών συνεπειών της χρήσης αυτής στην αγορά ή στη γενικότερη αξία του υπό copyright κειμένου.

Υπογραφή .....

Σοφία Πουλιάση

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

**Σελίδα Τριμελούς Εξεταστικής Επιτροπής**

Η παρούσα Διπλωματική Εργασία εγκρίθηκε ομόφωνα από την Τριμελή Εξεταστική Επιτροπή που ορίστηκε από τη ΓΣΕΣ του Τμήματος Ναυτιλιακών Σπουδών Πανεπιστημίου Πειραιώς σύμφωνα με τον Κανονισμό Λειτουργίας του Προγράμματος Μεταπτυχιακών Σπουδών στην Ναυτιλία

Τα μέλη της Επιτροπής ήταν:

- Γκιζιάκης Κωνσταντίνος (Επιβλέπων)
- Παζαρζής Μιχαήλ
- Σαμιώτης Γεώργιος

Η έγκριση της Διπλωματικής Εργασίας από το Τμήμα Ναυτιλιακών Σπουδών του Πανεπιστημίου Πειραιώς δεν υποδηλώνει αποδοχή των γνώμων του συγγραφέα.

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

## **Acknowledgements**

The completion of this empirical study has been one of my most significant academic challenges and would not have been possible without the help of important people to me.

I would like to thank Dr. Konstantinos Giziakis, my supervisor and mentor, for his continued offer of assistance and guidance throughout the completion of this research.

I would like to show my gratitude to Mrs Mira Milouseva, maritime lawyer, for her assistance to my research.

## **Dedication**

To my parents, who inspired me that the difficult way is always the best.

To my husband for his patience and understanding.

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

## TABLE OF CONTENTS

<b>ΠΕΡΙΛΗΨΗ.....</b>	<b>vii</b>
<b>ABSTRACT.....</b>	<b>viii</b>
<b>INTRODUCTION AND ORGANISATION OF THIS DISSERTATION.....</b>	<b>1</b>
<b>CHAPTER 1</b>	
<b>1. SOME WORDS FOR THE SHIPPING INDUSTRY .....</b>	<b>3</b>
<b>CHAPTER 2</b>	
<b>2. HISTORICAL ANALYSIS OF THE RULES .....</b>	<b>5</b>
2.1 THE RULES PRIOR TO THE ROTTERDAM RULES AND THE DISSATISFACTION WITH THE ROTTERDAM RULES SYSTEM .....	5
2.2 THE TRANSITION FROM THE HAGUE RULES SYSTEM TO THE ROTTERDAM SYSTEM .....	7
<b>CHAPTER 3</b>	
<b>3. MATTERS REGULATED BY THE HAGUE – VISBY RULES, THE HAMBURG RULES AND THE ROTTERDAM RULES.....</b>	<b>11</b>
3.1 DEFINITION OF THE CONTRACT OF CARRIAGE.....	11
3.2 SCOPE OF APPLICATION.....	12
3.3 OBLIGATIONS OF THE CARRIER TO CARRY AND DELIVER THE GOODS .....	14
3.4 PERIOD OF RESPONSIBILITY OF THE CARRIER.....	15
3.5 SPECIFIC OBLIGATION OF THE CARRIER APPLICABLE TO THE VOYAGE BY SEA .....	17
3.6 CARRIER’S LIABILITY FOR LOSS, DAMAGE OR DELAY AND SHARE OF THE BURDEN OF PROOF .....	18
3.7 LIABILITY OF THE CARRIER FOR OTHER PERSONS .....	23
3.8 NOTICE IN CASES OF LOSS, DAMAGE OR DELAY.....	26
3.9 DEVIATION MATTERS.....	28
3.10 OBLIGATIONS AND LIABILITIES OF THE SHIPPER .....	29
3.10.1 DELIVERY OF THE GOODS FOR CARRIAGE .....	31
3.10.2 OBLIGATION TO PROVIDE INFORMATION INSTRUCTIONS AND DOCUMENTS	34

3.10.3 INFORMATION ABOUT THE CONTRACT PARTICULARS .....	37
3.10.4 DANGEROUS GOODS .....	38
3.10.5 LIABILITY OF THE SHIPPER FOR OTHER PERSONS.....	42
3.11 TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS .....	42
3.12 LIMITS OF LIABILITY .....	48
3.13 TIME FOR SUIT .....	50
3.14 VALIDITY OF CONTRACTUAL TERMS.....	51

**CHAPTER 4**

<b>4. MATTERS REGULATED BY THE HAMBURG RULES AND THE ROTTERDAM RULES .....</b>	<b>55</b>
4.1 DECK CARGO.....	55
4.2 THE CASE OF LIVE ANIMALS.....	57
4.3 THE LIABILITY OF THE ACTUAL CARRIER AND THE MARITIME PERFORMING PARTY .....	58
4.4 JURISDICTION.....	60
4.5 ARBITRATION.....	65

**CHAPTER 5**

<b>5. MATTERS REGULATED SOLELY BY THE ROTTERDAM RULES .....</b>	<b>68</b>
5.1 ELECTRONIC TRANSPORT RECORDS .....	68
5.2 THE ROLE OF THE MARITIME PERFORMING PARTIES.....	69
5.3 DELIVERY OF THE GOODS .....	71
5.4 POWER AND RIGHTS OF THE CONTROLLING PARTY AND THEIR TRANSFERABILITY .....	74
5.5 CARRIAGE PROCEEDING OR SUBSEQUENT TO THE SEA LEG.....	75

**CHAPTER 6**

<b>6. CONCLUSIVE NOTES .....</b>	<b>79</b>
----------------------------------	-----------

<b>BIBLIOGRAPHY .....</b>	<b>86</b>
---------------------------	-----------

<b>APPENDIX A .....</b>	<b>96</b>
-------------------------	-----------

<b>APPENDIX B.....</b>	<b>106</b>
------------------------	------------

## ΠΕΡΙΛΗΨΗ

Σκοπός της παρούσας εργασίας είναι η ανάλυση της επερχόμενης εφαρμογής των κανόνων του Ρόττερνταμ και των διαφορών τους με τις προυπάρχουσες συμβάσεις των Κανόνων της Χάγης – Βίσμπυ και του Αμβούργου. Παράλληλα εξετάζονται τα νέα άρθρα που επιφέρουν οι Κανόνες του Ρόττερνταμ. Η έρευνα θα είναι βιβλιογραφική και η μεθοδολογία που θα ακολουθήσουμε θα είναι βασισμένη στη σύγκριση της πρωτογενής δημοσιοποιημένης νομοθεσίας, σε βιβλία, και σε επίσημες αναφορές και έρευνες διακεκριμένων ερευνητών και ειδικών της ναυτιλιακής νομοθεσίας. Η ανάλυση του παραπάνω υλικού θα οδηγήσει σε περαιτέρω ακαδημαϊκή και επαγγελματική γνώση και θα συνεισφέρει στη ήδη υπάρχουσα βιβλιογραφία.

Συγκεκριμένα, η εργασία ξεκινά με μια σύντομη αναφορά στη ναυτιλιακή βιομηχανία. Αναλυτικότερα πραγματοποιείται μια ιστορική αναδρομή της εξέλιξης των Ναυτιλιακών κανόνων όπου οδήγησαν στη παρούσα σύμβαση των Κανόνων του Ρόττερνταμ. Η μελέτη συνεχίζεται με τη παρουσίαση και τη σύγκριση των άρθρων των Κανόνων της Χάγης – Βίσμπυ, του Αμβούργου και του Ροττερνταμ. Υποστηρίζεται ότι οι ‘απαρχαιωμένες’ συμβάσεις πρέπει να αντικατασταθούν εξαιτίας της εξέλιξης της ναυτιλιακής βιομηχανίας και της συνεχώς αυξανόμενης χρήσης των εμπορευματοκιβωτίων και των συνδιασμένων μεταφορών. Επίσης, εξετάζονται ζητήματα σχετικά με τις υποχρεώσεις και τα δικαιώματα του μεταφορέα, του φορτωτή και των συμβαλλόμενων μερών της ναυτιλίας.

Περαιτέρω γίνεται σύγκριση των κανόνων του Αμβούργου και των κανόνων του Ρόττερνταμ, σχετικά με τα θέματα της μεταφοράς ζωντανών ζώων, φορτίου στο κατάστρωμα κ.α. Στη συνέχεια αναλύονται λεπτομερώς ζητήματα που ρυθμίζονται μόνο από τους Κανόνες του Ρόττερνταμ όπως ηλεκτρονικά έγγραφα μεταφοράς, παράδοση φορτίου, μεταβίβαση ευθυνών κ.τ.λ. Τέλος, παραθέτονται τα συμπεράσματα σχετικά με την εφαρμογή των νέων Κανόνων του Ρόττερνταμ και τη χρησιμότητά τους στη ναυτιλιακή βιομηχανία.

**Λέξεις κλειδιά:** μεταφορέας, φορτωτής, συμβαλλόμενα μέρη της ναυτιλίας, συνδιασμένες μεταφορές, ηλεκτρονικά έγγραφα μεταφοράς

**ABSTRACT**

The current thesis aims to analyse the upcoming application of the Rotterdam Rules and their differences with the pre – existing rules of the Hague – Visby and the Hamburg Rules. At the same time it examines the new articles that introduce the Rotterdam Rules. The study will be bibliographic and the development of the dissertation will be based on primary published legislation, professional books and on official reports and researches of prominent researchers and experts of the maritime legislation. Therefore, a detailed and thorough analysis of the above Rules will lead to further academic and professional knowledge and will also be a contribution to the already existing literature.

. More specifically, the study begins with a brief reference to the shipping industry. In more detail, we make a historical analysis of the development of the Maritime rules that led to the current Convention of the Rotterdam Rules. The study continues with the presentation and comparison of articles of the Hague-Visby – Rules, Hamburg Rules and the Rotterdam Rules. It is believed that the ‘obsolete’ conventions need to be replaced due to the development in the shipping industry and the continuously increasing containerization and use of multimodal transportation. Moreover, matters that deal with the obligations and the rights of the carrier, the shipper, and the maritime performing parties are examined.

It further compares the Hamburg Rules and the Rotterdam Rules, with regard to issues like the transportation of live animals, deck cargo etc. What is more, issues such as electronic transport records, delivery of goods, transfer of rights, etc, that are regulated by the Rotterdam rules are analysed in detail. Finally, conclusive remarks are made with regard to the necessity of application of the New Rules and their beneficial role into the shipping industry.

**Key words:** carrier, shipper, maritime performing parties, multimodal transportation, electronic transport record



INTRODUCTION AND ORGANISATION OF THIS DISSERTATION

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) was signed in Rotterdam in September 2009. If the convention succeeds in what it was assumed to do - harmonising the carriage of goods by sea - regulations all over the world, the almost a century old status of the Hague Rules will be put aside. These conventions, next to the Hague-Visby Rules and the Hamburg Rules, legalize the liability in case of cargo damage, and what the carrier and the shipper correspondingly will be charged for.

The result of years' worth of debates, compromises and work was presented to the public in its final amendment, and now all that can be done is wait and see the results and how the maritime world receives it. The obligations and liabilities of the carrier is one of the fundamentals of the Rules and some alterations compared to the former conventions have been made. However, a detailed and thorough analysis of the above Rules would be of paramount importance for further academic and professional knowledge and as a contribution to the already existing literature.

Accordingly, the purpose of this thesis is to make a comparative analysis of the Hague-Visby Rules, the Hamburg Rules, and the Rotterdam Rules. It examines and analyzes the new regulations of the Rotterdam Rules and the differences with the Hague-Visby Rules and the Hamburg Rules. The study will be bibliographic and the development of the dissertation will be based on primary published legislation, professional books that analyse the maritime rules and on official reports and researches of prominent researchers and experts of maritime legislation.

The paper begins with some words for the shipping industry in general. There is further a discussion of the historical development of the Rules. Afterwards, the matters regulated by the Hague-Visby Rules, the Hamburg Rules, the Rotterdam Rules and the specific articles that deal with the obligations and the rights of the shipper, the charterer and the maritime performing party are discussed. The fourth chapter is devoted to the matters regulated by the Hamburg

Rules and the Rotterdam Rules, as it is the transportation of animals, deck cargo, jurisdiction, etc. The 5th chapter analyzes the matters regulated exclusively by the Rotterdam Rules. In particular, it focuses on the articles concerning the electronic transport records, delivery of goods, transfer of rights, etc. Finally, the sixth chapter discusses the conclusive remarks, the necessity of the application of the Rules and their beneficial role into the shipping industry.

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

## CHAPTER 1

### 1. SOME WORDS FOR THE SHIPPING INDUSTRY

Shipping is regarded the cornerstone of every nation that relates to the sea. It is considered to be an important part of economy, which consists of a large variety of activities and in various forms. Generally speaking, shipping industry is a valuable tool for every government, which aims to create employment opportunities and contribute to its national economy. Over 90% of the world trade is carried by the international shipping industry.<sup>1</sup> The transport mode of sea carriage is the very dominant in international transit of goods. Within the European Union 90% of the international trade is using carriage of goods by sea, while 30% of the trade within the EU is shipped by this transport mode<sup>2</sup>. Moreover, without shipping, the import/export of affordable food and goods would not be possible. Last but not least, shipping can be seen as an important political aspect, while it serves defence purposes.<sup>3</sup>

Shipping and trading are perhaps the most international businesses in the world nowadays. For example, a ship can be registered in one country, owned by a shipping company in a second country, have a master and / or crew from a third country and carry goods between a fifth and a sixth country. As a result, the internationality of carriage of goods by sea usually lead to that only one carriage itself need to be covered by various national legislations<sup>4</sup>. Therefore, it is very important that merchants involved in international trade carried by sea, as well as those who open letters of credit or insure them are aware of the possible risks. If not, costs to trade and, therefore, freight, interest and profit rates cannot be calculated, which would apparently have a negative impact on international

---

<sup>1</sup> [http://www.pfri.uniri.hr/~bopri/documents/Unit01a-Internationalshippingindustry\\_003.doc](http://www.pfri.uniri.hr/~bopri/documents/Unit01a-Internationalshippingindustry_003.doc), [12<sup>th</sup> June 2014]

<sup>2</sup> Jansson Madeleine, The coconsequences of a deletion of the nautical fault, Department of Law School of Economics and Commercial Law, Göteborg University (online) [https://gupea.ub.gu.se/bitstream/2077/7337/1/Nautical\\_Fault\\_Madeleine\\_Jansson.pdf](https://gupea.ub.gu.se/bitstream/2077/7337/1/Nautical_Fault_Madeleine_Jansson.pdf) [13<sup>th</sup> March 2014]

<sup>3</sup> Berlingieri Francesco, The history of the Rotterdam Rules, Chapter 1, (online) [http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8\\_1](http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8_1) [7<sup>th</sup> March 2014]

<sup>4</sup> <http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/Statisticalresources/Documents/December%202011%20update%20to%20July%202011%20version%20of%20International%20Shipping%20Facts%20and%20Figures.pdf>, [15<sup>th</sup> July 2014]

seaborne transportation. For that reason, there was great demand for the uniformity of maritime legislations.<sup>5</sup>

---

<sup>5</sup> Jansson Madeleine, The coquences of a deletion of the nautical fault, Department of Law School of Economics and Commercial Law, Göteborg University (online) [https://gupea.ub.gu.se/bitstream/2077/7337/1/Nautical\\_Fault\\_Madeleine\\_Jansson.pdf](https://gupea.ub.gu.se/bitstream/2077/7337/1/Nautical_Fault_Madeleine_Jansson.pdf) [13th March 2014]

## CHAPTER 2

### 2. HISTORICAL ANALYSIS OF THE RULES

#### 2.1 THE RULES PRIOR TO THE ROTTERDAM RULES AND THE DISSATISFACTION WITH THE HAGUE RULES SYSTEM

Bills of Lading firstly started to be in use in Venice, Italy in the 13th century. At those times, the merchant used to travel with his goods and since the trip was an adventure the master and crew would be paid with money or part of the goods only upon arrival at the destination. In turn he would pay the crews. After the 14th century, it was proved to be pointless for cargo-owner to travel with his goods. Instead of that, the cargo was delivered to the master of the vessel and the master would act as an agent on behalf of the cargo owner. Later on, the master found it necessary to maintain a book in order to keep information of the list of shippers, consignees, nature of cargo; and goods to be paid.<sup>6</sup>

The cargo owner, though, demanded a receipt from the master showing goods received and goods to be paid. The receipt given by the master was the origin of the Bill of Lading and was considered as evidence of the contract of carriage and that the master was responsible to deliver the cargo to the consignee<sup>7</sup>. Between 1880 and 1890, the International Law Association thought of uniformity of legislation and unification, where they were underway formulating the general average and therefore formed the York-Antwerp Rules. From 1890 and onwards, there were held several conferences aiming to form uniformity for the Bill of Lading. However, these conferences were inevitably interrupted when the First World War burst out.<sup>8</sup>

---

<sup>6</sup> The Travaux preparatoires of the Hague Rules and of the Hague Visby Rules, CMI, page 16 available at: <http://www.comitemaritime.org/Uploads/Publications/Travaux%20Preparatoires%20of%20the%20Hague%20Rules%20and%20of%20the%20Hague-Visby%20Rules.pdf>, { accessed 30<sup>th</sup> March 2011 }

<sup>7</sup> Logistics and shipping, The Hague Rules, 26<sup>th</sup> January 2010, (online) <http://viktorwong-logistics.blogspot.gr/2010/01/hague-rules.html> [13th March 2014]

<sup>8</sup> Kiriazidis, T., and Tzanidakis G. "Recent aspects of the EU maritime policy" (1995) *Maritime Policy and Management*, p 182

After the First World War, these conferences resumed and agreed to draft the minimum rules for the Bill Of Lading, which were to be mandatory. This meeting was held in London in 1923, where the Commonwealth states such as Canada, South Africa and Australia had strong reservations to the Uniform Rules<sup>9</sup>.

These rules were then rectified in 1924, in Hague, and it has been called "The Hague Rules". At the same year, the British had introduced the Carriage of Goods by Sea Act (COGSA 1924). Scandinavia and the United States adopted these rules into their legal system in 1936<sup>10</sup>. This diplomatic convention related to the Unification of Certain Rules, which was adopted later by the Hague Rules, was held at Brussels. The basic concept of the Hague Rules is that it is a vital legal system governing the liability of a carrier for loss or damage to the goods carried under a Bill of Lading. In addition, Hague Rules refer to the period from the time the goods are loaded onto the ship, until the period the goods are discharged.<sup>11</sup>

It is worth to mention that the Hague Rules have been amended twice since their adoption, once in 1968 and secondly in 1979. These amendments refer mostly to the financial limits of liability, while they do not change the basic system of liability or the allocation of risks under the Hague Rules. For that reason, they did not gain worldwide approval by many cargo owning countries.<sup>12</sup>

According to their provisions, the carrier is liable for loss or damage as a result of his failure to exercise due diligence or to make the vessel seaworthy and cargo worthy. In fact, The Hague rules contain a long list of circumstances that exempt the carrier from this form of liability. In that view, one of the main

---

<sup>9</sup> Logistics and shipping, The Hague Rules, 26<sup>th</sup> January 2010, (online) <http://viktorwong-logistics.blogspot.gr/2010/01/hague-rules.html> [13th March 2014]

<sup>10</sup> Logistics and shipping, The Hague Rules, 26<sup>th</sup> January 2010, (online) <http://viktorwong-logistics.blogspot.gr/2010/01/hague-rules.html> [13th March 2014]

<sup>11</sup> The Travaux preparatoires of the Hague Rules and of the Hague Visby Rules, CMI, page 32 available at:

<http://www.comitemaritime.org/Uploads/Publications/Travaux%20Preparatoires%20of%20the%20Hague%20Rules%20and%20of%20the%20Hague-Visby%20Rules.pdf>, { accessed 30<sup>th</sup> March 2011 }

<sup>12</sup> The Travaux preparatoires of the Hague Rules and of the Hague Visby Rules, CMI, page 53 available at:

<http://www.comitemaritime.org/Uploads/Publications/Travaux%20Preparatoires%20of%20the%20Hague%20Rules%20and%20of%20the%20Hague-Visby%20Rules.pdf>, { accessed 30<sup>th</sup> March 2011 }

exemptions frees the carrier from liability, as referred, if the loss or damage refers to faulty navigation or management of the ship.<sup>13</sup>

Indeed there was a need to uniform and modernise the international legal regime that would govern the carriage of goods by sea. This resulted in the adoption of the Hamburg Rules, which identify certain defects amongst the Hague and the Hague – Visby Rules. Those defects were found to be disadvantageous for cargo-owning countries and especially for developing countries. The Hamburg Rules were adopted by a written report by the Secretariat of UNCTAD in 1970.<sup>14</sup>

## 2.2 THE TRANSITION FROM THE HAGUE RULES SYSTEM TO THE ROTTERDAM RULES SYSTEM

The Hague Rules were adopted in 1921. At this period of time, both in the tramp and the liner trade, the goods were by and large received and delivered alongside. Therefore, since the period of responsibility of the carrier was rather limited, that was also the scope of application of the Hague Rules, and of the 1924 Brussels Convention, in which they were incorporated. The years later, though, for the avoidance of delays, the carrier tended to receive and deliver the goods in his or his agents' port warehouses and thus the period of his responsibility became wider than the period of application of the Hague Rules as well as of the Hague-Visby Rules. However, the relevant provisions weren't altered either in The Hague or the Hague – Visby Rules. As a result, it was left to the national applicable law to govern the liability of the carrier with regard to the loss of or damage to the goods occurring from the receipt of the goods until their loading on board the ship and from the completion of discharge until their delivery to the consignee.<sup>15</sup>

---

<sup>13</sup> R.Goode, *Commercial Law*, 3<sup>rd</sup> ed (Penguin Books Ltd, Uk,2004)

<sup>14</sup> <http://www.uncitral.org/pdf/english/yearbooks/yb-1988-e/vol19-p103-108-e.pdf>, [20<sup>th</sup> March 2014]

<sup>15</sup> Berlingieri Francesco, *International Maritime Conventions: volume 1, the carriage of goods and passengers by sea*, Informa law from Routledge, online  
[\[http://books.google.gr/books?id=RgaLAWAAQBAJ&pg=PR7&dq=berlingieri+international+maritime+convention+the+carriage+of+goods+and+passengers+by+sea&hl=el&sa=X&ei=OzwhVLS7J6WCzAOwoYHgDA&ved=OCB0Q6AEwAA#v=onepage&q=berlingieri%20int](http://books.google.gr/books?id=RgaLAWAAQBAJ&pg=PR7&dq=berlingieri+international+maritime+convention+the+carriage+of+goods+and+passengers+by+sea&hl=el&sa=X&ei=OzwhVLS7J6WCzAOwoYHgDA&ved=OCB0Q6AEwAA#v=onepage&q=berlingieri%20int)

Nevertheless, the Hamburg Rules were found to be the solution to the duality of regimes caused by The Hague and The Hague – Visby Rules. Pursuant to their provisions, the period of responsibility of the carrier is broadened enough to cover the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge. It may be the case, where the terminals at which the goods are received and are delivered, are outside the port areas. Gradually, with the advent of containers, it has become common the contract period to start from the point that the carrier undertakes to carry the goods at the door of the shipper and ends when he delivers them at the door of the consignee. Nevertheless, none of the existing Conventions applies to the whole contract period.<sup>16</sup>

Therefore, the development in the liner industry the last 40 years led to the need of a unique instrument which would govern the whole carriage performed by different modes of transport. In this regard, BIMCO set out general rules on the liability and limitation of liability of the carrier and therefore, issued a form of combined transport Bill of Lading. *‘In June 1991 the International Chamber of Commerce and UNCTAD adopted the UNCTAD - ICC Rules for Multimodal Transport Documents, the multimodal transport contract being defined as a single contract for the carriage of goods by at least two different modes of transport’*<sup>17</sup>. *‘In these Rules the general provision on the liability of the carrier is based on article 5(1)<sup>18</sup> of the Hamburg Rules, but for loss, damage or delay in respect of goods “carried by sea” the exemptions granted by article 4(2) (a) and (b) of the*

---

[ernational%20maritime%20convention%20the%20carriage%20of%20goods%20and%20passengers%20by%20sea&f=false](#) ], 20<sup>th</sup> March 2014]

<sup>16</sup> <http://www.uncitral.org/pdf/english/yearbooks/yb-1988-e/vol19-p103-108-e.pdf>, [20<sup>th</sup> March 2014]

<sup>17</sup> Berlingieri Francesco, Multimodal Aspects of the Rotterdam Rules, (online) <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf>, [10<sup>th</sup> March 2014]

<sup>18</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 5(1) (online) [http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28<sup>th</sup> February 2014]



*Hague-Visby Rules*<sup>19</sup> apply as well as the due diligence obligation to make the ship seaworthy at the commencement of the voyage'.<sup>20</sup>

As of early 2002 about fifty per cent of containers carried by sea were carried door-to-door. Therefore, there was a need of a new instrument, which would connect the land carriage with the carriage by sea. Therefore, the Rotterdam Rules have been conceived aiming to regulate generally multimodal carriage, but only aiming to regulate contracts of carriage by sea in which the carrier agrees to extend its services also to the transportation by other modes that precede and follow the carriage by sea. The intention was not to be a multimodal instrument in the traditional sense, since carriage by other modes must be a complement to carriage by sea<sup>21</sup>. Therefore, the Rotterdam Rules is an attempt to cover the needs of the increased containerization, where the Rules need to be extended to contracts for the carriage of goods wholly or partly by sea.<sup>22</sup> Indeed, in case of door-to-door contracts, in order the Rotterdam Rules to apply it is sufficient that the inland place of delivery is in a contracting State, provided the sea leg is international<sup>23</sup>.

The Rotterdam Rules are the result of inter-governmental negotiations that took place between 2002 and 2009. These negotiations took place within the United Nations Commission for International Trade Law (UNCITRAL) after the Comité Maritime International (CMI) had prepared a basic draft for the Convention. On the 11<sup>th</sup> of December 2008, the General Assembly of the United Nations adopted the Rotterdam Rules. The official ceremony took place in Rotterdam in September 2009 and the convention was signed by sixteen countries. The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) refers to the rights and obligations of parties involved in the carriage of goods by sea. As a matter of clarification, it describes in detail who is responsible for what, when and where in maritime transport and

---

<sup>19</sup> See Hague – Visby Rules, article IV(2)9a) & (b), appendix B

<sup>20</sup> UNCITRAL Note by the Secretariat, document A/CN.9/WG.III/WP.29 at para. 25.

<sup>21</sup> Berlingieri Francesco, The history of the Rotterdam Rules, Chapter 1, (online) [http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8\\_1](http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8_1) [7<sup>th</sup> March 2014]

<sup>22</sup> Hannu Honka, CMI, colloquium on the Rotterdam Rules, United Nations convention on contracts for the international carriage of goods wholly or partly by sea.

Scope of application and freedom of contract, page 2 Available at:

<http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20Hannu%20Honka.pdf> , [15<sup>th</sup> January 2011]

<sup>23</sup> BIFA (BRITISH INTERNATIONAL FREIGHT ASSOCIATION), *So what are the Rotterdam Rules?* Press Release 64 by Pysden Solicitors, London (online) <http://www.pysdens.com/press> [28th February 2014]

how far these obligations extend. The Rotterdam Rules are the first rules governing the carriage of goods by sea and connecting or previous transport by land. This land leg used to require separate contracts<sup>24</sup>. The New Rules aim to replace the Hague Rules, the Hague–Visby Rules and the Hamburg Rules, as they were characterized outdated. As Goode (2004) writes, ‘*the new convention brings balance again into shipping industry*’.<sup>25</sup>

---

<sup>24</sup> <http://www.rotterdamrules2009.com/cms/index.php>

<sup>25</sup> R.Goode, *Commercial Law*, 3<sup>rd</sup> ed (Penguin Books Ltd, Uk,2004) pp.1031-1032.

## CHAPTER 3

**3. MATTERS REGULATED BY THE HAGUE-VISBY RULES, THE HAMBURG RULES AND THE ROTTERDAM RULES****3.1 DEFINITION OF THE CONTRACT OF CARRIAGE**

The contract of carriage in article I(b) of the Hague-Visby Rules<sup>26</sup> is not defined on the basis of the obligations of the parties but the perception of the contract of carriage is rather connected to the document issued there under, the Bill of Lading. However, the 'Bill of Lading' does nowhere appear in the definition of contract of carriage in the Rotterdam Rules. Indeed as we will analyse later in the paper, one of the scopes of the New Rules is to accommodate a wider concept of a 'transport document' and also to include an 'electronic transport record' as a possible medium for a contract of carriage. Another difference with the Rotterdam Rules, relies on the definition which justifies the full name of the Rotterdam Rules, i.e. the Convention on Contracts for the International Carriage of Goods Wholly or *Partly by Sea*.<sup>27</sup>

As an alternative idea, the Hamburg Rules and the Rotterdam Rules contain a definition of the contract of carriage. However, they differ with regard to the description of the responsibility of the carrier, which under the Hamburg Rules is just the carriage of goods by sea from one port to another, while under the Rotterdam Rules is the carriage of goods from one place to another. The Hamburg Rules are not applicable to the carriage by modes other than sea, in case the contract provides for the carriage by other modes<sup>28</sup>, while the application of the

---

<sup>26</sup> See Hague – Visby Rules, article I(b), appendix A

<sup>27</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009

<sup>28</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), (online) , article 1(6) [http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

Rotterdam Rules is extended to the carriage by other modes, according to article 1<sup>29</sup>.

In other words, the first innovation of the Rotterdam Rules is that they apply to the carriage by modes of transport other than the sea. At the same time, it is necessary the carriage by other modes of transport to be complementary to the sea carriage, according to the definition of contract of carriage in article 1.1<sup>30</sup>. Pursuant to this article, sea carriage must be provided by the contract, while carriage by other modes of transport in addition to the sea carriage may also be provided<sup>31</sup>.

### 3.2 SCOPE OF APPLICATION

For the application of the Hague - Visby Rules, either the Bill of Lading or the port of loading must be located in a contracting state. The basis for the materialization of the Hamburg Rules is associated with the accomplishment of international uniformity in the law relating to the carriage of goods by sea, and obtains broad scope of application substantially wider than this of The Hague – Visby Rules. The Hamburg Rules can fit to all contracts for the carriage of goods by sea between two different States if, according to the contract, either the port of loading or the port of discharge is located in a Contracting State, if the goods are discharged at an optional port of discharge stipulated in the contract and that port is situated in a Contracting State, or if the Bill of lading or other document evidencing the contract is issued in a Contracting State.<sup>32</sup>

The Hamburg Rules do not apply to charter – parties but they present a wide variety of applications. Nevertheless, they apply to Bills of lading issued pursuant to charter-parties, if the Bill of lading regulates the relation between the carrier and the holder of the Bill of lading, who is not the charterer. At the same time, Hamburg Rules govern the rights and obligations of the parties to a contract of

---

<sup>29</sup> See Rotterdam Rules, article 1, appendix B

<sup>30</sup> See Rotterdam Rules article 1(1), appendix B

<sup>31</sup> Berlingieri Francesco, The history of the Rotterdam Rules, Chapter 1, (online) [http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8\\_1](http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8_1) [7<sup>th</sup> March 2014]

<sup>32</sup> Berlingieri Franscesco, Multimodal Aspects of the Rotterdam Rules, (online) <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf>, [10<sup>th</sup> March 2014]

carriage, despite of whether or not a Bill of lading has been issued.<sup>33</sup> Both Rotterdam and Hamburg Rules do not refer to the place of issuance of the Bill of lading (or other transport document). Also, there is not any reference in both Rules concerning the incorporation of the Rules in the transport document, because the effect of such incorporation may be different in the various jurisdictions. Considering the above, the reference in both Hague-Visby Rules and the Hamburg Rules to a national law, which gives effect to them, can lead to a great uncertainty and lack of uniformity, as national laws may give effect to them with variations.<sup>34</sup>

In turn, Rotterdam Rules apply only to contracts of carriage, while the sea leg is mandatory for their application. Moreover, according to article 5<sup>35</sup>, the geographical connecting factors are instead the places of receipt and of delivery and the ports of loading and of discharge. With regard to this, it should be noted that due to the Rules application to the door-to-door services, there may be contracts under which receipt and delivery may be inland. Therefore, according to Staniland, the Rotterdam Rules may be described as a ‘maritime multimodal convention’.<sup>36</sup>

Maybe the most remarkable and introductory feature among the provisions on the scope of application of the Rotterdam Rules is the protection recognized to third parties. It is important to mention that under the Hague-Visby and the Hamburg Rules such protection is established, only if a Bill of lading is issued and is endorsed to a third party. Nevertheless, under the Rotterdam Rules, except the situations excluded from their scope of application, the Rules, however, apply in respect of parties other than the original contracting party.<sup>37</sup> Moreover, they apply

---

<sup>33</sup> S.Baughen, *Shipping Law*, 3<sup>rd</sup> ed (Cavendish Publishing Ltd, Oct 2004)

<sup>34</sup> Berlingieri, Francesco-Delebecque, Philippe-Fujita, Tomotaka-Illescas, Rafael-Sturley, Michael-van der Ziel, Gertjan-von Ziegler, Alexander-Zunarelli, Stefano, *The Rotterdam Rules, an attempt to clarify certain concerns that have emerged*, (online) <http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/5RRULES.pdf> [27th February 2014]

<sup>35</sup> See Rotterdam Rules, article 5, appendix B

<sup>36</sup> Baatz Y., Debbatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London

<sup>37</sup> Debbatista Charles, *UNCITRAL Colloquium on Rotterdam Rules The Goods Carried – Who gets them and who controls them?*

irrespectively of a negotiable transport document (such as a Bill of lading) or a negotiable electronic transport record being issued or not, as well as irrespectively of any document being issued or not.

### 3.3 OBLIGATION OF THE CARRIER TO CARRY AND DELIVER THE GOODS

Since The Hague Rules are standard Bills of Lading clauses, they do not provide for the Carrier's obligation to deliver the goods to the consignee. With regard to the Hamburg rules, it is also not expressly provided, although it is implied by article 5(1)<sup>38</sup>. Instead, Rotterdam Rules set out this obligation in article 11<sup>39</sup>. According to this article, the carrier shall carry the goods to the agreed place of destination and deliver them to the consignee. Therefore, the discharge of the goods at a port, which is not included in the contract, if this is also the place of destination, would be a breach by the carrier and any transshipment and warehousing costs, should be for the carrier's account. The core concept, in which the contract of carriage is based, is the responsibility to deliver at destination as agreed between the parties concerned<sup>40</sup>. Moreover, where the contract provides for alternative ports of delivery (and this can be considered as the place of destination) or includes statements like "as safely as she can go", there would be

---

21 September 2009, available at:

<http://www.rotterdamrules2009.com/cms/uploads/Def%20%20tekst%20Charles%20Debattista%2031%20OKT29.pdf> [30<sup>th</sup> March 2011]

<sup>38</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 5(1) (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>39</sup> See Rotterdam Rules, article 11, appendix B

<sup>40</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009

arguably being no breach of the Article 11<sup>41</sup> obligation, if delivery is affected in another port, in case the port of destination is inaccessible.<sup>42</sup>

### 3.4 PERIOD OF RESPONSIBILITY OF THE CARRIER

The Hague – Visby Rules do not cover loss of or damage situations, while in case the goods are in the custody of the carrier prior to loading or after discharge, they cover only the period from the time the goods are loaded onto the ship (when cargo passes the ship's rail) and until the time they are discharged from it.<sup>43</sup> In modern shipping practices, carriers frequently take and retain custody of goods in port before and after the actual sea carriage.<sup>44</sup> Nevertheless, it has been claimed that most loss of or damage situations to goods have been occurred, while the goods were in port. Aiming to ensure that for such a loss or damage the party, which is in control of the goods and hence best able to guard against that loss of or damage, is responsible, the Hamburg Rules refer to the whole period that the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.<sup>45</sup>

In turn, Article 12<sup>46</sup> of the Rotterdam Rules refers to the period of responsibility of the carrier. According to the provisions of this Article, carrier's responsibility starts upon delivery of the goods to the contractual carrier or any

---

<sup>41</sup> See Rotterdam Rules, article 11, appendix B

<sup>42</sup> Francesco Berlingieri, *A comparative analysis of the Hague – Visby Rules, the Hamburg Rules and the Rotterdam Rules*, p. 3 Available at: [http://www.uncitral.org/pdf/english/workinggroups/wg\\_3/Berlingieri\\_paper\\_comparing\\_RR\\_Hamb\\_HVR.pdf](http://www.uncitral.org/pdf/english/workinggroups/wg_3/Berlingieri_paper_comparing_RR_Hamb_HVR.pdf) [15th January 2011]

<sup>43</sup> See Hague – Visby Rules, article I(e), appendix B

<sup>44</sup> Debattista, C. (2009) The goods carried –who gets them and who controls them. In: *Uncitral colloquium on Rotterdam Rules*, 21 September 2009, Rotterdam. Available at

<http://www.rotterdamrules2009.com/cms/uploads/Def%20%20tekst%20Charles%20Debattista%2031%20OKT29.pdf> [Accessed 30 March 2011]

<sup>45</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 4 (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>46</sup> See Rotterdam Rules, article 12, appendix B

performing party and ends when the goods are delivered to the consignee as provided by the Convention and the Contract of carriage. Complications are likely to arise in case shipments are operated under different contracts, although ran by the same entity in a port.

In other words, the period of responsibility of the carrier is significantly broadened by the Rotterdam Rules both under Hague and the Hague-Visby Rules and, in some cases under the Hamburg Rules<sup>47</sup>. Moreover, the contract of carriage may provide for only sea carriage, in which case no other mode of transport is involved. At the same time, in case the parties have exercised the option under Article 12(3)<sup>48</sup>, the period of responsibility of the carrier under the Rotterdam Rules can present similarities to that of the Hague-Visby Rules. In this case, the carrier's responsibility begins with the "initial loading" and ends upon "the final unloading", almost the same as the definition under Article I (e) of the Hague-Visby Rules<sup>49</sup>. What is more, Rotterdam Rules govern the responsibility of the carrier for periods of transshipment or storage of the goods on land. In contrast, both The Hague and The Hague-Visby Rules had left the point to be resolved by the contractual arrangements.<sup>50</sup>

Therefore, we conclude that one of the basic principles of the Rotterdam Rules is that the period of application and responsibility of the carrier coincide with the period which the carrier is in charge of the goods, wherever he receives and delivers them, except from where the goods must be handed over to an authority in the place of receipt or in the place of delivery (an exception that would apply, it is thought, only in port-to-port contracts).

---

<sup>47</sup> Britania news conventions, July 2010, *The Rotterdam Rules in a nutshell*, number 2, p. 4 Available at:

[http://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_20184.pdf](http://www.fd.unl.pt/docentes_docs/ma/wks_MA_20184.pdf), 27<sup>th</sup> February 2014

<sup>48</sup> See Rotterdam Rules, article 12(3), appendix B

<sup>49</sup> See Hague – Visby Rules, article I (e), appendix A

<sup>50</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009



### 3.5 SPECIFIC OBLIGATION OF THE CARRIER APPLICABLE TO THE VOYAGE BY SEA

Another significant difference between the New Rules and the old Conventions is regarding the seaworthiness of the vessel. According to Article III(1)<sup>51</sup> of the Hague – Visby Rules, the carrier shall exercise due diligence to make the vessel seaworthy before and at the beginning of the voyage and to care for the cargo (Article III(2))<sup>52</sup>. This obligation excludes only latent defect and must be discharged before the vessel sails from the load port. After the departure of the vessel, the carrier is, according to article III(2) under the obligations in relation to cargo.<sup>53</sup> On the other hand, Hamburg Rules make no reference to them, since it was deemed sufficient to provide in article 5(1)<sup>54</sup> that the carrier is liable unless he proves that he and his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences<sup>55</sup>.

The Rotterdam Rules in turn have preserved the traditional obligations of the carrier to exercise due diligence to make the ship seaworthy and to care for the goods but this kind of obligation has been made continuous throughout and until the end of the voyage by sea<sup>56</sup>. This requirement is at present already provided by the ISM Code. According to bibliography, the consequences of this obligation have become more radical for the carrier by the removal of the ‘nautical fault’ exception of article IV(2a)<sup>57</sup> of the Hague – Visby Rules. According to the provisions of article IV(2a) of the Hague – Visby Rules, in case of a failure to the ship or its equipment, either due to

<sup>51</sup> See Hague Visby Rules, Article III(1), appendix A

<sup>52</sup> See Hague – Visby Rules, Article III(2), appendix A

<sup>53</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009

<sup>54</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>55</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>56</sup> See Rotterdam Rules, article 14, appendix B

<sup>57</sup> See Hague – Visby Rules, article IV(2a) appendix A

the fault of the crew or by any other reason whatsoever, the carrier was obliged to rectify any damage in order to demonstrate his due diligence obligation. Instead, the carrier would be in breach of his seaworthiness obligation under the Rotterdam Rules and would be liable for the consequent damage. Tsimplis writes that: *'It is probably accurate to say that the change in the obligation of seaworthiness under article 14 together with the removal of the exception Article IV rule 2(a) will reverse most of the case law decided under the Hague – Visby Rules, on cargo damage occurring after the sailing of the ship.'*<sup>58</sup> Finally, we need to mention that Rotterdam Rules do not clarify if the seaworthiness obligation is covering unloading operation.

### 3.6 CARRIER'S LIABILITY FOR LOSS, DAMAGE OR DELAY AND SHARE OF THE BURDEN OF PROOF

To start with carrier's basis of liability, The Hague Rules provide that the carrier is responsible for loss or damage as a result of his failure to exercise due diligence to make the ship seaworthy and be properly manned<sup>59</sup>. Nonetheless, equipping and supplying the ship or making its storage areas fit and safe for the carriage of goods, are some of the crucial aspects that are taken into account in order to minimize the carrier's liability in case of a failure.<sup>60</sup> To illustrate, the above provisions are based upon exemption clauses that were common in Bills of Lading before the Hague Rules were adopted in the early 1920's. Perhaps the most critical exemption of those mentioned earlier that frees the carrier from liability if the loss or damage arises from the faulty navigation or management of the ship, is the so-called "nautical fault" exception.<sup>61</sup>

---

<sup>58</sup> Baatz Y., Dennaista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), *The Rotterdam Rules: A practical annotation*, informa, London 2009, page 40

<sup>59</sup> International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules"), and Protocol of Signature, Brussels, 25 August 1924, (online) <http://www.admiraltylawguide.com/conven/haguerules1924.html> [1st March 2014]

<sup>60</sup> Beare, Stuart, UNCITRAL Draft Convention on the Carriage of Goods – Presentation, in CMI Yearbook 2005-2006, online [http://www.comitemaritime.org/Uploads/Yearbooks/YBK\\_2005\\_2006.pdf](http://www.comitemaritime.org/Uploads/Yearbooks/YBK_2005_2006.pdf) [14th March 2014]

<sup>61</sup> Berlingieri, Francesco-Delebecque, Philippe-Fujita, Tomotaka-Illescas, Rafael-Sturley, Michael-van der Ziel, Gertjan-von Ziegler, Alexander-Zunarelli, Stefano,

Taking into consideration the original explanation for this liability scheme and more particularly the nautical fault exception, becomes apparent the inability of the ship-owner to communicate and exercise effective control over his vessel and crew during long-lasting voyages at sea, and the traditional concept of an ocean voyage as a joint adventure of the carrier and the owner of the goods. Nevertheless, new and rapid developments in communications and the reduction of voyage times have made these justifications outdated. Hamburg Rules in turn provide a more neutral and equitable allocation of risks and responsibilities between carriers and shippers. Therefore, it is believed that the Hamburg Rules have introduced several changes in the previous legal frame. In terms of clarity, liability is based on the idea of presumed fault or neglect.<sup>62</sup>

More specifically, the carrier is to blame if the incidence of loss, damage or delay took place while the goods were in his charge, whereas he may escape liability only if he proves that he, his servants or agents took all the appropriate actions required to prevent such occurrences and their indirect consequences.<sup>63</sup> This idea replaces the itemization of the carrier's obligations and the long list of his exemptions from liability under the Hague – Visby Rules<sup>64</sup>, while it eradicates the exemption from liability for loss or damage caused by the faulty navigation or management of the ship. The liability of the carrier under the Hamburg Rules corresponds with the liability imposed upon carriers under international conventions governing carriage of goods by other methods of transport, such as road and rail.<sup>65</sup>

---

The Rotterdam Rules, an attempt to clarify certain concerns that have emerged, (online) <http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/5RRULES.pdf> [27th February 2014]

<sup>62</sup> Berlingieri Francesco, Multimodal Aspects of the Rotterdam Rules, (online) <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf>, [10<sup>th</sup> March 2014]

<sup>63</sup> BONNEVIE, Philippe, Evaluation of the new Convention from the perspective of cargo interests, in *Transportrecht*, online, <http://www.transportrecht.org/html/IntSymUNConv09d.pdf>, [12<sup>th</sup> February 2014]

<sup>64</sup> See Hague – Visby Rules, article IV, appendix A

<sup>65</sup> Beare Stuart, *The Rotterdam Rules, some controversies*, p. 2, (online) [http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520controversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z\\_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms](http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520controversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms) [1<sup>st</sup> March 2014]

Moreover, it should be noted that Hamburg Rules provide only two exceptions to the carrier who is unable to disprove the presumption of fault and those two concern only cases of fire and live animals. In case where goods are lost or damaged by fire, Art 5 (4)<sup>66</sup> provides that the carrier will be liable only if the claimant can be able to prove that the fire arose from the “fault or neglect on the part of the carrier, its servants or agents”. Once fire has started, a carrier still has an obligation to extinguish it and to avoid damage.<sup>67</sup> As far as it concerns the carriage of live animals, the carrier is not legally responsible under Art 5 (5)<sup>68</sup> for loss, damage or delay arising out of “any special risk inherent in that kind of carriage”.<sup>69</sup>

Furthermore, one of the basic differences among the three Conventions is based on the fact that the Hamburg Rules and Rotterdam Rules cover liability for delay, while the Hague - Visby Rules do not. With regard to the basis of the liability of the carrier, the basis is ‘fault’ under all Rules. However, they differ in respect of the exceptions to the general rule, i.e. that fault entails liability and of the allocation of the burden of proof.<sup>70</sup> As it was already mentioned, the Hague – Visby Rules operate in a different way.

With regard to the unseaworthiness, under the Hague-Visby Rules article 4(1)<sup>71</sup>, it is the claimant that, in case he states that the loss of or damage to the goods was caused by unseaworthiness has the burden of proving his allegation

---

<sup>66</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 5(4) (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>67</sup> See *Waterman Steamship Corp v Virginia Chemicals, Inc.* 651 F.Supp.418, 1988 AMC 2681 (S.D.Ala.1987)

<sup>68</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 5(4) (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>69</sup> Tetley, W. Chapter 16: Properly Carry Keep and Care for Cargo (online)

<http://www.upload.mcgill.ca/maritimelaw/ch26.pdf#search=compare%20the%20Hamburg%20Rules%20and%20the%20HagueVisby%Rules> [3th January 2011]

<sup>70</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>71</sup> See Hague – Visby Rules, article IV (1), appendix A

along with the clause that the Carrier has breached. Carrier in turn has the burden of proving the exercise of due diligence in order to escape liability. Moreover, Carrier is released from liability in case of loss of or damage to the goods arising from fault of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship and for loss of or damage to the goods due to fire caused by fault of the crew<sup>72</sup>. At this point it is essential to state that under the Hamburg Rules and the Rotterdam Rules the carrier is always liable for loss, damage or delay caused by fault of the carrier, his servants or agents.<sup>73</sup>

In more detail, Rotterdam Rules govern liability of the carrier for loss, Damage or Delay under article 17. Pursuant to the provisions of this article the claiming party has two options in order to establish the liability of the carrier. He can either prove that the loss of or damage to the goods or delay took place during the period of the carrier's responsibility (article 14)<sup>74</sup> or that a causative event took place during the same period, while there is no need to prove a specific breach of the contract of carriage. For instance, in case the cargo becomes wet and as a result it is later found rusty, it would be enough if the claimant proves that the cargo became wet during the period of the carrier's responsibility.

According to paragraph 2 of this article Carrier in order to relieve itself of the liability needs to prove that neither he nor any other performing party's negligence has contributed to part or the whole of the cargo claim. In this case it can escape liability partly or wholly. Alternatively, paragraph 3 provides that it can prove that the cause of the damage is an exempted peril. This shifts the burden of proof to the claimant, who needs to prove, that the carrier or any person referred to in Article 18 caused or contributed to the event or circumstance (para. 4(b)). It can either prove that the cargo loss, damage or delay was probably caused or contributed to by a breach of the seaworthiness obligation under Article 14. It is important to show that the claimant does not need to prove unseaworthiness as the cause of loss or damage or delay but only that there is a probability that the

---

<sup>72</sup> See Hague – Visby Rules, article IV, appendix A

<sup>73</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), *“The Rotterdam Rules: A practical annotation”*, informa, London 2009

<sup>74</sup> See Rotterdam Rules, article 14, appendix B

vessel's unseaworthiness caused the loss / damage or delay (para 5(a)).<sup>75,76</sup> In this case, the burden of proof of the claimant is lighter.

A remarkable difference with the Hague – Visby Rules is that in case where the fault of the carrier or any of the performing parties, or his agents and / or servants can be demonstrated, the carrier is liable. Under Article 17<sup>77</sup> of the Rotterdam rules, fault of the carriers and all involved persons in respect of the seaworthiness requirements under Article 14<sup>78</sup> would make the carrier liable unless the breach of the seaworthiness obligation was due to a latent defect.<sup>79</sup> On the other hand, under the Hague and the Hague – Visby Rules the claimant has to prove its loss and on the same time the breach of the contract that caused such loss or damage. Moreover, there is a significant difference in the exceptions of the carrier's liability between the old and the new regime and this make the Rotterdam Rules a radically different legal framework<sup>80</sup>. In conclusion, the Rotterdam Rules are reinforcing a fault – based regime with a reverse burden of proof. From the above analysis it can also be extracted that the scope of the Rotterdam Rules is much wider than that of the Hague – Visby and the Hamburg Rules.<sup>81</sup>

---

<sup>75</sup> Britania news conventions, July 2010, *The Rotterdam Rules in a nutshell*, number 2, p. 5 Available at:

[http://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_20184.pdf](http://www.fd.unl.pt/docentes_docs/ma/wks_MA_20184.pdf), [27<sup>th</sup> February 2014]

<sup>76</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

<sup>77</sup> See Rotterdam Rules, article 17, appendix B

<sup>78</sup> See Rotterdam Rules, article 14, appendix B

<sup>79</sup> Berliglieri Francesco, *Multimodal aspects of the Rotterdam Rules*, p. 6-8, available at: <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf> [27<sup>th</sup> February 2014]

<sup>80</sup> Britania news conventions, July 2010, *The Rotterdam Rules in a nutshell*, number 2, p. 5 Available at:

[http://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_20184.pdf](http://www.fd.unl.pt/docentes_docs/ma/wks_MA_20184.pdf), [27<sup>th</sup> February 2014]

<sup>81</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, London

3.7 LIABILITY OF THE CARRIER FOR OTHER PERSONS

First of all, it must be noted that the number of persons for whom the carrier is liable gradually increase among the three Conventions. Under the Hague-Visby Rules, the carrier is liable for the faults of his servants or agents as it is implied by article 4(2)(q)<sup>82</sup>, apart from the exceptions mentioned in article 4(1)(a) and (b)<sup>83</sup>. Considering all the above and taking into account especially this rule, it is worth to mention that the category of the agents appears to be rather limited. This is because article 4(2) does not provide for independent contractors and because the scope of application of the Hague-Visby Rules is not covering actions performed ashore in the ports of loading and discharge. However, agents can include the master and crew of the ship, in case they are not employed by the carrier<sup>84, 85</sup>

Article 5(1) of the Hamburg Rules lists the servants or agents of the carrier, agents who may include independent contractors performing services within the port areas as well, since the exclusion of independent contractors does not result from other provisions<sup>86</sup>. Furthermore, according to the provisions of article 10 (1), the carrier is responsible for loss, damage or delay for which a sub-carrier is liable<sup>87</sup>. Article 18 of the Rotterdam Rules details the extent of the Carrier's liability. In more detail, the carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of: a) any performing party, b) the

<sup>82</sup> See Hague – Visby Rules, article 4(2)(q), appendix A

<sup>83</sup> See Hague – Visby Rules, article 4(1)(a) and (b), appendix A

<sup>84</sup> For example, in case the carrier is the disponent Owner and not the registered Owner or the bareboat Charterer

<sup>85</sup> Berlingieri F, A. Comparative Analysis of the Hague-Visby Rules, The Hamburg Rules and The Rotterdam Rules, p. 13 – 14, Available at:

(<http://www.uncitral.org/pdf/english/workinggroups/wg-3/Berlingieri-papercomparing-Rotterdam-Rules-Hamburg-HVR.pdf>)

[26 March 2012]

<sup>86</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 5(1)

(online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>87</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 10(1)

(online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

master or crew of the ship; c) employees of the carrier or a performing party, or d) any other person that performs or undertakes to perform any of the carrier`s obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier`s request or under the carrier`s supervision or control<sup>88</sup>.<sup>89</sup>

Pursuant to article 18(d)<sup>90</sup>, the definition of the performing party though requires that the performance of the relevant duties is done at the direct or indirect request of the carrier or under the carrier`s supervision or control. The obligations of the carrier, as the Rotterdam Rules define, are to properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods. Consequently, the default position is that the carrier is obliged to undertake the performance of such actions and, in addition, to perform them in a careful and proper manner. Then, any damages to the goods due to failure of any of these duties, would be a carrier`s breach of contract.<sup>91</sup>

Where operations are undertaken by other entities not expressly acting on behalf of the shipper, contractual shipper or the consignee, for example port authorities, the wording of Article 13<sup>92</sup> indicates that the responsibility would be with the carrier, unless the party undertaking these operations is so obliged to do by law and their actions are in effect part of the delivery of the goods, in which case the carrier`s responsibility may be discharged under Article 12<sup>93</sup>.

Actually, they embrace pursuant to article 18<sup>94</sup>, performing parties, both maritime and non-maritime. The term “maritime performing party” applies to all parties that perform duties under the contract of carriage from the time the goods arrive at the port of loading until they leave the port of discharge. Where part of

---

<sup>88</sup> See Rotterdam Rules, article 18, appendix B

<sup>89</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, informa, London 2009 , p.62-63

<sup>90</sup> See Rotterdam Rules, article 18(d), appendix B

<sup>91</sup> Berlingieri F, A. Comparative Analysis of the Hague-Visby Rules, The Hamburg Rules and The Rotterdam Rules, p. 13 – 14, Available at:

(<http://www.uncitral.org/pdf/english/workinggroups/wg-3/Berlingieri-papercomparing-Rotterdam-Rules-Hamburg-HVR.pdf>) [26th March 2012]

<sup>92</sup> See Rotterdam Rules, article 13, appendix B

<sup>93</sup> See Rotterdam Rules, article 12, appendix B

<sup>94</sup> United Nations Convention on Contracts for the International Carriage of Goods wholly or Partly by Sea, Resolution adopted by the general assembly, article 18 (online)

<http://www.rotterdamrules2009.com/cms/uploads/Resolution%20adpoted%20by%20GA%20of%20CMI.pdf> [27<sup>th</sup> February 2014]



the duties are performed by an inland carrier, then that party is not a maritime performing party. Only where the services are performed within the port, does an inland carrier qualify as a maritime performing party.<sup>95</sup>

In that case the carrier is responsible for the acts and omissions of any performing party and any party's employees. The definition of the "performing party" requires that the performance of the relevant duties is done at the direct or indirect order of the carrier or under the carrier's supervision or control.<sup>96</sup> It is worth mentioning that the carrier is responsible for the actions of the master and the crew of the ship. This would be the case whether they are employees of the carrier, where the carrier is the ship-owner or the demise-charterer of the ship, or where they are employees of a performing carrier. By and large, if the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several, but only up to the limits provided for under the Convention<sup>97,98</sup>.

---

<sup>95</sup> BONNEVIE, Philippe, Evaluation of the new Convention from the perspective of cargo interests, in Transportrecht, online,

<http://www.transportrecht.org/html/IntSymUNConv09d.pdf>, [12<sup>th</sup> February 2014]

<sup>96</sup> See Rotterdam Rules, article 1.6 (a), appendix B

<sup>97</sup> See Rotterdam Rules, article 20, appendix B

<sup>98</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", informa, London 2009

3.8 NOTICE IN CASES OF LOSS, DAMAGE OR DELAY

As it was underlined earlier, the Hague – Visby Rules system do not cover the liability of the carrier for delay in delivery since historically, sea voyages were subject to innumerable hazards, which most of the times caused delays and deviations.<sup>99</sup> Moreover, some countries clearly provide for the recovery of loss of market value of the goods resulting from delay in delivery in their maritime codes, while in common law jurisdictions it usually falls within the sphere of the “reasonable contemplation of the parties” test in *Hadley v Baxendale*<sup>100</sup>

The main concept under the Hamburg Rules is that the claimant has to prove its loss and the breach of the contract that caused the loss. At this point, it is crucial to consider whether the carrier has discharged its due diligence obligation to make the ship seaworthy “before and at the beginning of the voyage”. If there is a breach of the due diligence obligation, in that case the exceptions do not protect the carrier for the damage caused by this breach.<sup>101</sup>

Pursuant to article III(6) of the Hague – Visby Rules<sup>102</sup>, the notice of loss or damage must be given before or at the time of delivery, when the damage to the goods is evident and within three days if the damage is not apparent. It is not necessary to give such a notice; in case the contractual parties have made a joint survey.<sup>103</sup> In turn, article 19 of the Hamburg Rules<sup>104</sup> provides that the notice must be given no later than the working day after delivery or, when the loss or damage is not apparent, within 15 days after delivery. It must be noted that both Rules provide that unless such notice is given on time, delivery is *prima facie* evidence

<sup>99</sup> <http://www.lrcet.go.tz/download/treaty-convention/sea.pdf>, [14<sup>th</sup> July 2014]

<sup>100</sup> (1854) 9 Ex 341. See *Renton v Palmyra Trading Corp* [1957] AC 149; *The Ardennes* [1951] 1 KB 55

<sup>101</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, p. 16 – 18, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27<sup>th</sup> February 2014]

<sup>102</sup> See Hague – Visby Rules, Article III(6), appendix A

<sup>103</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

<sup>104</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the “Hamburg Rules”), (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28<sup>th</sup> February 2014]

of delivery of the goods as described in the Bill of lading or in the document of transport.<sup>105</sup>

Article 23 of the Rotterdam Rules<sup>106</sup> provides that the notice must be given before or at the time of delivery and, if the loss or damage is not apparent, within seven working days after the delivery of the goods. Failing to give such notice it is presumed that the goods have been delivered as described in the contract. However, on the proviso of paragraph 2 of the same article, failure to give such notice does not bar any claim for compensation nor does it affect the allocation of the burden of proof under article 17<sup>107</sup>. For avoidance of future disagreements, paragraph 3 makes the suggestion of joint inspection of the cargo by the receiver and the carrier or a maritime performing party. In this case, the joint inspection can be used as a basis of asserting liability, without the need of a notice<sup>108</sup>.

However, paragraph 4 puts a time-bar in respect of the delay in delivery by providing that a notice must be given strictly to the carrier within 21 days of delivery of the goods. Failure to put the carrier on notice he is released of any obligation to pay damages in respect of delay. Reading articles 23.4 and 23.5 together gives the impression that when a notice is given to the performing party that delivered the goods would be equivalent to a notice given to the carrier and therefore satisfying article 23.5. However, in avoidance of disputes and due to the time-bar consequences of article 23.4, Tsimplis suggests that the notice should be better given directly to the carrier.<sup>109</sup> Finally, the article provides for a general obligation imposed on both parties to assist in inspecting and tallying the goods along with providing access to records and documents with regard to the carriage of the goods.

To summarise, from the above analysis we deduce that the first difference among the three rules refers to the period of the notification for the loss or damage. The second one refers to the consequences of failing to notify the carrier of loss damage or delay. Both Hague – Visby and Hamburg rules provide that if

---

<sup>105</sup> J. Wilson, *Carriage of Goods by Sea*, 5<sup>th</sup> ed. (Pearson Longman, England, 2004)

<sup>106</sup> See Rotterdam Rules, article 23, appendix B

<sup>107</sup> See Rotterdam Rules, article 17, appendix 2

<sup>108</sup> Berlingieri Francesco, *Multimodal Aspects of the Rotterdam Rules*, (online) <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%20Berlingieri%2013%20OKT29.pdf>, [10<sup>th</sup> March 2014]

<sup>109</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, page 70

notification is not given to the carrier it is presumed that the cargo has been delivered in the same condition as described in the Bill of Lading. Rotterdam Rules make the same provision except for the fact that it refers to the contract particulars and not to the Bill of Lading. Moreover, Hamburg rules put an absolute time – bar for notification failure to 60 days, while Rotterdam Rules provide that such a failure does not affect the right to claim compensation for loss or damage and does not affect the allocation of the burden of proof.

### 3.9 DEVIATION MATTERS

Pursuant to article 24 of the Rotterdam Rules, it is up to the national applicable law to decide whether deviation constitutes a breach of carrier's obligations or not. This means that the current common law regime is not changed when English law is applicable, at least in the definition of deviation and when deviation can be justified under common law. In case deviation clauses are incorporated in the contract of carriage, according to common law, the vessel shall proceed through the usual and customary route and any deviation from such route will constitute a breach of contract, unless it can be justified to save life at sea or because it is considered necessary. At the same time, deviation of itself shall not deprive the carrier of any defence or limitation including the time bar and the list of excepted perils, since article 61 refers particularly to the limitation of liability provisions<sup>110</sup>.

More specifically, under article 61, the carrier and the maritime performing party are precluded from the benefit of the limitation of liability provided for in articles 59 and 60, if the claimant proves that the loss was attributable to, or the delay in delivery resulted from, a personal act or omission of the person claiming a right to limit, done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result<sup>111</sup>.

---

<sup>110</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London

<sup>111</sup> See Rotterdam Rules articles 59 – 61, appendix B

According to article IV(4) of the Hague-Visby Rules<sup>112</sup>, deviation is allowed only in order to save or attempt to save life or property at sea or when the deviation is reasonable. If the above rule is not justifiable, the Carrier may lose the right to rely on defenses in Rules and the right to limit liability. Finally, Hamburg rules do not make any special provision on deviation matters. If it causes loss it is subject to the general test for carrier's liability according to article 5.1<sup>113</sup>. Article 5.6<sup>114</sup> provides that the carrier is not liable, when he attempts to take measures to save life or property at sea.<sup>115</sup>

### 3.10 OBLIGATIONS AND LIABILITIES OF THE SHIPPER

In general, the Rotterdam Rules do not make any substantial changes about the existing law regarding shipper's obligation and liability. As it will be analysed below, most of the features have been kept nearly the same comparable to the older regimes. Beginning with the Hague-Visby Rules, they do not contain a special chapter or article regulating the shipper's obligations and liabilities, but they are rather scattered in different articles. First of all, in article III(5)<sup>116</sup> it is provided that the shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight given by him. Secondly, on the proviso of article IV(3)<sup>117</sup> the shipper is not liable for loss or damage sustained by the carrier or the ship arising or resulting from any cause without his, his agents or his servants act, fault or neglect, thereby implying, for the carrier, that the shipper is liable for loss or damage sustained by the carrier caused by the act, fault or neglect of the shipper. Finally, article IV(6)<sup>118</sup> provides that the shipper is liable for all damages and expenses directly or indirectly arising out of or resulting from the shipment of dangerous goods, the shipment whereof

---

<sup>112</sup> See Hague – Visby Rules article IV (4), appendix A

<sup>113</sup> See Hamburg Rules, article 5.1

<sup>114</sup> See Hamburg Rules, article 5.6

<sup>115</sup> <http://www.hilldickinson.com/PDF/Shipping%20Guide%201%20-%20Cargo%20conventions.pdf>

<sup>116</sup> See Hague – Visby Rules, article III(5), appendix A

<sup>117</sup> See Hague – Visby Rules, article IV(3), appendix A

<sup>118</sup> See Hague – Visby Rules, article IV(6), appendix A

the carrier has not consented with knowledge of their nature and character. Berlingieri suggests that it is strict liability in the first and third case, fault liability in the second case<sup>119</sup>.

Regarding Hamburg Rules, they do not present any significant advance on what had already been established by the Hague – Visby Rules. Article 12 provides a general principle of fault based liability, which corresponds to article IV(3) of the Hague – Visby Rules. It provides thought that a shipper is liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, only if the loss or damage resulted from the fault or neglect of the shipper, his servants or agents. However, the article does not expressly provide whether the shipper's fault is presumed, as provided for in the same Convention of the Carrier's liability. Supplementary strict obligations are imposed on the shipper with respect to dangerous goods, under article 13, which in turn corresponds to article IV(6) of the Hague – Visby Rules. Additionally, the shipper is liable if he fails to meet his responsibilities and his obligations with respect to the goods or if the goods become an actual danger to life or property. Article 17 is similar to article III(5) of the Hague – Visby Rules and deal with the transport documents and incorrect description of goods as to weight and quantity. Finally, it is provided that the shipper shall indemnify the carrier for loss resulting from errors.<sup>120</sup>

In comparison to the above illustrated, the Rotterdam Rules regulate in chapter 7 the obligations and the liability of the shipper in more details. Of course this gives more certainty to the regulation, for the benefit of the market and the parties involved.

Shipper's obligations can be divided into the following:

- To deliver the goods ready for carriage (Article 27)
- To provide information, instruction and documents (Article 29)
- To provide information for the compilation of the contract particulars (Article 31)
- To inform the dangerous nature or character of the goods (Article 32)

---

<sup>120</sup> <http://www.hilldickinson.com/PDF/Shipping%20Guide%201%20-%20Cargo%20conventions.pdf>

In turn, shipper's liabilities can be classified as follows:

- General shipper's liability rule
- Special liability regime regarding information for the compilation of the contract particulars
- Special liability regime for dangerous goods<sup>121</sup>

### 3.10.1 DELIVERY OF THE GOODS FOR CARRIAGE

Delivery of goods concerning their carriage is quoted in article 27 of the Rotterdam Rules<sup>122</sup>, in article IV(3) of the Hague-Visby Rules<sup>123</sup> and in article 12 of the Hamburg Rules<sup>124</sup>. The distinction among the three Conventions consists in that neither the Hamburg nor the Rotterdam Rules do specify which the obligations of the shipper are as for the preparation of the goods for carriage. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage.<sup>125</sup>

In any event, Rotterdam Rules provide that the shipper shall deliver the goods in such condition that they will withstand the *intended* carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that

---

<sup>121</sup> Guzman, Jose Vicente, The Rotterdam Rules, Shipper's obligations and liability (online)

<http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Rotterdam%20Rules%20-%20Shipper%27s%20Obligations%20and%20Liability%20-%20CMI%202010%20-%20Jos%C3%A9%20Vicente%20Guzm%C3%A1n.pdf> [20<sup>th</sup> March 2014]

<sup>122</sup> See Rotterdam Rules, article 27, appendix B

<sup>123</sup> See Hague – Visby Rules, article IV(3), appendix A

<sup>124</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>125</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

they will not cause harm to persons or property.<sup>126</sup> For example, if the carrier decides to use a transport mode or a route not agreed or one which he has not informed the shipper of, the latter cannot be blamed for that he has not fulfilled his obligations in this respect. *‘Finally the duty imposed by article 27.1 imposes a corresponding obligation vis-à-vis the carrier.’*<sup>127</sup> In case the goods are not in a condition to withstand the operations such as loading, handling and discharging operations and as a result the goods are damaged, the shipper will be liable for any losses that may occur.

In addition the shipper has a general obligation to deliver the goods for carriage in such condition that they will not cause harm to persons or property. It is doubtless that this wording is evocative of that contained in the opening sentence of article 32<sup>128</sup>. Its scope is to establish the minimum requirements a shipper of any cargo has to comply with, in order to render the cargo safe for carriage, even though the shipment may not fall within the definition of dangerous cargo. However, we need to make a note that there are two major differences between the contents of article 27 and that of article 32: *‘(i) the phrase “cause harm” is used instead of “are or reasonable appear likely to become dangerous” and (ii) there is no reference to the environment’.*<sup>129, 130</sup>

Additionally, article 27.2<sup>131</sup> provides that the shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13<sup>132</sup>, paragraph 2. According to Lorenzon, this wording extends to it the basis of liability of the carrier or any performing party imposed by article 13.1<sup>133</sup>. Regarding article 13.2 there arises a problem since this is common practice in the bulk trade where for economic and practical reasons the parties to the agreed charter-party, for example a voyage charter, usually agree under FIO(S) terms under which

<sup>126</sup> See Rotterdam Rules, article 27.1, appendix B

<sup>127</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, page 80

<sup>128</sup> See Rotterdam Rules, article 32, appendix B

<sup>129</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, page

<sup>130</sup> Johnson Axel Ax:son, In institute of Maritime and Transport Law, Shipper’s obligation under the Rotterdam Rules - a fundamental change of view? Maritime Law library, (online) <http://www.maritimelawlibrary.se/carriage-of-goods/shippers-obligations-under-the-rotterdam-rules-a-fundamental-change-of-view/>, [13<sup>th</sup> March 2014]

<sup>131</sup> See Rotterdam Rules, article 27.2, appendix B

<sup>132</sup> See Rotterdam Rules, article 13, appendix B

<sup>133</sup> See Rotterdam Rules, article 13.1, 13.2 & 27.2, appendix B



the shipper shall load and perhaps also stow the goods. Article 27(2) clarifies that in such a case the shipper is responsible for that these operations are performed properly and carefully. If the shipper during the loading of the cargo acts with fault and damages the ship he will be liable for that.<sup>134</sup> Lorenzon suggests that those obligations do not seem to alter the current position under English law.<sup>135</sup> Indeed, Berlingieri suggests that such obligations do exist even if they are not specified and, regarding the Hague-Visby Rules, this is confirmed by referring to insufficiency of packing amongst the excepted perils (article IV(2)(n))<sup>136</sup>.<sup>137</sup>

Lastly, when a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property. In other words, article 27(3)<sup>138</sup> specifies the shipper's obligation in case of carriage of containers. For instance, in case the goods are stowed inside a container, on a trailer or rail road car, the goods must be stowed, lashed and secured in such a way that they will not cause harm to persons or property.<sup>139</sup>

As far as the allocation of the burden of proof is concerned, no provision is made in that respect in the Hague-Visby Rules and in the Hamburg Rules. However, the wording used in both reveals that the burden of proof is on the carrier. This is obviously the case in the Rotterdam Rules too. Article 30(1) in fact quotes that expressly<sup>140</sup>. Article 27.2<sup>141</sup> imposes on the shipper the obligation to

---

<sup>134</sup> Johnson Axel Ax:son, In institute of Maritime and Transport Law, Shipper's obligation under the Rotterdam Rules - a fundamental change of view? Maritime Law library, (online)

<http://www.maritimelawlibrary.se/carriage-of-goods/shippers-obligations-under-the-rotterdam-rules-a-fundamental-change-of-view/>

<sup>135</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London, page 82

<sup>136</sup> See Hague – Visby Rules article (article IV(2)(n)), appendix A

<sup>137</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014], page 19

<sup>138</sup> See Rotterdam Rules, article 27(3), appendix B

<sup>139</sup> Baughen, S. (2009) Obligations owed by the shipper to the carrier. In: Thomas DR (ed) *A new convention for the carriage of goods by sea: the Rotterdam Rules*. Lawtext Publishing, Oxford.

<sup>140</sup> See Rotterdam Rules, article 30(1), appendix B

<sup>141</sup> See Rotterdam Rules, article 27(2), appendix B

properly and carefully perform the loading, stowing and unloading of the goods pursuant to article 13(2)<sup>142</sup>. Consequently, in case the shipper has agreed to perform these activities, it affects the allocation of the burden of proof set out in article 30(1)<sup>143</sup>.

### *3.10.2 OBLIGATION TO PROVIDE INFORMATION, INSTRUCTIONS AND DOCUMENTS*

The obligation of the shipper to provide information, instructions and documents is referred to article 29 of the Rotterdam Rules<sup>144</sup>. According to its provisions, the shipper is to provide information and instructions required by the carrier, which are not otherwise reasonably obtainable and are necessary for the proper handling and carriage of the goods. This is also necessary for carrier's compliance with law, regulations or other requirements by public authorities in connection with the intended carriage. Finally, it is emphasized that both sides need to act in a timely manner. Compared to The Hague - Visby Rules and the Hamburg Rules, there is an increased emphasis on security and cargo documentation in the Rotterdam Rules. This can be explained by the fact that today the customs authorities require much more cargo documentation compared to the Conventions of 1924 and 1978.<sup>145</sup>

Paragraph 2 provides that nothing in this article affects specific obligations pursuant to the law. This means that since there are no similar provisions in the previous Conventions, it is assumed that the obligations reported in article 29 of the Rotterdam Rules are similar with the usual practice. Thus, it seems that this paragraph refers only to law, regulations or requirements of public authorities of

---

<sup>142</sup> See Rotterdam Rules, article 13(2), appendix B

<sup>143</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London

<sup>144</sup> See Rotterdam Rules, article 29, appendix B

<sup>145</sup> Johnson Axel Ax:son, In institute of Maritime and Transport Law, Shipper's obligation under the Rotterdam Rules - a fundamental change of view? Maritime Law library, (online) <http://www.maritimelawlibrary.se/carriage-of-goods/shippers-obligations-under-the-rotterdam-rules-a-fundamental-change-of-view/>

the countries involved in the transport and the terms included in the contract of carriage. The intention is not though to change any obligations of the parties.<sup>146</sup>

Since pursuant to this clause it is the shipper who is responsible for the breach of its duty to provide the carrier with the necessary information, the latter may need evidence of such request and/or of omitted or inaccurate response thereto. Therefore, the burden of proof is on the carrier in this case, as it is expressly provided in article 30(1), which will be analysed below. While article 3 does not require written form of communications, it seems that any evidence will be acceptable. However, when comparing with article 29<sup>147</sup>, there is no reference to the timing of request, while this article specifies that it needs to be provided in a timely manner.<sup>148</sup>

With regard to possession of the information, whether or not the information is in fact accessible to the shipper is a factor that must be reviewed while assessing the shipper's liability for non - or misinformation. It remains to be seen though, where the burden of proof lies here<sup>149</sup>.

Article 30<sup>150</sup> sets out the general liability of the shipper for breach of his obligations to the carrier under Articles 27, 29 and 31. Pursuant to the first paragraph of this article, the shipper is liable for loss or damage sustained by the carrier, if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention. At this point we may notice that similarly to article 17 on the carrier's liability, the burden of proving that there was fault on shipper's liability falls initially on the carrier. What is more, except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32<sup>151</sup>, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable

---

<sup>146</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", Informa, London 2009

<sup>147</sup> See Rotterdam Rules, article 29, appendix B

<sup>148</sup> Baughen, S. (2009) Obligations owed by the shipper to the carrier. In: Thomas DR (ed) *A new convention for the carriage of goods by sea: the Rotterdam Rules*. Lawtext Publishing, Oxford

<sup>149</sup> Berlingieri, B., Delebecque, F., Fujita, P., Illescas, T., Sturley, R., Van der Ziel, M., Von Ziegler, G., Zunarelli, A, S. *The Rotterdam Rules, an attempt to clarify certain concerns that have emerged*, on CMI and UNCITRAL, 2003, p. 123-127. (Online) [http://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Rotterdam\\_Rules\\_An\\_Attempt\\_To\\_Clarify\\_Concerns.pdf](http://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Rotterdam_Rules_An_Attempt_To_Clarify_Concerns.pdf) [28th February 2014]

<sup>150</sup> See Rotterdam Rules, article 30, appendix B

<sup>151</sup> See Rotterdam Rules, article 31 & 32, appendix B

to its fault or to the fault of any person referred to in article 34<sup>152</sup>. Indeed, this paragraph gives the shipper a defence to the carrier's action. Finally, paragraph 3 provides that when the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34<sup>153</sup>.

In comparison to the Hague – Visby Rules, the words 'loss or damage sustained by the carrier' differ from the current 'loss, damages and expenses arising or resulting from' contained in article III(5) of the Hague – Visby Rules.<sup>154</sup> Nevertheless, actually the new provisions of the RR do not modify the existing law, since according to The Hague and The Hague – Visby Rules under the exception of article IV(2.i)<sup>155</sup>, the carrier is not liable for the loss or damage to the goods caused by any breach of the shipper of his duty to provide the carrier with the information, instructions and documents necessary for the carriage, according to the applicable law. The Hamburg Rules provide the same under the *General Rule* of article 12<sup>156</sup>. In this case, the burden of proof remains on the carrier, which is the same with the provision of article 30.1 of the Rotterdam Rules.<sup>157</sup>

<sup>152</sup> See Rotterdam Rules, article 34, appendix B

<sup>153</sup> See Rotterdam Rules, article 30, appendix B

<sup>154</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009, page 87 - 88

<sup>155</sup> See Hague – Visby Rules, article IV(2i), appendix A

<sup>156</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>157</sup> Guzman, Jose Vicente, The Rotterdam Rules, Shipper's obligations and liability (online)

<http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Rotterdam%20Rules%20-%20Shipper%27s%20Obligations%20and%20Liability%20-%20CMI%202010%20-%20Jos%C3%A9%20Vicente%20Guzm%C3%A1n.pdf> [20<sup>th</sup> March 2014]

### 3.10.3 INFORMATION ABOUT THE CONTRACT PARTICULARS

Article III(5)<sup>158</sup> of the Hague – Visby Rules provides that the shipper is deemed to have guaranteed the accuracy of the information at the time of shipment and is also provided that he is to indemnify the carrier against loss, damages and expenses due to inaccurate particulars. Hamburg Rules govern information for the contract particulars under article 17, and its wording is practically identical with that of The Hague – Visby Rules.

Article 31 of the Rotterdam Rules<sup>159</sup> refers to the obligation of the shipper to provide the carrier with all the necessary information for the compilation of the contract particulars and for the issuance of the transport documents or the electronic transport records. Moreover, it is provided that such information shall be provided to the carrier on time and shall be accurate. The article refers expressly to the particulars referred to in Article 36.1, the name of the party to be identified as the shipper in the contract particulars, the name of the consignee, if any, and the name of the person to whose order the transport document or electronic transport record is to be issued, if any. In this case, the liability which arises out of a breach of this provision is based on fault.

Moreover, paragraph 2<sup>160</sup> provides that, the shipper is regarded to have guaranteed the accuracy at the time of receipt by the carrier of the information provided to the Carrier and is held liable for the inaccuracy of such information. According to Lorenzon, the liability which arises out of the second paragraph is strict and cannot be avoided by proving that the loss or damage is not caused by the shipper's or any other person's acting on his behalf fault.<sup>161</sup>

From the above analysis we may notice that the wording of article 31 is not the same with the previous Conventions. Nevertheless, Rotterdam Rules do not make any significant changes to the existing law and do not increase shipper's obligation in this regard. Moreover, it is essential to note that liability is strict in

---

<sup>158</sup> See Hague – Visby Rules, article III(7), appendix A

<sup>159</sup> See Rotterdam Rules, article 31, appendix B

<sup>160</sup> See Rotterdam Rules, article 31.2, appendix B

<sup>161</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London, page 89 - 90

all three Conventions. Pursuant to article 30(2) of the Rotterdam Rules<sup>162</sup> whereby the shipper is relieved of all or part of its liability, if the cause of loss or damage is not attributable to its fault or the fault of any person for which he is liable does not apply to article 31(2) and 32<sup>163</sup>. Since this obligation is a warranty in the other conventions as well, we come to the conclusion that the carrier is to be indemnified in case of loss or damage in case of misinformation in the Rotterdam Rules as well.<sup>164</sup>.

### 3.10.4 DANGEROUS GOODS

The issue of dangerous goods is provided in article 4(6) of the Hague Visby Rules<sup>165</sup>, article 13 of the Hamburg Rules<sup>166</sup> and in article 32 of the Rotterdam Rules<sup>167</sup>. To start with, it is remarkable that none of the three Conventions provide a definition of dangerous goods. Therefore, according to Lorenzon: *‘where English law applies, the current definition given by the House of Lords in The Giannis NK<sup>168</sup> will stand’*.<sup>169</sup> However, there are some novelties, which are being analysed below:

First of all, Hague-Visby Rules refer to the inflammable, explosive or dangerous nature of the goods, while Hamburg rules merely refer to goods of a dangerous character. On the other hand, in the Rotterdam Rules the danger is defined by referring to *‘a potential danger to persons, property and the*

<sup>162</sup> See Rotterdam Rules, article 30(2), appendix B

<sup>163</sup> See Rotterdam Rules, article 31(2) & 32 appendix B

<sup>164</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>165</sup> See Hague – Visby Rules, article IV(6), appendix A

<sup>166</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>167</sup> See Rotterdam Rules article 32, appendix B

<sup>168</sup> Effort Shipping Co Ltd v. Linden Management SA (TheGiannis NK) [1998] 1 Lloyd’s Rep. 337

<sup>169</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London

*environment*'. This clarification is considered to better identify the situations, in which the goods may be treated to belong to the category of dangerous goods for the purpose of the contract of carriage<sup>170</sup>.

What is more, the word 'nature' in the Hague-Visby Rules, has now become 'nature and character' in the Rotterdam Rules. Lorenzon writes that: '*this may have the effect of expressly tackling the case where cargo which would not be naturally dangerous may so become because of its being off-spec or contaminated*<sup>171</sup>. In this case, the effects of *The Giannis NK*<sup>172</sup> would appear to remain unaffected'.<sup>173</sup>

Under the Hague-Visby Rules<sup>174</sup>, the shipper is liable for damages caused by dangerous goods shipped *whereof the carrier [...] has not consented with knowledge of their nature and character*. From the same words follows that in case the carrier was aware of the dangerous nature of the goods the shipper is not liable. Under the Hamburg Rules article 13<sup>175</sup>, the shipper must inform the carrier of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the carrier does not otherwise have knowledge of their dangerous character, the shipper is liable to the carrier for the loss resulting from their shipment. Moreover, the carrier has the right to unload and destroy the goods without payment of compensation.

Pursuant to article 32<sup>176</sup> of the Rotterdam Rules, the shipper has two separate obligations. Firstly, the shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the

---

<sup>170</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>171</sup> *The Athanasia Comninos* [1990] 1 Lloyd's Rep. 277, *The Fiona* [1993] 1 Lloyd's Rep. 257

<sup>172</sup> *Effort Shipping Co Ltd v. Linden Management SA (The Giannis NK)* [1998] 1 Lloyd's Rep. 337

<sup>173</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London, p.91

<sup>174</sup> See Hague – Visby Rules, article IV(6), appendix A

<sup>175</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 13 (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>176</sup> See Rotterdam Rules, article 32, appendix B

carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform<sup>177</sup>.

The duty to notify the carrier of the dangerous nature of the cargo remains practically the same with that imposed by the Hague-Visby Rules article IV(6)<sup>178</sup>. However, under the Rotterdam Rules the timing of such notice is now legislatively provided for. Moreover, the breach of this obligation raises the liability of the shipper, as for the Hague-Visby and the Hamburg Rules, only if the carrier does not otherwise have knowledge of the dangerous nature or character of the goods. The knowledge required under the Hague-Visby Rules system is that “*which a prudent ship owner, seeking to inform himself of the correct method of carrying [the cargo entrusted to it] could have been reasonably expected to become aware*”<sup>179</sup>. As it seems from the bibliography available, under the Rotterdam Rules the shipper needs to prove carrier’s actual knowledge in order to be relieved of its statutory duty. Therefore, to my understanding, the burden of proof falls on the shipper in order to avoid liability. In this respect the liability regime is the same in all three Conventions.<sup>180, 181, 182</sup>

Moreover, according to paragraph 2 of article 32, the shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.<sup>183</sup> The second obligation reported in article

<sup>177</sup> See Rotterdam Rules, article 32(a), appendix B

<sup>178</sup> See Hague – Visby Rules, article IV (6), appendix A

<sup>179</sup> The Athanasia Comminos and Georges Chr Lemos [1990] 1 Lloyd’s Rep. 277

<sup>180</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009, p. 93

<sup>181</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>182</sup> Guzman, Jose Vicente, *The Rotterdam Rules, Shipper’s obligations and liability* (online)

<http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Rotterdam%20Rules%20-%20Shipper%27s%20Obligations%20and%20Liability%20-%20CMI%202010%20-%20Jos%C3%A9%20Vicente%20Guzm%C3%A1n.pdf> [20<sup>th</sup> March 2014]

<sup>183</sup> See Rotterdam Rules, article 32(b), appendix B



32(b) of the Rotterdam Rules<sup>184</sup>, to mark or label the goods, arises from the applicable law, regulations or other requirements of the public authorities that apply at any stage of the intended carriage of goods. It should be noted that this kind of obligation pursuant to the existing law and regulations of every stage is new and burdensome. For instance, a shipper of a container carried by road, sea and rail, needs to mark such container according to the existing law of every country that the container will travel.<sup>185</sup> However, shipper's liability for breach of this obligation in respect of any loss caused to the carrier, exists in all the three Conventions. Nevertheless, the obligation of marking or labelling the dangerous goods is explicitly provided only by article 13 of the Hamburg Rules<sup>186</sup> and the current article of the Rotterdam Rules.,<sup>187</sup>

At this point it is worth mentioning that article 15 of the Rotterdam Rules<sup>188</sup>, provides carrier or the performing party with a number of options in case goods are or reasonably seem to become a threat to life, property or the environment. Obviously, this article allows carrier to perform actions in breach of his contractual obligations under articles 11 and 13<sup>189</sup>, in case the goods are likely to cause damage to persons, property or the environment. However, this principle is applicable in light of the other Conventions as well (article IV(6) of the Hague – Visby Rules and article 13(b) of the Hamburg Rules. Nevertheless, under the new Convention the carrier may take the same measures in case goods are or reasonably appear potentially to become an actual danger.

---

<sup>184</sup> See Rotterdam Rules, article 32(2), appendix B

<sup>185</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

<sup>186</sup> UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), article 13 (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>187</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>188</sup> See Rotterdam Rules, article 15, appendix B

<sup>189</sup> See Rotterdam Rules, article 11 & 13 respectively, appendix B

## 3.10.5 LIABILITY OF THE SHIPPER FOR OTHER PERSONS

According to article 34<sup>190</sup>, the shipper's liability is extended for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations. Nevertheless, the shipper is not liable for the acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations. According to this last sentence shipper could entrust the performance of any of his obligations to a carrier – or more possibly – to a performing party acting on behalf of the carrier. According to Lorenzon, this right would in all probability create disputes between carriers and shippers as to on whose behalf any such performing party will be acting pursuant to clause 58.2<sup>191</sup>.<sup>192</sup>

## 3.11 TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS

To begin with, the provisions of the articles to be analysed below refer to the issuance of the Bill of Lading and shipper's liability for the inaccuracy of its contents. Hague – Visby Rules, provide in article III(3)<sup>193</sup> that the carrier or the master or the agent of the carrier after receiving the goods into his charge shall issue a Bill of Lading. Then they set out the particulars of the goods that must be indicated in the Bill of Lading and provide that the carrier is not bound to state particulars that he has reasonable grounds for suspecting that they are not accurately represent the goods.

Moreover, article III(4)<sup>194</sup> provides that the statement in the Bill of Lading is *prima facie* evidence of their accuracy. The scope of this article is to protect the *bona fide* holder of the bill of lading, by stating that proof to the contrary of the description

---

<sup>190</sup> See Rotterdam Rules, article 34, appendix B

<sup>191</sup> See Rotterdam Rules, article 58.2, appendix B

<sup>192</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009, page 96-97

<sup>193</sup> See Hague – Visby Rules, article III(3), appendix A

<sup>194</sup> See Hague – Visby Rules, article III(4), appendix A

of the goods shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith.<sup>195</sup> Furthermore, article III(7)<sup>196</sup> provides that after the goods are loaded, the carrier must issue a Bill of Lading, which after the demand of the shipper can be a 'shipped' Bill of Lading under the warranties set forth in this article. Finally, article III(5)<sup>197</sup> provides that the shipper is deemed to have guaranteed the accuracy of the information at the time of shipment and is also provided and he is to indemnify the carrier against loss, damages and expenses due to inaccurate particulars.<sup>198</sup>

As it comes to the Hamburg Rules, at first place regulate the issuance of the Bill of Lading in article 14<sup>199</sup>. This article provides that when the carrier takes the goods into his charge, he must issue to the shipper a Bill of Lading. Moreover, article 15<sup>200</sup> (in the same way as article III(7) of the Hague-Visby Rules), provide that the carrier after loading the goods must issue a shipped bill of lading. On the proviso of Article 16<sup>201</sup> the Bill of lading is evidence of the taking - over, similarly to the Hague-Visby Rules. In contrast to the Hague-Visby Rules, Hamburg rules grant the carrier the right to clause the Bill of Lading, rather than to deny inserting the particulars when he has reasonable grounds to suspect that they are inaccurate. Finally, under article 17<sup>202</sup> - similarly to article III(5) of the Hague – Visby Rules the shipper is deemed to have guaranteed the information given for the compilation of the contract particulars and is held liable in case of misinformation.<sup>203, 204</sup>

---

<sup>195</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf)

<sup>196</sup> See Hague – Visby Rules, article III(7), appendix A

<sup>197</sup> See Hague – Visby Rules, article III(7), appendix A

<sup>198</sup> <http://www.hilldickinson.com/PDF/Shipping%20Guide%201%20-%20Cargo%20conventions.pdf>

<sup>199</sup> See Hamburg Rules, article 14 (online)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]

<sup>200</sup> See Hamburg Rules, article 15

<sup>201</sup> See Hamburg Rules, article 16

<sup>202</sup> See Hamburg Rules, article 17

<sup>203</sup> <http://www.hilldickinson.com/PDF/Shipping%20Guide%201%20-%20Cargo%20conventions.pdf>

As it comes to the Rotterdam Rules, article 35<sup>205</sup> provides first of all that the issuance of a transport document or an electronic transport record is not a condition if the parties have agreed or if it is a custom, usage or practice of the trade not to use one. This is against the provisions of article III(3)<sup>206</sup> of the Hague – Visby Rules and article 14 of the Hamburg Rules<sup>207</sup>, and therefore, it is currently contrary to the custom, usage or practice of the trade. Moreover, similarly to the same articles of the previous Conventions, article 35 give the shipper the right to obtain the transport document, without the need for any formal request from the carrier. This can be obtained whether he is the original party to the contract of carriage or not. At this point I would like to make a note that according to Lorenzon there are major differences between the legal regime in force and the one created by the Rotterdam Rules, which will have an impact on the law and practice of international sales on shipment terms.<sup>208</sup>

Moreover, according to the exceptions entailed in the subparagraphs (a) & (b) of article 35, the shipper is entitled to obtain a negotiable or a non-negotiable transport document. Again this second alternative is a novelty with respect to the Hague-Visby - Rules and the Hamburg Rules. This novelty is being criticised for the probability of creating conflicts, since currently, under English law, unless otherwise agreed in the sales contract, it is the seller's duty to provide the buyer with a negotiable transport document. Therefore, the issue of conflicting usages is something that shippers will need to take into account, while negotiating the payment clause in their sales contracts.<sup>209</sup>

In further comparison to the previous Conventions, while under the current regime the carrier is obliged to issue the transport document, '*after receiving the goods into his charge*', according to article III(3) of the Hague – Visby Rules and

---

<sup>204</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf)

<sup>205</sup> See Rotterdam Rules, article 35, appendix B

<sup>206</sup> See Hague – Visby Rules, article III(3), appendix A

<sup>207</sup> See Hamburg Rules, article 14

<sup>208</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009, page 99

<sup>209</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009

article 14 of the Hamburg Rules,<sup>210</sup> Rotterdam Rules provide that such duty arises ‘upon delivery of the goods for carriage to the carrier or performing party’. It is clear though that the intention is to follow the current practice for containerized cargo. Moreover, it is impossible for the shipper to request ‘shipped’ Bill of Lading since there is no relative provision in the Rotterdam Rules, contrary to the previous Conventions.<sup>211</sup>

Article 36 of the Rotterdam Rules<sup>212</sup> provides a long list for the information to be included in the contract particulars in the transport document or electronic transport record. These particulars are divided into three sections: the first contains a list of particulars to be provided by the shipper, the second the particulars to be provided by the carrier and the third has an optional character including particulars that may or may not be added according to the circumstances and are supplied partly by the carrier (name of the ship, places of receipt and delivery, ports of loading and of discharge) and partly by the shipper (name and address of the consignee)<sup>213, 214</sup>

In general, the list of particulars provided by article 36 does not considerably vary from that of the Hamburg Rules (article 15)<sup>215</sup>, while it contains many items of the ‘limited’ Hague – Visby Rules list (article III(3))<sup>216</sup>. For example, the description of goods, the leading marks necessary for identification of the goods, the number of packages or pieces, or the quantity of the goods, the weight, a statement for the apparent order and condition of the goods at the time the carrier [or a performing party] receives them for carriage. However, reading one the applicable articles of the three conventions understands that that even on the items that they have verbatim or almost verbatim provisions, the Rotterdam Rules contain new phrases or new application of the provisions. For instance, the

---

<sup>210</sup> See hague – Visby Rules, article III(3) and Hamburg Rules, article 14 respectively

<sup>211</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009, page 101

<sup>212</sup> See Rotterdam Rules, article 36, appendix B

<sup>213</sup> See Rotterdam Rules, article 36, appendix B

<sup>214</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf)

<sup>215</sup> See Hamburg Rules, article 15

<sup>216</sup> See Hague – Visby Rules, article III(3), appendix A

words ‘or weight’ of the Hague – Visby Rules (article III. 3(b))<sup>217</sup> has become ‘and [...] weight under 36.1(d)<sup>218</sup> under the Rotterdam Rules.

Another important difference – despite the fact that the provision is similar in all the three conventions is the aforementioned statement of the apparent good order and condition of the goods. It is very important to mention that the duty to insert this statement falls clearly to the carrier, while its omission has a rather draconian consequence: Article 39.3<sup>219</sup> expressly provides that the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them, if the contract particulars fail to state the apparent order and condition of the goods. In this case, there will be the typical consequences of a clean statement.

Moreover, one more of the novelties of the New Rules, is the provision for new items and practices aiming to accommodate the new needs of the market and therefore door – to – door contracts. For instance, the name and address of the carrier – (the consequences of omitting the name and address of the carrier from the particulars of the transport document are contained in Article 37, which will be analysed below), the date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued, etc. The latter proviso seems ‘*to give the carrier a genuine option as to which date to insert in the document*’.<sup>220</sup>

What is more, article 36 of the Rotterdam Rules does not contain a full list of the particulars that transport documents need to contain but they are rather scattered in different articles. For example, the fact that the transport document shall be signed is not contained in the list but is provided by article 38<sup>221</sup>.

Another innovation of the Rotterdam rules refers to the qualification of the information relating to the goods in the contract particulars – article 40<sup>222</sup>, wherein they include an obligation of the carrier to qualify the information when he has actual knowledge or when he has reasonable arguments to claim that it is false or

---

<sup>217</sup> See Hague – Visby Rules, article III. 3(5), appendix A

<sup>218</sup> See Rotterdam Rules, article 36.1(d), appendix B

<sup>219</sup> See Rotterdam Rules, article 39.3, appendix B

<sup>220</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009, page 106

<sup>221</sup> See Rotterdam Rules, article 38, appendix B

<sup>222</sup> See Rotterdam Rules, article 40, appendix B

misleading. The same article also provides that different rules are set out in respect of goods that are not delivered to the carrier in a full container and goods that instead delivered in a full container.

Finally, an important new provision is associated with the identity of the carrier, under article 37<sup>223</sup>. On the proviso of this article, if the carrier is identified by name in the contract particulars, any other information in the transport document relating to the identity of the carrier shall have no effect. In case that no person is identified as the carrier and the transport document indicates the name of the ship, the registered owner shall be thought to be the carrier, unless he proves that the ship was under a bareboat charter at the time of the carriage and identifies the bareboat charterer indicating his address. Alternatively, the registered owner may identify the carrier indicating his address and the bareboat charterer in turn may do the same<sup>224</sup>. Finally, it is important to point out that this provision will be of considerable assistance to claimants.

From the above analysis we come to the conclusion that the provisions of the Rotterdam Rules are significantly different from those of the Hague-Visby and the Hamburg Rules and seem to be definitely more comprehensive and inclusive.

<sup>225</sup>, <sup>226</sup>, <sup>227</sup>

---

<sup>223</sup> See Rotterdam Rules, article 47, appendix B

<sup>224</sup> See Rotterdam Rules, article 37(2), appendix B

<sup>225</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London,

<sup>226</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf)

[27th February 2014]

<sup>227</sup> <http://www.hilldickinson.com/PDF/Shipping%20Guide%201%20-%20Cargo%20conventions.pdf>

3.12 LIMITS OF LIABILITY

Beginning with the Hague-Visby Rules – article IV(5)<sup>228</sup>, the limitation of liability applies in relation to ‘*loss of or damage to or in connection with the goods*’, while Hamburg Rules – article 6(1)<sup>229</sup> provide for the ‘*loss of or damage to the goods*’. In turn, article 59 of the Rotterdam Rules<sup>230</sup> covers generally breaches of the carrier’s obligations under the Rules. Therefore, the extent of application of the limits of liability has been made broader under the Rotterdam Rules. This means that they cover damages, which are not connected with the goods if they arise from a breach of carrier’s obligations under the Rules. For instance, claims for misdelivery or misinformation are covered by limitation of liability under the Rotterdam Rules, while it was not clear if they were covered or not under The Hague – Visby Rules. Article 11 of the Rotterdam Rules<sup>231</sup> makes an express provision for carrier’s obligation in respect of delivery of the goods. Therefore, breach of this obligation is expressly covered by the limitation of liability provision.

The unit of account in all the three Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF). Hague-Visby Rules<sup>232</sup> contain both a per package limitation of 666,67 SDR and a per kilogram limitation of 2 SDR. The limitation amounts have been increased in the Hamburg Rule<sup>233</sup>s to 835 SDR and 2.5 SDR respectively and have been further increased in the Rotterdam Rules<sup>234</sup> to 875 SDR and 3 SDR. In general, the overall arrangement is similar among the three conventions. Nevertheless, there is an important difference in the limits of liability, which is higher under the Rotterdam Rules as described below.<sup>235</sup>

---

<sup>228</sup> See Hague – Visby Rules, article IV(5), appendix A

<sup>229</sup> See Hamburg Rules, article 6(1)

<sup>230</sup> See Rotterdam Rules, article 59, appendix B

<sup>231</sup> See Rotterdam Rules, article 11, appendix B

<sup>232</sup> See Hague – Visby Rules article IV(5.a)

<sup>233</sup> See Hamburg Rules, article 1(a)

<sup>234</sup> See Rotterdam Rules, article (1), appendix B

<sup>235</sup> Beare Stuart, The Rotterdam Rules, some controversies

(online)[http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520controversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z\\_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms](http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520controversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms) [1<sup>st</sup> March 2014]



The carrier's liability for breach of his obligations under the Rotterdam Rules is limited unless the value of the goods has been declared by the shipper and is included in the contract details. It can also be higher in case it is thereby agreed between the carrier and the shipper. According to Article 3<sup>236</sup> the declaration must be in writing, in which case the carrier's liability is not limited. Moreover, it must be noted that on the proviso of article 4<sup>237</sup>, '*the limits of liability apply in general to any judicial or arbitral proceedings irrespective of the legal basis of the claim*'.<sup>238</sup>

Article 60 of the Rotterdam Rules<sup>239</sup> regulates the limits of liability for loss caused by delay. The economic losses due to delay are not expressly covered by the limitations of liability provisions of the Hague-Visby Rules, under which liability for delay is not regulated. On the other hand, it is regulated in both Hamburg Rules and Rotterdam Rules, where it is provided that two and one-half times of the freight is payable in respect of the goods delayed.

Article 61<sup>240</sup> provides for the loss of the benefit of the carrier as well as all parties under article 18<sup>241</sup> to limit liability. The provisions are almost the same in all the three Conventions. Nevertheless, Hague – Visby Rules provide that the right to limit liability is lost in case of '*knowledge that damage would probably occur*', while under both Hamburg Rules and Rotterdam Rules reference is made to the knowledge that such loss '*... would probably result*'.<sup>242</sup>

The word 'loss' probably refers to damage. What is more, it is not provided that the acts or omissions of the persons, for whom the carrier is responsible under article 18, will make the carrier fully liable. Instead, article 61 expressly provides that the act or omission must be a personal act of the party seeking limitation. In contrast,

---

<sup>236</sup> See Rotterdam Rules, article 3, appendix B

<sup>237</sup> See Rotterdam Rules, article 4, appendix B

<sup>238</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009, page 182

<sup>239</sup> See Rotterdam Rules, article 60, appendix B

<sup>240</sup> See Rotterdam Rules, article 61, appendix B

<sup>241</sup> See Rotterdam Rules, article 18, appendix B

<sup>242</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf)  
[27th February 2014], page

in both Hague-Visby Rules and Hamburg Rules reference is made to acts or omissions of the carrier himself, a wording which is giving rise to conflicting views, as to whether the acts or omissions of the servants or agents of the carrier might be relevant.<sup>243</sup>,

### 3.13 TIME FOR SUIT

Article 62 of the Rotterdam Rules<sup>244</sup>, provide for the time bar in judicial or arbitral proceedings. The notification in case of loss, damage or delay is dealt with under article 23<sup>245</sup> and not in the same article as the time bar. Nevertheless, this is not the case in article III(6) of the Hague – Visby Rules<sup>246</sup>.

Article 62.1 provides for two - years time bar, which is similar to the provision of the Hamburg Rules article 20<sup>247</sup>. On the other hand, Hague – Visby Rules provide for one – year time bar. The provisions on the beginning and the extension of the limitation period and on actions for indemnity are practically the same in all the Conventions. On the other hand, a difference may exist in respect of the suspension or interruption of the period. Indeed, since nothing is said in that respect in the Hague-Visby Rules and the Hamburg Rules the possible application of the national law is allowed. At the same time, suspension and interruption of the limitation period is expressly excluded in the Rotterdam Rules as per article 63<sup>248</sup>.<sup>249</sup>

Further to the above, identifying a party in order to commence arbitration proceedings is not always an easy task. Article 36 of the Rotterdam Rules<sup>250</sup> provides that the contract particulars in the transport document or electronic

---

<sup>243</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, London

<sup>244</sup> See Rotterdam Rules, article 62, appendix B

<sup>245</sup> See Rotterdam Rules, article 23, appendix B

<sup>246</sup> See Hague – Visby Rules, article III(6), appendix A

<sup>247</sup> See Hamburg Rules, article 20

<sup>248</sup> See Rotterdam Rules, article 63, appendix B

<sup>249</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>250</sup> See Rotterdam Rules, article 36, appendix B

transport record shall include the name and address of the carrier. If it doesn't, Article 37.2<sup>251</sup> provides for certain presumptions regarding the identity of the carrier. Therefore, a special provision has been added to the Rotterdam Rules - Article 65<sup>252</sup> - in respect of the actions against the person identified as a carrier pursuant to article 37.2. According article 65, a clamant may institute proceedings after the expiration of the two - year time bar within the later of the time allowed by the jurisdiction where proceedings are instituted or ninety days commencing from the day when the carrier has been identified.<sup>253</sup>

### 3.14 VALIDITY OF CONTRACTUAL TERMS

Rotterdam Rules provide in article 79<sup>254</sup> that in case of conflict of terms between the Rules and any terms contained in any contract of carriage to which the Convention applies, the Rotterdam Rules supersede. At the same time, the 'equivalent' article III(8)<sup>255</sup> of the Hague-Visby rules currently in force under English law states: *'Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect'*.<sup>256</sup>

According to Lorenzon, there seem to be three differences between the New Rules and The Hague - Visby Rules article in question: First of all, the scope of article 79 of the Rotterdam Rules is significantly broader than article III(8) of The Hague - Visby Rules. Secondly, there are express provisions on the obligations and liabilities of both carriers and shippers; and finally the obligations

---

<sup>251</sup> See Rotterdam Rules, article 37.2, appendix B

<sup>252</sup> See Rotterdam Rules, article 65, appendix B

<sup>253</sup> See Rotterdam Rules, article 65, paragraphs 1 & 2, appendix B

<sup>254</sup> See Rotterdam Rules, article 79, appendix B

<sup>255</sup> See Hague Visby Rules, article III(8), appendix A

<sup>256</sup> See Hague Visby Rules, article III(8), appendix A

and liabilities of parties other than the carrier may not be either increased or decreased. Therefore, the Convention is partly made two - way mandatory.<sup>257</sup>

Moreover, an evolution of the Hague - Visby article III(8)<sup>258</sup> is the fact that article 79 is divided in two parts, in which the first part provides for the obligations and liabilities of the carrier and the second part for the obligations and liabilities of the shipper, consignee, controlling party, holder or documentary shipper.<sup>259</sup> This second part has no equivalent in The Hague – Visby Rules.

With regard to the Hamburg Rules, they provide in article 23<sup>260</sup> that any stipulation in a contract of carriage or Bill of Lading or in any other document is null and void to the extent that it derogates from the provisions of the Convention. However, a carrier may increase his responsibilities and obligations under the Convention. At the same time, article 23(4)<sup>261</sup> further increases the protection of the shipper or consignee by providing that, if it ‘has incurred loss as a result of stipulation which is null and void by virtue of that article the carrier must pay compensation’.<sup>262</sup>

As it is aforementioned, article 79 provides that the obligations and liabilities of both the carrier and the maritime performing parties as well as of the shipper, consignee, and controlling party are mandatory. However, article 80<sup>263</sup> then allows, under certain requirements, freedom of contract for volume contracts<sup>264</sup>. According to Berlingieri, the United States proposed a special regime for the volume contracts allowing freedom of contract for the category of transport contracts named “*service contracts*”. The freedom for such contracts ‘*is granted by subsection (c) of section 8 (a) of the Shipping Act 1984, as amended by section 106 (b) of the Ocean Shipping Reform Act, 1998*’.<sup>265</sup> In fact, that the term of

<sup>257</sup> See Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009, page 243 - 244

<sup>258</sup> See Hague Visby Rules, article III(8), appendix A

<sup>259</sup> See Rotterdam Rules, article 79.2, appendix B

<sup>260</sup> See Hamburg Rules, article 23

<sup>261</sup> See Hamburg Rules, article 23(4)

<sup>262</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, London

<sup>263</sup> See Rotterdam Rules, article 80, appendix B

<sup>264</sup> According to article 1(2)<sup>264</sup> of Rotterdam Rules, a volume contract is defined as ‘a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time’.

'*service contract*' was unknown in most of the jurisdictions and therefore, it was proposed and accepted to adopt the term "*volume contracts*" or "*tonnage agreements*".

The requirements for derogating from the compulsory character of the Rules in respect of this kind of contracts, were based on the fact that the parties have normally, as in charter parties, equal bargaining power, despite transportation is made in the liner trade<sup>266</sup>. Indeed article 80.1 provides that, as between the carrier and the shipper, a volume contract, defined as above, may impose greater or lesser rights, obligations and liabilities than those imposed by the Rotterdam rules on both parties.<sup>267</sup> At this point, it is worth to note that according to Lorenzon, freedom of contract for '*volume contracts*' may lead to abuse by the shipowners. This is explained by the fact that article 80 indirectly gives freedom to shipowners as for the cargo quantity to be shipped, period of time or frequency of shipments; and last but not least to the number of shipments, since the minimum number of shipments is just two for a contract to fall within the definition of the '*volume contract*'.<sup>268</sup>

Furthermore, in order to cover small contracts, where equal bargaining power could not exist and therefore to ensure the protection of small shippers, it was agreed to require formal requirements for derogation: a) that the volume contract contains a prominent statement that it derogates from this convention and, therefore, should be subject to negotiation and, b) that shippers should be given an opportunity and notice of the opportunity to conclude the contract of carriage on terms and conditions that comply with the Rotterdam Rules. Finally, the derogation is neither incorporated by reference from another document nor is

---

<sup>265</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) , [27th February 2014], page 38

<sup>266</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) , [27th February 2014]

<sup>267</sup> See Rotterdam Rules, article 80 (1), appendix B

<sup>268</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London

included in a contract of adhesion that is not subject to negotiation.<sup>269</sup> What is more, it must be noted that according to paragraph 6 of the same article, the party claiming the benefit for the derogation bears the burden of proofing the fulfilment of such conditions.<sup>270, 271</sup>

In addition, article 80(4)<sup>272</sup> expressly excludes the possibility of both carriers' and shippers' derogation from their fundamental obligations. These are carrier's obligation for the vessel sea seaworthiness along with his duty to properly man and equip the vessel; and shipper's obligation to provide information and instructions necessary for the proper cargo handling as well as information in respect of dangerous cargo.<sup>273</sup> On the proviso of paragraph 5, third parties are not bound by derogations unless they give their express consent for doing so.<sup>274</sup> Finally, any liability arising from an act or omission referred to in Article 61<sup>275</sup> is also regarded absolutely mandatory.

Finally, in comparison to the previous Conventions, as we have already stressed out, Rotterdam Rules apply to contracts of carriage. Instead, The Hague – Visby Rules apply only to Bills of Lading or any other similar documents of title and therefore, any other contracts of carriage – and hence volume contracts – are not subject to the current legal regime. Regarding Hamburg Rules, despite they are applicable to contracts of carriage by sea, they are not making any special provisions for volume contracts.<sup>276</sup>

---

<sup>269</sup> See Rotterdam Rules, article 80 (2), appendix B

<sup>270</sup> See Rotterdam Rules, article 80(6), appendix B

<sup>271</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) , [27th February 2014]

<sup>272</sup> See Rotterdam Rules, article 80 (4), appendix B

<sup>273</sup> As they are provided by articles, 14, 29 and 32, respectively

<sup>274</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>275</sup> See Rotterdam Rules, article 61, appendix B

<sup>276</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "The Rotterdam Rules: A practical annotation", London

## CHAPTER 4

### 4. MATTERS REGULATED BY THE HAMBURG RULES AND THE ROTTERDAM RULES

#### 4.1 DECK CARGO

According to article I(c)<sup>277</sup> of the Hague – Visby Rules, if it is stated by the contract of carriage that the cargo is thought to be carried on deck and it is so carried, it is not subject to the Hague-Visby Rules. Consequently, under the current legal regime, carriers have the right to exclude by contract all liabilities for loss of or damage to deck cargo. This is done by inserting exclusion clauses in Bills of Lading, even in cases they are issued in the short form “to be used with charter party”.<sup>278</sup>

Nowadays, it is common practice for containers to be carried on deck in modern container ships. Hamburg Rules take this development into account and article 9<sup>279</sup> provides three conditions under which carriage of goods on deck is permitted when it is in accordance with: a) an agreement with the shipper; b) with the usage of the particular trade; c) it is required by statutory rules or regulations.

In turn, article 25<sup>280</sup> of the Rotterdam rules regulates the deck cargo carriage. Article 25.1<sup>281</sup> allows carriers to carry goods on deck provided the following circumstances are satisfied: a) such carriage is required by law-presumably- of the contract, of the flag or the port of loading, transshipment or discharge; b) the goods are carried in or on containers or vehicles that are fit for deck carriage, provided the decks are specially fitted to carry such containers or vehicles; or c) the carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question. It should be noted that article 25.1(b) is an innovation in line with the carriage of containers on modern

---

<sup>277</sup> See Hague – Visby Rules, article I (c), appendix A

<sup>278</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, p.75-76

<sup>279</sup> See Hamburg Rules, article 9

<sup>280</sup> See Rotterdam rules, article 25, appendix B

<sup>281</sup> See Rotterdam rules, article 25.1, appendix B

container ships and the carriage of vehicles on modern Ro / Ro ships. However, at the same time it imposes two requirements for the allowance of such carriage: the containers or vehicles are fit for deck carriage; and decks are fitted for such carriage. The endorsement of the contract of carriage, or the customs, usages or practices of the trade is a requirement in both Hamburg and Rotterdam Rules.

Both Conventions have similar provisions with regard to the implications of unauthorized deck cargo and of deck carriage in lack of the express consent of the shipper. Contrary to article 25.2, Rotterdam Rules Article 25.3 holds the carrier liable in case of unauthorized deck cargo, even if loss of or damage to the goods or delay in their delivery is exclusively caused by their carriage on deck. At the same time, carrier is not entitled to the defenses provided for in article 17<sup>282, 283</sup>. Article 25.5<sup>284</sup> in turn provides that the carrier has no right to limit his liability of any loss of or damage or delay in the delivery of the goods in the absence of express agreement for deck cargo. Nevertheless, it is a condition that such loss of or damage or delay is resulted from the carriage of the goods on deck.

Finally, article 25.2<sup>285</sup> of the Rotterdam Rules, provide that *‘the carrier is liable for the loss of, damage to or delay in the delivery of goods carried on deck, irrespective of any mention thereof in the Bill’*.<sup>286</sup> Nevertheless, the carrier may exempt himself from liability in case he can prove that the loss of or damage or delay in delivery is due to inherent risks of deck cargo. On the other hand, Hamburg Rules do not provide for the consequences of loss, damage or delay in delivery occurring when the deck cargo carriage is authorized. From the above analysis, we may deduce that the provisions of the Rotterdam Rules are more complete and in line with today’s requirements of the trade.<sup>287</sup>

---

<sup>282</sup> See Rotterdam Rules, article 17, appendix B

<sup>283</sup> See Rotterdam Rules, article 25 (3), appendix B

<sup>284</sup> See Rotterdam Rules, article 25 (5), appendix B

<sup>285</sup> See Rotterdam Rules, article 25 (2), appendix B

<sup>286</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), *“The Rotterdam Rules: A practical annotation”*, informa, London 2009, page 76

<sup>287</sup> Berlingieri, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [15th January 2011]

<sup>287</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), *“The Rotterdam Rules: A practical annotation”*, informa, London 2009



#### 4.2 THE CASE OF LIVE ANIMALS

According to Hague – Visby Rules article I(c)<sup>288</sup> the carriage of live animals is excluded from the Rules since live animals fall outside the definition of the ‘goods’ . Instead, both Hamburg and Rotterdam Rules apply to the carriage of live animals with major differences though. According to article 5(5)<sup>289</sup> of the Hamburg Rules the carrier is not liable for loss, damage or delay resulting from any special risks inherent in their carriage. The carrier may relieve himself from liability in case of loss, damage or delay in the delivery of the goods, if he proves that he had complied with shipper’s special instructions for the protection of the animals - unless there is a proof that all or partial loss of, damage or delay in delivery resulted from his or his servants’ or agents’ fault or neglect.

On the other hand, Rotterdam Rules grant the carrier freedom of contract in case of the carriage of live animals. Indeed, article 81(a)<sup>290</sup> provides that the carrier or the maritime performing party may exclude or limit themselves from obligation or liability for the carriage of live animals. However, exclusion and limitation clauses may become of no effect in case the claimant can prove that the animals were injured, died or their delivery delayed: a) because of the reckless act or omission of the carrier, the Master or crew and the rest contained in article 18<sup>291</sup>; or b) because of an act or omission done with the intention of causing such death, injury or delay in delivery.<sup>292</sup>

---

<sup>288</sup> See Hague – Visby Rules, article I(c), appendix A

<sup>289</sup> See Hamburg Rules, article 5(5)

<sup>290</sup> See Rotterdam Rules, article 81(a), appendix B

<sup>291</sup> See Rotterdam Rules, article 18, appendix B

<sup>292</sup> Berlingieri, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [15th January 2011]

#### 4.3 THE LIABILITY OF THE ACTUAL CARRIER AND THE MARITIME PERFORMING PARTY

It is common in the shipping market for a contracting carrier to enter into a contract of carriage by sea with a shipper, but entrust the carriage or part of it, to another carrier. In these cases, he often includes in the Bill of Lading a clause that exempts the former from liability for loss or damage attributable to the actual carrier. As a result, shippers usually face complexities in legal systems that uphold those exemption clauses, since they have to seek compensation from the actual carrier, whom carrier might not be subject to suit by the shipper in an appropriate jurisdiction<sup>293</sup>.

Neither The Hague nor The Hague – Visby Rules do deal with the responsibility of the actual carrier. Instead, Hamburg Rules regulate the liability of the actual carrier for the first time. Article 10(2)<sup>294</sup> provides that all the provisions of the Convention that govern the responsibility of the carrier apply also to the actual carrier for the carriage performed by him. The same article provides further that the contracting carrier may exempt himself from liability for loss, damage or delay attributable to an actual carrier only if the contract of carriage specifies the part of carriage entrusted to the actual carrier and names the actual carrier. Where the contracting carrier and the actual carrier are both liable, their liability is joint and several<sup>295</sup>.<sup>296</sup>

Rotterdam Rules article 19<sup>297</sup> in turn has replaced the reference to the actual carrier with a reference to the maritime performing party. Article 1.7 provides that a maritime performing party means a performing party that performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the

---

<sup>293</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009

<sup>294</sup> See Hamburg Rules, article 10(2)

<sup>295</sup> See Hamburg Rules, article 10

<sup>296</sup> Berlingieri, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [15th January 2011]

<sup>297</sup> See Rotterdam Rules, article 19, appendix B

port of discharge of a ship<sup>298</sup>. Article 1.6 defines the meaning of the performing party, (of which the maritime performing party is a sub-species), as a party that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, loading or delivery of the goods<sup>299</sup>.<sup>300</sup>

Article 19 makes the relevant provisions for claims against parties – the maritime performing parties – who do not have contractual relationship with the claimant. Tsimplis writes that Rotterdam Rules create liability only against maritime performing parties and not performing parties. However, the carrier's liability covers actions performed by all performing parties both maritime and non maritime.

The Convention apply to a maritime performing party under the following conditions: Firstly, the maritime performing party needs to operate at least in part in a Contracting State, either by receiving or delivering the goods or by performing its activities regarding the goods in a port in a Contracting State. The second requirement may apply to a party, for instance stevedores, who perform activities in a port area but do not receive or deliver goods<sup>301</sup>. At the same time, maritime performing parties who perform their activities outside a Contracting state are not subject to the Rotterdam Rules.

Paragraph 1(b) provides that the occurrence that caused the loss, damage or delay took place either: a) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge; b) while the goods are under the custody of the maritime performing party; c) at any other time to the extent that the maritime performing party was participating in the performance of contractual activities<sup>302</sup>. When the above requirements are met, the maritime performing party is imposed on the same liabilities as the contractual carrier and therefore is entitled to the same protection. Therefore, when Rotterdam

---

<sup>298</sup> See Rotterdam Rules, article 1(7), appendix B

<sup>299</sup> See Rotterdam Rules, article 1(6), appendix B

<sup>300</sup> Berlingieri, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [15th January 2011]

<sup>301</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009, page 65

<sup>302</sup> See Rotterdam Rules, article 19.1(b), appendix B

Rules apply to a contract of carriage, claimants are enabled to sue directly the maritime performing parties with whom they have no contractual relationship.

Moreover, article 19(2)<sup>303</sup> provides that in case the carrier agrees to be exposed to higher liability levels or undertakes more obligations than those specified by the Convention, the maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits. In turn, article 19(3)<sup>304</sup> provides that in case a maritime performing party has entrusted the performance of any of the carrier's obligations under the contract of carriage to another person, he is liable for the breach of his obligations under the Conventions for any of this person's acts or omissions. Finally, article 19(4)<sup>305</sup> provides that the Master, the crew and any employees of the carrier or the maritime performing party are expressly excluded from liability under the Rotterdam Rules.<sup>306</sup>

#### 4.4 JURISDICTION

Rotterdam Rules article 66<sup>307</sup> provides that the plaintiff has the right to institute judicial proceedings against the carrier under this Convention, unless the contract of carriage contains an exclusive choice of court agreement that complies with article 67 or 72. It further lists the places where the plaintiff has the right to bring court proceedings against the carrier: i) the domicile of the carrier; ii) the place of receipt agreed in the contract of carriage; iii) the place of delivery agreed in the contract of carriage; iv) the port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship<sup>308</sup>. Paragraph b of the same article provides that the courts or court of proceedings may be designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention<sup>309</sup>.

---

<sup>303</sup> See Rotterdam Rules, article 19(2), appendix B

<sup>304</sup> See Rotterdam Rules, article 19(3), appendix B

<sup>305</sup> See Rotterdam Rules, article 19(4), appendix B

<sup>306</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", Informa, London 2009

<sup>307</sup> See Rotterdam Rules, article 66, appendix B

<sup>308</sup> See Rotterdam Rules, article 66(a), appendix B

<sup>309</sup> See Rotterdam Rules, article 66(b), appendix B

In comparison to the other Conventions, neither The Hague nor The Hague-Visby Rules do contain any provisions on jurisdiction or arbitration proceedings. However, the House of Lords has held a jurisdiction clause void in case it would grant a carrier lower liability limits than those imposed by the Hague-Visby Rules<sup>310</sup>.<sup>311</sup> The Hamburg Rules contain provisions on both jurisdiction and arbitration, which restrict the effect of exclusive court or arbitration agreements. According to Articles 21 (1) and 22 (3) of the Hamburg Rules<sup>312</sup>, the cargo claimant may choose from a number of different places to bring court or arbitration proceedings including the principal place of business or, in the absence thereof, the habitual residence of the defendant, the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made, or the port of loading or the port of discharge, or any additional place designated in the contract.<sup>313</sup>

Article 67<sup>314</sup> provides for the court agreements for volume contracts: *'the jurisdiction of a court chosen in accordance with article 66, paragraph b<sup>315</sup>, is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction: a) is contained in a volume contract that clearly states the names and addresses of the parties and either i) is individually negotiated or ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement ; and b) clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State'*<sup>316</sup>. Rotterdam Rules give the parties to volume contracts greater freedom of contract. Indeed Article 80<sup>317</sup> provides that under certain circumstances, the parties to a volume contract can, to a certain extent, derogate from the Rotterdam Rules.

<sup>310</sup> The *Hollandia* sub nom *The Morviken* [1983] 1 AC 565; [1983] 1 Lloyd's Rep 1

<sup>311</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009, page 212

<sup>312</sup> See Hamburg Rules, articles 21(1) & 22(3)

<sup>313</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>314</sup> See Rotterdam Rules, article 67, appendix B

<sup>315</sup> See Rotterdam Rules, article 66(b), appendix B

<sup>316</sup> See Rotterdam Rules, article 67, appendix B

<sup>317</sup> See Rotterdam Rules, article 80, appendix B

According to Baatz, the provisions of the Rotterdam Rules on jurisdiction are influenced by the Hamburg Rules. Nevertheless, there are significant differences between the two Conventions in this regard. The basic difference between the provisions of the two Conventions consists in that the Rotterdam Rules allow exclusive jurisdiction clauses under certain circumstances, while Hamburg Rules never do. Moreover, the provisions in the Rotterdam Rules are more complex than those in the Hamburg Rules.<sup>318</sup>

Moreover, article 67(2)<sup>319</sup> provides the requirements for an exclusive court agreement between the carrier and ‘a person that is not a party to the volume contract’. This clause has been criticized for leading parties to much litigation since the law may differ from state to state as to whether a third party is bound by such a clause. The requirements are the following: ‘a) *The court is in one of the places designated in article 66, paragraph (a); b) That agreement is contained in the transport document or electronic transport record; c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; d) The law of the court seized recognizes that that person may be bound by the choice of court agreement*’.<sup>320</sup>

What is more, Berlingieri writes that article 67 cannot be compared with article 80(2)<sup>321</sup>, since there is no analogy among the requirements between the two articles. Indeed article 67(1) sets out the conditions for the validity of exclusive jurisdiction clauses and mentions only some of the conditions set out in article 80(2), i.e. the conditions set out in paragraph c and d of article 80 are missing.<sup>322, 323</sup>

---

<sup>318</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, pages 215 - 216

<sup>319</sup> See Rotterdam Rules, article 67(2)

<sup>320</sup> See Rotterdam Rules, article 67(2), appendix B

<sup>321</sup> See Rotterdam Rules, article 80(2), appendix B

<sup>322</sup> ALCANTARA, HUNT, JOHANSSON, OLAND, PSYDEN, RAMBERG, SCHMITT, TETLEY, VIDAL, Particular concerns with regard to the Rotterdam Rules, April 2010 available (online)

[http://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_20183.pdf](http://www.fd.unl.pt/docentes_docs/ma/wks_MA_20183.pdf) [28th February 2014]

<sup>323</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf), [27th February 2014]

Article 68<sup>324</sup> provides for the actions against a maritime performing party and is read in combination with article 69<sup>325</sup>. Article 68 provides that the plaintiff has the right to bring proceedings against a maritime performing party either at the place where the maritime performing party is domiciled or at the port where the goods are received or delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods<sup>326</sup>. Pursuant to article 69 ‘and subject to the parties entering into an agreement after the dispute has arisen or submitting to the jurisdiction of a court within article 72<sup>327</sup>, [...] no court proceedings can be brought against a maritime performing party, other than in the places listed in article 68’.<sup>328</sup> Moreover, article 69 provides that no court proceedings can be brought against the carrier other than the places listed in article 66.<sup>329</sup> Finally, it must be noted that the provisions of article 69 are subject to article 71<sup>330</sup> on consolidation of actions, which will be analysed below.<sup>331</sup>

According to Baatz, article 69 must be subject to article 70<sup>332</sup> although it doesn’t expressly provide for same. Article 70 provides that nothing in the Rotterdam Rules affects jurisdiction with regard to provisional or protective measures, including arrest. In order a state where such measures have been taken to have jurisdiction to determine the case upon its merits, the requirements of chapter 14 must be fulfilled<sup>333</sup> or an international Convention that applies in that State so provides<sup>334</sup>.

Article 71<sup>335</sup> provides for the consolidation and removal of actions. It therefore provides that unless there is an exclusive choice of court agreement that

---

<sup>324</sup> See Rotterdam Rules, article 68, appendix B

<sup>325</sup> See Rotterdam Rules, article 69, appendix B

<sup>326</sup> See Rotterdam Rules article 68, appendix B

<sup>327</sup> See Rotterdam Rules, article 72, appendix B

<sup>328</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009, page 224

<sup>329</sup> See Rotterdam Rules, article 69, appendix B

<sup>330</sup> See Rotterdam Rules, article 71, appendix B

<sup>331</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

<sup>332</sup> See Rotterdam Rules, article 71(1), appendix B

<sup>333</sup> See Rotterdam Rules, article 70, appendix B

<sup>334</sup> See Rotterdam Rules, article 70(a), appendix B

<sup>335</sup> See Rotterdam Rules, article 70(b), appendix B

<sup>336</sup> See Rotterdam Rules, article 71, appendix B

is binding pursuant to article 67 or 72<sup>336</sup>, in case a consolidated action can be brought against multiple defendants arising out of a single occurrence, the action may be instituted only in a court that satisfies a dual test: i.e. satisfies both article 66 and article 68<sup>337</sup>. If there is no such court, which satisfies that test, a consolidated action may be brought where the goods are received or delivered by the maritime performing party, or where the maritime performing party performs its activities in respect with the goods.<sup>338</sup> Except when there is an exclusive choice of court agreement that is binding pursuant to articles 67 or 72, article 71(2)<sup>339</sup> aims to prevent the carrier or the maritime performing party seeking proceedings for a declaration of non – liability or any other action that would deprive a person from suing the carrier or the maritime performing party of its right to select the forum pursuant to Article 66 or 68.

With regard to jurisdiction agreement after a dispute has arisen, article 72(1)<sup>340</sup> provides that the parties to the dispute are free to enter into jurisdiction agreement choosing any competent court after the dispute has arisen. Where the defendant appears before a competent court and does not contest jurisdiction in accordance with the rules of that court, the court has jurisdiction<sup>341</sup>.

Article 73(1)<sup>342</sup> provides that a decision made in one Contracting State by a court which has jurisdiction under this Convention, shall be recognized and enforced by another Contracting State in accordance with the law of that latter State. This will apply only if both States have made a declaration in accordance with article 74. Article 73(2)<sup>343</sup> provides that the Contracting State requested to recognize or enforce a decision of another Contracting State may refuse to do so, on the grounds available under its law. Article 73(3)<sup>344</sup> provides that Chapter 14 shall not affect the application of the rules of a regional economic integration organization that is a party to the Rotterdam Rules, as concerns the recognition or enforcement of judgments as between member states of the regional economic

---

<sup>336</sup> See Rotterdam Rules, article 67 & 72 respectively, appendix B

<sup>337</sup> See Rotterdam Rules, article 66 & 68 respectively, appendix B

<sup>338</sup> See Rotterdam Rules, article 71(1), appendix B

<sup>339</sup> See Rotterdam Rules, article 71(2), appendix B

<sup>340</sup> See Rotterdam Rules, article 72(1), appendix B

<sup>341</sup> See Rotterdam Rules, article 72(2), appendix B

<sup>342</sup> See Rotterdam Rules, article 73(1), appendix B

<sup>343</sup> See Rotterdam Rules, article 73(2), appendix B

<sup>344</sup> See Rotterdam Rules, article 73(3), appendix B



integration organization, whether those rules were adopted before or after the Rotterdam Rules.<sup>345</sup>

Finally, article 74<sup>346</sup> refers to the application of chapter 14 on jurisdiction and provides that the provisions of this chapter shall bind only Contracting States that declare in accordance with Article 91 that they will be bound by them.

#### 4.5 ARBITRATION

The Hague – Visby Rules are silent regarding arbitration. The rules contained in both Hamburg and Rotterdam Rules are in general similar to those for jurisdiction. That is to say that the person asserting a claim against the carrier has the option to choose as place of arbitration any of the places mentioned respectively in article 22(3)<sup>347</sup> and in article 75(2)(b)<sup>348</sup>. Indeed the places contained in the aforementioned articles are the same as those referred to jurisdiction in articles 21(1)<sup>349</sup> and 66(a)<sup>350</sup> respectively.<sup>351</sup>

In more detail, Chapter 15 of the Rotterdam Rules refers to arbitration. Article 75(1) provides that when chapter 15 on arbitration is binding, the parties may agree that any dispute that may arise relating to the carriage of goods under this convention shall be referred to arbitration. Pursuant to article 78<sup>352</sup>, Chapter 15 will only bind Contracting States that declare in accordance with article 91 that they will be bound by that chapter<sup>353</sup>. On the proviso of article 75.5 if they do so

---

<sup>345</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, Informa, London 2009

<sup>346</sup> See Rotterdam Rules, article 74, appendix B

<sup>347</sup> See Hamburg Rules, article 22(3)

<sup>348</sup> See Rotterdam Rules, article 75(2)(b), appendix B

<sup>349</sup> See Hamburg Rules, article 21(1)

<sup>350</sup> See Rotterdam Rules, article 66(a), appendix B

<sup>351</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>352</sup> See Rotterdam Rules, article 78, appendix B

<sup>353</sup> See Rotterdam Rules, article 91 appendix B

declare, any term of an arbitration clause that is inconsistent with the provisions of article 75 is void.<sup>354</sup>

Article 75(2)<sup>355</sup> provides that the person bringing arbitration proceedings against the carrier may choose the place of arbitration to be in one of the following options: the place designated in the arbitration agreement or in a state where: the carrier is domiciled; or the place of receipt or delivery of the goods agreed in the contract of carriage is located; or the port where the goods are initially loaded on a ship or finally discharged from a ship is located.

Furthermore, in comparison with the provisions on court jurisdictions contained in chapter 14, chapter 15 again separate volume contracts, which satisfy certain requirements from contracts which are not volume contracts or volume contracts which do not satisfy the conditions set out in article 75(3)<sup>356</sup> and, where necessary, article 75(4)<sup>357</sup>. Therefore, article 75(3) provides that the choice of the place of arbitration is binding for disputes “between the parties to the agreement” if the agreement is contained in a volume contract which clearly states the names and addresses of the parties<sup>358</sup>. In this case, it is either individually negotiated or contains a prominent statement that there is an arbitration agreement and it specifies the sections of the volume contract containing the arbitration agreement.

The requirements contained in article 75(3) are identical with a jurisdiction agreement under 67(1)(a)<sup>359</sup>, amended accordingly to reflect that this is an arbitration agreement instead of a court jurisdiction clause. Nevertheless, the requirement regarding the place of arbitration in a Contracting state according to article 67(1) (b) for an exclusive jurisdiction agreement is not a requirement under article 75(3).<sup>360</sup>

Moreover, article 75(4) sets out the conditions under which a third party to a volume contract, is bound by the choice of the place of arbitration. This is the case only when the requirements of both article 75(3) and article 75(4)<sup>361</sup> are

<sup>354</sup> See Rotterdam Rules, article 75(5), appendix B

<sup>355</sup> See Rotterdam rules, article 75(2), appendix B

<sup>356</sup> See Rotterdam Rules, article 75(3), appendix B

<sup>357</sup> See Rotterdam Rules, article 75(4), appendix B

<sup>358</sup> See Rotterdam rules, article 75(3), appendix B

<sup>359</sup> See Rotterdam rules, article 67(1)(a), appendix B

<sup>360</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London

<sup>361</sup> See Rotterdam Rules 75, 75(3) & 75(4)

satisfied. Therefore, the place of arbitration must be one of the listed under paragraph 2. Moreover, it provides that the agreement must be contained in the transport document or electronic transport record; the person to be bound is given timely and adequate notice of the place of arbitration; and the applicable law permits that person to be bound by the arbitration agreement. According to Baatz, the last requirement has been strongly criticized as being too vague and that it may lead to major differences of approach by Contracting States.<sup>362</sup>

Additionally, with regard to the place of arbitration, Baatz writes that: *‘working group III acknowledged that one difficulty of the approach in the Hamburg Rules [now largely adopted by the Rotterdam Rules] was said to be that they reduced commercial certainty by allowing the arbitration to take place in one of a number of different possible locations’.*<sup>363</sup> Indeed *‘article 75(4) limits the carrier’s choice as to the place of arbitration’.*<sup>364</sup> As it seems he has no longer the liberty to *‘choose a neutral place which has no connection with the parties or the dispute, other than the place of its domicile’.*<sup>365</sup>

According to Baatz again: *‘If the carrier is not domiciled in England and the facts of the dispute are not connected with England, a London arbitration clause could never bind a third party, even in the case of a volume contract. Although the shipper and the carrier could be bound by such an agreement if it satisfied article 75(3), it would not bind a third party to the contract under article 75(4), as it is not one of the places listed in article 75(2)(b) as required by article 75(4)(a). This would have a significant impact on choice of London arbitration, which continues to be popular due to the expertise in maritime law, efficiency and integrity of, for example, the London Maritime Arbitrators Association’.*<sup>366</sup>

---

<sup>362</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, page 239

<sup>363</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, p. 237

<sup>364</sup> See footnote 363

<sup>365</sup> See footnote 363

<sup>366</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “The Rotterdam Rules: A practical annotation”, London, p.238 - 239

**CHAPTER 5**

**5. MATTERS REGULATED SOLELY BY THE ROTTERDAM  
RULES**

5.1 ELECTRONIC TRANSPORT RECORDS

The use of electronic transport documents in international trade is currently out of the scope of English law. Therefore, one of the innovations of the Rotterdam Rules is the provision for the use of electronic transport records alternative to the transport documents. Due to the continuous evolution in electronic communications, the drafters of the Rotterdam Rules created a workable system aiming to replace paper documents in such a way as to enable their application whatever system may in the future be envisaged.<sup>367</sup>

Articles 8 – 10 of the Rotterdam Rules<sup>368</sup> have been drafted in this regard. Article 8<sup>369</sup> provides that electronic transport records have equal value with the transport documents, such as Bills of Lading and Sea waybills. However, the use of electronic transport records is subject to the requirements set out by the Rotterdam Rules. In addition, article 9<sup>370</sup> refers to the negotiable electronic transport documents. It sets out the basic requirements and the necessary procedures to be followed for the use of the negotiable electronic transport records instead. Thus transport is encouraged to take place entirely on digital transfer documentation without the need of paper documents. This will give an equal recognition to paper and electronic documentation and is hoped to achieve quicker transfer of the goods carried as well as lower transaction costs.<sup>371, 372, 373</sup>

---

<sup>367</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>368</sup> See Rotterdam Rules, articles 8 – 10, appendix B

<sup>369</sup> See Rotterdam Rules, article 8, appendix B

<sup>370</sup> See Rotterdam Rules, article 9, appendix B

<sup>371</sup> BERLINGIERI, Francesco, *The Rotterdam Rules: The “Maritime Plus” approach to uniformity*, in *European Journal of Commercial Contract Law*, 2009

## 5.2 THE ROLE OF THE MARITIME PERFORMING PARTIES

Rotterdam Rules create the grounds for claims against maritime performing parties, with whom the clamant – usually the shipper or consignee, has no contractual relationship. The term ‘maritime performing party’ applies to the sub-contractors of the carrier according to article 6(a). Maritime performing parties perform duties on behalf of the carrier from the time the goods arrive at the port of loading until they leave the port of discharge. The liability of the maritime performing parties is provided by article 19 of the Rotterdam Rules, which extends the rule adopted in article 10<sup>374</sup> of the Hamburg Rules.

The Hamburg Rules regulate the role of the performing parties, which are acting ashore but within the port areas, whereas under the Rotterdam Rules a maritime performing party is subject to the obligations and liabilities imposed on the carrier and is entitled to the carrier's defences and limits of liability as provided in article 19<sup>375</sup>. For the application of the Rules it is necessary, pursuant to paragraph 1(a), that the maritime performing party must receive the goods for carriage or deliver them in a Contracting State or, if it is performing services ashore, that such services be performed in a port situated in a Contracting State.<sup>376</sup> The provisions of article 19 may be applicable not only to the shipowner, demise – charterer or charterer who performs the contract of carriage, but also to stevedores, lightering companies etc.

As it is aforementioned, the period of responsibility of the maritime performing parties starts from the point that the goods arrive at the port of loading and ceases upon departure from the port of discharge of the ship<sup>377</sup>. At this point we may notice that the Hamburg Rules also apply to the period during which the

---

<sup>372</sup> CHAMBER OF SHIPPING OF THE UNITED KINGDOM, Rotterdam Rules: why we should support early ratification, by Donald Chard (online) <http://www.british-shipping.org> [11th January 2011]

<sup>373</sup> BIFA (BRITISH INTERNATIONAL FREIGHT ASSOCIATION), *So what are the Rotterdam Rules?* Press Release 64 by Pysden Solicitors, London

<sup>374</sup> See Hamburg Rules, article 10

<sup>375</sup> See Rotterdam Rules, article 19, appendix B

<sup>376</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>377</sup> See Rotterdam Rules, article 19(b)(i), appendix B

goods are in charge of the carrier in the ports of loading and discharge. It is therefore conceivable that sub-contractors operating in the port areas may take benefit themselves of the defences and limits of liability as applicable to the carrier. Nevertheless, Rotterdam Rules give a clear picture of their obligations and defences.<sup>378, 379</sup>

At this point we may note that Berlingieri doubts the innovation of the Hamburg Rules in comparison to The Hague – Visby Rules in this regard.<sup>380</sup> This is explained as follows: As we have already mentioned, Hamburg Rules regulate the liability of the actual carrier in article 10<sup>381</sup>. Additionally, they provide in article 7(2)<sup>382</sup> that servants or agents of the carrier against whom an action is brought, are entitled to the same defences and limits of liability of the carrier, which is similar to the provisions of The Hague – Visby Rules. At the same time, Hague – Visby Rules do not provide for claims against third parties, i.e. any other party apart from the contractual carrier and therefore, they do not make any provision on the protection of other parties, which is not the case under Hamburg Rules.<sup>383</sup>

---

<sup>378</sup> A Summary of General Criticisms of the UNCITRAL Convention on (the Rotterdam Rules), William Tetley, December 2008, online [https://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Summary\\_of\\_Criticism\\_of UNCITRAL\\_No\\_1.pdf](https://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Summary_of_Criticism_of UNCITRAL_No_1.pdf), [7th August 2014]

<sup>379</sup> BONNEVIE, Philippe, Evaluation of the new Convention from the perspective of cargo interests, in *Transportrecht*, online, <http://www.transportrecht.org/html/IntSymUNConv09d.pdf>, [12<sup>th</sup> February 2014]

<sup>380</sup> Therefore, the question is extended to whether it is actually an innovation of the Rotterdam Rules

<sup>381</sup> See Hamburg Rules, article 10

<sup>382</sup> See Hamburg Rules, article 7(2)

<sup>383</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online) [www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

5.3 DELIVERY OF THE GOODS

To start with, neither do The Hague-Visby Rules nor do the Hamburg Rules make any provisions on the rights and obligations of the parties with regard to the delivery of the goods after their arrival at destination. Therefore, there may arise issues, such as: the carrier is entitled to withhold the goods in case the freight remains unpaid and on the other side a person may request delivery of the goods although he is unable to properly identify himself or to surrender a negotiable transport document.<sup>384</sup>

Pursuant to article 11 of the Rotterdam Rules, Carrier's primary obligation is to carry and deliver the goods to the consignee<sup>385</sup>. According to article 43, the consignee in turn is obliged to accept delivery of the goods after they have arrived at their destination.<sup>386</sup> Articles 45 – 47 govern the obligation of the carrier to deliver the goods<sup>387</sup>. According to article 45, delivery is subject to the condition of whether a negotiable transport document (or electronic record) has been issued or not. In this case, the consignee needs to properly identify himself in order to get delivery of the goods, since the surrender of the document is not a requirement. We may also mention that article 45 applies only where a straight Bill of Lading, seawaybill or electronic transport record is issued.<sup>388</sup>

In the second case, under article 46 – the condition is the consignee to surrender the document or record for delivery of the goods. In this case also the consignee needs to identify himself as the consignee if the carrier requires, but this condition is weaker than that of the surrender of the document. This article is applicable in case a straight bill of lading or a seawaybill is issued. Furthermore, pursuant to the same article, the carrier, for the protection of the holder of the non - negotiable document or record, has not only the right to deny delivery of the

---

<sup>384</sup> BERLINGIERI, Francesco, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]

<sup>385</sup> See Rotterdam Rules, article 11, appendix B

<sup>386</sup> See Rotterdam Rules, article 43, appendix B

<sup>387</sup> See Rotterdam Rules 45 – 47, appendix B

<sup>388</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

goods but also the obligation to refuse delivery without the surrender of the document except when the transport document expressly states that the goods may be delivered without the surrender of the document.<sup>389, 390, 391</sup>

What is more, Article 48 sets out the consequences of goods remaining undelivered and the rights of the carrier for the disposal of the goods. Goods may remain undelivered because either the consignee does not accept delivery, the person to deliver the goods cannot be found or the carrier is entitled or required to refuse delivery. With regard to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require: a) to store the goods at any suitable place; b) to unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and finally c) to cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time<sup>392</sup>.

Furthermore, paragraph 3 provides that the carrier may exercise his rights under paragraph 2 of this article only after it has reasonably notified the person stated in the contract particulars in this regard<sup>393</sup>.

On the proviso of paragraph 4, undelivered goods may be sold if at least one of the requirements provided by paragraph 2 is met. Moreover, it is provided that the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, after deducting any costs incurred by him along with any amounts due to him in connection with the carriage of the goods.<sup>394</sup> However, according to Debattista, it is not made clear by the Rules, for whose benefit are the proceeds held, i.e. *‘Are they held for the benefit of the person entitled to the property in the goods or to the person entitled to the possession of the goods under*

---

<sup>389</sup> See Rotterdam Rules, article 46(a), appendix B

<sup>390</sup> BONNEVIE, Philippe, Evaluation of the new Convention from the perspective of cargo interests, in Transportrecht, online,

<http://www.transportrecht.org/html/IntSymUNConv09d.pdf>, [12<sup>th</sup> February 2014]

<sup>391</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), *“The Rotterdam Rules: A practical annotation”*, informa, London 2009

<sup>392</sup> See Rotterdam rules, article 48(2), appendix B

<sup>393</sup> See Rotterdam rules, article 48(3), appendix B

<sup>394</sup> See Rotterdam Rules, article 48(4), appendix B



*the contract of carriage?*'<sup>395</sup> Therefore, Debattista suggests that given that the Rotterdam Rules refer to the contract of carriage and not to any contract of sale, it is most probable that the proceeds are held for the benefit of the person entitled to delivery under the contract of carriage.

Finally, paragraph 5 provides that the carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps<sup>396</sup>.

Finally, article 49<sup>397</sup> preserves the rights of the carrier or of a performing party for the lien of goods for security of the payment of freight or any other sums due, according to the terms of the contract of carriage or the applicable law.<sup>398</sup>

---

<sup>395</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009, page 150

<sup>396</sup> See Rotterdam Rules, article 48(5), appendix B

<sup>397</sup> See Rotterdam Rules, article 49, appendix B

<sup>398</sup> Michael F. Sturley, 'The preparation, philosophy, and potential impact of the Rotterdam Rules' (2008) 14 JIML

#### 5.4 POWER AND RIGHTS OF THE CONTROLLING PARTY AND THEIR TRANSFERABILITY

Chapter 10 of the Rotterdam rules regulates the rights of the Controlling Party. In short, if goods are sold in transit, most probably the shipper will have to give instructions to the carrier or change the instructions previously given, which is a common practice under the international trade. Article 1.12 of the Rotterdam Rules<sup>399</sup> defines the right to give instructions as “right of control” and article 1.13<sup>400</sup> the person that may exercise such right as “controlling party”.

In turn, Article 50<sup>401</sup> limits the rights of the controlling party. It starts by setting out which are its rights and include, in addition to the right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage, the right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, to any place en route and the right to replace the consignee by any other person including the controlling party<sup>402</sup>. Paragraph 2 of the same article provides that the right of control exists during the entire period of responsibility of the carrier, as provided in article 12<sup>403</sup>, and ceases when that period expires<sup>404</sup>. Then, under article 51 they stipulate the identity of the controlling party and regulate the conditions under which the carrier is bound to execute the instructions<sup>405</sup>.

What is more, article 57 provides for the transfer of rights when a negotiable transport document or negotiable electronic transport record is issued<sup>406</sup>. Moreover, article 58 regulates the circumstances under which the holder of a negotiable transport document that is not the shipper assumes three assumptions of liabilities under the contract of carriage. First, the holder must exercise ‘any right under the contract of carriage’, secondly, the liability of the holder must be one which the contract of carriage imposes ‘on it’ (i.e on the

---

<sup>399</sup> See Rotterdam Rules, article 1.12, appendix B

<sup>400</sup> See Rotterdam rules, article 1.13, appendix B

<sup>401</sup> See Rotterdam Rules, article 50, appendix B

<sup>402</sup> See Rotterdam Rules, article 50(1), appendix B

<sup>403</sup> See Rotterdam Rules, article 12, appendix B

<sup>404</sup> See Rotterdam Rules, article 50(2), appendix B

<sup>405</sup> See Rotterdam Rules, article 51, appendix B

<sup>406</sup> See Rotterdam Rules, article 57, appendix B

holder); thirdly such liability must be incorporated in or ascertainable from' the document or electronic transport record<sup>407, 408</sup>.

### 5.5 CARRIAGE PRECEDING OR SUBSEQUENT TO THE SEA LEG

It is worth mentioning that since Rotterdam Rules were tailor made for multimodal transportation, it is the first time that a Convention refers to Conventions other than those of the maritime industry. However, it is believed that this inclusion was necessary due to the fact that the period of responsibility of the carrier under the Rotterdam Rules is extended to include the place of receipt and the place of delivery; and therefore both the Rotterdam Rules and the different unimodal liability regimes may be applicable simultaneously. This is something which inevitably leads to conflicts of Conventions.

Therefore, for avoidance of conflict with the unimodal Conventions of other modes, the drafters of the Rotterdam Rules have designed two limited liability provisions, applicable to door-to-door contracts of carriage - articles 26<sup>409</sup> and 82<sup>410, 411</sup>.

#### *Article 26<sup>412</sup>*

Pursuant to the first paragraph of this article it is applicable to cases when loss of or damage to goods or an event or circumstance causing a delay in their

<sup>407</sup> See Rotterdam Rules, article 58, appendix B

<sup>408</sup> Beare Stuart, The Rotterdam Rules, some controversies, p. 2, (online) [http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520controversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z\\_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms](http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520controversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms) [1<sup>st</sup> March 2014]

<sup>409</sup> See Rotterdam Rules article 26, appendix B

<sup>410</sup> See Rotterdam Rules article 82, appendix B

<sup>411</sup> Eftestol – Wilhemson Ellen, The Rotterdam Rules in a European Multimodal context, Scandinavian Institute of Maritime Law, university of Oslo, 2010, Journal of International Maritime Law, Vol. 16, p. 274, 2010, (online)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1865777](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865777) [9<sup>th</sup> March 2014]

<sup>412</sup> See Rotterdam Rules article 26, appendix B

delivery occurs during carriers' period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship. Therefore, due to the use of additional modes than the ship to the transport of goods there raises the question which legislation will be applicable in case of loss of or damage or delay due to mistakes or omissions during their handling and transport. In other worlds the above mentioned events or circumstances have been localised as having occurred outside the sea leg of the voyage. We may point out here that this is applicable only in case such event is the exclusive cause of the loss, damage or delay. If this is the case Rotterdam Rules provide that the provisions of this Convention do not prevail over the provisions of another international instrument, provided this international instrument contains mandatory liability provisions.<sup>413</sup>

Note that there are three conditions for the operation of article 26. As already mentioned above, the first one is related to the time when the event has occurred, i.e. the loss of or damage to the goods or the event or circumstance causing a delay must have occurred during carrier's period of responsibility but solely before their loading onto the ship or after their discharge from the ship. The word 'solely' suggests that the event must not coincide with any other event prior to the loading or after the discharge of the vessel.

The second is that the other international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to the goods, or the event or circumstance causing a delay in their delivery occurred. The third condition provides for the carrier's liability, limitation of liability or time for suit and at the same time it is provided that it cannot be departed from the detriment of the shipper under that instrument.<sup>414</sup>

#### **Article 82<sup>415</sup>**

Article 82 provides that the Rotterdam Rules do not affect the application of other Conventions that regulate the liability of the carrier for loss of or damage

---

<sup>413</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), "*The Rotterdam Rules: A practical annotation*", informa, London 2009

<sup>414</sup> Beare, Stuart, UNCITRAL Draft Convention on the Carriage of Goods – Presentation, in CMI Yearbook 2005-2006

<sup>415</sup> See Rotterdam Rules, article 82, appendix B

to the goods. Nevertheless, their identification is not made expressly by reference to the other Conventions but by indicating the various modes of transport (carriage by road, by rail, by air and by in-land waterway) and the contents of the Conventions that govern them. The repetitive use of the phrase: ‘according to its provisions’ is explanatory. It is obvious that this article aims to make provisions for avoidance of conflict and makes it clear that nothing in the Rotterdam Rules affects the application of any unimodal Convention regarding the liability of the carrier for loss of or damage to the goods.

Moreover, it is apparent to point out that pursuant to the first paragraph of this article, the reference to the other Conventions is limited to ‘*international Conventions in force at the time this Convention enters into force, including any future amendment to such conventions*’.<sup>416</sup> At this point I would like to mention that there are researchers who suggest that since the application of the Rotterdam Rules has not come into force at the time of writing, it is not possible to identify the other Conventions and their amended provisions. This is because it is suggested that it is unknown what the position will be with regard to other Conventions when the Rotterdam Rules come into force. This means that the Conventions in force, when the Rotterdam Rules come into force could include both the Conventions that exist currently as well as Conventions that will be done in the future along with their amendments.<sup>417</sup>

Nevertheless, other researchers analyse each paragraph of this article and specify the Conventions applicable to each mode by reference. For example, with regard to carriage of goods by air, article 82(a) provides generally that the provisions of the Rotterdam Rules<sup>418</sup> shall not prevail over any international Convention governing carriage of goods by air to the extent that such Convention according to its provisions applies to any part of the contract of carriage. Since the scope of this provision is general and the Montreal Convention is a unimodal convention with a wide scope of application it is applicable in this case. Specifically, according to Article 1 of the second Convention, it applies to all international carriage of cargo by air.

---

<sup>416</sup> See Rotterdam Rules, article , appendix B

<sup>417</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

<sup>418</sup> See Rotterdam Rules, article 82 (a), appendix B

Article 82(b) of the Rotterdam Rules<sup>419</sup>, provides that the Rotterdam Rules shall not prevail to any Convention that according to its provisions is applicable to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship. The applicable Convention in this case is the Convention on the Contract for the International Carriage of Goods by Road (CMR). Moreover, according to article 82(c)<sup>420</sup> this Convention shall not prevail over any Convention that according to its provisions governs the carriage of goods by rail. In this case the applicable Convention is the Convention concerning International Carriage by Rail (COTIF). Finally according to paragraph (d) of this article<sup>421</sup>, Rotterdam Rules do not affect the application of any Convention that according to its provisions applies to a carriage of goods without transshipment both by inland waterways and sea. The convention in force in this case is the Budapest convention on the contract for the Carriage of goods by inland waterway (CMNI) done at Budapest 22 June 2001.<sup>422, 423</sup>

---

<sup>419</sup> See Rotterdam Rules, article 82 (b), appendix B

<sup>420</sup> See Rotterdam Rules, article 82 (c), appendix B

<sup>421</sup> See Rotterdam Rules, article 82 (d), appendix B

<sup>422</sup> BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)

[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf)

[27th February 2014]

<sup>423</sup> Eftestol – Wilhemson Ellen, The Rotterdam Rules in a European Multimodal context, Scandinavian Institute of Maritime Law, university of Oslo, 2010, Journal of International Maritime Law, Vol. 16, p. 274, 2010, (online)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1865777](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865777) [9<sup>th</sup> March 2014]

## CHAPTER 6

### 6. CONCLUSIVE NOTES

Although Hague – Visby Rules have been in force for almost half a century, they have been criticised for their weaknesses and their inability to be compatible with the changes in the modern shipping world. Moreover, there are several aspects of the rights and responsibilities of the parties to a contract of carriage which are not dealt with. As a result, usually issues that are not governed by The Hague – Visby Rules are being resolved by rules of national law. Moreover, many aspects of the Rules have been criticised for being in favour of the carrier. The limited period that the carrier is liable, the exceptions regarding the ‘navigation fault’ and the non – liability for deck - cargo carriage are some examples of the aforementioned.

Therefore, UNCITRAL initiated the re-examination of the rules. The revision was concluded in 1973 and the Convention known as ‘Hamburg Rules’ was adopted in 1978. It is worth to mention that the Hamburg Rules put forward the potential of accomplishing greater uniformity than the Hague – Visby rules. Nevertheless, they have been criticised by the majority of the maritime nations for their wide scope of application and the abolishment of the exception clauses among others; and therefore, they haven’t been ratified in large.

As a result, it was widely recognised that there was an urgent need for a practical, comprehensive, uniform legal regime governing the rights and obligations of carriers, shippers and consignees under a contract of door – to – door shipments that involve international sea transport. Indeed UNCITRAL made an attempt to unify the international law on the carriage of goods by sea and to modernize the entire regime of international transport law, not only regarding the carriage of goods by sea but also build a ‘multimodal’ transport regime.

Thereafter, taking into consideration the differences we found through the analysis of the three different regimes we have to remark the following findings: The first attempt of the Rotterdam Rules was to modernize the pre – existing Rules in order to accommodate the new needs of the shipping market. Therefore, their initiative difference with the previous Rules refers to the scope of application. The Hague – Visby Rules scope of application was limited since it is connected to the issuance of the Bill of Lading. However, the ‘Bill of Lading’ does nowhere appear

in the definition of the contract of carriage in the Rotterdam Rules but they rather initiate a wider concept of a 'transport document' and also include an 'electronic transport record' as a possible medium for a contract of carriage. The Hamburg rules widen the scope of application to contracts of carriage where it is enough the Bill of Lading or any other document to evidence that the contract is in a contracting state.

In turn the Rotterdam Rules expand further the scope of application to contracts for carriage by other modes of transport in addition to the sea carriage and hence their name: '*Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.*' Thus they provide that the scope of application shall include the place of receipt, the port of loading, the place of delivery and the port of discharge.

The period of responsibility of the carrier under The Hague – Visby Rules covers from the time the goods are loaded until the time the goods are discharged from the ship. Carrier's period of responsibility is extended by the Hamburg Rules to cover 'port to port'. This has now further been extended by the Rotterdam Rules to cover the time from the place where the goods are received to the place where the goods are delivered, i.e. door – to – door.

Moreover, neither The Hague – Visby nor the Hamburg Rules make any provision for the use of electronic transport documents in international trade. Therefore, one of the novelties of the Rotterdam Rules is that they represent the first statutory structure for the use of electronic transport records.

The most important differences refer to carrier's obligations. Starting with the obligation to carry and deliver the goods to the consignee, we saw that there is no provision in the Hague-Visby Rules and the Hamburg Rules with regard to the rights and obligations of the parties relating to the delivery of the goods after their arrival at destination. A distinct difference with the previous conventions refers to the burden of proof, in cases of loss, damage or delay, where it is enough for the claimant to prove that he has suffered loss and that the goods were within the period of the carrier's responsibility. In turn, the burden of proof shifts on the carrier, who in turn has to prove a number of exemptions in order to avoid liability, as we have stressed out earlier in the paper. Therefore, it is worth to note at this point that the legal regime of the Rotterdam Rules is still fault based but with a reversed burden of proof.



Moreover, under the Rotterdam Rules carrier's responsibility with regard to the seaworthiness is not only before and at the beginning of the voyage – as it was under The Hague - Visby regime, but shall be continuous throughout the voyage. Another significant difference is the deletion of the nautical fault exception in The Hague – Visby Rules. This means that, the carrier, his servants and agents are not any more exonerated from liability in case of negligent ship management and navigation.

In addition, The Hague – Visby Rules have no provisions on delay. Hamburg Rules contain such an article providing that delay occurs if the goods are not delivered at the port of discharge within the time agreed, or in the absence thereof, it falls on the due diligence obligation. Rotterdam Rules make special provisions on delay upon agreement in the contract of carriage, but omit the test of a diligent carrier.

Another remarkable difference among the three regimes is the matter of deviation. The Hague – Visby Rules provide that the carrier is relieved from his liability in case the vessel deviates for the purpose of saving life or property. The Hamburg Rules do not contain a deviation clause. The Rotterdam Rules provide that the issue of deviation is left to the national law to decide, while the carrier or the maritime performing party is given the right to enjoy the defenses and limitation of liability under the Rules.

Deck cargo is an issue that both the Hamburg and the Rotterdam Rules have made significant changes, since deck cargo was not falling within the definition of 'goods' under the Hague – Visby Rules. One reading article 25 of the Rotterdam Rules, understands that its provisions are in line with the increased containerization of the modern shipping industry. For instance, we may regard that the provision that containers should be fit for deck carriage and the decks fitted for the carriage of containers upon agreement in the contract of carriage are of the most important developments in the carriage of containers.

Rotterdam Rules contain by far the most elaborate provisions on the obligations of the shipper. The Rules provide three main areas where the shipper is expected to provide information for: the proper handling and carriage of the goods; information to enable compliance with laws and regulations; and information for the compilation of the contract particulars. Moreover, Rotterdam Rules make special provisions on the carriage of dangerous goods, under which

the shipper is liable to the carrier for the damage caused due to inaccurate information in this regard. What is more, the shipper is liable for the acts or omissions of his employees or agents as well as his subcontractors but not to the performing party acting on behalf of the carrier to which the shipper has entrusted the performance of his obligations.

The limits of liability under the Rotterdam Rules are higher compared with The Hague – Visby Rules and the Hamburg Rules. What is more, the Rotterdam Rules make provisions with regard to economic loss due to delay and therefore, delay is subject to the limitation of liability.

As for the time to suit, The Hague – Visby Rules provide for one year time bar, while the Hamburg Rules provide for two years. In turn, Rotterdam Rules have adopted the two – year time bar. Moreover, the provisions on the indemnity actions are similar between the Hamburg and the Rotterdam Rules. However, Rotterdam Rules provide further that in case the carrier cannot be identified from the transport document, proceedings may be instituted after the expiration of the two years and within the time allowed provided by the Rules.

The appearance on the scene of the ‘performing party’ and the ‘maritime performing party’ is also an innovation of the Rotterdam Rules. These definitions highlight the fact that it is common the carriers to assign to third parties part of their contractual obligations. What is more, a performing party can be a maritime or a non- maritime, since the Rotterdam Rules do not cater solely for maritime transport.

What is more, definitions such as the ‘controlling party’ and the ‘right of control’ are firstly introduced by the Rotterdam Rules. In short, ‘controlling party’ is the party who has the right under the contract of carriage to give the carrier instructions in respect of the goods. ‘Right of control’ means the right under the contract of carriage to give instructions to the carrier in respect of the goods. In other words, the party who has the ‘right of control’ is the ‘controlling party’, who can give the carrier a set of alternatives like the replacement of the consignee, the delivery of the cargo en route and the modification of the instructions in respect of the goods. The controlling party has the right to transfer its rights to another person and therefore designate it as ‘controlling party’.

The Hague – Visby Rules do not contain any special provisions on jurisdiction and arbitration. Therefore the parties are free to decide in this regard

in the contract. The Hamburg Rules provide for jurisdiction and arbitration, while the Rotterdam Rules provisions are similar to those of the Hamburg Rules. However, for the arbitration and jurisdiction provisions to apply, it is necessary for the States which ratify the Convention to decide whether they opt in or opt out the application of subject provisions. When the States decide to opt in, the Rules provide for the places where the arbitration is to take place, with implications contrary to the current common practice.

At this point I would like to note that according to the bibliography used for the compilation of this paper, this will most probably result in the fact that the carrier will not be able to choose a neutral place for arbitration, which is not connected with the parties or the dispute, but only the place of his domicile. This means that if the carrier's domicile is not in England, a London arbitration clause will never bind a third party. This would result in the inability of choosing London arbitration, which is popular within the shipping world due to the expertise in maritime law.

According to bibliography, article 80 for 'volume contracts' remains the most controversial provision of the Rotterdam Rules, despite innovative. The definition of volume contracts has been criticized for being uncertain and therefore we may say with uncertain implications for the parties and especially the shippers. The article does not provide for any minimum quantity, period of time or frequency and the minimum number of shipments and therefore it can lead to abuse by the carriers. Of course, how the courts will treat this issue is something to be seen in the future.

Finally, it was obvious throughout the paper that the Rotterdam Rules are designed to accommodate the multimodal transport of goods. It is the first time that a Convention makes express provisions for the relationship of the ship with other modes of transport like the train, trucks, airplane and inland carriage. In this regard, Article 82 caters for the relationship of this Convention with other international Conventions which have no relationship with the maritime transport and provides which Convention supersedes in case of possible conflict during the transit of the cargo to the next mean of transport. Rotterdam Rules expressly provide that this Convention do not affect the application of other Conventions that regulate the liability of the carrier, under other means of transport.

Nevertheless, while others have tried to specify the Conventions implied by this article, there are others who suggest that this is impossible since it provides for Conventions in general. This can be explained from the fact that Rotterdam Rules have not come into force yet and it is also still unknown when they are coming into force. Therefore, the contents of this provision could be regarded as generic since they can include any Convention applicable at the time this Convention will come into force along with any future amendments.

To conclude, through our comparison of the three Conventions and a more detailed analysis of the Rotterdam Rules, we can surely support that they are a more practical, comprehensive and complete legal regime, from theoretical point of view. Containerization and use of multimodal transportation is catered for by extending the Rules to contracts of carriage '*wholly or partly by sea*' and thus their description from many authors of the bibliography used as: 'a maritime plus' legal framework. Undoubtedly, the New Convention is an attempt to harmonise the obligations between the carriers and the shippers. For instance, I believe that the deletion of the 'nautical fault' exempt and the continuous obligation for vessel seaworthiness among others will create a new era in the shipping market with rather significant implications for the shipowners.

As we have already concluded through our analysis, the Rotterdam Rules is the most complete legal framework to date. Of course, it does not mean that there is no room for improvement, since they have been heavily criticised for having limited scope, or containing ambiguities and complexities. For instance, it is believed that chapters 14 and 15 give the right to Contracting States, which have ratified the Rules to opt out from the jurisdiction and arbitration provisions of this Convention. It is regarded to create uncertainty to the parties of a contract of carriage.

We have yet to see if the Rules will finally attract enough support in order to come into force, since there are still too many who are reluctant with them. If they come into force, maritime lawyers will undoubtedly have to work on the basis of new legal and untested provisions. I would further suggest that even if the Rotterdam Rules never come into force, they have created the grounds for a more

complete international legal framework which accommodates the needs of the increased containerization in the modern shipping world.<sup>424</sup>,<sup>425</sup>,<sup>426</sup>

---

<sup>424</sup> Updating the Rules on international carriage of goods by sea: The Rotterdam Rules, online, <http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Paper%20of%20Kofi%20Mbi%20ah.pdf>, [6<sup>th</sup> August 2014]

<sup>425</sup> A Summary of General Criticisms of the UNCITRAL Convention on (the Rotterdam Rules), William Tetley, December 2008, online [https://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Summary\\_of\\_Criticism\\_of UNCITRAL\\_No\\_1.pdf](https://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Summary_of_Criticism_of UNCITRAL_No_1.pdf), [7<sup>th</sup> August 2014]

<sup>426</sup> Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), “*The Rotterdam Rules: A practical annotation*”, informa, London 2009

## BIBLIOGRAPHY

- Baatz Y., Dennatista C., Lorenzon F., Serdy A., Staniland H., Tsimplis M., (2009), *“The Rotterdam Rules: A practical annotation”*, informa, London 2009
- Baugen, S. *Shipping Law*, 3<sup>rd</sup> ed, Cavendish Publishing Ltd, Oct 2004
- Baughen, S. (2009) Obligations owed by the shipper to the carrier. In: Thomas DR (ed) *A new convention for the carriage of goods by sea: the Rotterdam Rules*. Lawtext Publishing, Oxford.
- BAUGHEN, Simon, International maritime law, in International maritime and commercial law yearbook 2003, London, Informa Professional, 2003
- Baughen Simon, *International maritime law, in International maritime and commercial law yearbook 2003*, London, Informa Professional, 2003
- BEARE, Stuart, *Strengths and Weaknesses of the new Convention*, paper delivered at the Congress “The Rotterdam Rules: A New Era in Uniform Transport Law”, held at Carlos III University of Madrid on the 17<sup>th</sup> and 18<sup>th</sup> of September 2009
- Berlingieri Francesco, International Maritime Conventions: volume 1, the carriage of goods and passengers by sea, Informa law from Routledge, online [<http://books.google.gr/books?id=RgaLAWAAQBAJ&pg=PR7&dq=berlingieri+international+maritime+convention+the+carriage+of+goods+and+passenger+by+sea&hl=el&sa=X&ei=OzwhVLS7J6WCzAOwoYHgDA&ved=0CB0Q6AEwAA#v=onepage&q=berlingieri%20international%20maritime%20convention%20the%20carriage%20of%20goods%20and%20passengers%20by%20sea&f=false> ], 20<sup>th</sup> March 2014]
- Thomas Edward, *Scrutton on Charterparties and bills of lading*, 21<sup>st</sup> ed, Sweet & Maxwell, London, 2008
- Berlingieri Frangesco, *An analysis of two recent commentaries of the Rotterdam Rules*, Esratto della Rivista, Il Diritto Marittimo, Fasc. I, 2012, [online] <http://www.comitemaritime.org/Uploads/An%20analysis%20of%20two%20recent%20commentaries%20of%20the%20RR-F.Berlingieri.pdf>, 15<sup>th</sup> August 2014
- Brown Robert, *Marine Insurance – The principles*, Witherby & Co Ltd, London 1975
- Chami, Diego Esteban, *The Rotterdam Rules from an Argentinean perspective*, in *Uniform Law Review*, Vol. XIV, 2009, p. 847

- CLARKE, Malcolm, *Carrier Liability under Global and Regional Regimes – Air Carriage by Road: Quantum Rumbles On*, in *General Trends in Maritime and Transport Law 1929-2009*, Stockholm: Jure AB, 2009
- DIAMOND, Anthony, *The next sea carriage convention?*, in *Lloyd's Maritime and Commercial Law Quarterly*, 2008
- DIAMOND, Anthony, *The Rotterdam Rules*, in *Lloyd's Maritime and Commercial Law Quarterly*, 2009
- Eriksson, R., "Shipping: EC maritime competition law reform – opportunities and options" [2005] *Comp. L.I.* 3.
- Ersboll, N.C., "EU transportation" (2004) *Global Competition Review* 95.
- Farantouris, Nikolaos, E., "Shipping in Europe and the Emergence of a Common Maritime Transport Policy" *Hellenic Maritime Law Association Publications* 8, Ant. N. Sakkoulas Publishers, Athens 2000.
- Goode, R. *Commercial Law*, 3<sup>rd</sup> ed, Penguin Books Ltd, Uk, 2004
- Hudson N. Geoffrey, Medge Tim, *Sturges Keith, Marine Insurance Clauses*, 5<sup>th</sup> edition, informa law, London 2012
- Kiriazidis, T., and Tzanidakis G. "Recent aspects of the EU maritime policy", *Maritime Policy and Management*, 1995
- Ruttley, P., "International shipping and EEC competition law" [1991] *ECLR* 5.
- Victor Dover, *A Handbook to Marine Insurance*, H.F. & G. Witherby Ltd., London 1957
- Wilson ,J., *Carriage of Goods by Sea*, 5<sup>th</sup> ed. (Pearson Longman, England, 2004)

#### **Journals:**

- ASARIOTIS, Regina, *Draft instrument on transport law: an update on proceedings at the UNCITRAL Working Group*, *Journal of International Maritime Law*, 2003, p. 400
- ASARIOTIS, Regina, *What future for the bill of lading as a document of title?* in *Journal of International Maritime Law*, 2008, p. 75

- ASARIOTIS, Regina, *Burden of proof and allocation of liability for loss due to a combination of causes under the new Rotterdam Rules*, in *International Maritime Law*, Vol. 14, Issue 6, November-December 2008, p. 970
- ASARIOTIS, Regina, *Allocation of liability and burden of proof in the Draft Instrument on Transport Law*, in *Lloyd's Maritime and Commercial Law Quarterly*, 2002, p. 382
- BRUNNER, Raphael, *Electronic transport documents and shipping practice not yet a married couple*, in *European transport law*, 2008, p. 123
- CARLSON, Mary Helen, *U.S. participation in private international law negotiations: Why the UNCITRAL Convention on contracts for the international carriage of goods wholly or partly by sea is important to the United States*, in *Texas International Law Journal*, Vol. 44, Spring 2009, p. 269
- CARLSON, Mary Helen, *U.S. participation in the international unification of private law: the making of the UNCITRAL draft carriage of goods by sea convention*, *Tulane Maritime Law Journal*, 2007, p. 615
- CLARKE, Malcolm, *A conflict of conventions: the UNCITRAL/CMI draft transport instrument on your doorstep*, in *Journal of International Maritime Law*, 2003, p. 28
- CLARKE, Malcolm, *The law between land and sea*, in *Journal of Business Law*, 2003, p. 522
- CLARKE, Malcolm, *Multimodal transport in the new millennium*, in *WMU Journal of Maritime Affairs*, 2002, p. 71
- CLECAT – EUROPEAN ASSOCIATION FOR FORWARDING, TRANSPORT, LOGISTIC AND CUSTOMS SERVICES, *Position Paper on Rotterdam Rules*, 29 May 2009, available on line at [www.clecat.org](http://www.clecat.org), 20th March 2014
- CHAMI, Diego Esteban, *The Obligations of the Carrier*, CMI Colloquium on the Rotterdam Rules, Rotterdam, September 21, 2009
- CMI, *A guide to the e-commerce features in the draft instrument on the carriage of goods [wholly or partly] [by sea]*, in *CMI Yearbook*, 2003, p. 250
- HONKA, Hannu, *Scope of application, Freedom of contract*, in *CMI Yearbook* 2009
- STURLEY, Michael F., *Scope of Coverage Under the UNCITRAL Draft Instrument*, in *Journal of International Maritime Law*, 10, 2004, p. 138



- STURLEY, Michael F., *Setting the Limitation Amounts for the UNCITRAL Transport Law Convention: The Fall 2007 Session of Working Group III*, in *Benedict's Maritime Bulletin*, 5, 2007, p. 147
- Sturley Michael F., *'The preparation, philosophy, and potential impact of the Rotterdam Rules'* (2008) 14 JIML 479
- Sturley Michael F., *'Uniformity in the law governing the carriage of goods by sea'* (1995) 26 J. Mar. Law and Comm. 553
- STURLEY, Michael F., *Solving the Scope-of-Application Puzzle: Contracts, Trades, and Documents in the UNCITRAL Transport Law Project*, in *Journal of International Maritime Law*, 11, 2005
- STURLEY, Michael F., *The UNCITRAL Carriage of Goods Convention: Changes to Existing Law*, in *CMI Yearbook 2007-2008*
- ZUNARELLI, Stefano, *The liability of the shipper*, in *Lloyd's Maritime and Commercial Law Quarterly*, 2002, p. 350

### Legal Cases

- The Accomac (1890) 15 P.D.208 (C.A).
- The Ardennes [1951]1 KB 55.
- Brown, Jenkinson v Percy Dalton [1957] 2 qb 621.
- The Carron Park (1890) 15 P.D. 203.
- Hadley v Baxendale (1854) 9 Ex 341.
- Hansson v Hamel & Horley Ltd [1922] 2 AC 36.
- Insurance Co of N America v Blue Star Ltd. [1997] AMC 2434.
- Waterman Steamship Corp v Virginia Chemicals, Inc. 651 F.Supp.418, [1988] AMC 2681 (S.D.Ala.1987)
- Effort Shipping Co Ltd v. Linden Management SA (TheGiannis NK) [1998] 1 Lloyd's Rep. 337
- The Athanasia Comninos [1990] 1 Lloyd's Rep. 277
- The Fiona [1993] 1 Lloyd's Rep. 257
- The Athanasia Comninos and Georges Chr Lemos [1990] 1 Lloyd's Rep. 277
- Brown, Jenkinson v Percy Dalton [1957] 2 QB 621

- The *Hollandia* sub nom *The Morviken* [1983] 1 AC 565; [1983] 1 Lloyd's Rep 1
- C-116/02 *Erich Gasser GmbH v. MISAT SRL*

### Web Sources

- Alcantara, Hunt, Johansson, Oland, Psyden, Ramberg, Schmitt, Tetley, Vidal, Particular concerns with regard to the Rotterdam Rules, April 2010 available (online)  
[http://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_20183.pdf](http://www.fd.unl.pt/docentes_docs/ma/wks_MA_20183.pdf) [28th February 2014]
- Beare, Stuart, UNCITRAL Draft Convention on the Carriage of Goods – Presentation, in CMI Yearbook 2005-2006, online  
[http://www.comitemaritime.org/Uploads/Yearbooks/YBK\\_2005\\_2006.pdf](http://www.comitemaritime.org/Uploads/Yearbooks/YBK_2005_2006.pdf) [14th March 2014]
- Beare Stuart, The Rotterdam Rules, some controversies, p. 2, (online)  
[http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520contr%2520oversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z\\_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms](http://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.comitemaritime.org%2FUploads%2FRotterdam%2520Rules%2FRotterdam%2520Rules%2520Some%2520contr%2520oversies%2520paper%2520-%2520S.Beare.doc&ei=ExQSU7O2F8HdtAafwIHwDA&usg=AFQjCNHHeLkA8eZmKn-z_vTOI-3n10qiSA&bvm=bv.62286460,d.Yms) [1<sup>st</sup> March 2014]
- BERLINGIERI, Francesco, A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, available (online)  
[www.comitemaritime.org/draft/pdf/Comparative\\_analysis.pdf](http://www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf) [27th February 2014]
- Berlingieri, Francesco-Delebecque, Philippe-Fujita, Tomotaka-Illescas, Rafael-Sturley, Michael-van der Ziel, Gertjan-von Ziegler, Alexander-Zunarelli, Stefano,

The Rotterdam Rules, an attempt to clarify certain concerns that have emerged, (online)

<http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/5RRULES.pdf> [27th February 2014]

- Berlingieri Francesco, The history of the Rotterdam Rules, Chapter 1, (online) [http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8\\_1](http://link.springer.com/chapter/10.1007%2F978-3-642-19650-8_1) [7<sup>th</sup> March 2014]
- Berlingieri Francesco, Multimodal Aspects of the Rotterdam Rules, (online) <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20F.%200Berlingieri%2013%20OKT29.pdf>, [10<sup>th</sup> March 2014]
- BIFA (BRITISH INTERNATIONAL FREIGHT ASSOCIATION), So what are the Rotterdam Rules? Press Release 64 by Pysden Solicitors, London (online) <http://www.pysdens.com/press> [28th February 2014]
- BONNEVIE, Philippe, Evaluation of the new Convention from the perspective of cargo interests, in *Transportrecht*, online, <http://www.transportrecht.org/html/IntSymUNConv09d.pdf>, [12<sup>th</sup> February 2014]
- Britania news conventions, July 2010, The Rotterdam Rules in a nutshell, number 2,  
Available at: [http://www.fd.unl.pt/docentes\\_docs/ma/wks\\_MA\\_20184.pdf](http://www.fd.unl.pt/docentes_docs/ma/wks_MA_20184.pdf), [27<sup>th</sup> February 2014]
- CHAMBER OF SHIPPING OF THE UNITED KINGDOM, Rotterdam Rules: why we should support early ratification, by Donald Chard (online) <http://www.british-shipping.org> [11th January 2011]
- Debattista, C. (2009) The goods carried –who gets them and who controls them. In: *Uncitral colloquium on Rotterdam Rules*, 21 September 2009, Rotterdam.  
Available at <http://www.rotterdamrules2009.com/cms/uploads/Def%20%20tekst%20Charles%20Debattista%2031%20OKT29.pdf>  
[Accessed 30 March 2012]

- DiMichael, N. and Booth, A. Counsel for the National Industrial Transportation League, Summary of Proposed Changes to COGSA (online) <http://www.globalshippersnetwork.net/NorthAm/COGSA.htm> [12th January 2011]
- Eftestol – Wilhemson Ellen, The Rotterdam Rules in a European Multimodal context, Scandinavian Institute of Maritime Law, university of Oslo, 2010, Journal of International Maritime Law, Vol. 16, p. 274, 2010, (online) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1865777](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865777) [9<sup>th</sup> March 2014]
- Guner, O. (ed). The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by the Sea, 2011, Heidelberg, Springer-Verlag, online [http://books.google.gr/books?id=GI3\\_7c4MSQoC&pg=PA228&lpg=PA228&dq=%E2%80%A2+Baughen,+S.+\(2009\)+Obligations+owed+by+the+shipper+to+the+carrier.+In:+Thomas+DR+\(ed\)+A+new+convention+for+the+carriage+of+goods+by+sea:+the+Rotterdam+Rules.+Lawtext+Publishing,+Oxford&source=bl&ots=D-MrnSB63L&sig=EpxYsguk5s31SPKT1tQa-1TNqXc&hl=el&sa=X&ei=NC7IU6SSK8eW0QWE6IDoDA&ved=0CCYQ6AEwAQ#v=onepage&q&f=false](http://books.google.gr/books?id=GI3_7c4MSQoC&pg=PA228&lpg=PA228&dq=%E2%80%A2+Baughen,+S.+(2009)+Obligations+owed+by+the+shipper+to+the+carrier.+In:+Thomas+DR+(ed)+A+new+convention+for+the+carriage+of+goods+by+sea:+the+Rotterdam+Rules.+Lawtext+Publishing,+Oxford&source=bl&ots=D-MrnSB63L&sig=EpxYsguk5s31SPKT1tQa-1TNqXc&hl=el&sa=X&ei=NC7IU6SSK8eW0QWE6IDoDA&ved=0CCYQ6AEwAQ#v=onepage&q&f=false)
- Guzman, Jose Vicente, The Rotterdam Rules, Shipper's obligations and liability (online) <http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Rotterdam%20Rules%20-%20Shipper%27s%20Obligations%20and%20Liability%20-%20CMI%202010%20-%20Jos%C3%A9%20Vicente%20Guzm%C3%A1n.pdf> [20<sup>th</sup> March 2014]
- Hannu Honka, CMI, colloquium on the Rotterdam Rules, United Nations convention on contracts for the international carriage of goods wholly or partly by sea. Scope of application and freedom of contract, page 2 Available at: <http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20Hannu%20Honapdf>, [27<sup>th</sup> January 2014]

- International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules"), and Protocol of Signature, Brussels, 25 August 1924, (online)  
<http://www.admiraltylawguide.com/conven/haguerules1924.html> [1st March 2014]
- Jansson Madeleine, The coequences of a deletion of the nautical fault, Department of Law  
School of Economics and Commercial Law, Göteborg University  
(online)  
[https://gupea.ub.gu.se/bitstream/2077/7337/1/Nautical\\_Fault\\_Madeleine\\_Jansson.pdf](https://gupea.ub.gu.se/bitstream/2077/7337/1/Nautical_Fault_Madeleine_Jansson.pdf)  
[13th March 2014]
- Johnson Axel Ax:son, In institute of Maritime and Transport Law, Shipper's obligation under the Rotterdam Rules - a fundamental change of view? Maritime Law library, (online)  
<http://www.maritimelawlibrary.se/carriage-of-goods/shippers-obligations-under-the-rotterdam-rules-a-fundamental-change-of-view/>, [13<sup>th</sup> March 2014]
- Logistics and shipping, The Hague Rules, 26<sup>th</sup> January 2010, (online)  
<http://viktorwong-logistics.blogspot.gr/2010/01/hague-rules.html> [13th March 2014]
- Smith, UK Commercial law has responded well to the needs of the international business community by facilitating international trade (online)  
<http://www.markedbyteachers.com/university-degree/law/uk-commercial-law-has-responded-well-to-the-needs-of-the-international-business-community-by-facilitating-international-trade-a-a-analyse.html> [19th January 2011] [19th January 2011]
- Sturley F. Michael, Jurisdiction under the Rotterdam Rules (online)  
<http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20Michael%20Sturley%2023%20OKT29.pdf>, [30<sup>th</sup> March 2011)
- Svante O. Johansson, A. Barry Oland, Kay Pysden, Jan Ramberg, William Tetley C.M., Douglas G. Schmitt, A response to the attempt to clarify certain concerns over the Rotterdam Rules, 5<sup>th</sup> August 2009, online

<http://www.mcgill.ca/files/maritimelaw/Summationpdf.pdf>

- Tetley, W. Chapter 16: Properly Carry Keep and Care for Cargo (online)  
<http://www.upload.mcgill.ca/maritimelaw/ch26.pdf#search=compare%20the%20Hamburg%20Rules%20and%20the%20HagueVisby%20Rules> [3th January 2011]
- The Travaux preparatoires of the Hague Rules and of the Hague Visby Rules, CMI, page 16  
Available at  
<http://www.comitemaritime.org/Uploads/Publications/Travaux%20Preparatoires%20of%20the%20Hague%20Rules%20and%20of%20the%20Hague-Visby%20Rules.pdf>, [accessed 30<sup>th</sup> March 2011]
- UNCITRAL, United Nations Convention on Contracts for the International Carriage of Goods wholly or Partly by Sea, United Nations, Viena 2009, (online)  
[http://www.uncitral.org/pdf/english/texts/transport/rotterdam\\_rules/09-85608\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/09-85608_Ebook.pdf), [27<sup>th</sup> February 2014]
- UNCITRAL, United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the "Hamburg Rules"), (online)  
[http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/Hamburg\\_rules.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_rules.html) [28th February 2014]
- <http://www.hilldickinson.com/PDF/Shipping%20Guide%201%20-%20Cargo%20conventions.pdf>
- Updating the Rules on international carriage of goods by sea: The Rotterdam Rules, online,  
<http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Paper%20of%20Kofi%20Mbah.pdf>, [6<sup>th</sup> August 2014]
- A Summary of General Criticisms of the UNCITRAL Convention on (the Rotterdam Rules), William Tetley, December 2008, online  
[https://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Summary\\_of\\_Criticism\\_of\\_UNCITRAL\\_No\\_1.pdf](https://www.mcgill.ca/maritimelaw/sites/mcgill.ca.maritimelaw/files/Summary_of_Criticism_of_UNCITRAL_No_1.pdf), [7th August 2014]
- [http://www.pfri.uniri.hr/~bopri/documents/Unit01a-Internationalshippingindustry\\_003.doc](http://www.pfri.uniri.hr/~bopri/documents/Unit01a-Internationalshippingindustry_003.doc), [12<sup>th</sup> June 2014]

- <http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/Statisticalresources/Documents/December%202011%20update%20to%20July%202011%20version%20of%20International%20Shipping%20Facts%20and%200Figures.pdf> , [15<sup>th</sup> July 2014]
- <http://www.uncitral.org/pdf/english/yearbooks/yb-1988-e/vol19-p103-108-e.pdf>, [20<sup>th</sup> March 2014]
- <http://www.lrct.go.tz/download/treaty-convention/sea.pdf>, [14th July 2014]

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ

## APPENDIX A

### Hague-Visby Rules

#### *Article I*

##### Definitions

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say,

(a) "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper;

(b) "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by water, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

(c) "goods" includes goods, wares, merchandise and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

(d) "ship" means any vessel used for the carriage of goods by water;

(e) "carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

#### *Article II*

##### Risks

Subject to the provisions of Article VI, under every contract of carriage of goods by water the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

#### *Article III*



## Responsibilities and Liabilities

**1.** The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to

(a) make the ship seaworthy;

(b) properly man, equip and supply the ship;

(c) make the holds, refrigeration and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

**2.** Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, keep, care for and discharge the goods carried.

**3.** After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(b) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) the apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

**4.** Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs 3(a), (b) and (c).

However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

**5.** The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by

him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

**6.** Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

Subject to paragraph *6bis* the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

**6.bis** An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

**7.** After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped

and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

**8.** Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

#### *Article IV*

##### Rights and Immunities

**1.** Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

**2.** Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from

(a) act, neglect, or default of the master, mariner, pilot or the servants of the carrier in

the navigation or in the management of the ship;

(b) fire, unless caused by the actual fault or privity of the carrier;

(c) perils, dangers and accidents of the sea or other navigable waters;

(d) act of God;

(e) act of war;

(f) act of public enemies;

- (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) act or omission of the shipper or owner of the goods, his agents or representative;
- (j) strikes or lock-outs or stoppage or restraint of labour from whatever cause whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
- (n) insufficiency of packing;
- (o) insufficiency of inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (q) any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

**3.** The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agent or his servants.

**4.** Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

**5. (a)** Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph

(a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

(i) in respect of the amount 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this article, 10,000 monetary units;

(ii) in the respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned. The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national

currency of that State as far as possible the same real value for the amounts in sub-paragraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the protocol of 1979 or of accession thereto and whenever there is a change in either.

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an actor omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

**6.** Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising of or resulting from Such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

***Article IVbis***

#### Application of Defences and Limits of Liability

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

#### *Article V*

##### Surrender of Rights and Immunities and Increase of Responsibilities and Liabilities

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

#### *Article VI*

## Special Conditions

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by water, provided that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

## *Article VII*

### Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by water.

## *Article VIII*

### Limitation of Liability



The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of vessels.

**Article IX**

Liability for Nuclear Damage

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

**Article X**

Application

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

- (a) the bill of lading is issued in a Contracting State, or
- (b) the carriage is from a port in a Contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

## APPENDIX B

### *Rotterdam Rules*

#### *Article 1 - Definitions*

For the purposes of this Convention:

1. “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.
2. “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.
3. “Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.
4. “Non-liner transportation” means any transportation that is not liner transportation.
5. “Carrier” means a person that enters into a contract of carriage with a shipper.
6. (a) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.  
(b) “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.
7. “Maritime performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the

period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

8. “Shipper” means a person that enters into a contract of carriage with a carrier.

9. “Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.

10. “Holder” means:

- (a) A person that is in possession of a negotiable transport document; and
- (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or

Rotterdam Rules With Index - 5

- (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or

- (b) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.

11. “Consignee” means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.

12. “Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 10.

13. “Controlling party” means the person that pursuant to article 51 is entitled to exercise the right of control.

14. “Transport document” means a document issued under a contract of carriage by the carrier that:

- (a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
- (b) Evidences or contains a contract of carriage.

15. “Negotiable transport document” means a transport document that indicates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the document, that

the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “nonnegotiable” or “not negotiable”.

16. “Non-negotiable transport document” means a transport document that is not a negotiable transport document.

17. “Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

18. “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:

- (a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
- (b) Evidences or contains a contract of carriage.

19. “Negotiable electronic transport record” means an electronic transport record:

- (a) That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
- (b) The use of which meets the requirements of article 9, paragraph 1.

20. “Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.

21. The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.

22. The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.

23. “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.
24. “Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.
25. “Ship” means any vessel used to carry goods by sea.
26. “Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.
27. “Vehicle” means a road or railroad cargo vehicle.
28. “Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.
29. “Domicile” means
- (a) a place where a company or other legal person or association of natural or legal persons has its
    - (i) statutory seat or place of incorporation or central registered office, whichever is applicable, (ii) central administration or
    - (iii) principal place of business, and
  - (b) the habitual residence of a natural person.
30. “Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute.

Article 2 - Interpretation of this Convention

Rotterdam Rules With Index - 6

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

#### Article 3 - Form requirements

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph 4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

#### Article 4 - Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:

- (a) The carrier or a maritime performing party;
- (b) The master, crew or any other person that performs services on board the ship; or
- (c) Employees of the carrier or a maritime performing party.

2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.

#### Chapter 2 - Scope of application

##### Article 5 - General scope of application

1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in

different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:

- (a) The place of receipt; (b) The port of loading;
- (c) The place of delivery; or
- (d) The port of discharge.

2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

#### Article 6 - Specific exclusions

1. This Convention does not apply to the following contracts in liner transportation: (a) Charter parties; and

(b) Other contracts for the use of a ship or of any space thereon.

2. This Convention does not apply to contracts of carriage in non-liner transportation except when:

(a) There is no charter party or other contract between the parties for the use of a ship or of any space thereon;

and

(b) A transport document or an electronic transport record is issued.

#### Article 7 - Application to certain parties

Notwithstanding article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

#### Chapter 3 - Electronic transport records

##### Article 8 - Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

(a) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and

subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and 11 Rotterdam Rules With Index - 7

(b) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

#### Article 9 - Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for: (a) The method for the issuance and the transfer of that record to an intended holder;

(b) An assurance that the negotiable electronic transport record retains its integrity; (c) The manner in which the holder is able to demonstrate that it is the holder; and

(d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a)(ii) and (c), the electronic transport record has ceased to have any effect or validity.

2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

#### Article 10 - Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

(a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and

(c) The negotiable transport document ceases thereafter to have any effect or validity.

2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:



- (a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and
- (b) The electronic transport record ceases thereafter to have any effect or validity.

#### Chapter 4 - Obligations of the carrier

##### Article 11 - Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

##### Article 12 - Period of responsibility of the carrier

1. The period of responsibility of the carrier for the goods under this convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.
2. (a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.  
(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.
3. For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:
  - (a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
  - (b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

##### Article 13 - Specific obligations

1. The carrier shall during the period of its responsibility as defined in article 1 2, and subject to article 2 6, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.
2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

#### Rotterdam Rules With Index - 8

##### Article 14 - Specific obligations applicable to the voyage by sea

The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to: (a) Make and keep the ship seaworthy;

(b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and

(c) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

##### Article 15 - Goods that may become a danger

notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harm less, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

##### Article 16 - Sacrifice of the goods during the voyage by sea

Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

Chapter 5 - Liability of the carrier for loss, damage or delay

Article 17 - Basis of liability

1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

- (a) Act of God;
- (b) Perils, dangers, and accidents of the sea or other navigable waters;
- (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
- (d) Quarantine restrictions, interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;
- (e) Strikes, lockouts, stoppages, or restraints of labour; (f) Fire on the ship;
- (g) Latent defects not discoverable by due diligence;
- (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;
- (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
- (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (k) Insufficiency or defective condition of packing or marking noted by or on behalf of the carrier; (l) Saving or attempting to save life at sea;

- (m) Reasonable measures to save or attempt to save property at sea;
- (n) Reasonable measures to avoid or attempt to avoid damage to the environment; or
- (o) Acts of the carrier in pursuance of the powers conferred by articles 15 and

16.

4. Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:

(a) If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies; or

(b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to

Rotterdam Rules With Index - 9

the fault of any person referred to in article 18.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by

(i) the unseaworthiness of the ship;

(ii) the improper crewing, equipping, and supplying of the ship; or

(iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that:

(i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or

(ii) it complied with its obligation to exercise due diligence pursuant to article 14.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

#### Article 18 - Liability of the carrier for other persons

The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:

- (a) Any performing party;
- (b) The master or crew of the ship;
- (c) Employees of the carrier or a performing party; or
- (d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

#### Article 19 - Liability of maritime performing parties

1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if:

- (a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and
- (b) The occurrence that caused the loss, damage or delay took place:
  - (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship;
  - (ii) while the maritime performing party had custody of the goods; or
  - (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.

3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.
4. Nothing in this Convention poses liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

#### Article 20 - Joint and several liability

1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Convention.
2. Without prejudice to article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention.

#### Article 21 - Delay

Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

#### Article 22 - Calculation of compensation

##### Rotterdam Rules With Index - 10

1. Subject to article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 43.
2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.
3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

#### Article 23 - Notice in case of loss, damage or delay

1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.
2. Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in article 17.
3. The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.
4. No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.
5. When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.
6. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

## Chapter 6 - Additional provisions relating to particular stages of carriage

### Article 24 - Deviation

When pursuant to applicable law a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this convention, except to the extent provided in article 61.

Article 25 - Deck cargo on ships

1. Goods may be carried on the deck of a ship only if: (a) Such carriage is required by law ;  
(b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or  
(c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.
2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this article.
3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in article 17.
4. The carrier is not entitled to invoke subparagraph 1 (c) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.
5. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

Rotterdam Rules With Index - 11

Article 26 - Carriage preceding or subsequent to sea carriage

When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another



international instrument that, at the time of such loss, damage or event or circumstance causing delay:

- (a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;
- (b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and
- (c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

#### Chapter 7 - Obligations of the shipper to the carrier

##### Article 27 - Delivery for carriage

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.
2. The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13, paragraph 2.
3. When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.

##### Article 28 - Cooperation of the shipper and the carrier in providing information and instructions

The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Article 29 - Shipper's obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

(a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

Article 30 - Basis of shipper's liability to the carrier

1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention.

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.

3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34.

Article 31 - Information for compilation of contract particulars

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if

any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that

Rotterdam Rules With Index – 12 is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

#### Article 32 - Special rules on dangerous goods

When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform ; and

(b) The shipper shall mark or label dangerous goods in accordance with any law , regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

#### Article 33 - Assumption of shipper's rights and obligations by the documentary shipper

1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 55, and is entitled to the shipper's rights and defences provided by this chapter and by chapter

13.

2. Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

#### Article 34 - Liability of the shipper for other persons

The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

#### Chapter 8 - Transport documents and electronic transport records

##### Article 35 - Issuance of the transport document or the electronic transport record

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option:

- (a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or
- (b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one

##### Article 36 - Contract particulars

1. The contract particulars in the transport document or electronic transport record referred to in article 35 shall include the following information, as furnished by the shipper:

- (a) A description of the goods as appropriate for the transport; (b) The leading marks necessary for identification of the goods;
- (c) The number of packages or pieces, or the quantity of goods; and
- (d) The weight of the goods, if furnished by the shipper.

2. The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include:

- (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;

- (b) The name and address of the carrier;
  - (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
  - (d) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.
3. The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include:

#### R Rotterdam Rules With Index - 13

- (a) The name and address of the consignee, if named by the shipper;
  - (b) The name of a ship, if specified in the contract of carriage;
  - (c) The place of receipt and, if known to the carrier, the place of delivery; and
  - (d) The port of loading and the port of discharge, if specified in the contract of carriage.
4. For the purposes of this article, the phrase “apparent order and condition of the goods” in subparagraph 2 (a) of this article refers to the order and condition of the goods based on:
- (a) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and
  - (b) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or electronic transport record.

#### Article 37 - Identity of the carrier

1. If a carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification
2. If no person is identified in the contract particulars as the carrier as required pursuant to article 36, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the

carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier.

#### Article 38 - Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.

2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

#### Article 39 - Deficiencies in the contract particulars

1. The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

2. If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

(a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or

(b) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

Article 40 - Qualifying the information relating to the goods in the contract particulars

1. The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:

(a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or

(b) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if:

Rotterdam Rules With Index - 14

(a) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(b) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:

(a) Article 36, subparagraphs 1 (a), (b), or (c), if:

(i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and

(ii) N either the carrier nor a performing party otherwise has actual know ledge of its contents before issuing the transport document or the electronic transport record; and

(b) Article 36, subparagraph 1 (d), if:

(i) N either the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or

(ii) There w as no physically practicable or commercially reasonable means of checking the w eight of the container or vehicle.

#### Article 41 - Evidentiary effect of the contract particulars

Except to the extent that the contract particulars have been qualified in the circum stances and in the manner set out in article 40:

(a) A transport document or an electronic transport record is prim a facie evidence of the carrier's receipt of the goods as stated in the contract particulars;

(b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, w hen such contract particulars are included in:

(i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or

(ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith;

(c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non negotiable electronic transport record:

(i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier;

(ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and

(iii) The contract particulars referred to in article 36, paragraph 2.

#### Article 42 - "Freight prepaid"



If the contract particulars contain the statement “freight prepaid” or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

#### Chapter 9 - Delivery of the goods

##### Article 43 - Obligation to accept delivery

When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

##### Article 44 - Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

#### Rotterdam Rules With Index - 15

##### Article 45 - Delivery when no negotiable transport document or negotiable electronic transport record is issued

When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

- (a) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;
- (b) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;

(c) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because

(i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination,

(ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or

(iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(d) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.

Article 46 - Delivery when a non-negotiable transport document that requires surrender is issued

When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(a) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

(b) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because

- (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination,
- (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or
- (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;
- (c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

Article 47 - Delivery when a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document or a negotiable electronic transport record has been issued:

- (a) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder:
  - (i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10 (a)(i), upon the holder properly identifying itself; or
  - (ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;
- (b) The carrier shall refuse delivery if the requirements of subparagraph (a)(i) or (a)(ii) of this paragraph are not met;

Rotterdam Rules With Index - 16

(c) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

2. Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:

(a) If the goods are not deliverable because

(i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination,

(ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (a)(i), or

(iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(b) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (a) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder;

(c) The person giving instructions under subparagraph 2 (a) of this article shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (e) of this article. The carrier may refuse to follow those

instructions if the person fails to provide adequate security as the carrier may reasonably request;

(d) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (b) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods;

(e) Notwithstanding subparagraphs 2 (b) and 2 (d) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.

#### Article 48 - Goods remaining undelivered

1. For the purposes of this article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43;

(b) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47;

(c) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47;

(d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or

(e) The goods are otherwise undeliverable by the carrier.

2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take

such action in respect of the goods as circumstances may reasonably require, including:

- (a) To store the goods at any suitable place;
- (b) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and
- (c) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

3. The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to

#### Rotterdam Rules With Index - 17

be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

4. If the goods are sold pursuant to subparagraph 2 (c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

#### Article 49 - Retention of goods

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

#### Chapter 10 - Rights of the controlling party

Article 50 - Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:
  - (a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;
  - (b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and
  - (c) The right to replace the consignee by any other person including the controlling party.
2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

Article 51 - Identity of the controlling party and transfer of the right of control

1. Except in the cases referred to in paragraphs 2, 3 and 4 of this article:
  - (a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;
  - (b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and
  - (c) The controlling party shall properly identify itself when it exercises the right of control.
2. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:
  - (a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and
  - (b) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

3. When a negotiable transport document is issued:
- (a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;
  - (b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 57. If more than one original of that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and
  - (c) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 10 (a)(i), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.
4. When a negotiable electronic transport record is issued:
- (a) The holder is the controlling party;
  - (b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and
  - (c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures

Rotterdam Rules With Index - 18

referred to in article 9, paragraph 1, that it is the holder.

Article 52 - Carrier's execution of instructions

1. Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 50 if:
- (a) The person giving such instructions is entitled to exercise the right of control;
  - (b) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier;
- and
- (c) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.



2. In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.

3. The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.

4. The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this article shall be subject to articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 59 to 61.

#### Article 53 - Deemed delivery

Goods that are delivered pursuant to an instruction in accordance with article 52, paragraph 1, are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods.

#### Article 54 - Variations to the contract of carriage

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (b) and (c).

2. Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.

Article 55 - Providing additional information, instructions or documents to carrier

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

Article 56 - Variation by agreement

The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (b).

Chapter 11 - Transfer of rights

Article 57 - When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

(a) Duly endorsed either to such other person or in blank, if an order document; or

(b) Without endorsement, if:

(i) a bearer document or a blank endorsed document; or

(ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

Rotterdam Rules With Index - 19

2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

Article 58 - Liability of holder

1. Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

3. For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

(b) It transfers its rights pursuant to article 57.

Chapter 12 - Limits of liability

Article 59 - Limits of liability

1. Subject to articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

2. When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of

transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit.

3. The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

#### Article 60 - Limits of liability for loss caused by delay

Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.

#### Article 61 - Loss of the benefit of limitation of liability

1. Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability as provided in article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limited one with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

2. Neither the carrier nor any of the persons mentioned in article 18 is entitled to the benefit of the limitation of liability as provided in article 60 if the claimant

proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss could probably result.

#### Chapter 13 - Time for suit

##### Article 62 - Period of time for suit

##### Rotterdam Rules With Index - 20

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted after the expiration of a period of two years.
2. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.
3. Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

##### Article 63 - Extension of time for suit

The period provided in article 62 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

##### Article 64 - Action for indemnity

An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of:

- (a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

#### Article 65 - Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to article 37, paragraph 2, may be instituted after the expiration of the period provided in article 62 if the action is instituted within the later of:

- (a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
- (b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 37, paragraph 2.

#### Chapter 14 - Jurisdiction

##### Article 66 - Actions against the carrier

Unless the contract of carriage contains an exclusive choice of court agreement that complies with article 67 or 72, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

- (a) In a competent court within the jurisdiction of which is situated one of the following places:
  - (i) The domicile of the carrier;
  - (ii) The place of receipt agreed in the contract of carriage;
  - (iii) The place of delivery agreed in the contract of carriage; or
  - (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or
- (b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.

##### Article 67 - Choice of court agreements

1. The jurisdiction of a court chosen in accordance with article 66, subparagraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

- (a) Is contained in a volume contract that clearly states the names and addresses of the parties and either
    - (i) is individually negotiated or
    - (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and
  - (b) Clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State.
2. A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article only if:
- (a) The court is in one of the places designated in article 66, subparagraph (a);
  - (b) That agreement is contained in the transport document or electronic transport record;
  - (c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and
  - (d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

#### Rotterdam Rules With Index - 21

##### Article 68 - Actions against the maritime performing party

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

- (a) The domicile of the maritime performing party; or
- (b) The port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods.

##### Article 69 - No additional bases of jurisdiction

Subject to articles 71 and 72, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to article 66 or 68.

#### Article 70 - Arrest and provisional or protective measures

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

- (a) The requirements of this chapter are fulfilled; or
- (b) An international convention that applies in that State so provides.

#### Article 71 - Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both article 66 and article 68. If there is no such court, such action may be instituted in a court designated pursuant to article 68, subparagraph (b), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 66 or 68, whichever is applicable, where the action may be recommenced.

#### Article 72 - Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance

1. After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.



Article 73 - Recognition and enforcement

1. A decision made in one Contracting State by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of such latter Contracting State when both States have made a declaration in accordance with article 74.
2. A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law .
3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Convention.

Article 74 - Application of chapter 14

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 15 - Arbitration

Article 75 - Arbitration agreements

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.
2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at: (a) Any place designated for that purpose in the arbitration agreement; or

Rotterdam Rules With Index - 22

- (b) Any other place situated in a State where any of the following places is located:
  - (i) The domicile of the carrier;
  - (ii) The place of receipt agreed in the contract of carriage;
  - (iii) The place of delivery agreed in the contract of carriage; or
  - (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.

3. The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either:

- (a) Is individually negotiated; or
- (b) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

4. When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

- (a) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2 (b) of this article;
- (b) The agreement is contained in the transport document or electronic transport record;
- (c) The person to be bound is given timely and adequate notice of the place of arbitration; and (d) Applicable law permits that person to be bound by the arbitration agreement.

5. The provisions of paragraphs 1, 2, 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement to the extent that it is inconsistent there with is void.

#### Article 76 - Arbitration agreement in non-liner transportation

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the provisions of this Convention apply by reason of:

- (a) The application of article 7; or
- (b) The parties' voluntary incorporation of this Convention in a contract of carriage that would not otherwise be subject to this Convention.

2. Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this chapter unless such a transport document or electronic transport record:

- (a) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Convention by reason of the application of article 6; and
- (b) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

Article 77 - Agreement to arbitrate after a dispute has arisen

Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

Article 78 - Application of chapter 15

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 16 - Validity of contractual terms

Article 79 - General provisions

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:
  - (a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;
  - (b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or
  - (c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18.
2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:
  - (a) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or
  - (b) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, Rotterdam Rules With Index - 23 holder or documentary shipper for breach of any of its obligations under this Convention.

Article 80 - Special rules for volume contracts

1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention.
2. A derogation pursuant to paragraph 1 of this article is binding only when:
  - (a) The volume contract contains a prominent statement that it derogates from this Convention;
  - (b) The volume contract is
    - (i) individually negotiated or
    - (ii) prominently specifies the sections of the volume contract containing the derogations;
  - (c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and
  - (d) The derogation is neither
    - (i) incorporated by reference from another document nor
    - (ii) included in a contract of adhesion that is not subject to negotiation.
3. A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.
4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61.
5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that:
  - (a) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and
  - (b) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.
6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

Article 81 - Special rules for live animals and certain other goods

Notwithstanding article 79 and without prejudice to article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

- (a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or
- (b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

Chapter 17 - Matters not governed by this Convention

Article 82 - International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions that regulate the liability of the carrier for loss of or damage to the goods:

- (a) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;
- (b) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;
- (c) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or

(d) Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.

Rotterdam Rules With Index - 24

Article 83 - Global limitation of liability

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Article 84 - General average

Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

Article 85 - Passengers and luggage

This Convention does not apply to a contract of carriage for passengers and their luggage.

Article 86 - Damage caused by nuclear incident

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

#### Chapter 18 - Final clauses

##### Article 87 - Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

##### Article 88 - Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States at Rotterdam, the Netherlands, on 23 September 2009, and thereafter at the Headquarters of the United Nations in New York.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States that are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

##### Article 89 - Denunciation of other conventions

1. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924, to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on 23 February 1968, or to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading as Modified by the Amending Protocol of 23 February 1968, signed at Brussels on 21 December 1979, shall at the same time denounce that Convention and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978 shall at the same time denounce that Convention by notifying the Secretary-General of the United Nations to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

3. For the purposes of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the instruments listed in paragraphs 1 and 2 of this article that are notified to the depositary after this Convention has entered into force are not effective until such denunciations as may be required on the part of those States in respect of these instruments have become effective. The depositary of this Convention shall consult with the Rotterdam Rules With Index - 25

Government of Belgium, as the depositary of the instruments referred to in paragraph 1 of this article, so as to ensure necessary coordination in this respect.

#### Article 90 - Reservations

No reservation is permitted to this Convention.

#### Article 91 - Procedure and effect of declarations

1. The declarations permitted by articles 74 and 78 may be made at any time. The initial declarations permitted by article 92, paragraph 1, and article 93, paragraph 2, shall be made at the time of signature, ratification, acceptance, approval or accession. No other declaration is permitted under this Convention.

2. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

4. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.



5. Any State that makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. The withdrawal of a declaration, or its modification where permitted by this Convention, takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

#### Article 92 - Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. When a Contracting State has declared pursuant to this article that this Convention extends to one or more but not all of its territorial units, a place located in a territorial unit to which this Convention does not extend is not considered to be in a Contracting State for the purposes of this Convention.

4. If a Contracting State makes no declaration pursuant to paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

#### Article 93 - Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” in this Convention applies equally to a regional economic integration organization when the context so requires.

#### Article 94 - Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State that becomes a Contracting State to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply this Convention to contracts of carriage concluded on or after the date of the entry into force of this Convention in respect of that State.

#### Rotterdam Rules With Index - 26

#### Article 95 - Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the Secretary-General of the United Nations shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 96 - Denunciation of this Convention

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. If a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

ΠΑΝΕΠΙΣΤΗΜΙΟ ΠΕΙΡΑΙΩΣ