



**IMMTA E-News  
February 2010**

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**1. IMMTA / MARLAW International Conference on Multimodal Transport**

**Dear friends and IMMTA members,**

I am very pleased to announce the first joint IMMTA/MARLAW International Conference on Multimodal Transport that will be held from 19 to 23 **September 2010**, in **Marbella (Spain)** with sessions at **Algeciras and Malaga ports**. The Conference is being organized by IMMTA (under the responsibility of our good friend from Spain Jose Maria Alcantara) with close cooperation with MARLAW. More information concerning the conference including the programme will be sent to you by a separate mail. Please include these dates in your agenda. I am sure it is going to be a very interesting conference. Here is a *short presentation* of the event:

“The multimodal transportation of goods has become the most noticeable and important technological achievement in the late part of the XX century for setting appropriate solutions to the logistics of the transport chain. The new technical and operational appliances are enormous and a new performer has emerged to the market, namely, the Multimodal Transport Operator (MTO). However its technical and commercial success, multimodal transport has not yet found a suitable regulation at the international level. From the Tokyo Rules, the FIATA Rules, the Combidoc and Multidoc forms, the ICC/UNCTAD Rules to the Multimodal Transport Convention of Geneva 1980, a liability regime for the MTO has no yet been established internationally with binding effect. Indeed, the 1980 Convention did not yet gain force and meanwhile legislation is cropping up within domestic boundaries only. The fresh “Rotterdam Rules” (UNCITRAL Convention of 2009) make a door-to-door example of solution though it is doubtful that, by virtue inter alia of its restrictive application to the maritime mode and another only and of its adherence to the network liability system, it should be appropriate to serve as a regulation of the liability regime of the

MTO. Then, the market is still in search of such a regime that might be suitable to an international movement of goods by all modes of transportation.

The organisers, IMMTA with the cooperation of the thinktank shop MARLAW, will pay attention to that international endeavour, at a most timely occasion with the “Rotterdam Rules” on the road, by calling for an international conference located in the strategic passage of the Gibraltar Strait. The Conference will have sitting sessions, and visits, to the ports of Algeciras and Málaga, which serve the trade Mediterranean/Atlantic and the Europa/Africa land routage. The Conference is aimed at examining the performances of the MTO, the ITO, the Shipper and the Consignee with a view to comparing the regulatory options available to date, assessing the suitability of the “Rotterdam Rules” and arriving at a pattern of legislation that might be conclusively proposed for Multimodal Transport and for the liability of the MTO.”

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## **2. UNECE calls for renewed efforts to increase inland transport security**

The “*Inland Transport Security Discussion Forum*” organised by the United Nations Economic Commission for Europe (UNECE), on 28-29 January 2010, having discussed the issue, considered the inland transport to be the weakest link in global supply chain and compared to other modes of transport it had not received adequate attention: The security challenge facing inland transport range from terrorism, smuggling and trafficking to organized crime, petty theft and vandalism. To combat these problems, participants highlighted the need for freight security standards, driver training on security matters, government legislation and cooperation and the sharing of best practices.

More information is available at the UNECE website: [www.unece.org/trans](http://www.unece.org/trans)

## **3. The Rotterdam Rules: Status**

The Rotterdam Rules which were opened for signature by States in September 2009 has received 21 signatories but with no ratifications. 20 ratifications are required for the Convention to enter into force. In the meantime discussions / controversy over the Convention continue.

For more detailed information on the Rotterdam Rules, see IMMTA E-News, October 2009, available at: [www.immta.org](http://www.immta.org)

## **4. UNCTAD criticism of the Rotterdam Rules**

*The UNCTAD Review of Maritime Transport 2009* recently published provides a critical view of the Rotterdam Rules, highlighting a number of areas of concern. Some extracts from the concluding remarks:

- **Liability of the carrier:** The Rotterdam Rules are considered in substance *more favourable to carriers than any of the existing international conventions in the field. ... the rules on burden of proof, for instance, seem to be more advantageous to carriers*

*than those in the Hague-Visby or the Hamburg Rules, with potentially important consequences for the outcome of legal disputes between carrier and cargo interests.*

- **Shippers' obligations and liability:** *much more detailed and extensive than under existing maritime liability regimes, are mandatory, and the shippers' liability is – in contrast to the liability of the carrier – not subject to any monetary limitation. As a matter of policy, this important shift in commercial risk allocation to the detriment of shippers may be of concern to those representing the interests of transport users.*

- **Delivery of the goods,** *provisions under certain circumstances, permit the carrier to deliver the goods without surrender of a negotiable transport document are new and potentially problematic, as they undermine the document of title function of the negotiable bill of lading, which is key to its use in international trade.*

- **Mandatory nature of liability and volume contracts:** *The regulation of volume contracts in the Rotterdam Rules, also new and untested, may lead to a state of affairs in which freedom of contract becomes the norm and in which strength of bargaining power matters more than it has since the advent of the Hague Rules in 1924. This may be of particular concern from the perspective of small shippers and consignees, who as a result of commercial pressure might find themselves bound by contractual terms effectively set unilaterally by one of a small number of large global liner-carrying companies.*

- **Multimodal transport:** *provisions extending maritime liability regime of the Convention to multimodal transport contracts involving a sea leg are analysed and considered that: the new Convention adopts an approach which is complex and may give rise to difficulties in its practical application.*

- **Finally ...** *the complexity and considerable scope for interpretation inherent in the Convention means that extensive litigation may be required to gain a clear understanding of the new rules, with courts in different jurisdiction adopting potentially differing approaches to interpretation and application of the provisions.*

[http://www.unctad.org/en/docs/rmt2009\\_en.pdf](http://www.unctad.org/en/docs/rmt2009_en.pdf)

##### **5. The Rotterdam Rules: Note by Mr. Antonio Zuidwijk (IMMTA Committee member from Argentina)**

The views expressed below are personal view of the author and do not represent those of IMMTA or its Committee:

**“TO SUPPORT OR REJECT THE ROTTERDAM RULES, THAT IS THE QUESTION.** The Rotterdam Rules have been in the focus of IMMTA Newsletters for some time, practically all with very negative opinions, which they really deserve. Although it is not a question of “*To be or not to be*”, I believe it is worthwhile to dedicate some minutes to this very important question, which can have great consequences on the reduction of logistic costs of all countries in the world. Few of us are aware that the developing countries, where most of us, IMMTA members, are located, can benefit much more of improved Multimodal Transport Rules than the industrialized countries where the supply-chains already function very efficiently. They use to UNCTAD/ICC rules of 1992 for Multimodal Documents, which for them function quite well. So well that during the discussions whether UNCITRAL should

be given a mandate to include Multimodal Transport in the new rules that were under discussion in 2002, ICC stated that these cover the requirements sufficiently. The story is quite different in developing countries, where our completely outdated transport-laws make Multimodal Transport impossible and in our regions we need not only more infra-structure, even more than that we need binding international rules to make Multimodal Transport possible, because only a few megacarriers accept to take a step into the deep dark, without always knowing what their responsibilities are. Industrialized countries carried out studies and adapted their rules, but although there is much talk about doing this, in fact it is seldom done in our regions. An enquiry in a Virtual Forum of ALADI, a South American Association, showed that this region is a champion in the amount of different Multimodal Rules they could write, but in fact none of those has any practical application and the percentage of cargoes that move on Multimodal B/Ls is minimal. And this will remain so if the Rotterdam Rules are rejected. It seems to me that the experience in the industrialized world has proven that the advance of Multimodal Transport Contracts has lowered transportation costs for all shippers, big and small and that it is in the interest of all to put the rules in practice. Unfortunately after more than 8 years of long discussions, the Rules were written with a text that is very difficult to understand and now the question is: **What is best, try to promote the RR, with their enormous shortcomings and put them into practice or try to obstruct this and oblige the world to start all over again??**

“I myself am a layman, but with a very long experience in transport-matters in South America, a region where more discussions have taken place about Multimodal Rules than anywhere else in the world and where much more money has been spent trying to draw up rules than anywhere else, but without any practical result at all. I have actively participated in many of those discussions, which are always led by lawyers and often came to the conclusion that unfortunately these lawyers do not receive sufficient information on the real problems from the people who are daily confronted with them. When in 2003 the discussion started in IMMTA, whether UNCITRAL should be given a mandate to cover Multimodal Transport or not, I made a paper for Dr. Hans Carl, which I called “A Multimodal Transport Perspective” in which I explained why I thought then that IMMTA should support this and for the same reason I now believe that it is in the interest of developing countries to accept a binding International Legal Framework, even if it has many weak spots. In that paper, which is long, but deserves some attention, I mentioned several studies how **the diversity of “carrier liability regimes” in a multimodal transport impact on freight costs, and especially to one of the European Union, called FRICTION COSTS, which estimated the economic consequences for the European Union.**

This study points out what really is the question: how to bring transportation costs down in the whole world, not just the industrialized countries. In the long run better rules will avoid that the same cargo must be insured 2, 3 or even more times. Certainly the complicated RR will not have this result in the short term, but I believe that we should evaluate what will happen if these are not put in practice. What I have learned since I began to look with really great interest at these matters in the late seventies, when I worked as Operations Manager in this region for an American ship-owner MooreMcCormack Lines, is that if these rules are not put into practice, another 10 or maybe even 30 years will go by and people still will be discussing, because most want to start with perfect new rules, which is impossible. Some want these to be simple, when the question is utterly complicated. There are too many conflicting interests and there is too little knowledge how to merge these correctly. And it is also

very true, that the present rules that are applied in the world are totally outdated and overall are costing enormous amounts of money and most probably most of all for developing countries, where Multimodal Transport seems to be absent. In my view the best thing to do, is to accept the RR with all the present weaknesses and start with this as a basis and improve them as time goes by. **If we reject them, new endless discussions will start all over again for another 30 years.** Just look at what has happened since the HAMBURG RULES and the 1980 MULTIMODAL CONVENTION were discussed. After more than 30 years of discussions, the totally outdated HAGUE-RULES still apply in 80% of maritime transport in the whole world.”

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## **6. Maritime Transport and the Climate Change Challenge:**

A summary of the proceedings of an UNCTAD Expert Meeting, held in February 2009, has just been published. The publication presents the outcome of the meeting as well as the key issues discussed at the meeting, e.g. greenhouse gas emissions and climate change mitigation options; the potential impact of climate change on maritime transport system and supply chains; and the broader economic, social and development implications. The document is available at UNCTAD website:

[http://www.unctad.org/en/docs/dtltlb20091\\_en.pdf](http://www.unctad.org/en/docs/dtltlb20091_en.pdf)

## **7. Electronic bill of lading: Is it becoming a reality?**

Electronic Shipping Solutions (ESS) announced the launch of CargoDocs services, on the 29<sup>th</sup> January 2010, which is expected to make the use of electronic bills of lading a reality. The service is initially concentrating on the oil trade. BP, Morgan Stanley, INEOS, Denholm Barwil and Brostrom Tankers part of the A.P. Moller – Maersk Group are ESS’s first customers to issue and transact an electronic bill of lading using CargoDocs. It is hoped that they manage to solve all the legal problems which prevented previous attempts to establish an electronic substitute to traditional paper bill of lading.

For further information see, <http://www.essdocs.com>

## **8. Status of Transport Conventions**

Some of our members have been asking us to include information in the Newsletter concerning the list of contracting parties to some transport conventions including the Multimodal Transport Convention of 1980 and the Hamburg Rules. Presently the situation is as follows:

UN Convention on Multimodal Transport 1980: 11 Contracting States

Hamburg Rules: 34 Contracting States.

Information on the status of these conventions can be accessed at the UNCTAD website: [www.unctad.org/ttl/legal](http://www.unctad.org/ttl/legal)

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