COMITE MARITIME INTERNATIONAL

The Dossier: Rotterdam Rules Ratification

Standing Committee on Ratification of the Rotterdam Rules.

Chair: Stuart Hetherington

Alexander Von Ziegler

Tomotaka Fujita

David Farrell

Paula Backden

Eduardo Albors

Peter Laurijssen

Andrew Robinson

Observers: Jose Angelo Estrella Faria (UNCITRAL)

Ex Officio: President of CMI, Ann Fenech

Table of Contents

1. Introduction by Stuart Hetherington.

2. Chronology.

3. List of Relevant Materials and Documents Relating to the Rotterdam Rules. See CMI Website Standing Committee Ratification of Rotterdam Rules

4. Discussion on Uniformity and Disuniformity of the Law Relating to Carriage of Goods by Sea, by Stuart Hetherington.

5. Summary of the Beginnings of the CMI Work on Reforming the Hague Rules Regime.

6. Summary of Commentaries made on the Rotterdam Rules at CMI Conferences in 2008 (Athens) and 2012 (Beijing).

7. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

8. Extracts from Power Point Presentation of Kate Lannan, former Secretary of UNCITRAL Working Group III.

9. Memorandum by Stuart Hetherington and Professor Tomotaka Fujita on the Rotterdam Rules and E-Commerce.

10. Brochure of ISF: Promoting Maritime Treaty Ratification and Position Paper by the International Chamber of Shipping.

11. CMI Paper: The Role of the Rotterdam Rules in Vessel Safety, being CMI Submission to IMO - 14 February 2023 and Editorial comment in the Journal of International Maritime Law by Professor Michael Sturley: The Rotterdam Rules and Vessel Safety.

12. Presentation by Stuart Hetherington: The CMI and the Panacea of Uniformity - An Elusive Dream?, being the annual Tetley Lecture at Tulane University and published in the Tulane Maritime Law Journal Volume 39 Winter 2014.

Ratification of the Rotterdam Rules

Introduction by Stuart Hetherington, Chair of the CMI Standing Committee on Ratification of the Rotterdam Rules 95423200

History

1. The first intervention by a National Government in the regulation of the Carriage of Goods by Sea was made by the United States in its *Harter Act 1893*.

2. That was followed in New Zealand by the *Shipping and Seamen Act 1903*, in Australia by the *Sea-Carriage of Goods Act 1904* and Canada by its *Water Carriage of Goods Act 1910*.

3. In 1907 the Comite Maritime International (**CMI**) commenced work on seeking to produce international rules relating to the carriage of goods by sea and concluded that work in 1921. The Rules thereby formulated then became the basis of the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924, which entered into force on 2 June 1931 (**the Hague Rules**) and became internationally accepted by the major trading nations of the world.

4. In 1968 the Brussels Protocol amended the Hague Rules Convention by, inter alia, increasing the limits of liability that a carrier is entitled to rely on, the package limitation, from £100 sterling to Fr10,000 per package or unit or Fr30 per kilo of the gross weight of goods lost or damaged. (**the Hague-Visby Rules**).

5. In 1969 by a further Protocol to amend the Hague Rules the limitation sums were identified in accordance with the Special Drawing Rights of the International Monetary Fund as 666.67 units of account per package or two units of account per kilogram of gross weight of the goods lost or damaged **(the SDR Protocol)**.

6. In 1978 a further International Treaty was produced: the United Nations Convention on the Carriage of Goods by Sea 1978 which entered into force on 1 November 1978, known as the **Hamburg Rules** Convention**,** prepared by UNCITRAL at the request of UNCTAD**.**

7. With the encouragement of UNCITRAL, which was being made aware of the deficiencies in the Hague Rules regime and in particular through its work on electronic commerce, CMI began work, from 1988 on identifying the areas in which a new international Convention

might be devised which met all the concerns that were emerging concerning the Hague Rules.

8. During the 1990s States became concerned that the Hamburg Rules were unlikely to be adopted by the world's leading trading nations and some States, including Australia and China, introduced hybrid versions of the Hague Rules by incorporating elements of the Hague-Visby Rules and the SDR protocol and parts of the Hamburg Rules into their regimes.

9. Also during the 1990s, the Maritime Law Association of the United States (MLAUS) started work on drafting a Bill to be presented to Congress to amend the US Carriage of Goods by Sea Act 1936 (COGSA). The MLAUS did not proceed with its unilateral attempt to amend its COGSA and participated actively with the CMI and then through the UNCITRAL process in producing a new International Convention.

10. Because of the disuniformity which was occurring as a result of the multiplicity of regimes that by then had emerged the CMI began to consider how best it could assist in recreating the uniformity, predictability and certainty which the Hague Rules had achieved since 1924 until amendments had been made to them.

11. In 2001 CMI provided a draft Instrument which it had prepared to UNCITRAL which undertook the task of producing an international Convention in its Working Group III. That work concluded in 2008, and on 11 December 2008 the United Nations Assembly agreed the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, which is known as **The Rotterdam Rules**.

Status of Rotterdam Rules

12. The Rotterdam Rules have been ratified by the following five States:

    Spain (2011); Togo (2012); Congo (2014); Cameroon (2017); and Benin (2019).

13. The Rotterdam Rules have been signed by 25 States: Armenia, Cameroon, Congo, Democratic Republic of Congo, Denmark, France, Gabon, Ghana, Greece, Guinea, Guinea-Bissau, Luxembourg, Madagascar, Mali, Netherlands, Niger, Nigeria, Norway, Poland, Senegal, Spain, Sweden, Switzerland, Togo and the United States. (Those 25 States together represented over 25 percent of the then current world trade volumes according to the UN 2018 International Merchandise Trade Statistics Yearbook.)

14. A number of States have not ratified the Rotterdam Rules but are amongst the signatories that have passed legislation which will enable them to ratify the Rules when they determine that their major trading partners have ratified them. Those States include Norway, Sweden, Denmark and the Netherlands.

15. The MLAUS has been working tirelessly since 2009 to have the Rotterdam Rules ratified in their country.

Reasons for Ratification

16. The CMI and its constituent MLAs urge governments to ratify the Rotterdam Rules, or at least put in place legislation to enable the Rules to be ratified at the earliest opportunity together with denouncing any prior international Convention or Protocol which it has previously ratified or acceded to for the following reasons.

17. This plea is made because it is considered that the Hague Rules and all other subsequent amendments to it or substitutes for it are not fit for purpose in the modern international shipping scene and there is a strong desire to achieve certainty and uniformity once again.

18. Furthermore, it is believed that the Ratification of the Rotterdam Rules is supported by ship owners, carriers and the international bodies that represent such organisations, as well as their liability insurers, together with such bodies as represent shippers and consignees of goods that utilise international shipping as well as individual shippers and consignees of goods, together with the marine insurance industry worldwide that provides insurance for cargo that is shipped internationally. Such support can be seen in the documentation referred to herein.

19. The Ratification of the Rotterdam Rules is also supported on the basis that it is a comprehensive regime which covers all aspects of international carriage of goods where sea carriage is a major element and represents a modernisation and levelling of the playing field between carrier and cargo owner from its predecessors, in particular because of:

    a) the elimination of the nautical fault and management of the vessel defence available to shipowners under the Hague/Hague-Visby Rules regime;

    b) it places greater responsibility on cargo owners properly to identify their cargoes and therefore enhances safety at sea;

    c) it raises the limits of liability of carriers to reasonable amounts in modern currency;

d) it deals with the complex issues caused by electronic commerce;

e) it creates minimum requirements for jurisdiction and arbitration provisions and gives flexibility to States as to whether to permit alternative arrangements when giving effect to the convention; and

f) it retains much of the language and practices of the original Hague Rules regime meaning that the jurisprudence built up over 100 years remains significant and relevant;

g) There is no alternative regime available or likely to be available for at least another 20 years and there is no suggestion being made at the present time that any such regime should be produced;

h) There is a considerable wastage of funds spent annually within the shipping and insurance industries over arguments as to which of the multitude of different regimes apply in any given shipment of goods which could be avoided if States came together and ratified the Rotterdam Rules, denouncing all prior Conventions and Protocols that they may have ratified or acceded to and repealing all hybrid legislation.

20. A more comprehensive list of the advantages to be gained from Ratification of the Rotterdam Rules can be seen in simplified form in the extracts from a Power Point Presentation given by Kate Lannan, the former Secretary of UNCITRAL Working Group 111, which is **attached**.

21. The **attached** list of Relevant Materials and Documents Relating to the Rotterdam Rules (which has been culled from amongst other sources the Yearbooks of the CMI) can be accessed on the CMI website/Standing Committee for Ratification of the Rotterdam Rules.

Conclusion

In conclusion: the Ratification of the Rotterdam Rules is long overdue and necessary to restore greater uniformity, predictability and certainty to the liability regime which governs the international carriage of goods by sea, and promote greater efficiency (and thus lower costs) and safety .

Stuart Hetherington

Chair of CMI Standing Committee on Ratification of the Rotterdam Rules

May 2023

Chronology

1882 International Law Association Liverpool Conference: Model Bill of Lading.

1885 International Law Association Hamburg Conference: Code of Affreightment.

1893 Harter Act (US).

1903 Shipping and Seamen Act (New Zealand).

1904 Sea-Carriage of Goods Act (Australia).

1910 Water Carriage of Goods Act (Canada).

1924 Hague Rules Convention (89 Ratifications).

1931 Hague Rules Convention entered into force.

1936 US COGSA.

1968 Hague Visby Rules (29 ratifications) and SDR Protocol (25 ratifications).

1977 Hague Visby Rules entered into force.

1978 Hamburg Rules Convention.(34 Ratifications).

1984 SDR Protocol entered into force.

1992 Entry into force of the Hamburg Rules.

2008 (11 December). The UN Convention on International Carriage of Goods Wholly or Partly by Sea was adopted by the General Assembly of the United Nations.

2009 (23 September) Signing Ceremony in Rotterdam of the Rotterdam Rules Convention.

List of Relevant Materials and Documents Relating to the Rotterdam Rules.

1. Speech (extracts) by Francesco Berlingieri: CMI Paris Conference 1990; Paris Declaration on Uniformity of the Law of Carriage of Goods by Sea 29 June 1990.

2. CMI Newsletter No 4 1997 Minutes of Executive Council 8 and 14 June 1997.

3. CMI News Letter No 2 1998 (extract).

4. "Uniformity of the Law of the Carriage of Goods by Sea" by Francesco Berlingieri. Report on the Work of the International Subcommittee CMI Yearbook 1999.

5. Statement by the CMI 14 January 1999 CMI Yearbook 1999.

6. "The Treatment of Performing Parties" by Michael Sturley Transport Law CMI Yearbook 2003 Vancouver 1.

7. "The UNCITRAL Carriage of Goods Convention: Changes to Existing Law" by Michael Sturley: CMI Yearbook 2007-2008 Athens I pages 254-263.

8. "The New Convention on International Carriage of Goods Wholly or Partly By Sea: A Civil Law Perspective" by Philippe Delebecque: CMI Yearbook 2007-2008 Athens I pages 264-276.

9. "Introduction" by Tomotaka Fujita: CMI Yearbook 2007-2008 Athens I pages 277-278.

10. "Carrier's Obligations and Liabilities" by Francesco Berlingieri: CMI Yearbook 2007-2008 Athens I pages 279-286.

11. "The Convention on Contracts for the International Carriage of Goods Wholly or Partly By Sea: The Liability and Limitation of Liability Regime" by Kofi Mbiah CMI Yearbook 2007-2008 Athens I pages 287-299:

12. "Background Paper on Shipper's Obligations and Liabilities" by Ingeborg Holtskog Olebakken: CMI Yearbook 2007-2008 Athens I pages 300-30.6.

13. "A Brief History of the Involvement of CMI from the initial stages to the Preparation of the UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly By Sea": CMI Yearbook 2009 Athens II pages 252-254.

14. "Scope of Application, Freedom of Contract" by Hannu Honka: CMI Yearbook 2009 Athens II pages 255-270.

15. "Overview of the Convention The UNCITRAL Perspective" by Kate Lannan: CMI Yearbook 2009 Athens II pages 271-276.

16. "Shipowners' View on the UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" by Knud Pontopiddan: CMI Yearbook 2009 Athens II Pages 282-291.

17. "The New Elements The Facilitation of Electronic Commerce" by Johanne Gauthier: CMI Yearbook 2009 Athens II pages 296-300.

18. Multimodal Aspects of the Rotterdam Rules" by Gertjan van der Ziel: CMI Yearbook 2009 Athens II pages 301-313.

19. "The Rotterdam Rules An Attempt to Clarify Certain Concerns that have Emerged" by Francesco Berlingieri, Tomotaka Fujita, Alexander von Ziegler, Michael Sturley, Gertjan van der Ziel, Stefano Zunarelli, Philippe Delebecque, and Rafael Illescas 5 August 2009, responding to:

    (i) European Shippers Council (March 2009)

    (ii) Economic and Social Council Commission for Europe (May and November 2009)

    (iii) FIATA Position (March 2009)

    (iv) CLECAT Position (May 2009).

20 "The Rotterdam Rules-Some Controversies" by Stuart Beare: CMI Yearbook 2010 pages 516-520.

21. "The Need for Change and the Preparatory Work of the CMI" by Stuart Beare CMI Yearbook 2010.

22. An Analysis of the so-called Montevideo Declaration CMI Yearbook 2010.

23. A Latin American Response to the "Declaration of Montevideo".

24. "The Rotterdam Rules A Cherishable Opportunity for the Unification of the Law" by Henry Li.

25. Papers from Beijing Conference 2012: Michael Sturley: The Rotterdam Rules in Beijing; Alexander von Ziegler: Rotterdam Rules and the underlying sales contract; Kofi Mbiah: Updating the Rules on International carriage of Goods by Sea: The Rotterdam Rules; Andrew Bardot: The UN Convention on the contracts of International

carriage of goods wholly or partly by sea, the "Rotterdam Rules" Practical implications for carriers.

26. CMI International Working Group Paper: "Questions and Answers on the Rotterdam Rules" (10 October 2012).

27. Paper by Stuart Hetherington The Role of the CMI in the Development of Uniform Law for Multimodal Transport (2014).

28 Paper by Stuart Hetherington "Prospects of the Rotterdam Rules at its 10 Anniversary" (2018).

29. Paper by David Farrell Immediate Past President of MLAUS "Opinion: to support US Interests, Ratify UNCLOS and Rotterdam Rules".

Discussion on Uniformity and Disuniformity of the Law Relating to Carriage of Goods by Sea

As the CMI Constitution makes clear the raison d'etre of the CMI is "to contribute by all appropriate means and activities to the unification of maritime law in all its aspects" (Article 1).

Former CMI President Albert Lilar said:

> "The history of maritime law bears the stamp of a constant search for stability and security in the relations between the men who commit themselves and their belongings to the capricious and indomitable sea. Since time immemorial, the postulate which has inspired all the approaches to the problem has implied the establishment of a uniform law."

Justice Haight of New York made the following comments in a paper given in honour of Professor Bill Tetley at Tulane University, New Orleans:

> "Those who strive to achieve a uniform maritime law, nationally and internationally, seek to have the people of the maritime community - shipowners, cargo owners, insurers, lenders, furnishers of supplies, salvors - "be of one language and of one speech", so that rights and obligations may be certain and predictable".

The problems which the CMI identified in the late 1980s can be categorised as the awareness that there had become an absence of both certainty and predictability in relation to the international cargo liability regime.

As early as 1983 another experienced Admiralty Judge, Justice Yeldham in the New South Wales Supreme Court, in an address to the Maritime Law Association of Australia and New Zealand in that year said as follows:

> "Unless and until all the major maritime nations adopt either the 1968 Brussels Protocol or the Hamburg Rules or some other Rules, ship owners and shippers will have the prospect of operating and trading under perhaps three concurrent and alternative international Conventions governing their rights and liabilities inter se. …..Another consequence of the non-adoption of the Visby Amendments or the Hamburg Rules so far as Australia is concerned, is that problems with the sea carriage of goods, and especially those concerning containers……will in many cases continue to be problems and fertile sources of litigation to be considered by the courts."

How prophetic were those words.

In a brochure published by the International Chamber of Shipping and the International Shipping Federation on the topic Promoting Treaty

Ratification: the ICS and ISF Campaign the following is stated in the first two paragraphs:

> "ICS and ISF member national shipowners associations continually emphasise to their governments that shipping is an inherently international industry which depends on a global regulatory system to operate efficiently.
>
> It is crucial that the same regulations governing such matters of safety, environmental protection, liability, and seafarers' working conditions apply to all ships in international trade and that the same rules apply to all parts of the voyage. The alternative would be a web of conflicting rules and regulations that would compromise the efficiency of global trade, around 90% of which is carried by sea."

A "web of conflicting rules" can be seen in a telling example of the confusion that exists in the decision of the Court of Appeal in England in the "*Superior Pescadores*" case, (2016) 1 Lloyds Rep. 561. It was a case which went to the Court of Appeal in England. It was a relatively straightforward cargo claim. The cargo comprised machinery and equipment for use in the construction of a liquid natural gas facility in Yemen, which were shipped from Antwerp. The cargo shifted in the hold while crossing the Bay of Biscay. The losses were about USD3.6 million. A P&I Club letter of undertaking was obtained. It contained an agreement that English law and jurisdiction would apply. That law applies the Carriage of Goods by Sea Act 1971 which renders the Hague Visby Rules applicable when carriage is from a port in a contracting State. The carrier admitted liability to the extent of the Hague Visby package limitation. The cargo claimants sought USD200,000 more in reliance on the Hague Rules' limitation. Paramount clause:

> "The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply."

The issue which the Court of Appeal in England had to grapple with was whether the Paramount clause should be interpreted as giving effect to the Hague Rules or its later amendments, the Hague Visby Rules. The Judge, at first instance, had felt constrained to hold that it was the Hague Rules that applied.

In *Poralu Marine Australia P/L v MV Dijksgracht* (2022) FCA 1038 , which is currently reserved for decision in the Full Court of the Federal Court, the first instance Judge Stewart J also had to unscramble a Clause Paramount and determine which of 4 different liability regimes applied (and actually identified 6 regimes in the course of his decision) in order to determine what package limitation applied. In the event he held the carrier entitled to limit its liability to 100 pounds.

Is it not extraordinary that in the modern era parties still using a Paramount clause which makes reference to the Hague Rules 1924? Furthermore is it not strange that such a clause has a fall-back position that, if there is no such enactment giving effect to the 1924 Brussels Convention in the country of shipment, the corresponding legislation in the country of destination is to apply and, where there is no such legislation in that country, then it is simply the Convention itself which applies. That is, a Convention which was agreed nearly one hundred years ago and at a time when no-one could have conceived the revolution that took place in the 1960s when containers came along, let alone E commerce. Such a result rules out any effect being given to amendments of that regime, unless as occurred the Court of Appeal in England held that the clause was intended to give effect to the Hague Visby regime which was in place in Belgium. As Longmore LJ said:

> " …I consider that in any case, in which a bill of lading is issued in 2008 incorporating the Hague Rules as enacted in the country of shipment and in which the country of shipment has (as here) enacted the Hague-Visby Rules, should be regarded as a case which is subject to the Hague Visby Rules rather than the (old) Hague Rules".

What if China or Australia had been the country of shipment-both having hybrid regimes comprising parts of the Hague, Hague Visby and Hamburg Rules?

The "web of conflicting rules" referred to by ICS was presumably what provoked the IG P& I to approach CMI to intervene in the US in 1997 to prevent the MLAUS proceeding with its work on drafting a Bill for Congress to amend the US COGSA, in order to avoid this unilateral evolution of maritime law in the US. This request was considered by the CMI Executive Council in November 1997 and it was decided not to do so. The Minutes of that meeting read in part: " ….while they had sympathy for the fact that concerns are raised regarding proliferation of national enactments it was realised that CMI had no power to intervene in the national developments within a country. In any event the developments within the US proved to the contrary that there is urgent need for CMI and the international community to find a new basis for uniformity in this area". Patrick Griggs was to write to the IG P & I and inform them of the views of the CMI in this respect.

It is extraordinary that the amounts pursuant to which a carrier is entitled to limit its liability in respect of packages or the weight of cargo which have not altered since 1924 in some jurisdictions or 1968 (or later when that Protocol came into force) in others. It is also extraordinary that a regime based upon the contract of carriage which is evidenced by a paper document, a bill of lading or other carriage document, is still relied upon when international carriage is largely supported in the modern era by electronic documents. As long ago as 1999, in another Australian case of *Chapman Marine P/L v Wilhelmsen Lines A/S* (1999) FCA 178 the limitation sum appeared to be exceedingly low. The carrier and its negligent stevedore (by way of the Himalaya clause) were held entitled to rely on the US COGSA limitation of US$500 when a cruiser which had been shipped from the US and valued at US$88,000 was a constructive total loss having been knocked over the side of the vessel onto the wharf when discharging containers.

The changes which have taken place in world shipping since 1924 and the increase in value of the cargoes being shipped are greater than at any time previously. How come the States who ventured into this world 100 years ago think it is appropriate that the regime, which was agreed internationally at that time, is still fit for purpose almost 100 years later? It is extraordinary that in this modern age a carrier of goods can avoid having a liability for damage which occurs if its servant or agent has been negligent in the management or the navigation of the vessel. This, at a time, when conservation and the protection of the natural environment have never been more rigorously patrolled and sought to be protected.

The history of the work done by the CMI and what motivated the CMI in the late 1980s and 1990s, can be seen in the contemporaneous documentation. The same motivations apply today, 35 years since the work began.

There were detractors of the Rotterdam Rules and the CMI responded to them. The complaints made by maritime lawyers based in South America.in the so-called Montevideo Declaration have little substance. What strikes the reader 13 years after those materials were produced are:

1. They do not reflect on the necessity for compromises to be reached to satisfy both carriers and shippers of cargo.

2. They do not take account of the years that had gone into the drafting of the Rotterdam Rules.

3. They do not recognise the considerable benefits which accrue to shippers and consignees of cargo from the Rotterdam Rules.

4. They offer no solution to the disuniformity which started from the late 1960s and has grown greater since then.

The benefits of the Rotterdam Rules can, quite simply, be identified as offering:

1. Uniformity.

2. Fair allocation of risk.

3. Reasonable monetary limitations.

4. Recognition of E-Commerce.

5. Flexibility for States in the resolution of disputes on Jurisdiction and Arbitration.

6. Safety at sea, particularly in the area of dangerous goods.

It is noteworthy that BIMCO has recently launched a campaign to accelerate the uptake of electronic bills of lading.

It needs to be recalled that acceptance of the Hague Rules also took many years to achieve. It took 12 years after the Hague Rules Convention before the United States COGSA was passed in 1936.

Interestingly part of the tortuous history in the legislative processes in the United States occurred in 1924, and is set out in the magnificent publication of the Travaux Preparatoires of the Hague Rules of Professor Michael Sturley where on page 18 of the Historical Introduction, reference is made to Senator Charles McNary of Oregon, who introduced a Bill in 1924 which inter alia (quoting from this work but inserting equivalent Rotterdam Rules (RR) provisions in brackets):

(i) Extended the period of application of the Rules from the time when the goods are received by the carrier until proper delivery thereof at the point of destination (see RR Article 12).

(ii) The carrier's obligation to exercise due diligence to make the ship seaworthy at the beginning of the voyage was expanded to an absolute obligation to make and keep the ship seaworthy throughout the voyage (see RR Article 14).

(iii) The time for giving notice of claim was extended to 10 days (See RR Article 23 (7 days).

(iv) Time for suit provision permitted filing an action up to one year after the carrier declined to pay a claim (see RR Article 62 -2 years from delivery of goods).

(v) The carrier's exception for negligence in the navigation or management of the ship was omitted in favour of an explicit provision

holding the carrier liable for any act neglect or default… of the master, mariner, pilot, or other persons employed in or about such vessel or in connection with the navigation or management thereof. (see RR Articles 17 and 18).

The fact that such provisions were thought appropriate by some to have been introduced into COGSA in 1924 and are virtually replicated in the Rotterdam Rules strongly supports ratification over 100 years later.

In recent times CMI has sought to remind its membership, and international bodies, of some of the particular benefits to be derived from the Rotterdam Rules such as E-Commerce and Safety at sea. **Attached** are materials relating to those topics.

There is also a comprehensive body of work listed on the **attached** Relevant Materials and Documents Relating to the Rotterdam Rules, culled from CMI Year Books and other sources, which are located on, and available from the CMI Website, which may assist in dealing with questions that may arise.

We should not despair. The MLAUS has embarked on a fresh process of persuasion of the US government to ratify the Rotterdam Rules. There are five ratifications and many countries have made it clear that once a major trading nation such as the US comes on board they are ready to ratify.

Finally, if however the time comes when States can truly be said to have lost the appetite to regulate contracts between shippers and carriers there is an alternative, which had originally been attempted at the end of the 19th century and again at the time CMI concluded its drafting of the Hague Rules in 1921. Industry can agree the Rules to be applied to their contracts. There is precedent for this in the York Antwerp Rules, and is described in the attached Tetley Lecture given at Tulane University by the writer. Hopefully it will not come to that.

Stuart Hetherington

Chair of CMI Standing Committee on Ratification of the Rotterdam Rules

May 2023

Summary of the Beginnings of the CMI Work on Reforming the Hague Rules Regime

At the CMI Conference in Paris in 1990 the following Declaration on Uniformity of the Law of Carriage of Goods by Sea was made:

> "1. During the 34th international Conference of the CMI held in Paris on 24 to 29 June 1990 a draft document entitled "Uniformity of the Law of the Carriage of Goods by Sea in the 1990s" was discussed by a Committee of the Conference, largely on the basis of the Hague-Visby Rules and in which discussion all 41 national associations represented at the Conference participated.
>
> 2. Following this discussion the draft was amended to clarify certain points which were raised and to reflect views expressed by delegates which were not always unanimous. The document, as amended, is attached. It was presented to a Plenary Session at the Conference on Friday 29 June and was approved as a basis for the work.
>
> 3. In approving the document as a basis for further work the hope was expressed that the international organisations concerned would continue to offer to the CMI the co-operation it has received in the past for the work that lies ahead."

The topics discussed were:

> Identity of the carrier; contracts and documents; debt cargo; period of application; exemptions from liability; limits of liability; deviation; and damages including damages from delay.

The Introduction to those considerations contains the following:

1. It is now almost 100 years since the Bill HR9176, which ultimately lead to the passage of the Harter Act 1893 was introduced in the US Congress. The Harter Act was the beginning of the movement which led to the uniformity brought about by the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, popularly known as the Hague Rules. The Convention is itself based on a set of Rules adopted by the Maritime Committee of the International Law Association at a meeting in the Hague in September 1921. It was intended that those Rules should be voluntarily incorporated by reference in bills of lading, but owing to opposition from cargo interests the Rules were recast in legislative form at a meeting of the Diplomatic Conference on Maritime Law in Brussels in August 1924.

This was the first time that freedom of contract in relation to contracts of carriage of goods by sea was restricted by an international Convention.

The Rules as adopted by the 1924 Diplomatic Conference were subsequently amended by a Protocol adopted at the Diplomatic Conference in Brussels in February 1968 (the Rules as amended will be referred to as the Hague-Visby Rules). A further amendment was made by a Protocol adopted at a Diplomatic Conference held in Brussels in December 1979.

2. The Assembly of the CMI held on 22 April 1988 decided that the problem of uniformity of the law of the carriage of goods by sea should be investigated. It was subsequently decided that the investigation should take the form of a critical review of the Hague-Visby Rules.

   Among the reasons for this decision were the following:

   First, a considerable time has elapsed since the Hague Rules were last the object of study by a Conference of the CMI. Such a study was last conducted in 1963 at the Stockholm Conference, where the draft of the Visby Protocol was approved. Secondly, many important events have occurred since then, including substantial changes in transportation technique and the documentation of contracts of carriage as well as the adoption of a new international convention the 1978 United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules). Thirdly, whether or not the Hamburg Rules achieve widespread adoption it is likely that the Hague-Visby Rules will remain in force for many years. A study by the CMI of potentially controversial provisions may be of assistance in generating greater uniformity.

3. For this purpose it was decided to select a number of problems. The problems which were chosen are the following:

   1. Identity of the carrier;
   2. Contracts and documents;
   3. Debt cargo;
   4. Period of application;
   5. Exemptions from liability;
   6. Limits of liability;
   7. Deviation; and
   8. Damages including damages resulting from delay.

June 1996 at the 29th Session of UNCITRAL, in the context of its work on electronic data interchange the following was observed:

"…existing national laws and international conventions left significant gaps regarding issues such as the functioning of the bill of lading and sea waybill, the relation of those transport documents to the rights and obligations between seller and the buyer of the goods and to the legal position of the entities that provide financing to a party to the contract of carriage."

11 May 1998: At the first meeting of the "round table" on Issues of Transport Law attended by representatives of BIMCO, ICS, FIATA, IGP&I, IAPH as well as CMI representatives including the President Patrick Griggs, Alexander Von Ziegler (Secretary-General), Frank Wiswall, (Vice President), Stuart Beare, and others including the Secretary-General of UNCITRAL, Mr Sekolec who is reported in the CMI News Letter as saying the following:

"Mr Sekolec outlined the background to the project and referred to the report of the Steering Committee. He said that delegates to UNCITRAL were quite aggravated by the situation prevailing in Maritime Law. UNCITRAL therefore had gone to the CMI in order to obtain a good picture of existing legal issues, and those which would arise in the future, and how they should be codified. This might be done by legislative action, such as a treaty, a model law or a legislative guide, or by a non-legislative text such as model contracts or model clauses. He was looking forward to the outcome of the study which would highlight the issues and indicate possible solutions. There was no need to hurry; UNCITRAL wanted the CMI to do a job which at the end of the day would command consensus. UNCITRAL wanted everyone on board, and he encouraged all international organisations to put forward their views so that there would be no surprises. He believed that this project would involve into a very important project and he appealed for cooperation."

Report on the Work of the International Sub-Committee: Uniformity of the Law of the Carriage of Goods by Sea by Francesco Berlingieri, Chairman of the International Sub Committee (1999).

"The process of unification of the law relating to liability arising out of the carriage of goods by sea, which was begun by the CMI as long ago as 1907, continued satisfactorily until the Visby Protocol of amendments to the Hague Rules was adopted in 1968. At that time there were 73 States parties to the 1924 Convention, including most of the major maritime nations of the world. Some other States had introduced the provisions of the Hague Rules into their domestic legislation without ratifying the convention. With the entry into force of the Visby Protocol in 1977, the degree of uniformity decreased, as only a limited number of States parties to the Convention became parties to the Protocol. Presently there are 60 States Parties to the

unamended 1924 Convention, 17 States Parties to the Convention as amended by the Visby Protocol and 18 States Parties to the Convention as amended by the Visby Protocol and by the SDR Protocol. Moreover, although about 8 States simultaneously ratified the protocol and denounced the unnamed convention, about 12 other States have ratified the 1968 Visby Protocol without denouncing the original 1924 Convention.

After the Hamburg Rules entered into force, the pace of disunification increased significantly. In fact, whilst the amendments made to the original Hague Rules by the two Protocols did not affect the basic provisions of the Rules, contained in Articles 3 and 4, the Hamburg Rules brought about a system of liability which was significantly different from that of the Hague and Hague-Visby Rules.

Of the 25 States of present parties to the Hamburg Rules, 12 were parties to the 1924 Convention and 13 were not. The confusion is increased by the fact that only one of the States Parties to the Hague Rules appear to have denounced them while the other 11 do not appear to have done so. Moreover several States Parties to the Hague Rules, have amended their domestic legislation with which they have given effect to the Rules by amending some of its terms and adding other terms, based on certain provisions of the Hamburg Rules.

Several States that were not parties to the Hague Rules, have in turn enacted or are moving toward the enactment of domestic legislation incorporating features of both the Hague Rules and the Hamburg Rules as well as unilateral innovation."

Statement by the Comitė Maritime International (1999).

The Trend towards Disuniformity of the Law of the Carriage of Goods by Sea.(14 January 1999)

1.1 The object of the Comitė Maritime International ("CMI") is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. In pursuance of this object the CMI began the process of unification of the law relating to liability arising out of the carriage of goods by sea in 1907. It drafted the Hague Rules, which were formally adopted at the 1924 Brussels Conference, and the Visby Protocol, which was adopted at the Brussels Conference in 1968.

1.2 The degree of international uniformity established by the widespread adoption of the Hague Rules decreased when the Hague Visby Rules entered into force in 1977, since the majority of States Parties to the Hague Rules have not ratified the Visby Protocol. This

trend significantly increased with the entry into force of the Hamburg Rules in 1992 and the enactment of domestic legislation in a number of states adopting non-uniform versions of the Hague Visby Rules.

1.3 The CMI views this trend with great concern. In response to a questionnaire sent to its Member National Associations in 1994, the majority of those national associations which replied considered that the proliferation of legal regimes relating to liability for carriage of goods by sea was an unacceptable situation and that some effort should be made by the CMI to remedy it.

1.4 The CMI then set up an International Sub-Committee ("**ISC**") which identified and debated the most relevant issues that the uniform law of the carriage of goods by sea should regulate. The ISC has met five times. The work of the ISC will be concluded in the form of a CMI Study which will be published in 1999. It summarised the areas where there is consensus and the areas where there are conflicting positions regarding principals of liability. No attempt to draft new rules will be made at this stage.

1.5 It is the view of the majority of the national associations that the existence of a third liability convention would introduce even greater disuniformity. To achieve unification it would be necessary for a new convention to supersede the Hague Rules, the Hague Visby Rules and the Hamburg Rules".

It should be borne in mind that at this time, in the late 1990s, the MLAUS was in the process of drafting a Bill to amend the United States Carriage of Goods by Sea Act 1936 (US COGSA). The IG P&I had invited the CMI to seek to persuade the MLAUS not to proceed down that path for fear of creating further disuniformity. As the CMI Executive Council noted in response:

"… we cannot interfere with the work of an individual Maritime Law Association … and in any event it may actually assist in persuading the industry that a uniform over arching Convention was needed".

The International Sub-Committee that had been set up had decided on 4 April 1989 that the CMI should consider the most relevant legal issues relating to carriage of goods by sea and that the study to be carried out should be based upon the Hague-Visby Rules. The results of that study can be found in the CMI Yearbook 1990 Paris 1.

Stuart Beare in his paper in 2010, after the Rotterdam Rules had been agreed, entitled: "The need for change and the preparatory work of the CMI" referred to the adoption by the United Nation's General Assembly on 11 December 2008 of the Rotterdam Rules and its Preamble to the

Resolution which recited concerns that the current legal regime governing the international carriage of goods by sea lacks uniformity and failed adequately to take into account modern transport practices, including containerisation, door to door transport contracts and the use of electronic transport documents. He then went on to say that the present disharmony and the problems in this area:

> "have long been the concern of the CMI. The most recent work began in 1988 where a sub-committee was set up under the chairmanship of Professor Francesco Berlingieri and a study of the current problems, albeit based on the Hague-Visby Rules, was a major topic of the CMI's Conference in Paris in 1990. Five years later a new sub-committee was formed, commonly known as the "Uniformity Sub-Committee", also under Professor Berlingieri's chairmanship. Professor Berlingieri's 1999 report was the starting point for work on the obligations and liabilities of the carrier to be included in the draft instrument which the CMI was then preparing for the UNCITRAL Secretariat. This draft instrument had its origins in the 29th Session of the UNCITRAL Commission in 1996, when it considered a proposal to include in its work programme a revision of current practices and laws in the area of carriage of goods by sea with a view to achieving greater uniformity of law. This proposal arose out of UNCITRAL's work on its Model Law on Electronic Commerce, which had exposed the fact that there were significant gaps regarding issues such as the functions of bills of lading and sea waybills. The CMI took the lead in this project, which initially was primarily concerned with topics, such as electronic transport documents, that were not governed by existing conventions, but it became apparent that this work involved some provisions of the Hague-Visby and the Hamburg Rules, and this in turn led to a review of the obligations of liabilities of the carrier and the shipper, based initially on Professor Berlingieri's reports.
>
> The CMI delivered its draft instrument to the UNCITRAL Secretariat in December 2001. This preliminary draft instrument was the starting point for the subsequent inter-governmental negotiations in UNCITRAL Working Group III. During the six-year period of these negotiations the preliminary draft instrument was changed out of all recognition into the new Convention in terms of detailed drafting, but the basic structure of the draft prepared by the CMI remained."

Stuart Beare then went on to discuss the enormous changes that had happened in shipping since 1924, contrasting the speed at which vessels moved, their dead weight capacities and the enormous changes in speed and size of vessels with the introduction of containerisation in the late 1960s, then the arrival of door to door transportation by carriers, and the introduction of many other parties who perform carriage operations. His

comments provide a useful historical perspective of the changes since 1924 and are well worth reading.

Summary: Commentaries made on the Rotterdam Rules

At the **Athens Conference (October 2008)** Papers were prepared ahead of the Conference and some given at the Conference by leaders of the shipping and maritime industry . These are contained respectively in CMI Yearbooks 2007-2008 Athens I and 2009 Athens II.

In the former group the papers were by **Michael Sturley** in advance of the UNCITRAL Commission's final determination of the Draft Convention in which he discussed: Multimodal Coverage-Scope of Application and Period of Responsibility, Freedom of contract, Jurisdiction and Arbitration, Limitation Amounts, Loss of right to limit, Himalaya clauses, Time for Suit period, Expanded shippers obligations, Electronic Commerce, Controlling parties and the right of control, and Qualifying clauses

Philippe Delebecque looked at the final version of the Convention from a **civil lawyers perspective** and finds much that might offend a civil lawyer, much that might satisfy a civil lawyer and concludes that the Convention "has the great merit to contribute to re-unify the law of the carriage of goods by sea and to modernise this topic…As K. Christoffersen (AP Moller Maersk counsel) has written:" the clearer and more harmonised the rules are, the cheaper our services become; this would be benefit for the shippers." We have to underline that, at the moment where the States are invited to ratify the convention, the UNCITRAL Convention is neither in favour of the owners nor in favour of the shippers: the convention does not seek to protect any socio-professional category. It aims to realise a balance between both interests. The convention is neither a common law convention nor a civil law convention it is, first of all, a uniform law convention where many sources are flowing."

Tomotaka Fujita in a short introductory article posed the question to be examined by the panellists at the Conference as to what extent, if at all, the "**balance of risk**" had been changed by the new Convention and mentions the principal provisions which would need to be considered in determining how, if at all, there had been any change.

Francesco Berlingieri considered the "Carrier's obligations and liabilities" and discusses the alternatives that were available and the considerations that were in the minds of the drafters. These are particularly interesting in relation to the allocation of the burden of proof, the liability regime for carriage preceding or subsequent to carriage by sea, and thus the inter relationship with other conventions: CMR, COTIF-CIM and Warsaw.

Kofi Mbiah (former Chair of the Legal Committee of the IMO) also discussed the **liability and limitation of liability regime** and the effort made in the drafting to balance the interest of cargo and carriers, and

points out that in such an exercise of compromise "no-one leaves completely satisfied."

Ingeborg Olebakken looked at **the shipper's obligations and liabilities** and the discussions that took place in the UNCITRAL Working Group on these issues.

In the latter group there is a useful "**Brief History" of CMI's involvement** in this project from 1988.

And papers given at the Conference by:

Hannu Honka on the **Scope of Application and Freedom of Contract** in which the alternative approaches that were considered and their historical contexts, again highlighting the compromises that were necessarily made and poses the question as to what would come instead if the Rotterdam Rules should fail: He suggests: "Regional solutions? National solutions? A new global convention? To hope for the last mentioned development now and after Rotterdam Rules have been adopted is to my mind completely unrealistic. The first two are not desirable. I hope that the Rotterdam Rules are looked at with these serious macro perspectives in mind."

Kate Lannan, former Secretary of UNCITRAL Working Group III, gave an "Overview of the Convention from an UNCITRAL Perspective". She reminded the audience that the impetus for this work came from UNCITRAL's Working Group on Electronic Data Interchange or EDI resulting in a collaborative relationship with CMI in the late 1990s. She expressed the view that the end product: "is a comprehensive instrument governing international contracts of carriage from "door to door" that will modernise the law, making it much better suited for the needs of today's commerce. Importantly this is accomplished while preserving the existing international regimes in respect of unimodal transportation, such as carriage by road, by rail or by inland waterway. We believe that the Draft Convention will give commercial actors and those involved in the international carriage of goods the opportunity to benefit from predictability and uniformity in an area that has to date characterised by competing multilateral, regional and domestic regimes. The new Convention will thus improve conditions for international trade, enhance efficiency for commercial transactions, and reduce the overall cost of doing business internationally."

She also highlighted the involvement in the UNCITRAL Working Group sessions of IGOs and NGOs including UNCTAD, UNECE, ICC, IUMI, FIATA, ICS, BIMCO, IAPH, European Shippers Council, and others.

Knut Pontoppidan, Executive Vice President of AP Moller-Maersk gave a presentation on the "Shipowners' View on the UNCITRAL Convention. He helpfully summarised his paper at its commencement and

described the "main argument put forward" as being "that international harmonisation of maritime transport law is essential for the smooth handling of international trade to the benefit of carriers and customers. The existing port to port rules are no longer adequate to meet the complex logistical demands of the 21st century's door to door delivery services, which call for a new international convention on multimodal transports with a maritime leg." He continued that the "answer to these calls" is the UNCITRAL Convention, which provides "an attractive and modern set of rules", and "which "takes a balanced approach to the rights and obligations of shippers and carriers. Combined this makes for an attractive Convention that meets the requirements of todays liner shipping.". He went on to say that to achieve that goal ratification was needed by 20 States "and in this regard, we all have a role to play." In his paper he stressed the financial costs of disuniformity, and the needs for legal certainty and predictability. He referred to the possibility in the 1990s that the US would adopt its own regime but thanks to the efforts of WSC and NIT League the US decided to await the outcome of discussions within CMI and UNCITRAL.. He identified the reasons why the Convention "resoundingly" provided the answers industry needed. He described the Convention as "an ambitious attempt for a comprehensive and attractive convention for maritime transport and connected transports" which caters "to the need of international liner shipping." He said: "I think I speak for all shipowners and their associations, ICS and the WSC included when I say that the UNCITRAL Convention should be ratified quickly and on a broad basis in order to dissuade national and regional authorities from filling the vacuum with domestic or regional regulations." As part of an industry group he said he "had conveyed to the European Commission the importance of providing assistance to Member States to aid their ratification of the Convention. EMSA could be the instrumental vehicle in that effort." He also mentioned that the national shipowners in the Nordic countries had pledged their efforts towards "ensuring that Denmark, Sweden and Norway are able to ratify the Convention in 2010 or 2011-making these three countries the front runners on the way towards the 20 ratifications required".

Johanne Gauthier spoke on the "New Elements. The facilitation of Electronic Commerce" and explains the background to the incorporation of these matters in the Convention-(she having been involved in the study since at least the CMI Conference in Paris 1990) and the terminology used in the Convention, such as "Electronic transport records, the principle of "medium" and "technological" neutrality" as being one of the drafting goals, functional equivalence, (that is functionality as a receipt for the goods and evidence of the contract of carriage. And negotiability, via "exclusive control" and "right of control". As she said: "the Draft Convention certainly paves the way for a new way of doing business in a paperless world. It

also provides for more solid foundations to Sea waybills (paper or electronic form)…".

Gertjan van der Ziel considered the **"Multimodal Aspects of the Rotterdam Rules"**, and what he described as "One of the most contentious subjects during the whole discussion on this new convention." He described the tension between the work done to produce the Convention and the existing land based regimes and the ultimate resolution of the problem by the "maritime plus" regime. In particular he described the provisions in Articles 26 and 82 directed at resolving this conflict and how they are intended to work.

Reference should also be made to **Stuart Beare's paper "The Rotterdam Rules-some controversies"** in CMI Yearbook 2010 pages 516-520, in which he referred to "door to door transport" and the related overlap with conventions such as CMR, COTIF/CIM and Montreal, .and the role of national law. (These being covered by Articles 26 and 82.) He also discussed "performing parties (in particular terminal operators), electronic transport records, delivery of goods(referring to articles 43, 47).

At the CMI Beijing Conference (October 2012) papers included a report on the Conference by **Michael Sturley** which included the welcome from the CMI President Karl Gombrii who had read a message from Renaud Sorieul, the then Secretary General of the United Nations Commission on International Trade Law (UNCITRAL) who had noted that an UNCITRAL Working Group had drafted The Rotterdam Rules "based on the CMI's preliminary text, to harmonise and modernise the Law of International Carriage of Goods by Sea". He added that both developing and developed countries, as well as shipper and carrier nations, had indicated their acceptance of the Convention, and he looked forward to the future.

As Michael Sturley remarked a number of speakers reported on regional developments. He himself noted that many States seemed to be waiting to see what the United States did, but also that in Europe, Denmark, Norway and The Netherlands the political decision had been taken to ratify the Rotterdam Rules, and a number of African States had incorporated the Rules into their community code (Cameroon, Congo, Gabon, Equatorial Guinea, The Central African Republic and Chad).

Alexander Von Ziegler set out the lengthy history leading up to the Rotterdam Rules, particularly highlighting the movement towards electronic commerce as being a key driver of a need for a new international convention in this area.

Kofi Mbiah, former Chairman of the Legal Committee of the IMO noted that for developing countries, mostly consumers of shipping services, the Hague Rules which had held sway for so many years were unfair and

worked against their interests. He then discussed some of the key reforms included within the Rotterdam Rules such as:

> Scope of application, period of responsibility, electronic transport records, the liability of the carrier, delay, deviation, deck cargo, obligations of the shipper, limitation of liability, time for suit, jurisdiction and arbitration and volume contracts which he described as the most controversial.

He concluded by describing the Rotterdam Rules as a "mixed bag" but added: "

> The Rules thus represent a compromise and like all compromises no-one group leaves completely satisfied but all leave in the hope that they have taken something away. That is the spirt of the Rotterdam Rules which must be made to reflect in the judicial interpretation of the Rules" (emphasis added).

For **shipper interests**, he pointed out, they would find comfort in "the deletion of the nautical fault rule, the continuing obligation of due diligence and seaworthiness, the inclusion of provisions on delay, jurisdiction and arbitration (albeit under an opt-in-opt-out) clause" and he suggested "shippers would also find satisfaction and solace in the provisions on deck cargo, the extension of the time of suit, increased limitation amounts, the provisions on delivery, the widened scope of application and responsibility of the carrier, not to mention the clarity of language in a number of provisions even if they suffer from verbosity".

For **shipowners** he suggested that "the adoption of the format of the Hague-Visby Rules with respect to the basis of liability of the carrier, with the litany of exculpatory clauses, the reversed burden of proof on the claimant, the increased scope for limitation of liability (breaches of its obligations), the flexibility of a network liability regime, the Himalaya protection (now clearly covering maritime performing parties) are indeed welcome". In addition ship owner interests, he pointed out, "have the benefit of flexibility in volume contracts, the provision of detailed rules on all documentary aspects, as well as the detailed provision and obligations of the shipper, strict liability of the shipper with respect to dangerous goods etc. Indeed these are some of the underlying tenets of compromise reflected in the spirit of the rules" He also highlighted the "extensive consultations with major stakeholders" which had taken place.

Andrew Bardot, Solicitor and Secretary and Executive Officer of the International Group of P & I Associations gave a paper in which he discussed: "The UN Convention on the Contracts of International Carriage of Goods Wholly or Partly by Sea " The Rotterdam Rules" Practical Implications for Carriers". In his introductory remarks he said as follows:

> "The provisions of the Convention, the "rules", extend and modernise the present international rules governing contracts of maritime carriage of goods. The objective is that the rules will replace the Hague Rules, the Hague-Visby Rules and the Hamburg Rules, and that they will achieve uniformity of law in the field of maritime carriage and, hopefully, head off the ever present threats to all concerned interests of a patchwork of disparate domestic and regional legislation relating to the carriage of goods by sea. A worthy objective, but of course one which self-evidently is entirely dependent upon significant and wide-spread support by states through the ratification process. Currently there are 24 signatory states but only 2 ratifications of the required 20 to bring the rules into force. Therein lies the real challenge. (Emphasis added)

He identified the "Negative implications for carriers" as being:

> "Loss of the carriers 'nautical fault' exception from liability; more stringent seaworthiness obligations; increased package/unit of weight liability limits; the extension of time limits for commencing suit; maritime performing parties; dispute resolution forum choice and club cover ratification."

As to the "Positive implications for carriers" he identified:

> "A multi-modal convention; some beneficial aspects of existing Conventions and regimes retained; Shippers' obligations and liabilities in relation to cargo description and particulars and in relation to dangerous cargo; Deviation, Deck cargo application; Liability for delay; Delivery of goods; Greater freedom of contract in liner trades; and Provisions for electronic cover."

He summarised his comments as follows:

> "From both the carrier and the Club perspective, widespread ratification and adoption of the rules would promote uniformity/consistency and help to head off threats of conflicting and disparate national and regional legislation and regulation of carriers' rights and obligations". As an objective, this is desirable and welcome.
>
> There is general support for the rules from ship owner organisations including ICS, ECSA, BIMCO and WSC. Such support indicates that from the carrier's perspective, the rules are viewed positively notwithstanding the negative ramifications of certain aspects of the Rules.
>
> Undoubtedly application of the rules would increase the cost of claims to carriers and their P&I insurers, but this would be viewed as a price

worth paying if widespread ratification promotes the cause of uniformity and consistency in the approach towards assessment for carriers liabilities."

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea



UNITED NATIONS

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

UNITED NATIONS
Vienna, 2009

Note: This text includes the technical corrections notified in Depositary Notification C.N.563.2012.TREATIES-XI.D.8 and effected in Depositary Notification C.N.105.2013. TREATIES-XI.D.8.

UNITED NATIONS PUBLICATION
Sales No. E.09.V.9
ISBN 978-92-1-133672-6

© United Nations, June 2014. All rights reserved, worldwide.

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

Contents

Resolution adopted by the General Assembly 1

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 4

Chapter 1. General provisions 5

Article 1. Definitions 5

Article 2. Interpretation of this Convention 8

Article 3. Form requirements 8

Article 4. Applicability of defences and limits of liability 9

Chapter 2. Scope of application 9

Article 5. General scope of application 9

Article 6. Specific exclusions 10

Article 7. Application to certain parties 10

Chapter 3. Electronic transport records 10

Article 8. Use and effect of electronic transport records 10

Article 9. Procedures for use of negotiable electronic transport records 11

Article 10. Replacement of negotiable transport document or negotiable electronic transport record 11

Chapter 4. Obligations of the carrier 12

Article 11. Carriage and delivery of the goods 12

Article 12. Period of responsibility of the carrier 12

Article 13. Specific obligations 13

Article 14. Specific obligations applicable to the voyage by sea 13

Article 15. Goods that may become a danger 13

Article 16. Sacrifice of the goods during the voyage by sea 14

Chapter 5. Liability of the carrier for loss, damage or delay 14
Article 17. Basis of liability 14
Article 18. Liability of the carrier for other persons 16
Article 19. Liability of maritime performing parties 16
Article 20. Joint and several liability 17
Article 21. Delay 17
Article 22. Calculation of compensation 17
Article 23. Notice in case of loss, damage or delay 18

Chapter 6. Additional provisions relating to particular stages of carriage 19
Article 24. Deviation 19
Article 25. Deck cargo on ships 19
Article 26. Carriage preceding or subsequent to sea carriage 20

Chapter 7. Obligations of the shipper to the carrier 20
Article 27. Delivery for carriage 20
Article 28. Cooperation of the shipper and the carrier in providing information and instructions 21
Article 29. Shipper's obligation to provide information, instructions and documents 21
Article 30. Basis of shipper's liability to the carrier 21
Article 31. Information for compilation of contract particulars ... 22
Article 32. Special rules on dangerous goods 22
Article 33. Assumption of shipper's rights and obligations by the documentary shipper 23
Article 34. Liability of the shipper for other persons 23

Chapter 8. Transport documents and electronic transport records 23
Article 35. Issuance of the transport document or the electronic transport record 23
Article 36. Contract particulars 24
Article 37. Identity of the carrier 25
Article 38. Signature 25
Article 39. Deficiencies in the contract particulars 26
Article 40. Qualifying the information relating to the goods in the contract particulars 26

Article 41. Evidentiary effect of the contract particulars 27
Article 42. "Freight prepaid" 28

Chapter 9. Delivery of the goods 28
Article 43. Obligation to accept delivery 28
Article 44. Obligation to acknowledge receipt 29
Article 45. Delivery when no negotiable transport document or negotiable electronic transport record is issued 29
Article 46. Delivery when a non-negotiable transport document that requires surrender is issued 30
Article 47. Delivery when a negotiable transport document or negotiable electronic transport record is issued 30
Article 48. Goods remaining undelivered 32
Article 49. Retention of goods 33

Chapter 10. Rights of the controlling party 34
Article 50. Exercise and extent of right of control 34
Article 51. Identity of the controlling party and transfer of the right of control 34
Article 52. Carrier's execution of instructions 35
Article 53. Deemed delivery 36
Article 54. Variations to the contract of carriage 36
Article 55. Providing additional information, instructions or documents to carrier 37
Article 56. Variation by agreement 37

Chapter 11. Transfer of rights 37
Article 57. When a negotiable transport document or negotiable electronic transport record is issued 37
Article 58. Liability of holder 38

Chapter 12. Limits of liability 38
Article 59. Limits of liability 38
Article 60. Limits of liability for loss caused by delay 39
Article 61. Loss of the benefit of limitation of liability 39

Chapter 13. Time for suit 40
Article 62. Period of time for suit 40
Article 63. Extension of time for suit 40
Article 64. Action for indemnity 41
Article 65. Actions against the person identified as the carrier 41
Chapter 14. Jurisdiction 41
Article 66. Actions against the carrier 41
Article 67. Choice of court agreements 42
Article 68. Actions against the maritime performing party 42
Article 69. No additional bases of jurisdiction 43
Article 70. Arrest and provisional or protective measures 43
Article 71. Consolidation and removal of actions 43
Article 72. Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance 44
Article 73. Recognition and enforcement 44
Article 74. Application of chapter 14 44
Chapter 15. Arbitration 44
Article 75. Arbitration agreements 44
Article 76. Arbitration agreement in non-liner transportation 46
Article 77. Agreement to arbitrate after a dispute has arisen 46
Article 78. Application of chapter 15 46
Chapter 16. Validity of contractual terms 46
Article 79. General provisions 46
Article 80. Special rules for volume contracts 47
Article 81. Special rules for live animals and certain other goods . 48
Chapter 17. Matters not governed by this Convention 49
Article 82. International conventions governing the carriage of goods by other modes of transport 49
Article 83. Global limitation of liability 49
Article 84. General average 49
Article 85. Passengers and luggage 50
Article 86. Damage caused by nuclear incident 50

Chapter 18. Final clauses 50
Article 87. Depositary 50
Article 88. Signature, ratification, acceptance, approval or accession. 50
Article 89. Denunciation of other conventions 51
Article 90. Reservations. 52
Article 91. Procedure and effect of declarations 52
Article 92. Effect in domestic territorial units. 52
Article 93. Participation by regional economic integration organizations 53
Article 94. Entry into force 53
Article 95. Revision and amendment. 54
Article 96. Denunciation of this Convention 54

Resolution adopted by the General Assembly

63/122. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Concerned that the current legal regime governing the international carriage of goods by sea lacks uniformity and fails to adequately take into account modern transport practices, including containerization, door-to-door transport contracts and the use of electronic transport documents,

Noting that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Convinced that the adoption of uniform rules to modernize and harmonize the rules that govern the international carriage of goods involving a sea leg would enhance legal certainty, improve efficiency and commercial predictability in the international carriage of goods and reduce legal obstacles to the flow of international trade among all States,

Believing that the adoption of uniform rules to govern international contracts of carriage wholly or partly by sea will promote legal certainty, improve the efficiency of international carriage of goods and facilitate new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Noting that shippers and carriers do not have the benefit of a binding and balanced universal regime to support the operation of contracts of carriage involving various modes of transport,

Recalling that, at its thirty-fourth and thirty-fifth sessions, in 2001 and 2002, the Commission decided to prepare an international legislative instrument governing door-to-door transport operations that involve a sea leg,[1]

Recognizing that all States and interested international organizations were invited to participate in the preparation of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea and in the forty-first session of the Commission, either as members or as observers, with a full opportunity to speak and make proposals,

Noting with satisfaction that the text of the draft Convention was circulated for comment to all States Members of the United Nations and intergovernmental organizations invited to attend the meetings of the Commission as observers, and that the comments received were before the Commission at its forty-first session,[2]

Taking note with satisfaction of the decision of the Commission at its forty-first session to submit the draft Convention to the General Assembly for its consideration,[3]

Taking note of the draft Convention approved by the Commission,[4]

Expressing its appreciation to the Government of the Netherlands for its offer to host a signing ceremony for the Convention in Rotterdam,

1. *Commends* the United Nations Commission on International Trade Law for preparing the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea;

2. *Adopts* the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, contained in the annex to the present resolution;

---

[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 319–345; and ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), paras. 210–224.

[2] A/CN.9/658 and Add.1–14 and Add.14/Corr.1.

[3] *Official Records of the General Assembly. Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 298.

[4] Ibid., annex I.

3. *Authorizes* a ceremony for the opening for signature to be held on 23 September 2009 in Rotterdam, the Netherlands, and recommends that the rules embodied in the Convention be known as the "Rotterdam Rules";

4. *Calls upon* all Governments to consider becoming party to the Convention.

67th plenary meeting
11 December 2008

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Convinced that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation among all States on a basis of equality, equity and common interest, and to the well-being of all peoples,

Recognizing the significant contribution of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed in Brussels on 25 August 1924, and its Protocols, and of the United Nations Convention on the Carriage of Goods by Sea, signed in Hamburg on 31 March 1978, to the harmonization of the law governing the carriage of goods by sea,

Mindful of the technological and commercial developments that have taken place since the adoption of those conventions and of the need to consolidate and modernize them,

Noting that shippers and carriers do not have the benefit of a binding universal regime to support the operation of contracts of maritime carriage involving other modes of transport,

Believing that the adoption of uniform rules to govern international contracts of carriage wholly or partly by sea will promote legal certainty, improve the efficiency of international carriage of goods and facilitate new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Have agreed as follows:

Chapter 1
General provisions

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, keeping, 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 (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 "non-negotiable" 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

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

(*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 12, and subject to article 26, 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.

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 harmless, 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 not performed 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 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 and either (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 imposes 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

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.

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 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:

(*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:

(*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) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and

(*b*) Article 36, subparagraph 1 (*d*), if:

(i) Neither 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 was no physically practicable or commercially reasonable means of checking the weight 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 circumstances and in the manner set out in article 40:

(*a*) A transport document or an electronic transport record is prima 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, when 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.

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;

(*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 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 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.

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 limit done 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 would probably result.

Chapter 13
Time for suit

Article 62
Period of time for suit

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.

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

(*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 therewith 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, 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.

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 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.

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.

DONE at New York, this eleventh day of December two thousand and eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.



ISBN 978-92-1-133672-6



V.14-03633

UNCITRAL United Nations Commission on International Trade Law

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

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

COMITE MARITIME INTERNATIONAL

Rotterdam Rules and E Commerce

In the last several years, we have been hearing about the revolutionary change that autonomous ships will bring to international shipping. More recently, it is the technological developments in electronic commerce, such as "Blockchain"; that it is said will revolutionize shipping.

A recent article by Kyunghee Park published by Bloomberg, dated 19 April 2018, opens with the following paragraph:

> "Globalisation has brought the most advanced trading networks the world has seen, with the biggest, fastest vessels, robot-operated ports and vast computer databases tracking cargoes. But it all still relies on millions and millions of paper documents."

The article goes on to show how that is changing, and describes the revolution taking place "on a scale not seen since the move to standard containers".

British futurist, Kate Adamson, has referred to "this digital industrial revolution … opening the gates to massive gains in productivity and efficiency". (Readers may be familiar with her book "Shipping and the 800-lb Gorilla").

It is difficult to see how all this change can take place when the cargo liability regime that still prevails in international carriage documentation was agreed in 1924 (based on the Harter Act of the United States of 1893 and the Visby Protocol of 1968 not making any changes that would assist E Commerce). The only realistic answer is that States will need to ratify the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008 (the Rotterdam Rules) expeditiously.

What has been forgotten in the lethargy of States (except the four who have ratified them) and carriers since the Rotterdam Rules were adopted in 2008 is that they, unlike any of their

predecessor regimes (Hague, Hague Visby, and Hamburg), actually deal with electronic commerce.

An article in the Economist (April 25, 2018) entitled "Thinking outside the box: Global logistics" explains the significance of the problem:

> "Removing administrative blockages and outdated practices would, by some accounts, do more to boost international trade than eliminating tariffs. The UN reckons that putting all the Asia-Pacific regions trade-related paperwork online could slash the time it takes to export goods by up to 44%, cut the cost of doing so by up to 31% and boost exports by as much as $257 billion a year".

The article identified an institutional obstacle to reform as the failure to ratify the Rotterdam Rules which would "put electronic documents in international shipping on a firm legal footing".

When the CMI drafted its Instrument on Transport Law, which was provided to UNCITRAL in 2001 as the basis for the negotiations that ultimately produced the Rotterdam Rules, it declared that "there should be a clear statement in a preamble or in the Instrument that one of the intentions of the Instrument is to remove paper based obstacles to electronic transactions by adopting the relevant principles of the UNCITRAL Model Law on Electronic Commerce, 1996".

The CMI Yearbook 2001, in its introduction to what was the final version of the "Outline Instrument" made the following far sighted comments:

> "Electronic commerce
>
> The Instrument should apply to all contracts of carriage, including those concluded electronically. To reach this goal, the Instrument must be medium neutral as well as technology neutral. This means that it must be adapted to all types of systems, not only those based on a registry such as Bolero. It must be suited to systems operating in a closed environment (such as an intranet), as well as those operating in an open environment (such as the internet). One must also be careful not to be limited by what is currently in use, keeping in mind that technology evolves rapidly and that what appears impossible today is probably already on the current agenda of software developers."

The preamble to the Rotterdam Rules Convention, after referring to the Hague, Hague Visby and Hamburg Rules, noted that the Convention had been drafted:

> "Mindful of the technological and commercial developments that have taken place since the adoption of those Conventions and of the need to consolidate and modernise them."

The definitions section in the Rotterdam Rules gives a clue to the transformative nature of the Rotterdam Rules compared with its predecessors. There are definitions of the following words ""electronic communication"; "electronic transport record"; "negotiable electronic transport record"; "non-negotiable electronic transport record"; "the "issuance" of a negotiable electronic transport record; and "the "transfer" of a negotiable electronic transport record.

Chapter 3 of the Rotterdam Rules is entitled "Electronic transport records" and contains Articles 8 to 10 enabling the use of electronic transport records which are functional equivalents to transport documents such as bills of lading.

In addition Chapter 8 is headed "Transport documents and electronic transport documents" and comprises Articles 35 to 42 and Chapter 9 deals with "delivery of the goods" and comprises Articles 43 to 49 both of which include parallel provisions applicable to paper documents and their electronic equivalents; Chapter 10 "rights of the controlling party" (Articles 50 to 56) and Chapter 11 "Transfer of rights" (Articles 57 to 58) also address issues not covered by the previous regimes. All these provisions were carefully designed to be applicable to both paper and electronic records.

In addition to the use of electronic transport records the Rotterdam Rules create the possibility for using electronic communications to transfer the right of control.

It will be seen from this brief description of the contents of the Rotterdam Rules that they were drafted with electronic commerce in mind, unlike their predecessors.

Those involved in the transport chain, including carriers, port authorities, cargo interests, insurers and others involved in international trade should recognize the significance of the Rotterdam Rules in the context of electronic commerce, and they need to encourage their national governments to ratify the Convention as soon as possible.

Since this article was written on 21 May 2018 the Dutch Ministry of Justice has submitted two bills to Parliament, one for the approval of the ratification of the Rotterdam Rules and the other to make changes to Dutch transport law, as enacted in its Civil Code, in order to correspond to the Rotterdam Rules.

There seems to be a growing realisation of the necessity for ratification and momentum to achieve the entry into force of the Rotterdam Rules.

Stuart Hetherington
President, Comité Maritime International

Professor Tomotaka Fujita
Chair of CMI Standing Committee on Carriage of Goods

19 July 2018

Promoting Treaty Rati

For many years the International Chamber of Shipping (ICS) and the International Shipping Federation (ISF) have been conducting a global campaign to stress the vital necessity for governments to ratify and implement maritime Conventions adopted by the **International Maritime Organization (IMO)**, the **International Labour Organization (ILO)** and other United Nations bodies that impact on shipping. This brochure reiterates the reasons behind the ICS and ISF campaign and provides an update on recent developments.

ICS and ISF member national shipowners' associations continually emphasise to their governments that shipping is an inherently international industry which depends on a global regulatory system to operate efficiently.

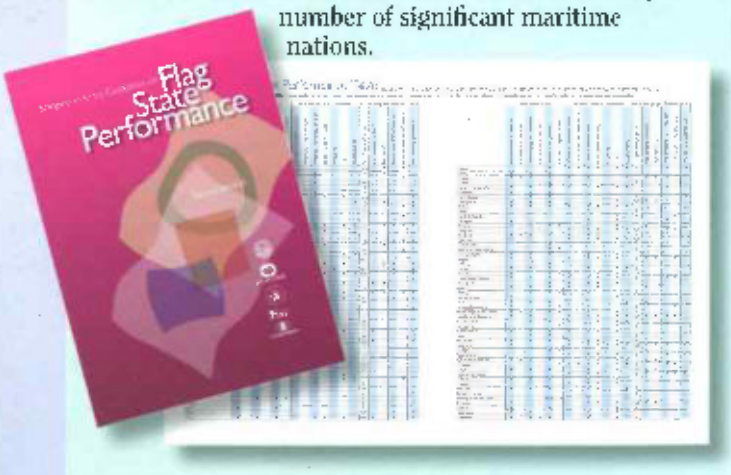
It is crucial that the same regulations governing such matters as safety, environmental protection, liability, and seafarers' working conditions apply to all ships in international trade and that the same laws apply to all parts of the voyage. The alternative would be a web of conflicting rules and regulations that would compromise the efficiency of global trade, around 90% of which is carried by sea.

It is therefore very important that governments appreciate that the smooth operation of a global maritime regulatory regime is impeded by any failure or delay on their part in the ratification and implementation of international instruments to which they have agreed at IMO, ILO and other Diplomatic Conferences.

The failure of new Conventions to enter into force or become widely ratified also gives encouragement to the promotion of unwelcome unilateral or regional regulation.

ICS and ISF have identified various international maritime Conventions which they believe are especially important for all governments to ratify as a matter of priority.

There are many other Conventions that require wider ratification and the reasons for highlighting only certain instruments are complex (see opposite). Indeed, as can be seen by the Round Table of international shipping associations' Flag State Performance Table (see www.marisec.org/flag-performance.htm) there are several core Conventions that have been in force for many years but which have still not been ratified by a number of significant maritime nations.





fication: The ICS and IS

IMO Instuments

International Convention on Control and Management of Ships' Ballast Water (BWM), 2004



ICS remains concerned that, in the continuing absence of entry into force of a global regime, there is an increasing proliferation of national and local regulations at variance with the IMO Convention, and resultant difficulties as shipowners struggle to comply with conflicting requirements at different parts of a voyage. For example, individual US States are introducing micro-organism 'kill standards' that are 100 times more stringent than those stipulated by the BWM Convention, for which treatment technology does not exist.

Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976



The LLMC Protocol entered into force in 2004 and increases significantly the liability limits for a number of maritime claims. The increased levels of compensation for claimants and the international community's continued endorsement of the concept of limitation of liability are supported by ICS, which is promoting the widespread ratification of this important instrument.

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996, and Protocol of 2010

The HNS Convention is modelled on the highly successful international oil pollution liability and compensation regime and will establish an international regime for HNS damage, the cost of which will be shared between shipowners and HNS cargo receivers. However the failure to enter into force has been giving encouragement to regional action and has been cited in a number of European Commission proposals. In 2010, IMO adopted a Protocol to the HNS Convention intended to overcome obstacles to ratification, which governments should no longer have any reason to delay. Until the HNS Convention enters into force, an existing EU Directive on Environmental Liability for Preventing and Remedying Environmental Damage will apply to HNS incidents in the waters of EU Member States.

International Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong), 2009

Early entry into force will help improve safety and environmental standards in ship recycling yards and impose mandatory requirements on ships, such as the maintenance of inventories of hazardous materials, from the time of their construction to their final demolition. It will also require that ships are only sold to recycling yards that meet the new standards. The Convention is fully supported by the shipping industry as an alternative to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, which was never intended to be applied to international shipping and which would make efficient ship recycling extremely impractical.

Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974

The Protocol introduces compulsory insurance for passenger personal injury claims and other mechanisms to assist passengers in obtaining compensation, the level of which is increased significantly. An EU Regulation, which incorporates the Protocol, has determined that EU Member States will apply the Protocol in the EC by January 2013 at the latest. The Protocol has been ratified already by a few countries both within and outside the EU and, in the interests of consumer protection, it is clearly desirable that it achieves global acceptance as soon as practicable.



MARPOL Protocol of 1997 (MARPOL Annex VI - Prevention of Atmospheric Pollution by Ships)

Although MARPOL Annex VI entered into force in 2005 and was amended in 2008 in order to reduce atmospheric pollution dramatically, the relatively low number of ratifications could lead to problems when, as agreed by IMO, Annex VI is the mechanism used for the early introduction of global measures to reduce CO_2 emissions from shipping, since any requirements that do not apply to all ships, regardless of flag, will be bad for the environment and cause serious market distortions. In the meantime, non-parties to Annex VI are less likely to comply with existing requirements concerning sulphur content in fuel, such as the need to ensure the provision of bunker delivery notes confirming that the fuel quality meets IMO requirements.



F Campaign

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules), 2009



The Rotterdam Rules, adopted by the United Nations Commission on International Trade Law (UNCITRAL), are intended to replace existing cargo liability regimes such as the Hamburg and Hague/Visby Rules. It is vital that the new regime is ratified to prevent a proliferation of regional cargo liability regulations, and to ensure a global regime that reflects modern 'door to door' services involving other transport modes in addition to the sea leg, and 'just in time' delivery practices. If the Rotterdam Rules do not take hold then the United States and the EU will almost certainly pursue their own regional regimes and the opportunity for global uniformity will be lost for another generation.

ILO Instruments

Maritime Labour Convention (MLC), 2006

For the first time, 67 ILO legal instruments covering such matters as conditions of employment, seafarers' hours of work, medical treatment, repatriation, and crew accommodation at sea have been consolidated into a single 'super convention' that can be enforced internationally both by flag state inspection and port state control. Its entry into force will provide the 'level playing field' of international maritime employment standards which shipowners and seafarers require, representing the 'fourth pillar' of global maritime regulation along with the IMO SOLAS, MARPOL and STCW Conventions.

Seafarers' Identity Documents Convention (Revised), 2003 (ILO 185)

ILO 185 was adopted as part of the package of maritime security measures following the terrorist attacks of 2001. As a quid pro quo for requiring seafarers to carry new identity documents, port states are required to facilitate shore leave and transits to and from ships, for example by not requiring seafarers to obtain visas from overseas consulates in advance of their arrival. As well as addressing the security concerns of port states, the wide ratification of the Convention should materially assist the welfare of seafarers who are increasingly deprived of shore leave in certain countries.

Campaign Update

The IMO Anti-Fouling Systems (AFS) Convention and the **IMO Bunker Spill Liability Convention,** which featured in the last ICS/ISF campaign update, have now entered into force. However, more widespread ratification is still needed to ensure global protection for the environment and potential pollution claimants.

The IMO Ballast Water Management (BWM) Convention has almost received the necessary ratifications to enter into force, assisted by the finalisation by IMO of Guidelines on implementation and the type approval of equipment. However, questions remain about the application of the Convention to some existing ships.

The ILO Maritime Labour Convention (MLC) is expected to enter into force by 2013. It has already been ratified by most of the large open registers and as a result of agreement between employers and unions, it is expected to be ratified by most EU States and enforced through Port State Control. In practice, MLC minimum rest hour requirements will be enforced from 2012, due to the entry into force of similar, though even stricter requirements, contained in the 'Manila Amendments' to the IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 2010).

The Protocol to the HNS Convention was agreed in 2010 following ICS's willingness to accept a compromise, whereby shipowner's liability in incidents involving packaged dangerous goods will be increased, in order to achieve an equitable sharing of the costs of compensation between shipowners and cargo interests. Adoption of the Protocol will hopefully pave the way for the early entry into force of the IMO HNS Convention.

The IMO Ship Recycling Convention and early implementation of its requirements are being actively encouraged through the inter-industry Guidelines on Transitional Measures for Shipowners Selling Ships for Recycling, which are specifically intended to help improve safety and environmental conditions in recycling yards in advance of the entry into force of the new Convention.

The Rotterdam Rules on cargo liability are being actively promoted by ICS. Early ratification by major trading nations will almost certainly give widespread acceptance critical momentum, and the United States is shortly expected to put ratification before Congress.

MARPOL Annex VI has recently been amended to include mandatory technical measures to reduce shipping's CO_2 emissions – the first global agreement for an entire industrial sector of its kind.

ICS is the principal international trade association representing all sectors and trades of the shipping industry. Together with representatives of its member national shipowners' associations, ICS participates actively at virtually every committee meeting of the International Maritime Organization (IMO), and contributes significantly to the development of all IMO regulations which impact on international shipping.



IMO in session



ILO Maritime Conference

ISF is the principal international organisation for maritime employers. As an official International Labour Organization (ILO) 'social partner', ISF is responsible for co-ordinating the votes of the national shipowners' association representatives who adopt ILO maritime Conventions as part of the ILO tripartite process, together with governments and seafarers' representatives co-ordinated by the International Transport Workers' Federation (ITF). ISF also represents maritime employers at IMO.



Promoting Maritime Treaty Ratification

Published by
International Chamber of Shipping
12 Carthusian Street
London EC1M 6EZ

Tel +44 20 7417 8844
Fax +44 20 7417 8877
ics@marisec.org

www.marisec.org

Inter-Industry
Anti Piracy Campaign

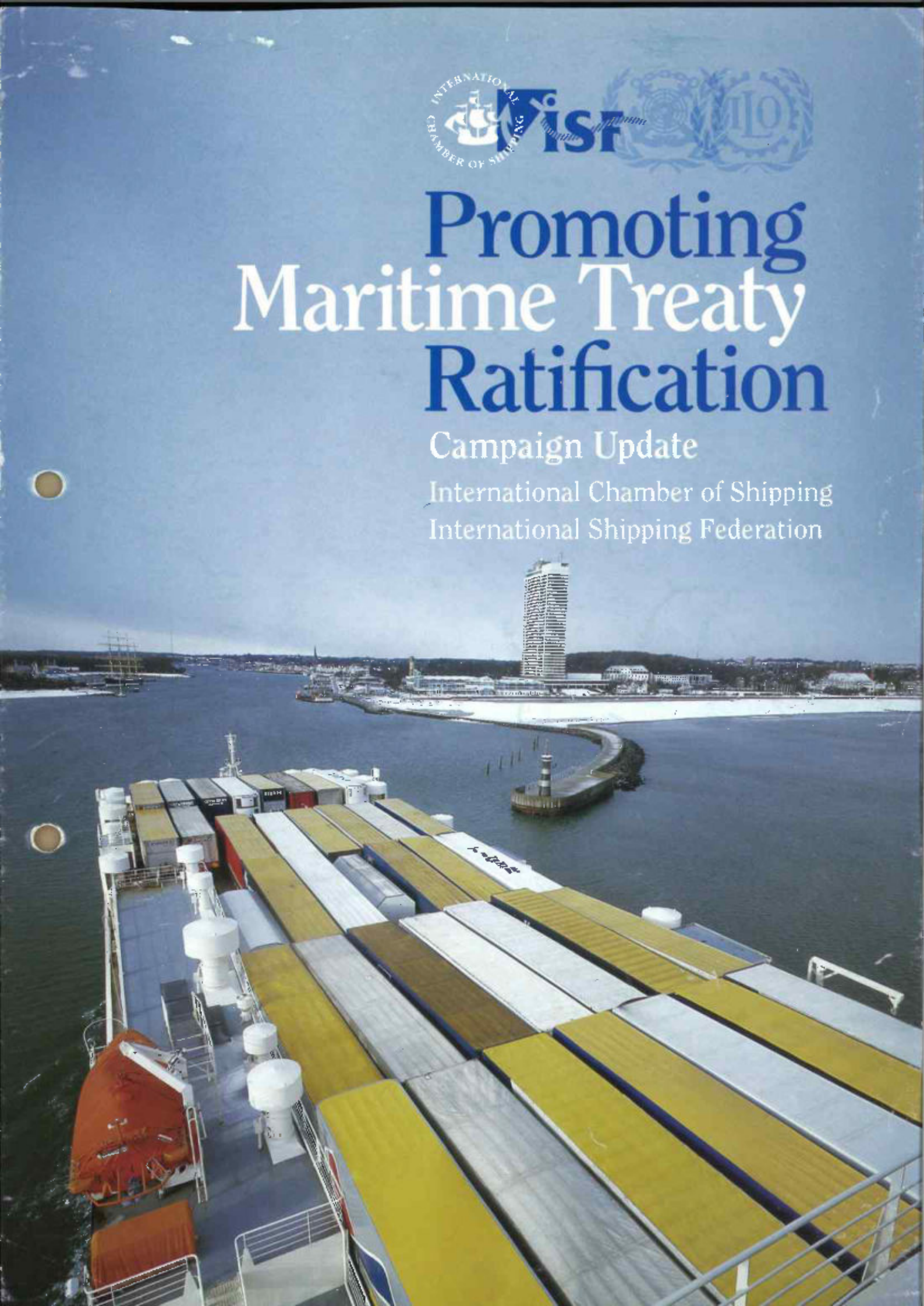
The ICS and ISF ratification campaign is supported by member national shipowners' associations in the following countries:

Australia	Isle of Man
Bahamas	Italy
Belgium	Japan
Brazil	Korea
Bulgaria	Kuwait
Canada	Liberia
Chile	Mexico
China	Netherlands
Croatia	Norway
Cyprus	Philippines
Denmark	Singapore
Finland	Spain
France	Sweden
Germany	Switzerland
Greece	Turkey
Hong Kong · China	United Arab Emirates
India	United Kingdom
Ireland	United States

Promoting Maritime Treaty Ratification

Campaign Update

International Chamber of Shipping
International Shipping Federation



The Role of the Rotterdam Rules in Vessel Safety: CMI's Submissions to IMO

July 26, 2020

The increasing number of casualties caused by container fires in recent years is a growing concern for maritime safety. To examine this problem, the International Maritime Organization (IMO) Sub-Committee on the Carriage of Cargos and Containers (CCC) established the Correspondence Group on a Review of Maritime Special Provisions.

It has been observed that the principal source of the underlying problem was the non-declaration or mis-declaration of the dangerous nature of the cargos and that it is most essential for relevant parties to provide information concerning goods for carriage in a proper and timely manner. In this context, CMI strongly believes that the promotion of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the "Rotterdam Rules") will greatly contribute to the solution of the problem. First, unlike existing international conventions such as the Hague, Hague-Visby, and Hamburg Rules, the Rotterdam Rules include a substantial number of provisions that encourage relevant parties to communicate and share information about goods for carriage, as well as enumerating the liabilities of the parties when they fail to do so. Second, the Rotterdam Rules provide a legal underpinning for the parties' use of electronic communication, including electronic transport records, and thereby facilitate the sharing of relevant information on the goods for carriage.

CMI submitted information papers (attached to this letter) to the 7th Session of the Sub-Committee on the Carriage of Cargos and Containers (CCC 7/6/1) and the 44th Session of the Facilitation Committee (FAL 44/20/2), although these meetings were postponed by the spread of COVID-19. The submissions explain how the Rotterdam Rules, in conjunction with other measures taken by the member states, can contribute to the solution of the current concern about vessel safety caused by container fires. I have also attached Professor Michael Sturley's editorial from the *Journal of International Maritime Law*, vol 25, issue 6, pp. 429-31 (Lawtext Publishing, 2019), which helps to put the CMI's submissions in context.

I hope each national maritime law association will take note of these documents and draw the attention of the relevant authorities in each state to them.

Tomotaka Fujita

Chair, Standing Committee on Carriage of Goods (including Rotterdam Rules)

INTERNATIONAL MARITIME ORGANIZATION

E

SUB-COMMITTEE ON CARRIAGE OF CARGOES AND CONTAINERS
7th session
Agenda item 6

CCC 7/6/1
14 February 2020
Original: ENGLISH
Pre-session public release: ☒

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

SUSTAINABLE SHIPPING FOR A SUSTAINABLE PLANET

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 onboard 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 liquefication 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.*

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

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 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.

EDITORIAL

The Rotterdam Rules and vessel safety

For a dozen years, a primary focus of many discussions of cargo claims has been the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (popularly known as the Rotterdam Rules). This is hardly surprising, for the existing international conventions addressing cargo liability are woefully out-of-date. The most popular regime now in force (the Hague-Visby Rules) is essentially an ad hoc patch-up – negotiated over half a century ago, when international container shipments had barely begun – of a multilateral convention that was drafted almost a century ago. That convention, in turn, was an attempt to give international effect to the principles established in the US Harter Act of 1893. The Rotterdam Rules would provide a much-needed update.

Although the Rotterdam Rules would indeed modernise the law governing cargo claims, the convention addresses much more than liability for cargo claims. I have elsewhere explained some of the ways in which the Rotterdam Rules would improve maritime law governing the carriage of goods but having very little to do with liability for cargo damage.[1] Here I will outline the role that the Rotterdam Rules could play in improving vessel safety, particularly in the context of cargo fires.

In the last few years, it has become distressingly common to see news reports of vessel casualties related to cargo fires. A few examples from last year well illustrate the point. As 2019 began, the *Sincerity Ace* was on fire in the mid-Pacific, and five crew members lost their lives as a result. Three days later, a container fire on the *Yantian Express* spread during a voyage to Canada, and it took more than three weeks to fully extinguish. Later that month, the *APL Vancouver* caught fire off the coast of Vietnam. In March, the *Grande America* sank in the Bay of Biscay after a fire started in one container and spread to others on deck. This is hardly a complete list, even for the first three months of 2019, and the list continued to grow during the rest of the year.

No single solution could be adequate to address the problem. Modern technology undoubtedly has a major role to play, but even the best equipped ships are not immune from disastrous fires. The ULCS *Maersk Honam* was less than a year old when a fire broke out while crossing the Arabian Sea en route from Singapore to Suez. The vessel was equipped with the latest fire-fighting equipment, but it still took five days to bring the fire under control and five crew members died in the process. Another seven weeks passed before the damaged vessel could be towed to a port of refuge.

The International Maritime Organization (IMO), the entity most directly concerned with issues of vessel safety, undoubtedly has a major role to play, and it is currently addressing the issue. The Maritime Safety Committee's 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. That group will review maritime special provisions (SPs) in the IMDG Code and provide recommendations on how to proceed.[2] No doubt improvements in the IMDG Code could well be part of the solution, but a manufacturer will almost always know that a new product is potentially dangerous long before the IMDG Code could possibly be updated to include it.

[1] See eg Michael F Sturley 'Can Commercial Law Accommodate New Technologies in International Shipping?' in Barış Soyer, Andrew Tettenborn *New Technologies, Artificial Intelligence and Shipping Law in the 21st Century* (Informa Law from Routledge 2020) 22.

[2] See CCC 6/14, para.6.22 (21 September 2019).

As the proponents of the new correspondence group recognised, lack of information, frequently due to non-declaration or mis-declaration of cargo, is often a principal source of the underlying problem.[3] Inadequate information can lead to improper handling and stowage, which can cause fires. Once fires start, inadequate manifest information often hampers both fire-fighting and salvage operations. Even if the ocean carrier has the information somewhere in its system, it does not necessarily reach those people who most need it in a timely fashion.

Inadequate information is an aspect of the problem that the Rotterdam Rules can help address. The Comité Maritime International (CMI), which prepared the initial draft of the Rotterdam Rules, recently submitted papers to the IMO to call attention to the benefits that ratification would provide. I summarise some of those benefits here.

The Rotterdam Rules recognise the importance of providing timely and accurate information, and the convention facilitates the most efficient method for doing so. Because on-board fires often result from a shipper's failure to provide information to the carrier, or even a carrier's failure to provide information to the shipper, having a regime that requires and facilitates the timely exchanging of information is an important factor in addressing that problem.

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 (particularly the Hague, 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 recognised 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.

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 shipment. 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.

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'. That 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. Secondly, it recognises that goods can cause serious damage by harming the environment. Article 15 similarly gives a carrier flexibility in dealing with such goods.

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.

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

[3] *See* CCC 6/6/17, para 7 (5 July 2019).

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.

In addition to its safety-specific provisions, the Rotterdam Rules would help solve the underlying problem that the IMO correspondence group is addressing in a second, less obvious, way. Everyone recognises that the non-declaration or mis-declaration 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.

The obvious solution to the over-reliance on paper documents is instead to 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.

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.[4]

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. 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.

The Rotterdam Rules by themselves will not solve the problem of container fires and other serious incidents, but they 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.

Professor Michael F Sturley
Fannie Coplin Regents Chair in Law
University of Texas at Austin
Rapporteur, CMI Carriage of Goods Committee

[4] See 'Thinking outside the box' *The Economist* (28 April 2018) p 21.

VOLUME 39 WINTER 2014 NUMBER 1

TULANE MARITIME LAW JOURNAL

THE CMI AND THE PANACEA OF UNIFORMITY— AN ELUSIVE DREAM?

Stuart Hetherington

TULANE UNIVERSITY SCHOOL OF LAW

ESSAYS

The CMI and the Panacea of Uniformity—An Elusive Dream?

Stuart Hetherington*

I. THE HISTORY OF THE CMI 161
II. MEASUREMENT OF SUCCESS 167
III. HAGUE RULES 167
A. *"Elusive Dreams"* 167
B. *A Solution?* 172
IV. THE PRESENT WORK OF THE CMI 175
A. *Revising the York-Antwerp Rules* 175
B. *Salvage Convention and Judicial Sale of Ships* 175
C. *Offshore Activities* 176
D. *Promoting the Ratification of International Conventions* 178
E. *Cape Town Convention 2001* 179
F. *Handbook of Maritime Conventions* 179
G. *Jurisprudence on Maritime Law* 179
H. *Arbitration* 180
I. *Future Work* 180
V. CONCLUSION 180

It is a great honour to have been asked to give this annual lecture, particularly when one considers the distinguished speakers who have preceded me since 1999. Apart from the great man himself, they include

---

* © 2014 Stuart Hetherington. Stuart Hetherington is the President of the Comité Maritime International (CMI) and a partner of the Australian law firm of Colin Biggers & Paisley. He leads the Transport and Logistics teams in that firm's offices in Sydney, Melbourne, and Brisbane.

He was called to the Bar of England and Wales at Grays Inn in 1973, having graduated with an M.A. from Pembroke College, Cambridge, U.K., in 1972. He is admitted to practice in the Supreme Courts of NSW and Victoria, the Federal Court, and the High Court of Australia. He is a member of the Federal Attorney-General's Admiralty Rules Committee. He has served as a Director of the Sydney Port Authority and the Sydney Ports Corporation. He wrote "Annotated Admiralty" legislation, published by the Law Book Company in 1988.

In 2013 and 2014, he was listed in Best Lawyers Australia for shipping, marine, and transportation and in Chambers and Partners for shipping. He was awarded the 2014-2015 Sydney Shipping and Maritime Lawyer of the Year by Best Lawyers Australia. In 2010, he was awarded the Lloyds List DCN Maritime Services Award.

Judges of the High Court of England and Wales (David Steele and Bernard Eder), the Chief Justice of the Federal Court of Australia (James Allsop), as well as distinguished professors from other learned maritime institutions (Charles Debattista and Jan Ramberg).

The topic of uniformity is one that is frequently the subject of papers by those of us who have been fortunate enough to serve on the Executive Council of the Comité Maritime International (CMI). The reason for this is, as I will shortly explain, that the raison d'être of the CMI is uniformity.

Others who have given this annual lecture in the fifteen years since its foundation have also spoken on this topic. Both served with distinction on the Executive Council of the CMI for many years. In the inaugural lecture, William Tetley spoke on the topic of international maritime law in a speech entitled "Uniformity of International Private Maritime Law—The Pros, Cons, and Alternatives to International Conventions—How To Adopt an International Convention."[1] Similarly in 2004, Professor Jan Ramberg gave a lecture entitled "The Rise and Fall of International Unification of Transport Law."[2]

The recently retired Vice President of the CMI, Justice Johanne Gauthier of the Canadian Federal Court of Appeals, spoke at the joint conference of the United States Maritime Law Association (U.S. MLA) and the Instituto Iberoamericano de Derecho Maritimo in Puerto Rico in 2013 on "The Quest for Uniformity in a Global Context."[3] Judge Charles Haight, of the United States District Court for the Southern District of New York, presented a paper entitled "Babel Afloat: Some Reflections on Uniformity in Maritime Law" at the third Nicholas J. Healy Lecture at New York University School of Law in 1996.[4] A former president of the CMI, Patrick Griggs, gave the sixth Nicholas J. Healy Lecture, which was entitled "Obstacles to Uniformity of Maritime Law."[5] Finally, I gave a paper entitled "The Elusive Panacea of Uniformity: Is It Worth

1. William Tetley, Q.C., *Uniformity of International Private Maritime Law—The Pros, Cons, and Alternatives to International Conventions—How To Adopt an International Convention*, 24 TUL. MAR. L.J. 775 (2000).

2. News Release, *The Rise and Fall of International Unification of Transport Law*, TUL. U. L. SCH. (Feb. 1, 2004), http://www.law.tulane.edu/tlsnews/newsitem.aspx?id=1406.

3. *See* Mar. Law Ass'n of the U.S. & Iberoamerican Inst. of Mar. Law, CLE Registration Materials for the Fall Meeting of the MLA and 18th Congress of the IIDM, MAR. L. ASS'N U.S. 1, 5, http://mlaus.org/content/itemcontent/1278events.pdf (last visited Oct. 20, 2014).

4. Charles S. Haight, Jr., *Babel Afloat: Some Reflections on Uniformity in Maritime Law*, 28 J. MAR. L. & COM. 189 (1997).

5. Patrick J.S. Griggs, *Obstacles to Uniformity of Maritime Law: The Nicholas J. Healy Lecture*, 34 J. MAR. L. & COM. 191 (2003).

Pursuing?" at the Australian Maritime and Transport Arbitration Commission lecture in September 2013,[6] on which this Article is based.

This Article aims to explain the history that led to the formation of the CMI and to describe the work of the CMI—from which you can draw your own conclusions as to whether it has achieved its founders' objectives. It will also refer to some of the work in which the CMI is currently engaged, as well as identify areas of possible further involvement by the CMI.

I. THE HISTORY OF THE CMI

The CMI was formed in 1897.[7] Thereafter, maritime law associations started forming (and are still being formed) around the world. The U.S. MLA celebrated its centenary in May 1999. This achievement was much to the annoyance of my predecessor Patrick Griggs, who was then President of the CMI. When Griggs spoke at the U.S. MLA centenary meeting, he conceded that the maritime law association of his country—the United Kingdom—was not formed until 1908!

Throughout the last couple of thousand years, as the papers to which I have referred recount, there has been a desire amongst traders (and some rulers) to adopt uniform laws to govern their activities arising from transportation by sea.[8] Google the Code of Justinian, Rhodian Law,[9] the Rolls of Oleron,[10] and the Laws of Wisby,[11] and you will see how the beginnings of uniformity developed. For example, in 1407, representatives from twenty-two Hanseatic cities met in Lubeck and produced a codification of maritime law.[12] Jump forward to the late nineteenth century, and there was an explosion of attempts to codify (or bring greater uniformity) to maritime law.

When I started to practice admiralty law in Australia in 1976, the law that I was practising was determined by the contents of the Admiralty Court Act 1840,[13] the Admiralty Court Act 1861,[14] and the Colonial

---

6. Stuart Hetherington, *The Elusive Panacea of Uniformity: Is It Worth Pursuing?*, AMTAC (Sept. 18, 2013), http://www.amtac.org.au/assets/media/Papers/AMTAC-Address-2013-The-Elusive-Panacea-of-Uniformity.pdf.

7. F.L. Wiswall, Jr., *A Brief History*, COMITÉ MAR. INT'L, http://www.comitemaritime.org/A-Brief-History/0,27139,113932,00.html (last visited Oct. 20, 2014).

8. *See* Griggs, *supra* note 5, at 192; Haight, *supra* note 4, at 194; Hetherington, *supra* note 6, at 3.

9. THE RHODIAN SEA-LAW (Walter Ashburner ed., 1909).

10. THE LAWS OF OLERON, *reprinted in* 30 F. Cas. 1171 (1995).

11. THE LAWS OF WISBY, *reprinted in* 30 F. Cas. 1189 (1995).

12. *See* Hetherington, *supra* note 6, at 3.

13. Admiralty Court Act, 1840, 3 & 4 Vict., c. 65 (Eng.).

Courts of Admiralty Act 1890,[15] which the Australian colonies had inherited from the mother country. Australia's admiralty jurisdiction remained static from the beginning of the twentieth century until it enacted its own Admiralty Act in 1988.[16] I understand that the Marine Insurance Act 1906 of the United Kingdom,[17] whilst not enacted in the United States, has a considerable bearing on U.S. marine insurance law. It may be the same with those other two great statutes of the late nineteenth century in the United Kingdom, the Sale of Goods Act 1893[18] and the Bills of Exchange Act 1902[19] (all three of which owe much of their existence to the work of the extraordinary Sir Mackenzie Chalmers). Certainly those pieces of legislation had significant impact on Australian law, as well as many of the colonies of the British Empire. Much of our admiralty and marine law—as well as commercial law—has a common origin, and considerable uniformity has been achieved.

In his aforementioned paper, Justice Haight quoted the Book of Genesis and, explaining how that text was relevant to the topic of uniformity, said:

> Those who strive to achieve a uniform maritime law, nationally and internationally, seek to have the people of the maritime community—shipowners, cargo owners, insurers, lenders, furnishers of supplies, salvors—"be of one language and of one speech," so that rights and obligations may be certain and predictable.[20]

He did however go on to say:

> But it seems that whenever the maritime world begins to achieve one legal language, so that the tower of a uniform maritime law starts to arise, some force confounds that language, and scatters the maritime community upon the face of all the earth, so that uniformity, having taken two steps forward, then takes one step back.[21]

William Tetley, in his inaugural lecture, identified many different ways in which uniformity is achieved.[22] It is useful to reproduce the list that he included in his paper because it reminds us that although we tend to think of conventions and treaties as being the principal means by which uniformity is achieved, there are of course many other methods.

14. Admiralty Court Act, 1861, 24 Vict., c. 65 (Eng.).
15. Colonial Courts of Admiralty Act, 1890, 53 & 54 Vict., c. 27 (U.K.).
16. *See Admiralty Act 1988* (Cth) (Austl.).
17. Marine Insurance Act, 1906, 6 Edw. 7, c. 41 (Eng.).
18. Sale of Goods Act, 1893, 56 & 57 Vict., c. 71 (Eng.).
19. Bills of Exchange Act, 1882, 45 & 46 Vict., c. 61 (Eng.).
20. Haight, *supra* note 4, at 190 (quoting *Genesis* 11:1).
21. *Id.*
22. Tetley, *supra* note 1, at 783.

These other methods are in constant use and also bring uniformity to the practice of the law in the maritime field. Tetley's list included conventions and treaties, model laws, standard form contracts, standard terms, international customs, the lex maritima, doctrines and writings, international courts, and courts and arbitral tribunals.[23]

Let me offer a few examples of some of the documents that he had in mind when identifying those ways of achieving uniformity. A good example of conventions and treaties are those dealing with the carriage of goods by sea, such as the Hague Rules,[24] to which I will refer in more detail below.

In terms of model laws, an example that gives rise to significant work in the admiralty area (and to interesting cases around the world) is the cross-border insolvency rules that the United Nations Commission on International Trade Law (UNCITRAL) has developed.[25] The CMI has also produced model rules on topics such as electronic bills of lading and sea waybills. The Baltic and International Maritime Council (BIMCO) has produced the Voylay Rules.[26] The CMI is the custodian of the York-Antwerp Rules,[27] to which I will refer again later.

When considering standard form contracts, one does not have to go far into works on voyage charters or time charters to realise that a huge amount of world cargo is moved pursuant to standard form charter parties, whether in the nature of voyage or time charters, the New York Produce Exchange form[28] being a classic example. Terms are almost identical in large numbers of bills of lading that are traded around the world. Many clauses that appear in bills of lading have become standardised: the New Jason Clause or the Himalaya clause, which also incorporates the circular indemnity provisions, are largely standardised.

---

23. *Id.*

24. International Convention for the Unification of Certain Rules Relating to Bills of Lading, Aug. 25, 1924, 2 U.S.T. 430, 120 L.N.T.S. 155 [hereinafter Hague Rules].

25. *See UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, U.N. COMMISSION ON INT'L TRADE L., http://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf (last visited Sept. 27, 2014).

26. *See Voyage Charterparty Laytime Interpretation Rules 1993*, BALTIC & INT'L MAR. COUNCIL, http://www.bimco.org/en/Chartering/Documents/Sundry_Other_Forms/~/media/Chartering/Document_Samples/Sundry_Other_Forms/Sample_Copy_VOYLAYRULES_93.ashx (last visited Oct. 20, 2014).

27. *See York-Antwerp Rules 2004*, COMITÉ MAR. INT'L, http://www.comitemaritime.org/York-Antwerp-Rules-and-General-Average-Interest-Rates/0,2754,15432,00.html (last visited Sept. 28, 2014) (follow "YAR 2004—English version" hyperlink); *York-Antwerp Rules 1994*, COMITÉ MAR. INT'L, http://www.comitemaritime.org/Uploads/YAR%2094%20english.pdf (last visited Oct. 20, 2014).

28. New York Produce Exchange 1993, *reprinted in* 2B BENEDICT ON ADMIRALTY 7-82.14(4) (LeRoy Lambert ed., 7th ed. rev. 2012).

In relation to the latter, I was intrigued by a paper that Michael Ryan (of Hill Betts & Nash LLP) presented last year to the U.S. MLA's Carriage of Goods Committee. In that paper, entitled "Covenants Not To Sue as Contained in Ocean Bills of Lading," the author identified a number cases in which the applicability and validity of such clauses was still being tested.[29] That is some thirty-five years after the issue was determined (as he pointed out) in *Nippon Yusen Kaisha v. International Import & Export Co. (The "Elbe Maru")* in the United Kingdom in 1978[30] and in a series of cases that I ran for carriers in my own country in 1980 and 1981.[31]

In relation to standard terms, there are of course the Incoterms, which seek to simplify the bases upon which traders contract with each other.

Tetley referred to many other examples in his paper, but I trust you have a feel for the fact that uniformity is not simply about conventions and treaties.

From my references to developments within the world of commerce in the United Kingdom in the late nineteenth century, you will have gathered that England was at the forefront of work to codify commercial law. Other European countries also played a significant role. The International Law Association (ILA), which was founded in Brussels in 1873, was the precursor of the CMI and had sought to codify maritime law. (It is holding its Seventy-Sixth Biennial Conference in Washington D.C. between April 7-14.) The ILA took its first steps in developing the York-Antwerp Rules on General Average in the 1880s, and it was decided in the 1890s that a separate specialist organisation should be set up with the goal of unifying maritime law.[32] Another group of Belgians took on this task, and so the CMI was established in 1897. At first, only European countries were involved, but as I have indicated, maritime law associations that became affiliated with the CMI began forming within a couple of years. Now there are about fifty-five members of the CMI, the most recent members being India, Poland, Ukraine, and Indonesia.

Louis Franck, one of the cofounders of the CMI, explained the organization's essential concept when he said:

29. Michael J. Ryan, Covenants Not To Sue as Contained in Ocean Bills of Lading (unpublished manuscript) (on file with author).

30. [1978] 1 Lloyd's Rep. 206 (Q.B.) (Eng.).

31. *See Broken Hill Proprietary Co. v Hapag-Lloyd Aktiengesellschaft*, [1980] 2 NSWLR 572 (Austl.); *Sidney Cooke Ltd. v Hapag-Lloyd Aktiengesellschaft*, [1980] 2 NSWLR 587 (Austl.); *Mercedes Benz Austl. Pty. Ltd. v Scancarriers A.S.* [1981] NSW No. 10138 of 1980 (Unreported, Rogers, J., 25 Nov. 1981) (Austl.).

32. *See* Wiswall, *supra* note 7, at 1-2.

> It is with the object of overcoming multiple opposition, national particularism, of resolving difficulties not by means of abstract and theoretical solutions but from the needs of practice, of obtaining the ear of the Parliaments, that we had the idea of appealing, not only to the jurists who are interested in maritime law, but to the very people who, in their interests, in their problems of every day, have to submit to the consequence of good and bad laws. We have taken into consideration that the shipowner, the merchant, the underwriter, the average adjuster, the banker, the person who is directly interested, all take a preponderant part in our work; that the task of the jurist is to discern that which, in this maritime community, is the general purpose, that which, among the divergent interests, is common to all; to discern what, among the diverse solutions, is the best, to contribute one's learning and one's experience; but that in the final analysis, the jurist must hold the pen and that it is the man with the experience who must dictate the solution.[33]

Similarly, Albert Lilar—a predecessor of mine who was President of the CMI from 1947 to 1976—said the following:

> The history of maritime law bears the stamp of a constant search for stability and security in the relations between the men who commit themselves and their belongings to the capricious and indomitable sea. Since time immemorial, the postulate which has inspired all the approaches to the problem has implied the establishment of a uniform law.[34]

That is the primary object of the CMI today.

After the formation of the CMI in 1897, there followed the famous series of Brussels diplomatic conferences on maritime law. These conferences resulted in the adoption of many of the conventions and protocols that the CMI drafted over the more than eighty years between the 1910 collision and salvage conventions and the 1979 Hague-Visby Rules.[35] In the first fifteen years of its existence, the CMI held eleven international conferences; in the twenty years between the First and Second World Wars, there were eight international conferences; and in the twenty-five years from the first postwar conference of 1947, there were ten international conferences.

The CMI works on a project in the following way. Initially, an international working group (IWG) is established. It is often chaired by a

---

33. ALBERT LILAR & CARLO VAN DEN BOSCH, LE COMITÉ MARITIME INTERNATIONAL 1897-1972, at 12 (1972).

34. *Id.* at 2.

35. *See generally Status of the Ratifications of and Accessions to the Brussels International Maritime Law Conventions*, Y.B. 2013 ANNUAIRE (Comité Maritime International) 591 (Sept. 2013), http://www.comitemaritime.org/Uploads/Publications/Yearbooks/CMI%20YEARBOOK%202013.pdf.

member of the Executive Council of the CMI, and he or she is assisted by a Rapporteur. The IWG consists of members of maritime law associations with an interest or expertise in the topic and can include representatives from other nongovernmental organizations (NGOs) with a particular interest in the topic under discussion. Such NGOs have included the International Chamber of Shipping (ICS), the International Group of P&I Clubs, the International Union of Marine Insurance, the International Association of Ports and Harbors, or the International Salvage Union (ISU).

Usually, the first task of the IWG is to send a questionnaire to the national maritime law associations in order to ascertain the law in their particular countries on the topic in question. The responses are then considered and assist the IWG to determine how best to proceed. Frequently, an international subcommittee (ISC) is called to meet, almost invariably, in a European capital, often considered the most convenient for travellers from around the world who wish to attend. At such ISC meetings, the intention is to involve as many stakeholders in the topic as possible, in order to achieve what Louis Franck reminded us is the role of the lawyer in producing draft conventions, model rules, or whatever form of document is to be the ultimate product of the particular IWG. The IWG then might produce a discussion paper or a draft wording for a proposed international instrument or model law, which in turn might be discussed at a CMI symposium or colloquium to enable participants to express their views on the work that is being done. When the IWG considers that sufficient work has been done, the proposal is put before a CMI Conference. In recent years, CMI conferences have taken place every four years. When an international instrument is being worked upon, these conferences resemble a diplomatic conference. Maritime law associations sit in their country delegations and vote on the wording of the instrument that the IWG has prepared.

Historically, once the CMI Conference has approved a text, the CMI requested the Belgian government to call a diplomatic conference, hence the many Brussels conventions in the maritime legal area. Since the formation of the Legal Committee of the International Maritime Organisation (IMO) in 1968, the IMO began to take over the role of organising diplomatic conferences in the field of maritime law from the government of Belgium. In the period from 1968 to 1997, the CMI has done the initial drafting of every convention that the IMO Legal Committee has considered, except the 1969 Intervention Convention, the 1973 Protocol, and the 1996 Hazardous and Noxious Substances by Sea Convention. The CMI was one of the first NGOs to be granted

consultative status by the IMO and has observer status at International Oil Pollution Convention Funds meetings.

II. MEASUREMENT OF SUCCESS

How does one measure success in achieving uniformity? Patrick Griggs, in the paper to which I have already referred, said it was "tempting to measure . . . success . . . on a strictly numerical basis," that is, by the number of ratifications.[36] That is not very accurate because many countries give effect to the essence of a convention without actually ratifying it. As he pointed out, in some cases countries ratify a convention without denouncing an earlier version and thus effectively have two conflicting versions of a convention dealing with the same topic in existence at the same time.[37]

III. HAGUE RULES

Nothing, in my view, exemplifies the difficulties that we, as maritime lawyers, face in achieving uniformity than the carriage of goods liability regime. Because the bread-and-butter work of maritime lawyers relates to cargo claims, I thought it might be useful to look at the history of the Hague Rules (and subsequent versions).

A. "Elusive Dreams"[38]

In writing this Article, I was reminded of "Elusive Dreams," a song sung by Nancy Sinatra and the late Lee Hazlewood in the 1960s. I have adapted the wording of that song, which involves a young couple travelling around the United States looking for work and their failure to settle in any one place, by way of analogy to the many locations where maritime lawyers and their clients sought to find a solution to the perennial problem of bringing uniformity to a worldwide cargo liability regime.

Professor Michael Sturley, who I suspect is well known to this audience, set out the history of the Hague Rules in his work on the *travaux préparatoire* of those rules.[39]

---

36. *See* Griggs, *supra* note 5, at 193.
37. *Id.* at 207.
38. NANCY SINATRA & LEE HAZLEWOOD, *My Elusive Dreams*, *on* NANCY & LEE (Reprise Records 1968).
39. THE LEGISLATIVE HISTORY OF THE CARRIAGE OF GOODS BY SEA ACT AND THE TRAVAUX PRÉPARATOIRES OF THE HAGUE RULES (Michael F. Sturley ed., Caroline Boyle trans., 1990).

I followed you to Liverpool

He noted that the ILA discussed bills of lading at its Liverpool conference in 1882 and adopted a model bill of lading for adoption by carriers and shippers. However, this model bill of lading did not achieve general acceptance.[40]

I followed you to Hamburg

The ILA then, at a subsequent conference, drafted a set of rules known as the Hamburg Rules of Affreightment,[41] which was designed for parties to incorporate voluntarily by reference into their bills of lading and is not to be confused with the 1978 Hamburg Rules Convention. (I will suggest below that the consolidation of liner shipping into a few mega carriers—particularly the recent coming together of the 2M and Ocean Three Alliances—may provide an opportunity for that failed nineteenth-century model to be revived in favour of the more tortuous path of international conventions.) Once again, these model rules had little immediate impact.

"We didn't find it there, so we moved on"[42]

As you may know, these failures led to several countries unilaterally enacting domestic legislation governing exoneration clauses in bills of lading.

I followed you to the United States, New Zealand, Australia, and Canada

The 1893 Harter Act of the United States[43] was the precursor to similar legislation in New Zealand,[44] Australia,[45] and Canada.[46]

"We didn't find it there, so we moved on"[47]

It was only towards the end of the First World War when countries such as Australia, New Zealand, and Canada lobbied Britain, and a

40. *Id.* at 4.
41. *Hamburg Rules of Affreightment, reprinted in* THE LEGISLATIVE HISTORY OF THE CARRIAGE OF GOODS BY SEA ACT AND THE TRAVAUX PRÉPARATOIRES OF THE HAGUE RULES, *supra* note 39, at 122.
42. SINATRA & HAZLEWOOD, *supra* note 38.
43. Harter Act, ch. 105, 27 Stat. 445 (1893).
44. *See* Shipping and Seamen Act 1908 (N.Z.).
45. *See Sea-Carriage of Goods Act 1904* (Cth) (Austl.).
46. *See* Water-Carriage of Goods Act, R.S.C. 1927, c. 207 (Can.).
47. SINATRA & HAZLEWOOD, *supra* note 38.

number of meetings took place in the period from 1917 to 1924, that the Hague Rules were finalised. These meetings occurred because consignees in those countries were unable to obtain the benefits of their own Harter Act style of legislation, while carriers were able to benefit from the wide exclusion clauses that were still permissible at that time.

I followed you to the Hague

It still took many years for the Hague Rules to catch on, and as you would know, it was not until 1936 that the United States passed its Carriage of Goods by Sea Act (U.S. COGSA).[48] U.S. COGSA's enactment provided the impetus for many other countries, such as France, Italy, Germany, Poland, Finland, and the three Scandinavian countries to follow suit within a couple of years. Many Commonwealth countries had given effect to the Hague Rules earlier, either in the 1920s or 1930s. The Hague Rules entered into force in June 1931 and have had eighty-four ratifications.[49]

I followed you to Visby

The low £100-per-package liability limit made it necessary to update the package limitation provisions of the Hague Rules. So the Hague-Visby Rules, which were drafted in Brussels on February 23, 1968, came into being but did not enter into force until June 23, 1977.[50] The latter has thirty-two ratifications but has never been ratified by the United States, Australia, or China.[51] Nevertheless, containerisation in the 1970s added to the necessity to update both the Hague and Hague-Visby Rules.

I followed you to Hamburg

The Hamburg Rules, which were agreed upon at the diplomatic conference in 1978, entered into force in 1992. However, the Hamburg Rules have only achieved thirty-three ratifications, and none of the major trading nations such as the United States, China, or Japan have ratified them.[52]

---

48. Carriage of Goods by Sea Act, Pub. L. No. 521, 49 Stat. 1207 (1936) (codified as amended at 46 U.S.C. § 30701 note (2012)).

49. *See Status of the Ratifications of and Accessions to the Brussels International Maritime Law Conventions*, *supra* note 35, at 599-601.

50. *See id.* at 605.

51. *See id.* at 605-06.

52. *Status of the Ratifications of and Accessions to United Nations and United Nations/IMO Conventions in the Field of Public and Private Maritime Law*, Y.B. 2013 ANNUAIRE

"We didn't find it there, so we moved on"[53]

In addition, there are hybrid versions of these Conventions in places such as China and Australia.

By the early 1990s, it had become apparent to the CMI that the Hamburg Rules were not proving attractive to trading nations, and then-President Francesco Berlingieri formed an IWG to consider what the CMI could do. Simultaneously, by the 1990s the U.S. MLA had started work on production of a bill to replace the U.S. COGSA of 1936. It is worth quoting from an article that Professor Sturley wrote in the 1990s, which offered the following commentary on the work that the ad hoc liability rules study group of the U.S. MLA was undertaking:

> The merits of the Study Group's proposal are open to debate. Indeed, they are currently being debated in a series of special meetings arranged by the MLA's Committee on the Carriage of Goods. The full debate, however, is beyond the scope of this article. But the effect of the proposal on international uniformity has been a major part of that debate, and an area where there have been many misconceptions and ill-informed arguments.
>
> On careful analysis, it can be seen that any international uniformity in this field is rapidly breaking down. In any event, U.S. law has been out of step with the rest of the world for many years, and under current political conditions there is no realistic prospect for bringing the United States into either of the international regimes. The Study Group's proposal may damage apparent uniformity, but this damage is merely cosmetic. Taken as a whole, the proposal does far more to bring the United States into substantive uniformity with its trading partners than any other option available. And most encouraging of all, if Congress adopts the proposal it may provide some of the impetus to help restore some of the international uniformity that has followed Congress' previous efforts in this field.[54]

The position has not, of course, changed. The 1936 U.S. COGSA, with its US$500-per-package limitation, still prevails.

For those of us practising maritime law in other jurisdictions (whose cargo owners and insurers are based in our jurisdiction and who import cargo subject to bills of lading that incorporate the U.S. COGSA), the position is out of kilter with the rest of the world, where so many bills of lading are subject to the Hague-Visby Rules—or at least modifications thereof—with its much more generous and reasonable limitation sums.

(Comité Maritime International) 703, 706 (Sept. 2013), http://www.comitemaritime.org/Uploads/Publications/Yearbooks/CMI%20YEARBOOK%202013.pdf.

53. SINATRA & HAZLEWOOD, *supra* note 38.

54. Michael F. Sturley, *Uniformity in the Law Governing the Carriage of Goods by Sea*, 26 J. MAR. L. & COM. 533, 579 (1995).

By way of example, it is difficult to justify a shipowner's ability to limit liability to US$500 (or indeed a third party taking the benefit of a Himalaya clause in a shipowner's bill of lading) in respect of considerable damage to a "Martinique" cruiser worth about A$88,000, which had been carried from the United States to Australia on the deck of a ship. Yet this is exactly what happened in *Chapman Marine Pty Ltd v Wilhelmsen Lines A/S*.[55] The Federal Court in Australia held that the boat was a package or freight unit.[56] On a cubic measurement basis, the agreed limitation sum would have been A$40,690.

This inclusion of the US$500-per-package or "customary freight unit" provision in the U.S. COGSA provides a good example of how differing methods of implementing maritime conventions can lead to the development of a confusing (and conflicting) body of law. Although, I note that Tetley, in his work on marine cargo claims, asserts that the phrase "per customary freight unit" was "intended to clarify rather than to change the meaning of the Brussels Convention."[57]

I followed you to Rotterdam

The CMI drafted an instrument on the carriage of goods, which it sent to UNCITRAL in 2001. The work of that U.N. body continued for seven years until the Rotterdam Rules were finalised in 2008.[58] Twenty-five countries, including the United States, have signed the Rotterdam Rules, but only three countries (Spain, Togo, and Congo) have ratified them.[59] A number of countries seem to be moving towards ratification but are awaiting developments in the United States.

In April 2013, together with Chet Hooper (who was President of the U.S. MLA in the mid-1990s when it had been producing its draft bill) I met with two employees of the United States Department of State. They told us at that time that the "transmittal package" was nearing completion.

Governments from around the world sent delegates to UNCITRAL meetings once, if not twice, a year in New York or Vienna for at least a week or more at a time to negotiate the Rotterdam Rules over a period of seven years. When you consider that the delegates completed their work

55. [1999] FCA 178, 1999 AMC 1221 (Unreported, Emmett, J., 5 Mar. 1999) (Austl.).
56. *Id.* ¶ 48, 1999 AMC at 1234.
57. 2 WILLIAM TETLEY, MARINE CARGO CLAIMS 2175 (4th ed. 2008).
58. *See* United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, G.A. Res. 63/122, annex, U.N. Doc. A/RES/63/122 (Dec. 11, 2008).
59. *Status of United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, U.N. TREATY COLLECTION, http://treaties.un.org/doc/Publication/Mtdsg/volume%20I/Chapter%20XI/XI-D-8.en.pdf (last updated Sept. 29, 2014, 8:08 AM EDT).

six years ago, it is troubling that governments have still not given effect to the Rotterdam Rules.

"I know you're tired of following
my elusive dreams and schemes"[60]

B. A Solution?

International liner shipping has changed significantly since the late nineteenth century. The consolidation of carriers, the conference system as it applies to liner shipping, the similarity in the forms of bills of lading, and the influence of the ICS and BIMCO on documentary matters all suggest that at least in relation to containerised carriage of cargo, it should be possible for carriers with the support of their P&I clubs to incorporate the Rotterdam Rules into their bills of lading. Whilst local laws may give effect to regimes that predate the Rotterdam Rules, it is hard to see why parties would seek to rely on those older regimes when by private contract they have agreed to another regime, especially when there would be provisions that are beneficial. For shippers and consignees, there are clearly benefits in having higher package limitations, the ability to sue for delay, and an absence of nautical fault being a defence to a carrier. For carriers, the benefits include a clearer responsibility on shippers and certainty insofar as the applicable liability regime is concerned. Further, it may be unlikely that carriers would take advantage of more beneficial limitations in the country in which proceedings take place if they have taken the step of incorporating the less beneficial regime into their contract.

As an example of the lack of certainty in the current international climate, I reproduce below a clause paramount in a bill of lading for the carriage of a significant cargo from China to Australia:

> Clause Paramount
>
> (a) The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment, shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect to which no such enactments are compulsorily applicable, the terms of the said convention shall apply.

60. SINATRA & HAZLEWOOD, *supra* note 38.

(b) Trades where Hague-Visby Rules apply

In trades where the International Brussels Convention 1924 as amended by the Protocol signed at Brussels on February 23rd 1968—the Hague-Visby Rules—apply compulsorily, the provisions of the respective legislation shall apply to this bill of lading.

The above clause paramount, in my view, highlights the uncertainty that exists in the present proliferation of conventions and national laws. Before considering the text we should remind ourselves that neither China nor Australia has, for present purposes, ratified the Hague, Hague-Visby, or Hamburg Rules. Both jurisdictions have given effect to a mixture of the Hague, Hague-Visby, and Hamburg Rules in their legislation relating to the international carriage of goods.

Looking closely at the clause paramount, the position seems to be that there are no Hague Rules contained in the 1924 Convention enacted in China. Similarly, there is no corresponding legislation in Australia. Thus one might think that the rules adopted at the 1924 Convention—that is, the Hague Rules—apply by reason of the concluding words in clause (a). That would seem the most likely Convention to apply because the Hague-Visby Rules—that is, the rules adopted at the 1924 Convention as amended by the 1968 Protocol—do not apply compulsorily in China or Australia. Those countries' legislation is a combination and does not expressly, in any event, give effect to either the Convention or the Convention and its Protocol. Therefore, prima facie, clause (b) does not apply.

A further enquiry then needs to be made as to whether the 1924 Hague Convention, to which China is not a party, can apply in the face of the Chinese Maritime Code, when article 44 provides:

> Any stipulation in a contract of carriage of goods by sea or a bill of lading or other similar documents evidencing such contract that derogates from the provisions of this Chapter shall be null and void. However, such nullity and voidness shall not affect the validity of other provisions of the contract or the bill of lading or other similar documents. A clause assigning the benefit of insurance of the goods in favour of the carrier or any similar clause shall be null and void.[61]

Article 56 of the Chinese Maritime Code includes the package limitation of "666.67 Units of Account per package or other shipping unit, or 2 Units of Account per kilogramme of the gross weight of the goods lost or

61. Maritime Code of the People's Republic of China art. 44 (promulgated by the Ministry of Comm., Nov. 7, 1992, effective July 1, 1993), http://english.mofcom.gov.cn/sys/print.shtml?/lawsdata/chineselaw/200211/20021100050726.

damaged,"[62] which in most cases would likely exceed the Hague Convention limitation of 100 pounds, even if allowance is made for article IX, the gold clause. The question that any lawyer considering this clause paramount therefore needs to answer is whether the Chinese Maritime Code trumps the concluding words in clause (a). I do not propose to answer that question, particularly because I am not aware of any case that has sought to decide the issue.

Quite apart from the difficulties in relation to article 44 of the Chinese Maritime Code, one should not overlook article 10 in Schedule 1A (the schedule of modifications) in Australia's Carriage of Goods by Sea Act 1991. Article 10 provides that when neither the Brussels Convention, nor the Brussels Convention as amended by the Visby Protocol or the SDR Protocol (or both), nor the Hamburg Convention apply, the Australian version of the Rules will apply in respect of the carriage of goods from outside Australia to ports in Australia.[63]

Obviously, there are a number of complex questions thrown up by such a clause paramount, which in my experience is not untypical. Similar provisions are found in many charterparties and bills of lading used in international trade. Given the plethora of potential regimes that might apply to a particular contract of carriage, one wonders how much legal expense litigants of cargo claims incur seeking to resolve issues that such provisions create.

If carriers were to take the step that I have suggested, namely incorporation of the Rotterdam Rules as the sole liability regime applicable to their contract, it would, in my view, impress governments, accelerate the process of ratification, and provide certainty as to the liability regime by which they intend to abide. In a May 2013 visit that I made with the President of the Maritime Law Association of Australia and New Zealand to the Department of Infrastructure and Transport in Canberra, officials indicated that such actions would influence the Australian government.

Overall, whilst the period after 1924 saw some measure of uniformity (particularly after 1936), the history of the Hague Rules since the 1970s does not supply very much evidence that the convention system (if I can refer to it in that way) has greatly assisted commercial parties. Instead, as we have seen, there are presently four sets of Rules governing cargo carriage from which to choose.

62. *Id.* art. 56.
63. *Carriage of Goods by Sea Act 1991* (Cth) sch 1A art (10)(2) (Austl.).

IV. THE PRESENT WORK OF THE CMI

A. *Revising the York-Antwerp Rules*

As I have said earlier, the CMI is the custodian of the York-Antwerp Rules and initiated, in October 2012, a major review of those Rules by appointing a new IWG under the chairmanship of Bent Neilsen. Amendments made in 2004 to the York-Antwerp Rules at the CMI Vancouver Conference have not received widespread support.[64] The main reasons the 2004 Rules were unacceptable to the shipping community were that salvage (Rule VI) was excluded from general average and crew wages in ports of refuge (Rule XI) were abolished.[65] There were additional provisions, but those appear to be the primary concerns. The questionnaire that was sent out to maritime law associations on March 15, 2013, raises those issues but also seeks to address the following questions: (1) whether general average should be abolished, (2) whether the Rules need amendment in the light of the Rotterdam Rules, (3) whether the Rules should attempt to define terms used, (4) whether they should incorporate provisions relating to arbitration or mediation in relation to disputes, (5) whether they should incorporate key documents such as average guarantees and average bonds, (6) whether changes are needed to further assist in relation to absorption clauses (where hull insurers pay general average in full up to a certain limit), (7) whether express wording is needed in the Rules to deal with the payment of ransoms, and other detailed questions posed in relation to particular Rule provisions.[66] The Rules drafted at the 1994 CMI Conference in Sydney are the most widely used. Further discussions took place at ISC meetings in Hamburg in June 2014, and the CMI is looking to complete this project in New York at its Conference in 2016.

B. *Salvage Convention and Judicial Sale of Ships*

The two principal topics discussed at the Beijing Conference in October 2012 were the Salvage Convention and Judicial Sale of Ships. The former had been carried out at the request of the ISU, which has

64. *See* Karl-Johan Gombrii, Richard Shaw & Bent Nielsen, *Revision of the York Antwerp Rules 2004 (To Be Known as York Antwerp Rules 2012)*, Y.B. 2011-2012 ANNUAIRE (Comité Maritime International) 289 (June 21, 2012), http://www.comitemaritime.org/Uploads/pdf/Yearbook_2011_12.pdf.

65. *See id.* at 291-94.

66. Questionnaire on General Average Sent from CMI to Presidents of National Maritime Associations, COMITÉ MAR. INT'L (Mar. 15, 2013), http://comitemaritime.org/uploads/correspondence%20president/YAR%2015%20march.pdf.

been very unhappy with the Convention for many years. Archie Bishop, in his 2012 Tetley Lecture, spoke about this work.[67] Sadly for the ISU, the CMI was not convinced that there was a compelling need for reform. Chinese lawyer Henry Li raised the issue of judicial sales out of concern that the absence of a convention in this area meant that sales of ships by order of a court in one jurisdiction were not always being recognised in other jurisdictions. There were further discussions on this topic in Dublin in September 2013, and the project was concluded in Germany in June 2014. Both of these projects were managed in classic CMI fashion: In advance of a conference, IWGs worked on the wording of an international instrument, which was then debated over a number of days at the conference in sessions that have much in common with a diplomatic conference.

C. Offshore Activities

Offshore activities were also debated at Beijing.[68] The CMI sent a draft instrument to the IMO after its Rio de Janeiro Conference in 1977. The draft instrument did not come up for consideration by the IMO Legal Committee until 1990 when it asked the CMI to consider whether any revision needed to be made to its 1977 document. At its 1994 Conference in Sydney, the CMI adopted a revised version of the 1977 Rio draft Convention entitled Draft International Convention Offshore Mobile Craft. At the same time, it established a working group to consider the issue further and, if appropriate, draft an international convention on offshore units and related matters.[69] The IMO Legal Committee considered the Sydney draft in 1995, but it did not gain traction. The Legal Committee encouraged the CMI to pursue efforts to draft a comprehensive treaty. That IWG's work can be found in the 1996[70] and 1997[71] CMI Yearbooks. The late Richard Shaw brought that history up to date in a report that he prepared for the Beijing Conference in 2012, which is reproduced in the 2011-2012 CMI Yearbook.[72] He noted that the CMI had submitted a report to the IMO Legal Committee in 1998 containing a review of the subject with a survey of the principal

67. Archie Bishop, *The Development of Environmental Salvage and Review of the London Salvage Convention 1989*, 37 TUL. MAR. L.J. 65, 90 (2012).

68. *See* Richard Shaw, *Regulation of Offshore Activity: Pollution Liability and Other Aspects*, Y.B. 2011-2012 ANNUAIRE (Comité Maritime International) 302 (Sept. 2012), http://www.comitemaritime.org/Uploads/pdf/Yearbook_2011_12.pdf.

69. *Id.* at 302-03.

70. Y.B. 1996 ANNUAIRE (Comité Maritime International) (May 1997).

71. Y.B. 1997 ANNUAIRE (Comité Maritime International) (Dec. 1997).

72. Shaw, *supra* note 68, at 302.

legal issues that should, in the view of the CMI ISC, be covered by such a convention.[73] In 2001, the Canadian Maritime Law Association produced a draft framework document for an International Convention on Offshore Activities, which was published in the CMI Newsletter in 2004.[74] As Richard Shaw noted in his Beijing report:

> The need for an international convention to clarify the application of legal principles relating to subjects such as registration, mortgages, salvage, limitation of liability and liability for oil pollution appears to be widely recognised, although it would not be right to overlook the view expressed in certain quarters, notably by the International Association of Drilling Contractors and the E and P Forum, that there is no need for such convention.[75]

Since the Deepwater Horizon and Montara disasters, some states, especially Indonesia, have argued that something needs to be done in this area. Justice Steven Rares of the Federal Court of Australia has written eloquently on the subject and believes that an international convention modelled on the Civil Liability Convention (dealing with oil pollution) should be prepared.[76] Accordingly, the CMI has set up a new IWG for offshore activities, pollution liability, and related issues under the Chairmanship of Patrick Griggs. A questionnaire was sent out to national maritime law associations in July 2013.

Tabetha Kurtz-Shefford has pointed out in a 2012 paper:

> [I]t is obvious that there is little appetite for a global regime. The probability of one arising within the near future is very low, especially without the support of some of the more influential nations and organisations. Although it will never be explicitly cited as a reason for failure, it is almost certain that such a regime faces strong resistance from the main oil and gas entities within the industry. . . . The subject has now turned from the establishment of a global regime to the shape regional guidelines might take.[77]

---

73. *Id.* at 303.

74. *See Convention on Offshore Units, Artificial Islands and Related Structures Used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources*, CMI NEWS LETTER (Comité Mar. Int'l, Antwerp, BE), Jan./Apr. 2004, at 1, 3, http://www.comitemaritime.org/Uploads/Newsletters/2004/Binder1.pdf.

75. Shaw, *supra* note 68, at 304.

76. *See* Steven Rares, *An International Convention on Off-Shore Hydrocarbon Leaks?*, Y.B. 2013 ANNUAIRE (Comité Maritime International) 340, 343 (Oct. 14-19, 2012), http://www.comitemaritime.org/Uploads/Publications/Yearbooks/CMI%20YEARBOOK%202013.pdf.

77. Tabetha Kurtz-Shefford, *Liability for Offshore Facility Pollution Damage After the Deepwater Horizon? What Happened to the Global Solution?*, 18 J. INT'L MAR. L. 453, 457-58 (2012).

Other topics discussed at Beijing and on which CMI IWGs are working between conferences include fair treatment of seafarers, piracy and maritime violence, marine insurance, cross border insolvency, and the Arctic and Antarctic legal regimes. All are extremely topical and require the CMI to utilise the services of its worldwide network of maritime law experts.

D. Promoting the Ratification of International Conventions

At the Beijing Conference in 2012, the CMI launched an initiative to set up a Standing Committee to investigate the possibility of joining with the ICS and IMO to seek more convention ratifications.[78] This has now occurred. It is believed that national maritime law associations could do much (in conjunction with the ICS worldwide membership) to educate states about the conventions that they have not ratified. The CMI, ICS, and IMO have jointly published a brochure that lists the conventions upon which a major focus is to be directed.[79] We have recently also combined that Standing Committee with a former IWG and charged the group with the responsibility of drafting guidelines to assist countries in ratifying conventions and giving them effect in their own jurisdictions without impeding the uniformity that the convention itself seeks to establish. As already mentioned, the U.S. COGSA is a good example of how states differ in the manner in which they give effect to conventions. Another example is the New York Convention on International Arbitration,[80] to which I refer below. The CMI intends to investigate whether there are any guidelines that it could develop to unify the manner of implementation.

---

78. Stuart Hetherington, *The Future of the CMI in the Decades To Come*, Y.B. 2011-2012 ANNUAIRE (Comité Maritime International) 395, 402 (Sept. 2012), http://www.comitemaritime.org/Uploads/pdf/Yearbook_2011_12.pdf.

79. *See* Int'l Chamber of Shipping, Int'l Shipping Fed'n & Comité Mar. Int'l, *Promoting Maritime Treaty Ratification*, COMITÉ MAR. INT'L (Apr. 2013), http://www.comitemaritime.org/Uploads/Work%20In%20Progress/Promoting%20Ratification%20of%20Maritime%20Conventions/3%20ICS%20Brochure%20-%20April%202013.pdf. The brochure identifies the following protocols and conventions as worthy of emphasis: the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea; the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims; the International Convention for the Safe and Environmentally Sound Recycling of Ships; the Protocol of 1997 To MARPOL (Annex VI—Prevention of Air Pollution from Ships); the Maritime Labour Convention, the Seafarers' Identity Documents Convention (Revised); the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea and Protocol of 2010; and the Nairobi International Convention on the Removal of Wrecks. *Id.*

80. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

E. Cape Town Convention 2001

A convention about which I knew nothing until recently was the 2001 Cape Town Convention on International Interests in Mobile Equipment,[81] which has three protocols relating to aircraft,[82] railways rolling stock,[83] and space assets.[84] It seems that the International Institute for the Unification of Private Law is considering incorporating ships within that Convention. The CMI and the IMO opposed this initiative when it was first raised in the 1990s, but it looks as if we will have to redebate that issue over the coming months.

F. Handbook of Maritime Conventions

The CMI has, in the past, worked with a publisher to produce a handbook containing the most significant maritime conventions.[85] With the assistance of Frank Wiswall and the International Maritime Law Institute in Malta, the CMI is working to produce a new edition. At the same time, consideration is being given to posting that material on the CMI website. In recent years the CMI website has been considerably upgraded.

G. Jurisprudence on Maritime Law

A further initiative of the CMI is to employ somebody on a six-month contract to gather important legal decisions worldwide on specific international conventions, summaries of which would be available on the CMI website. Francesco Berlingieri has already worked on this for some years voluntarily but has been reliant on volunteers around the world sending him decisions. However, we believe that someone working full time on such a project for a six-month period could assemble significantly more material and establish a more committed network of volunteers around the world to gather such material in the future.

---

81. Convention on International Interests in Mobile Equipment, Nov. 16, 2001, S. TREATY DOC. No. 108-10, 2307 U.N.T.S. 285.

82. *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, INT'L INST. FOR UNIFICATION PRIVATE L. (Nov. 16, 2001), http://www.unidroit.org/english/conventions/mobile-equipment/aircraftprotocol.pdf.

83. *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock*, INT'L INST. FOR UNIFICATION PRIVATE L. (Feb. 23, 2007), http://www.unidroit.org/english/conventions/mobile-equipment/railprotocol.pdf.

84. *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets*, INT'L INST. FOR UNIFICATION PRIVATE L. (Mar. 9, 2012), http://www.unidroit.org/english/conventions/mobile-equipment/spaceassets-protocol.pdf.

85. *See, e.g.*, COMITÉ MAR. INT'L, HANDBOOK OF MARITIME CONVENTIONS (Frank L. Wiswall ed., millennium ed. 2001).

H. Arbitration

The CMI has set up an IWG to consider whether there is anything it should be doing with respect to arbitration. As we have seen, the manner in which countries adopt international conventions engenders some of the problems in achieving uniformity. The New York Convention has 148 member States and, on Patrick Griggs' suggested methodology for calculating success, ranks well among all international conventions as being highly successful. However, the Convention has given rise to differing decisions around the world by reason of its language and the legislation that has given effect to it. Time does not permit me to go into detail, but relevant cases are identified in the footnote.[86]

I. Future Work

There are a number of other topics on which the CMI is considering working. I have advocated for many years that one topic worthy of study is the Admiralty Rules, that is, the procedures utilised to give effect to the Admiralty Conventions of 1952 and 1999. The last Tetley Lecture, by Bernard Eder, called for a change to the regime that deals with the topic of wrongful arrest.[87] A CMI IWG could consider this proposal in the context of perhaps drafting a set of uniform Admiralty Rules. Australia's provision, section 34 of its Admiralty Act 1988,[88] might be a good starting point. Since the Act's introduction, it has not generated any litigation and, in my view, operates as an excellent brake on plaintiffs (who are not required to post security), whose claim might be frivolous.

V. CONCLUSION

Whilst there seems to be a lack of interest in the IMO Legal Committee to develop new conventions (about which the shipping community will no doubt sigh with relief), I hope I have demonstrated that maritime lawyers are still doing much work seeking to unify maritime law. Since its formation at the end of the nineteenth century, the U.S. MLA has been a significant supporter, both financially and in providing academic and practical input into the development of

86. *IMC Aviation Solutions Pty Ltd v Altain Khuder LLC*, (2011) 253 FLR 9 (Austl.); Dardana Ltd. v. Yukos Oil Co., [2002] 2 Lloyd's Rep. 326 (C.A.) (Eng.); Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Gov't of Pak., [2010] 2 Lloyd's Rep. 691 (appeal taken from Eng.).

87. Sir Bernard Eder, *Wrongful Arrest of Ships: A Time for Change*, 38 TUL. MAR. L.J. 115, 119 (2013).

88. *Admiralty Act 1988* (Cth) s 34 (Austl.).

instruments of the CMI's work. In recent years, Frank Wiswall served on the CMI Executive Council, chaired many of its IWGs, and contributed enormously to the work of the CMI. Chris Davis, who was appointed a Vice President of the CMI at its meeting in Dublin in October 2013, now fills that role.

What I have sought to demonstrate in this Article is that throughout the last couple of thousand years, attempts have been made to make the law of the sea, as it applied to trade, uniform and that there have been many different ways used in trying to achieve uniformity. Since the end of the nineteenth century, great efforts have been made in the area of international conventions. Some would say that there has been a surfeit of work in this area and that governments have failed to rise to the challenge of giving effect to these conventions, either when they were originally agreed or in later years when amendments or new conventions were prepared to deal with problems that had not been considered originally.

What I have also tried to show, at least in relation to private international law topics such as the carriage of goods liability regime, is that there might be another way. Specifically, uniformity may be effected in the manner that was attempted at the end of the nineteenth century—that is, reliance on a standard form of contract between carriers and merchants. The two processes are not mutually exclusive. It may be that the dilatoriness of governments requires carriers to take the lead and incorporate the Rotterdam Rules into their bills of lading via the clause paramount, which will send a strong message to governments that they need to renounce the Hague, Hague-Visby, and Hamburg Rules and ratify the Rotterdam Rules. If BIMCO and the P&I clubs, together with the ICS, decided that giving effect to the Rotterdam Rules was an urgent need to bring greater certainty to the carriage of goods and to reduce legal costs substantially where disputes occur, I believe that we could achieve a situation that is even better than that which was achieved during the lifetime of the Hague Rules (effectively between 1924 and 1968).

"For they're only fleeting things, my elusive dreams"[89]

Uniformity may be "fleeting" because trade and commerce constantly change and require new rules and procedures. Nevertheless, there is no doubt that greater uniformity in liability regimes and commercial documentation around the world makes it easier (and

89. SINATRA & HAZLEWOOD, *supra* note 38.

cheaper) for traders to operate. That was as true for the ancient Romans and Hanseatic League nations as the Maersks, Hamburg Suds, and MSCs of today.

As so many others more learned than me have said, the goal of uniformity, or at least greater uniformity, is a noble one, and it should be pursued. The panacea, as we have seen, is indeed elusive, but we should not give up our pursuit. We should not be dismayed when, in the words of Justice Haight, having taken two steps forward we take one step back. The CMI will continue to seek greater uniformity in the area of maritime law, whatever hurdles we have to overcome.