



COMITÉ MARITIME INTERNATIONAL

PRESIDENT

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Presidents of MLAs

Copy to: Executive Council, Titulary Members, Consultative Members

By email

Dear All

Rotterdam Ruiles and E-Commerce

I am **attaching** a copy of a paper which Tomotaka Fujita and I have put together, and hope that you might find it to be useful in attempts which I would encourage you to make to interest your government in giving effect to the Rotterdam Rules sooner rather than later. The onward march of E-Commerce makes it essential that parties understand that the Rotterdam Rules is the only liability convention which deals with E-Commerce. Unless governments ratify the Rotterdam Rules there could be serious impediments to E-Commerce transactions in the transportation of goods by sea.

With kind regards,

Stuart Hetherington



COMITE MARITIME INTERNATIONAL

Rotterdam Rules and E Commerce

In the last several years, we have been hearing about the revolutionary change that autonomous ships will bring to international shipping. More recently, it is the technological developments in electronic commerce, such as "Blockchain"; that it is said will revolutionize shipping.

A recent article by Kyunghee Park published by Bloomberg, dated 19 April 2018, opens with the following paragraph:

"Globalisation has brought the most advanced trading networks the world has seen, with the biggest, fastest vessels, robot-operated ports and vast computer databases tracking cargoes. But it all still relies on millions and millions of paper documents."

The article goes on to show how that is changing, and describes the revolution taking place "on a scale not seen since the move to standard containers".

British futurist, Kate Adamson, has referred to "this digital industrial revolution ... opening the gates to massive gains in productivity and efficiency". (Readers may be familiar with her book "Shipping and the 800-lb Gorilla").

It is difficult to see how all this change can take place when the cargo liability regime that still prevails in international carriage documentation was agreed in 1924 (based on the Harter Act of the United States of 1893 and the Visby Protocol of 1968 not making any changes that would assist E Commerce). The only realistic answer is that States will need to ratify the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008 (the Rotterdam Rules) expeditiously.

What has been forgotten in the lethargy of States (except the four who have ratified them) and carriers since the Rotterdam Rules were adopted in 2008 is that they, unlike any of their

predecessor regimes (Hague, Hague Visby, and Hamburg), actually deal with electronic commerce.

An article in the Economist (April 25, 2018) entitled "Thinking outside the box: Global logistics" explains the significance of the problem:

"Removing administrative blockages and outdated practices would, by some accounts, do more to boost international trade than eliminating tariffs. The UN reckons that putting all the Asia-Pacific regions trade-related paperwork online could slash the time it takes to export goods by up to 44%, cut the cost of doing so by up to 31% and boost exports by as much as \$257 billion a year".

The article identified an institutional obstacle to reform as the failure to ratify the Rotterdam Rules which would "put electronic documents in international shipping on a firm legal footing".

When the CMI drafted its Instrument on Transport Law, which was provided to UNCITRAL in 2001 as the basis for the negotiations that ultimately produced the Rotterdam Rules, it declared that "there should be a clear statement in a preamble or in the Instrument that one of the intentions of the Instrument is to remove paper based obstacles to electronic transactions by adopting the relevant principles of the UNCITRAL Model Law on Electronic Commerce, 1996".

The CMI Yearbook 2001, in its introduction to what was the final version of the "Outline Instrument" made the following far sighted comments:

"Electronic commerce

The Instrument should apply to all contracts of carriage, including those concluded electronically. To reach this goal, the Instrument must be medium neutral as well as technology neutral. This means that it must be adapted to all types of systems, not only those based on a registry such as Bolero. It must be suited to systems operating in a closed environment (such as an intranet), as well as those operating in an open environment (such as the internet). One must also be careful not to be limited by what is currently in use, keeping in mind that technology evolves rapidly and that what appears impossible today is probably already on the current agenda of software developers."

The preamble to the Rotterdam Rules Convention, after referring to the Hague, Hague Visby and Hamburg Rules, noted that the Convention had been drafted:

"Mindful of the technological and commercial developments that have taken place since the adoption of those Conventions and of the need to consolidate and modernise them."

The definitions section in the Rotterdam Rules gives a clue to the transformative nature of the Rotterdam Rules compared with its predecessors. There are definitions of the following words "electronic communication"; "electronic transport record"; "negotiable electronic transport record"; "non-negotiable electronic transport record"; "the issuance" of a negotiable electronic transport record; and "the transfer" of a negotiable electronic transport record.

Chapter 3 of the Rotterdam Rules is entitled "Electronic transport records" and contains Articles 8 to 10 enabling the use of electronic transport records which are functional equivalents to transport documents such as bills of lading.

In addition Chapter 8 is headed "Transport documents and electronic transport documents" and comprises Articles 35 to 42 and Chapter 9 deals with "delivery of the goods" and comprises Articles 43 to 49 both of which include parallel provisions applicable to paper documents and their electronic equivalents; Chapter 10 "rights of the controlling party" (Articles 50 to 56) and Chapter 11 "Transfer of rights" (Articles 57 to 58) also address issues not covered by the previous regimes. All these provisions were carefully designed to be applicable to both paper and electronic records.

In addition to the use of electronic transport records the Rotterdam Rules create the possibility for using electronic communications to transfer the right of control.

It will be seen from this brief description of the contents of the Rotterdam Rules that they were drafted with electronic commerce in mind, unlike their predecessors.

Those involved in the transport chain, including carriers, port authorities, cargo interests, insurers and others involved in international trade should recognize the significance of the Rotterdam Rules in the context of electronic commerce, and they need to encourage their national governments to ratify the Convention as soon as possible.

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