

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (»Rotterdam Rules«)

**Symposium of Deutsche Gesellschaft für Transportrecht
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Contributions to the Symposium and Results

Introduction to the Symposium

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We have before us a new Convention on Carriage of Goods by Sea. It intends to improve the actual situation of unified international maritime law. How does this situation look like today?

The basis of all later attempts – and there are many of them – to unify the law of carriage of goods by sea is the famous Brussels Convention of 1924, the so-called Hague Rules. The conviction that it is far from being modern and up-to-date was already common view when the global trade started again after the Second World-war. Therefore, work for revision began in the early 50s of the last century. It ended up, after some preparatory conferences of the CMI, with the Brussels Protocol of 1968, the so-called Visby Rules. They added the minimum of modernization indispensable, but abstained from any fundamental revision.

Since this more or less provisional improvement did seem unsatisfactory to many States, the United Nations Commission on International Trade Law, after its establishment in 1968, immediately started intense preparatory work on a new convention under world-wide participation. This preparatory work went on many years and finally led to the UN Convention of 1978, the so-called Hamburg Rules. They were adopted in the Hamburg Congress Center some walking minutes from the place where this symposium is held, by more than 70

State delegations after a very intensely discussed compromise on the liability aspect: The rather low limits of cargo liability including the system of limitation were kept, the antiquated nautical fault exception was given up. And the details of contract of carriage, to the extent the instrument deals with them, were drafted in an understandable wording, unlike the Hague-Visby-Rules.

In parallel, UNCTAD prepared and in 1980 adopted a Convention on Multimodal Transport, which took into account the main features of the Hamburg Rules and provided a regime governing combined transport sea-land.

The three maritime Conventions – Hague Rules, Visby-Rules and Hamburg-Rules – went into force, not so the Multimodal Convention; UNCTAD is still, whereas with little interest of States, trying to bring it up to date.

The Hamburg Rules, the last and most modern of the existing instruments, did not meet the consent of the shipping industry. In spite of its nearly unanimous adoption and the broad consent to the basic compromise on new liability rules at the Diplomatic Conference it was mostly one main point, which prevented the maritime society from adopting the new UN Convention: The waiver of the nautical fault exception. I need not repeat or even mention the arguments against this change. It is sufficient here to state, that the resistance of

shipowners and insurers against this change in combination with the lacking interest of shippers in maritime law altogether blocked the replacement of the Hague-Visby-system by the new system. The Hamburg Rules gained up to now only 34 ratifications. Many States, after some reluctance, started revision of their national maritime law codes being aware that international unification obviously was impossible for the moment.

Since as well the UNCTAD convention on Multimodal Transport was blocked by the lacking interest in the Hamburg Rules, UNCITRAL started new work on the subject with the view to making the Hamburg Rules-Regime more acceptable to shipping states. The main aim was to include multimodal transport into the regime, provided it is partly performed by sea. Again much work was devoted to the revision.

The emerging Convention, now before us, basically retains the liability principles of the Hamburg Convention. It has, however, many confusing rules on various details, exceptions and on particular aspects e.g for liner trade and quantity contracts, which render it extremely difficult to understand. And, perhaps most important, it added a regime of multimodal transport liability for combined transports including a sea leg which faces land-transport and forwarders with complicated principles of liability, based on maritime law.

The new convention will be open for signature from 23 September this year. Governments now will have to decide whether or not they sign the Convention. This decision will have to be based first on an analysis of contents and technical quality of the new rules. Certainly, an international Instrument never can be equally exact as a good national law, because it is necessarily based on compromises and because diversity of working languages makes decisions and drafting even less reliable for later interpretation. But it needs a certain degree of clarity to avoid lengthy debates on its application and interpretation thus producing the contrary of unification. The more, as there is no international authority or even court to provide the States with decisions on common interpretation of the instrument.

The new concept of including the land-transport-part of a multimodal voyage in the regime must be seriously examined. The widening of the scope brings other interests but those of the sea-carriers into the game: The new conven-

tion directly touches on the liability of forwarders and land-carriers and sea-terminals. It is no more a purely maritime convention, but a multimodal regime. So the representatives of all modes of transport have to be heard with their comments.

This leads to the purpose of this symposium. In order to appreciate the value of the new instrument, we first have to learn about its particularities and purposes. And then try to make up our minds on the justification of the new scope. We benefit of the opportunity to welcome most experienced speakers, many of them having participated in the preparatory work for the new Convention. Their explanations and statements will build up the basis for a panel discussion among representatives of German experts coming from various parts of the industry. Hopefully we may see a bit clearer at the end of this day whether or not we feel that the new convention gives the chance to improve the situation.

It is certainly premature to raise doubts in this respect already now. I simply may mention, that another convention in itself, even if it were better, does not alone lead to progress. It needs to attract the States members to the existing conventions to denounce them and turn to the new one. This need was very ably expressed with regard to the Hamburg Rules by Lord Diplock in 1979. And it is valid even more for a fourth Convention given that three different ones are already in force. With a view to the visible resistance of broad circles of the industry it does not seem unlikely, that setting in force of another regime will destroy the rest of international uniformity, if this new regime is not accepted really world-wide. In a nutshell: The new convention has to convince States why they should ratify a liability concept, which is based on the same liability principles as the Hamburg Rules, whereas drafted much more uncertain. There seems to exist, more than thirty years after adoption of the Hamburg Rules, little opposition any more against liability for nautical fault, for which the time was not yet ripe in 1978. So at the end of an evaluation one may well ask the question: Why not adhere, at least as a first step for progress of unification, to the Hamburg Rules and await, as to the multimodal aspect of the revised UN-Convention, further reactions from States and from the industry, instead of already now heading to rapid signing thus giving a sign to do away with everything existing without knowing the perspectives of the new instrument.