Iranian Journal of Educational Sociology

Iranian journal of educational Sociology

(Interdisciplinary Journal of Education)
Available online at: http://www.iase-idje.ir/
Volume 1, Number 5, December 2017

Legal and social responsibility of maritime carriers in accordance with international law and conventions

Mahdieh Pazouki[1], Ali Zare[2*]

1. Ph.D. student in Public International Law, Islamic Azad University, UAE-Dubai branch.
2. Assistant Professor, Faculty of Law and Political Science, Islamic Azad University, University of Science Research, Tehran, Iran.

Article history:
Received date: 20 September 2017
Review date: 16 November 2017
Accepted date:10 March 2017

Keywords:
Goods marine transportation, electronic documents, Carriage of Goods by Sea Act

Abstract

Purpose: The present paper aims to find the exact responsibility of maritime carriers under the Carriage of Goods by Sea Act. In this regard, the delicacy of the US legislature has always been considered by other legal systems. **Methodology**: The research methodology will be analytical-descriptive. In this method, the existing references on the subject are investigated to comparatively identify and describe the rights and duties of the maritime carrier. Then, based on rational-legal rules, the subject is analyzed to show the ambiguities and the real status of the subject. **Findings**: in considerations done, there are many important conventions like HARTER act, Hague on 1924, Carriage of Goods by Sea Act 1936, the HAMBURG regulations on 1978 and ROTTERDAM on 2009, that have mentioned the marine transportation responsibility and these laws and regulations, behave with the factor of damages, based on the case and based on the responsibility and fault assumption related to the transportation responsible. Carriage of Goods by Sea Act, has been trying to compensate The Hague convention deficiencies meanwhile referring some cases to the sub-regulations and using some ways and approaches and the Carriage of Goods by Sea Act, has set some limitations for the responsibilities that sometimes the carriers put them for themselves and for example, each carrier, cannot decrease its responsibility to less than 50 American dollars, that is confirmed for each parcel in the law. **Discussion:** the ROTTERDAM regulations, has started considering the dispensation of marine transportation responsible and meantime, has canceled the duty and fault dispensation in navigation and ship handling. And the ROTTERDAM convention, has opened new horizons in marine transportation by using door-to-door way to carry goods and prevail electronic documents and also, setting the volumetric contracts.

Please cite this article as: Pazouki M, Zare A. (2017). Legal and social responsibility of maritime carriers in accordance with international law and conventions**, Iranian journal of educational Sociology,** 1(5), *203-208*.

*Corresponding Author Email: Dr.alizare@gmail.com

1. Introduction

Maritime cargo transportation has a long history and, consequently, the relevant issues are as old as its existence. With the growing importance of maritime routes and the increasing volume of exports and the costly transportation of goods through the land by low-capacity and costly vehicles, the sea became a focal point for exporting countries. The ship was a moving warehouse that was able to carry heavy and huge cargos. As a result, shipping began to expand and turned into an effective and decisive factor in the growth of countries. Given the importance of maritime transport and its ever-increasing development in the world, there was a need for legal rules to establish regular relations in maritime transport. The drafting of such regulations began in the late nineteenth century and was gradually formulated. Several international conventions on the maritime cargo transportation have been ratified and implemented so far, including The Hague Rules, The Hague-Visby Amendment, the Hamburg Rules and the Harter Act, which was a pioneer in determining the extent of such laws. However, it was necessary to have new rules to solve the problems due to day-to-day changes in transportation modes. The latest developments in cargo transportation are known as Rotterdam Rules that replaced The Hague and Hamburg Rules. It is while the precision of the Carriage of Goods by Sea Act on the limitation of the cases in this study that sparked the creation of a new maritime regulation is undeniable, the detailed approach of the Rotterdam Rules and the Carriage of Goods by Sea Act toward the responsibilities of the carriers before, during and after loading and unloading is among the strengths of these rules. Also, the inclusion of door-to-door transport or the recognition of electronic shipping documents are other benefits of these rules.

2. Methodology

The research methodology will be analytical-descriptive. In this method, the existing references on the subject are investigated to comparatively identify and describe the rights and duties of the maritime carrier. Then, based on rational-legal rules, the subject is analyzed to show the ambiguities and the real status of the subject

3. Findings

Liabilities and Exemptions of the Carrier in accordance with the COGSA 1936: The carrier's liability for the loss or damage to cargo or ship is explicitly set out in the COGSA. This act considerably protects the carrier for damages arising from negligence or failure in carriage or ship management, fire or hurricane. However, the carrier is liable for his failure to provide the necessary care and make the ship seaworthy at the beginning of the voyage. Carrier's Duties and Responsibilities: These duties include making the ship seaworthy before the voyage, providing the necessary care by the custody, the carrier's commitment to deliver the goods; each will be reviewed in the following:

Making the ship seaworthy before the voyage: The ship is seaworthy when it is prepared for the intended voyage and carriage of the relevant goods The carrier must not only perform his duties, but must ensure that the ship is seaworthy and consider the seaworthiness standards including the type of ship, the conditions and amenities, the suitability of its staff, the type of cargo and its stowage (Schaffer, Augustin, and Dhooge, 2014, 223).Therefore, the primary duty of every carrier is to provide the means of carriage of goods, which in the first instance is summarized in the preparation of the ship and the provision of other facilities for carrying and retaining the cargo during the voyage by employing experienced crew. These duties, known as 'seaworthiness", include three obligations:

The first obligation is related to the ship as a means of carriage which is mainly focused on technical and mechanical issues. In this regard, the carriers' unawareness of the defect is not acceptable. Paragraph 1 of

Article 1303 of the COGSA also binds the carrier to make the ship seaworthy. Second, in terms of having expert manpower for the operation of the ship, it is necessary for the crew to have a valid certificate; Sections A and B of Paragraph 1 of Article 1302 of the COGSA Law require the carrier to properly man, equip, and supply the ship. Third, the ship should be suitable for carrying the goods in such a way that it does not only damage the cargo but also protect it against the dangers of the seas (Amerman, 1968: 560-561).

Any deviation of the bill of lading or contract of carriage may lead to the loss of any exemption or immunity or protection that the carrier may have under this law (Mokhtari, 2002: 25-24).Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.The most important cases under which the carrier company is not responsible for any navigational faults and or poor management of the ship (with the exception of the failure of the ship's crew to protect the cargo, for example, the carrier is responsible during loading and unloading). The mistake made by the crew in the navigation or management of the ship is totally different from a situation where the shipowner does not make the ship seaworthy at the beginning of the voyage; while the carrier is responsible in the first case, he is not considered responsible for the second case.

The carrier is responsible if he allows the ship to leave the port with inappropriate firefighting equipment or with the crew not trained to combat the fire. Hence, if the carrier (the shipowner) doesn't control the equipment or train the crew of the ship to combat the fire, he is recognized responsible by the law. The COGSA Law exempts carriers from liability for "perils at sea." If the ship was seaworthy when leaving the port, the carrier would not be held responsible for the damage to the cargo as a result of a storm with a magnitude of a maritime peril. If the carrier fails to prove one of the 16 cases referred to in Article 1304, he cannot be absolved under the 17th defense of responsibility. Section 17 stipulates that any other cause arising without the actual fault and privily of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privily of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage. (Schaffer, Augustin, and Dhooge, 2014, 225).

Considering the time and situation of the case, there are reasonable exemptions for the parties based on which any liability will be relieved. In Paragraph C of Article 1301 of the COGSA Law, the term "goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck. Also, Article 6 of the COGSA Law refers to inflammable, explosive, or dangerous cargo. All of these items will be discussed below:

The adoption of the US COGSA Law dates back to 1936 when container transport was not widespread, and most of the cargos were transported in tanks and warehouses of the ships. Thus, the present law has paid attention to this case at that time. Paragraph C of Article 1301 of the COGSA law does not provide a definition of the goods carried on the deck, and the cargo may include any kind of goods, except for the goods which by the contract of carriage is stated as being carried on deck and is so carried.

Therefore, two conditions seem to be necessary:1. An agreement based on which the goods should be carried on the deck; 2. Carriage of the goods on the deck;

In the legal relations of carrying dangerous goods at sea, the carrier is not considered as important as the shipper. In the relations between the carrier and the shipper of the goods, the burden of responsibilities is mainly on the shipper. The reason for this support of the carrier is the particular risks of carrying dangerous goods.The US COGSA Law does not provide a definition for dangerous goods and places them along the inflammable or explosive goods. This law considers two assumptions for these goods: 1. The carrier, master or agent of the carrier are not aware of the loading of such goods on the ship. In this case, the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation.

2. The carrier, master or agent of the carrier are aware of loading dangerous goods; If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any. Therefore, although the carrier could, in the event of danger or damage, discharge or destroy the goods, he should be held responsible to other shippers on the basis of shared damage because of his knowledge of the dangerous cargo (Shaojing, 2013, 42).

The general obligation of the carrier in Article 14 of the Rotterdam Rules to carry and deliver the goods includes a number of specific obligations. According to Paragraph 2 of Article 2 of the Rotterdam Rules, the carrier, and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. The "reception" and "delivery of goods" are not mentioned in paragraph 2 of Article 13. Unlike other specific obligations that are technically and operational in nature, the reception and delivery of the goods are lawful, so they must be done by the carrier (Ahmadi, 2016: 81).

The Rotterdam Rules, following to its predecessors, has addressed the concept of seaworthiness in Article 14, entitled "Special Obligations applicable to the voyage by sea." The head of this article states: " The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to …". What makes the seaworthiness in the Rotterdam Rules different from other conventions is that the obligation of the carrier in this convention is a continuous obligation (Chacon, 2016, 88-89). The condition of seaworthiness under the Rotterdam Rules is a compulsory condition that cannot be subject to change by the parties in accordance with paragraph 4 of Article 80 (Ahmadi, 2016: 85).

In accordance with Article 11 of the Rotterdam Rules, " The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee. ". According to this article, the obligation of the carrier to deliver the goods is explicitly mentioned as an obligation of the carrier (Olsson, 2013, 17-18).

In Article 35 of the Rotterdam Rules, there are several alternatives specified for transport documents, which alone have a value equivalent to a bill of lading. Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, the carrier is required to issue a non-negotiable transport document or negotiable transport document, at the shipper's option (Simayi Sarraf and Yari, 2014: 124).

Article 16 of the Rotterdam Rules stipulates that the carrier may sacrifice goods at sea for the common safety or for the purpose of preserving from peril human life. In terms of saving property, the carrier cannot sacrifice the property of some people at sea for the sake of preserving the property of others, even if the value of the properties is considerably different. But if another property involved in the common adventure, the carrier is authorized to sacrifice the goods at sea. If the shipper has already provided the carrier with warnings and instructions on the nature of the goods, the carrier, having signed the contract of carriage, has implicitly accepted the risks of carrying these types of goods and is required to take reasonable measures.

In any case, Paragraph O in Section Three of Article 17 states the acts of the carrier in pursuance of the powers conferred by articles 15 and 16 (Ahmadi, 2016: 181).

4. Discussion

The following results are obtained by the comparison of the rights and duties of the carrier based on the US COGSA Law and the Rotterdam Rules: 1- Seaworthiness is one of the important obligations of the carrier, and his default in this area certainly gives rise to his responsibility. In the COGSA law, the carrier's liability to unseaworthiness is placed in the first paragraph of Article 1304, which is sometimes inaccurately inferred as the fault-based system of these regulations, while paragraph 2 considers the system correctly based on responsibility. It is while the Rotterdam Convention first addresses the main issues of responsibility

and Paragraph 5 of Article 17 addresses the issue of seaworthiness. It means that in the Rotterdam Rules, contrary to the COGSA law, the seaworthiness of the ship is a continuing obligation for the carrier.

2. According to the Rotterdam Rules, the carrier has no obligation to first prove the efforts of seaworthiness before invoking Paragraphs 2 and 3 of Article 17 to relieve the liability. Only if the claimant proves that the loss or damage is actually or probably due to unseaworthiness, then the carrier must prove the seaworthiness of the ship. Thus, the "prominent obligation" in the Rotterdam Rules, which was accepted by some courts, was rejected under Article 17. In the COGSA Law, if the damage is caused by two factors, one is the unseaworthiness, and the other is one of the cases of exemption from liability, the exemptions will not prevail over the unseaworthiness. 3. Under the terms of the Rotterdam Convention, no compensation will be payable for the delay, unless the compensation notice for the delay has been given within a maximum of 21 days from the delivery of the goods. However, the COGSA Law, while referring to this clause, states: "Any right to claim for loss of or damage to the goods or for delay in delivery of the goods carried under a contract of carriage of goods by sea under this Act is barred by prescription if no action or arbitration proceedings have been brought or commenced within one year from the day on which the carrier has delivered the goods. " This article has only addressed the issue of the time required to file a lawsuit, but the lack of mandatory damages for compensation is one of the weak points of this type of legislation. However, it may be possible to ignore this shortcoming by the assumption that a loss or damage is a principle to compensate.

4. The COGSA Law, in the third paragraph of Article 1301 considers live animals as an exception to the definition of goods. On the other hand, Article 195 of the Law on the Limitation of Liability of Carriers, which is predicted in Article 1311 of the COGSA Law for the post-loading obligations, has excluded its effect on the carriage of live animals. However, the Rotterdam Rules have taken a different approach in this regard, and the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party. However, paragraph (a) of Article 81 of the Rotterdam Rules stipulates that such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods resulted from an act or omission of the carrier or its representatives, done with the intent to cause such loss of or damage to the goods or done recklessly and with knowledge that such loss or damage would probably result.

5. The second paragraph of Article 1304 in the US COGSA Law and Paragraph 3 of Article 17 in the Rotterdam Convention mentions of 17 special cases of exemption for the carrier, although with some minor differences. These causes have some common features that they should be:1. External, i.e., they cannot be attributed to the carrier.2. Stable, i.e., the carrier cannot relieve them, or they cannot be relieved over time.3. Unpredictable (Ahmadi, 2016: 176).

References

Ahmadi, A. Law on Maritime Transport, With Emphasis on the Rotterdam Convention 2009, Tehran: Behnami Publications, 2016

Amerman, J. "Unseaworthiness Operational Negligence and the Death of the Longshoremen's and Harbor Worker's Compensation Act", Notre Dame Law Review, 43, 1968.

Bayat, M. Bahmani, M. Exemptions from irrelevant liabilities; Iran's law and the Rotterdam Convention, Journal of Social Sciences, Issue 11, 2017, Journal of Prevention of Crime and Law, p. 325.

Chacon, Victor H., "The Due Diligence in Maritime Transportation in the Technological Era", Zur Erlangung des Doktorgrades, der universitat Hamburg, 2016.

Maasoumian, P. Adaptive Maritime Law, Tehran: Jangal Javdaneh Publishing, 2016

Mohammadzadeh Vadghani, A. Kardan, K. Rotterdam Convention (1), Journal of Law, Faculty of Law and Political Science, 2012, No. 1.

Mohammadzadeh Vadghani, A. Kardan, K. Rotterdam Convention (2), Journal of Law, Faculty of Law and Political Science, 2013, No. 2.

Mokhtari, M. Carriage of Goods and Obligations of Carriers, Iran Chamber of Commerce & Industry, August 2002, No. 413

Schaffer, R. Augustin, F. and Dhooge, L. International Business Law and Its Environment, 40th edition, United States, West Educational Publishing Company and International Thomson Publishing Company, 2014

Sediq, H. General Principles of Maritime Law, Tehran: Jangal Javdaneh Publishing, 2016

Shaojing, QI. "Study on Major Legal Issues of Carriage of Dangerous Goods by Sea", Master Maritime Affers (Maritime Law and Policy), World Maritime University, 2013

Simayi Sarraf, H. Yari, M. Maritime Carrier's Obligations and Responsibilities under the Rotterdam Convention; Comparative Study with Iranian Maritime Law; Brussels and Hamburg Conventions; Shahid Beheshti University Journal of Legal Research, 2014; No. 66

Taghizadeh, E. Ahmadi, A. Comparative study of the scope and basis of the liability of the carrier in the Rotterdam Convention, Brussels and Hamburg Conventions, Journal of Comparative Law Studies, Issue 6, Fall and Winter, 2015, No. 2

Taghizadeh, E. Law on Maritime Transport, Tehran: Majd Publications, 2015