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## SURVEY ON THE UNIFORMITY OF SEABORNE CARGO CONVENTIONS: NEED TO LIMIT THE SCOPE OF UNIFORMITY

Lijun Zhao\*

### Abstract

*In order to examine differences in their understandings of the UN latest uniform sea-cargo rules - the Rotterdam Rules, this survey was conducted among Chinese and some European maritime professionals. The Rotterdam Rules were diversely understood and could cause a further reduction in uniformity. The current commercial shipping realities call for updating legal regimes with regard to electronic commerce and multimodal transport. The Rotterdam Rules attempted to update the legal regimes in accordance with the commercial realities, but were problematic and jeopardize uniform understandings of them and wide ratification.*

The international sea cargo carriage regimes continue to be fragmented even though for the past five decades the UN has attempted to harmonize this existing regime<sup>1</sup> by initiating the Hamburg Rules (1978)<sup>2</sup> and the Rotterdam Rules (2008).<sup>3</sup> There is a discrepancy between the scope of regulations governed by a sea cargo convention and the likelihood of its uniform application in a wide range of countries.

Unification relies upon universal adoption and application in contracting states. Thus, this study focuses on the issues of whether their Articles could be universally understood in application, had the Rotterdam Rules been adopted worldwide. The extent of the understanding of key elements of the Rotterdam Rules in the application process affects uniformity. This application of the uniform rules will be highly influenced by professionals' learning and understanding these Rules.

### Objectives

This study has two merits. First, it helps to improve research method and design. This study used mixed qualitative and quantitative methods through presenting qualitative

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<sup>1</sup> Brussels Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (the "Hague Rules"), 25 August 1924, 51 Stat. 233, T.S. No. 931, 120 L.N.T.S. 155, 1931 Gt. Brit. T.S. No. 17.  
Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 23 February 1968, 1977 Gr. Brit. T.S. No. 83 (Cmd. 6944) (entered into force on 23 June 1977) (the "Visby Rules").  
Because most provisions are the same in the Hague Rules and Visby Rules, the current author will use the abbreviation HVR to indicate both the Hague Rules and the Visby Rules.

<sup>2</sup> UNCITRAL, the United Nations Convention on the Carriage of Goods by Sea, (the "Hamburg Rules"), 31 March 1978, U.N. Doc.A/CONF. 89.

<sup>3</sup> UNCITRAL, The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, New York, 11 December 2008, UN Doc. C.N.790.2009, (the "Rotterdam Rules"). The Rotterdam Rules have been opened for signing but have not attained the minimum numbers of ratification for coming into effect by 28 June 2013.

feedback in a quantitative form (in figures and percentages).<sup>4</sup> This mixed method makes reading and understanding the results easier for readers. It also provided future research a sample questionnaire.

Second, it helps to update the 1995 WTO questionnaire.<sup>5</sup> This survey is conducted to provide supplementary information to existing research. The literature on the related conventions mainly provided theoretical views on these Rules themselves and their ratification, but lacked statistical evidence to support them. A significant, probably the most recent, empirical survey in which most official delegations (56 countries and 16 organizations) participated, embracing both the shipping markets and regulatory framework, was conducted by the WTO in 1995. This method is still valuable, but the responses are out of date. Thus, this pilot study attempts to update a limited aspect of information. Secondly, since the opinions on this uniformity issue from China are seldom published in English, it provides China's voices in English literature. A survey (a semi-structured questionnaire) was conducted among maritime professionals on their understandings on the related conventions primarily in China with combination of European opinions. Their understandings are related to applications of these sets of uniform rules, namely the actual performance of uniform rules and whether or not they are uniform in reality.

This survey targets China and the UK (some information on other European countries was also collected from respondents). First, even the WTO survey<sup>6</sup> had solely covered a limited number of countries (56 countries and 16 organizations), so this pilot study also only attempts to enrich and update the WTO collected information in 1995 to a limited degree. Second, given that the population of maritime professionals is small, a small number of respondents still have a relatively high degree of reliability. The reliability and representativeness will be discussed in the following section. Third, these targeted countries are playing an important role in today's trade and legal frameworks in the international seaborne-cargo services (e.g. ratification and application). If the Rotterdam Rules were adopted, the international uniform sea cargo regime would strongly affect the current *de facto* fragmented unification.<sup>7</sup> Finally, this survey seeks to begin to fill the absence of voices from China in the English technical literature, to induce more understanding of the Rotterdam Rules and the willingness to achieve unification by Chinese lawyers and researchers. So far only two Chinese scholars have published their opinions in English on the Rotterdam Rules at the international level, in the UN and CMI conferences.<sup>8</sup> Most Chinese literature on the Rotterdam Rules is published in Chinese. This study also attempts to show the likelihood of ratification in China and European countries.

<sup>4</sup> JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES (3 ed. 2009). JOHN W. CRESWELL & VICKI L. PLANO CLARK, DESIGNING AND CONDUCTING MIXED METHODS RESEARCH 488 (2 ed. 2011), <http://www.sagepub.com/books/Book233508..>

<sup>5</sup> See WTO, Communication from Norway: Response to Questionnaire on Maritime Transport Services, Doc. S/NGMTS/W/2/Add.6, (26 January 1995).

<sup>6</sup> See more on the section of NGMTS negotiations in Lijun Zhao, *Transportation, Cooperation, and Harmonization: GATS as a Gateway to Integrating the UN's Seaborne Cargo Regimes in the WTO*, 26 PACE INT. LAW REV. (2013). In the 1994 and 1995, the WTO's Negotiating Groups on Maritime Transport Services encountered the same difficulty in its conducted questionnaire among participants and observers; in the end, the participating countries and the Group provided as much information as they could, on bulking shipping, liner shipping and multimodal transport. See WTO, Communication from Norway: Response to Questionnaire on Maritime Transport Services, Doc. S/NGMTS/W/2/Add.6, (26 January 1995).

<sup>7</sup> UNCTAD, REVIEW OF MARITIME TRANSPORT UNCTAD/RMT/2010 (2010), & 2009. WTO, Doc. S/C/W/329/Add.1, 12, paragraph 30. China's record export growth was due to higher revenues from sea freight transportation services (42 per cent), which, in 2008, accounted for two thirds of the economy's transport exports. In the same year, over 22 per cent of world container port throughput originated from China.

<sup>8</sup> These two Chinese scholars were Yu-zhuo Si and Henry Li.

## Research Design and the Rationales to Design the Semi-structured Questionnaire

### A. Preview of the Plan before Conducting this Survey

At the beginning of this survey, three key points<sup>9</sup> had to be asked. First, the selection of informants and their representativeness have been considered, as mentioned below. Since this pilot study on understandings is qualitative research, purposive sampling is acceptable. All respondents are either qualified lawyers with speciality knowledge on maritime law or researchers who have spent years on the related conventions and some of who even have or are being practicing maritime law. Therefore, these amounts of first-hand information are valuable. Accordingly, this survey is only a pilot study to provide peer researchers with some first-hand information from China and European countries.

Second, the survey must serve the research objective - whether the trend to an international maritime transport regime based on UN negotiation forums will lead to further unification or fragmentation. Finally, whether the way to approach informants is face-to-face communication, or telephone calls, or emails (emails were more widely used by European respondents, compared with Chinese counterparts). Thus, interviewing and corresponding questionnaire were selected as the main research strategy. This pilot study, through interviews, questionnaire, and observations, tried to collect expert perspectives on future unification of seaborne cargo laws.

### B. Awareness of the Representativeness of Respondents and Ways to Approach Them

The respondents (the informants) work as maritime-law lawyers (e.g. ones working for Ince & Co and Birketts LLP law firms), lecturers,<sup>10</sup> and law school graduates (most of who had practiced maritime law).<sup>11</sup> The selected sites<sup>12</sup> were two maritime powers, concentrating primarily on China (Beijing) and the UK (London, Bristol, and Edinburg, as well as Hamburg, Germany) due to limits of time and financial funding (the information on a few other European countries was also handed over by a few respondents).

The selection of sites and respondents is based on three factors. First, the selection of sites and participants is based on the extent of research needed and the resources available to the author. Second, according to Morse, the representativeness of participants requires samples of the same experience or knowledge rather than selection on a demographic basis designed to reflect the general population.<sup>13</sup> Therefore, the sampling is based on opportunity and proficiency of knowledge rather than the location where they practice law or conduct research. London and Beijing are the places where there were many potential knowledgeable respondents. Third, under the criterion of adequacy referring to the amount of data collected, rather than to the number of respondents. There have been 31 respondents so far.<sup>14</sup> Even though these respondents were not the group who might take charge of the ratification of a UN convention, they are the practitioners or

<sup>9</sup> HANDBOOK OF QUALITATIVE RESEARCH, (Norman K. Denzin & Yvonna S. Lincoln eds., 1994), 211-212.

<sup>10</sup> They hold titles of professor, reader, senior lecture and so on. Some lecturers also practice maritime law.

<sup>11</sup> The author interviewed some PhD students, met in conferences, who worked on maritime transport law topics; approximately half of these PhD students also worked in law firms. See more in *Id.*, 228-229 (discussing that the selection of informants is that sample should be information rich).

<sup>12</sup> *Id.* 222-223 (discussing the factors involved in selecting a site, including the alternative setting, contrast setting and available resources).

<sup>13</sup> *Id.* 229 (discussing that the guidelines for sampling and interview).

<sup>14</sup> The percentage of researchers, within the roster the author has obtained, passing Chinese bar exams is approximately 95 %, graduates much higher than that at national level (10-20 %). The approached researchers were also qualified lawyers having handled maritime related cases.

teachers who teach and practice a ratified uniform transport regime. Thus, their opinions on the four UN conventions influence unification in the process of application.

These targeted samples were accessed by the current author in three ways.<sup>15</sup> First, the author contacted Chinese (international or maritime) law schools for a roster of graduates, and was introduced to these informants. These graduates virtually all had passed the Chinese bar exams, and worked as in-house lawyer in law firms, banks, arbitration tribunals, and courts. Second, the author built up contacts through maritime conferences with lawyers, teachers and PhD students: for instance, at the Maritime Law Conferences held by London City University; annual conferences of the (British) Society of Legal Scholars; the Hamburg Lectures on Maritime Affairs. It proved very fruitful to attend these conferences, and respondents were from the UK, Ireland, Germany, and China. Third, the author read some related articles and then approached the writers of those publications in person, through emails or telephone calls.

#### C. The Design of Data Collection: Interviews, Questionnaire and Information Sheet: Rationales to Design the Semi-structured Questionnaire

The study started from interviews on the basis of an open structured questionnaire. These interviewees were two maritime-law scholars (Basedow<sup>16</sup> and Baughen<sup>17</sup>) with great experiences in practices and governmental advisory commitments. After the current author had introduced her thesis and approached them for their opinions on international uniformity under the Rotterdam Rules, they freely talked for approximately half an hour. During the discussions, the current author took notes and posed follow-up questions.

After these two open structured interviews, a semi-structured questionnaire and an information sheet for the informants were designed. There are five reasons for choosing the semi-structure design. First, this structure after interviewing the first two professors has been designed to cover the main aspects of uniformity and the Rotterdam Rules comprehensively. Second, the form of a questionnaire enables the study to approach as many respondents as possible within the time schedule of a doctoral study. Third, the answers had been structured with open comments, so that the author could present respondents responses in a quantitative form which is vividly presented and easy for readers to grasp the points of responses. Fourth, the survey is made on solely a semi-structured basis, so the respondents could openly comment and add qualitative comments to the study. Their open feedback primarily concerned their understanding on the application of the Rotterdam Rules and related predecessor conventions. Finally, the survey is easy to send and return for the Author and respondents.

Next, the interviewees were informed of this study through an information sheet. They were given the information sheet before answering questions. They were also free to ask questions before and after responding.

#### D. The Design of Data Collection: the Design of the Semi-structured Questionnaire

As to the targeted issues within the questionnaire, the author tried to balance the safeguarding of accuracy of response will the cooperative willingness of the respondents. In order to make sure the respondents answered on the basis of their real views rather than dissembling unintentionally or deliberately, the questionnaire included several questions asking the same point in different ways so that consistent responses helped to

<sup>15</sup> Since this pilot study on understandings is qualitative research, the purposive sampling is an acceptable methodology.

<sup>16</sup> Prof. Dr. Dr. h.c. mult. Jürgen Basedow, LL.M. (from Harvard University), Managing Director of Max Planck Institute, Germany, working on transport and traffic law.

<sup>17</sup> Professor Simon Baughen, from Swansea University and Bristol University, works on maritime law, practiced for years.

confirm their true opinions. The disadvantage of this method is that it makes the questionnaire very long. In addition the issue to test is the lengthy Rotterdam Rules, so that restrictively following this method will substantially increase the number of questions asked, but at the same time highly reduce the willingness of the respondents to enter into the survey. Another reason for allocation of only one or two questions on one point is that it is possible to rely on the respondents' legal backgrounds and thorough understanding of the terms under the related conventions.<sup>18</sup>

The questionnaire was designed as semi-structured in this current research (see the Appendix on Semi-Structured Questionnaire). Questions 1 to 9 and 12 are force answered by (favourable ('Yes'/'Agree', unfavourable ('No'/'Disagree'), "being neutral", or "do not know") ticking choices, thus it is feasible to present the data in a quantitative form, such as figures and charts. Regarding Questions 10 and 11 (ticking all which apply), six choices are provided with an additional choice G open for responses. Another part left open for the respondents is at the end of this questionnaire, where they can freely comment on the UN uniform maritime transport conventions. As noted, among the respondents who wrote additional opinions, there were some who expressed their ideas in the second open area. Therefore, it is an advantage of this layout that additional responses can be elicited by the semi-structure design and by Questions 10 and 11.

## Process and Results

### A. Process of Feedback Collection

The final plan of the stages was sparked by initial interviews<sup>19</sup> in late 2011 and early 2012,<sup>20</sup> subsequent survey produced more targeted information guided by advanced outlines to allow gaps left by earlier interviews to be filled in as the productive data collection process proceeded with twenty more interviews in Beijing from April to July 2012.<sup>21</sup> In the end, aiming to enrich the previous responses, 4 respondents were interviewed in Beijing in November 2012,<sup>22</sup> and 8 respondents in London in April 2013.<sup>23</sup> There were 31 respondents submitted their feedback in total; data in the ensuing tables and charts mainly are given in the form of percentage (%) of responses.

### B. Calculated Results in Figures

<sup>18</sup> The percentage of grades, from Remin University and China Political Science and Law University, passing the Chinese Bar exams are higher than 90. And the master program in China is a taught and research combined degree, lasting three years.

<sup>19</sup> Before conducting on-going interviews, the handbook had been referred to enhance the necessary skills. See Andrea Fontana & James H. Frey, *Interviewing: The Arts of Science*, in HANDBOOK OF QUALITATIVE RESEARCH 361-376 (Norman K. Denzin & Yvonne S. Lincoln eds., 1994), 361-376.

<sup>20</sup> See *Id.*, 213, it involved in two interviewees in the research.

<sup>21</sup> See *Id.*, 229, which engaged in twenty interviewees.

<sup>22</sup> They were contacted through administrative secretary of School of Law of (China) Remin University. They were qualified Chinese lawyers having maritime-law knowledge and business.

<sup>23</sup> Although they were research students, approximately half of these PhD students worked in law firms with maritime cases before or during their PhD studies.

Figure 1: Semi-structured Questionnaire Q 1-5, 7-9 and 12

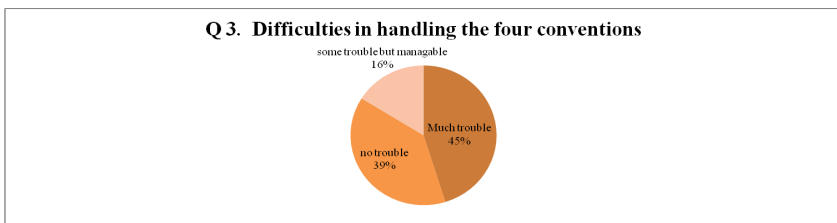
| Question No. & Key elements                                    | Brief description   | Responses (%)                 |                                   |           |               |
|--|---|-------------------------------|-----------------------------------|-----------|---------------|
|  |   | Favourable (“Yes” or “Agree”) | Unfavourable (“No” or “Disagree”) | “Neutral” | “Do not know” |
| 1. Learnt or Practiced   | Maritime law  | 87                            | 13                                | N/A       | N/A           |
| 2. Knowledge (whether academic or from practice) on            | the Hague Rules or the US COGSA   | 84                            | 16                                | N/A       | N/A           |
|  | the Visby Rules or the UK COGSA   | 81                            | 19                                | N/A       | N/A           |
|  | the Hamburg Rules   | 84                            | 16                                | N/A       | N/A           |
| 4. The Scope of Application under the Rotterdam Rules          | the Rotterdam Rules   | 68                            | 32                                | N/A       | N/A           |
|  | Extending to cover the land “door-to-door” transport (multimodal transport)   | 55                            | 19                                | 3         | 23            |
| 5. Maritime-plus scope under the Rotterdam Rules               | Inclusion of multimodal transport into a sea carriage convention              | 39                            | 10                                | 29        | 23            |
| 7. The extent of freedom of contract under the Rotterdam Rules | The mandatory minimum liability for carriers not applying to volume contracts | 32                            | 13                                | 10        | 45            |
| 8. Cargo Claims under the Rotterdam Rules                      | Reasonability of Transferrable (four times) Burden of Proof                   | 26                            | 16                                | 3         | 55            |
|  | Complexity of Transferable Burden of Proof in Cargo Claims                    | 45                            | 10                                | 3         | 42            |
| 9. The extended period of liability of carriers                | Rigidity of seaworthiness under the Rotterdam Rules                           | 13                            | 71                                | 3         | 13            |
| 12. Ratification of the Rotterdam Rules                        | Ratification of the Rotterdam Rules in the respondent’ country                | 13                            | 23                                | 0         | 65            |

\* 31 respondents in total

N.B.:

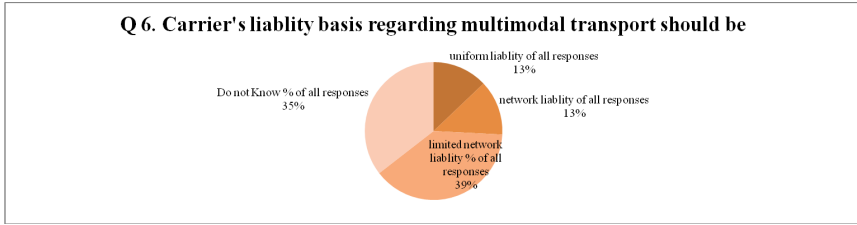
1. The Semi-structured questionnaires in English and Chinese, informant sheet and consent forms are included in the Appendix.
2. There are 13 respondents commenting in open areas in the semi-structured questionnaire; since they were short, these additional comments were categorized into 3 and included in Figure 7.

Figure 3: Semi-structured Questionnaire Q 3





**Figure 1: Semi-structured Questionnaire Q 6**



**Figure 4: Semi-structured Questionnaire Q 10**  
(Tick all apply)

| Brief description | Positive factors for the ratification of the Rotterdam Rules by your government   | Favourable responses ("Yes") | Percentage (%) |                |
|-------------------|---|------------------------------|----------------|----------------|
|                   |   |                              | Of responses   | Of respondents |
| A                 | Several maritime powers have actively been involved in the negotiations. The <del>USA and France</del> have signed it. Moreover, Spain has ratified it.         | 11                           | 14             | 35             |
| B                 | The first provisions on door-to-door multimodal transport   | 9                            | 11             | 29             |
| C                 | The first provisions for electronic equivalents of transport documents, so as to alleviate the problem of delivery of goods without bills of lading in practice | 16                           | 20             | 52             |
| D                 | Abolition of the navigating fault exemption, benefiting for protection of cargo interests   | 18                           | 23             | 58             |
| E                 | Clear list of the responsibilities of the cargo interests (e.g. shippers)   | 14                           | 18             | 45             |
| F                 | The application of the Rules is based on different kinds of transport documents, instead of only on bills of lading   | 8                            | 10             | 26             |
| G                 | Other advantages (see summary in the Discussion section)  | 3                            | 4              | 10             |
| <b>Total</b>      |   | <b>79</b>                    | <b>100</b>     | <b>100</b>     |

\*31 respondents in total. Respondents ticked all apply.

**Figure 5: Semi-structured Questionnaire Q 11**  
(Tick all apply)

| Brief description | Negative factors restricting ratification of the Rotterdam Rules by your government   | Favourable responses ("Yes") | Percentage (%) |                |
|-------------------|---|------------------------------|----------------|----------------|
|                   |   |                              | Of responses   | Of respondents |
| A                 | The number of Articles (96) exceeds any previous marine cargo convention, so increasing the difficulty of general ratification worldwide      | 13                           | 17             | 42             |
| B                 | Forbid any reservation (except on arbitration and jurisdiction), lack of flexibility  | 18                           | 24             | 58             |
| C                 | The scope of application is not clear, since the definition of the contract of carriage of goods is too perplexing to be understood           | 9                            | 12             | 29             |
| D                 | The content is tough and obscure, complex terms and jargons, resulting in difficulties for the lawyers and clients in applying the Convention | 10                           | 13             | 32             |
| E                 | A great number of maritime powers have not signed it, e.g. the United Kingdom, Germany, and China   | 16                           | 21             | 52             |
| F                 | Establish too much protection for carriers on the basis of immunity reasons, while the cargo interests are not protected enough               | 7                            | 9              | 23             |
| G                 | Other disadvantages (see summary in the Discussion section)   | 3                            | 4              | 10             |
| <b>Total</b>      |   | <b>76</b>                    | <b>100</b>     | <b>100</b>     |

- 31 respondents in total. Respondents ticked all apply.

### C. Response Rate and Open Comments

83 interviewees have been approached, including 43 Chinese and 40 European-based maritime professionals. In China, there were 23 respondents out of 43. Unfortunately, there were merely 10 respondents out of 40 Europe-based professionals (2 through unstructured interviews; 8 through semi-structured surveys). However, they mainly have profound professional backgrounds. They are either from shipping law firms (e.g. Ince) or studied shipping law for years.

The total number of respondents was 31; the results obtained from the pilot study were presented in percentages of response (for all questions) and of respondents (for Q 10 and 11), and open comments will be presented and combined within the table below.

**Figure 6: Open Comments**

| Category | Brief description of Attitudes on the Rotterdam Rules  | Number of response |
|----------|--|--------------------|
| 1        | The Rotterdam Rules mainly would bring benefits of future uniform shipping law   | 5                  |
| 2        | The Rotterdam Rules were a combination of positive and negative regulations, but the negative ones overwhelmed the positive ones.  | 5                  |
| 3        | Be natural on the Rotterdam Rules, because there are too many uncertainties whether the Rotterdam Rules would be ratified worldwide or not. My country could wait to see and follow the majority countries' attitude towards the Rules | 3                  |
| Total    |  | 13                 |

\* 31 respondents in total. 13 respondents provided additional comments. Most comments were demonstrated by their ticked answers, which have been categorized into the three groups listed above.

#### IV. Discussion

As shown in Figure 1 (Q 1 and 2), most of the 31 respondents were knowledgeable on the Hague, Visby, and Hamburg Rules ( $\geq 80\%$ ), as well as on the Rotterdam Rules ( $\geq 68\%$ ). Therefore, this pilot study might help to illustrate whether these respondents understand related conventions uniformly in the process of application of these sea cargo conventions.

From the discrepancy between the percentages mentioned above it was found, through checking individual questionnaires and added comments, that those respondents who knew the three earlier conventions had not learned or did not understand the Rotterdam Rules well. Figure 2 supported this explanation: Figure 2 presented that 61 % of respondents encountered more or less difficulties in handling the different four conventions (Q3; 45% much trouble; and 16 % some trouble but manageable). Their difficulties in understanding the articles of a convention might create various interpretations and jeopardize uniformity of the convention in application.

Figures 1 and 2 presented various attitudes over six aspects of the Rotterdam Rules: two aspects with compelling majority attitude (Q 4 and 9) and four conflicting attitudes over six aspects of the Rotterdam Rules (Q5-8). In Q 4, 55 % respondents favoured the application on multimodal transport), and in Q9 71% respondents asserted the Rotterdam Rules' extension of the period of liability of carriers was not rigid/harsh for carriers. More than one-half of respondents supported the Rotterdam Rules provisions on the inclusion of multimodal transport (Q4, 55 %) and the extension of the period of carriers' liability (Q9, 71%).

However, the respondents had no consensus on another four areas of the Rotterdam Rules. As shown in Figures 1-3, there were no critical majority percentages ( $\geq 50\%$ ) in Q

5-8: “maritime-plus” coverage of multimodal transport (Q5), the basis of liability of multimodal carriers (Q6; 35 % uniform basis; 26 % network and limited network basis), freedom of contract and volume contracts (Q7), and cargo-claim litigation (Q8). Although there was a relative majority in Q 8 (55%), this percentage was on “Do not know”. Conflicting opinions on these four areas indicate that the Rotterdam Rules touched on some controversial matters of law. Likewise, as these approached respondents, other countries might hold different opinions on the four areas issue by issue. This would become a difficulty for the Rotterdam Rules in achieving wide adoptions and then in uniform application.

Twelve areas of the Rotterdam Rules were categorized into positive and negative groups of factors for the adoption of the Rules in Figures 4 and 5 (Q10 and 11) by the author. In Figures 4 and 5, the respondents seemed not to share common views on the Rotterdam Rules. As shown in Figure 4, positive factors for the adoption of the Rotterdam Rules might be electronic transport records (58% respondents), the abolition of navigating fault exemption (52% respondents), and a clear list of the responsibilities of the cargo interests (e.g. shippers) (45% respondents). Negative factors, seen in Figure 5, for the adoption of the Rules might be prohibition of any reservation (except on arbitration and jurisdiction) (58% respondents), the hesitation of many marine powers to ratify these Rules (52% respondents), and too many articles (42% respondents).

In the semi-structured questionnaire, respondents were allowed to correct the categories and added comments to all questions: 41 % (13 respondents) of respondents added open comments. It is noting that 2 respondents (from Italy and Sweden) ticked no provided choices in Q 10 and regarded the Rotterdam Rules on multimodal transport (Q10.B) and maritime electronic commerce (Q10.C) as problematic which would decrease uniformity in application of the Rotterdam Rules. A possible explanation is that even though the current maritime transport set up deals with the new practices of multimodal transport and paper-less electronic maritime commerce, they are well organized by contract terms in contracts of carriage. Thus, there might be no need to include multimodal transport and electronic transport documents in a uniform sea cargo convention.

In sum, based on data in all figures, three aspects of these Rules received conflicting feedback with approximately even percentages of favourable and unfavourable responses. They were the inclusion of multimodal transport into a sea cargo convention (Q5, 6, 10.B and 11.C), the liability basis of carriers (Q5, 11F), and the burden of proof of carriers’ liability (Q8 and 11). These disagreements would bring about various attitudes on the adoption of the Rotterdam Rules. Therefore, uniformity in international carriage of goods by sea would not easily be accomplished by these Rules. They possibly would exist as the law on paper but not in practice, so finding an alternative way to apply these Rules is needed.

Eight respondents were neither British nor Chinese; they were from other European countries, such as Germany and Greece. These respondents released some information on their governments’ attitudes over the Rotterdam Rules and their nationality in their

questionnaires. One unanticipated finding is that their feedback on positive and negative factors differed with those from Britain and China. Thus, there seems a relationship between attitudes to a sea cargo convention and informants' nationality (that country's shipping structure). The author found that responses were very conflicting regarding Questions 5, 6 and 7, since these questions received different answers with high percentages for each choice ( $\geq 10\%$ ). On the basis of these differing views on the Rotterdam Rules, with reference to supplementary comments, countries are divided into three categories: first, the cargo-represented countries rely on exporting or importing (e.g. the US); second, the carrier-represented countries which do not have developed international trade in goods, have powerful carriers to provide transport services between exporting and importing countries as a third party (e.g. Norway, Greece, Germany). Third, there are the hybrid countries, which have a developed international trade in goods and have substantial carrier interests (e.g. China). The relatively different opinions on the same legal articles are the results of balancing these two groups' internal interests. It further proves that the nature of a sea cargo convention is a balance between the cargo and the vessel interests.

### **Limitations and Future Research**

This is the first attempt to rigorously identify the understandings of uniform transportation rules in China and EU countries. As opposed to doctrinal analysis of these uniform rules, for which the legal texts themselves are focused, the empirical evidence presented in this pilot study should be seen as a starting point for future analysis and should be treated with caution in light of the quality of the data and the small pool of samples. This pilot study can be further refined as more data are collected in all maritime-related countries; if more researchers and national and international organizations contribute themselves to collect more data, new information can examine whether legal, doctrinal analysis is compatible with commercial, shipping practice.

The current author encountered the same problem with a WTO questionnaire.<sup>24</sup> First, the author acknowledges shortage of time and financial resources to carry out a broader work. Second, the limit of scope of respondents is acknowledged by the current author. Third, as discussed in the Section on The Design and Process of Data Collection, the limitation of the main research strategy (semi-structured questionnaire) is also acknowledged and attempts have been made to minimize it. For instance, respondents might be misled by presented choices (e.g. Q10, 11), but they could add comments. Therefore, even though most approached respondents were knowledgeable on carriage of goods by sea; with a small sample size (31 respondents), caution must be applied, as the findings might not be transferrable to respondents from other countries and national legislature.

What is now needed is a cross-national study regarding understandings on the concluded draft of the Rotterdam Rules and whether the understandings are uniform or not. Future research could be collaboratively done by international, regional, or sub-regional organizations to cover more nations. There might be three more prospects for future research. First, focus groups of maritime law experts would be a valuable way to

explore the contradictions which this current research has found, such as on electronic commerce and on multimodal transport. Second, if a number of researchers devote themselves to the unification of empirical research in their countries, then a cluster of national and regional research would contribute to the global pool of empirical data.

Finally, more ways of communication could be tried in future research in order to collect more data to supplement the existing data. Because of workload and information restriction of occupations like in-house lawyers and judges, commercial shipping companies and maritime courts have been approached in this pilot study without success. Hopefully, more Chinese scholars who have access to maritime professionals personally would explore further survey regarding this research topic.

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<sup>24</sup> In the 1994 and 1995, the WTO's Negotiating Groups on Maritime Transport Services encountered the same difficulty in its conducted questionnaire among participants and observers; in the end, the participating countries and the Group provided as much information as they could, on bulking shipping, liner shipping and multimodal transport. See WTO, Communication from Norway: Response to Questionnaire on Maritime Transport Services, Doc. 2/NGMTS/W/2/Add.6, (26 January 1995).

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