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Arbitration in Maritime Law as a Legal Means for Resolving Disputes Arising from International Cargo Transportation Contracts under the Rotterdam Rules of 2008

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Abstract:
The tremendous advancements in technology and international economic growth, particularly in the field of international trade, have prompted serious research into the role of maritime arbitration as a mechanism for resolving maritime disputes. This aims to prevent disruptions in international trade and ensure the delivery of quality services in trade facilitation. Countries have increasingly turned to maritime arbitration to streamline international trade, culminating in the adoption of the Rotterdam Convention in 2008 for this purpose.
Keywords: Rotterdam Convention, maritime arbitration

Introduction:
Commercial arbitration has become the most widely used and effective legal means for resolving disputes related to maritime transport contracts. It has been adopted by most national laws and regulated by international conventions. This adoption is undoubtedly due to its connection with facilitating commercial transactions from legal, economic, and judicial perspectives between countries and contracting parties. Arbitration, as a legal tool for resolving disputes among economic actors—the exporter, importer, and carrier, who are the parties to the contractual relationship in the international transport contract—has become a necessity imposed by international economic changes resulting from the development of international trade and maritime transport. These changes require legal mechanisms to address disputes arising from maritime contracts.
Among the international agreements that include provisions related to maritime arbitration is the Rotterdam Rules of 2008.

Problem Statement:
What is the role of the Rotterdam Rules in resolving disputes arising from maritime transport contracts?

Research Objectives:
To explore the importance and role of the Rotterdam Rules of 2008 in resolving disputes arising from maritime transport contracts.

Research Methodology:
To study the Rotterdam Rules and their role in resolving disputes through arbitration, we followed the historical, descriptive, and analytical methods.

Research Plan:
To address the problem at hand, the research is divided into two sections. The first section discusses the concept of maritime arbitration (linguistically, legally, and technically), while the second section covers the rules of arbitration according to the United Nations Convention on Contracts for the International Carriage of Goods wholly or partly by sea.

First Section: The Concept of Maritime Arbitration:
The significance of maritime arbitration stems from its role as a legal means for resolving international commercial disputes. This importance arises from several considerations, namely that maritime contracts are commercial, economic, and maritime agreements. These aspects derive their importance from the economic changes that have made maritime transport the most critical means of transporting goods.
Moreover, the importance of arbitration derives from its legal, judicial, and economic effectiveness, which is tied to its efficiency in resolving disputes related to maritime transport contracts. Arbitration is distinct from

domestic court proceedings in terms of the speed with which maritime disputes are resolved, the simplicity of arbitration procedures, and the prior consent of the parties to abide by the arbitration decision on the subject of the dispute.

First Demand: Definition of Arbitration in Language and Jurisprudence:

First: Arbitration in Language:

The term "arbitration" in the Arabic language carries several meanings, including judgment, prevention, and command. One of God's names is "Al-Hakim" (The Wise), where the first meaning involves adjudicating between disputants, and the second meaning (prevention) is derived from the term "ruler," meaning the one who prevents injustice. It also means to appoint someone to arbitrate between disputants, and it is said, "We appointed so-and-so to judge between us," meaning we approved his judgment.[12] Jurists also state that "if two persons submit to someone for adjudication between them, and he gives a judgment, his judgment is executed.[3] As described by the author of 'Al-Durr': 'By definition, it is the appointment by both disputing parties of an arbitrator to judge between them" .[4]

As for the word "sea" in language, it is the opposite of "land," and it is said that it was named as such for its depth and vastness, with its plural forms being (بحار) or ,[5](بحور) and every great river is also referred to as a "sea".

Second: The Technical Definition:

Legally, arbitration is an agreement between two parties in a specific dispute to refer the matter to a third person or more for resolution without resorting to the courts. If the agreement occurs before the dispute arises, it is called an arbitration clause, and if it happens after the dispute arises, it is called an arbitration agreement or arbitration submission. [6] It is also defined as...

"An agreement whereby the parties to this contract commit to resolving any disputes that have arisen or may arise in the future concerning the execution or interpretation of this contract through maritime arbitration".[7]

A part of the jurisprudence defines arbitration as "a method chosen by the parties to resolve disputes arising from the contract by submitting the dispute for resolution before one or more individuals, known as arbitrators, without resorting to the judiciary". [8] The UNCITRAL Model Law on International Commercial Arbitration also defines it as "an agreement between the parties to refer to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement."[9]Article of the UNCITRAL Model Law defines it as an agreement between the parties to refer to arbitration all or certain disputes that have arisen or may arise between them concerning a defined legal relationship, whether contractual or non-contractual, and the arbitration agreement may take the form of an arbitration clause in a contract or a separate agreement".[10]

Second Demand: The Importance of Maritime Arbitration:

Most laws have adopted maritime arbitration as a means to resolve disputes arising from contracts for the carriage of goods by sea due to its legal, judicial, and economic importance, particularly in light of international economic changes.

Two major historical conventions have embraced maritime arbitration: the Brussels Convention of 1924, known as the Hague Rules, which is the international convention for the unification of certain rules of bills of lading signed in Brussels. The convention has 75 member countries, most of which are carrier countries, and two Arab countries, Algeria and Kuwait, have joined the convention. The convention was amended twice, in 1968 and 1979, known as the Hague-Visby Rules, with 27 and 21 member countries respectively.

The second convention concerned with maritime arbitration is the United Nations Convention on the Carriage of Goods by Sea, 1978, known as the Hamburg Rules,[11] which has 34 member countries, most of which are shipper countries, including six Arab countries: Jordan, Egypt, Lebanon, Morocco, Syria, and Tunisia.[12]

The Hamburg Rules, in Article 22, permit arbitration for any dispute related to the carriage of goods based on an agreement between the parties. The Hamburg Rules recognize the "Paramount Clause," respecting the will of the parties, allowing the shipper and carrier to agree to subject the bill of lading to the Hamburg Rules, except in cases where the convention applies automatically under its own provisions.[13]

The third convention regulating maritime transport contracts is the United Nations Convention on Contracts for the International Carriage of Goods wholly or partly by sea, which was the result of the tireless efforts of the United Nations Commission on International Trade Law (UNCITRAL) in cooperation with the International Maritime Committee. This convention introduced new provisions aimed at keeping pace with

technological and logistical developments in the global maritime transport and logistics industry. It also expanded the use of container transport and electronic transport documents alongside traditional paper transport documents, and promoted carriers providing door-to-door services using multimodal transport methods, including international maritime transport of goods.

This convention was designed to keep pace with technological and logistical developments in maritime transport contracts, with the aim of establishing uniform rules that balance the interests of carriers and shippers and address the changes in the transport industry. The use of arbitration as a means of resolving international maritime disputes began in the early 20th century, leading to several multilateral international conventions addressing the subject of arbitration".

-The Convention for the Execution of Foreign Arbitral Awards signed in Geneva on 26/09/1927.

-The New York Convention signed on 10/06/1958, concerning the recognition and enforcement of foreign arbitral awards, which entered into force on 24/09/1959.

Article 7(2) of the New York Convention stipulates the termination of the Geneva Protocol of 1923 on arbitration awards and the Geneva Convention of 1927 on the execution of foreign arbitral awards for the signatory or bound states.

-The Washington Convention of 18 March 1965, which established the International Centre for Settlement of Investment Disputes (ICSID).

-The United Nations Convention on the Law of the Sea of 1982, which includes arbitration as a means for resolving maritime disputes related to the law of the sea. States may voluntarily resort to arbitration in consideration of the principle of state sovereignty. Arbitration is applied according to the convention if no written choice of one of the settlement means listed in Article 287 of the convention is made, assuming that the state has accepted arbitration by default.

Article 287(1)(c) of the fifth part of the convention outlines the cases where arbitration is resorted to, which includes:

-When the parties disagree on choosing a specific means to settle the dispute.

-When a party state in the dispute does not choose any means of settlement listed in Article 287(3) of the fifth part of the convention by a written declaration, arbitration is applied.

The convention provides two types of arbitration in the event of disputes between an international organization and a member state in the convention. If a state opts for arbitration through a written declaration, the International Court of Justice may be resorted to.[14] The convention also outlines specific arbitration procedures for practical and field reasons in Annex VIII of the convention, limiting its role to resolving maritime disputes in specific areas mentioned exclusively, such as:

-Marine fishing, protection of the marine environment, scientific research, and maritime navigation.

Special arbitration procedures apply to disputes concerning the interpretation or application of the provisions in the convention.

-The European Convention on International Commercial Arbitration signed in Geneva on 21/04/1961.

-The Arab Union for Commercial Arbitration, established after the meeting held in Beirut in May 1999, to divide Arab arbitration centers.

Algeria joined the New York Convention of 1958 through Presidential Decree No. 88-233 dated 5 November 1988, which ratified the New York Convention concerning the recognition and enforcement of foreign arbitral awards, with reservations. Legislative Decree No. 93/09, dated 25/04/2009, was issued to amend and supplement Ordinance No. 66/154 dated 08/06/1966, which includes the Code of Civil Procedure. [15] Chapter Six of Part Two of the Code outlines the provisions of arbitration as included in Book Five, entitled "Alternative Dispute Resolution Methods" in Articles 1039 to 1061, allowing natural and legal persons to resort to arbitration concerning their international commercial relations. It should be noted that the Algerian legislator has not provided specific provisions for maritime disputes.

Several countries have adopted maritime arbitration. The Emirati legislator regulated it in Articles 325-339 of the UAE Maritime Commercial Law. The Egyptian legislator did the same with Egyptian Law No. 27 of 1994. The Iraqi legislator permitted arbitration under Article 251 of the Civil Procedure Code No. 83 of 1969, allowing arbitration in all disputes arising from the execution of an arbitration contract. The Algerian legislator adopted arbitration as a legal means for dispute resolution under Legislative Decree No. 93-09 [16] dated 23 April 1993, which amended and supplemented the Code of Civil Procedure by modifying Article 442 and introducing a specific chapter on international commercial arbitration. Additionally, Law No. 08 -9 [17] dated 25-02-2008

"Legislative Decree No. 09-17, dated 25/02/2008, which includes the Code of Civil and Administrative Procedures, addressed arbitration in the second section of the fifth book.[18]

The adoption of maritime arbitration laws confirms its judicial importance, as its application can relieve the burden on the judiciary. Arbitration, when chosen voluntarily by the parties, not only has judicial significance but also proves its effectiveness, especially in reducing costs and resolving disputes in a short period compared to the lengthy processes of ordinary courts. Some scholars estimate that arbitration can resolve disputes within 60-90 days, a relatively short period compared to litigation in regular courts, which can sometimes take several years.[19] The speed of resolving arbitration cases is due to the fact that arbitrators do not approve delay requests, unlike ordinary courts, which may allow for adjournments. Additionally, arbitrators are often specialized in matters related to maritime transport contracts, and they generally do not resort to expertise, which is often the case in regular courts.

The application of arbitration procedures in national laws and international regulations also helps achieve economic, commercial, and even political objectives. When a state enters into maritime transport contracts, it often resorts to arbitration to avoid being subjected to the domestic laws of other countries in case of disputes regarding these contracts.

Second Section: Arbitration Rules According to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

First Demand: The Legal Nature of Maritime Disputes.

Second Demand: Arbitration Rules in the 2008 Rotterdam Convention.

First Demand: The Legal Nature of Maritime Contracts.

1- Definition of Maritime Contract Disputes: Maritime contract disputes include those arising from contracts of the maritime carrier through a bill of lading or a charter party, as well as disputes arising from shipbuilding, repair, and sale contracts, marine insurance and reinsurance contracts, marine sales contracts, and other maritime contracts.[20]

Maritime disputes can be categorized into dry and wet navigation disputes. "Dry navigation" refers to all commercial uses of ships, while "wet navigation" concerns maritime accidents. Most dry navigation disputes are contract-based, whereas most wet navigation disputes are based on non-contractual liability, or tort, such as ship collisions.[21] Wet navigation disputes are divided into four categories: collisions, marine assistance, salvage, and confiscation, as well as liability limitation. Dry navigation encompasses various types of ships, from passenger vessels to bulk carriers, including livestock carriers.

Maritime disputes subject to arbitration often involve roaming ships that are not part of organized maritime lines. A large percentage of maritime disputes resolved through arbitration are not handled through institutional arbitration but rather through ad hoc arbitration.

In practice, most disputes arising from these commercial uses are governed by contracts, typically charter party contracts for either a single voyage or a specific time period, bills of lading, or ship sale, purchase, or maintenance contracts.[22]

A maritime transport contract is defined as a contract in which the carrier agrees to transport goods by sea for the shipper in exchange for a specified fee. It is a contract between two parties: the shipper, who provides the goods to be shipped and pays the freight, and the carrier, who transports the goods delivered by the shipper. The contract may be in the form of a bill of lading or a charter party for renting ships.[23]

The Algerian legislator defines the maritime transport contract of goods in the Maritime Code, within the second book, which addresses the commercial exploitation of ships, specifically in the third section under the title "Transport"...

"In the first chapter of the general rules in the Maritime Code, Article 7 [24] stipulates that 'the carrier, under a maritime transport contract, undertakes to deliver specific goods from one port to another, and the shipper undertakes to pay the freight, called the shipping fee'.

Referring to some comparative laws, it can be said that the Algerian legislator's definition of the transport contract is almost identical to that of the French legislator in Article 15, Paragraph 01 of the law dated 18 June 1966, concerning contracts for the chartering of ships and maritime transport, which defines it as a contract where the carrier undertakes to transport goods by sea for a fee.[25] This definition is also similar to that found in Jordanian law, under Article 177 of the Commercial Law. The Egyptian law also defines maritime transport contracts similarly, merging both goods and passenger transport in Article 196 of the new Egyptian Maritime Trade Law of 1990, which states: 'A contract whereby the carrier undertakes to transport goods or persons by sea for a fee'.

Second: The Maritime Transport Contract in International Conventions:

In the Brussels Convention of 1924, the convention did not define the maritime transport contract for goods within Article 1, which specifies the meaning of the terms used. However, Paragraph (b) of the same article states that 'the contract of carriage applies only to contracts for the carriage of goods covered by a bill of lading or any similar document that serves as evidence of the carriage of goods by sea. It also applies to a bill of lading or similar document issued pursuant to a charter party, from the moment this bill governs the relationship between the carrier and the holder of the bill of lading'.

Several international conventions have addressed the regulation of maritime arbitration. This diversity in organizational methods stems from the varied objectives of the countries that have joined or signed these conventions. These countries can be classified into two groups: the carrier states, which own large commercial fleets and defend the interests of shipowners and carriers, and the shipper states, which do not have large commercial fleets and ship their goods on the ships of the former group, seeking to protect the rights of the shippers.[26]

In the Hamburg Convention of 1978, the United Nations Convention on the Carriage of Goods by Sea defines the transport contract in Paragraph 6 of Article 1 as 'a contract by which the carrier undertakes to transport goods by sea from one port to another for a fee. However, for the purposes of this convention, a contract that includes sea transport as well as transport by another means is not considered a maritime transport contract except to the extent that it relates to sea transport'.

The maritime transport contract under the Hamburg Convention involves an agreement where the carrier undertakes to transport the shipper's goods from one port to another in return for the shipper's payment of the freight, regardless of the form in which the contract is presented. The emphasis is on the existence of an agreement between the carrier and the shipper regarding the sea transport of goods.[27]

Article 279 of the 1982 United Nations Convention on the Law of the Sea stipulates that the disputing parties must refer to Article 33(1) of the United Nations Charter, which includes alternative means for resolving maritime disputes, including arbitration. It states: 'The parties to any dispute, the continuation of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.' The United Nations Convention on the Law of the Sea grants the parties complete freedom to choose the means they deem appropriate for resolving their disputes.[28] Arbitration has gained significant importance for the countries that have signed and participated in international conferences.

Maritime disputes arise over various subjects, including"...

1- Time Charter Contracts: Disputes arise regarding the responsibility of the shipowner or the charterer for specific losses incurred during the charter period. For example, disputes may arise over the charterer's responsibility for damage to the chartered vessel.

2- Voyage Charter Contracts: These disputes concern the responsibility of the ship charterer or owner for specific losses, or disputes related to the safety of ports and berths for loading and unloading, the condition of the vessel upon delivery to the charterer, or disputes related to demurrage penalties.[29]

3-Transport Contracts: Under a transport contract, the carrier undertakes to perform several maritime shipments on one or more vessels within an agreed period. Disputes may arise over a series of voyage charter contracts. It is worth noting that a large proportion of maritime arbitrations in London involve shipping operations under charter parties or voyage charters, as well as all matters related to maritime transport.

4- Bills of Lading: The bill of lading serves as proof of the transport contract between the carrier and the owner of the goods. Most disputes involving bills of lading revolve around losses or damages to the goods during the voyage, delays in their arrival, failure to deliver the goods, or incorrect delivery of the goods.

5- Sale of Used Ships: Standard contracts, such as Norwegian contracts, are often used for this type of sale. Most disputes in this case revolve around the condition of the ship upon delivery to the buyer.

6- Shipbuilding and Repair Contracts: Disputes here involve whether the ship, upon completion, meets the specifications agreed upon in the contract between the parties.

7-Insurance and Reinsurance Contracts: Disputes related to insurance matters may arise, particularly between insurers who have subrogated the original beneficiaries based on the principle of subrogation in insurance.

8-Marine Salvage and Rescue: Most marine salvage and rescue operations are carried out through standardized contracts for this purpose. The signing of such a contract by the ship's captain is an

acknowledgment of the shipowner's responsibility to cover the costs of the agreement. These costs are often determined through arbitration.[30]

9-Disputes Regarding the Settlement of General Average Losses: Some disputes may arise over the determination of this type of loss.

10 -Other Navigational Disputes: Other disputes may arise that are unrelated to navigation, such as claims against ship suppliers or disputes with port authorities.

Second Demand: Maritime Arbitration Under the Rotterdam Rules 2008:

1-Legal Significance of the Rotterdam Rules 2008: The Rotterdam Rules were established to address the needs of the maritime industry and technological developments, aligning maritime transport contracts with international economic changes. The rules were drafted in New York on December 11, 2008, and the accession process for the convention was opened on September 23, 2009, in Rotterdam (Netherlands). So far, 21 countries have signed the convention, and the legal threshold for its entry into force is the accession of at least 20 countries.

2-Arbitration Rules in International Transport Contracts for Goods Under the RotterdamRules: Chapter 15 of the Rotterdam Rules includes provisions related to arbitration, covered in Articles (75-78). These provisions apply to arbitration agreements concluded between the carrier and the shipper as part of the terms and conditions of the international transport contract for goods by sea, whether wholly or partially.

Article 75 allows the parties to a maritime transport contract to resort to arbitration as a means of resolving disputes that may arise between them. It states: "The parties may agree that any dispute arising from the carriage of goods under this Convention may be referred to arbitration".[31] The purpose of the convention in regulating arbitration as a means of resolving disputes between the parties to a maritime transport contract for goods, whether wholly or partially by sea, is to achieve swift and consensual solutions, ensuring efficiency and seriousness in the resolution of disputes in the field of maritime transport.

The convention also introduced important and new provisions that align with the development of transportation means and technological advancements. While it grants the parties complete freedom to choose the arbitration venue and requires that the arbitration clause be written, which is usually agreed upon between the shipper and the carrier in maritime transport contracts where the arbitration clause must necessarily be included in the contract according to the convention, it also permits the parties to resort to arbitration for disputes arising between the carrier and the shipper in contracts for the carriage of goods by sea, whether wholly or partially, after the dispute has arisen.[32] The requirement to include the arbitration clause according to the convention is a formal condition that cannot be violated in the arbitration clause, necessitating the determination of arbitration procedures and the arbitration venue in this contract as a condition included in the international contract for the carriage of goods. All the conditions must be adhered to, or else the arbitration clause in the maritime transport contract will be invalid, as stipulated in Article 75 of the convention.

It is noteworthy that the Rotterdam Rules emphasize some conditions that must be included in the international maritime transport contract to be valid and not voided. These include the necessity of including an arbitration clause in the contract, whether in the bulk contract, charter party, transport document, or electronic record. The rules require that the details related to the arbitration agreement be clearly mentioned in the international maritime contract, specifying the arbitration clause in the contract and identifying the parties clearly.

However, Article 66 [33] of the convention grants the parties to the maritime transport contract complete freedom to include an arbitration clause in the contract between the parties, provided that it is included as a clause and the details related to the parties are clearly specified. Nonetheless, the parties to the dispute are given complete freedom to choose arbitration as a legal means to resolve their disputes, and the concept of freedom extends to choosing the arbitration venue, the procedures to be followed, the applicable law, the arbitration location, and the method of dispute resolution.

In addition to including technological means for exchanging documents in the international goods transport contract, the convention also introduced a new type of transport where maritime transport may be partial or complete. This means that maritime transport may be linked with other forms of transport, such as land, air, or river transport, for the same goods, whether before the goods are loaded onto the ship or after they are unloaded, with the aim of providing a "door-to-door" service, which relieves the shipper from having to search for and contract with several carriers for each stage of the transport separately.[34]

Third: Arbitration Venue:

Article 75(2) of the Rotterdam Rules specifies a list of possible locations from which the claimant (usually the consignee, who makes a claim against the carrier, the respondent) can choose the arbitration venue or "seat of arbitration," in addition to any location agreed upon by the parties to the contract. Since, under the Rotterdam Rules, the transport contract may start with the collection of goods from the shipper's warehouses or factories, pass through the port of loading, reach the port of discharge, and finally be delivered to the consignee's warehouses, the article specifies the possible arbitration venues, which are:

1-The carrier's place of business.

2-The agreed place of delivery or the port of loading.

3-The agreed place of delivery or the port of discharge.

4-The place agreed upon in the transport contract.

Fourth: Arbitration Rules for Bulk Contracts According to the Rotterdam Rules:

The convention regulates bulk contracts, which are defined as "a contract for the carriage of a specified quantity of goods in a series of shipments during an agreed period and may include a minimum or maximum amount of cargo or a range of quantities." The bulk contract allows the parties a high degree of contractual freedom, enabling them to negotiate all contract terms, including the arbitration clause or the conditions governing the carrier's liability or exemptions from it. According to Article 75(3) of the Rotterdam Rules, the agreement on the arbitration venue specified in the bulk contract is binding on the signing parties if two conditions are met:

1-The bulk contract must clearly specify the names and addresses of the parties involved.

2-That the agreement has been specifically negotiated".

3-Or that it clearly states that the arbitration agreement has been specifically negotiated or referred to in the contract" However, the convention also addresses the extension of the arbitration agreement to third parties, such as the consignee, who may have an interest in initiating arbitration proceedings against the carrier if the goods are lost, damaged, or delayed beyond the agreed timeframe. Article 75(4) stipulates that the arbitration venue agreed upon by the original parties does not bind third parties unless the following conditions are met:

-**Condition 1**: The arbitration venue is located in one of the places the shipper may choose against the carrier for their claim, such as the carrier's place of business, the place of receipt, the port of loading, the place of delivery, or the port of discharge.

-**Condition 2**: The consignee is made aware of the existence of such an agreement, which can be achieved through the inclusion of the arbitration agreement in a paper or electronic transport document that allows the consignee to review it.

-**Condition 3:** The respondent in the arbitration must notify the other party of the arbitration venue in a timely manner, to prevent any violation of the defense rights of either party in the arbitration proceedings.

-**Condition 4**: The applicable law permits such a person to be bound by the arbitration agreement, which is a condition related to the applicability of the arbitration clause to certain public legal entities.

It is worth noting that the consignee (usually the importer who has purchased a quantity of goods to be delivered in shipments) can counter this situation by including a clause in the sales contract or letter of credit presented to the seller, stating that the arbitration agreement in the paper or electronic transport document is not acceptable and will not be enforced against them.

Fifth: Arbitration Rules in Charter Parties and Ship Usage Contracts:

A "charter party" is the term used for contracts to charter a ship, either for a specified period or for a certain number of voyages. In some cases, the ship may be leased without its equipment and fittings, which is known as a "bareboat charter".[35] The Rotterdam Rules exclude charter parties in regular maritime transport, such as transport by ships operating on fixed schedules between specific ports, and other contracts related to the use of a ship or a portion of it from their provisions. This means that charter parties and ship usage contracts, like bulk contracts, allow the parties to freely negotiate their terms, including the arbitration venue, the number of arbitrators, and the applicable law for arbitration procedures and the subject of the dispute. However, this exclusion from the convention's provisions applies only to the relationship between the original parties, namely the shipowner (the lessor) and the charterer (the carrier, who typically uses the ship to transport their own goods or the goods of others), including the arbitration clause. The convention applies between the charterer (the carrier) and the consignee, who was not an original party to the charter party.

As for :charter parties in non-regular maritime transport", they are also excluded from the convention's provisions under Article 6(2) with respect to the original parties. However, according to Article 7 of the

convention, the convention's provisions apply to the relationship between the carrier and the consignee if Article 76(2) is met when the paper or electronic transport document includes:
a. The names of the parties to the charter party and the date of its conclusion.
b. A clear and explicit reference to the arbitration clause included in the charter party.

Sixth: The Mandatory Nature of the Rotterdam Rules Regarding Arbitration:

The Rotterdam Rules permit arbitration both before and after a dispute arises, clearly referring to arbitration as both a clause and an arbitration agreement under the term "arbitration agreement." The convention does not specify the type of maritime arbitration, whether institutional or ad hoc, which implies that the parties to the contractual relationship have complete freedom to choose the appropriate type of arbitration for their dispute.

This freedom reflects the convention's consideration of the absolute will of the parties, a principle increasingly emphasized by both international conventions and domestic laws. This will may be either explicit or implicit, or a combination of both. The convention respects the parties' will as a general principle in resorting to arbitration. At the same time, it contains mandatory provisions related to arbitration to ensure a proper balance between carriers, shippers, and consignees, as well as those referred to as the "holder" or "controlling party" by the convention. These provisions aim to prevent the inclusion of any arbitrary conditions by one of the contractual parties—particularly the carrier, who is often the stronger party in the contractual relationship. The convention seeks to avoid situations where the carrier inserts an arbitration clause that favors their interests, such as selecting an arbitration venue that is convenient for them but imposes significant financial burdens on the consignee, who may have to travel to the carrier's country or another distant location to submit their arbitration request and participate in lengthy arbitration proceedings.

The convention's Article 75, Paragraph 5, stipulates that arbitration, whether it pertains to contracts governed by the convention, bulk contracts, charter parties, or ship usage contracts, is governed by mandatory rules that cannot be violated by agreement. If the arbitration clause conflicts with the convention's provisions, the clause is considered void and is replaced by the convention's rules, provided the dispute has not yet arisen. However, if the arbitration venue is agreed upon after the dispute has arisen in any of the aforementioned transport contracts, the free will of the parties applies, and they may agree on any suitable venue for conducting the arbitration, depending on the circumstances.

It is also worth noting that the application and enforcement of the convention's provisions extend only to the contracting states that have declared their commitment to be bound by it. This is the case for all the states that have signed or acceded to the convention to date. This provision is outlined in Article 78 of the Rotterdam Rules, which is known as the "opt-in" system for states that have signed or acceded to the convention.

Conclusion:

The Rotterdam Convention of 2008 permits the use of maritime arbitration and includes certain mandatory provisions binding on the states that are party to the convention. These mandatory provisions pertain to maritime arbitration to prevent abusive terms and conditions that one of the contractual parties in a maritime transport contract might use to harm the other party. Additionally, the convention grants complete freedom to the parties, respecting their will to resort to arbitration, whether as a clause in the original contract or as an agreement, such as an arbitration agreement.

The Rotterdam Rules include various provisions related to arbitration, including the choice of arbitration venue, which is highly significant since it is where arbitration requests are submitted by the party making a claim against the carrier. It is also where the arbitrators are selected and the arbitration tribunal is formed, where statements of claim and defense are submitted, witnesses are heard, experts present their reports, and where the arbitration award is issued and usually enforced. Finally, it is also the venue where a claim to annul the arbitration award may be filed.

Thus, the Rotterdam Rules provide a comprehensive framework for the arbitration of international transport contracts, covering both paper and electronic transport documents. They also exclude charter parties and bulk contracts from their scope, in principle. However, the convention's rules apply between the carrier and third parties, such as the consignee, if certain conditions are met, allowing the arbitration agreement to extend to parties other than the original contracting parties. The significance of the convention and its rules on maritime arbitration lies in facilitating international trade, reducing the costs of resolving maritime disputes through arbitration, and encouraging the use of maritime arbitration in various arbitration centers, often located where the goods are delivered, the port of loading, or the port of discharge.

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