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AMENDMENTS TO THE IMDG CODE AND SUPPLEMENTS

The role of the Rotterdam Rules in vessel safety

Submitted by the Comité Maritime International (CMI)

SUMMARY

Executive summary: The document highlights the role that the Rotterdam Rules would play in reducing the risk of container fires by: (1) requiring greater sharing of information between shippers and carriers; (2) focusing more generally on safety standards; and (3) facilitating electronic commerce, which will better enable operational personnel to have timely access to the information they need to ensure vessel safety.

Strategic direction, if applicable: 5

Output: 5.1

Action to be taken: Paragraph 17

Related documents: CCC 6/14 and CCC 6/6/17

Introduction

1 The Sub-Committee on the Carriage of Cargoes and Containers (CCC), at its sixth session, established the Correspondence Group on a Review of Maritime Special Provisions due to the increasing number of casualties related to container fires reported over the past several years (CCC 6/6/17, paragraph 4). The correspondence group was instructed to review certain maritime special provisions (SPs) in the IMDG Code and provide recommendations on how to proceed to CCC 7 (CCC 6/14, paragraph 6.22).

2 The co-sponsors of document CCC 6/6/7 (Liberia, ICS, IUMI, BIMCO, ICHCA, the International Group of Protection & Indemnity Associations, IVODGA, and WSC) identified a principal source of the underlying problem, explaining:

“Non-declaration or misdeclaration of dangerous goods in accordance with the IMDG Code, either inadvertent or deliberate, deprives ocean carriers, shipping companies and transport intermediaries of critical information that would otherwise allow them to arrange for proper handling and stowage, depending

on the significant hazards that these shipments present. As such, non-declaration or misdeclaration leads to unsafe stowage and cargo segregation which dramatically increase the risk of fire, resulting in potential loss of life, damage to the environment and assets.”

3 The Comité Maritime International (CMI) has prepared this document to serve as a source of information to explain how the ratification of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, adopted on 11 December 2008 (herewith called the “Rotterdam Rules”) would provide an important part of the solution to the underlying problem that the above correspondence group has been tasked with addressing.

4 The international conventions that most clearly address safety at sea, such as the SOLAS Convention, focus on the relationship between private parties (usually carriers) and public authorities. That is obviously an essential part of any solution to the problem of casualties related to cargo fires. But in the context of cargo fires, a party’s ability to fully comply with safety regulations is often dependent on the relationship between a carrier and the shipper or other cargo interests. The Rotterdam Rules govern that contractual relationship, and thus complement the work of conventions such as SOLAS.

The Rotterdam Rules promote safety by requiring greater sharing of information

5 The Rotterdam Rules were designed to modernize the international regime governing contracts for the carriage of goods by sea and they do so in a number of different ways. Of particular relevance here, the Rotterdam Rules recognize the importance of each party’s providing timely and accurate information, and it facilitates the most efficient method for doing so. Because on-board fires often result from a shipper’s failure to provide timely and accurate information to the carrier, or even a carrier’s failure to provide timely and accurate information to the shipper, having a regime that requires and facilitates the timely exchanging of information is an important factor in addressing the problem.

6 Turning to the specifics, multiple provisions in the Rotterdam Rules explicitly require the exchange of timely and accurate information. Article 29(1)(a) goes beyond the existing carriage conventions (such as the Hague-Visby and Hamburg Rules) to require a shipper to “provide to the carrier in a timely manner” the “information, instructions and documents” needed for “the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party,” whether or not the goods have been recognized as dangerous in the IMDG Code. In countries where local authorities have enacted safety measures in addition to the international requirements, article 29(2) preserves their force and article 29(1)(b) requires the shipper to timely provide the carrier with the “information, instructions and documents” needed to comply with those local regulations.

7 More importantly, the Rotterdam Rules extend the traditional requirement to furnish information at the beginning of the process. Article 28 establishes a new procedure to enable either the carrier or the shipper to obtain information or instructions from the other whenever necessary during the process. If a problem arises in the middle of a voyage, for example, or if a carrier develops suspicions about an unusual shipment, article 28 — unlike any of the existing carriage conventions — provides a mechanism that enables the carrier to obtain the information or instructions that it needs to avoid a serious incident.

Other safety-specific provisions in the Rotterdam Rules

8 Article 32 specifically addresses the shipper’s obligation to provide information to the carrier about goods that “by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment.” This provision improves on existing carriage conventions in two significant ways. First, it avoids the ambiguity of the

existing conventions' use of the term "dangerous goods" without defining that term. Second, it recognizes that goods can cause serious damage by harming the environment. Article 15 similarly gives a carrier flexibility in dealing with such goods.

9 Article 27(1) expands on current law to require the shipper to "deliver the goods [to the carrier] in such condition that they will withstand the intended carriage." That provision would help to avoid, for example, the liquefaction of goods that are normally solid (which is a serious risk in some solid goods with a high moisture content). Article 27(3) similarly requires a shipper that packs a container or loads a vehicle to be carried on a vessel to "properly and carefully stow, lash and secure the contents . . . in such a way that they will not cause harm to persons or property." Improperly securing the goods in a container increases the risk of fire, and extending the rule to vehicles addresses an important safety concern in the freight ferry industry.

10 Other provisions of the Rotterdam Rules contribute to safety more generally. Article 14, for example, extends the carrier's obligation to exercise due diligence to provide a seaworthy ship beyond the commencement of the voyage (as under today's most common carriage regimes) to the entire voyage. Under the Rotterdam Rules, therefore, the carrier owes a duty to cargo to maintain safety standards not only when the vessel is in the port of loading but for the entire time that the goods are on the ship.

The Rotterdam Rules promote safety by facilitating electronic commerce

11 In addition to its safety-specific provisions, the Rotterdam Rules would help solve the underlying problem that the correspondence group is addressing in a second, less obvious, way. Everyone recognizes that the non-declaration or misdeclaration of dangerous goods is a principal cause of the increasing number of casualties related to container fires. But even if a shipper properly declares the cargo, the information must still be conveyed to operational personnel in a timely manner if it is to be effective. In a system that relies heavily on paper documents, information may be conveyed inaccurately, or it may not be accessible to those who need it, or it may not be available in time. Inaccurate, inaccessible, or untimely information also causes serious incidents.

12 The obvious solution to the over-reliance on paper documents is to instead use electronic equivalents. If the ocean shipping industry used a system based on blockchain, for example, everyone who needed to know the information or instructions furnished by the shipper would almost immediately have access to that information in the form furnished by the shipper — even if the goods pass through multiple intermediate parties before reaching the ocean carrier.

13 Unfortunately, the industry has been slow to adopt electronic equivalents to traditional shipping documents. A principal reason is that the existing carriage conventions do not provide the necessary legal framework to support electronic commerce. The Rotterdam Rules, in contrast, were specifically designed not only to accommodate electronic commerce but to facilitate it. Indeed, the original proposal to undertake the project came from the United Nations Commission on International Trade Law (UNCITRAL) E-Commerce Working Group. Even the popular press has identified the failure to ratify the Rotterdam Rules as an obstacle to the growth of electronic commerce*.

14 When the Rotterdam Rules enter into force, not only will shippers and carriers have stronger legal obligations to share the information that can help prevent container fires and other serious incidents, but the legal basis will exist to permit industry to develop and rely on a more effective system to get that information to the operational personnel who need it in time for them to use it. In this regard, the Rotterdam Rules will complement Standard 1.3*bis* of the

* Refer to the article entitled "Thinking outside the box," *The Economist*, dated 28 April 2018, page 21.

FAL Convention, which governs the exchange of information between ocean carriers and government authorities. *Cf.* paragraph 4. The Rotterdam Rules facilitate electronic commerce among all the parties to a transaction on a door-to-door basis — thus covering the flow of information from the original shipper to the ocean carrier's operational personnel.

Conclusion

15 CMI recognizes that the Rotterdam Rules by themselves will not solve the problem of container fires and other serious incidents, but it would contribute to the solution. And without the Rotterdam Rules, the existing outdated legal regimes governing contracts for the carriage of goods by sea will continue to act as a barrier that prevents the industry from developing the most effective operational solutions to the problem.

16 CMI therefore invites the Sub-Committee to recognize the importance of the Rotterdam Rules as it studies the underlying problem and makes recommendations on how to proceed. Ratifying the Rotterdam Rules is one step that Member States can take as part of an overall solution to the problem.

Action requested of the Sub-Committee

17 The Sub-Committee is invited to consider the above information and take action as appropriate.
