

Rotterdam Rules: Multimodal Solutions and Impact on the Rail Road Carrier



The basic approach when embarking on the revision of traditional / historic maritime transportation law

Background of the problem:

- > Situation of maritime and shipping trade in 1924
- > Segmentation of the Industry → division by mode of transport



The basic approach when embarking on the revision of traditional / historic maritime transportation law

Special Nature of Maritime Law:

- > Maritime law was *lex specialis* – *lex maritima* and has developed independent from the law on land (and later by air)
- > Shipping Industry as a prominent private sector
 - road → small entities
 - rail road → governments (Europe)
 - air → national airlines



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The basic approach when embarking on the revision of traditional / historic maritime transportation law

Result:

- > Segmentation of the law on international transport
- > Segmentation of the "ownership" for the legislation / harmonization of international transport law
 - CMI
 - IMO
 - UNCITRAL
 - UNCTAD
 - UN ECE
 - ICAO
 - OTIF
 - etc.



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The basic approach when embarking on the revision of traditional / historic maritime transportation law

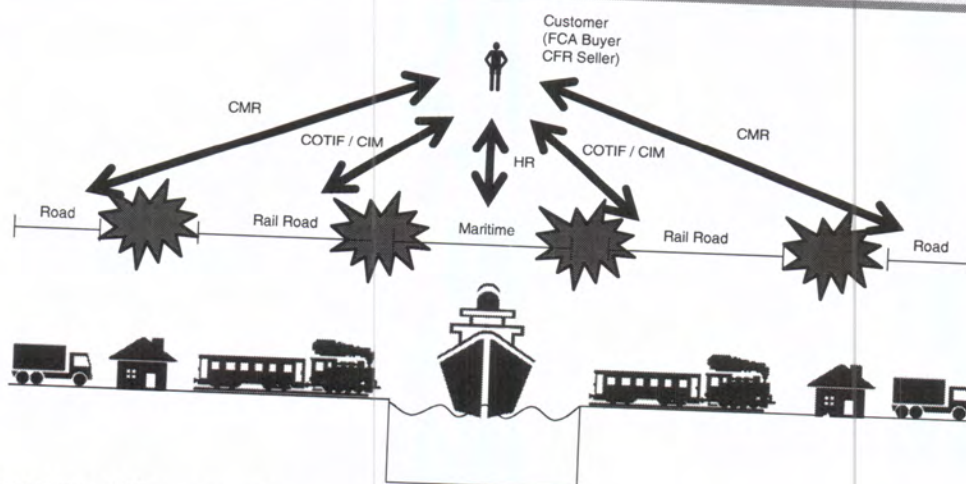
Dealing with the Segmentation of International Legislation:

- > Segmentation of the law depending on the stage of the multimodal logistical chains
- > Role of the Freight Forwarder
- > Role of the Shipping Documentation
- > UNCTAD / ICC Rules
- > International Land Transportation Instruments basically restricted to the European Continent

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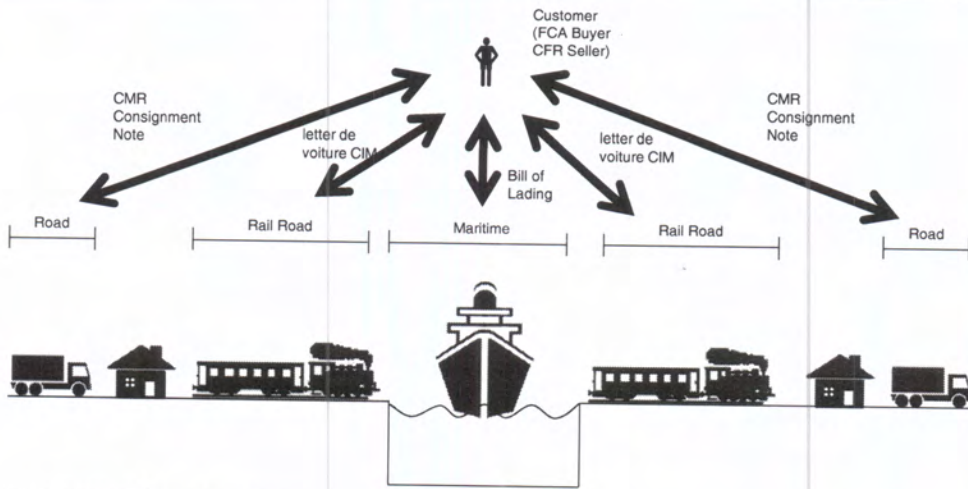
Segmentation of the law depending on the stage of the multimodal logistical chains



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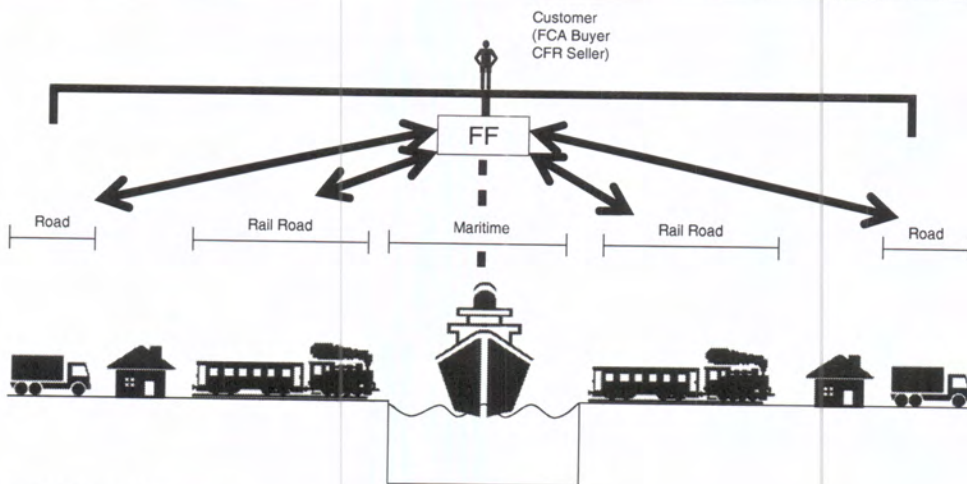
Role of the Shipping Documentation



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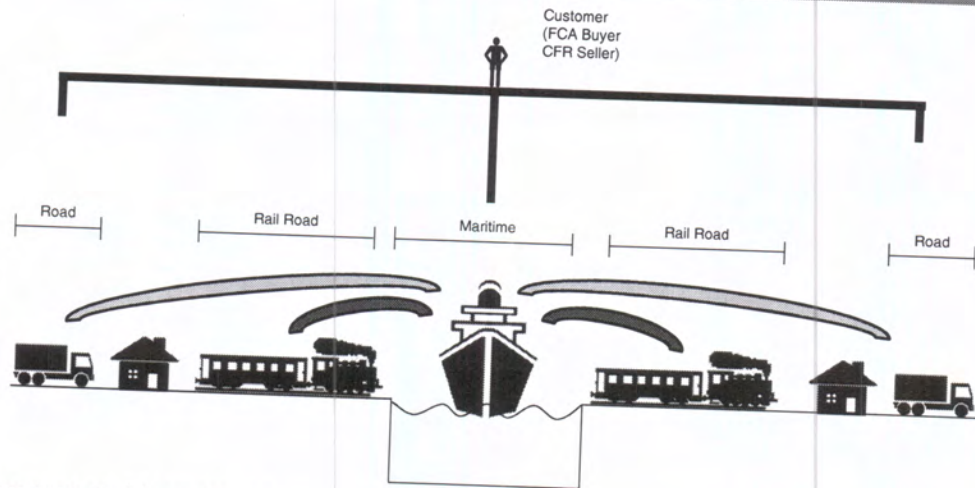
Freight Forwarder as "Carrier" The NVOCC concept



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Door-to-Door Ocean Shipping



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„The UNCITRAL Project“

- > From the Hague
- > to Rotterdam
- > via Hamburg

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Main features of the Rotterdam Rules

- > Trade:
Trade transactions are the “raison d’être” of the shipping industry

- > Maritime Transportation:
Movements of goods are the backbone of international trade

Main features of the Rotterdam Rules

- > Contractual approach versus documentary approach
 - Extension of the scope from a liability convention to a convention on the contract of carriage
 - Recognition of the particularities of the contract of carriage and the transport documents in the context of international trade
 - Inclusion of electronic trade and “documentation”

Main features of the Rotterdam Rules

- > From “tackle to tackle” to “door to door”
 - Extension of the scope of application
 - Concept of the so-called “**Maritime +**”
 - Conflict with land transportation conventions (CMR / COTIF)?

Multimodality under the Rotterdam Rules



Multimodality under the Rotterdam Rules

- > **Defining the geographical scope**
 - > Utopia: A full maritime solution stretching from door to door
 - > Capitulation: back to port to port
 - > Compromise: revised network system
- > **Scope of Application:** Article 5 (1) RR
- > **Limited Network System:** Article 26 RR

Scope of Application of the Rotterdam Rules

- > Contract of international carriage, where one of the following places is located in a Contracting State:
 - place of receipt (e.g. Zurich)
 - port of loading (e.g. Hamburg)
 - place of delivery (e.g. Montreal)
 - port of discharge (e.g. Boston)
- > **NEW** → „door – to door“ transportation with 4 different triggers

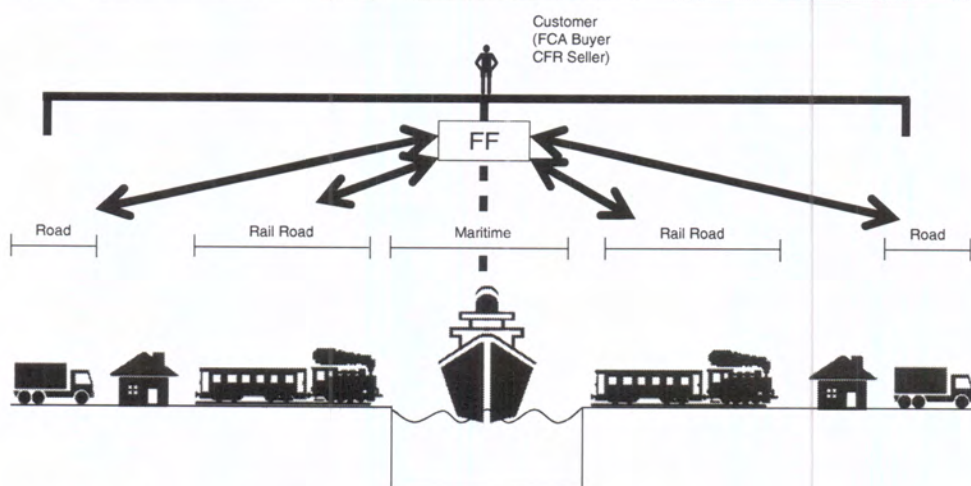
Article 5 Rotterdam Rules General scope of application

1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage,

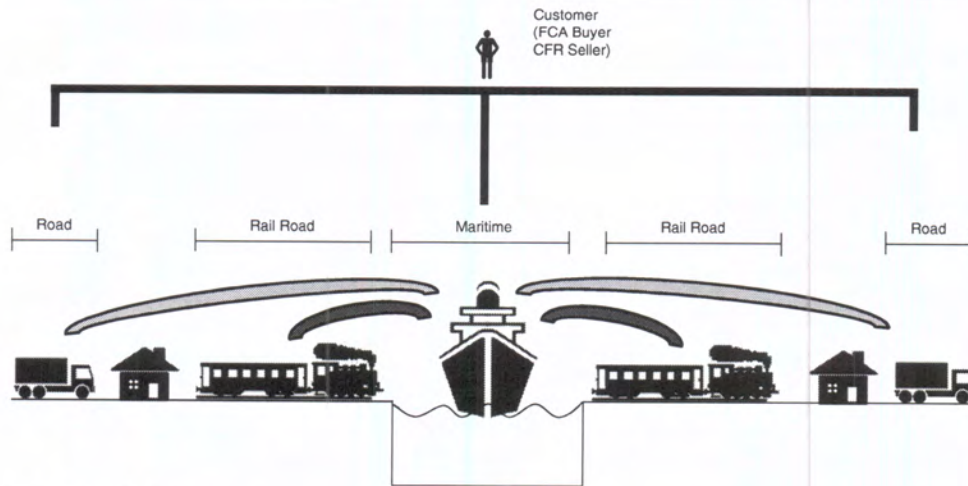
any one of the following places is located in a Contracting State:

- > (a) The place of **receipt**;
- > (b) The **port of loading**;
- > (c) The place of **delivery**; or
- > (d) The **port of discharge**.

Liability Regime for the „Maritime +“ Carrier under the Rotterdam Rules



Liability Regime for the „Maritime +“ Carrier under the Rotterdam Rules



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Liability for on-land damages

- > Where loss or damages or (circumstances causing a delay) occur
 - solely before loading the goods onto the ship
- > or
 - solely after their discharge from the ship

The UN Convention will not prevail over an other International Instrument (e.g. CMR) as long as such Convention would have applied to those land operations if shipper had made a separate and direct contract and provides for liability / limitation in a mandatory manner

- > **NEW** → limited Network System

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Article 26 Rotterdam Rules Carriage preceding or subsequent to sea carriage

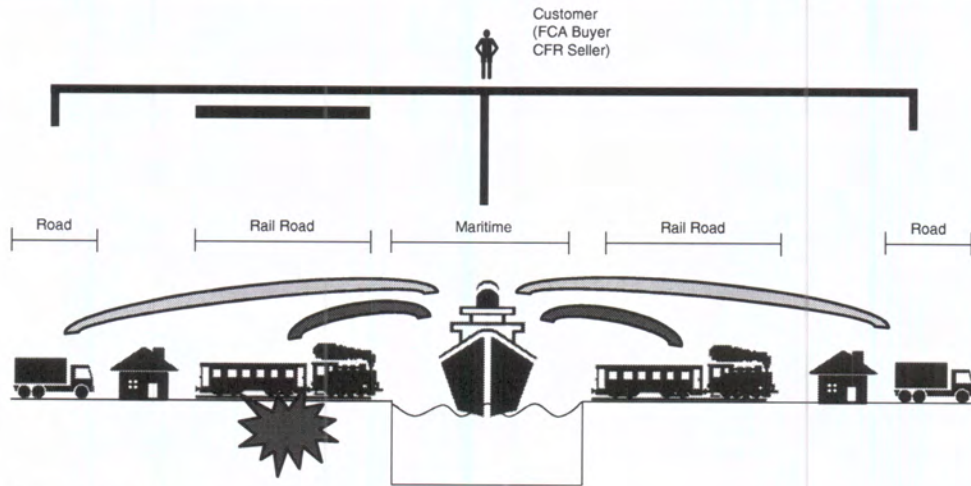
When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility **but solely before their loading onto the ship or solely after their discharge from the ship**, the provisions of this Convention do not prevail over those provisions of **another international instrument** that, at the time of such loss, damage or event or circumstance causing delay:

- > (a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities **if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage** where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;
- > (b) Specifically provide for the **carrier's liability**, limitation of liability, or time for suit; and
- > (c) **Cannot be departed from by contract** either at all or to the detriment of the shipper under that instrument.

Limitation of Liability

> Hague Rules 1924 →	100 £ Sterling / Package
> US COGSA 1936 →	500 USD / Package
> Visby Protocol 1968 →	30 Franc Poincaré / kg
-	10'000 Franc Poincaré / Package
> SDR Protocol 1979 →	2 SDR / kg
-	666,67 SDR/ Package
> Hamburg Rules 1978 →	2.5 SDR / kg
-	835 SDR / Package
> NEW → UNCITRAL →	3 SDR / kg
	875 SDR / Package

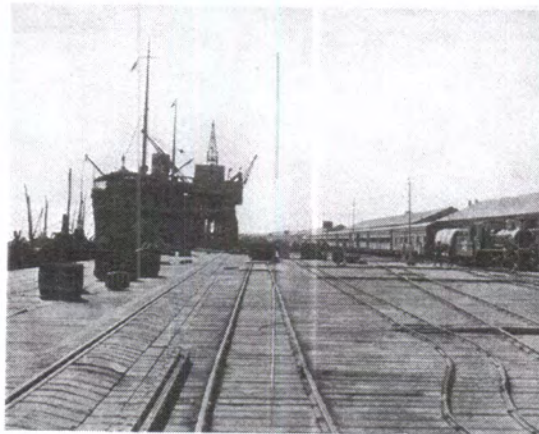
Liability Regime for the „Maritime +“ Carrier under the Rotterdam Rules



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“Liability of the Sub-Contracted Carrier” under the Rotterdam Rules



At the Landing Stage, Maspf, Barrs

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Maritime Performing Party in the Rotterdam Rules

- > From the Contractual Carrier to the „Actual Carrier“
- > **NEW** → From the „Actual Carrier“ to the „Maritime Performing Carrier“
- > Himalaya Clause – Defence?
- > Liability Regime of Maritime Performing Carriers:
 - basis of liability and defences
 - limitation of liability
 - jurisdiction: ports or domicile of maritime performing party

Article 1 Rotterdam Rules Definition of the “Maritime Performing Carrier”

7. **“Maritime performing party”** means a performing party to the extent that it performs or undertakes to **perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship.**

An **inland carrier** is a maritime performing party **only if it performs or undertakes to perform its services exclusively within a port area.**

Article 19 Rotterdam Rules Liability of maritime performing parties

1. A maritime performing party is **subject to the obligations and liabilities** imposed on the carrier under this Convention and is **entitled to the carrier's defences** and limits of liability as provided for in this Convention if:
 - (a) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or **performed its activities with respect to the goods in a port in a Contracting State**; and
 - (b) The occurrence that caused the loss, damage or delay **took place**:
 - (i) during the period between the arrival of the goods at the **port of loading** of the ship and their departure from the **port of discharge** from the ship;
 - (ii) while the maritime performing party had **custody of the goods**; or
 - (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

Article 19 Rotterdam Rules Liability of maritime performing parties

2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.
3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.
4. Nothing in this Convention imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

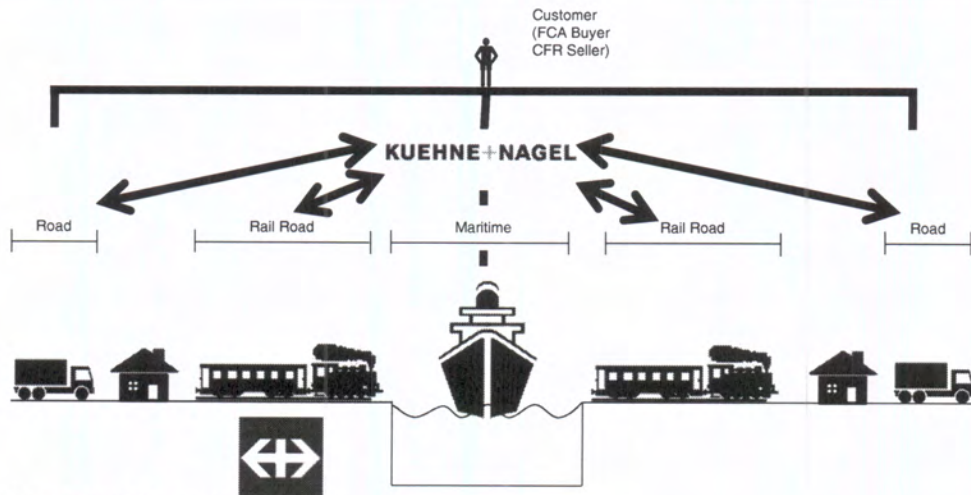
Impact of the on the Rail Road Carrier

- > No changes:
 - > Rail Road carrier remains responsible purely under its own legal regime (i.e. COTIF / CIM), as long as it does not enter itself into a maritime + contract as carrier from door to door:
 - Same defenses
 - Same Limits of Liability
 - Same (Master-) documentation

Impact of the on the Rail Road Carrier

- > The contractual party is either
 - a **direct customer** / shipper (entering into a contract for the typical rail road services under COTIF / CIM) or a
 - **NVOCC carrier** (e.g. Danzas → Danmar Lines / Kühne & Nagel → Blue Anchor Line) or
 - **Door-to-Door Ocean Line** (e.g. MSC / MEARSK)

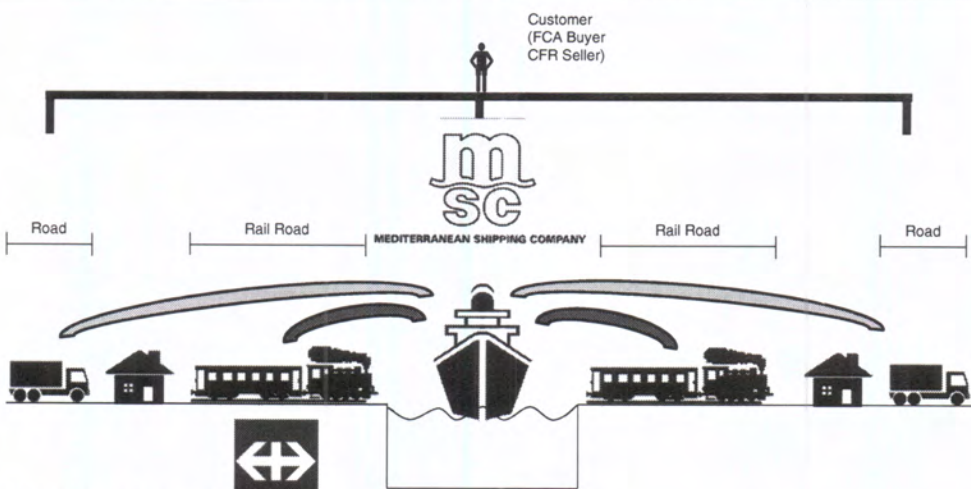
Impact for the Rail Road Carrier under the Rotterdam Rules?



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Impact for the Rail Road Carrier under the Rotterdam Rules?



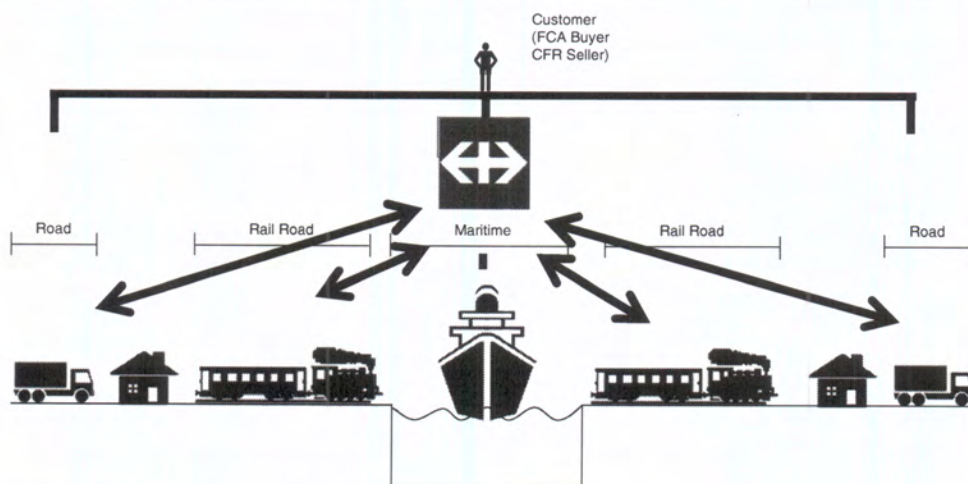
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Impact of the on the Rail Road Carrier

- > Rail Road will not "feel" the Rotterdam Rules, unless the Rail Road carrier gets involved into "multimodal maritime contracting"
- > Rail Road Carrier is not a "maritime performing carrier" → no direct action under the Rotterdam Rules against the Rail Road Carrier

Impact for the Rail Road Carrier under the Rotterdam Rules?



Impact of the on the Rail Road Carrier

- > Possible Changes:
 - > Commercial shift away from direct market to secondary market (NVOCC Carriers as clients)
 - > Possible exposure under the Rotterdam Rules for Port / Harbor Rail Road Services (becoming maritime performing carrier)
 - Direct Action
 - Basis of Liability and Limitation under the RR
 - Protection from tort

Rail Road Carrier as Maritime Performing Carrier



Where will we go from here?

- > Rotterdam Inauguration Ceremony (Rotterdam, 23 September 2009)
- > Entry into Force: Ratification of 20 Contracting States

Lessons learned for the Rail Road Carrier?

- > Tailor Instrument to the commercial realities and expectations
- > Build in flexibility to expand on new combined services "outside of the box"
- > Respect the participating modes of transport and attempt to accommodate their needs and particularities
- > Do not focus on liability regimes but on the mechanism of the shipping routine as part of a greater commercial transaction of the customers
- > Harmonize where possible with solutions found by regimes of other Modes of Transport

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Thank you for your attention.

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