



International Carriage of Goods Wholly or Partly by Sea: The Impact of the Rotterdam Rules on Developing Countries - Vietnam

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ABSTRACT

In this era of globalization, transport plays a significant role, and in international trade, shipping is the critical mode, about 80% of import and export goods are transported by sea. However, international law governing legal relations related to bills of lading and contracts for carriage of goods by sea has not yet been agreed. This is a significant barrier causing difficulties in international trade. And, the practice is negotiating with international transport contracts, including sea transport, companies of developing countries are often disadvantaged and is detrimental. Moreover, on September 23, 2009, representatives of 20 UN member countries accounting for 25% of the international trade volume gathered in the city of Rotterdam to sign the 2009 Rotterdam. The Rotterdam Rules cover areas not covered by the previous some conventions relating to delivery, control, and rights transfer,... This article will compare the provisions of the Rotterdam Rules with the current Vietnamese laws. From that comparison, the paper also analyzes many indicators that impacted by the Rotterdam Rules on developing countries, such as Vietnam.

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1. Introduction.

In this era of globalization, transport plays a significant role, and in international trade, shipping is the critical mode, about 80 per percent of import and export goods are transported by sea. Due to the characteristics of the shipping industry, it creates competitive advantages such as a wide transport range, large capacity, and low shipping costs. However, international law governing legal relations related to bills of lading and contracts for carriage of goods by sea has not yet been agreed. This is a significant barrier causing difficulties in international trade.

Before 2009, in the world, three international conventions were governing legal relations related to bills of lading and contracts for the carriage of goods by sea. In particular, Hague Rules and Hague Visby are too biased towards shipowners; for

example, Article IV (2) allows the carrier to get rid of negligent acts occurring on his ship. Meanwhile Hamburg rules are more inclined to protect shippers by providing that if they suffer losses due to invalidation due to that clause, the carrier must compensate. In fact, the vast majority of countries apply Hague and Hague-Visby rules, such as the UK and Singapore using the full text of Hague rules to enact into their own law; besides, some countries such as China and Thailand cite some crucial things to include in domestic law. Meanwhile, very few maritime strong countries have ratified, adopting Hamburg rules, only a few countries like Austria, Chile, Greece, and some African countries. Due to the existence and parallel effect of the three international rules of sea transport and the application of the countries is not the same, which are leading to difficulty and inconsistency in the Code of conduct between transport-related entities is when disputes and litigation occur. In addition, the legal regime in the three conventions above also does not take into account the rapid development of multimodal transport, modern means of transport, the process of containerization, the increasing application of electronic documents, difference transport arrangements in international con-

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tracts for sales, transportation, insurance, credit, forwarding,...

Therefore, under the chairmanship of UNCITRAL³ with the coordination of CMI, a new convention has emerged to replace the three above conventions in order to increase the sustainability, stability, and efficiency of international cargo transportation, including sea routes, and minimize legal obstacles. “The aim of the Convention is to extend and modernize existing international rules and achieve uniformity of International trade law in the field of maritime carriage, updating or replacing many provisions in the Hague Rules, Hague-Visby Rules, and Hamburg Rules (Susan Husselman, 2009).

On September 23, 2009, representatives of 20 UN member countries accounting for 25 per percent of the international trade volume gathered in the city of Rotterdam to sign the 2009 Rotterdam. The Rules includes 18 chapters and 96 articles, defining the obligations and responsibilities of the parties involved in the carriage of import and export goods by sea, clearly defining who is responsible for what, how, when, where and to what extent. In the preamble of the Rules, the interests of the carrier and the shipper are balanced and central to a coherent and integrated system to ensure the proper functioning of transport contracts involving more than one mode of transport, creating a consistent and healthy set of rules for all parties involved in carriage laws. The Rotterdam Rules cover areas not covered by the previous some conventions relating to delivery, control, and rights transfer. Chapters on electronic documents and how to process them, take out, deliver, control, and transfer rights are included in the Rotterdam Rules.

Vietnam has an important geographical position in the region with the most dynamic sea freight transport network in the world, with a long coastline and a deep seaport. These are the conditions for the development of the shipping industry. In recent years, Vietnam’s shipping industry has continuously developed and contributed significantly to the country’s development. According to the list of ports in Vietnam seaports announced by the Ministry of Transport in 2021, Vietnam’s seaport system currently has a total of 286 ports⁴. In 2020, although affected by the Covid-19 epidemic, the volume of goods through the seaport will maintain growth, reaching more than 680 million tons (up 4 per percent compared to 2019)⁵. Besides, according to statistics of the United Nations Trade and Development Forum (UNCTAD), based on the Leading flags of registration by dead-weight tonnage, Vietnam’s fleet ranked 27 in the world in 2020⁶; 9123 thousand dead-weight tons, growth in dead-weight tonnage 2020 over 2019 is 7.7 per percent.

However, the practice is negotiating with international transport contracts, including sea transport, Vietnamese companies are often disadvantaged because foreign partners choose the

foreign law to apply, and the dispute settlement agency is also foreigners, which is detrimental to Vietnamese enterprises.

With the potential to develop sea transport and the actual difficulties of the shipping companies as mentioned above, along with the trend of international economic integration, Vietnam is considering joining international conventions on the carriage of goods by sea, including Hague-Visby Rules, Hamburg Rules, and the Rotterdam Rules. The problem of considering joining the International Convention on the carriage of goods by sea, especially the Rotterdam Rules - which is considered the most advanced is essential.

This article will compare the provisions of the Rotterdam Rules with the current Vietnamese laws. In addition, the paper also analyzes many indicators that determine whether a country should join a Convention or not and explores the advantages and disadvantages of joining the Rotterdam Rules in order to address the issue, whether or not Vietnam joins the Rotterdam Rules.

The paper draws on several different sources of materials. It first the international legal - Rotterdam Rules. “Second, the paper’s Vietnam’s national legal systems and Vietnamese legal documents. In addition, the paper also uses other documents such as scholarly books and research papers, related reports” (Dinh & Pham, 2020).

2. Comparison between Vietnamese Maritime Law and Rotterdam Rules.

2.1. Scope of application.

The general scope of the Rules: The Rotterdam Rules significantly extends the range of the harmonization of multimodal transport, such as international freight, door-to-door delivery, including sea and land transport. The Rules specifies the carrier’s liability for the goods when the goods are under the carrier’s responsibility from the place of receipt to the place of delivery. This more comprehensive range will more closely reflect the reality of modern international trade transport arrangements. The Rotterdam Rules applies a statute of liability similar to that contained in the Hamburg Rules, but it reiterates some provisions of the Hague-Visby Rules, in particular outlining the express obligations of the carrier and the carrier disclaimers that may apply. The provisions in the Rotterdam Rules are much more complete and detailed than those in Hague-Visby and Hamburg Rules and are intended to regulate today’s international transport business better.

Geographical scope:

“The Rotterdam Rules (Article 5) provides that the Rules applies to contracts for the carriage of goods where the place of loading and delivery of goods is located in different countries, the port of loading and the port of discharge are also located in different countries, provided one of the following places is located within a Contracting State:

- Where the goods are received;
- Port of loading;
- Place of delivery; or

³United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – the ‘Rotterdam Rules’. U.N. Commission on International Trade Law. UNCITRAL.org.

⁴Ministry of Transport, Workshop on master plan development of Vietnam’s seaport system period 2021-2030, vision to 2050.

⁵Ministry of Transport, Workshop on master plan development of Vietnam’s seaport system period 2021-2030, vision to 2050.

⁶UNCTAD, Review of maritime transport 2020.

Port of discharge” (Rotterdam Rules, 2009).

The Rules still applies irrespective of the ship’s nationality, the contracting party, or any other persons involved. In contrast to the previous regulations, the Rotterdam Rules does not specify where the bill of lading is to be issued. The Rules may even apply regardless of whether the bill of lading has been issued or not.

Law of Vietnam, Clause 4, Article 3, Maritime Code 2015 stipulates that: “In the case of legal relations relating to the contract of carriage of goods, the law of the country where the goods are to be paid under the contract applies” (Vietnam Maritime Code, 2015). Understandably, the cases of application of the Vietnam Maritime Code are when:

The contract is performed entirely in Vietnam;

The place where the goods to be paid under the contract is in the territory of Vietnam.

Thus, compared with the provisions of the geographical scope of Rotterdam, the geographical scope of the Maritime Code of Vietnam is narrower. Therefore, if joining the Rotterdam Rules, in the cases of transport with foreign elements, the Vietnam Maritime Law may be applied to other cases if the port of loading, the place of delivery, or the port of discharge is in Vietnam. Besides, in cases where the goods are paid under the contract in Vietnam, but the contracting parties choose the law of the country where the goods are to be delivered, the port of loading, or the port of discharge, the Law of Vietnam shall not apply.

Subjects:

Article 6 states that the Rotterdam Rules do not apply to charter parties or any contract for the purpose of the use of a ship. The Rules does not apply to charterers or other contracts governing the use of a vessel or any space on board. However, the Rules may “apply in such cases if a transport document or an electronic transport record is issued” (Rotterdam Rules, 2009).

This Rule “does not apply to contracts of carriage in non-liner transportation except when there is no charter party or other contract between the parties for the use of a ship or of any space thereon, or a transport document or an electronic transport record is issued” (Rotterdam Rules, 2009).

Vietnamese law regulates two types of carriage contracts. They are bill of lading contract and voyage charter-party. Article 146 defines: “Bill of lading contract refers to a contract for carriage of goods by sea concluded to include terms and conditions whereby the carrier is not bound to provide the whole or a specified part of a ship for the shipper but relies on the nature, quantity, size or weight of goods for carriage purposes. The bill of lading contract shall be concluded in the form agreed upon between parties” (Vietnam Maritime Code, 2015). And “Voyage charter-party refers to a contract for carriage of goods by sea concluded to include terms and conditions whereby the carrier is bound to provide the whole or a specified part of a ship for the shipper with the purpose to carry goods on a voyage. The voyage charter-party must be concluded in writing” (Vietnam Maritime Code, 2015).

Comment: International rules apply the only bill of lading contract, not to voyage charter-party, and Rotterdam is no

exception. At the same time, Vietnamese law applies to both types. Participation in the Rotterdam Rules only legally affects the provisions of Articles 170 to 174 of the Vietnam Maritime Code and other provisions related to the bill of lading contract.

2.2. Responsibility of Carrier.

In order to ensure favorable conditions for the conclusion of the contract of carriage of goods by sea between the shipper and the carrier, as well as to avoid conflicts that occur when the goods are lost or damaged, it is essential to determine the carrier’s responsibility. The issues compared between the Vietnam Maritime Code 2015 and the Rotterdam Rules include (1) the basis of responsibility, (2) the term of liability, (3) the limitation of liability, and (4) the carrier’s liability in exceptional circumstances.

2.2.1. The basis of responsibility.

The liability basis of the carrier is shown through the following three contents: (a) the carrier’s liability for the common itinerary and the cargo; (b) Relief of the carrier’s liabilities; and (c) the responsibility to prove the error.

a) The carrier’s liability for the common itinerary and the cargo

The Rotterdam Rules (Article 14):

General principle: The carrier is responsible for any loss or damage to the goods when the goods are under the responsibility of the carrier as well as when the goods are delayed. The Rotterdam Rules “defines the period of liability applicable from when the carrier receives the goods until the time he delivers the goods” (Rotterdam Rules, 2009). This means that when goods are transported by sea, the carrier “entering before, at the beginning, and during the sea voyage” (Rotterdam Rules, 2009) must take reasonable diligence to:

Ensuring the maintenance of the ship is fully seaworthy;

Personnel, equip, adequately supply the ship and maintain the ship in such service, equipment, and supply throughout the voyage;

To ensure and keep the ship’s hatch and other cargo parts and the carrier-provided containers appropriate and safe for the receipt, transport, and storage of the cargo.

The carrier must also deliver the goods on time,... according to the deadline stated in the contract.

Vietnam Maritime Code 2015: Article 150 states that: “The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy; properly man, equip and supply the ship; make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation of goods” (Vietnam Maritime Code, 2015).

Comment: According to Rotterdam Rules, the carrier is responsible for making and maintaining the ship’s full seaworthiness for the entire voyage, while under Vietnamese law, this obligation of the carrier is recognized only before and at the beginning of the voyage. Thus, if joining Rotterdam Rules, the

Vietnamese carrier's obligations will be extended.

b) Relief of the carrier's liabilities

The Rotterdam Rules (Article 17):

The carrier is exempt from liability in whole or in part if he proves that the loss or damage to the goods or delay is caused by one of the following incidents or circumstances: "(a) Act of God; Perils, dangers, and accidents of the sea or other navigable waters; War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions; Limitations due to quarantine; interference or interference by authorities, authorities or people, including arrest without fault of carriers or agents or servants of the carrier; Strikes, lockouts, stoppages, or restraints of labor; Fire on the ship; Latent defects not discoverable by due diligence; Act or negligence of the shipper, the shipper under the contract, the controller or any other person responsible by the shipper or the party under the name of the shipper in the contract; Loading, handling, stowing, or unloading of the goods unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee; Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods; Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier; Saving or attempting to save life at sea; Reasonable measures to save or attempt to save property at sea; Reasonable measures to avoid or attempt to avoid damage to the environment; or The carrier's actions under the authorized rights to deal with dangerous goods could become a threat or sacrifice the cargo for overall safety in the journey" (Rotterdam Rules, 2009).

However, the carrier cannot invoke these disclaimers if:

The person fails to comply with the specific carrier obligations listed in the Rotterdam Rules, or

The incident or circumstances occurred due to the carrier's fault or the fault of the subcontractor, or the employee or the master or the ship's crew.

Vietnam Maritime Code 2015:

The carrier is fully exempt from liability, if the loss of the cargo occurs in the following cases: "Act, neglect or default of the master, seafarer, pilot or the servants of the carrier in the navigation and in the management of the ship; Fire, unless caused by the actual fault or privity of the carrier; Perils, dangers and accidents occurring at sea, port water area where a ship is allowed to operate; Act of God; Act of war; Act of infringement upon public safety and security, unless committed by the fault of the carrier; Arrest or restraint of people, or seizure ordered by the Court or other competent authority; Quarantine restrictions; Act or omission of the shipper or owner of the goods, his agent or representative; Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general; Riots and civil commotions; Act of saving life or property at sea; Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods; Insufficiency of packing; Insufficiency or defective conditions of marks or codes; Latent defects not discoverable by the re-

sponsible person though such person has already exercised due diligence; Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage" (Vietnam Maritime Code, 2015).

Besides, the carrier is not responsible for the delay in delivery of the goods in the following cases: Deviating from the route with the shipper's approval; Causes of force majeure; To save lives or assist other ships in danger when human lives on board may be in danger; It takes time to provide first aid to crew members or people on board.

Comment: The carrier's unreasonable waiver of liability in connection with the carrier's neglect in the course of steering or handling the ship has been removed following the Rotterdam Rules. However, Vietnamese law still stipulates this as an exemption.

c) Responsibility to prove faults

The Rotterdam Rules (Article 17):

The carrier will prove exempt from liability, and the claim will prove that the carrier is not exempt from liability.

Vietnam Maritime Code 2015 (Articles 151 and 152):

Anyone who wants to be exempt from liability must prove that he is not at fault.

Comment: There is a similarity in the regulation on the responsibility to prove faults under Vietnamese law and Rotterdam Rules.

2.2.2. Period of responsibility of the carrier.

Rotterdam Rules:

The carrier is responsible for the goods from receipt of goods at the place of departure until delivery of goods at destination (from warehouse to warehouse). The Rotterdam Rules (Article 12) assumes that "the carrier's liability begins from the moment the carrier or the performing party (the actual carrier) receives the goods carried at a place of departure until delivery of the goods at a destination" (Rotterdam Rules, 2009). The Rules also defines "how the goods are to be received and delivered. If the laws or regulations of the place of delivery require the goods to be delivered to an authorized authority or to another third party from which the carrier may receive the goods, the carrier's term of liability" (Rotterdam Rules, 2009). Transit will commence when the carrier receives the goods from such competent authority or a third party. At the place of delivery, if the laws or regulations of the place of delivery require the goods to be delivered to a competent authority or to a third party from which the consignee can receive the goods, then the carrier's term of liability ends when the carrier delivers the goods to such competent authority or a third party. In other words, the carrier's responsibility is from receipt to delivery, which is completely suitable for multimodal transport.

Vietnamese Maritime Code 2015:

Article 170 provides for the carrier's liability arising from the moment the carrier receives the goods at the port of loading, maintained throughout the course of carriage and terminated after the delivery at the port of discharge.

In which details are as follows:

“The reception of goods shall begin when the carrier received goods from the shipper, competent authority, or third party by laws or regulations set out in the port of loading.

The discharge of goods shall be terminated under the following circumstances:

The carrier has completed the delivery of goods to the consignee; unless the consignee directly receives the goods from the carrier, such termination shall happen in the form of discharge of goods as requested by the consignee in accordance with the contract, laws, or commercial terms that prevail at the port of discharge;

The carrier has completed delivery of goods to a competent authority or third party under laws or regulations prevailing at the port of discharge” (Vietnam Maritime Code, 2015).

This regulation is not really suitable when the sea carrier acts as a multimodal transport operator (MTO).

2.2.3. Limitation of liability.

Issues covered in this content include: (a) Limits of the carrier's liability in the event of loss or damage to the cargo and in the case of delayed delivery; (b) where the carrier loses the right to the limitation of liability; (c) The right to agree to the limitation of the carrier's liability.

a) Limits of the carrier's liability in the event of loss or damage to the cargo and the case of delayed delivery

Rotterdam Rules:

This Rules limits to “875 SDR per package or another unit of transport or 3 SDR per kg of gross weight, whichever amount is higher, unless the value of the goods has been declared and recorded in the contract or the carrier and the shipper agreed to an amount higher than the amount above” (Rotterdam Rules, 2009).

Vietnam Maritime Code 2015 (Article 152):

“Where the characteristics or value of goods has not been declared by the shipper before loading or has not been clarified in the bill of lading, sea waybill, or other transport documents, the carrier shall only be liable for compensation for any loss of or damage to goods or other loss of goods within the maximum limit equivalent to 666.67 units of account per each package or other shipping unit or two units of account per kilogram of the gross weight of the goods lost or damaged, whichever is the higher. Unit of measurement referred to in this Code is the Special Drawing Right defined by the International Monetary Fund” (Vietnam Maritime Code, 2015).

“When goods are consolidated in or on a container or similar article of transport, each package or shipping unit enumerated in bills of lading, or consolidated in that article of transport,

is deemed 01 packages or 01 shipping unit. If not so enumerated, such container or article of transport is deemed 01 packages or 01 shipping unit” (Vietnam Maritime Code, 2015).

“Where the nature and value of such goods have been declared by the shipper before shipment and accepted by the carrier and embodied in a transport document, the carrier shall be liable for any loss or damage to or in connection with goods by reference to such value according to the following rules:

Concerning goods that have been lost, the value of compensation is equal to the declared value;

Concerning goods that have been damaged, the value of compensation is equal to the difference between the declared value and the remaining value of goods damaged.

The remaining value of goods is determined by reference to the market price defined at the time and place when/where the discharge of goods took place or should have taken place; if not so determined, the market price defined at the time and place when/where loading of goods took place with the addition of the cost of transport of such goods to the port of discharge serves as the basis for determination of such remaining value” (Vietnam Maritime Code, 2015).

Comment: According to the provisions of Rotterdam, the level of compensation for undeclared goods is higher than the compensation rate under Vietnamese law. In the case of goods declared under Rotterdam, the level of compensation based on the declared level, which is lower than the undeclared calculation method, will be calculated at a higher rate. Still, according to the Law of Vietnam, it will be calculated according to the declared rate.

In the event of delayed delivery, Vietnam Maritime Code 2015 and the Rotterdam Rules (Article 21) both state: The carrier must compensate 2.5 times of the payable freight for the late delivery, but not exceeding the total freight of the entire shipment or the limit of liability if the goods were lost or damaged.

b) Where the carrier loses the right to the limitation of liability

The Rotterdam Rules (Article 61):

The carrier is not entitled to a limitation of liability if there is evidence that the carrier's actions or omissions caused the loss, damage, or delay in delivery intentionally in order to cause the loss, damaged or delayed in delivery or performed recklessly while knowing that loss or damage may occur. The carrier is not entitled to a limit of liability for loss or damage to the cargo due to carriage of the cargo on deck. Still, in practice, the carrier and the shipper do not agree that the cargo is carried on deck.

Vietnam Maritime Code 2015:

The carrier loses the right to limit liability as provided for in Article 152: “if the complainant proves that the loss or damage to the goods is the result of the carrier's intentional act of causing loss, damage or delay in delivery, or is negligent and knows that loss, damage or delay in the return of the goods may occur” (Vietnam Maritime Code, 2015).

When the servants and agents of the carrier do the work to cause loss or damage to the goods, delay in delivery, or negligence and know that the possible loss, damage, or delay in the return of the goods, there is no limit the liability.

c) The right to agree to the limitation of the carrier's liability

Rotterdam Rules: The parties do not have the right to agree to lower the limit of the carrier's liability. However, the parties are allowed to agree to increase the limit of the carrier's liability.

Vietnam does not have specific regulations on this issue.

2.2.4. Liability of the carrier in special cases.

In some special cases, the carrier's liability is specified differently from general liability. These cases include: (a) loss caused by fire; (b) loss resulting from transport of live animals; (c) loss resulting from carrying the cargo on deck; (d) loss resulting from carrying the dangerous goods; and (e) losses due to deviation.

a) Loss caused by fire

Rotterdam Rules: Not specified.

Vietnam Maritime Code 2015 (Article 151 (2) (b)) provides that the carrier is responsible for fire caused by his fault.

b) Loss resulting from transport of live animals

The Rotterdam Rules (Article 81): Applicable rules for the carriage of live animals: "The carrier remains liable for losses if the shipper can prove that loss, damage, or delay in delivery occurred due to the carrier's act or negligence, or the carrier does so intending to cause damage to the goods or delay delivery, or doing so recklessly and aware that such damage may occur" (Rotterdam Rules, 2009).

Vietnam Maritime Code 2015 (Article 170 (4) (b)): "The parties fully have the right to agree on the responsibility of the carrier" (Vietnam Maritime Code, 2015).

c) Loss resulting from carrying the cargo on deck

Rotterdam Regulation (Article 25):

The Rotterdam Rules also provides that cargo on deck is allowed only if: "The shipper authorizes, or Carrying goods as required by law, or Goods are carried in containers or means of transport suitable for carriage on deck, and the deck is particularly suitable for carrying these containers or means of transport, or If this is the usage for this kind of goods or as required by law" (Rotterdam Rules, 2009).

The Rotterdam Rules loosens rules for deck cargo compared to the Hamburg Rules, which is consistent with the development of maritime transport and increased use of containers. The carrier remains responsible for loss, damage, or delay in deliveries carried on deck, but the carrier is not responsible for loss, damage, or delay in deliveries occurring due to special risks associated with the carrier on deck.

Vietnam Maritime Code 2015 (Article 179 (4) (c))

The parties fully have the right to agree on the responsibility of the carrier.

d) Loss resulting from carrying the dangerous goods

Vietnam Maritime Code 2015 (Article 155): "The carrier shall be entitled to discharge goods out of a ship, destroy or eliminate any harmful effect of goods of explosive, inflammable nature, or other goods of dangerous character without being held liable for any compensation, and shall be paid a full amount of freight charge in the event that such goods are wrongfully declared, or the carrier has not received any prior notification of and, with his general professional knowledge, failed to recognize dangerous characters of such goods during the goods handling process. The shipper shall be held liable for any loss incurred" (Vietnam Maritime Code, 2015).

"Where the carrier has consented to load dangerous goods on board the ship and, despite prior notification or recognition of the dangerous nature or characters of such goods with his general professional knowledge and implementation of preservation measures in accordance with laws and regulations, where such goods pose a threat to safety for the ship, people and cargoes onboard the ship, the carrier shall be entitled to deal with such situation in accordance with paragraph 1 of this article. In this case, the carrier shall be liable for any loss arising out of such situation according to the rules regarding general average. It shall only be allowed to collect the freight charge calculated on the basis of the actual distance that the ship has traveled" (Vietnam Maritime Code, 2015). - The Rotterdam Rules (Article 32 and Article 15)

The same provisions apply, and the shipper is obliged to mark and label the dangerous goods properly.

e) Losses due to deviation

The Rotterdam Rules (Article 24): "Except for the general average, the carrier is not liable for loss, damage, or delay in delivery due to the enforcement of life-saving measures or reasonable measures to save property at sea. This Rules applies when the carrier deviates with a reasonable reason as well as other circumstances causing loss or damage to the goods" (Rotterdam Rules, 2009).

Vietnam Maritime Code 2015 (Article 185): "Any deviation that is intended to save or attempt to save lives or property at sea or any other reasonable deviation will not be considered an infringement or breach of this Rules or the contract of carriage, and the carrier is not liable for any loss or damage resulting from this. In the event that the carrier deviates without any reason, he will lose the right of the disclaimer and the limitation of liability" (Vietnam Maritime Code, 2015).

Comment: The provisions on carrier liability under the Vietnam Maritime Code 2005 are almost similar to the provisions of the Hague-Visby Rules, such as disclaimer, limitation of liability. Some other provisions on the carrier's liability under the Code, such as the duration of liability, the carrier's liability for delay in delivery, are similar to the Hamburg Rules. Note that the limitation of the carrier's liability under the Rotterdam

Rules is the highest. If Vietnam becomes a party to this Rules, the obligations of Vietnamese carriers will increase, which is a significant increase.

2.2.5. Notice of losses and complaints.

a) Notice of loss

The Rotterdam Rules (Article 23): For apparent losses: “Notice of loss must be sent to the carrier or the party performing the carriage before or at the delivery time. For Unspecified Loss: If the loss is not apparent, a notice of loss must be sent within seven working days at the place of delivery from the date of delivery. In case of delay of delivery: Notice of loss must be sent to the carrier within 21 consecutive days from the date of delivery” (Rotterdam Rules, 2009).

Vietnam Maritime Code 2015 (Article 174): “The carrier is presumed to have delivered the goods according to their description in the bill of lading, sea waybill, or other transport documents unless notice of loss of or damage to the goods was given in writing to the carrier within 03 days from the date of reception of the goods if any apparent loss of or damage to the goods was discovered. In case of delay of delivery, the consignee has the right to notify the loss of the goods; if the goods are not received within 60 days of the date, the goods should have been delivered as agreed upon in the contract” (Vietnam Maritime Code, 2015).

In addition, there are also provisions on inspection: The consignee, before receiving the goods at the port of discharge or the carrier, before delivery at the port of discharge, can request the inspection agency to inspect the goods. The party requesting assessment is obliged to pay assessment costs but has the right to reclaim such costs from the party causing the damage.

b) Time for complaints and lawsuits

The Rotterdam Rules (Article 62): A lawsuit against the carrier must be made within two years from the date on which the carrier has delivered all or a portion of the goods or, in the event of no delivery, commencing from the last date the goods should have been delivered. “The parties may agree to extend this period” (Rotterdam Rules, 2009).

Vietnam Maritime Code 2015 (Article 169): “Lawsuits against the carrier must be made within one year of the delivery of the goods or of the date the goods should have been delivered. However, this period may be extended if the parties agree so after the cause of the action has arisen” (Vietnam Maritime Code, 2015).

Comment: The statute of limitations for initiating a commercial dispute is two years from the date of violation of lawful rights and interests under the Vietnam Commercial Law. Otherwise, the statute of limitations for a one-year lawsuit under the Vietnam Maritime Code 2015 does not seem reasonable. Therefore, this Code is not very supportive of protecting the legitimate rights and interests of the party suffering the loss. Consequently, it is necessary to extend the statute of limitations for suing up to 2 years, like the Rotterdam Rules.

2.2.6. Transport documents and electronic transport records.

The Rotterdam Rules no longer focuses on the concept of “bill of lading” (Rotterdam Rules, 2009), but is more concerned with “transport documents” (Rotterdam Rules, 2009), and “electronic transport records” (Rotterdam Rules, 2009), thus including bill of lading and delivery order.

Under the Rotterdam Rules, the carrier of the goods, upon request of the shipper, must issue to the shipper (or the person in whose name the shipper is in the contract), at the option of the shipper, a document of carriage that is transferable or non-transferable. The carrier may be exempt from this obligation if the carrier agrees not to use this document or if the relevant commercial practice does not use this document.

“The carrier may issue an electronic transport record, with the shipper’s consent, in place of the transport document. This is intended to facilitate e-commerce and avoid postage delays. The transport document or electronic transport record must contain the instructions and information of the contract provided by the shipper:

- A description of the goods as appropriate for the transport;
- The leading marks necessary for identification of the goods;
- The number of packages or pieces, or the number of goods;
- The weight of the goods, if furnished by the shipper;
- A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
- The name and address of the carrier;
- The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued;
- If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.
- The name and address of the consignee, if named by the shipper;
- The name of a ship, if specified in the contract of carriage;
- The place of receipt and, if known to the carrier, the place of delivery;
- The port of loading and the port of discharge, if specified in the contract of carriage” (Rotterdam Rules, 2009).

Information contained in transport documents or electronic transport records is considered accurate unless the carrier notes otherwise. The carrier may do so when he has the knowledge, and reasonable basis to believe that the information contained in the transport documents or the electronic transport record is

false or misleading, or in the case of the goods being placed in a container or a transport vehicle, and the carrier does not have a commercially reasonable and practical means of examining the information provided by the shipper. In that case, the carrier must specify what information he cannot check.

The legal validity of transport documents or electronic transport records is similar to the validity of bills of lading provided in the Hague-Visby and Hamburg Rules. Therefore, the carrier must deliver the goods specified in the document or electronic transport records unless the carrier has reserved an opinion as outlined above.

“The holder of a negotiable transport document or electronic transport record may assign the document, with its associated interests, to another. This can be done by transferring the document to another specific person or by assigning the name blank. When the holder of any transferable document or electronic transport record is not the shipper or does not exercise the contractual rights of carriage, he/she does not assume any responsibility of the shipper under that contract” (Rotterdam Rules, 2009). This person is only responsible for as long as the person has exercised the rights under the contract of carriage.

According to the Vietnam Maritime Code, “the transport document includes the bill of lading, through bill of lading, sea waybill, and other transport documents. The Code also defines the definition of the bill of lading” (Vietnam Maritime Code, 2015). Accordingly, the bill of lading is a transport document evidencing that the carrier has received the goods with the quantity, type, and condition as indicated in the bill of lading for transport to the place of delivery; proof of possession of the goods used to dispose of and receive the goods and is evidence of the contract of carriage of the goods by sea.

Through bill of lading refers to a bill of lading clearly stating that at least two sea carriers perform carriage of goods. “Sea waybill is used as evidence that the goods are received as aforesaid stated in a sea waybill; evidence for a contract for carriage of goods by sea. Sea waybill is non-negotiable. Other transport documents refer to any document of which contents and value are agreed upon by the carrier and shipper” (Vietnam Maritime Code, 2015). In addition, the Vietnam Maritime Code has not mentioned electronic shipping documents.

3. The Impact of the Rotterdam Rules on Developing Countries - Vietnam.

To have a basis for assessing the impact of the Rotterdam Rules on developing countries, like Vietnam, the authors developed a survey form, and conducted surveys from agencies, companies, as well as experts in this field. The assessment survey form was built with appropriate content:

Survey questions on the Impact of the Rotterdam Rules on Developing Countries - Vietnam

Evaluator:

Organization:

How do you evaluate the impact of Rotterdam Rules on developing countries, like Vietnam? (Circle the selected level).

No.	The impact of Rotterdam Rules	Necessary levels
		1. Not necessary 2. Less necessary 3. Don't know 4. Necessary 5. Very necessary
1	The necessity of Rotterdam Rules for export activities of developing countries, like Vietnam.	① ② ③ ④ ⑤
2	The necessity of Rotterdam Rules for the operations of shipping companies in developing countries, like Vietnam.	① ② ③ ④ ⑤
3	The necessity of Rotterdam Rules for the operations of insurance companies in developing countries, like Vietnam.	① ② ③ ④ ⑤
4	The necessity of Rotterdam Rules for economic activities in developing countries, like Vietnam.	① ② ③ ④ ⑤
5	The necessity of Rotterdam Rules for perfecting the legal system in developing countries, like Vietnam.	① ② ③ ④ ⑤

3.1. Rotterdam Rules influence economic business activities in Vietnam.

3.1.1. Import and export overview.

In 2016-2020, Vietnamese import and export activities have achieved positive and encouraging results with the highlights of high and continuous growth of exports, the development and expansion of export markets, diversifying export products, and controlling imports with high efficiency.

In the 2016-2020 period, the world economy faced many difficulties and challenges, affecting export growth. The world economy recovered slowly after the 2008 economic crisis and had many risks. Until 2017, the world economy started to recover, and global trade began to see positive developments, although still facing many difficulties and potential risks due to the increasing trend of trade protectionism.

The US-China trade conflict started in April 2018, and the escalation of tensions has had a substantial impact on global trade, in which Vietnam is a highly open economy also suffers from many effects. From the beginning of 2020, the Covid-19 epidemic broke out and is still not controlled, having a severe impact on the global economy and trade.

Vietnam's situation in 2016 up to now has basic advantages: political and macroeconomic stability; economic structure shifted in a positive direction; extensive international integration has a substantial impact on the business environment, attracting investment and developing production. Export growth in the period 2015-2020 averaged 12.5 per percent/year, higher than the target of 10 per percent set by the 12th National Congress

In 2020, in the context that Covid-19 heavily influences the world economy, exports of countries in the region all decrease compared to the previous year, “Vietnam's export still achieved positive growth, the export turnover of goods reached 281.5 billion USD, up 6.5 per percent compared to 2019. Import is

controlled, the average growth rate of import turnover is lower than the average growth rate of export turnover. Import turnover has an average growth rate in the 2015–2019 period at 11.2 per percent/year. Thus, the average annual growth rate of import turnover in this period was lower than the average growth rate of export turnover (13 per percent)” (Ministry of Transport of Vietnam, 2021).

The trade balance was in surplus for the whole period with the next year’s trade surplus increasing higher than that of the previous year. In fact, from 2016 to now, the trade balance has always been in surplus with the trade surplus increasing over the years, respectively 1.77 billion USD (2016), 2.11 billion USD (2017), 6.83 billion USD (2018), 10.87 billion USD (2019), 19.1 billion USD (2020).

The structure of export goods continued to improve in a positive direction. The proportion of processed industrial goods will increase from 80.3 per percent of export turnover in 2016 to 85.1 per percent in 2019 and 85.2 per percent in 2020. Meanwhile, the proportion of fuel and mineral products decreased from 2 per percent of the total export turnover in 2016 to 01 per percent in 2020. The number of items with export turnover of over 1 billion USD will gradually increase from 28 items in 2016 to 31 items in 2020.

According to the Maritime Administration, the fleet of ships carrying the Vietnamese flag has decreased to 1,576 ships with a total tonnage of about 9.3 million DWT. Of which, there are 1,049 transport ships, with 764 ships (accounting for 72 per percent) are bulk and general cargo ships; 162 ships (accounting for 15 per percent) are oil and chemical tankers; and a fleet of 38 container ships (accounting for 3.6 per percent), the rest are other types of ships. The average age of the Vietnamese fleet is 15.5 years old, 5.8 years younger than the world fleet.

The Vietnam Maritime Administration assessed that the competitiveness of the Vietnamese fleet is still weak. In just five years, the market share of Vietnamese fleets has decreased from 10 per percent (in 2015) to only 5 per percent (in 2020) of the export and import freight market. The reason is that the majority of Vietnamese shipowners are small, with 1,049 shipping ships and 550 owners. Only about 30 shipowners have fleets of more than 10,000 DWT.

In particular, the exploitation of Free Trade Agreements has also made significant achievements, contributing to the rapid and sustainable development of exports, gradually reducing the dependence on one or several markets. The total export turnover using the preferential types of C/O under FTA averaged 32 per percent -34 per percent /year. This result reflects that enterprises and exported goods from Vietnam gradually improve the rate of taking advantage of tariff preferences in markets with FTA with Vietnam. Although the EVFTA Agreement has just been put into effect since August 2020, there have been positive signals in the work of issuing certificates of origin.

3.1.2. Commercial terms.

In terms of shipping modes, Vietnamese exporters usually sell goods to foreign trading partners by onboard delivery (FOB). With this method of foreign trade contract, Vietnamese exporters do not have the right to choose a carrier or insurance for their

goods. Similarly, Vietnamese importers often buy goods from abroad under the CIF method. With this mode of contracting, Vietnamese importers are naturally not allowed to choose their insurers and carriers.

This fact is due to the following four main reasons:

Foreign partners of Vietnamese trading companies want to sign contracts in their favor when they gain the right to choose carriers and insurers.

Vietnamese trading companies suffer common disadvantages when choosing the formula “sell FOB, buy CIF,” as these companies can avoid the risk of having to sign transport and insurance services: such as the risk of an increase in insurance premiums, freight rates, inadequate vessels,...

Inexperienced Vietnamese trading companies in transportation and insurance services: lack of adequate knowledge and relationships with freight and insurance shipments, complicated charter procedures,... and above all is the common misconception of Vietnamese companies that it is safer to sell FOB than to sell CIF and vice versa.

Vietnamese people have difficulty in financing to pay freight and insurance charges. A common situation in Vietnam is that foreign buyers have to pay Vietnamese exporters in advance to afford the cost of the goods.

3.2. Impacts on Vietnam’s economy.

The impact of the Rules on Vietnam’s economy can be measured through the impact of each Rules on Vietnam’s importers, exporters, carriers, and insurance companies.

3.2.1. Impact on importers and exporters.

Impact on Vietnamese importers and exporters, it was clear above that Vietnamese traders usually export FOB and import CIF. Thus they are excluded from any contractual relationship with the international carrier. The liability in those contracts, and the associated risks, are therefore determined by the Vietnamese trader’s customers and suppliers. It is inappropriate to choose to join the Rules because, without these commercial conditions, Vietnamese exporters and importers will never need to use the rules of the Rules.

However, in cases where some companies still organize the transport of goods and negotiate directly with the carriers, the Rotterdam Rules does not fully address the problems of multi-modal transport and e-commerce.

In this context, Vietnamese trading companies have to choose between paying more for the international shipping of their goods or maintain a slightly higher risk to support themselves in the event of loss or damage to their goods. However, “if participating, the premiums imposed on the trading companies themselves will also be higher, thus compensating for lower shipping costs. Therefore, the impact of this Rules would be negligible on Vietnamese traders” (Dao Van Duong, 2011). Likewise, the optimal choice will depend on the nature of each transaction, and this can be negotiated with each contract.

3.2.2. Impact on Vietnamese freight.

The above section makes it clear that the Vietnamese shipping industry remains limited, albeit exhibiting a vibrant growth

sector, given that regional trade is likely to go up. Currently, the international transport market is still dominated by foreign companies. In addition, domestic trucking companies are mainly used only in state transport contracts, and almost no company can sign contracts with foreign business people. Although the industry strategy “is to increase the number of specialized ships (tankers, container ships) and large ships, it seems that the market share of Vietnamese ships in the international transport of goods by sea will not change significantly in the near future” (Dao Van Duong, 2011).

In practice, it appears that there will be fewer transport contracts with foreign businesses and non-governmental businesses. With these contracts, the application of the Rotterdam Rules increases the liability of the Vietnamese carrier. That could be addressed with more extensive coverage. Higher premiums are paid to insurance companies.

3.2.3. *Impact on Vietnamese insurance companies.*

As noted above, even though the insurance market is on the rise, the CIF import and export activities of Vietnamese traders still exclude Vietnamese insurance companies from larger contracts. In this context, the choice of the Rules will have little impact on Vietnamese insurance companies. These companies will benefit only if Vietnamese traders change their terms of trade and organize international transport themselves. If possible, Vietnamese insurers, assuming they can sign Vietnamese exporters/importers contracts, will receive higher premiums under the Rules, then the Rules entails a higher risk for the shipper. However, its impact on the Vietnamese economy is negligible.

Conclusion: Based on the above information, the Rules has a small impact on the Vietnamese economy. Currently, the Vietnam Maritime Code draws from Hague-Visby Rules, related to the general liability regulations, and the Hamburg Rules regarding liability for delayed delivery and time frames for claims. Changing this law through the application of the Rotterdam Rules do not significantly change the landscape of business activities and the competitiveness of Vietnamese exporters/importers, carriers, and insurance companies.

3.3. *Flexibility of Rules.*

In the current market conditions, there are only a few problems that contracts between economic actors cannot regulate. In principle, the parties to a business contract have full discretion about the terms of their relationship. Regulation only plays a role when the market is distorted, and some participants may abuse the illegal advantage that the market gives them.

The Rotterdam Rules has change the law of Vietnam in a number of respects. In practice, this Rules is binding on and does not accept reservations. Besides, Rotterdam Rules go into details of complex business relationships, which may not necessarily be built into a business environment where each shipping document details obligations and terms of delivery.

However, it should be noted that the Rotterdam Rules allow the parties to be covered by the contract below the level outlined in the Rules for the carriage of goods in bulk, representing a significant part of the trade-in goods. This partly limits the real

impact of the Rules. However, this also creates loopholes for abusive regulations in the absence of full competition law.

The Rotterdam Rules, when applied to bulk freight, are the most complete. If it is necessary to meet the modern transport business, undoubtedly the Rotterdam Rules is the most suitable. However, the Rotterdam Rules for the carriage of small quantities are too rigid, the Rules’ complexity and over-detail may not be suitable for some subjects.

Conclusions.

International regulations work when there is a need to harmonize the conditions for a particular business to take place between countries. In the case of the international carriage of goods by sea, the market is international by nature. It is not convenient for the parties involved to apply different rules of responsibility for each country. It is, therefore, necessary to harmonize the Rules. In addition, the instability of the maritime routes requires the application of regulations that somewhat reduce the carrier’s liability.

However, the question of whether Vietnam should join the Rotterdam Rules or not is not a clear answer, especially with the small number of international contracts in Vietnam for the carriage of goods by sea. Besides, the future benefits of Vietnam’s acceding to this Rules are not much.

Firstly, some Vietnamese traders who sign their contract of carriage with international carriers may rely on this Rules to ensure a settlement of a conflict before the courts of the foreign carrier’s country. However, if the foreign carrier comes from a State party to this Rules, the courts of that country shall apply the Rules’ provisions in all cases. In most countries, international law of direct influence and discrimination between entities in similar circumstances is not allowed. Therefore, in this respect, Vietnam may not necessarily comply with an international convention, especially considering the fact that most of Vietnam’s trading partners are members of different conventions. The importance of this potential benefit is therefore limited.

Second, Vietnam’s compliance with this Rules can be beneficial for Vietnamese carriers. Firms shall not be held liable beyond the level specified in the relevant Rules before the courts of a party to the Rules. However, this assumes that the Vietnamese carrier contracts with foreign traders. The second assumption is that foreign traders come from countries that are members of the same Rules as Vietnam. This scenario cannot happen at this time. Most transport contracts with Vietnamese carriers are signed with Vietnamese business entities. In addition, if the business entity is not a Vietnamese chartering a Vietnamese ship, it is usually businessmen of ASEAN or North Asia countries. However, neither country here has signed the Rotterdam Rules. Therefore, the Vietnamese carrier has nothing to do with these Conventions.

Ultimately, the potential benefits for Vietnam to join this Rules will be available if its policy is to develop the international shipping industry, renew its fleet and compete in international markets to get big deals. By acceding to one of these

Conventions, Vietnam will increase the confidence of potential bidders about the predictable outcome of the conflict being adjudicated in Vietnamese court. However, the current competitive situation of Vietnam's transport industry does not seem to explain the need to comply with Vietnam's international conventions at this time.

To conclude, although Vietnam has potential benefits from joining one of the international conventions on the carriage of goods by sea, there does not seem to be an urgent need to join, especially in the absence of a prevalent convention in this area. In the current Vietnamese situation, most of the possible conflicts are fully regulated under Vietnamese domestic law.

On the above basis, Vietnam should not be in a hurry to apply the rules, given the limited potential benefits and uncertainty surrounding the fate of the Rotterdam Rules. When this Rules does become popular, then participation should be considered.

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