

DECLARATION OF MONTEVIDEO

A group of citizens and experts in Maritime Law, who are against their respective countries ratifying and becoming parties to the so-called “ROTTERDAM RULES” (“Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea”, which was opened for signature on 23rd September 2009 in Rotterdam), have agreed to issue the following Declaration:

1. The aforementioned Convention is seriously detrimental to import and export firms in Latin American countries, almost all of which are dependent on international carriage by sea.

2. Not only does it fail to provide equity and reciprocal benefits in international trade but in itself the Convention constitutes a highly complex juridical instrument with a regulatory approach which is full of references from one provision to another and contains definitions that are tautological. Furthermore, it introduces a maritime neo-language that invalidates a great amount of international case law created since 1924 and which, due to its deficient legislative technique, gives rise to very different interpretations.

3. It represents a retrogressive step in the standards and practices prevailing in multi-modal carriage, since it excludes other means of transport whenever shipment by sea is not involved – for it only regulates the marine carriage leg and associated transport (maritime plus). Moreover, it is not *per se* a convention of universal and uniform scope, as it allows exemptions to its own provisions, for example, in the case of “volume contracts”. In addition, it leaves the door open for states not to ratify the rules on Jurisdiction and Arbitration (Chapters 14 and 15) which means these provisions are not compulsory for contracting parties.

4. It introduces expressions that in juridical terms bear little or no significance to transportation contracts, such as: *volume contract*, *regular* or *non-regular liner*

transportation, performing party and maritime performing party. These terms change neither the concept nor the purpose of contracts of carriage.

5. It introduces the concept of the "*documentary shipper*", which is different from the shipper, although the Convention itself admits that this person is not in fact the other party to the contract of carriage. It also removes the concept of the transit agent or cargo transit agent.

6. It removes the terms *cargo broker* and *cargo agent* which are time-honoured expressions employed for almost two centuries in international legislation, case law and practice. These terms are replaced by others with no juridical significance such as *transport document holder, consignee, right of control and controlling party*.

7. It removes the term *bill of lading*, also a traditional concept used in all international legislation, case law and practice, to be replaced by vague expressions such as *transport document or electronic transport document*.

8. It errs in stating that the replacement for the Bill of Lading (namely the *transport document*) is the contract of carriage when it is really nothing more than evidence of the existence thereof. Furthermore, its other functions such as a mate's receipt for merchandise on board and credit note are ignored.

9. It allows special clauses to be inserted into the transport document, thus altering the current one, which is only admissible in freely negotiated charter parties.

10. It accepts the validity of adhesion clauses incorporated into transport documents that attribute exclusive jurisdiction to the courts that the carrier may choose. In practice, this means that claimants will be bound always to bring suits in the courts where the carrier has its domicile, thus excluding the courts of States that are users of transportation services. In particular, this will prevent a shipper claiming breach of contract from having recourse to the courts in the place of delivery.

11. It does not apply to transport documents or bills of lading issued under charter parties relating to the whole or part of a ship, which is a standard commercial procedure with many years of untroubled application behind it.

12. It leaves the carrier free to decide whether to take goods on board or destroy them if such merchandise may at any time during the course of shipment become dangerous. It also relieves the carrier of liability for any natural loss, whether of weight or volume, without laying down specific limits for each type of merchandise. Moreover, it permits carriers to deviate without losing rights of exemption or limitation of liability due to such deviation.

13. It modifies the clear rules that previously governed carriers' liability significantly by placing the burden of proof on the claimant (whether the shipper or the consignee) which substantially alters the current state of affairs. There is, however, no reason to abandon the traditional system whereby the person who suffers loss or prejudice only has to prove the existence of the contract of carriage and breach of its terms. To that extent, it is up to the carrier to demonstrate reliance on exemptions which may relieve it from liability.

In view of the number of exemptions provided for, it is unclear whether the carrier now commits itself to a result, and the obligation on the carrier to look after the goods it receives on board disappears. But, if the essence of the contract is the duty to produce a result, this gives rise to a basic obligation on the carrier, namely to safeguard the merchandise.

With regard to loading and stowage on board the fact that carriers are allowed to transfer the responsibility for such operations to the shipper or other third party or parties means that the carrier is freed of its obligations to supervise and/or be responsible for proper stowage of the goods which may cause seaworthiness to be compromised.

14. Furthermore, as the unit of account is a monetary unit that is subject to inflation, the passage of time will tend to lead to a progressive increase in carriers' irresponsibility. The limitation on liability for delay (two and a half times the value of the freight) seems insufficient too. In addition, the rules with respect to the amount of compensation due when the value of the goods has been declared are not clear either.

The limitation of liability only applies to the carrier but not to the shipper (Articles 17/24) whose liability is integral and unlimited. The carrier is therefore granted an unacceptable privilege.

15. The limitation of carriers' liability is prejudicial for transport users as it entails a transfer of costs in favour of ship-owners and affects the balance of payments of countries that are reliant on shipping services. It must be pointed out that limitation of liability is not admissible in the laws of many countries in this region of the world (for example, Brazil and Uruguay) and that the limits adopted by Argentina and other countries that have ratified the Hague Rules are significantly higher.

16. With a view to achieving unanimity juridical principles and provisions have been incorporated into these new Rules both from those adopted by the Hague Rules of 1924 and from the Hamburg Rules.

To put it another way, a framework based on Common Law has been covered over with extracts from the Hamburg Rules which are founded on European codified civil law.

When it is said that the aim is to achieve uniformity in applicable law in order to facilitate international maritime trade, this ignores the incoherence of the mass of Rotterdam provisions designed to please everybody which, in fact, only leads to a legal Tower of Babel. This outcome is considerably more inappropriate than analysing the laws of other countries that have been built up to protect the rights of users, i.e. importers and exporters.

Modern information technology allows the world to have access to local laws and regulations along with the courts' and legal authorities' interpretations thereof. In other words it is not so difficult to find out about transoceanic rules and regulations.

To sum up, it is a mistake to proclaim that the Rotterdam Rules will put an end to the "worldwide confusion currently affecting this sector" as the promoters of the new regulations enthusiastically assert.

Conclusion: For all the above reasons we call on the governments and parliaments of our respective countries NOT to ratify or become party to the "Rotterdam Rules".

Montevideo, October 22, 2010

We applaud the excellent work done leading to the creation of the Montevideo Declaration and wholly support the view stated therein that the "Rotterdam Rules" should not be brought into force.

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