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LIMITATION OF LIABILITY IN THE ROTTERDAM RULES

- A LATIN AMERICAN PERSPECTIVE -

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- I - INTRODUCTION

1. Limitation of Liability in Maritime Law

Limitation of liability is considered a traditional rule and a principle of the maritime law.

In France, Book II, Title VII, article II of the *Ordonnance de la Marine* of 1681, established the limitation of liability of the shipowners. This provision has been followed by the French Commercial Code, the codes of Spain, Greece, The Netherlands, Portugal and Italy, among others, and by several Latin American codes (such as those of Argentina, Brazil, México, Peru and Uruguay).

Patrick Griggs explains that in the United Kingdom, shipowners' limitation of liability has been introduced in 1733 by the Responsibility of Shipowners Act, pursuant to which shipowners were allowed to limit their liability for cases of theft by the master or crew. In 1786 the limitation was extended to include any act of the master or crew occurred without shipowners' privity or knowledge[1].

Nowadays, there are two different limitations of liability in maritime law: (a) the general limitation for most maritime credits, and (b) the carriers' limitation.

Regarding general limitation, there are basically three systems: (a) the limitation based on the value of the ship at the end of her voyage, (b) the limitation based on the tonnage of the ship, and (c) a mix of both these systems.

In Latin America the value of the ship at the end of her voyage was adopted by Uruguay, the tonnage of the ship was adopted by Venezuela in 2001, following the Limitation Convention of London of 1976, and a mix of both systems was adopted by

[1] GRIGGS, Patrick, WILLIAMS, Richard and FARR, Jeremy, *Limitation of liability for maritime claims*, fourth edition, LLP, London, Singapore, 2005, p. 5.

Argentina in the Navigation Act of 1973, following the model of the United States of America.

After this brief introduction I will now focus my presentation on the carriers' limitation of liability.

As it has been well noted, the Rotterdam Rules do not mean a "revolution", but rather an evolution.[2] It is therefore my intention to shortly describe the evolution of the limitation of carriers' liability in the previous conventions.

- II - CARRIER'S LIMITATION OF LIABILITY

2. The Clauses of the Bills of Lading Limiting Carriers' Liability and the States Reaction

Till the beginning of the last century, bills of lading included clauses of limitation of liability which were admitted by the courts of a number of countries. As a reaction against such clauses, however, some States enacted legislation restricting carriers' right to limit their liability.

In this line was the Harter Act of the United States (1899), which inspired similar legislation in Australia (1904), Canada (1910) and New Zealand (1908), and the Hague Rules of 1921 adopted by the International Law Association (ILA). The ILA rules are the immediate precedent of the Brussels Convention of 1924 on Bills of Lading, that was drafted and sponsored by the CMI. In view of its origin, this convention is known as *The Hague Rules.*

3. The Hague Rules

The Hague Rules have been approved or enacted by eight Latin American countries: Argentina, Bolivia, Cuba, the Dominican Republic, Ecuador, Mexico, Paraguay and Peru.

In case of "*loss or damages to or in connection with goods*", article 4.5 of the Hague Rules establish a limit of "*100 pounds sterling per package or unit, or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper and inserted in the bill of lading*", and article 9 provides that "*the monetary unit mentioned in this Convention are to be taken to be gold value*".

4. Some Interpretation Issues Arising From the Hague Rules

Articles 4.5 and 9 of the Hague Rules posed, mainly, two sets of construction problems:

[2] "The new convention is deliberately evolutionary, not revolutionary" (STURLEY, Michael, "The UNCITRAL Carriage of Goods Convention: Changes to existing law", in CMI Yearbook 2007-2008, Athens I, Documents for the Conference, p. 255).

First, some general problems regarding basic criteria, that have not been considered in the original version of the Hague Rules but have been solved by further Protocols, Rules or Conventions:

- Is a container a *package*? Is a huge and unpackaged machine a *unit*? Which is the unit in case of bulk cargoes?

- What packages or units should be considered in order to establish the limit? The packages or units mentioned in the bill of lading or the packages or units lost or damaged?

- Can the carrier lose the right of limitation?

- Are damages for delay subject to limitation?

The second construction problem is referred to the monetary unit:

- What is the *gold value* to be considered in order to convert the 100 pounds sterling into currency?

- III - BASIC CRITERIA ON LIMITATION OF LIABILITY OF CARRIER OF GOODS

5. The Hague-Visby Rules

The first set of questions in respect of the Hague Rules has been partially answered by the Brussels Protocol of 1968, known as the *Visby Rules.*

The Hague Rules, as amended by the Visby Rules, are known as the *Hague-Visby Rules* and have been adopted in Latin America by Ecuador an México.

5.1. *Package or Unit: Containers and Other Articles Used to Consolidate Goods*

The Visby Rules gave a new wording to article 4.5 of the Hague Rules. Pursuant to the new wording *"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."*

Although Argentina is not a party to the Visby Rules, some of their provisions have inspired the Navigation Act of 1973. The new wording of article 4.5 is one of such provision. As a consequence of the adoption of this specific provision of the Visby Rules in Argentine internal law, courts have extended this solution to cases governed by the Hague Rules[3].

[3] SUPREME COURT, in re m.v. "*Río Marapa*", 1989, FALLOS: 312:152.

5.2. *Unpackaged Goods*

If unpacked goods were not considered a package or unit, carriers would not be entitled to limitation of liability in their respect. The Visby Rules solved this problem by adopting the weight of the affected cargo as an additional criterion in order to establish the limit of liability.

The Argentine Republic, which is not a party to the Hague-Visby Rules, solved this problem differently. Article 278 refers to "*bulto o pieza perdidos o averiados*" (*"lost or damaged package or piece"*), so a box or a bag is deemed a *bulto* (package). A *pieza* (piece) will be anything that is not packaged. Taking in consideration that the weight is not considered under Argentine law for these purposes, huge unpackaged machines may be subject —from the point of view of the cargo interests— to a low limit. In order to obtain in Argentina a higher degree of indemnification in case of loss or damage to such cargo, the value of these types of machines should be declared and inserted in the bill of lading.

5.3. *Package or Unit: Bulk Cargo*

By definition, bulk cargo is unpackaged cargo and the concept of *unit* in relation to it seems clearly inapplicable (should a grain of corn be considered a *unit*?). It may therefore be the case that there is no limitation of liability in respect of bulk cargo.

In the Carriage of Goods by Sea Act of the United States (COGSA), the problem of bulk cargo has been addressed by section 4(5) providing that, in case of goods not shipped in packages the carrier can limit its liability to US$500 *"per customary freight unit"*. The same solution has been adopted by article 278 of the Argentine Navigation Act, which is deemed applicable even when the contract is governed by the Hague Rules.

Nevertheless, the wordings of the COGSA and the Argentine Navigation Act differ from the wording of the Hague Rules, so in other countries the conclusion was that when the Hague Rules apply, bulk cargo does not allow the carrier to limit its liability[4] .

The problem with bulk cargo has been solved under the Visby Rules by adopting an additional criterion in order to establish the amount of the limit. Under the new wording of article 4.5(a) of the Hague-Visby Rules, not only the number of packages or units is to be considered but also the *gross weight of the goods lost or damaged* when the limit that results from it is higher than the limit that results from the number of packages or units.

This amendment also solves some other inconsistencies of the Hague Rules, pursuant to which the limit applicable to a standard bag or a box was the same as that of a car, truck, large machinery, etc., regardless of their weight.

[4] See GRIGS et alt., *Limitation…*, p. 137.

5.4. *Number of Packages to be Considered to Establish the Amount of the Limit*

The Hague Rules do not specifically address the issue of what number of packages or units are to be considered in order to establish the limitation amount: the number of packages or units mentioned in the bill of lading or the number of packages or units actually lost or damaged?

The issue is solved under the Visby Rules, favouring the second alternative (i.e., the number of lost or damaged packages or units). Nevertheless, and notwithstanding the silence of the original version of the Hague Rules in this respect, it has been considered that the solution is the same that results from the Visby version[5].

5.5. *Loss of Benefit of Limitation of Liability*

The Visby Rules introduced a new paragraph in article 4.5 of the Hague Rules. Under article 4.5(e) of the Hague-Visby Rules, the carrier is not entitled to limit its liability if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that a damage would probably result.

Argentina also adopted this approach under article 278 of the Navigation Act. Although I have no knowledge of the application of this rule in cases governed by the original version of the Hague Rules, I think it is very likely that even in that case, Argentine courts would apply this Visby rule (more than once, the provisions of the Navigation Act have been applied by Argentine courts to construe the Hague Rules).

5.6. *The Protocol of 1979 (SDR's)*

The Protocol of 1979 amended the Hague-Visby Rules by introducing a different unit of account: the Special Drawing Right (SDR), as defined by the International Monetary Fund (IMF), instead of the Franc Poincare. In paragraphs 10, 11 and 12 of this presentation I will come back to the issue of "gold vs. SDR".

6. The Hamburg Rules

The Hamburg Rules have been adopted by three Latin American countries: Chile, the Dominican Republic and Paraguay.

Article 6.1(a) of the Hamburg Rules of 1978, follows (with higher limits) the criteria of article 4.5 of the Hague-Visby Rules, as amended by the 1979 Protocol, so the limits are established by reference to the number of packages or units lost or damaged, or by reference to their weight.

[5] GRIGGS *et alt.*, *Limitation.…*, p. 142.

6.1. *Delay*

Under the Hamburg Rules carriers are entitled to limit their liability in cases of delay *"to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea*" (article 6.1(b) of the Hamburg Rules). In no case, however, the aggregate liability of the carrier for loss or damage, and for delay, shall exceed the limit applicable to a total loss of the cargo (article 6. 1(c) of the Hamburg Rules).

In Argentina, where the original version of the Hague Rules apply, the Federal Court of Appeals of Buenos Aires admitted the carriers' right to limit their liability in cases of delay, but the limit is not calculated upon the amount of the freight or a multiple of it. The limit is calculated instead as if in the case of lost or damage cargo: 100 pounds sterling per package or unit delayed[6].

7. The Rotterdam Rules

Article 59.1 and 2 of the Rotterdam Rules of 2009 follows the Hamburg Rules with certain differences.

For instance, they equate the term "*vehicle*" with "*container, pallet or similar article of transport used to consolidate goods*".

Another difference —and this is a significant one— is that in the Hague Rules, the Hague-Visby Rules and the Hamburg Rules, the limitation may be invoked in case of "*goods lost and damaged*". Under article 59.1 of the Rotterdam Rules the carrier may invoke the limit in any event of breach of "*its obligations under this Convention*".

The following obligations have been mentioned by scholars among those that may be breached by the carrier without losing the benefit of limitation of liability: the obligation of article 35 to issue a transport document with the particulars of article 36; the obligation of article 40 to qualify the information related to goods if the carrier has actual knowledge or has reasonable grounds to believe that any material statement in the transport document is false or misleading; the obligation of articles 45 to 47 related to the delivery of the goods; and the obligation to execute the instructions of the controlling party which results from article 52[7].

[6] CIVIL AND COMMERCIAL FEDERAL COURT OF APPEALS of Buenos Aires city, Division 2, in re "*Deutz v. ELMA*", 1979, LA LEY 1979-D-3.

[7] MBIAH, Kofi, "The Convention on Contracts for the International Carriage of Goods wholly or partially by Sea: The liability and the limitation of liability regime", CMI YEARBOOK 2007-2008, Athens I, Documents for the Conference, p. 297; RAMBERG, Jan, "UN Convention on Contracts for International Carriage of Goods wholly o partially by Sea", CMI YEARBOOK 2009, Athens II, Documents of the Conference, p. 278; PONTOPPIDAN, Knud, "Shipowners View on the UNCITRAL Convention on Contracts for the International Carriage of Goods wholly o partially by Sea", CMI YEARBOOK 2009, Athens II, Documents of the Conference, p. 288.

8. An Overview of the Provisions of the Rotterdam Rules on Carriers' Limitation

At a first glance, the following comments may be made in respect of the provisions of the Rotterdam Rules on carriers' right of limitation:

- The rule of the limitation follows the general trend in previous international conventions (chapter 12 of the Rotterdam Rules).

- In line with the general trend, cargo owners are not beneficiaries of the limitation of liability.

- The unit of account is Special Drawing Right (SDR) of the International Monetary Fund (article 59.3). The issue of the amount of the limits will be addressed below (see chapter IV of this presentation).

- The new convention adopts a dual standard in order to fix the amount of the limits: the traditional *per package* limitation and the *per kilogram* limitation, whichever is higher (article 59.1). This solution solves the problem of unpackaged cargo of significant volume and weight.

- When goods are carried in or on a container, pallet or similar article used to consolidate goods, or in a vehicle, the packages or shipping units enumerated in the bill of lading as packed in or on the article of transport or vehicle are deemed packages or shipping units. If the goods in or on the article of transport or vehicle are not enumerated, each article or vehicle are deemed a shipping unit (article 59.2).

- The packages or units to be considered for the purpose of establishing the amount of the limit are the packages o units subject to the claim or dispute, not the total of the cargo covered by the bill of lading (article 59.1).

- Carriers are entitled to limit their liability in any event of breach of their obligations under the Convention (article 59. 1.) (see above, third paragraph of number 7).

- The benefit of the limitation of liability is not available to those who incurred in a personal act or omission with the intent to cause *the* loss (*such loss*) or recklessly and with knowledge that *the* loss (*such loss*) would probably result; the burden of the proof rests on the claimant (article 61.1 and 2). Since the rule requires a *personal act* by the person claiming a right to limit, the conduct of servants or agents is not an obstacle for the carrier to limit its liability. When referring to the loss, this provision specifically mention "*such loss*"; in my opinion, the use of these words means that the *intent* should be directed to cause the loss actually occurred and the *knowledge* should be the knowledge that the loss actually occurred would probably result.

- Application of the Convention does not affect the application of international conventions or national laws regulating the *global* limitation of liability of vessel owners (article 83). In my opinion, the words *vessel owners* include other beneficiaries of the global limitation systems.

9. Common Provisions in the Different Conventions or Rules

There are some common provisions in all the conventions or rules considered above. For example:

- In case of loss or damages to the goods, the total amount recoverable is the value of the goods at the place and time at which the goods are or were supposed to be discharged from the ship.

- The amount of the limitation must be calculated with reference to the number of packages or units which are the subject to the claim, but not with reference of the number of packages or units enumerated in the bill of lading.

- Those who are entitled to the benefit of the limitation of liability, may lose the benefit if the claimant proves privity or recklessly.

- Agreements modifying the figures of the limits are valid, provided the agreed figures do not reduce the limit set forth in the conventions.

- The limitation of liability of the carrier applies even in respect of non-contractual claims.

- The limits set forth in the conventions are not applicable when the nature and the value of the goods have been declared by the shipper before the shipment and inserted in the bill of lading.

- The rules of the conventions do not affect carriers' rights under any statute regarding the limitation of the liability of shipowners, so carriers are allowed to invoke the limitation of liability under the applicable convention or rules on the carriage of goods by sea, and if this limit is higher than the general limit (i.e., higher than the value of the ship or than the tonnage limitation, whichever may be applicable), the general limit may be invoked.

- Shippers and cargo owners lack the benefit of limiting their liability.

- IV - AMOUNT OF THE LIMITS AND CONVERSION INTO LOCAL CURRENCIES

10. Conversion into Local Currencies of the Carriers' Limits of Liability under the Conventions

Gold has been in the past, and Special Drawn Rights (SDRs) are today, resources used by international conventions to establish limits of liability, in an attempt to avoid or minimize the effects of inflation.

11. The Gold Sterling Pound in the Hague Rules

In the Hague Rules the limit is established in article 4.5: "*100 pounds sterling per package or unit, or the equivalent of that sum in other currency*". Under article 9, the pounds sterling "*are to be taken to be gold value"*.

Argentine courts have always decided that references to *gold* or *gold value* in some conventions —such as the Hague Rules in the field of the maritime law and in other conventions on aviation law— mean that, in order to determine the equivalence in other currencies, the current market value of the gold must be considered[8].

The current market value of the gold has been also accepted by the courts of the United Kingdom in 1988 and by the Singapore High Court in 1992.

Although Uruguay is not a party to the Hague Rules, it is still applied by Uruguayan courts when Uruguayan rules on conflicts of law so provide or when the parties to a contract have so agreed. According to qualified scholars, the market value of the gold should be taken in consideration in order to convert the gold pounds sterling into local currency[9].

The gold market value is also considered for the conversion of the 100 pounds sterling of gold into the Peruvian local currency.[10]

However, the market value of the gold was not admitted in a number of countries, especially during the first years of the Hague Rules.

William Tetley explains that the value of gold has been subject to significant changes since 1924 so, based on the second paragraph of article 9, several States parties to the Hague Rules opted to translate the sums indicated in pounds sterling into their own currencies, in the understanding that the conversion could be done at any time and did not need to be updated[11].

Upon ratifying the Hague Rules, the United States made a reservation stating that the limit will be US$500, and a number of countries adopted the limitation in local currency, such as Belgium, Canada, Ireland, New Zealand, Portugal, Spain, Switzerland, Syria and Turkey.

The obvious consequence of the abandonment of the current market value of the gold, was that the inflation affected the limit of liability established in local currencies.

Tetley also explains that the United Kingdom could not convert the gold sterling pound into another currency because the pound sterling was (and still is) its own currency. In

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[8] FEDERAL COURT OF APPEALS of Buenos Aires, Civil and Commercial Division, in re "m.v. *Río Atuel*", 1967, LA LEY 127-178).

[9] AGUIRRE RAMÍREZ, Fernando and FRESNEDO de AGUIRRE, Cecilia, *Curso de transporte. Transporte marítimo. Contratos*, Montevideo, Fundación de Cultura Universitaria, 2002, vol. III, p. 186. It is also the opinion of Gabriela VIDAL, who has been consulted on this issue by the author of this presentation.

[10] Peruvian bases for to conversion have been informed to the author by Katerina Vuskovic.

[11] TETLEY, William, with the assistance of Marc Nadon, *Marine cargo claims*, Toronto, Butterworths, 1978, Second edition, p. 444/446.

order to avoid the consequences of the uncertainty and instability in the value of the gold a consensus was reached in the United Kingdom, known as the *Gold Clause Agreement*, pursuant to which the per package limitation was fixed at "200 sterling lawful money of the United Kingdom" rather than at gold value. Nonetheless, today the 1988 court precedent mentioned above is the rule.

12. The Visby Rules

The Brussels Protocol of 1968 (the Visby Rules) adopted a unit known as *Franc Poincaré* and gave a new wording to article 4.5(a) of the Hague Rules.

The new limits were "*10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher"*.

The Franc Poincaré is defined in the new article 4.5(d) of the Hague Rules as "*a unit consisting of 65.5 milligrams of gold of millesimal fineness 900*".

The idea was that the gold unit would be the weapon to avoid the consequences of the loss of real value of the national currencies. Nevertheless the problem was not solved because a number of countries gave an *official* value to the gold and the current market value conflicted with the official value.

In Ecuador —where the Visby Rules have been adopted—, the conversion of the *Poincare Francs* into local currency is calculated considering the market value of the gold.[12]

In addition, the Visby Rules resulted in a lower limit in those countries that were a party to the Hague Rules in which the current market value of the gold has been adopted.

13. The Brussels Protocol of 1979

The Brussels Protocol of 1979 gave a new wording to article 4.5 of the Hague-Visby Rules.

In Latin America the Protocol has been ratified by Mexico, and its figures have been adopted in the internal law of Venezuela.

In this version of the Hague-Visby Rules, the unit of account is the IMF Special Drawing Right (SDR).

The limits are "*666.67 units of account per package or unit or two units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher*".

This amendment to the Hague Rules improved the level of the limit of liability compared to the levels resulting from the previous amendment, but the new limit is still

[12] This has been informed to the author this presentation by José Modesto Apolo.

significantly lower than the limit that results from the market value of the gold contained in 100 sterling pounds.

14. The Hamburg Rules

The Hamburg Rules adopted the SDR that has been previously adopted by the Brussels Protocol of 1979.

The limits are "*835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher*".

The Hamburg Rules further improved the level of the limit of liability of the carrier *vis a vis* the 1979 Protocol, but it is still significantly lower than the limit resulting from the market value of the gold contained in 100 sterling pounds.

15. The Rotterdam Rules

The Rotterdam Rules maintain the SDR as the unit of account and again improves the level of the limit compared to the Hamburg Rules; yet it is still far from the level resulting from the market value of the gold of the 100 sterling pounds.

The limits in the Rotterdam Rules are "*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 is higher*".

16. The Limits under the Different Conventions and Protocols Converted into US Dollars

Taking into consideration that: **a)** the value of the gold on September 10, 2010 was in the region of US$1,246 per troy ounce, and **b)** the value of a SDR is in the region of US$1.50, the different limits of liability of the carrier on September 10 was:

Per package or unit limit

Convention	**Units of account**	**Limit per package or unit**
Hague Rules	100 pounds sterling	US$29,307 approx.
Visby Rules	10,000 francs	US$23,600 approx.
Protocol 1979	666.67 SDRs	US$1,000 approx.
Hamburg Rules	835 SDRs	US$1,252.50 approx.
Rotterdam Rules	875 SDRs	US$1,312.50 approx.

Per kilo limit

Convention	**Units of account**	**Limit per kilogram**
Visby Rules	30 francs	US$70,80 approx.
Protocol 1979	2 SDRs	US$3 approx.
Hamburg Rules	2.50 SDRs	US$3.75 approx.
Rotterdam Rules	3 SDRs	US$4.5 approx.

In order for a package or unit to be valued at 100 gold pounds sterling under the different conventions, it must weight:

- 423.73 kilograms under the Visby Rules.
- 10,000 kilograms under the 1979 Protocol.
- 8,000 kilograms under the Hamburg Rules.
- 6,666 kilograms under the Rotterdam Rules

17. Countries that Are Not a Party to the International Conventions

Some Latin American countries have not ratified nor adopted the principles of any of the international conventions on carriage of goods by sea; in some of these countries the maritime law is governed by codes inspired in the French Commercial Code of 1807 and other continental codes of the 19th century.

In some of these countries, apart from the general limitation available to shipowners — based on the value of the vessel at the end of her voyage—, the only limit of liability available to the carrier is the market value of the goods in the port of destination. As a result, courts in these jurisdictions often find null and void the clauses inserted in bills of lading limiting the carrier's liability.

For example, in Uruguay, although the case law is not uniform, a number of courts reject limitation clauses. Other Uruguayan courts admit the limitation clauses when the amount of limitation appears to be reasonable[13].

Brazil is another country that is not a party to international conventions on the carriage of goods by sea, so the carriers' limitation of liability regime is governed by its domestic law.

Under the Brazilian Civil Code, the carrier's liability is limited to the declared value of the cargo in the bill of lading. The amount of the limit is an issue, however, when the value of the cargo has not been declared in the bill of lading. Some argue that, in this

[13] AGUIRRE RAMÍREZ, Fernando y FRESNEDO DE AGUIRRE, Cecilia, *Curso… Transporte marítimo*, Fundación de Cultura Universitaria, Montevideo 2002, vol. III, pp.216 et seq.

case, the value of the cargo may be proved with the invoices. Others favour the application of the limit established under the multimodal transport regime: i.e., 666.67 SDRs per package or 2 SDRs per kilogram.[14]

- V – THE MONTEVIDEO DECLARATION

On October 22, 2010, a group of distinguished maritime lawyers published the *Declaración de Montevideo*, recommending governments and parliaments not to adopt the Rotterdam Rules.

Some of the main concerns of these colleagues is the low level of the limits of liability and the fact that the benefit if limitation is only available to carriers and not to the shippers.

The *Declaración of Montevideo* has been considered by a qualified group of CMI members who participated in the drafting of the Rules. They argue that with the limits established in the Rotterdam Rules "*all but the most valuable shipments will be entitled to full recovery*", so "*those few shippers who ship cargo that is more valuable than the limitation levels can decide for themselves whether to declare the full value (effectively buying extra insurance from the carrier) or buy insurance elsewhere, knowing that the carrier will not be liable above the limitation levels*".

Regarding shippers' limitation of liability the CMI members who participated in the drafting of the Rules explain that UNCITRAL tried to formulate a limitation system for the shippers' liability but no workable solution has been found. They also pointed out that no convention on the carriage of goods by any means of transport provides a limit on shippers' liability, and that the Montevideo Declaration does not present a proposal to that effect.

- VI - THE POINT OF VIEW OF THE ARGENTINE MARITIME LAW ASSOCIATION

On April 27 and 28, 2009, the Rotterdam Rules have been considered and debated in a Plenary Session of the Argentine Maritime Law Association.

As a result of these discussions the Executive Council of the Association considered that the Rotterdam Rules:

- do not conflict with the principles of Argentine maritime law; and
- address issues that were not specifically addressed in the past by the legal system.

But:

- the adoption of an international convention establishing a limit of liability significantly lower than the limit currently in force in Argentina is a political

[14] The information on the Brazilian law has been obtained from Artur R. Carbone.

issue that must be decided taking into account the commercial interests involved.

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Buenos Aires, October 27, 2010.