EDITORIAL

A new Convention on the international carriage of goods by sea

On 11 December 2008 the General Assembly of the UN adopted the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea and authorised a ceremony for the opening for signature to be held on 23 September 2009 at Rotterdam. In keeping with established custom the proposed new law will become familiar to all as the Rotterdam Rules. The new proposal requires adoption by at least 20 states to achieve elevation to the status of international law, no reservations are permitted (save that the provisions relating to jurisdiction and arbitration are subject to express affirmation) and with adoption states must denounce earlier conventions. In recognition of the significance of this development the entirety of this issue of the Journal is devoted to an analysis of the new Convention.

The ambition is that the new Convention will replace the two existing versions of the Hague Rules and also the later Hamburg Rules and establish a single international code. Much has been absorbed from one or other of the preceding conventions and so the new code will not strike the reader on first acquaintance as wholly unfamiliar. It is in one sense the product of a mix and match selection process, but in other regards it is nothing short of radical.

The first clue of its radical approach is to be found in its title, which declares that it relates to the carriage of goods 'Wholly or Partly by Sea'. Not much forensic expertise is required to appreciate that this connotes not only traditional port-to-port transport but also multimodal transport with a sea leg. This extends radically on the reach of the preceding conventions and also contributes significantly to the scale and complexity of the new Convention. Many will also consider the recognition of 'volume contracts' as a special category, deserving of conditional immunity from the regulatory regime established by the new Convention, as a radical development. This category will be a new and strange concept to many, who will require instruction as to its definition before passing judgment on the proposal that this area of marine transportation is one where freedom of contract should be retained.

Nothing is more radical than the sheer breathtaking ambition of the new Convention. In its scope and detail it casts such a significant shadow over its predecessors that they are reduced to spectral images. It travels substantially beyond the primary relationship between carrier and shipper, and even in this regard gives a prominence to the legal position of shippers that is not witnessed in the earlier conventions. Other topics such as rights of control and delivery, the transfer of the transport contract, jurisdiction and arbitration clauses, the principles emanating from what are now universally identified as Himalaya clauses, and electronic transport documentation are also comprehensively embraced. The new Convention is, therefore, much more than a regulator of the core contract of carriage, it may truly be represented as an international maritime transport and commercial code.

When such ambition exists, there can be no sense of surprise when confronting the bulk of the instrument. It runs to 94 Articles, divided into 18 Chapters, and it makes for very detailed reading. There is much to analyse, digest, ponder and assess, and the object underlying this

special issue is to assist the readers of the journal to understand the proposals embodied in the new Convention and to arrive at some personal assessment or judgment of their merits. The contributions have been written by experts in the field, some with direct experience of the lengthy and considered preparatory process which has preceded the formal adoption of the Convention. The 12 contributions cumulatively provide a comprehensive and considered evaluation of the new proposals, and also probably represent the first concerted response in print.

At this juncture it is impossible to predict the fate of the Rotterdam Rules, although the experience associated with the Hamburg Rules does not represent an encouraging precedent. Nonetheless, it cannot be disputed that the existing mix of three international conventions and national laws, coupled with the absence of a multimodal convention, is not an ideal jurisprudential environment within which to expect international maritime trade to develop and prosper. It is patently clear that something needs to be done and therefore the initiative taken by the CMI and thereafter continued by UNCITRAL is to be applauded, but only time will tell whether the entire process and the commitment given to it by so many able and dedicated people has produced the right answer.

DRT