

Institution: University of Southampton
Unit of Assessment: 20 Law
Title of case study: 20-02 The Rotterdam Rules: modernising the global container trade
<p>1. Summary of the impact</p> <p>The University of Southampton's Institute of Maritime Law (IML) has played a significant role in the development of a new international convention which, if it comes into force, may govern the \$18 trillion global containerized trade. Southampton researchers contributed substantially to the debate underpinning the new global liability regime devised to replace a system which has struggled to keep up with the pace of technological change. The new international legal regime - the so-called <i>Rotterdam Rules</i> - has dramatically altered the scope of regulatory intervention in the sector and affected the rights and liabilities of shippers, carriers, receivers and insurers across maritime and multimodal transport worldwide. A global provider of CPD training, the IML continues to play an important part in explaining the new Rules to industry players and advising on how best to cope with the impact of future change.</p>
<p>2. Underpinning research</p> <p>The last two decades have witnessed explosive growth in the global container trade. Since the containers are designed for multi-modal carriage, that is they can be transhipped from one means of transport to another (ships, trucks, trains) without unpacking their contents, they have had a huge impact in reducing carriage costs of goods while increasing speed, volume and efficiency. In 2012 the World Trade Organisation estimated that more than 90 per cent of global trade, worth some \$18 trillion, was carried in containers, almost all using more than one mode of transport. However, international regulation has failed to keep up with the pace of change and, since the 1970s, the lack of a global or even regional regime setting out the duties and liabilities of multi-modal transport operators has been identified as an obstacle to world trade both by the United Nations Conference on Trade and Development (UNCTAD) and by the European Union.</p> <p>The European Commission asked the IML to undertake research in 1998-99 and 2005-06. The work was funded by consultancy contracts between the IML and the Commission. The researchers examined some of the fundamental assumptions made in the past by reformers, notably whether a uniform liability system was preferable to the traditional network approach adopted by the most common standard form contracts in use. A critical aim was to reconcile the positions of carriers and shippers/receivers, that is those providing transport services and those paying for such services, with all the complications arising from issues such as liability for items lost or damaged, and the related insurance issues. It was felt by some that technological advancement required a revision of the existing international regulatory framework, the so-called Hague and Hague-Visby Rules, dating back to 1924. One key driver of change was the impact of electronic commerce; how could bills of lading and other transport documents be translated into instruments of trade suitable for the age of the internet?</p> <p>Dr Regina Asariotis, who left the IML in 2002, was the principal investigator for the 1998-99 research (3.1, 3.4, 3.5) and led the consultations it involved with industry players. Together with Mikis Tsimplis, Professor of Law and Ocean Sciences, her work focused on American resistance to international uniformity. Their conclusions were critical of the US draft statute, the Carriage of Goods by Sea Act (COGSA) 1999, which set out to define unilaterally the balance of rights and responsibilities between shippers of cargo and ship-owners involved in transport to and from the US. Filippo Lorenzon, who joined the IML in 2002 and is its current director, led the 2005-06 research (3.2, 3.3, 3.6), which also included industry consultations and international academic exchanges. Other researchers were Yvonne Baatz, Professor of Maritime Law, who joined Southampton in 1991, Charles Debattista, who joined in 1982 and was Professor of Commercial Law until 2011, Professor Hilton Staniland, who joined in 2008, Dr Andrew Serdy, a Reader in law who joined in 2005, and John Dunt, a Senior Visiting Research fellow who joined in 2008.</p>

Published in 2009, *The Rotterdam Rules: a practical annotation*, is the fruit of cooperative research within the IML, and has led to a number of subsequent articles on the topic. The work is frequently cited in academic research and the criticisms made in these publications are implicitly addressed in policy papers worldwide.

3. References to the research

3.1 Asariotis R., Tsimplis, M.N., The proposed US Carriage of Goods by Sea Act [1999] LMCLQ 126-164; a response to which was published as Sturley, M., Proposed amendments to the US Carriage of Goods by Sea Act: a response to English criticisms [1999] LMCLQ 519-529; this led to a further reply: Asariotis R., Tsimplis, M.N., Proposed amendments to the US Carriage of Goods by Sea Act: a reply to Professor Sturley's response [1999] Lloyd's Maritime and Commercial Law Quarterly 530-535

3.2 Asariotis, R., UNCITRAL (draft) convention on contracts for the international carriage of goods wholly or partly by sea: mandatory rules and freedom of contract. In Competition and regulation in shipping and shipping related industries. Antapassis, A., L.I. Athanassiou and E. Røsaeg, eds. Leiden, The Netherlands, Martinus Nijhoff Publishers, 2009. p. 347-365 [peer reviewed on publication];

3.3 Baatz, Y., Jurisdiction and arbitration under the Rotterdam Rules, in The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules). Journal of international maritime law (Witney, U.K.) 2008, at 608-624 [peer reviewed on publication];

3.4 Debattista, C., The CMI/UNCITRAL cargo liability regime: regulation for the 21st century? LMCLQ (London), 2002, 304;

3.5 Asariotis, R., Allocation of liability and burden of proof in the Draft Instrument on Transport Law. LMCLQ (London), 2002, at 382 [peer reviewed on publication];

3.6 Lorenzon, F. and others, Integrated services in the intermodal chain (ISIC) (Brussels, 2006) [Assessed by the Commission of the EU at application stage, intermediate stage and publication stage]; also IML, Integrated services in the multimodal chain (London, 2006). [Assessed by the Commission of the EU at application stage, intermediate stage and publication stage]. Available on-line at

<http://folk.uio.no/erikro/WWW/cog/Intermodal%20liability%20and%20documentation.pdf>

Grant "Integrated services in the intermodal chain", funded by the EU Commission (DG-TREN), June-December 2005 (30,000 Euros).

4. Details of the impact

The IML's research has had a continuing impact on analysis and assessment of the development of a new international liability regime for maritime and multi-modal transport operators. Formally titled the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, the Rotterdam Rules were approved by the UN General Assembly on 11 December 2008, with a signing ceremony held in Rotterdam on 23 September 2009. Despite initial fears that the United States was preparing instead to act unilaterally, by updating their own regulatory regime, the US did take part in the drafting of the Rotterdam Rules and signed them, as did eight European nations involved in maritime transport. In all, signatures were obtained from 25 countries making up 25% of world trade volume. The Rules will come into force when they are ratified by 20 countries. Seen by some as a vital step in modernising the system upon which world trade depends, the new Rules represent a possible international solution to the many problems and limitations of the existing regimes, which fail to address important issues such as door-to-door transport and electronic transport documents. The new Rules also facilitate e-commerce, are more detailed on shippers' obligations to make cargo ready for carriage, and contain very specific

provisions on carriers' delivery obligations, while providing them with the right to limit liability for all breaches of their obligations under the Rules. At the same time, the Rules support the principle of freedom of contract between the parties and adopt a limited network liability system which ensures, to some degree, the absence of conflict with other unimodal carriage compulsory regimes.

The new Rules were influenced by the IML's research for the EU Commission, in particular the two reports proposing a new uniform liability regime: Intermodal Transportation and Carrier Liability (1999), and Implementation of the Freight Integrator Action Plan (2006). Numerous references to these reports can be found in EU Commission working papers and policy statements (5.1, 5.2, 5.3, 5.4). The possibility of the EU developing its own, separate regulatory system was instrumental in pushing other players to agree a new worldwide system, and references to the IML's research can also be found in policy documents of the United Nations Commission for Trade and Development, UNCTAD (5.5, 5.6, 5.7). The 2006 Action Plan, and the lengthy industry consultation that followed, steered the UN towards shifting the focus of the Rotterdam Rules from maritime transport only to what is now known as a "maritime plus" approach.

The IML has been involved in drafting key industry documents to help inform and prepare legal practitioners for the impact of the new Rules. The IML's John Dunt was a member of the drafting group which produced the 2009 Institute Cargo Clauses (ICC), the current industry standard for cargo insurance. Professor Charles Debattista chaired the Incoterms 2010 International Drafting Group, drawing up internationally accepted definitions and interpretations for most common commercial terms involved in the delivery of goods from sellers to buyers. These rules, published by the International Chamber of Commerce, are widely used in commercial transactions. Filippo Lorenzon of the IML formulated the UK submissions to this Group.

Other examples of the IML's continued involvement in policy formulation and implementation include being asked in 2010 by the UK government to help draw up the British Maritime Law Association's position on the Rotterdam Rules, and provide expert advice on their ratification for the UK Department for Business, Innovation and Services. Filippo Lorenzon has become Senior Legal Advisor to the World Bank and has been asked to draft Egypt's law on multi-modal transport.

His contribution to the World Bank has drawn praise from Periklis Saragiotis (5.8), a Private Sector Development Specialist for the Bank's Trade Logistics division, who said: "Lorenzon's expertise in multimodal transport law and his deep understanding of the connections between the law and practice of multimodal carriage and its socio-economic implications have been crucial for the success of our broader Trade Logistics project in Egypt and specifically for its Multimodal Component. In this context, Lorenzon's expertise will be essential for the improvement of Egypt's multimodal legislative and regulatory framework and its alignment to regional and international best practices."

The IML runs regular Continuing Professional Development courses on the legal impact of the Rotterdam Rules, and held two workshops in London in 2009 on the practical implications for transport and insurance practitioners. Professor Yvonne Baatz helped the British Maritime Law Association organise a similar workshop designed to raise awareness among the legal profession. The President of the British Maritime Law Association, Mr Andrew Taylor, thanking the speakers, including Professor Baatz, for their work on the seminar said: "I judge it to have been a very successful event. It was well attended indeed. More importantly your contributions were of the highest quality. This is what I wanted the BMLA to put on: a high level analysis. In turn it generated a stimulating debate with the audience." The IML has also published the first complete commentary on the new Rules (5.9), a work which has been extensively cited by legal experts leading the international debate on the subject. For example, key industry handbooks such as *Carver on bills of lading* by Guenter Treitel and F. M. B. Reynolds (3rd edition), London 2012, and *The Rotterdam Rules: The U.N. Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, by Michael Sturley, Tomotaka Fujita and Gertjan van der Ziel, London 2010, contain numerous references to the research work of the IML.

5. Sources to corroborate the impact

- 5.1 Commission of the EC, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Freight Transport Logistics in Europe – the key to sustainable mobility, COM (2006) 336 final, at 9;
- 5.2 Commission of the EC, Staff Working Document accompanying the Communication from the Commission: Freight Transport Logistics Action Plan COM(2007) 607 final, SEC(2007) 1320;
- 5.3 Commission of the EC, Staff Working Document accompanying the Proposal for a directive of the European Parliament and the Council on reporting formalities for ships arriving in or departing from ports of the Member States of the Community and repealing directive 2002/6/EC: Report on impact assessment of different options to simplify/reduce/eliminate administrative procedures for Short Sea Shipping and implementing a European Maritime Transport Space without Barriers, SEC(2009) 46;
- 5.4 Commission of the EC, Staff Working Document: Impact Assessment Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Mid-Term Review of the Programme for the Promotion of Short Sea Shipping (COM(2003) 155 final), COM(2006) 380 final.
- 5.5 UNCTAD, Implementation of multimodal transport rules, UNCTAD/SDTE/TLB/2, (2001) at 8;
- 5.6 UNCTAD, Multimodal transport: the feasibility of an international legal instrument, UNCTAD/SDTE/TLB/2003/1, (2003) at 31;
- 5.7 UNCTAD, Review of maritime transport 2003, UNCTAD/RMT/2003, (2003) at 119;
- 5.8 Corroborating statement: Periklis Saragiotis, Private Sector Development (PSD) Specialist, Trade Logistics, International Trade and Investment, Investment Climate, World Bank | MIGA
- 5.9 IML, The Rotterdam Rules: a practical annotation (London, 2009); Lorenzon, F., The Rotterdam Rules' transport document: still a good key to the gold's chest?, paper delivered at Fundacao Getulio Vargas, Rio de Janeiro, 2009;
- 5.10 Lorenzon, F., Transport documents through the bankers' sieve: Rotterdam Rules v UCP 600, Paper at the 3rd Arab Conference for Commercial and Maritime Law, Alexandria, Egypt, 2009.