

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO



CMI Standing Committee for Ratification of the Rotterdam Rules

Questionnaire to MLAs

Are you aware of:

- 1. Any time stamped data collection or research that has been carried out as to the time or cost savings to the maritime industry in a paperless carriage by sea documentary world?**

We are not aware of any data collection or research carried out by the Government or any other institutional entity such as the Italian Shipowners Association on the impact of paperless carriage by sea.

We can refer to some recent academic articles: A. Montesano, The Digital Revolution of the Shipping Industry: Electronic Bill of Lading, Blockchain Technology and Smart Contracts, in *Diritto marittimo*, 2020, p. 267; E. Orrù, The Challenges of ICTs in the Shipping Sector among International Uniform Law, Codification and Lex Mercatoria: the Electronic Bill of Lading, in J. Nawrot and Z. Peplowska-Dabrowsa (editors), *Codification of Maritime Law: Challenges, Possibilities and Experience*, Oxon-New York 2020, p. 134.

A short discussion on the electronic transport documents can be found in the judgment of the Genoa Court mentioned as item 7 on our answer to Question 3.

- 2. Any issues that have arisen since 2000, (or earlier) in claims handling which were then resolved with or without recourse to litigation in one way or another, but which could have possibly avoided thanks to provisions of the Rotterdam Rules, or which would have had a different outcome from what would have happened in a Rotterdam Rules environment.**

As it will appear from the summary of cases in our answer to Question 3, the main issue on which the application of the Rotterdam Rules (instead of the Hague-Visby Rules) would make a difference is that of multimodal transport.

Other relevant issues that we have identified are: basis of liability, liability of performing parties, time bar, delivery of goods, jurisdiction and arbitration clauses.

3. Any report disputes or cases in which the Rotterdam Rules would have provided a different result to the outcome (including resolving the issue involved in the case).

We provide below a summary of recent cases where the application of the Rotterdam Rules might have provided a different outcome.

1. Court of Bologna, Italy (02.12.2015) – in Dir. Mar. 2017, p. 208

- Key issues: **short delivery** of the goods; multimodal transport; **non-applicability** of the Hague-Visby Rules to **multimodal transport**.
- Relevant provision of the Rotterdam Rules: **art. 1** (Definition of “contract of carriage”, **art. 26** (Carriage preceding or subsequent to sea carriage)

2. Italian Supreme Court (06.08.2013 n. 18657) – in Dir. Mar. 2013, p. 861

- Key issues: **shortage of cargo**; **non applicability** of the Hague-Visby Rules to **multimodal transport**.
- Relevant provision of the Rotterdam Rules: **art. 1** (Definitions, “transport” in particular)

3. Court of Genoa, Italy (11.01.2011) – in Dir. Mar. 2013, p. 479

- Key issues: **damage** to cargo; **multimodal** transport; **applicable rules** in respect of **each leg** of multimodal transport.
- Relevant provision of the Rotterdam Rules: **art. 1** (Definition of “contract of carriage”) **art. 26** (Carriage preceding or subsequent to sea carriage)

4. Italian Supreme Court (06.06,2006, n. 13253) – in Dir. Mar. 2008, pg. 448

- Key issues: **damage** to cargo; **multimodal** transport; compensation; **scope** of application of the Hague-Visby Rules; **non-applicability of the Hague-Visby Rules** to multimodal transport; non-applicability of **limits of liability**
- Relevant provisions of the Rotterdam Rules: **art. 1** (Definition of “contract of carriage”), **art. 26** (Carriage preceding or subsequent to sea carriage)

5. Italian Supreme Court (14.02.2005, n. 2898) – in Dir. Mar. 2007, p. 1115

- Key issues: sinking of the ship; **total loss** of cargo; multimodal transport; **non-applicability of the Hague-Visby Rules** to multimodal transport.
- Relevant provision of the Rotterdam Rules: **art. 1** (Definition of “contract of carriage”), **art. 26** (Carriage preceding or subsequent to sea carriage)

6. Court of Genoa, Italy (22.01.2019) – in Dir. Mar. 2019, p. 623

- Key issues: **fire** on board; **no damage** to cargo; **indemnity claim** of cargo interests vis à vis the shipowner for **salvage compensation**; liability of **performing parties**; validity of the **Himalaya Clause**.
- Relevant provision in the Rotterdam Rules: **art. 4** (Applicability of defenses and limits of liability) **art. 19** (Liability of maritime performing parties)

7. Court of Genoa, Italy (30.09.2015) – in Dir. Mar. 2016, p. 178

- Key issues: **electronic transport documents**; **seawaybill**; **damage** to cargo.
- Relevant provisions of the Rotterdam Rules: **art. 8** (Use and effect of electronic transport records), **art. 46** (Delivery when a non-negotiable transport document that requires surrender is issued)

8. Italian Supreme Court (19.03.2015, n. 5488) – in Dir. Mar. 2016, p. 93

- Key issues: failure of the consignee **to take delivery of cargo**; sale by auction by customs authorities; **claim for compensation** of the consignee vis-à-vis the carrier; **general scope of application** of the Hague-Visby Rules.
- Relevant provisions of the Rotterdam Rules: **art. 12** (Period of responsibility of the carrier), **art. 48** (Goods remaining undelivered)

9. Court of Genoa, Italy (04.12.2002) – in Dir. Mar. 2004, p. 1473

- Key issues: **damage** to cargo; **period of responsibility** of the carrier under the Hague-Visby Rules
- Relevant provision of the Rotterdam Rules: **art. 12** (Period of responsibility of the carrier)

10. Court of Appeal of Venice, Italy (13.07.2020) – in Dir. Mar. 2021, p. 195

- Key issues: **damage** to cargo; **duty of care of the cargo** by the carrier **throughout the voyage**; **burden of proof**.
- Relevant provisions in the Rotterdam Rules: **art. 14** (Specific obligations applicable to the voyage by sea), **art. 17** (Basis of liability)

11. Court of Appeal of Reggio Calabria, Italy (28.10.2016) in Dir. Mar. 2017, p. 191

- Key issues: **identity** of carrier; **damage** to cargo; art. 4 of the Hague-Visby Rules; **deviation**; **delay** in delivery; **burden of proof**
- Relevant provision in the Rotterdam Rules: **art. 37** (Identity of the carrier); **art. 17** (Basis of liability)

12. Court of Naples, Italy (27.01.2015) – in Dir. Mar. 2016, p. 736

- Key issues: **damage** to cargo; **applicability** of the Hague-Visby Rules; liability of the carrier for commercial fault vis-à-vis **error in the management of the ship**
- Relevant provision in the Rotterdam Rules: **art. 17** (Basis of liability)

13. Court of Genoa, Italy (23.04.2008) – in Dir. Mar. 2010, p. 132

- Key issues: **grounding** of the ship; **abandonment** of ship and cargo; **abandonment** of maritime adventure; liability of the carrier for **error in navigation**; **lack of skill** of the crew; **unseaworthiness** of the vessel, **due diligence**; **burden of proof**.
- Relevant provision of the Rotterdam Rules: **art. 17** (Basis of liability)

14. Court of Leghorn, Italy (22.01.2008) – in Dir. Mar. 2010, p. 126

- Key issue: **time limit** for suit, **indemnity action** of the contractual carrier vis-à-vis the actual carrier; **damage** to cargo
- Relevant provisions of the Rotterdam Rules: **art. 62** (Period of time for suit), **art. 64** (Action for indemnity)

15. Court of Genoa, Italy (09.01.2001) – in Dir. Mar. 2003, p. 1359

- Key issues: **shortage** of cargo; **time limit** for suit.

- Relevant provision of the Rotterdam Rules: **art. 62** (Period of time for suit)

16. Court of Nocera Inferiore, Italy (11.07.2022) – in Dir. Mar. 2022, p. 819

- Key issues: **short delivery** of containers; **lack of jurisdiction; choice of forum clause.**
- Relevant provision in the Rotterdam Rules: **art. 67** (Choice of court agreements)

17. Court of Appeal of Bologna, Italy (04.05.2022) – in Dir. Mar. 2023, p. 172

- Key issues: **damage** to cargo; **lack of jurisdiction; choice of forum clause; enforceability** of the clause **against a third party.**
- Relevant provision in the Rotterdam Rules: **art. 67** (Choice of court agreements)

18. Court of Genoa, Italy (15.03.2022) – in Dir. Mar. 2023, p. 319

- Key issues: **damage** to cargo; **choice of forum clause; enforceability** of the clause **against a third party** i.e. holder of the bill of lading
- Relevant provision in the Rotterdam Rules: **art. 67** (Choice of court agreements)

19. Court of Ravenna, Italy (16.02.2017) in Dir. Mar. 2017, p. 236

- Key issues: **shortage** of cargo; **lack of jurisdiction; arbitration clause; enforceability** of the clause **vis-à-vis the holder of the bill of lading.**
- Relevant provision in the Rotterdam Rules: **art. 75** (Arbitration Agreements)

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