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The Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. Second Edition by Michael F. Sturley, Tomotaka Fujita and Gertjan van der Ziel, Sweet and Maxwell, 2020.

The carriage of goods by sea is a fascinating area of international trade. The value of cargo and the associated financial benefit that may be secured by the trading of that cargo, particularly in commodity trades, can be enormous. It follows that the possibility of loss and damage to cargo brings risk and with it the potential for dispute between the trading parties. The law that has oversight of international trade is therefore important; clarity of that law is essential. In the common law world in particular the law relating to it is continually developing. This book, now in its second edition, is an essential guide to those seeking to develop an understanding of this world.

As the title tells us the subject of this book is the Rotterdam Rules, which are “rules”¹, designed by UNICTRAL, (the United Nations Commission on International Trade Law) to modernise the international legal regime for the carriage of goods where at least some part of the carriage is by sea. Not an insignificant project when one learns that it is estimated that around 90% of world trade in goods has a sea leg.² However, the Rules have not received sufficient support in terms of state ratification and so are not in force.

The Rotterdam Rules themselves hold a status in maritime law that is at once both optimistic and disappointing. They address issues that are in need of reform and point towards the appealing prospect of a world of uniformity, with them possibly forming a key part of a so-called new *lex mercatoria*. However, they also highlight the current reality of the rules governing the practice of international trade, which are fractured and made by the self-interest of national states. The enthusiasm for the convention that was apparent on the 23rd of September 2009 when it opened for signature, (and sixteen sovereign states did so), particularly since the signatories included several large economies (some not noted for participation in international conventions) and those with a long history in the carriage of goods by sea such as Denmark, France, Greece and the United States of America,³ has dissipated with the passage of time.

The authors are leading proponents of the adoption of the Rules and in this book they work through the convention chapter by chapter with very clear explanation. Particularly helpful is the significant increase from the first edition in the number of “Illustrations”, set out in the body of the text. These are

¹ An old-fashioned expression but one that follows the precedent set by the other international convention in this area; The Hague Rules, The Hague Visby Rules and The Hamburg Rules.

² Industry practitioners frequently use this figure but the source is not usually identified; suffice it to say that it is a very large number!

³ In contrast with the Hamburg Rules, which are in force but without such support and so have very limited application.

practical examples of the point under discussion, which are set out in easily identified numbered boxes.

Starting in chapter one and continuing in chapter two the authors set the Rules in an historical context, pointing out the desirability of change and difficulties with the existing regimes, (i.e. the Hague, Hague Visby and Hamburg Rules).

Each chapter of the Rules are discussed and very helpful accounts of the debate and negotiations that took place during the drafting process are provided. It is fascinating to be taken through some of the, no doubt forcefully expressed, negotiating positions that were held by state representatives and commercial interests and observe the delicacy needed to achieve the final wording.⁴

The convention does indeed recognise the need for change and offers modernisation. In doing so the Rotterdam Rules are more ambitious in scope than existing regimes. They are not limited to the sea stage of the carriage of goods, which are the subject of international trade; the so called “tackle to tackle” stage, nor to the wider “port to port” position of the Hamburg Rules. Instead, they anticipate “door to door” carriage, a wider and more comprehensive requirement. Furthermore they are not limited to carriage based on bills of lading. Also they anticipate the movement from traditional paper documents to electronic ones; which has the potential not just to modernise but to actually improve this important aspect of world trade.

All chapters provide illumination but chapter five is particularly important in that it looks at, what many might say is the key aspect of this and also all the other regimes; the issue of the carrier’s liability. The authors deal with this in depth and they are particularly interesting on the question of timeous delivery.

However, after reading this book, one question that comes to mind is why is it that if the Rules are so beneficial and such an improvement on what we currently have that they have not yet received sufficient approval?

The authors strongly make the case for change and in addition note that this change is not based purely upon intellectual argument but also that pragmatism and the awareness of commercial needs is to be found in the Rules:

“ The Rotterdam Rules address the prior conventions’ failure to keep pace with modern business practices in a number of specific ways. While none of the earlier regimes facilitate electronic commerce, for example, the Rotterdam Rules address this modern trend not only with a separate chapter devoted to the subject but throughout the text.”

It is the case that electronic records and bills of lading are sometimes used in practice but the industry as a whole has not rushed to embrace them. The possibility for their use currently exists in the Hague, Hague Visby, Hamburg world; it is not the role of the Rotterdam Rules to provide a detailed template of

⁴ In this regard, the authors take advantage of this new edition to point out the technical corrections that have been made since 2009. These concern the definition of a “performing party” in art 1(6) and a “maritime performing party” in art 19.

how electronic documents might be used and so this is not a criticism of them but until the industry finds such methods secure, flexible and financially attractive then they are unlikely to be commonly in use.

Over the years there has been much criticism of some other aspects of the convention: some have suggested that the whole tenor of the convention is one of compromise and that taken as a whole this is a weakness and not a strength since, instead of every interested party being satisfied with the result; none is.

Over the years, in addition to the practical application of this aspiration for the use of electronic documents, the main issues to attract criticism have been the novel concept of “volume contracts” and how they are to operate and perhaps give an advantage to large companies and the availability under the Rules of local dispute resolution and its possible link with uncertainty and variation in judicial decisions; this concern arises from the inexperience of some legal systems in dealing with high value and complex commodity sales.

The authors of The Rotterdam Rules, the book, do not directly confront these criticisms in a detailed way, they do not aim for critical analysis; they focus on the convention itself. They are deeply knowledgeable and long-standing supporters of the convention. They seek its adoption and success; they made this plain in their Preface to the first edition:

“With better understanding, however, should come more widespread acceptance, and thus the success of the Convention. We offer this treatise as part of the effort to achieve that goal.”

The authors want the “project” to succeed and wish to persuade that it is a desirable improvement upon the current arrangements.

The Preface to the second edition claims:

“...considerable progress has been made toward achieving the goals of the Rotterdam Rules.”

However, we are over ten years on from the opening of the convention signature and ratification and only five states have done both, (Spain, Togo, Congo, Cameroon and Benin). Some states have made some moves towards ratification and so it may be that others will join them, but twenty nations must ratify for the convention to come into force; there is a long way to go.

If you are seeking a detailed and objective analysis of the weaknesses of the Rotterdam Rules then you will have to look elsewhere but if you desire a thoughtful and comprehensive examination of the Rotterdam Rules together with insight into their development through the process of drafting then you need look no further. The authors know the issues inside out and write in a learned but also simultaneously clear, engaging and attractive style.

Overall then this is a worthwhile purchase for any maritime lawyer’s bookshelf.

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