



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

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## Compelling Reasons

- **Pursuit of Harmonization**
  - Hague Rules - 1924 outdated
  - Visby Protocol 1968 and SDR Protocol 1979 and Hamburg Rules 1978 not universally adopted
- **Pursuit of Modernization**
  - Current regime seen as ill-fitting for modern container transport
  - Electronic commerce



# Origin of the Convention: CMI & UNCITRAL

- **34<sup>th</sup> Session of UNCITRAL – 2001**

**Report suggested the following additional issues should be considered in any future instrument:**

- Scope of application - **Chapter 2**
- Period of responsibility of the carrier – **Chapter 4**
- Obligations of the carrier – **Chapter 4**
- Liability of the carrier – **Chapter 5**
- Obligations of the shipper – **Chapter 7**
- Transport documents – **Chapter 8**
- Freight – deleted – **Art. 42 “freight prepaid”**
- Delivery to the consignee – **Chapter 9**
- Right of control – **Chapter 10**
- Transfer of rights – **Chapter 11**
- Right of suit against the carrier - **deleted**
- Time for suit – **Chapter 13**

# Time frame and Stakeholders

- **Time frame**

- **9<sup>th</sup> Session of WG III (Transport Law), April 2002**
- **21<sup>st</sup> Session of WG III, January 2008**
- **25 weeks of intergovernmental deliberations**

- **Stakeholders**

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

## Adoption of the Convention

- **Draft Approved – July 2008 – 41<sup>st</sup> session of United Nations Commission on International Trade Law (UNCITRAL)**
- **Adopted – 11 December 2008– 63<sup>rd</sup> Session of United Nations General Assembly**
  - **Opened for signature 23 Sept 2008 in Rotterdam**
  - **Recommended Convention be known as the Rotterdam Rules**
  - **Called upon all Governments to consider becoming party to the Convention**

## Signatures – 23 September 2009

- **16 States:** Congo, Denmark, France, Gabon, Ghana, Greece, Guinea, the Netherlands, Nigeria, Norway, Poland, Senegal, Spain, Switzerland, Togo, United States
- **World Trade Volume:** Over 25%
- **Hamburg Rules – 34 Contracting Parties:** 5%

## Signatures – 23 September 2009

- **Official Delegations but not yet in a position to sign or unable to sign because deficiency in Full Powers: **United Kingdom\***, **Belgium\***, **Slovenia**, **New Zealand**, **China**, **Croatia**, **Bulgaria**, **Finland**, **Japan**, **Angola**, **Democratic Republic of Congo**, **Benin****

## Total Signatures To Date: 19

- Three more signatures since 23 Sept:  
Madagascar, **Armenia**, Cameroon





# Main Innovations

- **Scope of Application: Contractual approach**
  - **Hague and Hague-Visby:** Bill of Lading
  - **Hamburg:** Contracts of carriage by sea
  - **Rotterdam:** ALL Contracts of carriage with an international sea leg
  
- **Scope of Application: Door-to-Door Transport**
  - **Hague and Hague-Visby:** Tackle to tackle
  - **Hamburg:** Port to port
  - **Rotterdam:** Door to door
    - Limited network principle (Art. 26)
    - Art. 82 – International conventions governing the carriage of goods by other modes of transport

# Main Innovations

- **Electronic Commerce**
  - **Hague, Hague-Visby and Hamburg:** No electronic commerce provisions
  - **Rotterdam:** Provides legal infrastructure for e-commerce (Chapter 3)



# Main Innovations

- **Containerisation**
  - **Hague-Visby and Hamburg:** Limited to “container clause” in the per package limitation provision
  - **Rotterdam:**
    - Door to door contracts of carriage
    - Due diligence obligation extends to carrier-provided containers (Art. 14(c))
    - Qualifying clause provision takes into account that carrier usually has no opportunity to inspect goods inside a container (Art. 40)
    - Shipper packing its own container must do so properly and carefully (Art. 27(3))

# Main Innovations

- **More Balanced Carriers' Liability**
  - Due diligence extended to an ongoing obligation (Art. 14)
  - Onus of proof clearly on carrier regarding cause of damage and that it was not caused by its fault (Art. 17(2))
  - Errors in navigation and management of the ship deleted as excuses for liability, and fire exception has been restricted (Art. 17(3))
  - Deck cargo no longer outside regime (Art. 25)
  - Increase in monetary amounts for limitation on liability (Art. 59(1))
- **Direct Liability of Maritime Performing Party (Art. 19)**

# Main Innovations

- **Controlling Party, Right of Control and Transfer of Rights**
  - Not dealt with in previous maritime transport conventions
  - Important for providing instructions to carrier during the carriage
  - Decoupled from transport document – important key to e-commerce
- **Limitation amounts on carrier liability**
  - **Hague:** per package limitation only
  - **Hague-Visby:** 666.67 SDRs per package and 2 SDRs per kilo
  - **Hamburg:** 835 SDRs per package and 2.5 SDRs per kilo
  - **Rotterdam:** 875 SDRs per package and 3 SDRs per kilo

# Main Innovations

- **Delivery of goods to the consignee**
  - Not expressly in current maritime transport conventions
  - Extensive rules on delivery in Chapter 9 of Rotterdam Rules to improve legal certainty
- **Identity of the carrier**
  - To assist in identifying the contractual counterpart of the shipper (Art. 37)
- **Shippers' obligations**
  - Not new, but consolidated in a systematic and logical manner

# Main Innovations

- **Time for Suit**
  - **Hague, Hague-Visby:** One year for cargo claimant to file before time-barred
  - **Hamburg:** Two years
  - **Rotterdam:** Two years
  
- **Jurisdiction and Arbitration**
  - **Hague, Hague-Visby:** No specific rules
  - **Hamburg:** Specific provisions
  - **Rotterdam:** Opt-in chapters (Art. 91 declaration)

# Main Innovations

- **Freedom of Contract**
  - **Only in volume contracts**
  - **Strong protection for the shipper:**
    - » **Volume contract must prominently state that it derogates from the Convention**
    - » **Must specify the derogations**
    - » **Must be individually negotiated**
    - » **Cannot incorporate the derogations by reference or in a contract of adhesion**
    - » **Shipper must ALWAYS be given opportunity to contract without derogation**
    - » **Some provisions are ‘super-mandatory’**



# Navigating the Convention

- **Chapter 1 – General provisions**
- **Chapter 2 – Scope of application**
- **Chapter 3 – Electronic transport records**
- **Chapter 4 – Obligations of the carrier**
- **Chapter 5 – Liability of the carrier for loss, damage or delay**
- **Chapter 6 – Additional provisions relating to particular stages of carriage**
- **Chapter 7 – Obligations of the shipper to the carrier**

# Navigating the Convention

- **Chapter 8 – Transport documents and electronic transport records**
- **Chapter 9 – Delivery of the goods**
- **Chapter 10 – Rights of the controlling party**
- **Chapter 11 – Transfer of rights**
- **Chapter 12 – Limits of liability**
- **Chapter 13 – Time for suit**
- **Chapter 14 – Jurisdiction – Opt-in**
- **Chapter 15 – Arbitration – Opt-in**

# Navigating the Convention

- **Chapter 16 – Validity of contractual terms**
- **Chapter 17 – Matters not governed by this convention**
- **Chapter 18 – Final clauses**



## Conclusion

- **Industry-driven project**
- **Comprehensive instrument**
- **Modernizes**
- **Harmonizes**
- **Preserves existing unimodal transport regimes**
- **Predictability**
- **Transparency**
- **Enhanced efficiency**
- **Reduced transaction costs**

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

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