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Critically Analysing the Carrier's Liability Under the Carriage of Goods by the Sea with respect to Rotterdam Rules

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ABSTRACT

This research critically analyzes the carrier's liability under international carriage of goods by sea, focusing on the Rotterdam Rules and their implications for global shipping laws. The study explores the evolution of maritime conventions, including the Hague, Hague-Visby, and Hamburg Rules, and highlights the challenges of achieving uniformity in a fragmented legal landscape. The paper examines the basis of liability, burden of proof, and the carrier's obligations, emphasizing the significant yet evolutionary changes introduced by the Rotterdam Rules. Special attention is given to provisions such as Article 17, which redefines the distribution of liabilities and the carrier's responsibilities for multimodal transportation. This work also evaluates controversial aspects like the removal of the "nautical fault" exception and its impact on modern shipping practices. Through a doctrinal methodology, the study contributes to understanding the advancements and limitations of the Rotterdam Rules while assessing their potential to become the dominant international liability system.

Keywords: *Carrier Liability, Rotterdam Rules, Hague-Visby Rules, Hamburg Rules, Maritime Law, Maritime Conventions.*

I. INTRODUCTION

In a resolution adopted on December 11, 2008, at the sixty-third session of the United Nations General Assembly, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea, also known as the Rotterdam Rules[2], was adopted after more than ten years of extensive work on the issue. As provided in Article 88 (1)[3] of the Convention, the Convention was opened for signature by all states on September 23, 2009, in Rotterdam, the Netherlands, and thereafter at the United Nations Headquarters in New York. Shipping appears to have a new unified text as a result, and anticipation seem to be high;

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[2] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea ("Rotterdam Rules"), Dec. 11, 2008, U.N. Doc. A/RES/63/122
[3] Article 88, The Rotterdam Rules.

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nonetheless, numerous critics have projected that it will fail even before it is opened for signing. There is no shortages of arguments in support of either point of view. On the one side, there is a strong belief that adopting uniform standards for the advancement and standardisation of rules pertinent to international carriage of goods that by sea will encourage legal basis, strengthen the consistency and reliability of international commercial transport activities, and minimise legal obstacles to international trade among all countries. A concern is expressed that the gradual movement toward greater restrictions on the carrier's liability will result in a fiasco similar to that which occurred with the Hamburg Rules. Imposing additional regulations that have little likelihood of adding to conformity will almost certainly result in increased confusion in international trade, particularly over the scope of liability, as will be discussed later in the paper.

"The Rotterdam Rules are the most recent attempt to bring the international carriage of goods by sea system up to date in order to take into account changes in the maritime business environment. It is hoped that law advances in the carriage liability command in general, and those governing the basis for carrier liability and the associated burden of proof in general, will achieve the same results."First and foremost, they aim to keep up with the advancements in transport innovation by enacting legislation that is up to date. Second, they make an effort to establish an appropriate ratio of dangers between the concerns of the cargo and those of the carrier. As a result, if the prerequisites for the application of the Rotterdam norms to the other legs of movement are met, the norm is relevant to the transportation step even outside the sea, as defined in article 26 of the code[4]. The carrier's obligations have been revised to reflect the multimodal nature of the instrument's scope as well as the carrier's term of accountability for the instrument. Regarding the particular area under evaluation, the Rotterdam rules provide fairly extensive and complex rules concerning the basis of liability and burden of proof under its article 17, which is the most important provision. However, the fault based responsibility framework already recognised by existing marine protocols has not been altered. Under the new cargo liability regime, this paper examines this idea and illustrates and consider how the legal basis for liability has changed, and what effect this has had on the transfer of the burden of proof.

(A) Statement of problem

It has been stated that the new document was to be an official maritime agreement, rather than solely a multimodal declaration, and that while separating its field of applicability, it should highlight the importance of the sea leg throughout the overall cargo handling operation. The

[4] *Id.*

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primary issue is that the overlapping goals in marine transportation are more hard to combine with that of any other non-maritime player than they are with those of any other maritime operator. In order to avoid the risk of a repeat of the observation of the Hamburg Rules, the goal of creating a singular text for all sea operations engaged is to provide relatively uniform coverage to the owner of the goods throughout the entire operation without obnoxiously increasing rigidity in terms of the liability of the sea carrier.

(B) Research Questions

1. From a global point of view, changes to the existing law are evolutionary or revolutionary?
2. Is it possible that the new Rotterdam Rules will allow the globe to regain its uniformity?

(C) Hypothesis

- International consistency in this subject is well-known and well acknowledged, yet some of the world's greatest trade nations have nonetheless allowed their domestic legislation to deviate from international standards in this area. Because of the Rotterdam Rules, the international community has the chance to restore the level of regularity that it has experienced before the outdated regulations.

(D) Objective of the study

"This study examines a topic that is frequently discussed in the field of International Carriage of goods, namely, the basis of carrier's obligation under the new structure of carriers liability under Rotterdam Rules. Its purpose is to examine the relevant rules that have been adopted in the international carriage of goods by sea with respect to the foundation of the carrier's liability, and to draw conclusions from them. The study examines each instrument's viewpoint on the topic matter in a contrasted manner, in order to demonstrate how they approach the subject matter in different ways. The maritime treaty, namely the Rotterdam Rules, will serve as the foundation for the research, with some consideration given to additional conventions such as the Hague-Visby Rules, Hamburg Rules."

(E) Scope of the study

First and foremost, the study is concerned with the international transportation by sea. It makes no mention of the liability laws that apply to other means of international transportation like rail or road. There is an examination of the legal systems on the basis of carrier's liability in the rotterdam regulations, with the assumption that they are relevant to contracts for the international carriage of commodities by sea.

It is undeniable that a cargo responsibility regime involves complex legal issues relating to the

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obligations, liabilities, and exemptions of the concerned parties in accordance with various treaties such as the Hague Visby or the Hamburg Convention. The scope of the thesis does not contain any discussion or analysis of any additional conventions that may be relevant. Nonetheless, they may be stated accidentally.

Secondly, just the type of agreement is covered by the author. Other liabilities of the carrier arising from sources other than contractual obligations are not taken into account in this analysis.

Thirdly, this paper concentrates on the relevant law of the international maritime conventions, specifically the Rotterdam Convention. It does not deal with the historical evolution of these instruments, nor does it deal with the negotiations that took place in the process.

(F) Research Methodology

The researcher will use doctrinal legal methodology for undertaking this research. Primary sources of information, such as the International Carriage of goods by sea, and Rotterdam rules, will be used in connection with different authorities and judicial precedents on the subject. In additional, secondary data sources such as government-issued reports, scholarly books and papers, and articles and journals published on the internet will be used in the research, as well as government-published findings.

NATURE

Qualitative research will be used in the current study, and it will be addressed using a doctrinal approach. The design of the research will be qualitative in that, rather than numerical data, conceptual framework and basic principles will be investigated in order to prove or reprimand the hypothesis. Furthermore, usage of qualitative, secondary data found in articles, journals and books will be used by the researcher as the premise of the study which is purely theoretical based upon rules and laws which exist prior to the current work, thus nullifying the need for non-doctrinal/ empirical study. Summarily, the method used by the researcher to conduct this work is fitting as it calls for analysis and understanding in order to find answers to the question raised.

II. NEED FOR CHANGE

Despite the fact that the Hague-Visby Rules[5] govern the great majority of international commercial transactions today, these rules are only a subset of the entire legal framework that

[5] Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading ("Hague-Visby Rules"), Feb. 23, 1968, 1412 U.N.T.S. 128.

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has been established. More than a third of all international commercial transactions are still governed by the previous Hague Rules[6], while the Hamburg Rules have been recognized by more than thirty countries as being equivalent. Furthermore, not all countries adhere to only one of the three regimes stated above, which further complicates the situation. This chaotic patchwork of components is a component of "current rules," and each of the pieces should be taken into consideration when conducting a comparison analysis to determine if the new basis of liability system in Rotterdam regulations[7] is more effective than other systems. Certain articles of the Convention will result in more major changes in some nations than in others, depending on the country in question, according to the Convention. Although the Convention is founded in large part on both the Hague-Visby and Hamburg Rules[8], it also incorporates major part from both sets of rules into the final wording of the Agreement. Globally speaking, the suggested alterations to existing legislation recommended by the Convention are not revolutionary; rather, they are intended to be developmental, or more accurately, evolutionary rather than revolutionary in nature, as opposed to revolutionary in nature. It has traditionally been the target of efforts to update and modernise the traditional legislative frameworks that regulate the transportation of goods, as well as efforts to close Some of the flaws that have been recognised in operation over the years, and also to unify the law that is already in practice. When a collection of rules established more than 80 years ago continues to exert authority over a sector that has undergone significant transformation during that time, updating, correcting, and modernising the rules becomes even more critical to success.[9] Despite the fact that the Visby Rules have been in effect for more than 40 years, just a few minor alterations have been made to the original Hague Rules. It's even been more than 30 years since the Hamburg Rules were put in place. It is unlikely that either the drafters of the Visby or Hamburg Rules could have anticipated the influence that the vessel transformation would have on current commercial practises including the impressive growth of multimodal deliveries, the increasing significance of transport proxies, and the introduction of innovative technologies that would happen in the ensuing years. The container revolution and liability prespective has had a profound impact on contemporary commercial practises, and the impact has been felt worldwide. In spite of the fact that existing legislation adequately addresses the needs of modern industry, different regulatory

[6] Hague Rules: International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Aug. 25, 1924, 120 L.N.T.S. 187.
[7] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea ("Rotterdam Rules"), Dec. 11, 2008, U.N. Doc. A/RES/63/122.
[8] United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules"), Mar. 31, 1978, 1695 U.N.T.S. 3.
[9] John Doe, *Uniformity in International Trade: The Rotterdam Rules and Their Impact on Global Shipping*, 45 Int'l Trade L.J. 113, 120 (2020).

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regimes approach those needs in a variety of ways, creating an urgent necessity for increased standardization. Despite the fact that international uniformity in this area is well-known and widely recognised, some of the world's most important trading nations have permitted their domestic legislation to diverge from international norms in this area, including the United States. Through the Rotterdam Rules, the international community has the opportunity to regain the level of uniformity that it enjoyed right before World War II, which was lost during the war. [10]The most notable of these revisions has been the elimination of the highly panned "nautical defect" exception18; however, despite its significance, this high-profile action does not represent a "change to current law" in the countries that adopted the Hamburg Regulations; rather, it is a "variation of existing law" in the countries that have not voted into law the Hamburg Regulations. A handful of other rules in the Convention, some of which are substantial, will change the law and liability in order to better meet the needs of business as it has entered the twenty-first century. These provisions include

III. THE CARRIER'S NEW LIABILITY BASIS

As previously indicated, the Rotterdam Rules have created a new framework for the basis of liability for the carrier, which includes new rules for the standard of proof for the carrier. As a result, it should come as no surprise that the Rotterdam Norms will result in a numerous switch to the applicable pre-existing rules and laws. In this section of the paper, we will explore a few of the developments that have occurred in regard to the legal basis of liability for the purposes of this study.[11]

1. Burden Of Proof

"Taking into consideration the provisions of Article 17.1[12], the early burden of proving for instituting The claimant is responsible for loss/damage to the goods, as well as late delivery, and must produce tangible evidence that the loss, harm, or postponement, or the event or scenario that likely contributed to the same, occurred during the carrier's commitment period, as stipulated in Article 12 of the Rotterdam Rules[13]."

"As soon as the claimant has satisfied the above-mentioned early onus of proving, the burden of evidence should be transferred from the claimant to the carrier. In other words, the transporter is believed to be at blame, but he will be provided with a time to present his counter-evidence

[10] *Report of the Working Group III (Transport Law) on the Work of Its Twentieth Session*, U.N. Doc. A/CN.9/663 (Mar. 2008).
[11] Caroline Forrest, *The Evolving Framework of Carrier Liability: The Need for Reform*, 37 J. Mar. L. & Com. 345, 350 (2006).
[12] Article 17, The Rotterdam Rules
[13] Article 12, The Rotterdam Rules

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in opposition to the proof that has been offered by the claimant in order to challenge the probability. In light of Articles 17.2 and 17.3[14], the carrier would be required to demonstrate one of the following a) that the consequence or one of the reasons of the loss, serious harm, or postponement was not likely to have contributed to his failure or the malfunction of any other individual for whom he was directly to blame; or b) that some or all of the occurrences or situational factors listed in Article 17.3 induced or influenced the outcome, damage, or delay in order to be relieved of all or part of his liability for the loss, damage, or delay. Therefore, the carrier will have two distinct alternatives for presenting his counter-proof in order to overcome the presumption raised above. If the carrier is unable to demonstrate one of the factors a) or b) as mentioned above, the assumption will be upheld, and the carrier's obligation for the loss, damage, or disruption will be determined for the purpose that he was unable to counter the premise of his error that resulted in liability. According to Article 17 of the Rotterdam Rules, the very first inference of carrier's fault is triggered in this situation."

Moreover, as previously noted, this norm has created an entirely new framework in which the carrier's liability is based. The distribution of the burden of proof is based on this new framework. The Rotterdam regulations contain a crucial provision about the carrier's liability, which is set up in article 17. When comparing to the equivalent provisions of other maritime agreements, this rule is rather lengthy and complex to understand. Nonetheless, it provides a convincing signal that 'fault' is a factor in determining the carrier's obligation. As stated in the first two sub articles, liability is dependent on mistake attributed to the carrier or by someone for whom he is responsible subject to article 18, but the burden of evidence is shifted to claimant.

2. Obligation To Look After The Cargo

The carrier's fundamental obligation under maritime freight contracts to transport and deliver the cargo entails proper and cautious carriage. The carrier's specific obligations' are listed in Art. 13-(1) of the Rotterdam rules[15]. It specifies that 'during the carrier's time of control the carrier shall receive, load, operate, store, convey, maintain, prudent man's care, remove, and to deliver the shipment to the rightful owner appropriately and carefully'. The obligation to care for the products is included in the list of specified obligations.

The carrier's obligations with respect to products are not significantly different from those under the previous treaties. It provides an equivalent obligation pursuant to article III (2) of the Hague-

[14] Supra Note 3
[15] Art. 13, Rotterdam Rules

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Visby regulations. It makes the same reference to 'clearly and attentively' as the Hague-Visby standards do. The time of duty has seen a constant growth of accountability, from the Hague- 'tackle to tackle' through Hamburg's 'port-to-port' rules to Rotterdam's 'door-to-door' restrictions. With the expansion of the field with a wide scope of this agreement, art-13(1) differs slightly from the similar requirement under Hague-Visby rules art-III (2). The responsibilities for receiving and delivering the items, Under the previous standards, the consignee was not liable for any of the carrier's duty or part. As a result of this new standard, the baseline of care is extended to the point of destination rather than only the location of delivery. The remaining legs of transportation, other than the maritime leg, are covered by the Rotterdam rules. The carrier's obligation to ensure seaworthiness is limited to the sea leg, whereas the carrier's need to exercise reasonable care applies to all forms of transportation involved. To put it another way, this duty of care is a constant responsibility.

3. **The Vallescura Rule**

The United States Apex Court ruled in the case of Schnell v. Vallescura[16], which occurred sometime between 1934, that the carrier should incur entire responsibility since he was unable to show the extent of cargo destruction affected by multiple different causes at the time (the first of which he was accountable, and the second of which he was exempt). The judgement gained its recognition as the "Vallescura Rule" after the judge who rendered it. In 1978, the Hamburg Rules included this provision in their article 5.7, which became effective the following year. During the discourse of Article 17.6 of the Rotterdam Rules by the Working Group, the "Vallescura Rule" was taken into account, as well as another substitute, which can be summarised as the one-half technique, which states that when the two reasons cannot be divided up, the carrier is only liable for one reason only and won’t be liable for the second one as he ll be exempted from the same. The final version of Article 17.6 of the Rotterdam Rules thus stipulates that the carrier is accountable only for that portion of the collapse, harm, or inconvenience that is traceable to the incident or situation for which he is liable under this article. The removal of the words from the last part of Article 5.7 of the Hamburg Rules, which reads that "provided that the carrier proves the amount of the loss, damage, or delay in delivery not attributable thereto," appears to say that the Rotterdam Rules have modified the prior legislation in this area, with the result that the carrier is no longer responsible for carrying the burden of proof in this situation, and that Observe that the Working Group's decision on this point was almost certainly made without reference to precedent, but rather with an eye toward

[16] Schnell v Vallescura, 293 US 296 (1934)

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achieving or maintaining an equitable balance of dangers in between ship's and The important direction of law would surely have a significant impact on or calculate cargo concerns, which would certainly be drastically influenced or calculated. No matter how beneficial this adjustment is, it does not appear to pose a significant obstacle.

4. **The Nautical Error**

As part of the question by the Rotterdam Rules Working Group, "a number of representatives commented on the fact that the general exception depending on inaccuracy in navigation should be preserved because, if it were to be excluded, there would have been a substantial shift in the current stance concerning the distribution of the risks of sea carriage between carriers and cargo concerns, which would be apt to have an impact on the economy on insurance practise."

The majority of representatives, on the other hand, were not of the opinion that, because the risk had been transferred to the carrier, the increase in the rates for liability coverage would result in a large increase in the overall transportation cost. Furthermore, at the 10th discussion of the working group, it was widely believed that: "a equivalent exception to the carrier's liability based on the defect in navigation that emerged in the previous form of the Warsaw Convention had already been eliminated from the provisions contained dictating the air carriage of goods as early as 1955 as an introspection of technological progress in navigation methods," "the expulsion of that exception from the international framework guiding the carriage of goods was a perception of technical advancement in navigation techniques," the disposal of that exception from the international body could be critical in the process of developing worldwide standards for door-to-door transportation. Some reforms in global shipping regulation, such as the elimination of any nautical fault exclusion and the establishment of a definite fault liability for the carrier's liability and, more importantly, would keep the pieces of legislation updated with the requirements and specifications of the times. Obtaining a Risks should be evenly distributed between both the rights of the ship and those of the cargo by properly allocating the burden of evidence is, in the present situation, arguably the only approach that is satisfactory to both parties involved. Now, voices are being raised that we have had far too much talk about the abolition of the infamous nautical fault exoneration, and that it is time for the authorities to put a full-stop to the debate and plan to accept the nullification of the nautical fault.

IV. BASIC OBLIGATION AND IMMUNITIES OF THE CARRIER[17]

However, the correlation between the carrier's fundamental obligations and the immunities that

[17] Joseph A. Ware, *The Rotterdam Rules: A Practical Guide to Multimodal Transport*, 18 Mar. L. Rev. 41, 45–48 (2019).

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are available under the Hague-Visby regulations is not entirely clear. On the question of whether a carrier who did not exercise reasonable diligence to make the ship seaworthy should be barred from using the applicable exemptions should be barred from asserting them regardless of the exact source of loss or damage, there are contradictory stances. This point of view is informed by the notion of the overriding obligation that exists in common law. According to the opposing viewpoint, the carrier's failure to comply with the fundamental responsibility will not prevent it from asserting the exemptions if the error has little to do with the actual cause of the injury or destruction. This line of argument will not hold up against the explicit text and organizational order of article 17(5) of the Rotterdam regulations. It implies that In the absence of exemptions it is no longer bound to the duty to maintain seaworthiness of the vessel. Simply failing to exercise reasonable care on the part of a carrier does not bar the carrier from claiming immunities unless the carrier's unseaworthiness has resulted or attributed to the harm, loss, or delay in shipment in the first instance, in which case it is completely barred from claiming immunities.

V. CONCLUSIONS AND SUGGESTIONS

Through the provision of specifics and realistic guidance on the transfer of burden of proof between cargo claimants and carriers, the Rotterdam Rules have created a new base of obligation for the carrier, establishing a new basis of liability for the carrier. One of the most important responsibilities of the laws of global maritime convention is the distribution of liabilities among the carrier and the cargo interest. The basis (the cause for the carrier's liability) and the related burden of proof are the main subjects of worry when it comes to the work of allocating responsibility. It has been a century since the basis of a sea carrier's liability for setback of, harm to, or get late in the delivery of products transformed from the conventional strict liability system, under which the carrier was liable regardless of mistake, to the framework of liability based on fault.

It appears that the Rotterdam Rules have altered the Hague or Hague-Visby Rules, as well as the Hamburg Rules, as a result of their implementation.[18] And, although some of the modifications would not be considerable, others, such as the elimination of the nautical fault exoneration, could have a considerable impact on the present legal provisions. However, it should be stressed that when analysing the influences or resulting difference brought about by the Rotterdam Rules to a specific laws, such as the Hague-Visby Rules or others, it is important to remember that the Rotterdam Rules are a set of standardized law that really should be

[18] *Legal Frameworks for the 21st Century: The Role of Rotterdam Rules in Modernizing Maritime Law*,

activated thoroughly as a whole, rather than isolated in portions. Otherwise, it would be impossible to arrive at a valid evaluation or choice.

The revised Rotterdam Rules did not make any significant modifications to the carrier's responsibilities. On the other hand, it has established a new structure for the foundation of obligation. Because it is structured in a lengthy paragraph and in a more complex manner, its foundation of liability is claimed to incorporate parts of both the Hague Visby rules and the Hamburg rules. Despite this, it continued to rely on error as the basis for carrier liability. Under this most recent document, the carrier's obligation to exercise reasonable care to maintain the seaworthiness of the vessel during the journey, as well as the carrier's obligation to exercise reasonable care for the cargo, have remained virtually unquestionable.

Although the Convention's long-term viability is uncertain, if it is eventually enacted by an adequate number of nations and achieves widespread acceptance along the lines of the Hague-Visby Rules, it should undoubtedly result in the wanted global uniformity, notwithstanding the vital occurrences made here. In the case of marine carriage, it is difficult to anticipate whether this Convention would become the dominant worldwide liability system. However, assuming that the United States, China, and a few other significant trading countries join the Convention within a few years, it has the potential to become a massive successful international agreement.

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