Lady Justice. Shipping and trade lawyers continuously work to improve international commercial law over time. Photo credit: Tingey Injury Law Firm.

Convention for negotiable cargo documents likely to finalise

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2025 is likely to see the finalisation, in Vienna from December 15-19 2025, of the work of the United Nations Commission on International Trade Law (UNCITRAL) on the Convention for Negotiable Cargo Documents (NCD).

At UNCITRAL's 52nd session in 2019 the Chinese government presented a proposal on possible future work "towards the development of a negotiable transport document to facilitate multimodal carriage of goods, particularly by railway in the Euro-Asian space" It was pointed out at the same time that "unlike the ocean bill of lading the railway consignment note did not serve as a document of title and could not be used for the settlement of and financing of letters of credit." That proposal was accepted by UNCITRAL.

The Comite Maritime International (CMI) has monitored the progress of the work done over the last few years in Working Group VI of UNCITRAL to ensure that there was no inconsistency between the laws as they operate in relation to bills of lading and their negotiability and the proposed new Convention. Miriam Goldby, a highly regarded expert in this area of maritime and commercial law and Professor at London University, has taken on the major burden of that work for CMI.

The NCD provides in Article 1.2 that: "This Convention does not affect the application of any international convention or national law relating to the regulation and control of transport operations."

Article 24.1 permits States, when ratifying the new Convention to express reservations in the following

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circumstances: "A State may declare at the time of deposit of its instrument of ratification, acceptance, approval or accession or at any time thereafter, that it will not apply this Convention to any negotiable transport document that evidences or contains a contract for the carriage of goods wholly by sea governed by an international convention to which it is a State Party."

It is the hope of UNCITRAL that the NCD will be treated as being complementary to all the liability regimes: Hague, Hague Visby, Hamburg (their hybrids) and Rotterdam Rules, relating to the carriage of goods by sea and there will not be any overlap. Similarly it is clearly the intention that the NCD will be complementary to any legislation based on the MLETR.

Many of the provisions of the NCD are modelled on equivalent provisions under the latest attempt to modernise the liability regime for the international carriage of goods by sea, the Rotterdam Rules (2008), which is much more than just a liability Convention, thus many of the definitions in the NCD have direct equivalence and use the same wording as are contained in the Rotterdam Rules and many of its principal provisions are also modelled on equivalent provisions in the Rotterdam Rules. It must be emphasised that the new Convention is neither a liability convention, nor is it a transport contract. Traders using a document which comes within the NCD will have to ensure that equivalent liability provisions apply to their legal relationship, which match the provisions contained in other Conventions (such as those dealing with carriage by road, rail and air) and are included in their contracts.

The NCD will have the potential, if widely accepted, to make significant changes to how international carriage of goods and trade, particularly by rail in the Euro-Asian space, not involving a sea leg, operates. The NCD does not deal with any aspect of the contract of carriage, (in particular not to liability issues). It merely provides for the negotiability of documents that come within the Convention.

Some suggestions which CMI made to the Working Group during the course of this year were not accepted by the delegates and as a result CMI has some concerns that the shipping industry, for example, will not support this Convention and there could be conflicts of laws issues arising under the Convention and local laws relating to Bills of lading under the liability Conventions. Only time will tell whether these concerns will affect ratifications by States who rely on maritime trade. Once ratified the success of the NCD will be measured by the level of comfort respective trades will find in it, and thus trigger greater use in their trades and financial arrangements.

Reform in 2026?

Looking forward- 2026 will be an important year in relation to reform in the maritime legal world. Next July UNCITRAL will celebrate the 60th anniversary of its formation. It intends to hold meetings around the world to remind governments that there are numerous conventions which UNCITRAL has drafted which are not in force and require ratifications to bring them into force.

Historic reform

In the remainder of this article in the hope that we can learn from the past I would like to discuss some aspects of legal reform that I have witnessed over the last 50 years that I have been in practice in Australia in the maritime field and to pay homage to four people in government that I have encountered who have played key roles in developing or seeking to develop reform in the maritime industry as it affects Australia. I would then like to conclude by comparing their foresight and involvement with recent governments which have not appeared to appreciate the significance of the international carriage of goods that Australia depends on, and the need for reform.

I will start by referring to the annual seminars that the Attorney-General's department organised in Canberra in the 1970s and early 1980s which took place over a weekend for business leaders to hear from the department of the work that it had been engaged in over the previous 12 months and what might be expected in the following 12 months. These were extremely informative meetings attended by key players in business, the professions, academia and the judiciary. It is a great shame that similar meetings do not take place today, One of the principal topics discussed in one of the first meetings I attended in the late 1970s was the convention that was being developed internationally which became known as the Hamburg Rules which were agreed in 1978.

Three of the people I want to mention in particular served as ministers of transport during the last 50 years that I have practised in the maritime legal world in Australia. They were the Honourable Peter Morris, the Honourable John Sharp and the Honourable Warren Truss. They each made (or sought to make), things happen in their portfolios which made or would have made a difference for all Australians. The first two attended and spoke at Conferences organised by the Maritime Law Association of Australia and New Zealand. They understood how reform of the maritime industry benefits the public at large. The fourth person I want to pay homage to was an employee of the Department of Transport, Danny Scorpecci, who appreciated that Australia, in having legislated for the Hamburg Rules Convention but not brought it into force, had gone too far in taking that step because it had not attained worldwide support, although it was clearly considered that reform of the Hague Rules liability regime was much needed (even in the 1970s). Danny Scorpecci brought together a committee of people representing each of the principal stakeholders concerned with the liability regime for the carriage of goods by sea and that committee proposed to the government a package of reforms to the Hague Rules regime which were then legislated by the federal government. Those reforms have stood the test of time but are now greatly in need of further reform.

By July 2026 there will be at least two recent maritime legal conventions that have been produced by UNCITRAL in the last 17 years which, in the opinion of this writer, Australia should ratify if it is has any interest in having relevant and up to date maritime legal regimes in place.

The Rotterdam Rules Convention

The first convention is the Rotterdam Rules Convention, to which reference has already been made earlier, and I have written extensively about for this journal (and others). It contains modest (but long overdue) reforms to the over 100 years old Hague Rules regime, which benefits Australians and in particular shippers and consignees who for over 100 years have suffered a regime which


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was clearly weighted in favour of carriers, and thus not of benefit to Australian consumers. The Rotterdam Rules does not have the widespread support now that it had internationally when it was agreed in 2008. In my view that should not be a factor in the modern era when its benefits to Australians are weighted so much more in their favour than the current regime.

The Judicial Sales Convention

The second international convention which Australia should ratify is the Judicial Sales Convention. It, essentially, is a convention to recognise, formally, what was a widespread international expression of comity whereby recognition was given by States to orders made by courts in other countries for the sale of ships, for example, when they had been ordered by those courts in which an owner of a ship had been found liable to pay a debt to a claimant for damage which had been occasioned to it, for example, to its cargo, and the creditor had been paid from the proceeds of the sale of the ship. The debtor shipowner would forfeit the ship pursuant to such a sale and the new buyer would acquire the ship with a clean title, thus no further claim could be made against that ship once it had been sold by the court. The comity which had existed for many years had been seen to be breaking down so this convention was agreed at UNCITRAL to remedy that problem and help preserve the market for the acquisition of ships from judicial sales which ultimately benefits ship financiers, such as mortgagees, ship owners who acquire such vessels and all other creditors of the defaulting ship owner, such as stevedores, employees, providores, ship repairers, bunker suppliers etc, who had debts owned to them at the time of the sale.

While Australia does not have too many judicial ship sales it is clearly a worthwhile convention for Australia to ratify, if only to protect Australians who buy second hand ships in other jurisdictions at judicial sales or cargo owners who may have cargo on board a foreign ship that has been acquired from such a sale.

I should disclose a personal interest in these two conventions, Rotterdam and Judicial Sales. Both had been subject to many years of discussion and debate within the CMI and CMI had produced draft instruments which it had presented to UNCITRAL, so that after further detailed consideration and work by government representatives (including Australian) they might become international conventions. There is one other Convention which has been under consideration by Australia for many years which could also form part of a much needed package of reforms and that is the Wreck Removal Convention of 2007.

In conclusion, readers of this journal do not need to be told the importance of maritime trade to Australia. Unfortunately, it seems government does. There have been a few key individuals that I have referred to within government over the past 50 years who have made or tried to make significant contributions to the reform of the maritime industry. In recent years, no one has sought to replicate their example. I hope the 60th anniversary of UNCITRAL which will be celebrated from July 2026 will be a catalyst for someone in Canberra and the maritime industry to come together and at least ratify the Rotterdam Rules and the Judicial Sales Conventions, but also other maritime conventions such as the Wreck Removal Convention, in order to bring Australia into the 21st century and not languish as it has done in recent times.

This distinctive-looking building is the Vienna International Centre, the home of the Secretariat of the UNCITRAL. Photo credit Dominik Ferl Stose.

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