

THE EXTENT TO WHICH THE ROTTERDAM RULES SOLVE PROBLEMS OF MULTIMODAL TRANSPORTATION

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ABSTRACT

International trade has transformed the world significantly over the last century. Various modes of transport are being used in order to get goods from one part of the world to another. For instance, upon reaching a sea port, goods usually require rail or road transportation to reach buyers. Although laws governing each separate mode have developed over the years, it has become a need to have a single regime that would govern carriage of goods even when it involves more than one mode of transport. In other words, an overarching instrument which would administer all modes of transportation over air, water and land is urgently needed. After several failed efforts of trying to develop a single legal instrument for carriage of goods involving more than one mode of transportation and the most recent one is the Rotterdam Rules. The extent to which the latest “multimodal” transport conventions (the Rotterdam Rules) successfully resolve complications arising from multimodal transportation has been evaluated in this paper. This paper points out problematic areas of the Rotterdam Rules that remain, suggesting modifications where possible, with the view that addressing such areas would help the Rotterdam Rules to excel as an efficient multimodal transport convention. However, since the Rotterdam Rules possess a fundamental feature that calls for debate regarding whether it is at all the kind of multimodal convention that the world was in expectation of, plus given the time and effort required to address the complex nature of problems that require mending, and considering the risk of enough nations ratifying the Rules in order for it to come into force, this paper concludes by suggesting an alternative way of encouraging multimodal transportation.

I. INTRODUCTION

In today’s world, people benefit from access to products that do not originate from their own nations. Modern day transport opens up the possibility of products ranging from perishable goods to high-tech electronic devices becoming available globally. Maritime trade has long been the most popular form of carrying out international business transactions where traditionally the risk associated with the carriage of goods are the responsibility of the carrier and it begins from the time the goods are loaded on to the ship to the point of unloading, and even at the port where the goods are loaded till the

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goods are placed at the port of discharge.¹ It is important to note that latest developments have set new expectations for carriers to take responsibility for the cargo throughout the duration of the transportation contract – receipt to delivery, while both places may be inland.² Meaning, responsibility over the cargo would not remain limited to the port of loading or the port of discharge, but the carriers would also take liability throughout the whole transportation route, including carrying the goods somewhere inland.³ A regime covering the whole time span of transportation was much required, unlike existing maritime conventions, all of which fails to assume responsibility once the load leaves the port. So “door-to-door” coverage was sought as opposed to methods such as “port to port” or “tackle to tackle”⁴ – hence the introduction of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (“The Rotterdam Rules”) in 2008. Prior to this, there were many unsuccessful attempts in the past to draft a convention that would administer multimodal transport contracts. Either the conventions lacked recognition, or were implemented by few nations. Although those attempts focused on administering all modes of transportation, the Rotterdam Rules’ approach emphasizes “multimodalism,” but includes a mandatory maritime-leg clause.⁵ Therefore, this paper aims at assessing the extent to which the Rotterdam Rules successfully solves difficulties arising from multimodal transportation, suggesting how the Rules may be developed in administering multimodal transportation.

Part II of this paper aims at providing a comprehensive overview of multimodal transportation, difficulties arising from the same and how the Rotterdam Rules came to be the last multimodal convention. Part III then evaluates how the door-to-door provisions of the Rotterdam Rules solve the difficulties arising from multimodal transportation. Subsequently, Part IV points out the possible ways ahead in highlighting the shortcomings of the Rotterdam Rules (in light of multimodal transportation) and how to overcome such shortcoming in order to make Rotterdam rules a perfect multimodal transport convention. Finally, considering the risk of nations not ratifying the Rotterdam

¹ Kouladis, N., *Principles Of Law Relating To International Trade*, Springer, 2006, at p. 278.

² Nikaki, T. and Soyer, B., “A New International Regime For Carriage Of Goods By Sea: Contemporary, Certain, Inclusive AND Efficient, Or Just Another One For The Shelves?”, 30(2) (2012) *Berkeley Journal of International Law*, pp. 303-348, at p. 307.

³ *ibid.*

⁴ Karan, H., “Any Need for a New International Instrument on The Carriage Of Goods By Sea: The Rotterdam Rules”, 2(3) (2011) *Journal of Maritime Law and Commerce*, pp. 441-451, at p. 443.

⁵ Baatz and others, *The Rotterdam Rules*, Taylor and Francis, 2013, at p. 15.

Rules, the last section attempts to set out an approach beyond the Rotterdam Rules, which may be adopted in dealing with multimodal transportation.

II. MULTIMODAL TRANSPORT AND THE EMERGENCE OF THE ROTTERDAM RULES

The following sub-headings aim at providing a clear understanding of what multimodal transportation is, an overview of problems arising from multimodal transportation and the birth of the Rotterdam Rules.

A. Multimodal transportation

As already mentioned, earlier international instruments concerning the carriage of goods only governed one mode of transport. The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (Hague Rules), Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (Hague Visby Rules) and United Nations International Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules) (hereinafter referred to as the “sea conventions”) only cover carriage of goods by sea, thus do not taking into account the consequences of transporting the cargo outside the maritime port.⁶ Similarly, the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (Montreal Convention) only takes into account, cargo transported by air. However, all or a minimum of two modes of transport (over water, land or air) is required for the purpose of carriage of goods to be in accordance to a multimodal transportation system.⁷ An example is, goods reaching the final terminus of the buyer from the source (seller) – carriers start and end using air or land transportation, with carriage by sea in between (the case of door-to-door contract of Rotterdam Rules).⁸ According to the United Nations Convention of International Multimodal Transport of Goods, “international multimodal transport” involves a multimodal transport operator (MTO), who takes responsibility of goods reaching one country from another, using at least two modes of transport.⁹ However, this convention never came into force. A simple example of a multimodal transport would involve the shipping of a customer order that leaves the warehouse by way of a truck.

⁶ supra note 4 at p. 443.

⁷ Harris I. and others, “ICT in multimodal transport and technological trends: Unleashing potential for the future” 159 (2015) *International Journal of Production Economics*, pp. 88-103, at p.89.

⁸ Reynolds, F., *Managing Exports: Navigating the Complex Rules, Controls, Barriers, and Laws*, John Wiley & Sons 2003, at p. 222.

⁹ UNCTAD, “United Nations Convention on International Multimodal Transport of Goods” (1980), at http://unctad.org/en/PublicationsLibrary/tdmtconf17_en.pdf. (last visited on 22 february 2017)