



# FONASBA ANNUAL MEETING 2009

The Rotterdam Rules  
Chartering & Documentary Committee Plenary  
Meeting

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# WHY A NEW CONVENTION?

- ▶ Currently three international liability conventions
  - Hague Rules 1924
  - Hague Visby Rules 1968
  - Hamburg Rules 1978
- ▶ Other conventions for specific areas, road transport etc.
  - CMR 1956
  - COTIF 1980
- ▶ Also individual national rules, so no consistency, variations in liability, very complex
- ▶ Current conventions are outdated, e.g.: no recognition of multimodal transport or "e-" provisions

# WHO USES WHAT?

## ▶ Hague Rules:

- Argentina, Croatia, Cyprus, Ireland, Israel, **Kenya**, Mauritius, Montenegro, **Netherlands**, Peru, Portugal, Slovenia, Turkey, **UK** and USA

## ▶ Hague Visby Rules:

- Australia, Belgium, Denmark, Finland, France, Germany, Italy, Japan, **Netherlands**, Norway, Poland, South Africa, Spain, Sweden, **UK**

## ▶ Hamburg Rules:

- Hungary, **Kenya**, Mexico, Morocco, Senegal, Tunisia

## ▶ National Rules:

- Brazil, Bulgaria, China, Dubai, Iceland, Malta, Mauritania, Philippines, Russia, Sudan, Uruguay, Yemen

# WHAT DOES ROTTERDAM AIM TO ACHIEVE ?

- ▶ Single, consistent regime for multimodal transport with a sea leg
- ▶ Avoid need for changing liability regimes as the mode changes
- ▶ Recognise use of "e-" and eventually electronic bills etc.
- ▶ Recognise existence and use of Volume Contracts

# WHAT IS THE CATCH?

- ▶ Very complex:
  - Hague Visby Rules run to 4 pages, Rotterdam to 54 pages
- ▶ Not proven:
  - Will require disputes to be taken through the courts in order to smooth rough edges, bring certainty in areas of doubt, set precedents
- ▶ New terminology introduced, established practices terminated:
  - good bye bills of lading, seawaybills etc., hello "transport documents"

# TO WHAT DOES ROTTERDAM APPLY?

- ▶ Primarily a liner convention
  - Can be applied if the place of receipt, port of loading, place of delivery or port of discharge are in a contracting state
  - Does not apply if a charterparty is in existence
- ▶ Will not normally apply to non-liner transport
  - Unless there is no C/P – e.g. project cargo
  - Or a transport document (CFR or CIF) is issued
  - BUT can be applied by mutual consent

# CARRIER'S OBLIGATIONS

- ▶ To carry and deliver the cargo (applies to all modes)
- ▶ To care for the goods (all modes)
- ▶ To exercise due diligence in making the vessel seaworthy (sea leg)
- ▶ AND maintain the vessel in a seaworthy condition and care for the cargo DURING the voyage – NEW – complies with ISM code requirements

# BASIS OF CARRIER LIABILITY

- ▶ Liability presumed if cargo damage is proven
- ▶ Carrier can reject on basis of *prima facie* evidence that damage caused elsewhere or one of 15 perils applies (perils updated)
- ▶ Cargo interests can try to prove loss due to unseaworthiness or act of carrier
- ▶ Carrier can counterclaim if can show due diligence was exercised
- ▶ NO NAUTICAL FAULT EXCEPTION – NEW
- ▶ Changes to GA claims – can no longer claim for negligent navigation



# LIMITS OF LIABILITY

- ▶ Rotterdam increases package or unit limits
- ▶ Includes better definition of “package”
- ▶ Includes specific clauses for economic loss due to carrier delays
- ▶ Increases time bar limits, Hague-Visby and Hamburg one year, Rotterdam 2 years
- ▶ Carrier liability for land carriage can be reduced if another convention is in force, e.g. CMR on an international road haulage leg
- ▶ Port authorities included as “maritime performing parties”

# VOLUME CONTRACTS

- ▶ Rotterdam specifically recognises volume contracts
- ▶ But is not clear on de-minimis size of a volume contract
- ▶ Does allow unlimited freedom of contract by negotiation
- ▶ BUT does not absolve shippers from obligations for dangerous cargo or allow carriers to avoid seaworthiness liabilities

# JURISDICTION

- ▶ Rotterdam provisions similar to Hamburg
- ▶ But go against prevailing EU law
- ▶ Exclusive jurisdiction clauses are no longer acceptable:
  - Dispute can now be heard in any competent court in country of domicile of carrier, place of receipt of goods, place of delivery, port of loading or discharge or by agreement between parties
- ▶ Recognises the right to choose court or arbitration
- ▶ Uncertainty for carriers

# IMPACT OF ROTTERDAM

- ▶ Liner companies and shippers will immediately have to rewrite clauses
- ▶ Liner booking procedures will have to be revised, clerks retrained
- ▶ Little change for bulk operators – unless decide to use Rules
- ▶ NVO's may now offer volume contracts
- ▶ Ports and Terminal Operators need to watch liabilities

# WILL ROTTERDAM SUCCEED?

- ▶ 16 states signed up on 23.09.2009
  - Including Denmark, France, the Netherlands, Norway, Poland, Senegal, Spain, and the US, representing more than 30% of world trade
- ▶ Need four more by 23.09.2010
  - China very enthusiastic, UK, Australia and South Africa also expected to sign
- ▶ If 20 states sign up and ratify by 23.09.2010 then will come into effect one year after 20<sup>th</sup> state has ratified

# WHAT IF IT DOESN'T?

## ▶ CHAOS!

- ▶ Individual nations/trading blocs will implement regional regimes, e.g.:
  - US will revise COGSA
  - European Commission will continue work on its own draft regime – firmly rejected by 50 out of 58 consultees in favour of international regime. Only shippers and forwarders support
- ▶ Result will be more confusion, even less consistency and legal certainty

# THANK YOU

I would like to acknowledge the help and guidance provided by Craig Neame of Holman Fenwick & Willan for providing the background information for this presentation, as well as the excellent food and wine at their recent seminar !

Any mistakes, however, are mine alone.

A copy of a series of Frequently Asked Questions provided by HF&W will be circulated with the minutes of this meeting.