International trade law course work material

Introduction:

The Rotterdam rules is alternate name given to the conventions on contracts implemented by United Nations General Assembly for carriage of the goods internationally either wholly or partly via Sea. This convention extends internationally and needs to be followed by all signatory members of rules. It is totally focused on sea trade. This is called Rotterdam rules because the place where it was signed was Rotterdam, the Netherlands and thus after the name of this place, this treaty was termed as "Rotterdam Rules".The convention was opened for signatories for the first time on September 23, 2009. The purpose behind this treaty was the regulation of maritime freight transport. Though there existed TheHague rules and The Hague-Visby rule and the Hamburg rule serving the same purpose but this treaty was drafted for expansion and modernization of the previously established treaties and contracts. The countries that signed the convention on the first day i.e. on September 23, 2009 include Congo, Poland, Denmark, France, Guinea, Gabon, Ghana, Greece, the Netherlands, Nigeria, Norway, Senegal, Spain, Switzerland, Togo and U.S.A.In total, there were these 16 countries which signed the treaty on its first day of opening for signatories. The treaty had such a great impact everywhere that only in a period of one month, the treaty was signed by 5 more nations. With these nations, the number of signatories increased to 21 nations.

The Rotterdam Rules is a set of 96 articles that have been drafted with due care. These articles which together form the treaty are highly technical in nature and these articles follow a comprehensive approach towards relevant issues. When this treaty was drafted the purpose was to slowly replace the already existing Hague rules and The Hague-Visby rule and the Hamburg rule drafted for regulating maritime transport. It was expected that from this convention to attain uniformity of law of maritime carriage. The convention is very important as it is estimated that around 80% of the total world trade is carried via way of sea. The Rotterdam Rules are expected to make clearer the issues like who should be held responsible and liable for what, when should be held responsible, the place of occurring of such responsibility and the extent of such responsibility; when the transportation of goods has been undertaken by way of sea.

Let's try to understand the reason for existence of these rules. The world has seen a huge development in technology which has created complex scenarios for trade which was earlier handled manually. With the advent of technology, everything was required in an electronic mode and since the records were maintained manually it posed a problem. With the help of internet, all documents started appearing in electronic format. The law could not catch with the speed of advancement in technology and gaps in the law started appearing.Next was containerization which has become the talk of the town. It has revolutionized the shipping industry. No longer were goods to be unloaded at ship tackle because they were already packed in containers. They

were directly offloaded in the waiting trucks which directly delivered it to the consignee doorstep.The courts in different jurisdictions tried their best to interpret the law but failed to do so. They even tried to modify the existing rules and also tried to create new rules as circumstances dictated. Since different jurisdictions interpreted the laws differently. So, there was no common consensus across jurisdictions for a common law which made the situation even more complex.

Shipping is an international trade and modifying own laws or creating own rules is not supposed to work longer. Hence the need appeared to form a new uniform international rule which can cope up to the changes in technology, and can find out its effect on sea transport and present day trade practice. This resulted in the formation of Rotterdam rules. These rules provide a legal framework to maritime transport considering technological advancement affecting the shipping industry. The technology has affected the door to door movement of goods, containerization and the generation of documents in electronic form with the help of e-commerce. However, the rules did not appear instantly and a large time period of 7 years was spent before the rules could actually come into existence. The preliminary working on these rules started 7 years back in the year 2002. During the preparation,several rounds of inter-governmental negotiations under the aegis of the United Nations Commission for International Trade Law (UNCITRAL) took place. The responsibility of preparing draft was handed to Committee Maritime International (CMI) which was again a global entity. Finally, on September 23, 2009, the Rules were signed by sixteen countries not from a single continent but spread around three continents. The findings presented by United Nations 2008 International Merchandize Trade statistics year book represent that, the first 20 countries which signed this treaty account for some 25 % of the current volume of total international trade.

Now the discussion will move to what are these various articles of this treaty all about, what all they provide. It administers the carriage of the goods via sea, via land or rail transportation before and after the sea transport till the time goods reach to the doorstep of the related person, Consignee, also called the owner. In short, it recognises all the various modes of transportation which help to get the goods available at the doorstep of the owner. As far as, the earlier drafted rules are concerned, the various modes of transportation used to be covered by separate contracts which caused a lot of paper work as well legalities. It abolished all those.The most important articles of this treaty are as follows:

Article 12 of the treaty made an important provision which was not in existence as far as other international treaties on maritime transport are concerned. In case of the Hague-Visby regime, the responsibility attached to the carrying of ship related only to loading and unloading. Rotterdam Rules have extended this responsibility and according to this, now it is the responsibility of the carrier and maritime performing parties to take care of goods throughout the duration for which carriage or storage of these goods take place in accordance with a through contract of carriage. Or we can also say that a carrier's responsibility starts from receiving the goods from the party and ends with delivering the goods to the party as per agreed under the

contract's terms and conditions. If we examine this change, it will be a sigh of relief for many exporters when they can get the guarantee of goods till their doorstep.However in case the loss, damage or delay happens in cargo prior to loading or after offloading, the Rotterdam rules don't come with any extra provision. In this rule, remains the same as earlier provision. This can be seen a critic to Rotterdam as it took seven long years to sign the same, but they were unable to make any law on Loss or damage.

Lets us now move on to article 13 which speaks about carrier obligations. As per the Article, there are 3 main obligations of a carrier. First one relates to carrying and delivering; second is to care for the goods; and third one relates to exercising due diligence for making the vessel seaworthy. The general duty of carrier remains the same in the Rotterdam rules as it was under **Article III Rule 2** of Hague-Visby Rules with an exception that the period of responsibility for which the carrier has to exercise due diligence is increased.

Moving on to Article 14 which is related to Specific obligations on Sea voyage, this article basically modifies carrier's obligations of seaworthiness. Rotterdam rules provide that all carriers should exercise due diligence for making and keeping the ship seaworthy, properly manned, equipped and supplied; and to keep the ship as well as container supplied by the carrier in and upon which goods are to be carried fit and safe for reception, carriage and preservation. Under another regime, the carrier has to exercise due diligence for keeping the ship seaworthy before and after the start of voyage. But Rotterdam rules provide for a continuing obligation to keep the vessel seaworthy.

Article 17 of the treaty relates to "Basis of Liability" which has been mentioned under chapter 5 of the treaty. This article deals with the liability of the carrier for loss, damage, or delay. The contract has tried to overcome the defects present in earlier treaties of both The Hague or Hague-Visby Rules and the Hamburg Rules. The article gives that the carrier is responsible for loss, damage or delay if the person making the claim is able to prove that such loss, damage or delay has taken place during the time period when the carrier was responsible for the goods. The time period of responsibility of carrier has been provided under the law. The article also provides that in case the carrier can prove that such loss, damage or delay has not taken place due to his fault then his liability is reduced or sometimes even completely ruled out.

Article 26 of the convention provides that in casethe loss, damage or delay has happened to cargo solely before or after the sea leg of any given voyage, the Rotterdam Rules will not be applicable. This article however is considered to be faulty because generally, it is very difficult to exactly find out when such loss or damage has happened. This difficulty in finding out the timing of such loss or damage can give rise to disputes relating to the choice of convention which can be applied under such situation.This can be said as one major defect of this new convention.

Article 44 of the Rotterdam Rules; deal withthe obligation of the consignee or owner of goods towards acknowledging the receipt of goods. This article provides that if the carrier of goods or the performing party that delivers the goods to consignee makes request to the consignee to acknowledge the receipt of goods delivered, the consignee is bound to make such acknowledgement as per the manner which exists at the destination of delivery. The article 44 also gives that if the consignee refuses to make such acknowledgement, the carrier or the performing party has the right to refuse the delivery of goods until and unless such acknowledgement is made by the consignee.

Article 49 of the Rotterdam Rules; deal with the carrier's rights to retain the goods if the payment due to him is not made by the consignee. The article protects the rights of the carrier or the performing party by providing them with the right to hold goods till the time their payment is made clear for the goods. This helps the carrier or the performing party to realize their due amounts.

Lets us discuss about the regulations mentioned in **Article 62**.One of the critical difference that lies among the Rotterdam Rules and previous rules is that it has increased the time limit for bringing suit. It is now two years as against earlier time limit which was one year; and it commences on the day at which the carrier has completed the delivery of the goods. In case the delivery does not take place, then it commences on the last day on which the goods should have been delivered.Under such a situation, any action with an affect of indemnity can be undertaken after a period of two years of the time permitted by the applicable law of the jurisdiction where proceedings are instituted, or 90 days from the date that the person seeking an indemnity has settled the claim or has been served with process in the action against itself or, if earlier, within the time.

All the important rules have been discussed in article which is important from the point of clear differentiation. Rotterdam Rules not only act as an improvement over the existing regulations but it also deals with a number of new and critical issues. This convention also has the capability of facilitating international trade by creating a harmony in international sea trade environment. The treaty provides a legal means of facilitating an easy and free sea trade across international borders. Any kind of disputes between the parties to trade can be settled down through this treaty of international nature. This makes it possible for the traders to use sea as a means of carriage of goods without any hassles. This is such a set of regulations which protect the interests of all engaged in trade.

The Rotterdam has been successful in mending some of the loop holes of its earlier regimes, but it could not do it fully. Still there are many areas in the rules remain open to be worked. There is no limit to sea trade. It will keep on increasing Day by day. So, in order to avoid any further failure of rules, definitely there is needed to look at Rotterdam rules again for providing provisions against the missed areas of trade and regulations. It is also a fact there are only few members who have accepted these rules. The rules member countries shall be increased by

taking other countries into confidence. It will happen when everyone will come together on a common platform with their suggestions about current rules and required rules.

The convention is also criticized for being too complicated. The treaty contains 96 articles in total which is obviously a large number. Being such a large number of articles, it becomes difficult to remember the provisions mentioned under all of these articles. Also such a large number of articles make the whole convention very complicated to understand and apply.It is also a fact that Rotterdam rules is definitely a work which has done with due care after having long meetings across various regions of globe. New rules clearly show the amount of effort which has been put up the steering committee to whom the task of drafting rules was given. But, still there remains a scope of further development and improvement in rules.

Conclusion:

The world has seen a huge development in technology which has created complex scenarios for trade which was earlier handled manually. R. rule provide a legal framework to maritime transport considering technological advancement affecting the shipping industry. The technology has affected the door to door movement of goods, containerization and the generation of documents in electronic form with the help of e-commerce. the various modes of transportation used to be covered by separate contracts which caused a lot of paper work as well legalities. It abolished all those. . The freedom to derogate from the Rules in instances of volume contracts is premised on the trade aspect of the contractual relationship between carrier and shipper.

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