



## Development of Maritime carrier liability for goods transported by sea

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### Abstract

This study reviews the importance of maritime transport, which is the major factor in the International trade. carriage of cargoes Includes maritime transportation contract is introduced, the development of the legal system to contract of the maritime transport of goods has been through many stages regarding Provisions of various international conventions, and need to follow the development of legislation in internal legislation of States in order to reach uniform rules apply on maritime transport of goods contract at the international level are explored also. This study also demonstrates the responsibility of the Maritime carrier for loss, whether this total or partial loss and also responsible for damage or delay in accordance with international rules and domestic legislation.

**Keywords:** maritime transport, Law of carriage of goods by sea, Carrier Liability, international conventions

### 1. Introduction

The present time characterized in particular, the increasing importance of the Maritime transport, because goods need to move from one country to another.

“In the 2008 trading year, an estimated 8,186 billion tonnes of cargo were transported by sea. This was almost double that in 1990”<sup>[1]</sup>.

This resulted in the development of the rules and provisions governing maritime transport, we find The “Hague Rules”<sup>[2]</sup> were adopted in 1924. “Hague/Visby Rules in 1968 and 1979”<sup>[3]</sup> and “Hamburg Rules4 in 1978”<sup>[4]</sup>, Finally “Rotterdam Rules”<sup>[5]</sup>.

Maritime carrier responsibility plays an essential role in the topics of shipping, so it becomes the most important transportation issues, causing many disputes.

As the main commitment of the carrier is transfer of goods, and delivering to the consignee, on the date specified.

“determine when and to what extent the carrier is liable for economic loss resulting from loss of, or damage to, goods or delay arising while the goods were in the custody of the carrier”<sup>[6]</sup>.

He shall be responsible for “the loss, if goods are not delivered to the consignee, and the damage if the goods do not deliver in proper condition, and if do not deliver in the date specified”<sup>[7]</sup>.

It cannot be discussed the various provisions of carrier responsibility of goods, without passing the basis of this responsibility.

It is worth mentioning that the maritime transport contract arranges obligations for both parties, sender and carrier. Sender is committed to deliver goods to the carrier and pay freight, and carrier is committed to receipt goods, transport and deliver to the consignee at the end.

Through this, it shows us that the big responsibility lies upon the shipping carrier of goods. Based on the foregoing, there are several cases will be discussed in this study, as follow:

Period of Liability, carrier Liability for Loss and damage, carrier liability for delay in delivering goods, and liability of carrier for other persons.

### 2. Liability Period

In this section period of liability of carrier is explored according to provisions established by: “Hague Rules”, “Hamburg Rules in 1978”, and “Rotterdam Rules”, as follow:

According to: Hague Rules which stated that:

“Carriage of goods’ covers the period from the time when the goods are loaded on to the time they are discharged from the ship”<sup>[8]</sup>.

“This means that the rules will apply on a basis from the start of the loading operation to conclusion of discharge”<sup>[9]</sup>

The period of application is started from: “the beginning of loading of the goods on the ship to the completion of their discharge from the ship where carrier takes the goods in charge before their loading on board and delivers them to the consignee of the port of discharge”<sup>[10]</sup>.

According to: “Hamburg Rules”, carrier liability period is expressed as “the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge”<sup>[11]</sup>.

Thus, the rules of Hamburg are usually applied in a “port-to-port” contract on the whole time of charge of goods, but “this is not the case in a door-to-door contract or when the terminals of the carrier are outside the port area, because the rules applicable would be different”<sup>[12]</sup>.

According to “Rotterdam Rules” which provided that:

“The period of responsibility of the carrier for the goods begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered”<sup>[13]</sup>.

“Under the Rotterdam Rules the period of application and the period of responsibility of the carrier coincide with that during which the carrier is in charge of the goods, wherever he receives and delivers them, except where the goods must be handed over to an authority in the place of receipt or in the place of delivery”<sup>[14]</sup>, this means that: the time frame of the responsibility begins from the moment of receiving the goods in the shipping port and continues till the goods are delivered at the arrival port.

“the period of responsibility starts when the goods are delivered to the contractual carrier or any performing, and ends when the goods are delivered in accordance with the convention and the contract of carriage” [15].

“This has often caused difficulties Hague Rules, Hamburg Rules and article 12.1 of Rotterdam Rules, the simplicity of this formulation will be welcomed by many users of the rules but difficulties may be encountered where there are multiple parties involved in the movement of the goods” [16].

“Rotterdam Rules make specific provision for the case where regulations at the place of receipt require the goods to be handed over to an authorities” [17].

“the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void when the time of receipt of the goods is subsequent to the beginning of their initial loading or prior to the completion of their final unloading” [18]. “Rotterdam Rules adopts a ‘door-to-door’ period of liability, which will be inclusive of the time when the goods are handed over to the carrier to the time they are delivered to consignee” [19]

### Transportation previous and subsequent to shipping

Carriage prior or posterior sea carriage which stipulated in Rotterdam Rules’ provisions deals explicitly with this important extension: “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 .....” [20].

“The principal markers of the operation of this are provisions loss, damage or delay occurring before loading onto a ship or s after discharge from that ship” [21].

“This article applies the network liability system typical of Multimodal transport legislation to the effect of applying the unimodal regime proper of a specific mode of Multimodal transport, in all circumstance in which the event which has caused loss of or damage to the goods, or an event circumstance causing a delay in their delivery has been localized as having occurred outside the sea leg of the voyage” [22]

“Period of the Carrier’s responsibility for the goods does not necessarily commence at the same moment as delivery by the seller to the buyer under the contract of sale” [23].

Carrier is responsible for loss of cargoes, “Whether this total or partial loss and also liable for damage, If the loss or damages occurred during the period of the carrier receipt the goods at the port of loading, and the carrier delivered the goods at the port at the port of arrival to the consignee” [24].

### 3. Liability for Loss and Damage

Maritime carrier of goods is responsible for loss whether this total or partial loss and also is liable for damage occurred to goods in case its loss occurred from the date he received the goods the subject matter of transportation.

The total loss of goods Includes the failure in handing over goods to person entitled to receive it at destination of arrival, by either the destruction of the physical structure of the materials or the stealing of the goods or handing over the same to person other than that entitled to receive such goods either in the destination of arrival or other place.

“Hague- visby” rules Stipulated “Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from

unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions” [25].

This article stated that: “in case the claimant alleges that the loss of or damage to the goods was caused by unseaworthiness has the burden of proving his allegation (and then the carrier has the burden of proving the exercise of due diligence)” [26].

Hamburg Rules provide that “The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences” [27].

“The claimant must either prove the fault of the carrier or that another event caused or contributed to the loss or damage. This regime adopted by the Hamburg Rules in case of loss, damage or delay” [28].

Hamburg Rules included carrier’s liability for “loss or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents consequences” [29].

Rotterdam Rules stated that: “The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier’s responsibility” [30].

This mean that this article establish liability carrier when loss or damage of goods occurred during liability period of carrier, so “liability is established the timing of damage, the loss and not by specific breach of contract” [31].

Rotterdam Rules states that: “the carrier is liable for all or part of the loss, damage, or delay” [32]

(a) “If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies” [33]; or

(b) “If the claimant proves that an event or circumstance contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18” [34].

Rotterdam Rules also provided that: “if The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by the unseaworthiness of the ship; the improper crewing, equipping, and supplying of the ship; or the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods” [35].

“it is the claimant that, in case he alleges that the loss of or damage to the goods was caused by unseaworthiness has the burden of proving his allegation (and then the carrier has the burden of proving the exercise of due diligence), pursuant to article 17(5)(a) of the Rotterdam Rules the burden of proof of the claimant is lighter, since he must only prove that the loss, damage or delay was probably caused by unseaworthiness: probability, therefore, not certainty” [36].

Note that: “the claimant does not have to prove unseaworthiness as cause of loss, damage or delay but only that

it is probable that unseaworthiness caused the loss, damage or delay”<sup>[37]</sup>.

#### 4. The Liabilities of carrier for other persons

“Hamburg Rules” provided obligations to carrier for other persons as follow: “which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences”<sup>[38]</sup>

“Rotterdam Rules” introduced a new article regarding Liabilities of the carrier for other persons stated that: “for the breach of its obligations under this Convention caused by the acts or omissions of any performing party, the master or crew of the ship, employees of the carrier or a performing party; or any other person that performs or undertakes to perform any of the carrier’s obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control”<sup>[39]</sup>.

The carrier is responsible for parties: “These include not only any performing party, the master or crew of the ship, the employees of the carrier or a performing party, but also ‘any other person, including a performing party’s subcontractors and agents, who performs or undertakes to perform any of the carrier’s responsibilities under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control”<sup>[40]</sup>.

#### 5. Liability for Delay in Delivering the Goods

The carrier is responsible for the damages which occurred due to the delay in handing over the goods, irrespective of whether there is destruction or damage to goods provided that such damage is due to such delay in delivery.

Hamburg Rules provide that two cases for Delay in delivery:

1- “When the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon”<sup>[41]</sup>.

This case carrier of goods is responsible for damages occurred to goods in case of the goods arrived after the agreed date.

“The Egyptian Maritime law states that the same provisions in case of agreement on a specific date of delivery”<sup>[42]</sup>.

“In the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case”.

In case of disagreement on a specific time, Hamburg Rules introduced remedy of this case when stipulated “within the time which it would be reasonable to require of a diligent carrier”.

“Many States established standard of ordinary carrier”<sup>[43]</sup>. Hamburg Rules established “diligent carrier” which is more precise standard.

The carrier shall be responsible if he exceeded the date the of a diligent carrier can take in the similar circumstances in case no specified date for handing over the goods was agreed to.

Rotterdam Rules provide that: “Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed”<sup>[44]</sup>.

According to The Rotterdam Rules: “Delay in Delivery is a breach of one of the obligations and damages as well as limitation of liability in that respect are provided for”<sup>[45]</sup>.

However, “it is arguable that any statement regarding an agree time of delivery would be subject to the contractual construction and qualifications added by the carrier to the agreed time for delivery. Thus, in many cases, the issue of delay will not arise because it is not customary to include such requirement in bills of lading, although of course the availability of damages may lead to change in practice”<sup>[46]</sup>.

Rotterdam Rules did not provide that in case of disagreement on a specific time to delivered goods.

#### 6. Conclusion

The rules and provisions governing maritime transport are developed within many stages, responsibility of the carrier starts from date of receiving the goods and ends upon delivering the same to the consignee and not unloading the goods at the port of arrival. Rotterdam Rules introduced new Provisions related to “Carriage before and after sea carriage” Hague Rules and Hamburg Rules introduced rules of carrier Liability for Loss and damage, and also “Rotterdam Rules” establish many cases related to carrier Liability for total or partial of the loss and damage.

“Liability of the carrier for other persons” is discussed according to “Rotterdam Rules” and “Hamburg Rules”.

“Rotterdam Rules” did not provide a specific time to deliver the Goods but Hamburg Rules established “diligent carrier” which is more precise standard, in the absence of such agreement.

Finally the rules of carriage of goods should be revised and unified taking into account the advantages of all international rules introduced of this study.

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