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

Kate Lannan
Secretary of Working Group on Transport Law
UNCITRAL Secretariat
Compelling Reasons

• **Pursuit of Harmonization**
  • Lack of a universal system:
    • [Hague Rules](#) – 1924 (4* formal Latin American Contracting Parties)
    • [Visby Protocol](#) – 1968 (1** formal Latin American Contracting Party)
    • [Hamburg Rules](#) - 1978 (3*** Latin American Contracting Parties)
    • Domestic gap-filling legislation and Regional attempts
  • Achieve a *global* regime

*Argentina, Belize, Bolivia, Peru  **Ecuador  ***Chile, Dominican Republic, Paraguay*
Compelling Reasons

• **Pursuit of Modernization**

  • No current regime takes into account modern container transport

  • No current regime provides for electronic commerce
Origin of the Convention

• **34th Session of UNCITRAL – 2001**
  - Consultations had indicated that work could usefully commence towards an international instrument that would:
    - Modernize the law of carriage
    - Take into account the latest technological developments
    - Eliminate legal difficulties that had been identified

• **UNCITRAL established the Working Group on Transport Law to consider the project**
  - Consider the preliminary text received from CMI
  - Broad mandate: including liability issues and the feasibility of door-to-door coverage
  - Moved the project from the industry phase to the intergovernmental negotiation stage
Time frame and Stakeholders

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

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


- Adopted – 11 December 2008– 63\textsuperscript{rd} Session of United Nations General Assembly
  - Opened for signature 23 Sept 2009 in Rotterdam
  - Recommended Convention be known as the Rotterdam Rules
  - Called upon all Governments to consider becoming party to the Convention
Signing Ceremony – 23 Sept 2009

• 16 States signed:
  Congo        Ghana        Nigeria        Spain
  Denmark      Greece       Norway        Switzerland
  France       Guinea       Poland        Togo
  Gabon        Netherlands  Senegal       United States

• World Trade Volume: Over 25%*
• Compare: Hamburg Rules – 34 Contracting Parties: 5%*

*According to UN United Nations 2008 International Merchandise Trade Statistics Yearbook
Additional Signatures since 23 Sept

- Madagascar 25 Sept 09
- Armenia 29 Sept 09
- Cameroon 29 Sept 09
- Niger 22 Oct 09
- Mali 26 Oct 09
- Luxembourg 31 Aug 10
- Democratic Republic of Congo 23 Sept 10

TOTAL: 23
The 23 Signatory States

Armenia  Gabon  Mali  Poland
Cameroon  Ghana  Netherlands  Senegal
Congo  Greece  Niger  Spain
Denmark  Guinea  Nigeria  Switzerland
DRC  Luxembourg  Norway  Togo
France  Madagascar  United States

Intriguing mix:

• strong maritime and trading nations
• shipper and carrier states
• developing and developed countries

Process toward ratification underway in a number of States, including Denmark, Spain and US
Advantage for Shippers / Disadvantage for Carriers

- Increased monetary limits on carrier’s liability for loss or damage
- Carrier liability for delay
- Deletion of the carrier’s nautical fault exception
- Circumscription of fire exception
- Due diligence obligation of the carrier for seaworthiness and cargo-worthiness of the ship now a continuing obligation
Advantage for Shippers / Disadvantage for Carriers

- Inclusion of deck cargo so carrier not automatically exonerated from responsibility for loss or damage to cargo carried on deck
- Clarification of liability of maritime performing parties
- Extension of the notice period for loss or damage to goods to 7 days
- Carrier can no longer hide its identity in transport document
- Limitation period extended to 2 years
Advantage for Carriers / Disadvantage for Shippers

- Clear articulation of the shipper’s obligations
- Clear rules for delivery
- Clear articulation of basis of liability of carrier
- Improved regime for deviation
- Clear rules for undelivered goods
- Solution to problem of concealed damage in multimodal carriage
- Solution to problem of delivery without presentation of negotiable document
Win-Win for ALL Stakeholders

- Clear, harmonized global regime for maritime transport
- Electronic commerce for modern, efficient shipping practices
- Door-to-door shipments under a single contract of carriage and a single legal regime
- Modern containerized shipping accounted for throughout
- Inclusion of incoming and outgoing maritime carriage
Win-Win for ALL Stakeholders

• Use of a well-known limited network liability system
• Coverage of ALL transport documents in liner trade, not just B/Ls
• Limited freedom of contract, where appropriate, with mandatory protection where needed
• Comprehensive and more systematic provisions on carrier and shipper liability and balanced allocation of risk
Win-Win for ALL Stakeholders

• Right of control, to assist shippers and financing institutions, and to pave way for e-commerce
• Clarification of numerous legal gaps that exist under current conventions
• Codification of existing industry practice to provide legal certainty
• General adoption of commercially practicable solutions
Strong support from:

- International Chamber of Shipping (ICS)
- Bimco
- International Group of P&I Clubs
- World Shipping Council (WSC)
- US Shippers’ Organization (National Industrial Transportation League)
- European Community Shipowners’ Associations (ECSA)
- American Bar Association
- European Parliament
- Arab League Workshop
Conclusion

- A Win-Win approach
- Industry-driven project
- Global solution
- Comprehensive instrument
- Modernizes
- Harmonizes
- Preserves existing unimodal transport regimes
- Commercial and Legal Predictability and Transparency
- Enhanced efficiency
- Reduced transaction costs
The Rotterdam Rules

For further information on the work of UNCITRAL please visit our web site

http://www.uncitral.org/

THANK YOU FOR YOUR ATTENTION