

REPORT

I. Purpose

This Report is drafted in support of the accompanying Recommendation that the House of Delegates urge the United States Senate to ratify the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (hereinafter “the Rotterdam Rules”).

II. The Rotterdam Rules

The Rotterdam Rules are a convention describing the various rights and obligations of parties involved in marine shipping. They are the product of more than a dozen years of preparatory work and negotiations by inter-governmental and industry representatives through a working group within the United Nations Commission on International Trade Law (“UNCITRAL”).

On December 11, 2008, the General Assembly of the United Nations adopted what had been known informally as the UNCITRAL Convention, and scheduled a signing ceremony for September 23, 2009 in Rotterdam, the Netherlands. The United States joined fifteen other countries in signing the Rotterdam Rules (as they are now known) on September 23. The Rotterdam Rules will become international law one year following their ratification by twenty nations. They are intended to replace the existing conventions on this subject, which have become outdated. The United States Department of State has requested the American Bar Association provide its position regarding ratification of the Convention.

The United States played a meaningful role throughout the negotiation of the Rotterdam Rules representing the various concerns and interests of the United States maritime community. Ratification of the Convention will demonstrate that the United States remains a forerunner in world shipping.

III. Concerns with the Present System and Reasons for Ratification

Presently, trading nations operate under a number of conflicting cargo shipping regimes. Most nations subscribe to one of the following conventions: the Hague Rules (1924); the Hague-Visby Rules (1968) as later amended; or the Hamburg Rules (1978). As sea carriage is predominantly an international activity, uniformity and predictability are much desired. In practice, the existing conventions remain subject to each nation’s interpretation, resulting in further complication.

The United States follows the 1936 Carriage of Goods by Sea Act (COGSA). COGSA is

essentially the domestic enactment of the 1924 Hague Rules. Issues relating to containerization, multimodal transport, and e-commerce are not addressed in COGSA.

The Rotterdam Rules have been described as evolutionary, not revolutionary. The convention builds on the existing regimes and, where possible, harmonizes and modernizes the existing conventions. It contemplates multi-modal transport and will apply to contracts for transport of goods by sea as well as any prior or subsequent land-based segments of the carriage under the same contract. Thus, one contract and one regime may cover an entire transaction.

Port congestion may be improved, as the Rotterdam Rules provide terminals and carriers with a number of options for storing uncollected cargo outside the port. The convention recognizes and integrates e-commerce, which should facilitate a reduction in processing times and errors through the use of electronic transport documents.

COGSA generally limits a carrier's liability to a maximum of \$500 per "package". COGSA did not define "package". Given this lack of certainty, parties frequently are compelled to litigate the issue. When enacted, the \$500 limitation was deemed sufficient to cover most cargo. Given the dramatic change in the value of the dollar since COGSA's enactment, the Rotterdam Rules have increased the limitation amount and defined "package" for purposes of limitation of carrier liability. Liability for loss, claims procedures, and the obligations of the various parties have been set forth in greater detail than in the existing sea carriage conventions.

The United Nations and the signing nations have acknowledged the innumerable technological and commercial advancements that have occurred since the adoption of the existing legal sea carriage regimes. All parties to a maritime carriage contract will benefit from the efficiency and predictability of a universally binding legal regime covering maritime carriage as well as maritime carriage involving inland legs.

Additional detailed information, including the text of the convention itself, can be found at <http://www.abanet.org/tips/admiralty/Rotterdam>.

IV. Conclusion

The present legal regimes for maritime cargo transportation are numerous and outdated. COGSA is the enactment of a convention drafted eighty-five years ago. The drafters of the existing regime simply could not have anticipated the coming age of containerization, multimodal transport, and e-commerce, which changed the face of sea carriage. The Rotterdam Rules address these issues and set forth, with greater clarity, the rights and responsibilities of the interested parties. The Rotterdam Rules will provide greater harmony, efficiency, uniformity, and predictability for those involved in marine shipping.

The United States' interests were represented in UNCITRAL throughout negotiation of the Rotterdam Rules, and on September 23, 2009, the United States signed the treaty. Therefore, the attached Recommendation now proposes that the House of Delegates urge the United States Senate to ratify the Rotterdam Rules.

Respectfully submitted,

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John R. Tarpley, Chair
Tort Trial and Insurance Practice Section

Glenn P. Hendrix, Chair
International Law Section

February 2010

GENERAL INFORMATION FORM

Submitting Entity: Maritime Law Association of the United States
Tort Trial and Insurance Practice Section
International Law Section

Submitted By: Warren J. Marwedel, President
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Tort Trial and Insurance Practice Section

Glenn P. Hendrix, Chair
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1. Summary of Recommendation(s). The United States Senate is urged to ratify the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, also known as “the Rotterdam Rules.”

2. Approval by Submitting Entity.

Approved by the membership of the Maritime Law Association of the United States on May 1, 2009.

Approved by the Council of the Tort Trial and Insurance Practice Section on October 10, 2009.

Approved by the Council of the International Law Section on October 31, 2009.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Consistent with policy on **Electronic Commerce** adopted 8/97.

Consistent with policy on **Electronic Communications in International Contracts** adopted 08A100.

Consistent with policy on **Maritime Law** 8/76

5. What urgency exists which requires action at this meeting of the House?

Since the United States and fifteen other countries signed the treaty on September 23, 2009, the total number of signatories has increased to twenty. The United States State Department has urged the Maritime Law Association of the United States and the Association to become involved and influence the ratification decisional process.

6. Status of Legislation. (If applicable.)

No legislation is involved at this time but is anticipated.

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

Members of all three sponsoring entities represent various parties affected in various ways by the adoption of the treaty such as shippers and carriers. Members of the Maritime Law Association of the United States have participated in the drafting of the treaty.

9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

This Report is being referred to all ABA Sections, Divisions, and Forum Committees as well as state and local bar associations for co-sponsorship.

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

The ABA House of Delegates should urge the United States Senate to ratify the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (UNCITRAL), also known as the “Rotterdam Rules.”

2. Summary of the Issue that the Resolution Addresses

Presently, trading nations operate under a number of conflicting cargo shipping regimes. Most nations subscribe to one of the following conventions: the Hague Rules (1924); the Hague-Visby Rules (1968) as later amended; or the Hamburg Rules (1978). As sea carriage is predominantly an international activity, uniformity and predictability are much desired. In practice, the existing conventions remain subject to each nation’s interpretation, resulting in further complication. Current rules governing international cargo transportation contracts are fragmented by trade lane and transport mode, are widely perceived as favoring vessel owners over cargo owners, and have failed to keep pace with a global transition to containerized cargo and electronic shipping documents.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Rotterdam Rules, if widely adopted, will facilitate uniform cargo liability rules for ocean and related inland transportation, will create a more level playing field for cargo interests, and will recognize and encourage the use of modern information technology in global trade. It is believed that early ratification by the United States would influence similar action by other trading nations.

4. Summary of Minority Views

None