



# The Rotterdam Rules

## A Trap for Unwary Underwriters?

Wilfried Van Gompel

# The Rotterdam Rules



- Goal of the Rotterdam Rules
  1. promote legal certainty
  2. improve the efficiency of international carriage of goods and
  3. facilitate new access opportunities for previously remote parties and markets
- regulating multi-modal transport with a sea-leg (a maritime-plus convention)

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- where is the dividing line ?
  - nautical fault
  - due diligence obligation to keep the ship seaworthy
  - increase of the liability limits
  - liability for delay
  - deck cargo
  - burden of proof and allocation of liability
  - “volume contracts”
  - time-bar to two years
  - Etc...

Prof Rhidian Thomas

“...suffocating wordiness, careless use of language and persistent refusal to abide by the basic rules of elegant and effective drafting. When the time comes to put the drafting to the test,..., it is suspected that the Rules may be found to be wanting and potentially productive of more disputes than might be considered healthy for the shipping industry. Consequently, the adoption of the new Convention may carry a very high price label”

Prof Richard Williams

“...one can only sympathize with those in the industry who will have to review their trading systems and transport documents in order to accommodate requirements which are complex if not confusing.”

Prof Yvonne Baatz

“...Chapter 14 and 15 of the Rotterdam Rules introduce considerable further complexity into an already challenging area, without addressing some of the existing issues that trouble maritime litigants.”

Prof William Tetley

“...the excessive detail of the Rotterdam Rules is likely to create uncertainty and hinder the goal of attaining legal certainty in multimodal transport regulation. The Rotterdam Rules seem fit for only a small group of trained lawyers “

## Possible sources of conflict & confusion

- The scope of application
- Maritime Performing Parties
- Obligations of the shipper to the carrier
- Possibility for the carrier to “qualify” information related to the goods
- Conflicts with other conventions



## Scope of application :

### ➤ Contractual approach

*contract 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.”*

### ➤ Trade Approach

### ➤ Performance

## Maritime performing party :

1. 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, care, unloading or delivery of the goods, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.
2. 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.

# The Rotterdam Rules



Maritime performing party is liable if it

- received or delivered the goods in a Contracting State,
- performed its activities with respect to the goods in a port in a Contracting State and
- the loss occurred
  - (i) 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
  - (ii) while 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

# The Rotterdam Rules



But

- Limits of liability
- LLMC
- Different regimes for goods under custody
- Port or port area ?
- Joint and several

## Obligations of the shipper

### ■ *Fault-based*

- provide the carrier with all information, instructions and documentation required for the proper handling and carriage of goods.
- deliver the goods to the carrier, ready for carriage and able to withstand their loading, handling, stowing, lashing and securing

- *Strict*
  - provide to the carrier, in a timely manner, the information required for the compilation of the contract particulars and the issuance of transport documents
  - inform the carrier of the dangerous nature or character of the goods in a timely manner when the goods, by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment + mark any such goods in accordance with law or regulations that apply during any stage of the intended carriage..

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- Strict liability remains unlimited
- article 33 : a documentary shipper is subject to the obligations and liabilities imposed on the shipper
- article 58,2 of the Rules : a holder that is not the shipper and exercises any right under the contract of carriage assumes any liabilities imposed on it to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document

## Qualifying information : article 40

- qualification with reasons ?
- “physically practicable or commercially reasonable means” and “reasonable grounds”



## *Conflicts with other conventions :*

article 26 : if localized damage or loss before loading onto the ship or after discharge from the ship

→ RR do not prevail over those provisions of another international Instrument that, at the time of such loss or damage,

- Would have applied 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 occurred
- Specifically provide for the carrier's liability, limitation of liability or time for suit
- Cannot be departed from either at all or to the detriment of the shipper under that instrument

## Conclusion :

a complex and ambiguous instrument, with a lot of drafting deficiencies

*You, however, can easily correct this bill to the taste of my brother lawyers, by making every other word a "said" or "aforesaid," and saying everything over two or three times, so that nobody but we of the craft can untwist the diction, and find out what it means; (\*)*

■  
\*)- Thomas Jefferson, Letter to Joseph C. Cabell, 9 Sept. 1817, in Writings of Thomas Jefferson 17:417-18 (Andrew A. Lipscomb ed. 1904)