CHAPTER 15
Impact of the Rotterdam Rules on the Himalaya Clause:
the port terminal operators’ case

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... "the shore is now an artificial place to draw a line" ... ¹

CONTEXTS AND CONSIDERATIONS

15.1 The Australian Federal Court once said that it is commercially unrealistic to expect that, in the international carriage of goods by sea, a carrier will itself perform all of the activities concerned with the carriage.² In sea transportation contracts, the carrier cannot be physically and logistically with the cargo continually even though the expectation is that he assumes responsibility for the cargo as soon as it comes into his control. It is inconceivable that a sea carrier could be present to direct the movement and handling of the containers at every leg of the journey. It could not therefore be suggested that a consignor or merchant would enter into a contract of carriage with an expectation that the carrier will perform all the activities relevant to the carriage. Sub-contracting and outsourcing are inevitable. The third party will naturally wish to benefit from the defences and limitation of liability the carrier had negotiated for himself from the cargo interest given that the third party is so closely involved in handling the cargo's interest's goods. The reality is even more acute in today's world of highly computerised multimodal transportation. The sharing of computing systems and the fact that parties in the logistic chain can remotely access each other's computerised cargo handling and distribution systems mean that it is frequently impractical and artificial to delineate who was responsible for what part of the computer-controlled cargo management process. In these circumstances, it would be unfair for a third party not to be able to benefit from the protection of the contract of carriage when the boundaries of responsibility cannot be easily drawn.

15.2 However, it does not need pointing out that the contract of carriage is made between the cargo interest and the carrier, not between the cargo interest and the third party concerned. As such, this raises the question as to whether the third party, as a stranger to the contract, is entitled to rely on any defences or limitations of liability contained in the contract of carriage. Most readers will be familiar with the

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225
15.2 IMPACT OF THE RR ON THE HIMALAYA CLAUSE

case of Adler v Dickson.\(^3\) It was a personal injury case involving a passenger on the steamship Himalaya. The passenger was prevented from pursuing her action against the carrier because of certain exculpatory clauses in the contract of carriage. She thus commenced action against the master and boatswain for negligence. The court held that the defendants were not allowed to benefit from the same exculpatory clauses because they were not privy to the contract of carriage. The shipping industry very quickly responded to this decision by extending protection from liability clauses expressly to benefit the servants and agents of the carrier. There is no absolute consistency in how these Himalaya clauses are drafted but they mostly provide that “agents, servants and independent contractors whose services have been used in order to perform the contract shall be entitled to the defences, exception, limitation, condition or liberty benefiting the carrier”. Some also carry an indemnifying provision whereby the carrier or the shipper agrees to indemnify the third party for any claims or liabilities the third party has incurred in the course of performing the services associated with the contract of carriage.

15.3 What is of particular significance is that in the context of maritime law, these “defences, exception, limitation, condition or liberty benefiting the carrier” are not merely those which are found in the contract of carriage but also those provided for by applicable statute law and international conventions. In 1962, the Himalaya clause was gradually recognised and fully given effect to by the House of Lords in Scruttons Ltd v Midland Silicones Ltd.\(^4\) Readers will also know that it was in the famous case of The Eurymedon\(^5\) where the Privy Council reasoned that the consideration from the stevedores for the protection in the exculpatory clauses was the discharge of the goods from the ship.\(^6\) These strenuous findings of consideration and/or an implied contract were to avoid the strictures of the doctrine of privity. In 1999, the Contracts (Rights of Third Parties) Act made it possible for third party beneficiaries to rely on the benefit of such clauses without the need to prove consideration of an implied contract.

15.4 In 2003, the House of Lords appeared to suggest that the Himalaya clause could not be relied on to avoid the mandatory effect of the Hague Visby Rules. In The Starlin,\(^7\) it was the shipowner who attempted to rely on the Himalaya clause which was found in a charterer’s bill. The House of Lords found that the shipowner was not a contractual carrier but an independent contractor of the charterer (the carrier). As such, the shipowner could in principle rely on the Himalaya clause but the majority of the House of Lords held that the shipowner was the carrier for the purposes of the Hague/Visby Rules and, as such, the exculpatory clause though

6. At 168; as Lord Denning said, “The reason why the stevedores and others are protected is because, although they were not parties to the contract, nevertheless they participated in the performance of it, and the exception clause was made for their benefit whilst they were so performing it. The clause was not made expressly for their benefit, it is true, but nevertheless it was by necessary implication, which is just as good.”
extended to them was null and void as a result of the Rules. Some considered this to be a limitation on the expansion of the Himalaya clause.8

15.5 Another constraint on the Himalaya clause is in the context of jurisdiction clauses. The Makhutu9 amply demonstrates that an exclusive jurisdiction clause is not an exception, limitation, condition or liberty benefiting the carrier within the meaning of the Himalaya clause because it does not create substantive rights capable of transfer. It merely creates mutual rights and obligations with regard to the jurisdictional question. The US approach in contrast is more permissive. In Acciai Speciali Terni USA Inc v M/V Berane "... the Himalaya clauses apply to all defenses that the carrier may raise, and the forum selection clause is as valid a defense that the carriers may raise as any other".10 Other constraints, such as those imposed by countries like Canada, are that the carrier is required to obtain consent from the third party to include a Himalaya clause or at the very least, a ratification of the clause from the third party at some later stage.11

15.6 Despite these limitations on its expansion, it might be said that the law tends to favour the pervasiveness of the Himalaya clause. Indeed, Lord Steyn in The Starfish12 cited with approval the dictum of the Canadian case of International Terminal Operators Ltd v Mida Electronics Inc (The Buenos Aires Maru)13:

"Himalaya clauses have become accepted as a part of the commercial law of many of the leading trading nations, including Great Britain, the United States, Australia, New Zealand, and now in Canada. It is thus desirable that the courts avoid constructions of contractual documents which would tend to defeat them."14

It is purely a matter of contract to whom the benefit of the contract should extend. The law stays at an arm's length.

REPLICATION OF THE HIMALAYA CLAUSE BY TREATY

15.7 The long-running story of the Himalaya clause is one of reconciling commercial and shipping practice with established principles of contract law. In common

11. See, for example, International Terminal Operators Ltd v Mida Electronics Inc (The Buenos Aires Maru) [1986] 1 SCR 752; 1986 AMC 2550; Broker Equipment Ltd v Fraser Surrey Docks Ltd (1998) 59 BCLR (3d) 108 (BCSC) and Kodak v Racine Terminal (Montreal) Ltd (1999) 165 FTR 299 (Fed C Can). Naturally, such constraints no longer apply in England following the passage of the Contracts (Rights of Third Parties) Act 1999 where the third party beneficiary only needs to be referred to expressly or by description, name or even class (s. 1(1),(3)). In the US, a similar more relaxed approach is seen in the Eleventh Circuit's decision in Certain Underwriters at Lloyd's v Barber Blue Sea Line (675 F.2d 266 (11th Cir. 1982): "It is sufficient that the [bill of lading] terms express a clear intent to extend benefits to a well-defined class of readily identifiable persons. When a bill refers to a class of persons such as 'agents' and 'independent contractors' it is clear that the contract includes all those persons engaged by the carrier to perform the functions and duties of the carrier within the scope of the carriage contract. No further degree of clarity is necessary." (at 269–270).
12. At para. 56.
13. Ibid.
law countries, it is a story which has a similar beginning but has in the course of judicial activity taken on different but comparable storylines. At a transnational level, several conventions have attempted to replicate the Himalaya clause but with varying effectiveness.

15.8 The Hague Visby Rules provide in article IVbis rule 2 that the defences and limits of liability provided for in the Rules shall extend to a servant or agent of the carrier as long as the servant or agent is not an independent contractor. Carver had this to say:

"It is difficult to be satisfied that the self-contradictory words servant or agent of the carrier (such servant or agent not being an independent contractor) mean anything but a servant who does not work on a self-employed basis. If one acts on another's behalf as an agent, not being a servant, under contract, one must be an independent contractor. To give the words a meaning excluding a stevedore is absurd: stevedores are not even mentioned."\(^{15}\)

As an old edition of Scrutton remarked:

"Recourse to the French text is of no help. The equivalent to 'servant or agent' is Prepos, a word elsewhere translated simply as 'servant'. There is no consistency in the use and translation of 'Prepos' and 'servant'."\(^{16}\)

A port terminal operator, for example, may or may not be entitled to avail itself to article IV bis rule 2 because, despite what Carver asserted, it is unclear whether it is an agent or independent contractor.

15.9 Moreover, the servant or agent shall not be entitled to avail himself of the defences or limits of liability if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.\(^{17}\) However given the fact the Hague Visby Rules only cover the period between the commencement of loading and discharge, actions done by the third party ashore prior to loading and after discharge would not be protected.\(^{18}\) Port terminal operators and other third parties who are not involved in the actual loading and discharge of goods at port will thus not be able to rely on article IV bis rule 2.

15.10 The Hamburg Rules attempt to improve on the Hague Visby Rules by specifically deleting the reference to independent contractors.\(^{19}\) Article 7 rule 2 provides that if an action is brought against a servant or agent of the carrier in respect of damage, loss or delay, that third party shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under the Rules. The question should not be perceived as a matter of fact but of law; the concept of an independent contractor will be evaluated on the basis of the applicable

\(^{15}\) Carver on Carriage by Sea, 13th edn (Stevens & Sons, 1982), p. 402.

\(^{16}\) Scrutton on Charterparties and Bills of Lading, 19th edn (Sweet & Maxwell, 1984); p. 459.

\(^{17}\) Art. IVbis(4).

\(^{18}\) Art. 1 defines "carriage of goods" as covering "the period from the time when the goods are loaded on to the time they are discharged from the ship". Article 2 further states that under every contract of carriage the carrier shall be entitled to the rights and immunities set forth in the convention "in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods".

law of the contract. As far as English law is concerned, an independent contractor is not usually synonymous with servant or agent.20 It seems therefore that although the Hamburg Rules do not explicitly exclude the independent contractor from the defences and limits of liability provisions, in the context of English law article 7 rule 2 cannot be said to have improved much on the Hague Visby Rules. Additionally, the proviso is that the servant or agent should be able to prove that he acted within the scope of his employment makes it difficult to extend the provision to independent contractors even if that is the intention. This is because, whilst it is relatively more straightforward to ascertain the scope of an agent’s or servant’s employment than that of an independent contractor, in the common law, “employment” suggests a strong element of control by the carrier (employer) when an independent contractor is frequently seen as one with much more discretion as to how the work is to be performed.21

15.11 As far as its period of cover is concerned, the Hamburg Rules are intended to cover more than the sea carriage. The carrier’s responsibility extends to “the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge”.22 Thus, it might seem to follow that the servant or agent who performs his work at an inland point might conceivably be entitled to rely on the carrier’s defences and limits of liability. After all, article 4 rule 2(a)(i) provides that the carrier is deemed to be in charge of the goods from the time he has taken over the goods from the shipper, or a person acting on his behalf. That could, arguably, be said to refer to an inland point. However, it has been suggested that article 4 rule 2(a)(i) should be read in conjunction with article 4 rule 1, which refers specifically to the carrier being charge of the good “at the port of loading”.23 This seems to indicate that when the goods are taken over from the shipper, that is an event which takes place at the port of loading rather than at some inland point. There is some support for this proposition in the definition of the term “contract of carriage by sea” in article 1 rule 6 which states that it is “any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another” (emphasis added). For a third party who wishes to rely on the Hamburg Rules, the key question often is whether the place where they deal with the goods is a port for the purposes of the rules.

15.12 As far as the United Nations Convention on International Multimodal Transport of Goods 1980 is concerned, article 20.2 provides the servant or agent of a multimodal transport operator will be entitled to rely on the defences and limits of liability which the convention provides for the multimodal transport operator if he is able to prove that he acted within the scope of his employment. If an action is brought against any other person of whose services the multimodal transport operator had used, that other person shall also be entitled to those same defences and limits

22. Art. 4 r. 1.
23. Supra n. 20 at p. 149–150.
of liability if he could prove that he acted within the performance of the contract. This is an improvement on the Hamburg Rules in that in the context of the independent contractor it does not require proof that he acted within the course of his employment (as we observed above, employment is a concept which suggests a greater degree of control than that which a carrier might properly exercise on an independent contractor). The reference to “acted within the performance of the [multimodal transport] contract” is far more rational.

15.13 The unloved United Nations Convention on the Liability of Operators of Transport Terminals in International Trade 1991 also makes an attempt at providing for a Himalaya clause-type protection to persons employed or engaged by terminal operators. Article 7(2) states that:

“If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.”

Again the weaknesses of the Hamburg Rules are avoided by express reference to “another person of whose services the operator makes use for the performance of the transport-related services” and “acted within the scope of his . . . engagement”.

These words make it quite plain that the independent contractor is to be conferred the protective provisions of the convention.

15.14 As we know, both the Convention on International Multimodal Transport of Goods 1980 and the Convention on the Liability of Operators of Transport Terminals in International Trade 1991 have not received sufficient international recognition for them to take the law forward.

15.15 Given these limitations in the different conventions, the shipping industry has continued simply to rely on the Himalaya clause rather than consciously to depend on the written law. The drafters of the Rotterdam Rules however did not think this was a satisfactory state of affairs and went with tradition by expressly providing for the extension of the carrier’s statutory defences and limits of liability to third parties. The relevant general provision \(^{24}\) in the Rotterdam Rules is found in:

“Article 4

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:
   (a) The carrier or a maritime performing party;
   (b) The master, crew or any other person that performs services on board the ship; or
   (c) Employees of the carrier or a maritime performing party.

2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.”

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24. The more specific provision on Himalaya-type protection is art. 19 (infra at \([15.2]\).
There is a wealth of writings on the relevance and impact of the Rotterdam Rules on Himalaya-type protection. It is safe to suggest that the following are largely the grounds of agreement:

- the Rotterdam Rules do not prohibit the contractual adoption of Himalaya clauses;
- the rules however provide for the statutory extension of the limitations, defences and exceptions provided for in the rules to some third parties;
- those third parties who the Rotterdam Rules consider should benefit are so-called “maritime performing parties”;
- third parties working for the shipper will equally benefit from the defences available under the Rotterdam Rules to the shipper.

Given the voluminous amount of literature on the subject, it would be injudicious to rake over the same ground.

15.16 The object of this chapter is to consider the implications of the Rotterdam Rules’ provision for automatic Himalaya-type protection for port or marine terminal operators. Why port terminal operators? Modern container and computerised shipping has meant that the role of the port or marine terminal operator has taken on a greater significance in the logistic marine transport chain. The sharing of technology between port terminal operators with carrier, cargo interests, and other third parties is inevitable. Some terminal operators may be privatised agencies whilst others are government owned and run. Then there are the so-called global terminal operators; these are huge conglomerates usually backed by sovereign funding or ownership which operate across the world and control a huge market share of the terminal operators market. More and more port terminal operators are not pure port terminal operators. Indeed, many have shareholding or a controlling stake in shipping lines. This is particularly of interest because it is shipping lines (as


26. For convenience, this chapter will use the term “port terminal operators” as referring to “marine terminal operators”, “container terminal operators” etc.

27. Drewry, the shipping industry’s consultancy company, reported in 2005 that ten of the largest operators control around 36% of the world market share. The top ten in 2005 were Hutchison Port Holdings, Singapore Port Authority, APM Terminals, P&O Ports, Dubai Port World, Evergreen, Eurogate, Cosco, SSA Marine, and HHLA.

28. For example, the world’s second and third largest container lines, MSC and CMA CGM already run port terminal operations in 15 and 10 container ports in Europe (2006), whilst Maersk Line’s parent company, AP Moller-Maersk (APM) owns 6% share of the world port terminal operators market. Asian lines also do the same – see for example Evergreen, Cosco (both directly or through its sister company, Cosco Pacific), Hanjin, NYK, Yang Ming, APL (which is a unit of Singapore’s Neptune Orient Line) and Hyundai.

231
against tramp services) which use bill of lading contracts which thereby attract the application of the Rotterdam Rules. The lack of "Chinese walls" makes it difficult to establish whether the port terminal operator is not also an actual carrier.

15.17 The law, for better or worse, in many jurisdictions continues to maintain a distinction between carrier and terminal operator though the reality is that the dividing line between actual carrier and terminal operator has become blurred. In the USA, federal maritime law treats the distinction between marine terminal operator and the sea carrier as important for the purposes of licensing and other regulatory purposes. The distinction is also maintained in China where for example the Port Cargo Handling Rule does not consider the terminal operator to be an actual carrier.

15.18 The nature of the terminal operators' corporate control may mean that other imperatives should apply where it comes to considering the extension of a Himalaya clause to them. The fact is also that most port terminal operators will be subject to statutory liability regimes under national public law. Thus, an ancillary question outside the scope of this chapter is whether and to what extent the fact of regulatory intervention should influence the port terminal operator's ability to rely on the Himalaya clause or the Rotterdam Rules. The risk profile of port terminal operators will have a direct bearing on how competitive a particular port will be. In today's world of intense competition between ports, this is no small matter. The fact that the Rotterdam Rules are likely to affect the risk profile of port terminal operators will also have a knock-on effect on how terminal insurers will price the indemnity or insurance cover they extend to port terminal operators. Terminal insurers are thus well-advised to be fully appraised of the impact of the Rotterdam Rules on the risk profile of terminal operators.

15.19 The idea of exploring this subject stems from a practice article published by Holman Fenwick Willan, a shipping law firm. The article states: "The days of terminals relying on their own standard conditions (further to the doctrine of

29. The Federal Maritime Commissions states on its website that "a marine terminal operator is a person engaged . . . in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. 49 U.S.C. §13521, or in connection with a common carrier. A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads which perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. Conferences of marine terminal operators are also considered MTOs. 46 CFR § 525.1(c)(13)." (http://www.fmc.gov/home/faq/index.asp?L_category_id=13)


31. On how serious the issue has become in the EU, see M Huysbrechts et al, Port Competitiveness: An Economic and Legal Analysis of the factors in determining the competitiveness of Seaports (De Boeck, Antwerp) (2002); see especially chapter 5 by Prof Van Hooydonk for the link between terminal operations and port competitiveness.


“bailment on terms”) or excluding liability altogether (further to the carrier’s Himalaya clause) are probably numbered.” Port terminal operators are then exhorted to “start thinking about the impact that the Convention will have on their portfolio of contracts with carriers and cargo interests”. Under the Rotterdam Rules, port terminal operators will be linked directly to the carrier liability regime which naturally has been quite controversial. The proponents of the Rotterdam Rules argue that this is indeed a benefit because for the first time they do not have to rely on Himalaya clauses but can benefit directly from the automatic Himalaya-type protection provided for in the convention. The object of this chapter to examine how beneficial this automatic Himalaya-type protection is so as to inform a better understanding of the position of port terminal operators. It is not the object here to discuss the new liability regime for third parties.

THE SCOPE OF THE APPLICATION OF THE ROTTERDAM RULES AND PORT TERMINAL OPERATORS

15.20 A port terminal operator is not a term known in general law. However, in the 1991 Convention on the Liability of Operators of Transport Terminals in International Trade we have a useful working definition. Article 1(a) defines a terminal operator as

“a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access or use.”

However, article 1(a) goes on to stress that a person is not considered to be an operator whenever he is a carrier under applicable rules of law governing carriage. The convention thus recognises that in law the port terminal operator should be treated differently from the carrier. Where a same entity takes on the functions of either role, it will be treated as a carrier in law and would not be allowed to shield itself behind the law relating to port terminal operators. However, the reality is that the distinction between the roles is not always clear.

15.21 In this regard, the Rotterdam Rules provide that maritime performing parties, the master, crew or any other person that performs services on board the ship and the employees of the carrier or a maritime performing party may avoid or limit their liability for cargo loss, damage or delay in delivery or breach of any other obligation under the Rules by invoking any provision of the convention that may provide a defence for, or limit the liability of, the carrier. A maritime performing party is defined in article 1(7) as:

“a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a

34. *The Starsin supra n. 7.*

35. The Rotterdam Rules therefore adopt a geographical divide – the carrier’s period of responsibility is for door-to-door carriage whilst the maritime performing party is only responsible for services provided at the port area. See below on the lack of a definition for “port”.

233
maritime performing party only if it performs or undertakes to perform its services exclusively within a port area."

The object of the definition is to restrict the application of the convention only to those persons who are involved in the provision of maritime services.

15.22 The Rotterdam Rules clearly extend beyond where their predecessors have gone; the reference to “performs or undertakes to perform” makes it clear that even though the performing party who has not actually commenced its services could rely on the defences if it is upon its omission that the cargo interest is suing it. What sort of services should a maritime performing party be providing, as far as the protective provisions of the Rotterdam Rules are concerned? Article 1(6) states that the “performing party” is

"a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control."36

The exclusion of the carrier from its definition coincides with the terms of the Convention on the Liability of Operators of Transport Terminals. The carrier’s liability is primary whilst that of the maritime performing party is secondary. Article 1(6) goes on to assert that “performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.

15.23 Reading article 1(6) together with article 1(7), the concept of a maritime performing party is quite complex. Port terminal operators will clearly fall within this definition as long as they had performed or undertaken to perform their services within a port area. The word “port” is not explicitly defined. This lack of a definition would seem to be intentional but problematic. A question is whether cargo consolidation areas would also count as the port area. In the light of the increasing need for cargo consolidation near a port, it seems unrealistic to make an artificial distinction between inland and port without looking at the logistic chain. However, given the fact that the Rotterdam Rules claim to be a maritime rather than a multimodal convention, the rules naturally favour a geographic test as to what constitutes the maritime side of its coverage contrary to how the shipping industry views cargo logistics.37 Containerisation means multimodal transport; in the context of performing parties, the Rotterdam Rules only offer limited recognition of the multimodal reality although they do purport to provide for a door-to-door coverage. There is merit in Prof. Tetley’s view that the Multimodal Convention offers a more a streamlined solution.38 Its basic premise for statutory Himalaya protection is sound – we recall that article 20 provides, “If an action is brought against any other person of whose services the multimodal transport operator had used, that other

36. Emphasis added.
person shall also be entitled to those same defences and limits of liability if he could prove that he acted within the performance of the contract." Only a little modulation is needed to ensure that a third party who has undertaken to provide services but has yet to execute those services should also be covered (as is the case in article 1(6) the Rotterdam Rules).

15.24 Another question, not fully attended to by the Rules, is the question of association or connection between the defences claimed and the services provided. Take this example, D is a port terminal operator. It has agreed, as is standard, to consolidate cargo and provide cargo loading services to the carrier. The goods are delayed, it is claimed, as a result of D's fault. The cargo interest sues D. Under article 4(1) will D be entitled to rely on the defences and limits of liability in the Rotterdam Rules generally or should it be shown that the delay was caused as a result of the loading operations instead of the cargo consolidation operations which took place outside the port area before D can rely on the statutory Himalaya protection? On the one hand, if the port terminal operator is treated as being in the carrier's shoes, the carrier's period of responsibility for which he is entitled to the defences is from the time he receives the cargo to the time he delivers the goods. On that proposition, the port terminal operator would be able to rely on the Himalaya-type protection without needing to link the actions causing the delay were carried out during port operations. On the other hand, article 1(7) defines a maritime performing party (namely the person seeking to rely on article 24(1)) quite narrowly.

15.25 In such a situation, the third party may be able to take advantage of the more specific statutory Himalaya-type protection in article 19. Article 19 states:

"(1) A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if:

(a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and

(b) The occurrence that caused the loss, damage or delay took place: (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) while the maritime performing party had custody of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage."

In our example, the port terminal operator must show that it has the requisite link with a Contracting State. Although in our example, D would seem to meet this requirement, it should be emphasised that it is not extraordinary for a contract of carriage to be subject to the Rotterdam Rules without the relevant port terminal operator having the requisite connecting factor with a Contracting State. After all under article 5, as long as a port of receipt, or the port of loading, or the port of delivery or the port of discharge is located in a Contracting State the Rotterdam Rules will apply but the maritime performing party could be involved in servicing any part of the port to port leg.

39. Or his performing party; supra n. 36.
40. Art. 12.
15.26 As to the relevance of para (b), sub-para (i), by referring to the period of
time between the arrival of the goods at the port of loading and their departure from
the port of discharge, re-emphasises the concept of a maritime performing party
and adds thus very little to article 4(1) (reading together with article 1(7)). More
complicated are sub-paras (ii) and (iii). These paragraphs refer to the occurrence of
events while the maritime performing party was in possession of the goods or at any
other time when the performing party was participating in the performance of the
contract of carriage. Whilst it would appear to be the intention of the article to
extend automatic Himalaya-type protection beyond that encompassed in para (i), it
raises a tricky problem.

15.27 Article 19 specifically refers to the maritime performing party, not a mere
performing party. Does it therefore mean that a person who is engaged as a mar-
itime performing party but does an act (whilst in custody of the goods or at any
other time contributing to the performance of the contract of carriage) outside the
maritime sector would not be able to seek cover under article 19? There is little
clarity in the convention or the travaux préparatoires about this potential conflict.

15.28 Moreover, what if the maritime performing party had acted beyond the
scope of his contract with the carrier? Article 19(1)(b)(ii) simply refers to the
maritime performing party having custody of the goods, not lawful or contractual
custody of the goods. It would seem that article 19 as is set out would extend the
Himalaya-type protection to a maritime performing party who incurs liability whilst
in non-contractual or unauthorised possession of the goods (where, for example, the
goods come into his possession outside the scope of his employment). Although in
theory it might be possible for national legal norms such as equity41 or good faith42
to prevent reliance by the third party who is in unlawful or extra-contractual posses-
sion of the goods, it is submitted that for an international harmonising legal mea-
ure, article 19 is somewhat deficient in failing to anticipate such difficulties. In the
case of a Himalaya clause, at common law it is arguable that the third party would
not be entitled to such benefit because of an implied term or for failure to provide
consideration for the benefit of the clause. Article 19 however is not a contractual
but statutory device dispensing with the need for consideration or implied con-
tracts.

15.29 The same is true for article 19(1)(b)(ii) which refers to participating in the
performance of any of the activities contemplated by the contract of carriage; it does
not explicitly exclude the extra-contractual or non-contractual performance of those
activities. If a maritime performing party does an act which is outside the scope of
his employment but is part of the activities contemplated by the contract of carriage,

42. As far as the common law is concerned, though, Bingham LJ made it quite plain in Interfoto Picture
Library v Stiletto Visual Programmes [1988] 1 All ER 348, at 352-353 that: "In many civil law systems,
and perhaps in most legal systems outside the common law world, the law of obligations recognises and
enforces an overriding principle that in making and carrying out contracts parties should act in good
faith. This does not simply mean that they should not deceive each other, a principle which any legal
system must recognise; its effect is most aptly conveyed by such metaphorical colloquialisms as 'playing
fair', 'coming clean' or 'putting one's cards face upwards on the table'. It is in essence a principle of fair
and open dealing...English law has, characteristically, committed itself to no such overriding principle,
but has developed piecemeal solutions in response to demonstrated problems of unfairness..."

236
article 19 seems to avail to him the Himalaya-type protections a maritime performing party acting contractually would. A commercially realistic example might be this. D is a port terminal operator offering various cargo services. D agrees to provide terminal operations (at port) for C. W is the cargo consolidator. D also offers cargo consolidation services but in this case, had not undertaken to do so for C. Indeed, C had engaged the services of W, an entity not associated with D. During cargo consolidation operations outside the port area, D’s employees assisted W’s despite there being no contract between W and D. Would D subsequently be entitled to rely on article 19 if it was sued by the cargo interest for delay or damage caused as a result of its employees’ actions during cargo consolidation?

15.30 In fairness, a maritime performing party would lose the benefit of the convention’s limitation of liability rules if the damage, loss or delay is “attributable to [his] personal act or omission” (article 61). It is conceivable that “personal” would cover acts done outside the scope of the third party’s contract. However article 61 requires that the claimant must additionally prove that there was “the intent to cause such loss or recklessly and with knowledge that such loss would probably result”. It is submitted that the mere acting outside the scope of one’s contractual employment is not such an act. Furthermore, article 61 narrowly refers to the provisions on limitation of liability in articles 59 and 60.

**HIMALAYA-TYPE PROTECTION AND THE PERIOD OF RESPONSIBILITY**

15.31 The importance of the carrier’s period of responsibility and the defences and limits of liability provisions has already been alluded to. In both articles 4 and 19, the maritime performing party’s entitlement to rely on the automatic protective provisions depends largely on their performance of operations in the maritime leg of the carriage. Article 12(1) states quite peremptorily that “the period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered”. However, article 12(3) allows the carrier and shipper to “agree on the time and location of receipt and delivery of the goods” subject to two conditions, namely that:

(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
(b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.”

43. In general, for loss or damage to goods, the defendant’s liability is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

44. The “compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed”.

237
The intention is to allow the carrier and shipper to continue to make so-called "tackle-to-tackle" contracts. Hence, it would be possible for the Rotterdam Rules to apply where the shipper delivers the goods to the container yard of the port of loading and the carrier unloads the goods at the container yard of the port of discharge, with the carrier being responsible only for the carriage between the two container yards.

15.32 As far as a tackle-to-tackle arrangement is agreed to pursuant to article 12(3), it would follow that the maritime performing party is a performing party who performs (or undertakes to perform) the carrier's obligations during that period. Therefore, it is at least arguable that the maritime performing party's period of responsibility would also shorten in line with the carrier's. Although articles 4 and 19 are not explicit as to whether a third party who does anything falling outside the tackle-to-tackle period could benefit from the Himalaya-type protection, the natural conclusion is that they would no longer be treated as maritime performing party and would not be protected by articles 4 and 19.

15.33 In a tackle-to-tackle type of arrangement, it is probable that the port terminal operator actually is the shipper's independent contractor. Under the Rotterdam Rules, the shipper owes the carrier a number of significant duties including the duty to deliver cargo packed in an appropriate manner, the duty to cooperate with the carrier and the duty to provide relevant handling instructions etc. The shipper will be liable for breaches 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. In the circumstances, the Rotterdam Rules leave it to the shipper and his employee agent or independent contractor to make provisions for a Himalaya clause.

WHAT CONSTITUTE THE "DEFENCES" UNDER ARTICLES 4 AND 19?

15.34 Articles 4 and 19 both provide for the maritime performing party's entitlement to the carrier's defences as provided for in the Rules. An important starting point is the travaux préparatoires where one is exhorted to give the word "defences" a capacious reading. Thus, it would seem that the provisions in the convention dealing with the time for bringing an action, arbitration, jurisdiction clauses, etc.

46. Ibid.
47. Art. 27.
48. Art. 28.
49. Art. 29.
50. Art. 34; the article goes on to state that the shipper would 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.
53. Ibid., Baatz, Chapter 14.
54. Ibid., Baatz, Chapter 15.
and excepted perils etc. should potentially be encompassed by the two articles.\textsuperscript{55} That said, the provisions dealing with process rather than substance such as jurisdiction and arbitration remain a little problematic in this context.

15.35 First, it should be noted the Rotterdam Rules allow states to opt in\textsuperscript{56} to the provisions dealing with jurisdiction\textsuperscript{57} and arbitration.\textsuperscript{58} As regards jurisdiction, if contracting states do not make a declaration to opt in, the effect will be that whilst the parties will have the right to make exclusive jurisdiction clauses in volume contracts (the so-called service contracts),\textsuperscript{59} there is no such liberty given to the holders of any paper or electronic transport document issued under a volume contract. It is therefore not open to parties to a non-volume contract to make an exclusive jurisdiction clause prior to the dispute arising.\textsuperscript{60} Jurisdictional matters will be resolved using the provisions of the Rotterdam Rules exclusively. Article 66 provides that the carrier could be sued at a \textit{competent court}\textsuperscript{61} in any of the following places:

(a) place where the carrier has his domicile;
(b) place of receipt of the goods under the contract of carriage;
(c) place of delivery as agreed in the contract of carriage; and
(d) the place where the goods are first loaded onboard a ship or the place where the goods are finally discharged from the ship.

As for the maritime performing party, the range of places where he could be sued is more narrow. Under article 68, the claimant could bring action against him at a \textit{competent court}\textsuperscript{62} located in the place where:

(a) the maritime performing party has his domicile, or
(b) the port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port where he performs activities with respect to the goods.

It would appear that the general presumption is that there should be some connecting factor linking the place, the contract and the maritime performing party. Notions of the \textit{forum conveniens} doctrine feature quite pronouncedly in the delibera-

\textsuperscript{55} See Nikaido \textit{supra}.
\textsuperscript{56} On whether maritime conventions should actually contain rules dealing with jurisdiction and arbitration, see Herber, "Jurisdiction and Arbitration – Should the new Convention contain rules on these subjects?" (2002) LMCLQ 405.
\textsuperscript{57} Art. 74 provides that "the provisions of this chapter [chapter 14 dealing with jurisdiction] shall bind only Contracting States that declare in accordance to art. 91 that they will be bound by them".
\textsuperscript{58} Art. 78 uses exactly the same words as art. 74.
\textsuperscript{59} Volume contracts are to be treated differently and in these exclusive jurisdiction clauses may continue to be incorporated. A "volume contract" is defined in art. 1(2) as "a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range."
\textsuperscript{60} The only type of jurisdiction agreement permitted is one which is made between the parties after the dispute has arisen (art. 72).
\textsuperscript{61} See below.
\textsuperscript{62} See below.
tions leading to the rules. This premise is bolstered by article 69 which states that "no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to article 66 or 68". This therefore limits the range of possible fora where the maritime performing party could and should be sued. The assumption is that this is for their benefit and coincides with the notion of forum conveniens. It is however not beyond reasonable boundaries that a maritime performing party may insist on being sued at a place listed in article 66 instead of article 68 using the capacious reading recommended for articles 4 and 19. That is to say, could a maritime performing party rely on the provisions of article 66 which purportedly confer the benefit of jurisdiction on the carrier? At one level, it might be suggested the terms of Chapter 14 are to draw a clear delineation between the jurisdictional domain of the carrier and that of the maritime performing party. Also, if considerations of the doctrine of forum conveniens were applicable, it could be argued that the maritime performing party should be denied the right to rely on article 66. This would be made on the basis that as they are maritime performing parties, their connection to the dispute is chiefly tied to where they perform activities associated with the carriage. However there are basically no explicit terms to that effect. Article 69 for example does not carry the word, "respectively". The omission is understandable in that it was not anticipated that a maritime performing party would conceivably wish to be sued in a country other than those listed in article 68. It is permissible under article 72 however for the claimant and maritime performing party to agree, after the dispute has arisen, to a competent court not in the place listed in article 68 to have jurisdiction.

15.36 Both articles 66 and 68 refer to a "competent court". Article 1(3) defines this to be a "court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute" (emphasis added). That means if a maritime performing party is not domiciled in a Contracting State and does not carry out its activities in a Contracting State, article 68 will have no effect because there is no competent court. The claimant is therefore not given a choice of forum against the maritime performing party under the Rotterdam Rules. He will be bound by ordinary rules of private international law of the country where he wishes to pursue the action to establish jurisdiction but that country may not apply the Rotterdam Rules. The maritime performing party would thus not be able to rely on the protection of the Rotterdam Rules even though the contract of carriage itself might be subject to the


64. Ibid.

65. The chapter dealing with the jurisdictional rules in the Rotterdam Rules.

66. In a similar vein, the parties' right to choose a court under art. 72 (namely after the dispute has arisen) is restricted to a competent court. The specific reference to a "competent court" in arts 66, 68 and 72 is to prevent the claimant from losing his rights under the Rotterdam Rules if the country having jurisdiction is one is not a Contracting State; see 14th Session Report ¶¶ 114–115 (Fall 2004).
Rotterdam Rules. In such a case, a Himalaya clause might still be the best solution where the applicable law recognises a jurisdiction conferring Himalaya clause. 67

15.37 Another not unrealistic prospect is where the claimant wishes to sue both carrier and the maritime performing party jointly. Article 71(1) provides that such an action may be instituted only in a court designated pursuant to both articles 66 and 68. If the maritime performing party operates at either the port of loading or the port of discharge, either of those places will qualify as the common forum. However, in practical terms, this is not always the case. In that case the action should be brought before a competent court of the place where the maritime performing party performed activities related to the contract of carriage (i.e. the place designated by article 68(b)). 68 The attempt to make specific provisions for maritime performing parties as regards jurisdictional matters is intended to provide certainty for these third parties who actually do the majority of the actual work of cargo transportation. 69 However, it is wondered if a Himalaya clause might be just as or more efficient. 70

15.38 As far as volume contracts are concerned, article 67(2) provides that the third parties to the volume contracts would be bound by the jurisdiction clause contained in the charterparty if:

(a) the court is one of those specified in article 66(a);
(b) the agreement is contained in the transport document or electronic transport record;
(c) the holder is given timely and adequate notice of the court where the action will be brought and that the court’s jurisdiction is exclusive;
(d) the law of the court seised recognises that the person may be bound by the jurisdiction clause.

So whilst the original parties to the volume contract can agree to an exclusive jurisdiction clause other parties will not be bound by this unless they expressly agree and the jurisdiction is one of the four places mentioned in article 66(a). This provision is likely to have a significant impact on actions against maritime performing parties. It is not especially clear what the connection is between articles 4 and 19, and this article. Various speculative interpretations might be suggested but perhaps best resisted here, given the lack of clarity in the factual and legal matrix.

15.39 As regards arbitration, article 75(2) provides that arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:

“(a) Any place designated for that purpose in the arbitration agreement; or
(b) Any other place situated in a State where any of the following places is located:
   (i) The domicile of the carrier;
   (ii) The place of receipt agreed in the contract of carriage;
   (iii) The place of delivery agreed in the contract of carriage; or

68. Art. 71(1).
69. See Sturley, supra n. 63 at fn. 155.
70. Subject to its applicable law on whether it can confer a jurisdiction agreement as a benefit (supra n. 67).
(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.

An arbitration agreement however can only be incorporated into volume contracts. As regards third parties, article 75(4) states that a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

"(a) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2(b) of this article;
(b) The agreement is contained in the transport document or electronic transport record;
(c) The person to be bound is given timely and adequate notice of the place of arbitration; and
(d) Applicable law permits that person to be bound by the arbitration agreement."

These provisions only apply where there is an arbitration clause in the volume contracts. Arbitration clauses in non-volume contracts will not be enforceable; though not explicitly stated, it would seem logical that the object of Chapter 15 should not be defeated by a Himalaya-type clause. However, as far as English law is concerned, it is arguable that section 8(1) Contracts (Rights of Third Parties) Act 1999 could be relevant.⁷¹ That section provides that:

"Where --
(a) a right under section 1 to enforce a term ("the substantive term") is subject to a term providing for the submission of disputes to arbitration ("the arbitration agreement"), and
(b) the arbitration agreement is an agreement in writing for the purposes of Part I of the Arbitration Act 1996,
the third party shall be treated for the purposes of that Act as a party to the arbitration agreement as regards disputes between himself and the promisor relating to the enforcement of the substantive term by the third party." ⁷²

There are nonetheless particular problems relating to the interpretation of s 8 which would not be helpful to the port terminal operator or claimant seeking arbitration. ⁷²

15.40 The Rotterdam Rules are keen not to conflict with the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral

⁷¹ There is no comparable provision in the Act applicable to jurisdiction agreements.
⁷² C Ambrose, "When can a third party enforce an arbitration clause?" (2001) JBL 415; see also Nishin Shipping Co v Clauses [2003] FWHC 2602 (Comm) where Colman J commented that no direct analogy should be made between s. 8 and the jurisprudence surrounding Himalaya clauses. The judge said (at para. 49): "I am not persuaded that the reasoning of the Privy Council in The Makhuzai [1996] AC 650 expressed by Loed Goff at p. 666 assists in any way in the construction of section 8. That which makes the benefit of a Himalaya Clause available to a third party is the mutual intention of the parties to the underlying contract as expressed in the words of the clause. It is in that context that the approach to the incorporation of arbitration clauses and jurisdiction clauses from one contract into another such as a bill of lading, as discussed in T W Thomas & Co Ltd v Portsea Steamship Co Ltd [1912] AC 1, may have to be considered. But Himalaya clauses transfer the benefit of substantive contract terms to a subcontractor by operation of the agreement between the parties of the contract of carriage and the law of agency stemming from the relationship between the sub-contractor as principal and the contracting party as agent. This is a fundamentally different scene from that arising from the operation of section 1 of the 1999 Act. There is, above all, nothing analogous to a statutory assignment of a right of action effected subject to the principle of conditional benefit."
Awards 1975. Therefore unlike Chapter 14, Chapter 15 contains no provisions dealing with recognition and enforcement of awards. Instead, it concentrates primarily on the place of the arbitration. Another material difference from Chapter 14 is that there is no reference to a maritime performing party – the reason is because there is usually no contract between the maritime performing party and the claimant.

15.41 It is essential to remember that these rules on jurisdiction and arbitration do not apply to volume contracts and the relationship between the carrier and consignee, controlling party or holder who are original parties to a charterparty. For simplicity, the Rotterdam Rules affect the jurisdiction or arbitration clauses in all contracts in the liner trade except charterparties or contracts for the use of space on a ship. The scope in the liner trade has thus been expanded beyond bills of lading or similar documents of title to all contracts except charterparties and other contracts for the use of space on a ship. The scope in the non-liner trade is restricted to transport documents or electronic records that are not between parties to a charterparty or contract for the use of space on a ship. It follows therefore that the Rotterdam Rules will have no effect on a slot charterparty whether it is in the liner or non-liner trade. Where the Rotterdam Rules do not apply, it remains important for third parties to continue to insist on a Himalaya clause (noting, of course, the attitude of some courts to the extension of such non-substantive rights to third parties using the Himalaya clause as we saw in The Makkutai).

**EFFECT OF DEVIATION ON THE AUTOMATIC HIMALAYA-TYPE PROTECTION**

15.42 It is made quite clear in article 24 that as deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this convention, except to the extent provided in article 61. They will only lose their right to limit their liability if the claimant proves that the loss in question was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

**INDEMNITIES AND THE AUTOMATIC HIMALAYA-TYPE PROTECTION**

15.43 As we have observed, a Himalaya clause will sometimes contain an indemnifying provision allowing the third party to seek an indemnity from the carrier (or cargo interest) if it incurred liability for services rendered. In contrast, articles 4 and

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73. See art. 73 which deals with recognition and enforcement of foreign judgments.
75. Art. 76.
15.43 IMPACT OF THE RR ON THE HIMALAYA CLAUSE

19 do not provide for an indemnity, merely the extension of the carrier’s defences and limitations of liability rights to the maritime performing party. Thus, port terminal operators may therefore still wish to require an indemnity in a Himalaya clause, given the imposition of joint and several liability (article 20).

15.44 However an attempt to enforce an indemnity is subject to the Rotterdam Rules. Article 62 provides that “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”. This needs to be read in conjunction with article 64. Article 64 provides that “an action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of:

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
(b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

These provisions therefore make it more difficult for a port terminal operator subject to the Rotterdam Rules to rely on an indemnifying provision in a Himalaya clause.

CONCLUSION

15.45 This chapter has hopefully demonstrated some of the less than obvious problems with the application of articles 4 and 19. These problems stem largely from the convention’s structural weakness. The convention purports to be a half-way house between a maritime convention and a multimodal regime – the so-called maritime plus model. Whilst acknowledging and respecting the rationale for this crossbreed creature, the maritime plus regime makes it difficult for port terminal operators and other independent third parties who operate on a multimodal business model to be clear about their potential liability and defences. The same applies for inland or air carriers who facilitate part of the carriage. Although port terminal operators may rely on the statutory Himalaya protection under the Rotterdam Rules, what they have lost is the opportunity to develop their own liability regime. The 1994 Convention on the Liability of Operators of Transport Terminals in International Trade expresses in its preamble the following:

“CONSIDERING the problems created by the uncertainties as to the legal regime applicable with regard to goods in international carriage when the goods are not in the charge of carriers nor in the charge of cargo-owning interests but while they are in the charge of operators of transport terminals in international trade;


244
INTENDING to facilitate the movement of goods by establishing uniform rules concerning liability for loss of, damage to or delay in handing over such goods while they are in the charge of operators of transport terminals and are not covered by the laws of carriage arising out of conventions applicable to the various modes of transport."

Surely these objectives remain important objectives for the international community to continue to pursue. The Rotterdam Rules, by exposing port terminal operators (despite giving them the incentive of statutory Himalaya protection) to the various liability regimes, could do more to recognise the important roles port terminal operators play in the cargo logistic chain.

APPENDIX

Select bibliography

(Some of the main commentaries on the Rotterdam Rules relevant to Chapter 15)


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