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Civil liability regimes in intermodal transport**The Rotterdam Rules in relation to current law on multimodal transport contracts****Note by the Netherlands and Poland****I. Short outline**

1. In line with the mandate of the Working Party to facilitate intermodal land transport and to provide a level playing field for intermodal transport at the pan-European level, the Working Party decided that a note should be prepared on the scope of application and the practical consequences of the Rotterdam Rules¹ for pan-European land and intermodal transport operations (ECE/TRANS/WP.24/127, para. 55). This document contains a short outline on the impact of the Rotterdam Rules on the existing legal framework of multimodal carriage.

II. Introduction

2. The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008, known as “Rotterdam Rules” regulates the relations between the parties involved in a contract of international carriage of goods by sea. Special attention is given to the liability of a party that does not comply with its contractual obligations, such as a carrier delivering cargo in a damaged condition to the consignee. The Rotterdam Rules are designed to respond to the need of the industry to modernize the outdated existing international law on maritime carriage.

¹ The text of the Rotterdam Rules is available at:
www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/09-85608_Ebook.pdf.

3. Under the Rotterdam Rules, it is irrelevant whether a transportation contract covers carriage by sea only or also includes carriage by another mode of transport, such as by road or rail, in addition to the sea carriage.² The reason hereof is that in modern containerized maritime trade, land transport is often covered under the same contract of carriage as the sea part of the transport. As a result, the question has arisen to what extent the multimodal application of the Rotterdam Rules fit in the existing framework of law and practices on multimodal transport contracts.

III. Existing legal framework for unimodal international carriage of goods

4. For historical reasons and because each mode of transport has its own dynamics, all modes of transport (sea, air, road, rail and inland waterway transport) have their own treaty dealing with the contractual relations between the parties to a contract of international carriage performed by that particular mode. To some extent, these treaties address however also transport by other modes. Hereunder follows a short overview of multimodal applications of these otherwise unimodal conventions:

(a) Road: The treaty dealing with the contract for the international carriage of goods by road is the CMR Convention, 1956. When a goods road vehicle makes use of another type of infrastructure than road, for example when a loaded trailer is carried by sea on a ferry boat (“motorways of the sea”) or on a railway wagon (“Rollende Landstrasse”), the CMR Convention continues to apply during such “mode-on-mode” carriage.

(b) Rail: Similarly to CMR, the COTIF-CIM Convention, 1999 provides that, when a loaded railway wagon is carried by sea on a ferry boat, the COTIF-CIM Convention continues to apply under certain conditions during such “mode on mode” carriage. Furthermore, the contract of carriage by rail to which COTIF-CIM applies may include carriage by other modes of transport in addition to the rail carriage, provided this additional carriage does not pass a border.

(c) Inland waterways: The contract of international carriage by inland waterways is regulated by the Budapest Convention (CMNI), 2000. It includes a provision that when goods are carried on a vessel that sails both over sea and inland waterways without these goods being transhipped from a sea going vessel onto an inland waterway vessel, CMNI may apply to the whole carriage, provided certain conditions are fulfilled.

(d) Air: The Montreal Convention, 1999 applies to the contract for international air carriage. Because sea-air transport combinations are rare, the rules relating to additional carriage by other modes included in this convention could be left aside in the context of this note.

(e) Sea: The three current treaties dealing with contracts of international carriage by sea, i.e. the Hague Rules, 1924, the Hague-Visby Rules, 1968 and the Hamburg Rules, 1978 apply to contracts of carriage by sea only. The Rotterdam Rules are intended to replace these treaties.

² In the context of this paper, carriage performed by more than one mode of transport is called “multimodal transport”. Door-to-door carriage usually requires multimodal transport. Example: Carriage of goods from Detroit (United States of America) to Graz (Austria) is usually multimodal. The stretch from Detroit to a US port may be performed by rail or road, the subsequent crossing of the Atlantic ocean will be by sea and the final stretch from a European port to Graz will again be by rail or road. In this example, the Rotterdam Rules would apply to the whole journey.

IV. Existing legal framework for international multimodal carriage of goods

5. Worldwide no treaty is in force that covers contracts for the international multimodal carriage of goods.³ Some mandatory law exists however on regional or national level. As a result, unless the latter category of law is applicable to multimodal transport contracts, parties are free to agree any terms for such contracts. In practice, however, a contractual standard pattern has developed with regard to the liability of the carrier for cargo damage. This pattern is described below.

6. Vessel operating container carriers usually make a distinction in their contracts between cases where it is known during which stage of the transport a damage occurred (“localized damage”) and where this is not known (“non-localized damage”). In case of localized damage, the law that otherwise would have been applicable at the stage where the damage occurred, applies (“network system”). In case of non-localized damage, the solution is either to refer to existing law regulating maritime transport, such as the Hague-Visby Rules, or to create own rules containing a fault based carrier’s liability up to a certain level, these own rules leading to similar results as maritime law rules.

7. Non-vessel operating container carriers, such as forwarders, often apply contractual terms based on the “UNCTAD-ICC Rules”.⁴ Their conditions also follow to a large extent the network liability system. In case of non-localized damage, they apply a fault based liability system, the content of which is akin to the liability system of vessel operating carriers.

V. The Rotterdam Rules

8. How do the Rotterdam Rules relate to the existing framework of the law and practices outlined in paras. 4–7 above?⁵

A. The Rotterdam Rules do not create conflicts with unimodal conventions for land transport

9. As the Rotterdam Rules apply to contracts for maritime carriage alone as well as to contracts for maritime carriage and additional land transport, in principle, little room for conflict with existing unimodal conventions governing international land transport (thereafter called unimodal conventions). In Europe these are mainly CMR (road), COTIF-CIM (rail) and CMNI (inland water transport). In parts of Eastern Europe, Central Asia, the Caucasus and in China the Agreement on International Goods Transport (SMGS) regulates the contractual relationship between the parties to international railway contracts. It should be noted that each of these unimodal Conventions applies, in principle, to a contract for

³ In 1980 the UN Convention on International Multimodal Transport of Goods was adopted. It enters into force upon its acceptance by 30 States. Up till now only 11 States have ratified or acceded to this Treaty, none of them being a large trading or shipping country.

⁴ In cooperation with the industry, these rules were developed under the joint auspices of UNCTAD and ICC. They were completed in 1991 and include standard liability conditions intended to be referred to in contracts of multimodal international carriage.

⁵ Although the Rotterdam Rules follow the existing contractual pattern, the network system of the Rotterdam Rules is narrower than that which the current practice provides. The standard contracts for multimodal transport apply the network system to national and international law, while, in contrast, the Rotterdam Rules apply the network system to international law only.

carriage by a specific mode, such as a contract for carriage by road, rail or inland water and not to a contract for multimodal transport (or any part of it).

10. Conflicts may arise only in cases where unimodal conventions extend their scope to other modes of transport (see para. 4 above). However, article 82 of the Rotterdam Rules refers to such situations and expressly provides that courts in Contracting States may apply the provisions of these other unimodal conventions. Consequently, for example, in the relation between the road carrier and its customer, the carriage by sea of goods remaining loaded on a goods road vehicle continues to be governed by the CMR Convention and will, in principle, not be affected by the Rotterdam Rules.

B. The Rotterdam Rules are consistent with the existing contractual arrangements

11. In line with current practice on multimodal contracts (see paras. 5–7 above), the Rotterdam Rules make a distinction between localized and non-localized damage. In the first case, the Rotterdam Rules provide for the network system (RR Art.26): The liability rules of the unimodal conventions that regulate the stage of the transport where the loss, damage or delay occurred, are applicable. In case of non-localized damage, the general liability rules of the Rotterdam Rules apply. This way, the Rotterdam Rules respect and follow the standard contractual pattern under the current practices which has been developed by the industry over the past few decades.⁵

C. The Rotterdam Rules enhances the uniformity and certainty of law

12. Although the Rotterdam Rules adopt a similar pattern as may be found in the current practices, it should be emphasized that they include an essential advantage which the current practices based on contractual arrangements cannot provide. The Rotterdam Rules provide, to a large extent, rules on mandatory basis, which, by definition, any contract cannot achieve. This greatly enhances uniformity and certainty of law. Together with their modernized liability provisions, the Rotterdam Rules create substantial improvements for all parties involved in modern containerized transportation.
