#### THE PERSPECTIVE OF ROTTERDAM RULES IN INTERNATIONAL TRANSPORT

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Abstract

United Nations Convention on Contracts for the International Carriage of Goods wholly or partly by sea (Rotterdam Rules), represent the first international rules governing multimodal transport. In the logistic sector multimodal transport undergone a great expansion in practice, but this was not case in the filed of legal framework. Even *masive expansion of container revlolution* *and* *door to door transport of goods, were dominate between logistic operators long time ago, in the area of legal regulations there was legal gap.* This legal gap in many aspects contributed to the emergence of numerous lawsuits in the area of transport, freight forwarders, insurance and logistic operations *in ultima linea.*

In this article subject of analysis we’ll be the strengths, weaknesses and prospects of the Rotterdam Rules in the field of multimodal transport route as a basis for realization of overall international trade. The focus of this study is the advantages of Rotterdam rules and the benefits of the carries that use it in every day transactions.

**UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA (ROTTERDAM RULES 2009)**

1. **Applicability of Rotterdam Rules in International Transport**

Before starting to analyze and elaborate the most important and controversial provisions in Rotterdam rules (hereafter RR), we’ll define the applicability of these rules (*Chapter 2, Scope of Application, art 5*).[[1]](#footnote-1)Beside the rules of applicability, RR comprise provisions that determine the cases in which this Convention in not applicable. (*art. 5/1/2*). In this context art. 5/1/2 envisages: Rotterdam convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State: а) the place of receipt, b) the port of loading, c) the place of delivery, d) the port of discharge. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties. In *art. 6/1/2* (*specific exclusions*), RR determine the cases in which they are not applicable. Hence, (*RR, art. 6/1/2*), this Convention does not apply to the following contracts in liner transportation: (*liner transportation*) *a) charter parties*, *b) other contracts for the use of a ship or of any space thereon*.Further in this context, this Convention does not apply to contracts of carriage in non-liner transportation except when *a) there is no charter party or other contract between the parties for the use of a ship or of any space thereon, and b) transport document or an electronic transport record is issued.*[[2]](#footnote-2)

Nevertheless from art. 6, in art. 7 (application to certain parties), RR provides applicability between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6 mentioned above.[[3]](#footnote-3)

According to the rules of applicability, we summarize that if ***non-liner transportation[[4]](#footnote-4)***of separate shipments are realize on the charter party (lease contract) or *long term contracts*, *RR* ***are not applicable on the conditions of*** **booking contracts or long term** contracts, neither the terms of shipping individual shipments (art. 6(2)). This is case unless they are not cover by ***art. 6/2/b***). If the transfer of separate shipments is realized by *liner transportation*, and if we not discuss about charter party, or lease contract of boat or boat space, RR are applicable on the terms contains in the charter party, separate shipments, and *long term contract,* in scope envisages for separate shipments. This means that *art. 6/2* exclude the applicability of the contract of transport in *non-liner transportation*. However, there is a case when exclusion of o*n-liner transportation* means exclusion ofthe contracts of transport under *Hague and the Hague-Visby Rules*. This type of contract sometimes is titled as „*on demand carriage*“and it’s arrange in *art. 6/2/a/b.* In this case one example as an illustration: supposing that *several shippers brings their own cars on the port for transfer till the arrange destination. The cars are load on the boat. Route is fix, but not the plan.* The route is legally caver by bill of lading. The contract is also cover by *Hague/Hague Visby Rules* because bill of lading is issued on the bases of the contract and not on the bases of *charter party.* The provision of *RR, art. 6/2 reintroduce the applicability of Rotterdam Rules for these type of contracts in non-liner transportation.*

The possibility of applying of *RR* in case when bill of lading is transmit to a thirdparty (*RR, art.7*), but not to apply on the relations between shipper and transporter is not logical and correct solution according to our opinion! This solutions exist in *Hamburg Rules* and *Hague/Hague-Visby Rules* to. Actually, we emphasize that in modern transport, many subjects change their position during the same transport route. For example, many transporters act as shipper or consignee, or many freight forwarders act as transporters. On this way we thing that these provisions do not comply with modern transport of goods. But, these set of rules are fruit of the many academical brains and practice experience. So, we just open the question, creating a space for further deliberations in this context.

**2. Door to door concept of transport according to Rotterdam Rules**

Exploring the provisions of RR, we summarize that one of the most important thing is to elaborate the fact that *Rotterdam Rules* accepted „*door-to-door*“ concept,[[5]](#footnote-5) and that the period of transporter’s liability depends on the conditions in the contract. It’s also important in this context to emphasize that there are no provisions in the RR that prevent the contract of transport in the concept of traditional „*port-to-port*“contract of transport. In this sense, *art. 12/3* in which the time and the place of loading and receipt is arrange is created with two exemptions. In this context, (*RR, art. 12/3/a/b*) For the purpose of determining the carrier’s period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that *а) the time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.*

According to this provisions, under the conditions in RR, the options for contracting in the sense of traditional „*port-to-port*“ concept in which shipper deliver the goods on the port for loading, and the transporter unload it in the port of the buyer of the goods or the person who act as him (theory of representation).

The transporter is liable for the whole period of transmission till the delivery of the goods at the port of destination. As a conclusion of this elaboration we emphasize the *RR* are applicable to „*door-to-door*“transport only if contracting parties arrange this type of liability, including the land branches. Finally there is no provision in RR that prevent “*port to port”* or*“tackle to tackle*” stipulation.

Consequently with the applicability, the question of conflict between conventions has imposed. We consider this question as important. Article *26* and *82* of the RR clearly indicate the applicability of „*limited network work*“, avoiding the eventual conflicts with other conventions: *CMR* or *COTIF-CIM*. As an example we take the case and provisions and we emphasize: when loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier’s period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay: а) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier’s activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred,b*)* specifically provide for the carrier’s liability, limitation of liability, or time for suit; and., c) cannot be departed from by contract either at all or to the detriment of the shipper under that instrument (RR, art. 26/1/a/b/c). Furthermore, nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods: any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage; any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail, or*; any* convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.*[[6]](#footnote-6)*

Bearing in mind this provisions, we summarize the *art. 82 from RR* provide protections about countries that had signed others conventions in scope in which they are applicable to transport of goods by sea.

**3. The concept of limited network system according to Rotterdam Rules**

According to *art. 26* and *82* from *RR*, we find the concept of „*limited network system*“ incorporate in RR in whole. Even the implementation of „*network system*“and „*uniform system*“seems that create incompatibility with other conventions, the possibility of modifications in any system is usual. Basis on this, differences between solutions are not the same as they look. Any „*network system*“should be supplemented with rules that arrange the question of allocation of liability when the factual question impose about the place of occurrence of damage. According to *UNCTAD*/*ICC,* *art. 6.1/3,* and *Hague-Visby Rules:* unless the nature and value of the goods have been declared by the consignor before the goods have been taken in charge by the MTO and inserted in the *MT document*, the MTO shall in no event be or become liable for any loss of or damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2 SDR per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.[[7]](#footnote-7) „*Uniform system*“ very often is modified in order to allow applicability of imperative provisions (in national legal system) for the liability in separate transport segment, till the place of damages is not identify.

In point of fact, the question is: *whether to adopt a uniform value limiting value that is completely independent of any legal regime that applies to any transport model*?!Referring to this, RR not provide uniform limit “value”/„*unique*“ *limitation amount*, but provide limited liability in the area of sea transport. This is not case unless if other limit is applicable according to solutions of *art. 26 or* *art. 82* from RR*. RR* do not apply implement „*full network system*“that is applicable on the contracts and other conventions when damages are located in separate faze of transport route on which this conventions are applicable.

According to the viewpoint of several experts, this is insignificant progress in achieving uniformity of transporter liability.[[8]](#footnote-8) As a prove of this, we pay a call to *art. 26* („*limited network system*) that explicitly emphasizes the will of avoiding the conflicts with other conventions. In terms of limitating the liability of the carrier, RR explicitely declare that transporter cant limit his liability vis a vis shipper and receiver of the goods. The limitation is possible only if the shipper as contracting party and the transporter arrange that in the contract of transport. This restriction is envisages in art. 12/3 of RR, that encompass that for the purpose of determining the carrier’s period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.[[9]](#footnote-9)

Referring to the obligations of the transporter, article 11 of RR provided that the carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee. What is very important in this issue is to emphasize that carrier and shipper are free to arrange provision that are not forbidden in the contract of transport. The carrier and shipper may incorporate *liberty clause –* „*Caspiana*“or „*war clause*“that allows under the certain conditions the carrier to unload the goods on the place that is not arrange in the contract. превозникот да ја истовари стоката на место кое отстапува од првично договореното.

This issue is naturally connected with the subject titled as “basic of liability.” The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier’s responsibility. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person participating in the transport route and define in art. 18 from RR.

The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay: *а) vis* major; b) perils, dangers, and accidents of the sea or other navigable waters; (c) war, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions; (d) quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18; (e) strikes, lockouts, stoppages, or restraints of labour.

The carrier is also excluded from liability in: (f) Fire on the ship; (g) latent defects not discoverable by due diligence; (h) act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34; (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee; (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods; (k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier.[[10]](#footnote-10)

Nevertheless, the carrier is liable for the damage and the delay of the goods if the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies, or, if the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

All the cases in which carrier is liable is incorporated in RR. This provisions are base for further creations of the liability concept. In any case, we can’t ignore the factual situation in business sector and the process of transformation of carrier to logistic operators. These subject stipulate as logistic operator the offer full package services so the issue of carrier liability is minimize. This process was very obvious if we take into account the expansion of multimodal transport and container revolution.

Finally, taking into account the existence of Civil and Common law system, the carrier as two separate legal regime, the carrier liability mostly depends on the court and arbitration perception about this provisions.

**4. Period of time for suit according to Rotterdam Rules**

(*Notice in case of loss, damage or delay*)

In order to explain the subject of time limit for suit abut damages on the goods, we’ll elaborate some RR provisions. Namely, *art. 23* envisages time limit of 7 working days after delivery of the goods. Compared with the period of 3 working days envisages in *Hague/Hague Visby-Rules*, RR incorporate increasing regarding the period for notice in case of loss, damage or delay. In absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods (RR, art. 23).

Regarding the right of appeal, no judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted after the expiration of a period of two years. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.[[11]](#footnote-11)

This provision refer to the fact that RRprovides with time for suit longer than *Hague/Hague-Visby Rules,* twice. As a shipper in modern transport, we can see many different subjects. In this case, any provisions from RR are applicable to these subjects*.* Freight forwarders are one of these subjects. *Shipper’s obligations and* *liabilities* (*for the countries that ratify the RR*). Regarding the question for obligations and liability of shipper, RR contains detailed provisions. Yet, increased number of provisions doesn’t implicate more obligations and higher liability. Namely, shipper is liable according to national law and supplemented provisions that generate from the contract of transport.

Comparing the three conventions in the part of liability of shipper, it’s very easy to conclude that every shipper is liable for breach of the contract (*RR, Hague/Hague-Visby Rules, and Hamburg Rules*). The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper’s obligations under this Convention. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.[[12]](#footnote-12)

According to RR, the shipper is liable when the damages is caused from dangerous goods and wrong informations regarding the transport documents. Comparing with previous solutions, these provisions don’t enhance liability of shipper. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it: directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Convention.[[13]](#footnote-13)

From this point of view the shipper is much more protected compared with previous conventions. Further, RR provide protection for shipper by forbidding enhancement of the liability by via domestic law. Finally, in the part of shipper’s liability for the third parties, The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

**CONCLUSIONS:**

Reffering to *Rotterdam Rules*, legal literature contains many and different theoretical views and debates that express positive and negative critiques. This depends from the sector that elaborate the advantages and disadvantages of RR. Nevertheless, in the field of International Transport of goods, RR represent светска атракција која фрла сенка врз претходните меѓународни правила во сферата на поморскиот и копнениот транспорт кој му претходи или следи на поморскиот сегмент. Taking into account the fact that ***Hague/Hague-Visby Rule,*** ***Hamburg Rules***and ***US Carriage of Goods act 1936 are replace with the provisions/solutions from Rotterdam Rules***(this is applicable for the countries that ratify *new rules for international transport of goods*), we are on the opinion that separate exploration of the *Hague/Hague-Visby Rules* and *Hamburg Rules* is totally irrational. Only, parallel study of this issue can bring us to the right results. On the other hand, we have the practice that provides us with informations that despite the existence of many critique from freight forwarders sector, in practice, remain the advantages of RR as the most modern set of International rules that covers all segments of transport.

The biggest negative critiques about RR comes from the freight forwardes sector. This is logical viewpoint bearing in fact the position of freight forwarders in modern transport of goods. Yet, our opinion is that the problem is not in the RR, but in the position of freight forwarders that haven’t yet decides which their role in the transport route?! Are they shipper or carriers? Are they consignees of the goods?!In the context of RR, one of the most important question: *do the freight forwarders operations belongs under the* ***category of „maritime performing party“?*** *Consequently,are the freight forwardes subject of RR regime****?***

Freight forwarders have various roles referring to international transport of goods. *Rotterdam Rules are applicable on any of them*. Their applicability depends on the response of the question: ***What is the role of the freight forwarder in international transport*? *If he oblige to transfer the goods for his client, he is carrier, not just freight forwarder according to RR*. *If freight forwarder contract with the subcontract in his own name,*** *he is a shipper* ***according to RR. Rotterdam Rules.*** Finally, if freight forwarder stipulate with the carrier in the name of the client, (acting as an agent), he is not a carrier, nor is shipper who falls under the RR regime***.*** Freight forwarder does not belongs in the category of „*maritime performing party*. “ The exclusion exist when he take an obligations to transfer the goods, and guarantee for the safety delivery of the goods. Than he is a maritime preforming party, and he can’t hide under the freight forwarder liability.

When the freight forwarder act as a stevedore, he is oblige to act carefully on any segment of the operation. Regarding the contract between freight forwarder (*in the case when freight forwarder acts as stevedore*) and carrier, legal connection is not studied in RR. This is case because they are not applicable to the contract between carrier and “*maritime performing party*“. The fact the freight forwarder that Фактот што шпедитерот кој дејствува како „*maritime performing party* “ е субјект на *RR* веројатно би конструирал одредени предности наместо недостатоци, бидејќи со тоа се гарантираат бенефициите/уживање заштита вклучувајќи краткиот рок на застареност, правото на лимитирана одговорност.

Finally, we perceived RR as the most sophisticate set of International Rules that covers multimodal transport on a very successful way. RR were basis for INCOTERMS which creation was imperative. RR contribute to the implementation of e bill of lading that is a great gain in transport system. We also can’t forget many issues that are not dilemmas thanks to RR. Covering the multimodal transport request that transporters couldn’t avoid. So, we are sure the global transport sector has a set of rules that present a great perspective in the nest decades, which is very important for the legal certainty and *in ultima linea* for economic growth.

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1. RR comprise 96 articles, drafted warily after many theoretical deliberations of the representative from academical world. Bering in mind the expressed technical nature and regulations of many question not arrange till now, we thing that we’ll not burden the text if we elaborate some materials, interviews debates referring to RR. [↑](#footnote-ref-1)
2. <http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/Resolution.pdf>., accessed 16.09.2014. [↑](#footnote-ref-2)
3. Mukherjee P.K., Basi Bal A., A Legal and Economic Analysis of the Volume contract Concept under Rotterdam Rules, Journal of Transport Law, Logistics and Policy, Vol.77, No.1, 2010, p. 1-24. [↑](#footnote-ref-3)
4. Non-liner transportation” means any transportation that is not liner transportation. Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates (RR, art. 3 and 4). [↑](#footnote-ref-4)
5. Lannan K., Rotterdam Rules: door-to-door carriage of goods, Viena, 2010, p. 13. [↑](#footnote-ref-5)
6. See, (RR, art. 82/a/b/c/d). [↑](#footnote-ref-6)
7. See: <http://r0.unctad.org/en/subsites/multimod/mt3duic1.htm>, [accessed 20 August 2014]; [↑](#footnote-ref-7)
8. See: Innovations in Rotterdam Rules, 18TH OSCE Economic and environmental forum, Vienna, 2010. [↑](#footnote-ref-8)
9. Hellner J.: Tort Liability and Liability insurance, 6 Scandinavian Stud. L 129 (1962), available from:

Heinonline Collection, [accessed 24 August 2014], p. 243. [↑](#footnote-ref-9)
10. See: Collins D.M.: Comments on the Rule of in Rem liability, Maritime Lawyer 10 Mar. Law. (1985), available from: Heinonline Collection, [accessed 20 January 2014]. p. 342. [↑](#footnote-ref-10)
11. Loza B., Law of Obligation, Sarajevo, 1971, p. 75. [↑](#footnote-ref-11)
12. Prica R.: International trade contract and practice, Budimpešt, 1997, p. 55. [↑](#footnote-ref-12)
13. (RR, art. 79/2). [↑](#footnote-ref-13)