



## STEAMSHIP MUTUAL

To the Members

September 2009

Dear Sirs,

### THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA – THE “ROTTERDAM RULES”

In 1996 the United Nations Commission on International Trade Law (UNCITRAL) began a review of laws in the area of the international carriage of goods by sea. Their aim was to end the multiplicity of liability regimes and to bring international maritime transport law up to date to meet the needs and realities of modern practices. UNCITRAL held numerous sessions to progress this work and the International Group Secretariat, along with other industry bodies, made representations, objecting to various proposals which seemed likely to work to the detriment of carriers.

The text of a new Convention, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (“the Convention”) was finalised by UNCITRAL in 2008 and formally adopted by the UN General Assembly in December 2008, with the signing ceremony to take place on 23rd September 2009 in Rotterdam. Thereafter the Convention, to be known as the “Rotterdam Rules” will be open for signature at the UN in New York. The Convention will enter into force 12 months after 20 states have ratified it.

The terms of the new Convention have eroded some of the traditional defences available to sea carriers, for example the elimination of the nautical fault defence. The obligation of due diligence has been extended to apply throughout the duration of the voyage and limits of liability per package or unit of weight have been significantly increased, beyond Hague-Visby and Hamburg Rules limits. In addition, the new Convention contains jurisdiction and arbitration provisions based on the overly restrictive approach in the Hamburg Rules, although these provisions are subject to an “opt in” by States. Under the Convention, cargo owners are effectively able to choose from a number of jurisdictions in which they can sue the carrier, and exclusive jurisdiction agreements in contracts of carriage largely do not have primacy.

However, at the same time, the new Convention addresses areas not covered by existing conventions, for example it is a “Maritime Plus” Convention, its scope extending to multi modal transport where there is a sea leg involved. The new Convention retains the existing concept of “network” liability, whereby the liability and the applicable limits of liability for loss of and damage to goods occurring before or after the sea-leg will be determined by any unimodal international instrument compulsorily applicable to the relevant mode of transport where the loss or damage occurs (for example the Convention for the International Carriage by Road (CMR)). This “network” system was preferred to a system of “uniform” liability, under which the same scope and limits of liability for loss and damage would apply irrespective of whether the loss or damage occurred on the sea or land leg, since such a single liability regime might inadequately address modes of transport involving fundamentally different risks. The new Convention also looks forward by making provision for electronic commerce and allows parties greater freedom of contract in the liner trade.

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Principally because of the loss of traditional defences, and the likelihood of a significant increase in the liability for, and cost of, cargo claims for shipowners and maritime carriers, as well as disputes over interpretation, if the Rotterdam Rules regime were to be adopted, Group Clubs, reflecting the views of their members, initially did not express strong support for the new Convention.

In contrast however, other shipowner organisations, including the International Chamber of Shipping (ICS), BIMCO, the European Community Shipowners' Associations (ECSA), and the World Shipping Council (WSC), have argued that certainty will be promoted by a widely-adopted international regime and that carriers should support the introduction of the Rotterdam Rules. The concern is that if the Rotterdam Rules do not come into force, there will be a risk of proliferation of regional and domestic legislation, with such initiatives particularly likely to emanate from the European Commission (EC) and the United States. In fact the European Commission has already publicly attacked the Rotterdam Rules and has initiated a consultation exercise with a view to drafting its own regional multi-modal transport instrument. The Commission has indicated that it favours a "uniform" (as opposed to "network") system of liability and is likely to introduce limits at least equivalent to those of any of the current unimodal Conventions (e.g. CMR). It is speculated that any EU proposals are likely to favour the shipper or consignee, which the Commission equates to the "consumer," rather than the carrier.

In view of these concerns, and in line with the decisions of the Boards of other Clubs in the International Group, the Club's Directors have agreed to support ratification of the Rotterdam Rules. However given the uncertainty as to when, if at all, the Rotterdam Rules might come into force, P&I cover will not at this stage be extended to voluntarily assumed Rotterdam Rules liabilities; cover will continue to be available for liabilities arising under contracts of carriage by sea on terms no less favourable than the Hague or Hague Visby Rules.

Whether, and if so when, the Clubs in the International Group will consider it appropriate to replace the Hague/Hague-Visby Rules with the Rotterdam Rules as the standard for P&I cover will depend on a variety of factors, including which nations ratify the convention; how ratification and incorporation into domestic law progresses; as well as the extent to which carriers will want to adopt the Rotterdam Rules as the standard for their carriage terms. In the meantime however, as is the case today, a Member wishing to be covered for liabilities which he has voluntarily accepted and agreed beyond the normal standard of the Hague/Hague-Visby Rules, may ask the Club Managers to arrange cover for the additional liabilities on special terms by agreement.

There follows in **Appendix I**, a summary of the main provisions of the Rotterdam Rules.

There is also attached, at **Appendix II**, a comparative schedule, highlighting the important issues and differences in each case between the existing maritime conventions currently in force governing the carriage of goods by sea, namely the Hague/Hague-Visby and Hamburg Rules. Although the Hamburg Rules are not in force in most parts of the world, they have been included in the comparison, not least because the Rotterdam Rules borrow elements both from those Rules and the Hague/Hague-Visby regimes.

This Circular and the Appendices may also be accessed via the Club website at <http://www.simsl.com>. The text of the Convention can be viewed using the following link <http://www.simsl.com/Conventions/UNCoGConvention09.pdf>.

Yours faithfully,

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## APPENDIX I

### Summary of provisions of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – the “Rotterdam Rules”

#### **1. Scope of Application (Chapter 2) / Freedom of Contract (Validity of Contractual terms) (Chapter 16)**

Essentially the scope of the Convention extends to contracts of carriage used in “liner” transportation (as defined in the Convention) in which the place of receipt and delivery and the port of loading and discharge of the goods are in different states and one of the states has ratified the Convention. It does not extend to charterparties or contracts for the use of or space on a ship such as slot charters. In order to accommodate the United States, parties to “volume contracts” (defined as contracts of carriage that provide for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time) in the liner trade are permitted to derogate from the Convention provided notice is given in accordance with strict criteria set out in the Convention. The Convention expressly provides that its scope does not extend to contracts of carriage in non-liner transportation other than to transport documents (which term includes bills of lading) which have been issued pursuant to a charterparty and negotiated to a consignee. This reflects the position under Hague/Hague-Visby.

As stated, the Convention is not limited to tackle-to-tackle and port-to-port movements but extends to multimodal contracts of carriage where there is a sea leg contemplated under the contract of carriage.

Where loss or damage occurs solely during multimodal carriage other than during a sea leg, the Convention will apply unless some other existing international unimodal instrument is compulsorily applicable (e.g. CMR,) to the extent that the unimodal instrument contains provisions providing for a carrier’s liability, limitation of liability and time for suit. In such case the provisions of that instrument will apply - (Article 26). This arrangement is known as a network liability system, which mirrors the current interrelation between Hague-Visby and Hamburg Rules with other international unimodal conventions and the existing structure of cover under the rules of the International Group P&I Clubs and the Pooling Agreement. It should be noted that the UNCITRAL Commission, after lengthy and protracted debate, ultimately declined to include an express provision acknowledging or permitting the continuing use of “through transport” documents, but expressly affirmed that this decision did not in any way signal a criticism of the practice. In other words, through transport documentation ought not to be affected by the Convention and is subject to national law.

Concealed damage, that is where it cannot be determined on what particular leg the loss or damage occurred, will be subject to the Convention limits of liability.

#### **2. Electronic Commerce (Chapter 3)**

The Convention provides that an “electronic record” of a contract of carriage or other information in electronic form has the same effect as a “transport document”, or its paper equivalent such as a bill of lading. It is intended that by including such provisions the Convention will be equally applicable to electronic trading.

### 3. Obligations and Liabilities of the Carrier for Loss Damage or Delay (Chapters 4 and 5)

#### (i) Period of Responsibility

The carrier is responsible for the goods, subject to the provisions of the Convention and in accordance with the terms of the contract of carriage, from the time that the carrier or a performing party received the goods to the time that they are delivered.

#### (ii) Obligations

The current wording of the Convention is similar to that of Art III.1 and 2 and IV.1 of the Hague-Visby Rules to the extent that the carrier is obliged to properly and carefully receive, load, handle, stow, carry, keep, care for and unload the goods and to exercise due diligence in relation to the seaworthiness of the vessel, its manning, equipment and fitness for the carriage of cargo. However unlike the existing Hague-Visby regime the obligation to deliver is express rather than implied, and the due diligence obligation is not restricted to the period before and at the beginning of the voyage but is a continuing one throughout the voyage.

The Convention provides however that the carrier and shipper can agree that the loading, stowing and unloading the goods is to be performed by the shipper, the documentary shipper or the consignee i.e. FIOS terms.

#### (iii) Liabilities

The carrier's liability for loss, damage or delay remains fault based but is greater than under the existing liability regimes, due largely to the combination of the loss of the nautical fault exception and the extension of the obligation to exercise due diligence to make the ship seaworthy throughout the voyage. The Convention retains a list of exceptions similar to, but more extensive than, that contained in Hague-Visby, and with the onus on the carrier to sustain the operation of the exception from liability and prove the absence of his fault. The expanded list of exceptions includes: "hostilities", "armed conflict", and, more topically, "terrorism" and "piracy" and, importantly, an exception for "reasonable measures to avoid or attempt to avoid damage to the environment". The major fundamental difference is the omission in this Convention of the nautical fault exception (act, neglect or default in the navigation, or management of the ship).

The Convention sets out the method of allocating the burden of proof between claimant and carrier when determining liability for loss, damage or delay. It follows to a great extent the current Hague-Visby test (proof of loss or damage by the claimant; establishment by the carrier of absence of fault or proof of the operation of one of the exceptions from liability; proof of breach of the seaworthiness obligations by the claimant; proof of exercise of due diligence by the carrier) applied by the United Kingdom and United States and a number of courts in other jurisdictions when interpreting the liability provisions of Hague-Visby. The Convention also provides that the carrier is only liable for loss, damage or delay to the extent that its breach of its obligations resulted in the loss damage or delay.

The carrier, although liable for physical loss or damage caused by delay, is not liable for pure economic loss arising out of delay, as was first proposed, unless the time for delivery is the subject of agreement between the carrier and shipper. The agreement it seems need not necessarily be express but can be implied. Where the carrier is liable for economic loss he may limit his liability to 2½ x the freight but subject to a maximum overall cap of the compensation limits for physical loss or damage (Article 60). Any liability the shipper may have for delay will not be governed by the Convention but will be left to national law.

Elimination of the nautical fault exception, coupled with the extension of the carrier's due diligence obligations to the whole of the voyage as provided for in the Convention will, it is believed,

substantially alter the allocation of risk between carrier and cargo in favour of cargo and will accordingly result in an increase in the carrier's potential liability.

It should be noted with regard to Owners' liabilities generally, that these may also be increased by reason of the provision in the Convention that statements in a non-negotiable Transport Document (such as a sea waybill) will have conclusive evidential value where such a document indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee in good faith (Article 41 (a) (ii)). This is a major change from the long-standing position that statements in these documents would have prima facie evidential value and that only statements in a negotiable document would have conclusive evidential value and this only when they are transferred over to a third party acting in good faith.

#### **4. Maritime Performing Parties (Chapter 5, Article 19)**

The Convention introduces the concept of a "maritime performing party", that is a party other than the contracting carrier who performs any part of the sea leg or provides services ancillary to the sea leg. Stevedores and terminals acting normally as sub-contractors of the carrier would be "maritime performing parties" as would sea carriers performing under say an NVOCC transport document such as a bill of lading, (now included in the definition of "transport document" in the Convention.) Such a performing party is subject to the same liabilities and responsibilities as the carrier but essentially only whilst it has custody of the cargo. Nevertheless the carrier remains liable for the whole of the performance of the contract of carriage. Sub-contractors who perform a non-maritime leg such as road hauliers or rail operators would be excluded from the operation of the Convention. The fact that the carrier may be liable under the Convention for the acts of a "maritime performing party," represents a potential increase in the carrier's exposure in much the same way as the "actual carrier" concept introduced in the Hamburg Rules. Carriers may need to consider strengthening where possible their contractual rights of recourse against these other parties in the future.

The Convention contains a "Himalaya" provision extending the defences and limitations available to the carrier, to maritime performing parties.

The Convention also now implicitly preserves the right of the carrier and shipper to enter into through transport arrangements in that they are not expressly excluded by the Convention.

#### **5. Deviation (Chapter 6, Article 24)**

Article 24 specifically provides that where a deviation constitutes a breach of the carrier's obligations, it shall not of itself deprive a carrier or a performing party of its right to rely on statutory and contractual defences or to limit its liability under the contract of carriage (except to the extent that the claimant proves the loss was attributable to a personal act or omission, or recklessness, of the person claiming the right to limit, see Article 61). The Hague Visby Rules contain no such provision, which has led to a lack of consistency in the approach adopted to deviation by courts in different jurisdictions.

#### **6. Obligations and Liabilities of the Shipper (Chapter 7)**

The text provides that the shipper is obliged to deliver the goods in a condition fit for carriage and to provide the carrier with relevant information and instructions in order for the carrier to fulfil his obligations.

The shipper's liability to the carrier for loss or damage is generally fault based and the onus of proving loss lies with the carrier. However there are special rules for dangerous goods and

documentary inaccuracies in relation to such goods. The shipper is under an obligation to inform the carrier of the dangerous nature of goods and to mark or label such goods in accordance with any applicable law or regulation. If the shipper fails to comply with his obligations he is strictly liable for all loss or damage which may result and is not entitled to limit.

## **7. Delivery of the Goods (Chapter 9)**

Article 47 provides a mechanism under which a carrier can deliver the goods without production of the original transport document in prescribed circumstances, where the transport document expressly states that the goods may be delivered without production.

However the mechanism is hedged with caveats and does not give total protection to a carrier, in particular if a third party has acquired rights against the carrier before delivery, of which the carrier is most unlikely to be aware. Accordingly, the practise of the carrier requiring a letter of indemnity before delivering without production of the transport document is unlikely to change.

## **8. Limits of Liability and Time for suit (Chapters 12 and 13)**

The Convention provides for a package and weight-based limitation system as is the case in Hague Visby. The monetary limits are 875 SDR per package and 3 SDR per kilo, in excess of both the Hague-Visby and Hamburg Rules limits.

As with Hague-Visby the carrier loses his right to limit if the loss, damage or delay results from a personal act or omission done with intent or recklessly knowing that the loss or damage would probably result. The carrier also loses his right to limit if he carries goods on deck in breach of an express agreement to carry them under deck.

The type of claims in respect of which the Carrier may claim the right to limit has also now been expanded to include claims brought in tort and bailment and also misdelivery claims, by virtue of the reference in Article 59.1 to "the carrier's liability for breaches of its obligations under this Convention." This is wider in scope than the parallel provision under the Hague-Visby Rules, which limited the right to limit to claims for loss or damage related to the goods.

Time for suit has been extended from the Hague / Hague Visby one year prescription period to two years (Article 62.1).

## **9. Jurisdiction and Arbitration (Chapters 14 and 15)**

Jurisdiction and arbitration provisions relating to claims are included in the Convention. Such provisions are contained in the Hamburg Rules but not in Hague-Visby.

### **(i) Court Jurisdiction**

The current text provides a claimant with a wide choice of jurisdictions connected with the carriage e.g. domicile of the carrier / place of receipt / delivery of the goods, load / discharge port, in which to bring claims. The Convention also prevents a carrier from commencing pre-emptive proceedings. Although parties to a contract of carriage can agree a choice of jurisdiction in the contract of carriage, such a choice does not have primacy, even if exclusive, unless contained in a volume contract, when it must satisfy a number of specified criteria. However, most importantly a state must "opt-in" to the jurisdiction provisions for them to have effect.

Since the EU essentially gives effect to choice of jurisdiction clauses in certain categories of contracts which would generally include contracts of carriage (Council Regulation No. 44/2001, replacing the

Brussels Convention), it is unlikely that the Commission/Member States will opt-in. The United States however is very likely to do so.

(ii) Arbitration

The arbitration provisions provide that the parties to a contract of carriage can agree that disputes relating to the carriage of goods under the Convention can be referred to arbitration and that the arbitration proceedings shall take place either as agreed in the arbitration agreement or at the option of the claimant in any of the jurisdictions specified under the jurisdiction provisions, again unless contained in a volume contract, when the choice of place of arbitration will have primacy.

However it is expressly provided that nothing in the Convention will affect the enforceability of an arbitration agreement in a contract of carriage in non-liner trade, which is subject to the Convention only because it was issued pursuant to a charterparty. Clauses reflecting such arbitration agreements should be clearly drafted.

The arbitration provisions are also subject to an “opt-in” by States in the same way as the jurisdiction provisions.

## **10. Entry into Force (Chapter 18)**

The Convention will enter into force 12 months after ratification by 20 States. (Article 94.1)

**APPENDIX II**

**INTERNATIONAL CONVENTIONS RELATING TO THE CARRIAGE OF GOODS BY SEA**

**COMPARISON OF PROVISIONS**

	Article	HAGUE RULES (H) / HAGUE/VISBY RULES (HV)	Article	HAMBURG RULES (HR)	Article	ROTTERDAM RULES (RR)
<b>Scope of Application</b>	X	<p>Outgoing maritime carriage from contracting state (H only)</p> <p>Outgoing <u>international</u> maritime carriage from contracting state (HV)</p> <ul style="list-style-type: none"> <li>• Bill of lading issued in contracting state (H/HV)</li> <li>• Carriage from port in contracting state (HV)</li> <li>• BL stipulates HV shall apply to contract of carriage (HV)</li> </ul>	2	<p><u>Inward</u> and outward <u>international</u> maritime carriage from a contracting state</p> <ul style="list-style-type: none"> <li>• Port of loading or discharging in contracting state</li> <li>• Bill of lading issued in contracting state</li> <li>• Bill of lading stipulates HR apply to contract of carriage</li> </ul>	1 5	<p>A “maritime plus”, not full multimodal convention.</p> <p>Inward and outward international carriage from contracting state involving a maritime leg. Contract can provide for a mode of transport other than maritime.</p> <p>Definition of contract of carriage</p> <p>Applies to contracts of carriage where</p> <ul style="list-style-type: none"> <li>• Place of receipt or delivery of goods</li> <li>• Port of loading or discharge is in contracting state</li> </ul>
<b>Contracts which are covered</b>	I  V	<p>Definition of contract of carriage - Applies to contracts of carriage covered by a bill of lading or similar document of title relating to the carriage of goods by sea.</p> <p>Charterparties excluded but bills of lading issued pursuant to a charterparty covered.</p>	1.6  2.3	<p>Definition of contract of carriage.</p> <p>Covers contract of carriage by sea, including a contract which provides for carriage by other means, only insofar as it relates to carriage by sea.</p> <p>Charterparties and bills of lading in the hands of a charterer excluded.</p>	1  6	<p>Definition of contract of carriage, being a contract in which carrier, against payment of freight, undertakes to carry goods from one place to another. The contract must provide for carriage by sea but other modes permitted. Will include bills of lading and sea waybills.</p> <p>Applies to contracts of carriage in <u>liner transportation</u> – i.e. all transport documents including bills of lading and sea waybills, but not charterparties or slot/space charters.</p> <p><u>Non-liner transportation</u> – applies to contract of carriage issued where there is no charterparty or other contract between the parties for use of a ship or space thereon (e.g. a bill of lading issued pursuant to a charterparty).</p>



<b>Freedom to Derogate</b>	VI	Freedom to derogate in respect of non-negotiable receipts where no bill of lading is issued. Applicable only to shipments requiring special agreement – i.e. not ordinary commercial shipments made in the ordinary course of trade.	23.1 23.2	No freedom to derogate in respect of contracts/bills of lading evidencing the contract of carriage by sea. Carrier can increase his responsibilities and obligations under the convention.	80	Freedom to derogate from the convention in relation to “volume contracts” as defined in Article 1.2. A “volume contract” means 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.
<b>Period of responsibility</b>						
	I.e VII	“Tackle to tackle” - period from time goods loaded on ship until time discharged. Carrier or shipper may agree to extend the responsibility of the carrier/ship for goods prior to loading on and subsequent to discharge from the ship.	4 4.1 10.2	Tackle to tackle Port to port Period during which Carrier (or Actual Carrier as defined in Art. 1.2) is in charge of goods at port of loading, during carriage and at port of discharge. Art. 4.1 effectively provides that carrier’s liability for through-carriage shall not extend beyond port of discharge. Carrier remains liable for period carriage is entrusted to actual carrier	12.1 12.3	Period Carrier or Performing Party receives goods for carriage until goods delivered; thus tackle to tackle ) provided international sea leg port to port ) is contemplated under contract door to door ) of carriage (Art. 1.1) Parties can agree Carrier’s period of responsibility, subject to restrictions.
<b>Interface with laws and conventions governing other modes of transport and limits of liability</b>						
A – Limits of liability	VIII	Provisions of <u>statutes</u> for the time being in force relating to the limitation of liability of shipowners continue to apply	25.1	Provisions of <u>International Conventions</u> or <u>national law</u> re limits of liability of shipowners continue to apply.	83	International conventions or national law regulating global limitation of liability for vessel owners continue to apply.

B – Other modes of transport		Governs sea carriage only.	1.6	Definition of carriage by sea – HR govern portions of sea carriage only	26	Provisions (which deal with carrier’s liability, limits of liability and time for suit) of international <u>instrument</u> compulsorily applicable where loss/delay/damage sustained on non sea leg, prevail over RR. Where it cannot be determined on what particular leg loss, etc. occur – RR provisions apply.
			25.5	International conventions (and future amendments thereto) already in force at date of HR to apply, if they apply mandatorily to contracts of carriage of goods primarily by a mode of transport <u>other than</u> by sea.	82	Provisions of International Conventions in force at time of Rotterdam Rules and future amendments thereto regulating carrier’s liability for loss/damage to goods carried by air/road/rail/inland waterways – continue to apply.
Electronic Commerce		No provision		No provision	Chap. 3 Arts. 8, 9, 10.	An “electronic record” of a contract of carriage or other information in electronic form has same legal effect as its paper equivalent (e.g. a bill of lading)
					1.18 1.19	Definition of electronic transport record Definition of negotiable electronic transport record.
<b>Obligations and liability of Carrier for Loss, Damage, Delay</b>						
(A) Obligations of carrier in relation to Goods	III.2	Carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge goods carried	5 / Annex II	No equivalent: different basis of liability. Liability of carrier based on principle of <u>presumed fault</u> if loss/damage/delay took place while goods in carrier’s charge Burden on carrier to prove he took all reasonable measures to care for cargo	13.1	Carrier shall properly and carefully <u>receive</u> load, handle, stow, carry, keep, care for, unload and <u>deliver</u> goods. Same as H/HV Article III.2 except there is an express obligation to deliver whilst this is implied in H/HV.
			5.1		13.2	Carrier and shipper can agree loading, stowing, unloading of goods to be performed by shipper/ consignee i.e. FIOS terms.

<b>(B) Obligations of carrier in relation to the Ship</b>	III.1	<u>Due diligence</u> before and at beginning of voyage to: a) make ship seaworthy b) properly man, equip and supply ship c) make holds and cooled chambers, etc. of ship fit and safe for goods.	4.1	Responsibility for vessel extends throughout voyage. Carrier is responsible for goods during entire period that they are under his charge.	14	Similar to HV Art.III.1 but continuing obligation of due diligence <u>during voyage</u>
<b>Excepted Perils</b>	IV.2	Exonerations from liability set out at a-q include: a) default in navigation/ management of the ship b) fire, unless caused by actual fault or privity of carrier	5  5.4  5.1  5.7	Sets out basis of carrier's liability. <ul style="list-style-type: none"> <li>• No defence of default in navigation/ management of ship</li> <li>• Liability for <u>fire</u> if fire due to fault of carrier</li> </ul> Burden on carrier to prove he took all reasonable measures to avoid the occurrence causing loss/ damage/delay Express concept of contributing cause – carrier can mitigate his liability where there is a competing cause, other than his own fault	17.3        17.6	No exception for default in navigation/management of ship. Otherwise H/HV excepted perils are incorporated, including the fire defence, and expanded to include: (c ) piracy and terrorism (n) reasonable measures to avoid damage to the environment (m) <u>reasonable measures</u> to save or attempt to save property at sea . Onus on carrier to prove the operation of an exception (17.3) and absence of fault (Arts. 17.2, 17.4 and 17.5). Carrier only liable for loss/damage/delay to extent breach of its obligations caused same.
<b>Live Animals</b>	I.c	H/HV do not apply to carriage of live animals which are excluded from definition of "Goods."	1.6 5.5	Goods includes live animals Carrier liable for loss/damage/delay in relation to live animals unless resulting from "special risks" inherent in that kind of carriage and no fault/neglect proven on part of carrier.	81	Special Rules for live animals. An exclusion of carrier's liability in relation to live animals will not operate if loss occurred due to carrier's reckless/wilful default .

<b>Deck Cargo</b>	1.c	H/HV do not apply to cargo which by the contract of carriage is stated to be carried on deck.	9	Carrier entitled to carry goods on deck only if shipper agrees or carriage complies with trade usage/statutory regulations. Agreement between carrier and shipper must be recorded in the contract of carriage. If these requirements not met, carrier absolutely liable for damage attributable to on-deck carriage.	25.1 25.2 25.3 25.5	Carriage on deck permitted when required by law or undertaken by contractual agreement/custom of trade or cargo carried in containers/vehicles fit for deck carriage. Where carried as above – carrier not liable for loss/damage/delay caused by <u>special risks</u> involved in deck carriage. All other liabilities arising from deck carriage will be subject to the usual rights, defences and liabilities under the convention. Where <u>not carried</u> as above – carrier liable for losses exclusively caused by deck carriage and is not entitled to the defences of liability set out in Art. 17, but may be able to limit his liability in accordance with convention limits. If goods carried on deck in breach of express agreement to carry under deck – carrier may also lose the right to limit liability if loss / damage occurs by reason of deck carriage.
<b>Parties other than carrier</b>	HV Art. IV bis	H/HV largely regulate position of <u>carrier only</u> . Protection of third parties/ independent sub contractors requires extension of carrier's defences in contract of carriage by means of a Himalaya clause. Servants/agents of carrier can benefit from carrier's defences/limits of liability – unless damage resulted from such agent's wilful or reckless default	1.2 10 11 7.2	<u>Actual Carrier</u> – is any person who performs all or part of a contract of carriage on behalf of a carrier. Carrier remains responsible for entire carriage and liability with actual carrier is joint and several. Carrier can only exclude liability where the contract specifically provides for carriage by a party other than the carrier for a particular leg. Servants or agents of carrier can benefit from carrier's defences and limitations of liability under the convention.	1.6 / 1.7 18 19 20	Definitions of Performing Party (PP) and Maritime Performing Party (MPP). These are parties other than the carrier that perform or undertake to perform any of the carrier's obligations under a contract of carriage in relation to the goods. The MPP is one who performs any of the carrier's obligations during the period between arrival of goods at port of loading and their departure from port of discharge, including parties who perform or undertake to perform services exclusively within a port area (so includes stevedores/terminals). Carrier remains liable for breaches of performing parties Maritime Performing Parties are entitled to carrier's defences and limits of liability under RR, provided stipulated requirements are fulfilled (i.e. no need for Himalaya Clause). Liability of carrier and MPP is joint and several up to convention limits

Limits of Liability						
<b>Right to Limit</b>	IV.5	Right to limit for “loss or damage to or in connection with goods”. Debateable whether right to limit exists where no physical damage e.g. claims for wrongful delivery	6	Right to limit for loss resulting from loss of or damage to goods or <u>delay</u> in delivery.	59.1	Right to limit extends to <u>all</u> claims for breaches of carrier’s obligations under convention (subject to special rules for deck carriage), so can include claims in tort and bailment and misdelivery claims. (For claims in tort see Hague Visby Art. IV bis 1 and Hamburg Rules Art 7.1 discussed below).
<b>Package Limits</b>	IV.5	Package limit 666.7 SDR Weight limit 2 SDR per kilo	6.1	Package limit 835 SDR Weight limit 2.5 SDR per kilo.	59	Package limit 875 SDR Weight limit 3 SDR per kilo
				Carrier’s liability for delay in delivery is limited to 2 ½ x freight payable for goods delayed, but not exceeding total freight payable under contract of carriage. Overall limit of value of total loss of the goods.	60	<u>Carrier’s</u> limit of liability for economic loss due to delay is 2 ½ x freight payable on goods delayed; Overall limit of value of total loss of the goods.  No limit on liability for claims against <u>Shippers</u> – this is left to national law.
<b>Tort Liability</b>	IV bis 1	Hague Rules - no reference to tort liability. Hague defences will only protect carrier if Hague Rules incorporated into contract and tort claim is brought by a contracting party.	7.1	Same as HV Article IV bis but extends to claims for delay in delivery also.	59.1	Right to limit extends to <u>all</u> claims for breaches of carrier’s obligations under convention (subject to special rules for deck carriage – See Art 25 discussed above), so can include claims in tort and bailment and misdelivery claims.
		Hague Visby – HV defences and limits of liability are available in any action against carrier for loss/damage to goods covered by a contract of carriage, whether action founded in tort or contract.				

<b>Loss of Right to Limit</b>	Art. IV 5(e)	<u>Hague Rules</u> no provision	8	Same as HV Art. IV 5 (e) and Art. IV bis 4. Carrier and his servants / agents lose right to limit if loss/damage/delay results from wilful/reckless act or omission.	61	Loss of right to limit if due to <u>personal</u> reckless/wilful act or omission of <u>person claiming right to limit</u> . Applies to carriers' and other performing parties' servants or agents (see Art. 18). Comment - It is possible that misconduct of servant or agent may not reopen carrier's limit (if carrier is claiming the right to limit).
	Art. IV bis 4	Carrier's servants or agents lose right to limit if damage results from <u>their</u> wilful/reckless act or omission			25.5	Carrier also loses right to limit if he carries goods <u>on deck</u> in breach of an express agreement to carry under deck and loss results from deck carriage.
<b>Deviation- Loss of Right to Limit</b>		No equivalent		No equivalent	24	Where under national law a deviation constitutes a breach of the carrier's obligations, that shall not of itself deprive a carrier or maritime performing party of its right to rely on defences or rights to limit under the RR, except (per Art. 61) where there is a loss of right to limit for reckless/wilful misconduct.
<b>Time for Suit</b>	III.6 ( H)	Carrier and ship discharged from all liability in relation to loss or damage unless suit brought within <u>one year</u> after delivery of goods or date when goods should have been delivered.	20.1	Actions relating to carriage of goods under this convention are time barred unless instituted within <u>two years</u> . Comment – this operates to bar claims <u>by</u> as well as <u>against</u> the carrier.	62	<u>Two year</u> time limit (applicable to claims against the carrier and the shipper) in relation to claims/ disputes arising from a breach of obligations under the convention.
	Art.III.6 (HV)	Discharge from all liability <u>whatsoever</u> in relation to goods if suit brought within <u>one year</u> as above.	20.2	The limitation period starts on the day on which carrier has (part) delivered the goods or the last day on which the goods should have been delivered.	62.3 64	Limitation period is defined as per Hamburg Rules Art. 20.2. Rights of set off permitted outside time limit. Actions for indemnity may be brought outside the two year time limit (as per Hamburg Rules).
	Art III 6 bis (HV)	Actions for indemnity may be brought outside one year time limit.	20.5	Actions for indemnity may be brought outside the two year time limit.	65	New provision concerning actions against persons identified as the carrier. Actions may be started outside the two year time limit, subject to conditions.

Obligations and Liabilities of Shipper						
<b>Liability of Shipper</b>	H/HV Art. IV.3	Shipper liable to carrier for loss/damage where caused by shipper, his servants'/agents' fault or neglect.	12	Same as H/HV but shipper is liable for "loss sustained by carrier" which means shipper will in addition be liable for losses arising from a claim for <u>delay</u> in delivery	Chap. 7 Art. 30 Art. 34	More systematic treatment of shipper's obligations to carrier set out in separate chapter. Shipper's liability to carrier is fault-based. Onus on carrier to prove loss. Shipper liable for his own and servants'/agents' breaches of shippers' obligations under RR, other than those of carrier/PP whom shipper has entrusted to perform shipper's obligations.
<b>Limit of Liability of Shipper</b>		None stipulated		None stipulated		None stipulated. No express provision for liability for delay. National law applies.
<b>General Duties of Shipper</b>		No direct equivalent		No direct equivalent	27 29	Shipper general duty to deliver goods in condition to withstand intended carriage, including stowage of contents of containers. Shipper's obligation to provide carrier with timely information, instructions and documents regarding the goods for proper handling and carriage.
<b>Documentary Inaccuracies</b>						
<b>H/HV</b>	III.5	General Duty to give accurate particulars in the bill of lading and shipper liable for mis-statements. Shippers deemed to guarantee to carrier accuracy at time of shipment of marks, number, quantity and weight furnished by him; shipper to indemnify carrier for loss resulting from inaccuracy of particulars.	17.1 17.3	Same as H/HV III.5  Shipper's letter of guarantee to carrier in respect of issuance of clean bills of lading enforceable if carrier had no intent to defraud – deals with situation where carrier issues clean bill of lading for damaged goods. (No equivalent in H/HV)	31.2  31.1 & 36.1	Shipper deemed to guarantee to carrier accuracy of information at time of <u>receipt</u> of goods by carrier and indemnifies carrier for loss resulting from inaccurate information. (This is similar to HV III.5 and HR 17.1).  Details of information to be supplied by <u>shipper</u> - more extensive than in other conventions. Plus see comments on Contract Particulars below.
<b>H</b>	IV.5	Carrier/ship not liable for loss/damage in relation to goods if shipper has knowingly mis-stated their nature/value in the bill of lading.				
<b>HV</b>	IV.5 (h)	Ditto				

<b>Dangerous Goods</b>	IV.6 H and HV	Right of carrier/agents to discharge/destroy dangerous goods and shipper expressly liable if carrier had no knowledge of their dangerous character and did not consent to the carriage.	13.4	Right of carrier to unload/destroy dangerous goods if they become an <u>actual danger</u> to life or property.	15, 16	Carrier or Performing Party may decline to load, destroy, discharge etc. goods which reasonably appear likely, during carrier's period of responsibility, to become an actual danger to persons, property or the environment.
		No express requirement to mark/label dangerous goods	13.1	Shipper must mark/label dangerous goods	32	When nature of goods is reasonably likely to become a danger to persons, property or the environment: a) Shipper must, before goods are delivered to the carrier or performing party, inform carrier of dangerous nature of goods. Shipper liable to carrier if fails to warn and carrier does not have knowledge of dangerous character of goods. b) Shipper must mark/label dangerous goods in accordance with the requirements of law, regulations, public authorities. Shipper is strictly liable to carrier for losses/damage resulting from failure to do so.
			13.2	Shipper's duty to inform carrier of dangerous character of goods and necessary precautions to be taken. Shipper's liability to carrier negated if carrier has knowledge of dangerous character of goods.		
<b>Nature of Transport Document</b>					35	Transport document or Electronic Transport Record may be negotiable or non- negotiable (no equivalent in H/HV/HR).
<b>Contract Particulars</b>	H and HV III.3	Carrier to issue, on demand of shipper, bill of lading showing a) leading marks for identification of goods as furnished by shipper b) number of packages, pieces, quantity, weight c) apparent order and condition	15	More extensive schedule of 15 mandatory requirements to be stated on bill of lading including: date on which goods taken over by carrier at loadport (relevant to carrier's period of responsibility and claims for delay in delivery)	36	List of requirements similar to HR Art. 15 including: description of goods as <u>appropriate for transport</u> (not in HR) date on which carrier/performing party received goods (like HR 15.1 (f))
			15.1(f)	whether freight payable	36.1 (a) 36.2 (c)	
			15.1(k) 16.4	If no statement made concerning freight, BL is prima facie evidence that no freight/demurrage is payable by consignee.	42	No equivalent of HR 1(k) re freight. However, see Article 42- if contract particulars contain the statement "freight prepaid," carrier cannot assert against the contract holder/consignee that freight has not been paid, unless holder/consignee is also the shipper.
		No equivalent		No equivalent	31 /36	Liability placed on shipper to supply necessary contract information to carrier.



		No equivalent		No equivalent	36.4	A definition of “apparent order and condition of the goods” based on specified inspections.
<b>Evidentiary Value</b>	H III.4	Bill of lading is prima facie evidence of receipt by carrier of goods as described.	16.3	Similar to HV III.4 where bill of lading transferred to third party who in good faith has <u>acted in reliance</u> on description of goods.	41	Transport document is prima facie evidence of carrier’s receipt of goods as stated in the contract particulars .
	HV III.4	Bill of lading is prima facie evidence of receipt by carrier of goods as described and proof to contrary not admissible where BL transferred to third party acting in good faith.			41 (b), (c)	List of circumstances where proof to contrary not admissible. Applies to negotiable or <u>non-negotiable</u> transport document (NND) (e.g. seawaybill) when transferred to third party consignee acting in good faith, and, (in case of NND) which needs to be surrendered before delivery.
					41 (c)	Comment – A non-negotiable transport document such as a seawaybill may thus have conclusive effect when consignee acts on it in good faith. 41(c)
<b>Right to insert qualifications re contract particulars</b>	III.3 Proviso H/HV	Master/carrier <u>may</u> refuse to insert statements which are / suspected to be/ inaccurate or which he has no reasonable means of checking.	16.1	Carrier <u>must</u> insert reservations on bill of lading regarding particulars believed to be inaccurate.	40 40.1	Detailed provisions concerning : qualifications carrier <u>must</u> make, when he has actual knowledge / reasonable grounds to suspect inaccuracy of information furnished by shipper; qualifications carrier <u>may</u> make, depending on whether goods are delivered in closed containers or whether carrier had the actual opportunity / means to inspect goods.
			16.2	Failure to make reservations is a deemed notation on the bill of lading that goods are in apparent good condition.	40.2-4	
<b>Carrier’s delivery Obligations</b>		No provisions as to whom carrier may deliver.		No provisions as to whom carrier may deliver.	47.2  47.2 (d)	Mechanism under which carrier can deliver goods without production of original transport document in prescribed circumstances – where transport document expressly states that goods may be delivered without surrender of document. In these circumstances the carrier may have a right to limit liability in accordance with the RR for claims which arise from such delivery. However, carrier does not obtain total protection, e.g. if third party has acquired rights against carrier before delivery. So carriers will probably still require an LOI before delivery without production of the transport document.

Identity of Carrier		No provision		No provision	37	If the carrier is not identified in a transport document, but the goods are noted to have been loaded on a named ship, the <u>registered owner</u> is deemed to be the carrier. This presumption can be rebutted if registered owner identifies a bareboat charterer or other carrier and its address.
Special provisions for Volume Contracts		None		None	1.2 80  80.5	<p>Definition of volume contract There is freedom to derogate from the convention re volume contracts as defined provided that:</p> <ul style="list-style-type: none"> <li>the volume contract is individually negotiated or prominently specifies the sections of the contract containing the derogations; and</li> <li>the shipper is given an opportunity and notice thereof to conclude a contract on terms that comply with the Rotterdam Rules.</li> </ul> <p>The derogations apply also between the carrier and persons other than the shipper (e.g. the consignee) if such persons have received information that the contract derogates from the RR and gives its express consent in writing.</p>
Jurisdiction and Arbitration Provisions		None	21 22	<p>Jurisdiction Arbitration</p> <p>Multiple jurisdictions are open to claimant who can commence arbitration or court proceedings in the state where:</p> <ul style="list-style-type: none"> <li>The defendant has his principal place of business;</li> <li>The contract was made, provided the defendant has a place of business there;</li> <li>The port of loading of discharge is located;</li> <li>Any additional place stipulated in the contract of carriage.</li> </ul>	66-74 75-78  66  67  74	<p>Jurisdiction, Chapter 14 Articles 66-74 Arbitration, Chapter 15 Articles 75-78</p> <p><u>Jurisdiction:</u> Like HR, the claimant is given a wide choice of jurisdictions connected with the carriage, e.g. domicile of the carrier, place of receipt/delivery of the goods, load/discharge port, in which to bring claim.</p> <p>Although parties to a contract of carriage can agree a choice of jurisdiction in the contract of carriage, such choice does not have primacy, even if exclusive, unless contained in a Volume Contract, when it must satisfy a number of specified criteria.</p> <p>Most importantly, however, a contracting state must “opt in” to the jurisdiction provisions of the RR for them to have effect and this may significantly limit the impact of these provisions.</p>

				<p>The provisions render void any exclusive jurisdiction clause in the contract of carriage, the effect of which would frustrate the purpose of the jurisdiction and arbitration provisions in the HR and the choices open to the claimant therein.</p>	75	<p><u>Arbitration</u> The parties to a contract of carriage can agree that disputes relating to the carriage of goods under the RR can be referred to arbitration and that the arbitration proceedings shall take place either as agreed in the arbitration agreement, or, at the option of the claimant, in any of the places specified under the Jurisdiction provisions, again unless continued in a Volume Contract, when the contractual choice of place of arbitration will have primacy.</p>
					76	<p>However, it is expressly provided that nothing in the RR will affect the enforceability of an arbitration agreement in a contract of carriage in a <u>non liner trade</u>, which is subject to the convention only because it was issued pursuant to a charterparty.</p>
					78	<p>The arbitration provisions are also subject to “opt in” by contracting states in the same way as the jurisdiction provisions.</p>