An Analysis of Transport Documents and Electronic Transport Records under the Rotterdam Rules*

Abstract

Many changes have been brought into uniform seaborne cargo regimes by the Rotterdam Rules. One important change is that the Rules have replaced the term "bill of lading" with "transport document". This paper analyses transport documents under seaborne cargo regimes. Another change is the treatment of electronic transport records as equivalent to transport documents in Chapter 3 of the Rules. Namely, these electronic transport records are treated as the equivalent of transport documents. It should be noted that electronic transport records, as a newly-incorporated element in the uniform sea cargo regime, are not addressed in previous conventions. As electronic transport records are treated as the equivalent of transport documents, the discussion on "transport documents" in this paper also applies to electronic transport records. This paper demonstrates the Rotterdam Rules have much more expanded coverage than conventions prevailed previously. Accordingly, the necessity of such an extended scope of application and its impact on the wider ratification of such a convention of uniform rules will be examined.

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1. *Introduction*

One important change is that the Rotterdam Rules (RR) have replaced the term "bill of lading" with "transport document" [1]. Another change is the treatment of electronic transport records as equivalent to transport documents in Chapter 3 of the RR. As electronic transport records are treated as the equivalent of transport documents, the discussion on "transport documents" in this paper also applies to electronic transport records [2]. Electronic transport records, as a newly-incorporated element in the uniform seaborne cargo regime, is briefly discussed in the last section, in order to show the RR much more expanded coverage than conventions prevailed previously [3].

Although the RR also regulate contract documents and their particulars, there are clear differences. First, the RR (Chapter 8) greatly increase the number of provisions about contract documents and particulars which regulates there categories of contract documents and the evidentiary effects of the particulars and the qualified information endorsed in/by contract documents. Secondly, the RR introduce innovation by regulating the identification of the carrier, which is vital in locating a proper defendant in cargo claims. This paper shows that the RR differ significantly [4] from the Hague Rules (HAR), Visby Rules (HVR) and Hamburg Rules (HMR) on this aspect of the contract documentation.

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[1] See Rotterdam Rules Articles 1.14-16 (*Definitions*), 35 (*Issuance of Transport Document or the Electronic Transport Record*), 36 (*Contract Particulars*), 37 (*Identity of the Carrier*), 39 (*Deficiencies in the Contract Particulars*), 40 (*Qualifying the Information relating to the Goods in the Contract Particulars*), 41 (*Evidentiary Effect of the Contract Particulars*), and 42 (*Freight Prepaid*).

[2] Rotterdam Rules Chapter 8 Articles 35-49, except Article 46 (*Delivery when a Non-negotiable Transport Document that Requires Surrender is Issued*) only applying to paper-based transport documents but not to electronic transport records.

[3] See more in T. FUJITA, *Transport Documents and Electronic Transport Records,* in A. Von Ziegler, J. Schelin, S. Zunarelli (edited by), *The Rotterdam Rules 2008. Commentary to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Alphen aan den Rijn, 2010, pp. 161-187. FUJITA was a member of the Japanese Delegation in the UNCITRAL Rotterdam Rules negotiations.

[4] See details in the Table in the last section.

2. *Transport documents and contract particulars under existing rules* [5]

The HAR and HVR address the use of "bills of lading or any similar document of title" in commercial practice, but avoid defining "bill of lading" [6]. Although the HMR define "bill of lading" [7] their definition is not comprehensive enough to embrace all kinds of transport documents akin to bills of lading. Unlike the HVR and the HMR, the term "bill of lading" does not appear even once in the RR [8]. Furthermore, the HVR provide for the issuance of a bill of lading (Article III.3 and III.7). The HMR regulate the issuance of a bill of lading or similar documents of title and the evidentiary effect of the contract particulars recorded on the back of the documents [9].

The argument that a straight bill of lading is not regulated by a seaborne cargo convention is being challenged by common law and by the RR. In the past, English law never treated straight bills of lading as documents of title [10], and thus the Hague and Visby Rules did not apply. However, in *The Rafaela S* [11], the UK House of Lords rejected such an argument, recognising a 'straight bill of lading' as a document of title. A similar perspective is adopted by the RR, in addition to the extended scope of application on sea waybills as 'non-negotiable

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[5] F. LORENZON, *Transport Documents and Electronic Transport Records.* in Y. Baatz (edited by), *The Rotterdam Rules: A Practical Annotation*, London, 2009, pp. 99-120. M. STURLEY, *The Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, London, 2010, pp. 203-240.

[6] Hague and Visby Rules Article I (b).

[7] Hamburg Rules Article 1.7 defines "bill of lading" as "a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking."

[8] The term "Bills of Lading" appears three times in the Rotterdam Rules as part of the full name of the Hague Rules in the Preface and in Article 89.

[9] Hamburg Rules Articles 2.1, 2.3, 2.4, 14.1, 15, 16, and 18.

[10] E.g. English case law tradition, the UK Carriage of Goods by Sea Act (1992), and of the Hong Kong Bills of Lading and Analogous Documents Ordinance (Cap 440).

[11] *The Rafaela S* (2005) UKHL 11, (2005) 2 AC 423, (2005) 1 Lloyd's Rep 347, pp. 3, 12, 27 (The clause on the front of the transport document states, "(O)ne of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order"). In this case, the straight bill of lading was regarded as a similar document of title covered by the Visby Rules, since the express term in this bill (front side) says that this bill must be handed over against delivery of the goods. R. THOMAS, *The Carriage of Goods by Sea under The Rotterdam Rules*, London, 2010, p. 272, paragraph 13.4 (pointing out that this case has assumed that sea waybills (a non-negotiable receipt of the goods were not covered by the Visby Rules unless the Rules were specifically incorporated).

transport documents' that do not require surrender [12] This change would bring profound influence to bear on commercial practice, as well as on the application of sea cargo regimes [13].

The issuance of either negotiable or non-negotiable transport documents (or their electronic equivalents) (RR Article 35) is subject to "the shipper's option", unless there has been an agreement not to use one form of document, or unless it is the custom and practice of the trade not to use either of them. However, the wording of Article 35 conveys little on situations in which both parties agree on the issuance of a transport document but where there is no agreement of what kind of document should be issued (paper-based or electronic; negotiable or non-negotiable). Since this article generally places the issuance of a transport document at the shipper's option, and there is no qualification to exclude such shipper's option on the category of a transport document, following the same logic, it should be decided by the shipper when there are conflicting views on the issuance of a transport document. Another reason why the shipper has the privilege of option over the carrier is so that it can follow the legal tradition established by the HVR [14], followed by the HMR [15].

3. *Corresponding obligations of the shipper (RR Chapter 7)*

The HVR and the HMR did not specify shippers' obligations and liability in detail. The HVR only include some scattered provisions in respect of shippers [16]: the shipper's responsibility for guaranteeing the accuracy of the information

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[12] D. LEE, P. SOOKSRIPAISRNKIT, *The Straight Bill of Lading: Past, Present, and Future,* in *Journal of International Maritime Law*, 2012, p. 58 (arguing that *The Rafaela S* case and the prospect of straight bills of lading under the Rotterdam Rules is partly possible but problematic).

[13] D. LEE, *op. cit.*, p. 40 (refuting the argument that the Hague and Visby Rules would never apply to a straight bill of lading, and arguing that the UK judgment of Rafaela S does not stand in the light of the Rotterdam Rules). See the case *The Rafaela S*, n. 11. R. THOMAS, *The Carriage of Goods by Sea under The Rotterdam Rules*, *cit.*, p. 275, paragraph 13.18.

[14] Hague and Visby Rules Article I.b.

[15] Hamburg Rules 14.1.

[16] F. BERLINGIERI, *A Comparative Analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of the Average Adjusters - AMD, Marrakesh, 5-6 November 2009, p. 18. M. STURLEY, T. FUJITA, *Shipper's Obligations*, in M. Sturley, T. Fujita (edited by), *The Rotterdam Rules*, London, 2010, pp. 177-201, paragraphs 6.001-6.072.

which they furnish about goods [17], the shippers' exoneration for loss or damage sustained by the carrier caused by any factor which is not attributable to the shipper's fault [18], and the shipper's liability for dangerous goods [19]. The HMR addressed the obligations and liability of the shipper under Articles 12, 13 and 17 [20]. Nevertheless, the RR elaborated upon shippers' obligations and liability in considerable detail [21].

Though the HVR (Article III.5) and the HMR (Article 17.1) make the shipper responsibly for the accuracy of information provided by him, these Rules do not oblige the shipper must provide these information, instructions or documents (except information on dangerous goods). However, the RR require the shipper to provide *necessary* information to the carrier in a number of *specific* circumstances (Article 29) [22]. Although Sturley *et al.* mention that this requirement is simply a codification and harmonisation of the existing commercial practice rather than a created obligation [23], it is the first express incorporation [24] of the shipper's obligations into a sea cargo convention, which contributes to the significant increase in the number of articles of the RR.

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[17] Hague and Visby Rules Article III.5 provides that "the shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in NO (author's capitals) way limit his responsibility and liability under the contract of carriage to any person other than the shipper."

[18] Hague and Visby Rules, Article IV.3.

[19] Hague and Visby Rules, Article IV.6.

[20] Hamburg Rules 12 (*General rules*), 13 (*Special rules on dangerous goods*) and 17 (*Guarantees by the shipper*).

[21] Rotterdam Rules Articles 27 (*Delivery for Carriage*), 28 (*Cooperation of the Shipper and the Carrier in Providing Information and Instructions*), 29 (*Shipper's Obligation to Provide Information Instructions and Documents*), 30 (*Basis of Shipper's Liability to the Carrier*), 31 (*Information for compilation of contract Particulars*), 32 (*Special rules on Dangerous Goods*), 33 (*Assumption of Shipper's Rights and Obligations by the Documentary Shipper*) and 34 (*Liability of the Shipper for Other Persons*).

[22] UNCITRAL's discussions on Article 29 are reported in the Working Groups 9th Session Report, Doc.A/CN.9/510, paragraph 153; Doc.A/CN.9/552, 13th Session Report paragraphs 130-137; Doc.A/CN.9/591, 16th Session, Report paragraphs 128-135; Doc.A/CN.9/594, 17th Session Report paragraphs 187-194; Doc. A/CN.9/621, 19th Session Report paragraphs 217-219; Doc.A/CN.9/645, 21st Session Report paragraphs 96; 2008 UNCITRAL Commission Report, Doc.A/63/17, paragraph 101.

[23] M. STURLEY, *Shipper's Obligations*, *cit.*, pp. 181-183, paragraph 6.010.

[24] The breach of an Article 29 obligation causes fault-based liability to the shipper under Article 30.2.

4. *Overall discussion of chapters 3 and 8 of the Rotterdam Rules and proposed suggestions*

By avoiding use of the term "bill of lading", the RR ensure their potential application to a wide range of transport documents. The RR emphasise two characteristics of transport documents (evidence of the receipt of goods, and evidence of contract of carriage) [25], rather than relying their application on the use of practical documents (e.g. bills of lading). Unlike the Visby Rules (HVR), this novel approach of the RR brings out the two characteristics of transport documents, and avoids resorting to the term "bill of lading", which is defined differently in different jurisdictions [26]. As a result, regardless whether a transport document is named as a bill of lading or not in different jurisdictions, as long as it is equipped with the two characteristics just mentioned, it is a transport document as defined and governed by the RR. Thus, the replacement of "bill of lading" with "transport document" will promote uniformity.

After defining "transport document" under Article 1.14, the RR set out its two sub-categories: "negotiable transport document" and "non-negotiable transport document" [27]. The definition of "negotiable transport document" initially requires that such a document possesses the two characteristics to be a "transport document", and then creates rights to possess goods and to transfer the title of goods [28]. Since these newly-created rights have not been defined in the RR, the nature of these rights may be interpreted differently in different jurisdictions; the rights rendered by a negotiable transport document may be different from the laws applicable to the document, and lead to legal uncertainty between different jurisdictions.

In addition to negotiable transport documents, the other two categories of transport documents are both "non-negotiable". The second category is "that [which] is not a negotiable transport document" (i.e. does not require tendering of the document against delivery) [29]. In practice, these are called 'sea waybills'

[25] Rotterdam Rules, Article 1.14.

[26] A. DIAMOND, *The Rotterdam Rules*, in *Lloyd's Maritime and Commercial Law Quarterly*, 2009, p. 497 (positing that the definition of "transport document" is independent of different applicable national laws governing bills of lading).

[27] Rotterdam Rules Article 1.14, 1.15 and 1.16. Negotiable and non-negotiable transport documents are differentiated by whether the carrier is obliged to tender goods against surrender of the document. See Rotterdam Rules Article 47. The duty to tender transport documents against delivery will be discussed in the next section on the Rotterdam Rules Chapter 9 (*Delivery of Goods*).

[28] Rotterdam Rules, Article 1.15.

[29] Rotterdam Rules, Article 1.16.

[30]. In the same way, the definition first requires that the document must be a transport document with the two characteristics. The definitions simply distinguish between the two-category transport documents whether transferrable or not. Apart from this sole difference, the RR provide no further information. This definition simply excludes negotiable transport documents from their ambit without further description, and relies absolutely on the definition of a negotiable transport document. Moreover, according to its definition, the RR Chapter 11 (*Transfer of Rights)* does not govern non-negotiable documents. When a non-negotiable transport document is issued, the right arising under the document is transferred to a named party in the document (consignee), and the rights cannot be transferred by endorsement and transfer of the document itself. The RR cover the rights of the consignee, and the right of control under a non-negotiable transport document, which includes taking delivery of the goods. In order to obtain delivery of the goods, the non-negotiable transport document is not required to be surrendered to the carrier.

Besides the two categories of transport documents above, UNCITRAL has incorporated a third kind (or a "special subcategory") [31] of transport document (non-negotiable and requiring tendering of the document against delivery) into the RR [32]. These are non-negotiable transport documents, consigned to a named person, but are required to be surrendered against delivery of goods. This third category of transport documents is not defined in Article 1 of the RR, but Articles 46 and 51.2 (a) provide special rules for them. These Articles do not govern the second category of documents. 'Straight bills of lading' [33] seem to share some similarity with negotiable transport documents in the right of control

[30] A sea waybill is a shipping document that is only a receipt of cargo taken "on board" a vessel and which, unlike a bill of lading, is not a document of title. See Business Dictionary, Sea Waybill. See more about the differences between sea waybills and straight bills of lading in R. THOMAS, *The Carriage*, *cit.*, p. 276.

[31] M. FUJITA, *Transport Documents*, *cit.*, p. 162.

[32] See UNCITRAL, Proposal by the Netherlands on bills of lading consigned to a named person, Doc.A/CN.9/WG III/WP.68; UNCITRAL Working Group III, 17th Session, Doc.A/CN.9/594, paragraphs 208-215. They are also called 'straight bills of lading', or 'nominative bills of lading'. It is noted that a non-negotiable document which provides, indicates or specifies no tendering against delivery of goods, even if it is so named as a straight bill of lading, still falls within the second category rather than the third category of transport documents.

[33] Cf. D. LEE, *The Straight Bill*, *cit.*, pp. 39-58.

and the need to surrender them in order to take delivery [34]. Lee and Sooksripaisarnki argue that the use of the third category documents will cause conflicts between the RR and existing conventions, because the HVR usually do not apply to straight bills of lading or sea waybills [35].

In addition to the conflicts with preceding conventions which arise in the last category of documents, it is paradoxical that this legal classification of transport documents in theory is comprehensive, but is problematic in practice. Not all shipping agents and shippers are able to distinguish the slight literal differences (e.g. 'to order', 'negotiable', 'transferrable', and 'to bearer'), and understand why the distinction between negotiable and non-negotiable documents matters. Issues arise when the wording 'to order' is omitted. When 'to order' is omitted for any reason, the document is arguable to be non-negotiable under the RR [36]. In order to address the practical issue, Diamond recommends incorporation of a presumption that all bills of lading are negotiable, unless a prominent statement provides or indicates that the document is non-negotiable [37]. Another controversy occurs when a transport document makes the consignee "to order" but is marked "non-negotiable"; these documents could arguably be regarded as either non-negotiable or negotiable [38]. These issues make the classification of transport documents under the RR far from a purely practical matter. In order to achieve correct understanding by shippers and carriers, the major task is to educate the practitioners, so that they can understand precisely the

[34] The Rotterdam Rules create a new category of transport documents where presentation of a non-negotiable transport document is not necessary to take delivery unless the document itself indicates that it must be surrendered. Shippers may transfer the right of control to the consignee by "transferring the document to that person without endorsement" (Article 51.2(a)); the straight bills of lading bear the evidentiary effect and are "transferred to the consigned acting in good faith" (Article 41(b) (ii)); the shippers could transfer the right of control to the consignee "by transferring the document to that person without endorsement" (Article 51.2(a)). See more in M. STURLEY, T. FUJITA, G. VAN DER ZIEL, *Delivery of the Goods*, in M. Sturley (edited by), *The Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, London, 2010, pp. 251-253, paragraphs 8.037-8.042 (illuminating the new term of the third category of transport documents meeting commercial needs).

[35] D. LEE, *The Straight Bill*, *cit.*, pp. 57-58 (illustrating that the application of the Rotterdam Rules to straight bills triggers conflicts of law issues and complexity).

[36] This is because the Rotterdam Rules newly regulate the non-negotiable transport documents that require the surrender of the document against delivery, and "to bearer" might be used within the document. The words "negotiable" and "transferrable" do not show who the consignee is entitled to obtain delivery.

[37] A. DIAMOND, *The Rotterdam Rules*, *cit.*, p. 498.

[38] R. WILLIAMS, *Transport Documentation under the New Convention,* in *Journal of International Maritime Law*, 2008, pp. 566 and 568.

subtly different terminology, and to keep informed those who are handling shipping documents every day.

5. *Contract particulars and qualifications under the Rotterdam Rules*

Chapter 8 of the RR contains provisions on what information should be included, the circumstances in which the carrier could add qualified descriptions, and the evidentiary effect of these contract particulars in a transport document (or electronic equivalent). The carrier is entitled to, and sometimes must, qualify the information [(39)] in order to indicate that it does not assume responsibility for the accuracy of the information furnished by the shipper [(40)]. Without prejudice to this, the carrier may qualify the information [(41)] to indicate that it does not accept responsibility for the accuracy of the information furnished by the shipper in the two situations described below. However, these provisions are not compatible with shipping practice.

The use of qualifications will give rise to much difficulty with contract particulars for carriers, and in obtaining payment against a clean bill of lading by the shipper. It is impossible to predict how the provisions on contract particulars will be interpreted by the courts of different jurisdictions, and this will create much uncertainty. The following problems will arise.

5.1. *What is meant by "qualification"?*

Both Baughen [(42)] and Williams [(43)] claim that the RR have not defined "qualification". Diamond pinpoints that "qualification" is not defined in Articles 40 and 41 [(44)]. Article 40 does not do more than stating that the carrier "shall" or

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[(39)] Rotterdam Rules, Article 36.1.

[(40)] *Ibidem*, Article 40.1. The carrier must add qualifications to contract particulars, if "(a) the carrier has actual knowledge that any material statement in the transport document or electronic equivalent is materially false or misleading; or (b) the carrier reasonably believes that a material statement in the transport document or electronic equivalent is false or misleading".

[(41)] Rotterdam Rules, Article 36.1.

[(42)] S. BAUGHEN, *Shipping Law*, Hoboken, 2009, pp. 163-167.

[(43)] R. WILLIAMS, *Transport Documentation - the New Approach*, in R. Thomas (edited by), *A New Convention of the Carriage of Goods by Sea - The Rotterdam Rules: An Analysis of The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, London, 2009, pp. 211-215.

[(44)] A. DIAMOND, *The Rotterdam Rules*, *cit*., p. 506.

"may" "qualify the information ... to indicate the carrier does not assume responsibility for the accuracy of the information furnished by the shipper" [45]. Diamond interprets from a linguistic perspective that qualification must be made *ad hoc* or *shortly* [46] after the carrier receives goods and related information provided by the shipper; however, the linguistically correct interpretation differs from commercial practice: carriers usually do not make *ad hoc* qualifications [47]. The definition of "qualification", and when to qualify the information, are to be construed by national courts, and thus uncertain so far. It is a challenging question how to implement qualification in a commercially feasible way.

Subject to the qualification in Article 40, Article 41 provides that contract particulars are *prima facie* evidence of the carrier's receipt of the goods as stated in the contract particulars of a transport document (or alternative electronic equivalent). Some so-called "qualifications", other than those required under Article 40, have been found in transport documents. In the case *Mata K* [48] regarding qualifications as to the weight of loaded cargo, it was alleged these did not comply with the proviso [49] in the Visby Rules (VR) Article III.3. With regard to issues like this, Diamond argues that:

> *At the time of shipment the Convention [*RR*] will not apply if, as is usual, the bills of lading are issued as non-liner transportation. But the bills may subsequently be endorsed to one or more third parties, so that the Convention then applies. Will a clause [such as "weight loaded unknown"] that is valid on shipment [as bulk cargo] subsequently be invalidated [under the* RR*]? I suspect that these and other questions will be answered differently in the courts of different countries* [50].

Therefore, if we follow case law, these so-called "qualifications", other than those under Article 40 of the RR, will be ineffective. Alternatively, the future uniform sea cargo regimes should define "qualification".

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[45] Rotterdam Rules, Article 40. T. FUJITA, *Transport Documents*, *cit.*, pp. 180-182.

[46] Emphasised by the author.

[47] A. DIAMOND, *The Rotterdam Rules*, *cit.*, p. 506.

[48] *Agrosin Pte. Ltd. v. Highway Shipping Co. Ltd. (The "Mata K")* (1998) 2 Lloyd's Rep 614. In this case, the bill of lading was issued by the charterer (the claimant) on the behalf of the shipowner (defendant) and then transferred to the buyer of goods. The buyer assigned his rights under the bill of lading to the charterer, so the charterer sued in the name of the buyer, thus the bill of lading, rather than the charterparty, was the contract of carriage. The court held that the "weight unknown etc" clause in the bill of lading is valid, but it was neither prime facie nor conclusive evidence.

[49] Visby Rules Article III.4 stating the loss of monetary limitation owing to an act or omission of the servant or agent of the carrier.

[50] A. DIAMOND, *The Rotterdam Rules*, *cit.*, p. 506.

5.2. *Will the printed standard clauses be considered as "qualifications" prescribed in Article 40?*

The information furnished by shippers serves shippers' commercial purposes in fulfilling their buyers' (usually consignees') requirement for clean bills of lading, and for the exchange of furnished bills of lading with the buyers' payment (e.g. through a letter of credit). Meantime, to limit their liability carriers devise qualified descriptions for contract particulars furnished by the shippers, especially when the carriers have no chance to check the goods. In commercial practice, it is customary to permit the information furnished by shippers to be included in transport documents subject to the rubric 'said to contain', 'contents unknown', 'weight unknown', and so on [(51)]. If these rubrics are written, they are probably to be regarded as proper qualifications. However, in the practice of liner and bulk shipping [(52)], qualifications are usually standard printed clauses of transport documents, which poses a challenge as to whether they are to be regarded as "qualifications" prescribed in the RR [(53)]. Because there is no fixed definition of "qualification", it is likely that Article 40 requires more than a printed standard clause such as 'said to weigh' or 'said to contain', or 'weight unknown', in contract particulars [(54)]. Therefore, the printed rubric does not exclude transport documents from being regarded as clean in obtaining a payment against letters of credit via a bank.

5.3. *Verification of the gross mass of a packed container required by IMO under SOLAS amendments*

Since the 1970s cargoes have been increasingly carried within containers. In terms of containerised cargoes, carriers replied on the use of qualifying remarks on containerised goods, such as number of items unknown in the bills of lading and other transport documents. However, the consequences of misdeclaring the weight of containerised goods can be far-reading. A discrepancy between the weight information furnished by the shipper and the actual gross mass of a packed container will result in marine casualties and incidents. For instance, incorrect vessel stowage decisions, damage to the container vessels and loss of

(51) *Ibidem.*

(52) *Idem*, pp. 504-507 (explaining the reasons why the advanced printed "qualification" is used in shipping, especially in bulk trades).

(53) The "qualifications" are prescribed in the Rotterdam Rules Article 40.

(54) S. BAUGHEN, *Shipping Law*, *cit.*, p. 165.

containers. In particular, should this discrepancy go unnoticed, it may have a dramatic, negative effect on security and safety of seafarers, stevedores and ships. Therefore, the Maritime Safety Committee (MSC) of IMO, at its ninety-fourth session (17-21 November 2014), adopted amendments to SOLAS regulation VI/2 [55], to require the mandatory verification of the gross mass of packed containers.

These SOLAS amendments came into effect since 1st July 2016 and introduced two main new requirements: first, the shipper is responsible for providing the verified weight by stating it in the shipping document and submitting it to the master or his representative and to the terminal representative sufficiently in advance to be used in the preparation of the ship stowage plan; and the verified gross mass is a condition for loading a packed container onto a ship, namely without this information a container cannot be loaded.

Because of the recent introduction of the above requirement, the qualifying remarks on weight of containerised goods will not be an excuse for inaccuracy of information. The weight unknown qualification will lose its merit in the near future. However, it should be noted that other qualifying remarks on the number and conditions of goods in a container is not governed by the above SOLAS amendments, and 'weight unknown etc' remarks are usually taken place to bulk cargoes rather than containerised ones.

6. *Evidentiary effect*

The information in contract particulars is generally regarded as *prima facie* evidence for the goods as stated at the time of receipt [56]. However, the information will be conclusive evidence in litigation, where "proof to the contrary ... is not admissible" [57], in each of the following three cases: first, under the RR Article 41 (b) (i), when the contract particulars are included in the first category of transport documents (i.e. negotiable transport documents) or their electronic alternatives, and that document is transferred to a third party acting in good faith

[55] See IMO resolution MSC.380(94) and MSC.1/Circ.1475.

[56] Rotterdam Rules, Articles 40 and 41. For careful consideration of the evidentiary effect of the contract of particulars under the Rotterdam Rules, see R. WILLIAMS, *Transport Documentation*, *cit.*, pp. 211-215.

[57] Rotterdam Rules, Article 41 provides that "proof to the contrary ... shall not be admissible".

[58]; second, under the RR Article 41 (b) (ii), when the contract particulars are included in the third category of transport documents (i.e. non-negotiable and must be surrendered in order to obtain delivery of the goods) (no electronic alternatives), and the document is transferred to the consignee acting in good faith [59]; third, under the RR Article 41 (c), when the contract particulars are included in the second category of transport documents (non-negotiable and not requiring the document to be tendered against delivery of the goods) or their electronic alternatives, and a consignee has acted in good faith in "reliance" on the contract particulars furnished by the carrier [60].

As discussed earlier, the requirements for contract particulars to be conclusive (proof to the contrary being not admissible) differ amongst the three categories of transport documents. The provisions under Article 41(b) (ii) and 41 (c) are new, because the corresponding two categories of non-negotiable transport documents are newly incorporated by the RR. As a result, the interpretations of Article 41 (b) (ii) and 41 (c) are legally uncertain so far, for instance the meaning of "reliance" in Article 41.

The differences in strictness in the requirement for contract particulars to become conclusive evidence in the three categories of transport documents may serve to prevent contract particulars from being conclusive where litigation is brought by a consignee, who is also the shipper, and should have known whether contract particulars were proper and conformed to the common law principle of *estoppel* [61]. The carrier will be precluded from contesting in the event that:

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[58] Rotterdam Rules, Article 41 (b) (i); See also Diamond, 'The Rotterdam Rules', 507. As regards the second category of transport documents (non-negotiable, requiring surrendering), the contract particulars are not conclusive evidence.

[59] Rotterdam Rules, Article 41(b) (ii).

[60] Rotterdam Rules Article 41(c) describing the three cases of meaning "contract particulars" as "(i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier (rather than by the shipper); (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and (iii) The contract particulars referred to in article 36, paragraph 2".

Article 36.2 states "The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include: (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage; (b) The name and address of the carrier; (c) 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; and (d) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued".

[61] *Estoppel* is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial.

goods were received in apparent good order and condition where a clean [i.e. unclaused] non-negotiable transport document is issued, and then a cargo claim is brought against the carrier by a consignee who is not the shipper.

This is the first time that a seaborne cargo convention has prescribed that information contained in a transport document (including a bill of lading) should be conclusive evidence against the carrier [62]. In particular, the second and third categories of transport documents are also not excluded for this purpose (e.g. sea waybills, and straight bills of lading) [63]. In contrast, the analogous provisions of the Hague-Visby and the Hamburg Rules are restricted to the information which can be treated as conclusive within a bill of lading [64]. Accordingly, in the RR, the scope of documents bearing potential conclusive information is narrower than the CMI 'Uniform Rules Sea Waybill' [65], but wider than previous conventions.

7. *Identity of the carrier*

The contract particulars must include "the name and address of the carrier" [66]; if a carrier is identified by name in the contract particulars, any other information relating to the identity of the carrier (e.g. the small print on the reverse side of a transport document containing the identity of the carrier) shall have *no* effect to the extent to which it is inconsistent with the identification within the contract particulars [67]. The RR further establish certain presumptions on assumed carriers and ways to refute such presumptions [68]. Finally, the RR

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[62] *C.f.* a similar provision could be tracked in a non-convention document of CMI, the Uniform Rules for Sea Waybills 1990.

[63] Rotterdam Rules Article 41(b) (ii) regarding the third category of transport documents, because the provision mentions "non-negotiable" transport documents being "surrendered in order to obtain delivery of the goods", but it does not mention the application to "an electronic transport record"; and 41 (c) regarding the second category of transport documents, because this provision mentions the "non-negotiable" transport documents or alternative "non-negotiable electronic" transport records, but it does not mention the need to surrender the documents in order to obtain delivery of the goods.

[64] Hague and Visby Rules Article III; Hamburg Rules, Articles 14, 15, 16, 17 and 18.

[65] Uniform Rules for Sea Waybills Article 1 stipulates that this set of uniform rules, including Article 5 *(Description of the goods), shall* apply when adopted by a contract of carriage which is not covered by a bill of lading or similar document of title (namely not covered by the Hague and Visby Rules).

[66] Rotterdam Rules, Article 36.2 (b).

[67] Rotterdam Rules, Article 37.1.

[68] Rotterdam Rules, Article 37.2.

also enable an action to be taken out against the bareboat charterer [(69)] or the identified carrier after the expiry of the usual period of two years [(70)].

On balance, these are practical provisions of identities of the carrier to solve a number of well-known problems encountered in delivery of the goods. They may result in a few inconsistencies between the information on the front and the reverse sides of transport documents. Additionally, these presumptions will also motivate registered ship-owners and bareboat charterers to ensure that a transport document is clearly and properly drafted as regards the identification of the correct carrier, thus resulting, hopefully, in less costly and expensive litigation.

8. *Electronic records*

Electronic commerce has been used in shipping practice since 1970, particularly in liner carriage where transport documents are not always issued [(71)]. However, current English law [(72)] has not actively accommodated electronic transport records [(73)]. Even so, this does not mean that carriers do not or cannot use electronic records [(74)].

In order to facilitate the use of the law in electronic commerce and to fill the gap between law and practice, the RR are the first to devise provisions designed to regulate negotiable and non-negotiable transport records on a statutory basis. The RR are also the first [(75)] to provide a set of provisions designed to

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[(69)] Bareboat charter is the chartering of a vessel without crew.

[(70)] Rotterdam Rules, Article 65.

[(71)] R. THOMAS, *The Carriage*, *cit*., pp. 284-294.

[(72)] E.g. UK COGSA (1971 and 1992), and the Electronic Communications Act (2000).

[(73)] See e.g. M. GOLDBY, *CMI Rules for Electronic Bills of Lading*, in *Lloyd's Maritime and Commercial Law Quarterly,* 2008, pp.56-70; M. GOLDBY, *Electronic Alternatives to Transport Documents: A Framework for Future Development*, in R. Thomas (edited by), *A New Convention on the Carriage of Goods by Sea - The Rotterdam Rules: An Analysis of the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,* London, 2009, pp. 225-241.

[(74)] Y. BAATZ, C. DEBATTISTA, F. LORENZON, A. SERDY, H. STANILAND, M. TSIMPLIS, *The Rotterdam Rules: A Practical Annotation*, London, 2009, p. 23, paragraph 8-01.

[(75)]See M. ALBA, *The Use of Electronic Records as Collateral in the Rotterdam Rules: The Future Solutions for Present Needs,* in *Uniform Law Review/Revue de Droit Uniforme*, 2009, XIV, pp. 803, 816 (referring to the Comite Maritime International Rules for Electronic Bills of Lading and noting that the electronic equivalence approach is a developed solution addressing the already existing needs of electronic commerce). Uniform Rules for Sea Waybills.

promote the use of electronic transport records [76]. There were no corresponding provisions under previous rules [77]. The RR provide for transport documents, accompanied by their equivalent electronic records, throughout the whole Rules [78].

Article 8 of the RR provides for the "use and effect of electronic transport records" by setting out two principles. The first principle, given in Paragraph (a), is that it is necessary for issuance and subsequent use with the consent of the carrier and the shipper. Diamond argues that the "consent" includes consent that has not been expressed where use of an electronic record is made by the carrier without protest by the shipper [79]. The inferred/implied consent seems too broad for the current researcher. Although it would save transaction costs for both shippers and carriers, it is doubtful whether the shipper is able to protest against its use. Express consent or consent in practice would better protect the shipper's equal contracting position. The second principle, contained in Paragraph (b), is that the electronic transport record has equivalent [80] status in the record to that of paper-based documents [81].

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[76] See M. STURLEY, T. FUJITA, *E-Commerce Concepts and Electronic Transport Records*, in *The Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,* London, 2010, pp. 47-57. R. THOMAS, *The Carriage of Goods by Sea under The Rotterdam Rules*, *cit.*, p. 290, paragraph 14.39. J.A.E. FARIA, *Electronic Transport Records*, in A. Von Ziegler, J. Schelin, S. Zunarelli (edited by), *The Rotterdam Rules 2008. Commentary to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Alphen aan den Rijn, 2010, pp. 51-69.

[77] R. THOMAS, *The Carriage*, *cit.*, p. 284.

[78] Rotterdam Rules Articles 1.17-1.22, 8, 9, 35, 36, 37, 38, 39, 40, 41, 45, 47, 51, 57, and 58. Articles 1.17 and 1.18 define electronic communications and electronic transport records, respectively. Further relevant provisions on negotiable electronic transport records are Articles 1.10 (b) (the definition of the "holder" of a negotiable electronic transport record), 1.21 (the definition of the "issuance" of a negotiable electronic transport record), 9 ("Procedures for use of negotiable electronic transport records"), and 10 ("Replacement of negotiable transport document or negotiable electronic transport record"). CMI, *Rules for Electronic Bills of Lading 2009*.

[79] A. DIAMOND, *The Rotterdam Rules*, *cit.*, p. 500.

[80] Rotterdam Rules, Article 8 (Use and effect of electronic transport records) providing the principle of functional equivalence, which means that electronic records are treated as having the same effect in law as their paper counterparts. R. THOMAS, *The Carriage of Goods by Sea under The Rotterdam Rules*, p. 284, paragraph 14.5.

[81] M. ALBA, *The Use of Electronic Records as Collateral in the Rotterdam Rules: The Future Solutions for Present Needs,* in *Uniform Law Review/ Revue de Droit Uniforme*, pp. 803 and 816 (referring to the Comité Maritime International "Rules for Electronic Bills of Lading" and noting that the electron equivalence approach is a developed solution addressing the existing needs of electronic commerce).

This incorporation of electronic transport records under the RR [82] could bring about a technical dilemma. On the one hand, the singularity (uniqueness) of transport documents is commercially required and expected by law, because of their roles as documents of title. On the other hand, the singularity has not been well achieved under the prospective technology in existing electronic systems, such as Bolero, ESS-Databridge™, 'Electronic data exchange' systems and the "Atlantic Container Line data-freight system" [83]. Due to the intangibility and easy duplication of electronic records, the debate about singularity [84] was addressed but has not been solved in the RR (Articles 1.17-1.21, 8, and 9). The electronic equivalent of the handover or endorsement of a paper-based transport document is the transfer of "exclusive control" over the negotiable electronic transport record [85]. However, it is technologically difficult to achieve the position where only one holder controls the record at any one time. One possible solution is to omit the wording "exclusive". Moreover, Diamond suggests the introduction of singularity into Article 9 by providing "an assurance that at any one time there is only one holder" [86].

Corresponding to the three kinds of paper-based transport documents, there are only two categories of electronic alternatives, namely non-negotiable electronic transport records, which do not require surrender against delivery of goods [87], and negotiable electronic transport records. The reason why the kinds of electronic transport documents do not exactly match paper-based kinds is that it is not necessary to surrender an intangible non-negotiable electronic record in order to take delivery of goods. Therefore the UNCITRAL Working Group 21st Session decided to drop a draft provision on delivery when the electronic equivalent of a non-negotiable transport document that requires surrender is issued, on the grounds that "there was no existing practice of using the electronic equivalent of a non-negotiable transport document that required surrender [which] required support in the context of the draft Convention [RR]"

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[82] Rotterdam Rules Chapter 3, e.g. Articles 8, 9.2 and 35.

[83] See J. WILSON, *Carriage of Goods by Sea*, London, 2010, pp. 165-171. R. THOMAS, *The Carriage*, *cit.*, p. 292.

[84] See more about the singularity and functional equivalency of electronic records in M. STURLEY, T. FUJITA, G. VAN DER ZIEL, *E-Commerce Concepts*, *cit.*, pp. 47-50 (illustrating codification and the functional equivalency of electronic transport records and the traditional paper documents).

[85] J. FARIA, *Electronic Transport Record*, *cit.*, pp. 58, 62, 64, 66.

[86] A. DIAMOND, *The Rotterdam Rules*, *cit.*, p. 502.

[87] The title of Rotterdam Rules 46 (*Delivery when a Non-negotiable Transport Document that Requires Surrender is Issued*) shows that, within non-negotiable electronic transport records, only those that require surrender are issued.

[88]. Diamond advocates that this is possible because UNCITRAL did not envisage that the presence of a printed electronic record would be counted as "surrender" [89]. As a result, in the UNCITRAL negotiations, an amendment to this Article came into being, with regard to a negotiable electronic transport record, which "expressly states that the goods may be delivered without the surrender of ... electronic transport records" [90]. The current author has found that the presence of the right security key of electronic straight bills of lading may be construed as the "surrender" as well.; accordingly, Articles 46 and 51.2 should be reworded slightly by adding "and equivalent electronic records". However, the author also noted that this change of rewording might be only a linguistic change and will not be comically necessary, and the commercial practice will not be hampered much even if without the linguistic correctness.

9. *Concluding remarks*

The provisions mentioned above are problematic. Some provisions are restrictive so that there are difficulties in incorporation of new-born commercial practice into the scope of application of the RR. The definition of "negotiable transport document" (Article 1.15) refers to the descriptive words 'to order', 'negotiable' or 'other appropriate wording', but the meaning of the last phrase is vague regarding legal practice. Moreover, "indicates" within this definition is not a strong enough word [91] and is likely to result in conflicting rulings if a particular document falls within negotiable or non-negotiable categories. For instance, suppose a bill of lading states on its surface "not negotiable unless 'to order' " [92]. It is possible that the scope of the negotiable transport record is likely to be confined by the use of wording 'to order' or 'negotiable'; 'negotiable' has a number of different meanings in various jurisdictions. To avoid restriction, a possible alternative is to assume a transport document and its equivalent electronic form to be 'negotiable' documents, and possibly define 'negotiable' in the RR. As things stand, some provisions under the RR are too general to be of practical

[88] See the 21st Session of Working Group's opinion in UNCITRAL Doc. A/CN.9/645, paragraph 157.

[89] A. DIAMOND, *The Rotterdam Rules*, *cit.*, p. 500.

[90] See negotiations before the Commission in June to July 2008, Doc.A/63/17.

[91] G. VAN DER ZIEL, *Delivery of the Goods*, in A. Von Ziegler, J. Schelin, S. Zunarelli (edited by), *The Rotterdam Rules 2008. Commentary to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Alphen aan den Rijn, 2010, p. 199.

[92] R. THOMAS, *The Carriage*, *cit.*, p. 275.

feasibility. For example, Article 9.1 merely lists the items which need following, but goes no further on how to formulate; formulating is subject to a very general guideline, contained in Article 9.2. In addition, the UN-led attempts tend to sgnificantly expand the scope of uniformity of seaborne cargo regimes, as seen in the following table. From the replacement of 'bills of lading' with 'transport dments' and their electric equivalents, it is found that the uniformity under all the four conventions demonstrates a tendency to expand successively (from the Hgue to Rotterdam).

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Table of comparison of relevant provisions under the Hague, Visby, Hamburg, and Rotterdam Rules [93]

Matters Regulated under Existing Related Conventions	Hague Rules (HAR)	Visby Rules (VR)	Hamburg Rules (HMR)	Rotterdam Rules (RR)
Applicability as to documents	• **Bills of lading** (B/L) or similar document of title • B/L issued pursuant to carterparty • Other documents (e.g. waybills) if expressly incorporated • Charterparties where there is express icorporation of the HAR.	Same of HAR	**All** types of contracts of carriage, such as: • Waybills; • Short sea notes; • B/L; • B/L issued pursuant to charterparty (in the hand of third parties or carterparties expressly incorporated HMR	**All** these of contracts of carriage: e.g. • Negotiable transport documents (and equivalent electronic transport records); • Non-negotiable transport documents (and equivalent electronic transport records). *Does not apply to charterparties and "contracts for the use of a ship or of any space thereon", and non-liner transportation, unless the transport documents (or electronic transport records) are transferred to non-original parties.*
Applicability as to voyages	Applies to **B/L** where carriage is **between ports** in two different States if: • The B/L is issued in a Contracting State; •Carriage(outbound voyage) is	Same as HAR	Applies if: • Outbound voyage is from a Contracting State; • Inbound voyage is to a Contracting State; • An optional **port** situated in a Contracting State	Applies if one of the following place in a contracting state: • Port of loading; or • Place of acceptance; or • Place of discharge; or

[93] Updated by the current author with special reference to a similar table in I. CARR, P. STONE, *International Trade Law*, London, 2010, pp. 317-328.

	from a port in a Contracting State; • The contract contained in or evidenced by the B/L specifies the Rules to govern the contract; • The contract contained or evidenced by the B/L specifies that the laws of a state giving effect to the Rules are to govern the contract		and named in the contract of carriage becomes the actual port of discharge; • The B/L or document evidencing the contract of carriage is issued in a contracting state; • The Rules are incorporated by the parities; • There is provision that the laws of a state giving effect to the Rules are to govern the contract	• Place of delivery located. .
Applicability as to cargo	Do **not** apply to: • Deck cargo : where in fact stowed on deck, and made explicit on the face of the B/L; • Live animals; • Particular cargo	Same as HVR	Applies to **all** types of cargo (including deck cargo and live animals). Cargo qualifies as deck cargo on the basis of: • Usage; • Statutory rules; • Special agreement	Applies to **all** types of cargo (including deck cargo and live animals). Cargo qualifies as deck cargo on the basis of: • Statutory requirement; • Goods in containers or vehicles and decks specifically fitted to carry these goods; • Usage, practice in trade; • Agreement *Carriers are not liable for loss or damage or **delay** if caused by special risks inherent to such carriage.*
Carriers' documentary responsibility and contract particulars	The carrier is to issue a B/L *on demand by the shipper*, showing:• leading marks ;• number of packages or pieces; • quantity or weight of goods; • apparent	Same as HAR	The carrier, on demand by the shipper, is to issue a B/L, showing details enumerated in HAM Art. 15. The document must state that the	Shipper entitled to a non-negotiable transport document (or equivalent *electronic record*) or a negotiable transport document ((or equivalent *electronic record*)

	order and condition of goods		contract of carriage is governed by the Rules, which nullify any stipulations derogating from the Convention to the detriment of the shipper or consignee (see "Carriers' liability" in below rows)	These documents to contain a number of contract particulars: e.g. • description of goods; • name or address of carrier; • apparent order and condition of goods
Loss of Immunities of carriers		Damage or loss proved resulting from an act or omission with the intention of carrier, his servant or agent	Same with HVR, and add new provisions: Deck cargo where contrary to express agreement and carrier's or his servants intend to cause damage or loss	Art 17(3). See carriers' defences above.
Loss of the carriers' right to limit liability		Art.IV.5 (e): an act or omission of **the carrier** done with intent to cause such loss, damage or recklessly and with knowledge that damage would probably result. *Such an act or omission of the carrier's servant or agent does* ***not*** *affect the carrier's right to limit liability*	Art.8: an act or omission of the carrier done with intent to cause such loss, damage or *delay*, or recklessly and with knowledge that such loss, damage or delay would probably result. The above applies to a **servant or agent** who is not an independent contractor. In case of deck cargo, the carrier loses limits where cargo is carried on deck contrary to express agreement or, in the absence of usage, agreement or statutory rules, and it can be shown that the loss, damage	This right does not exist when: • (Art.59.1) when the value of the goods has been declared by the shipper and included in the details of the transport document; or • (Arts. 18 and 61) a personal act or omission of the carrier and the person (e.g. performing party, master/crew of ship, employees of carrier/performing party, any other person who performs or undertakes to perform any of carrier's obligations) claiming a right to limit done with

			or delay occurred from an act or omission of the carrier done with intent to cause such loss, damage or **delay** or recklessly and with knowledge that such loss, damage or delay would probably result	intent to cause loss/delay or recklessly and with knowledge that such loss/*delay* would probably result. Art 17: In case of unauthorised carriage of deck cargo carrier loses entitlement to defences provided in
Shipper's responsibility	• To guarantee the **accuracy** of marks, number, quantity and weight. • To inform the carrier of any **dangerous** nature of goods	Same as HAR	Same as HVR and add new provisions: • to mark dangerous goods in a suitable manner; • particulars of the dangerous nature of the goods are to be include dangerous nature of goods in the B/L	Chapter 7 of the RR (Art. 27-29) Obligations of the Shipper to the Carrier: • To **deliver** goods ready **for carriage** and in such condition as to withstand journey; • If obligations in respect of loading and stowing undertaken by shipper then these obligations should be done **properly and carefully**; • Packing of **container** or vehicle to be done properly and carefully; • To provide information, instruction and documents in a **timely** manner; • To inform carrier of **dangerous** nature or character of goods.
Carriers' right to indemnity, costs and damages	• The shipper should indemnify for loss, damage and expenses incurred from inaccurate particulars. (It is unclear	Same as HAR	• The shipper should indemnify for loss suffered due to the inaccuracy of any particulars. Duty subsists even where	• The shipper is liable to carrier where loss or damage caused due to failure to **inform** carrier of

	whether this right exists against a consignee or endorsee). • The shipper should pay damages and expenses arising directly or indirectly from the shipment of dangerous cargo without the carrier's consent.		the B/L is transferred to a consignee or endorsee • The shipper is liable for loss suffered by the carrier where the carrier is unaware of any dangerous nature of the cargo • There is an agreement between the shipper and the carrier, void against any third party, to indemnify the carrier from any losses suffered from issuing a clean B/L	**dangerous** nature of goods and carrier or a performing party does not otherwise have knowledge • The shipper is liable where carrier suffers, loss or damage due to shipper's failure to **label dangerous** goods • The shipper is liable for inaccuracy/insufficiency of **information** *Shipper's liability extends to the acts/omissions of the shipper's assimilated parties* (i.e. employees, agents and sub-contractors) *to whom performance of any obligation is entrusted.*
Shipper's liability	The Shipper is liable for: • the carrier's damages because of inaccurate particulars • shipment of dangerous cargo without the carrier's consent	Same as HAR	Same as HAR and add new provisions: Duties subsist even the BOL is transferred; The carrier unaware of dangerous nature of goods; An agreement to indemnify the carrier form Damages from issuing a clean BOL	The shipper is liable for the damage and loss caused by breach of shipper's responsibility (Art. 30).
Jurisdiction			At the option of the claimant, proceedings can be initiated in a competent court located in: • The defendant's principal place of busi-	(Opt-in Chapter of the RR) Shippers and carriers may designate competent t court. Proceedings against carriers can be instituted

			ness; • The defendant's habitual place of residence, in the absence of a principal place of business; • The place where the contract was made, provided the defendant has a place of business, branch or agency through which the contract was made; • The port of loading; • The port of discharge; • The place designated by parties to the contract of carriage; • The place where the carrying vessel or another vessel of the same ownership has been arrested	in a competent court at: • Domicile of the carrier; • Place of receipt agreed in contract of carriage; • Place of delivery agreed in contract of carriage; • Port where goods initially loaded; • Port where goods finally discharged from ship Proceedings against a maritime performing party may be instituted at: • domicile of maritime performing party; • port(s) where goods received/delivered by maritime performing party; • port where maritime performing party performs activities in relation to the goods
Delivery of the goods; Rights of control; Transfer of rights				Only regulated under the RR (Chapters 9, 10 and 11 of the Rules)

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