*Modernizing Iranian Maritime Law in regard to Liability of Sea Carrier: Can Rotterdam Rules find a word in edge ways?**

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Abstract

Iranian Maritime Code (1964) adopts its regulating system of maritime transportation from that of Hague Rules. The system does not incorporate the modern practice of maritime transportations, nor does it include the amendments of later conventions yet. This article takes an assessing approach in regard to this code with an overview to some cases set forth in Iran judicial system. It then appraises the possible ratification of the Rotterdam Rules by the country and the change it might leave on these cases. It also enjoys the experience of common law countries which are based on Hague/Hague-Visby Rules. Finally, it suggests that the Rotterdam Rules might enable the country toward fulfillment of its own objectives, besides facilitating its international trade with other European and Western countries whose ratification of the Rotterdam Rules is not far-fetched.

** This article is dedicated to my honorable professor **"Dr.Ali Moghadam Abrishami**" who has been my best role model of success, and to whom I am indebted for completing this article.*

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Introduction:

Before the birth of international conventions regulating maritime transportations, the parties of a contract of carriage or charter party had their own freedom to negotiate the terms of the contract. However, this uplifted the bargaining power of the carrier resulting in cessation of that freedom.[1] **"International Convention for the Unification of Certain Rules of Law relating to Bills of Lading** "was created as a result of growing dissatisfaction among shippers and their insurers due to arbitrary restrictions imposed by carriers to limit their liability in case of damage or loss of cargo. The **Hague rules** were the first practical efforts made to solve this problem by establishing standard basic obligations and responsibilities of the carrier and shipper for goods covered under a bill of lading.[2] After being amended by the Brussels Amendments in 1968, the Rules became known as the Hague–Visby Rules. Final amendment was made in the SDR Protocol in 1979.

Iranian Maritime Code has been adapted from book II of France Commercial Law ratified in 1807, and has been sorted out according to Iranian Legal System and the translation of international maritime conventions and Hague rules[3]. Ratified in September 20, 1964, it was once modified in 2012. Although it has some modification regarding decay of cargo or responsibilities of captain, it has not been changed in the area of carriage of goods.[4]

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[1]Wilson, J. F. (2010). Application of Hague/Visby Rules. In *Carriage of goods by sea* (7th ed., p. 174). New York: Pearson/Longman.

[2] *Hague-Visby Rules | Maritime-Connector.com. (n.d.). Last Access http://maritime-connector.com/wiki/hague-rules/*

[3] Najafi Asfad, M. (2008). Maritime Law: In Accordance with the Iranian Maritime Code and Maritime International Rules (4th ed., p. 23). Tehran, Iran: The Organization for Researching and Composing University textbooks in the Humanities (SAMT).

[4] Amending Bill of Maritime Code 1964. (2012, September 28). Last access October 3, 2015, http://rc.majlis.ir/fa/legal_draft/state/821330

After constituting other conventions like Hamburg Rules in 1978, and Rotterdam Rules in 2009, it seemed necessary for the Iranian Maritime Code to be harmonized under the initiatives of these conventions. Although Iranian Maritime Code had some amendments regarding Decay of Cargo (Article 66), Ship Command (Article 80 recurrent2), Navigation and ship management (Article 80 recurrent 3), Confidence in Shipworthiness (Article 80 recurrent4), Obligation and responsibility of the ship commander in receiving and carrying the cargo (Article 81), Discharge and loading (Article 81 recurrent)[5], it does not have a new perspective into the articles 52-55 which comply with Hague and Hague/Visby Rules in liability Of Sea Carrier.

In this article, we first study the different aspects of Iranian Maritime Code concerning liability of sea carrier in Carriage of Goods and will have a brief overview of International convention and related cases in this regard which manifest international and local experiences and sometimes difficulties; then will assess the possible impact of the Rotterdam Rules on each verdict. Later on we will study the innovations of Rotterdam Rules, and encourage Iranian legislator for the modification of Iranian Maritime Code under common worldwide practice and international conventions.

Why any change? Why Rotterdam Rules

Distinguished situation of Iran after Islamic Revolution, scientific explorations, the advent of well-equipped and technological ships to the market, the outburst of international conventions in the heart of maritime activities, insufficiency of

[5]Law of Iranian Maritime Code Amendments. (2012, December 18). Last access October 3, 2015, http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=421

Iranian Maritime Code and new internal and international essentials of the society necessitated the attention of the directors in charge more than before. Ports and Maritime Organization of Iran had some legal advisers and scholars codify a detailed plan of modified or even new codes of maritime law. The draft of 5 chapters, and 225 articles were prepared, however remained dormant due to unknown reasons.[6]

Some other researchers then stressed out the demand for adjusting Iranian Maritime Code to the new changes of maritime world. However, they have mentioned that since many countries have not ratified Hague-Visby rules, amendments to the chapter 4 of Iranian Maritime Code, which is an adaptation from Hague Rules, are not necessary.[7]

Hamburg Convention, a replacement of Hague and Hague/Hague-Visby rules, came into force after the ratification of 20th country, Zambia, on 1 November 1992[8]. However, it couldn't attract a large portion of world sea trade owing to the belief that Hamburg Rules are in accordance with the interests of cargo owners and hard on ship-owners[9]. Nonetheless, with the advent of the Rotterdam rules, a balance was created between two interest groups. It is believed that not only does Rotterdam Rules balance the interests of carriers, shippers, freight forwarders, insurance companies, and governments, but also it modernizes the trends of sea

[6] Najafi Asfad, M , *Op.cit. ,pp.8-9*

7 Fanaii, M. (1998). Iranian Maritime Code and the Necessity for its Revision 2. Payam Darya Monthly, (71), 17-17.

[8] Status. (n.d.). Last access October 4, 2015,

http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/Hamburg_status.html

[9] LawTeacher, UK. (November 2013). Hamburg Rules For International Carriage. http://www.lawteacher.net/free-law-essays/international-law/hamburg-rules-for-international-carriage.php?cref=1

trade toward uniformity.[10] In addition, considering modernization of Iranian Maritime Code, the innovations of Rotterdam Rules are so outstanding that cannot be disregarded; namely, the period of liability, seaworthiness, burden of proof, and care of cargo. Furthermore, as FOUR ship-owner groups have welcomed a call by the European Parliament for EU member states to support the Rotterdam Rules, [11]the future of Rotterdam Rules seems promising. Above that, the prediction for U.S. ratification of the Convention is not far beyond imagination since it played the leading role in the negotiations and much of the Convention is on a par with the efforts of Maritime Law Association of the U.S to remake the United States Carriage of Goods by Sea Act ("COGSA"), and although that statute was never enacted, the final agreed upon language submitted to Congress was generally viewed as a reasonable compromise among the various U.S. shipping interests.[12]

Therefore, Iran must take the preliminary steps toward modernizing its maritime law under the influence of Rotterdam Rules whose worldwide ratification is not far-fetched. Furthermore, there would be numerous advantages for this country upon the international coordination. Some of the major matters of international conventions which have undergone the changes are discussed here:

[10] Mbiah, K. (n.d.). Updating the Rules on International Carriage of Goods by Sea: The Rotterdam Rules. 1-1. Last access October 4, 2015, Available at: http://www.comitemaritime.org/Uploads/Rotterdam Rules/Paper of Kofi Mbiah.pdf

[11] Ship-owners praise EU for urging support of Rotterdam Rules. (n.d.). Last access September 21, 2015, http://www.shippingonline.cn/news/newsContent.asp?id=15763

12 The Rotterdam Rules. (2010). Last access October 4, 2015, Available at: http://www.blankrome.com/index.cfm?contentID=37&itemID=2117

A. Period of Liability

Article 52 of Iranian Maritime Code determines the period of carriage of goods in subparagraph 8:" The Carriage of Goods is from the time when the goods are loaded until the time they are discharged from the ship." This article is a mere translation of Hague Rules and Hague-Visby Rules[13]. It then defines the period of "Tackle-to-tackle" in subparagraph 9 of Article 52: "Loading usually starts from the time when the ship's tackle is hooked onto the cargo, which the shipper has prepared for loading from the quay, platform or other means of carriage and lifts the cargo; and, the discharge finishes when the hook releases the cargo in the quay, platform or other means of carriage for this purpose."[14]

There is a very famous case of "Pyrene CO., LTD. V. Scindia Steam Navigation Co.,LTD. in this regard which has elaborated on many issues. In August 1948, the plaintiffs entered into a contract of carriage with the government of India, through a department of the government ("I.S.D") by which they agreed to sell to the Indian government a number of airfield crash tenders, f.o.b. London. The arrangements for the carriage were made by I.S.D's agents through one of the defendant's ships for loading under the contract. The plaintiffs had one of the tenders delivered to the port of London for loading on board the ship. The tender was dropped and damaged in the course of loading, but before it was across the ship's rail by the defendant's stevedores. A bill of lading subject to The Hague Rules was later issued to cover the whole shipment, but with the tender deleted from it. The plaintiffs had the tender repaired and claimed in tort the amount of the cost repair from the defendants. The defendants admitted liability, however asked

[13] *"International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" (Hague Rules/amended by The Hague-Visby Rules). Article 1(e)*

[14] *Iranian Maritime Code1964*

for limitation of liability under Article IV (5). Counsel contended that the accident occurred outside the period specified in article I(e) , so article IV(5) which limits liability and all other rules regulating the rights and responsibilities of the ship-owner would not apply. However, it was later protested that such an argument is fallacious because even in the most restricted meaning possible for "contract of carriage", for example the period of the voyage, the loading of the goods would still relate to the carriage on the voyage and so be within the "contract of carriage."[15] How could the counsel have been able to put forward an argument, if the ruling conventions had been the Rotterdam Rules?

Article 12 of Rotterdam Rules mentions the Period of responsibility of the carrier:" The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered."[16] This "door-to-door" responsibility period includes sea leg as well.[17] Therefore, such an expansion would preclude the suspicion of whether or not being under the tackle-to-tackle period. This change was a tread toward breaking the tradition which made itself consistent with the intellectual and economic custom prevailing at the time when the negotiations were taking place, attracting focus on globalization, liberalization, and growth.[18]

[15] Pyrene Co. LTD. v. SCINDIA Steam Navigation CO., LTD available at: www.mcgill.ca/files/maritimelaw/ch9.pdf(2015)

[16] Rotterdam Rules 2009

[17]United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Resolution adopted by the General Assembly, (2014, June 1). Last access September 21, 2015, http://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/Rotterdam-Rules-E.pdf

[18] Ortiz, R. I. (2009). What Changes in International Transport Law after the Rotterdam Rules? Available at http://heinonline.org/HOL/LandingPage?handle=hein.journals/droit2009&div=36&id=&page

Door-to-door application of Rotterdam Rules prolong the period of carrier's liability. Whereas in Hague, and Hague/Visby Rules this period was from tackle to tackle (article 1, rule (e)). In a door to door transport, the period of liability of the carrier will be extended to the time when the goods are at a port terminal waiting for the carriage or delivery.[19] So, in the above mentioned case, such broad liability could have hampered the counsel of his claim.

The Rotterdam Rules have not only extended the period of liability of the carrier, but also has defined due diligence in a broader view which includes receiving and delivering the goods as well. Therefore, the carrier is obliged to be well informed of the goods to fulfill its duty.[20] The Rotterdam Rules impose the duty of receiving and delivering the goods on the shoulder of the carrier.[21] However the carrier's liability is determined "tackle-to-tackle" in Hague and Hague/Visby Rules.[22]

The similar case can be found in Iranian petitions as well. There was a case in 2008 in Branch 3 of Juridical Court of Tehran, in which Iran Insurance Stock Company requested for the demand of loss against Iranian Shipping Line (IRISL Group) claiming 11.031.000 Rials in addition to all the legal remunerations including honorarium of juridical representatives and the loss of delayed payment.

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[19] Chami, D. E. (n.d.). The Obligations of the Carrier. Available at: http://www.rotterdamrules2009.com/cms/uploads/Def.%20tekst%20Diego%20Chami%20-%20Obligations%20of%20the%20Carrier.pdf

[20] Katsivela, M. (n.d.). Overview of Ocean Carrier Liability Exceptions Under the Rotterdam Rules and The Hague-Hague/Visby Rules. Revue Générale De Droit, 419-419. Last access September 21, 2015, Available at : https://www.erudit.org/revue/rgd/2010/v40/n2/1026957ar.pdf

[21] Rotterdam Rules, Article13 Specific obligations 1." The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods."

[22] Hague Rules, Article1 (e):" "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship."

The plaintiff explained that Isfahan Steel Company requested freight insurance for the equipment of thermal powerhouse and grueling parts by Insurance Policy #4.11.10177.79 and the defendant company had committed the shipment of the equipment according to bill of lading DO 653 and had carried the equipment by Iran-Bayan vessel from Germany and china to Iran. According to the hearing session for damage investigation, done on 4.10.2005, part of the cargo had been damaged and Plaintiff Company had paid the damage value to the owner after evaluating the damage, and according to article 30 of insurance law demanded the damage value on behalf of the owner as representative.

By making a pleading,the defendant claimed that primarily, the suing time limit was passed and later asserted that no damage to the equipments had been caused according to custom certificate (verbal process in port). However, after providing the expert opinion approving the damage to box number 21/30, the defendant claimed the damage had been due to sea turbulance and seacarrier should not be responsible to compensate the loss.On the other hand, the damage had occurred during dischare done by the discharge contractor .The defendant requested to refer the problem to expert board, but the expert cost remained unpaid.

The Court resorted to expert opinions and complementary statements which cleared the fact that the discharge document had been signed by the defendant and had certified that three boxes with number 21/30, 22/30 and 24/30 boxes had been broken, but the content had remained intact. However, after the evaluation of insurance expert, it’d been certified that the content of one box had been damaged 4% during loading and discharge and the value of damage was 11031285 determined by the selected expert. As there were not enough documents and reasons implying that loading and discharge had not been the duty of sea carrier so as to approving non-liability, and since the damage had not occurred in the voyage period so as to be applied to the perils of the sea and resulting in non-liability, and

since the responsibility of carrier according to article 377 and 386 of commercial law and article 52 and 54 of civil law in delivering the cargo intact to the destination is absolute, and since the request was made within one legal year of discharging time, the defendant plea was denied and according to above explanation and articles 198, 519 and 522 of civil law and article 30 of insurance law, defendant was condemned to pay 11.031.000 Rials for the original of request and value of 1.665.800 Rials for judgment cost and expert cost and honorarium of juridical representatives as well as to pay delay loss from 85.4.26 up to payment time to plaintiff based on inflation rate which is announced by central bank. The issued verdict is revisable within 20 days after imparting in Tehran courts.[23]

Although the sea carrier could have proven enough evidences alleging that loading and discharge were not his duty, how could he have affirmed exculpation, had the Rotterdam Rules been applicable? Even if he had had enough evidences, the Rotterdam rules would have announced him responsible even in discharge and loading.

One other weakness of Hague Rules which is so called 'before and after the problem' is during the additional time in which the goods are under the control of the carrier outside the tackle to tackle period. Article VII provides that the parties are free to discuss their own terms in respect of care of cargo before loading and after discharge. [24] However, it can be assumed that under Hague Rules and Hague-Visby rules the carrier would be relieved of sufficient care and custody. In Hauhaea v Laurabada Shipping Services Ltd [2005] PGDC31; DC200(13 July 2005) there was a case put before the district court of justice in Papua New Guinea in which the relevant law is Sea Carriage of Goods Act 1951. Schedule 1 of the

[23] Case of Islamic Republic of Iran Shipping Lines, Branch 3 of Juridical Court of Tehran

[24] Wilson, J. F., *Op. cit.*, pp. 181,182

Act which is similar to Hague Rules defines "carriage of goods" the period of time when the goods are loaded to the time they are discharged from the ship. It also specifies a Bill of Lading is a contract of carriage.[25] The complainant bought 5 x 44 drums of zoom and 3 x 44 kerosene to be shipped to Ihu, Gulf Province. He had arranged with the defendant company to ship his goods, and a usual bill of lading was issued after payment. Upon delivery, one drum was not received and recorded lost. On the second trip of the complainant, he bought 10 drums, and after the payment and issuing the bill of lading, and shipment, he only received 7 drums. He visited the company office and alleged that four of his drums were lost between port of loading and port of delivery. He pleaded to the court seeking compensation. However, the court held that the Clause 6 of issued Bill of Lading expressly limited the liability of the defendant to losses incurred during the period of time the goods are on the ship itself, and here the complainant failed to prove that the loss had occurred at the time they were loaded on the ship to the time they were discharged at Ihu port and only in these circumstances the defendant's liability was limited to the losses. So the court found the defendant not reliable.[26] How would the verdict have altered under the Rotterdam Rules?

B. Seaworthiness

In Article 54 of Iranian Maritime Law the exact responsibilities of seaworthiness in Hague Convention is attributed to Sea Carrier. In regard to this responsibility,

[25] Dependent State of Papua New Guinea, Chapter 261., SEA-CARRIAGE OF GOODS ACT 1951, SCHEDULE 1 – RULES RELATING TO BILLS OF LADING

[26] Maritime Law Virtual Database. (2005, July 13). Last access September 21, 2015, Available at: http://www.paclii.org/maritime-law/case-summaries-sea-carriage/

article 54 mentions: "The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to a) make the ship seaworthy; b) properly man, equip and supply the ship; c) arrange and prepare the holds, refrigerating and cool chambers and all other parts which are used for carriage."[27] There seems to be similarities between Iranian Maritime Code and Hague Rules in this regard too.

In the United States Courts of Appeals for the fifth circuit, there was a dispute between The Folger Coffee Company; Gulf Insurance Co., (Plaintiffs-Appellants) Versus Olivebank; Chairman Shipping Inco.; Safbank Line Limited; Andrew Weir Shipping Limited; Lykes Brothers Steamship Company, Inc., (Defendants-Appellees) in Southern District of Texas.The plaintiffs filed actions in district court seeking a declaration that the vessel was not entitled to general average and recovery for damage to cargo.

The district court found that the loss of power was caused by a fortuitous combination of events and that the vessel was seaworthy when it left port. Folger Coffee and Gulf Insurance maintained that the defendant was not entitled to general average because the vessel was unseaworthy under the Carriage of Goods at Sea Act, 46 U.S.C. §§ 1300-1315. Under COGSA, once the vessel establishes that a general average act occurred, the cargo owner must prove that the ship was unseaworthy at the start of the voyage[28] and it caused the general average event[29].

[27] Iranian Maritime Code 1964

[28] United States Code: Title 46a,1304. Rights and immunities of carrier and ship | LII / Legal Information Institute. (n.d.). Last access September 21, 2015.
https://www.law.cornell.edu/uscode/html/uscode46a/usc_sec_46a_00001304----000-.html

[29] General Average Event: In its simplest form, general average is a voluntary act of sacrifice at a time of marine peril, ordered by the master for the common safety of the ship and cargo, in which all interested in the common venture (the owner of the ship, the owner of the cargo, and sometimes the party entitled to collect freight payment)

If the cargo owner proves unseaworthiness, the sea carrier can seek to prove that he exercised due diligence to make the vessel seaworthy prior to the voyage. The district court held that the evidence did not support the proposed finding that the vessel was unseaworthy due to a defective emergency electrical system. The district court held that the vessel was seaworthy when it left port and that the open skylight and the vent covers were not an issue of seaworthiness but a management decision.[30]

Regarding seaworthiness, a case was brought to Branch 3 of Shahid Beheshti Juridical Court in Tehran in 2009, requesting demand of loss. The plaintiff, Iran Insurance Join stock company, claimed demand against Iran Shipping Line requesting 310.765.550 Rials in addition to judgment and delayed payment loss explaining that Iran public commercial parent company requested freight insurance for 31000 tons of purchased rice and the defendant company committed the shipment of rice according to insurance policy number 18354 from Thailand to Chabahar. According to the damage investigation, the damage had been caused during the carriage. Complainant Company calculated the loss according to the available documents and expert opinions, and paid the damage value as 310.765.550 Rials to the owner and received the receipt. Since, according to article 386 and 388 of commercial law, the defendant's responsibility as the sea carrier was evident, he pleaded to receive the loss value on behalf of the cargo owner. The defendant presented a pleading claiming that the complete cause of loss was the sea storm and the sea carrier should be exempt from liability. In another document, the defendant claimed that 1115 packs had been drenched and the loss

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contribute to the payment of that sacrifice. Clark, Atcheson & Reisert, Sea Law Volume 1, available at: http://navlaw.com/doctrine-of-general-average-ancient-unique-admiralty-law

[30] Folger Coffee v. Olivebank (5th Cir. 2000). (n.d.). Last access September 21, 2015, from http://www.admiraltylawguide.com/circt/5thfolger.html

caused by discharge and loading would not ascribe to him. The court declared that the dossier contents showed damage evidence to the cargo signed by the captain as well as dampening proof of 1115 packs of rice, and according to article 54 of maritime law, the sea carrier was responsible to exercise due diligence before and at the beginning of the voyage to properly man, equip and supply the ship and makes the preparation of storehouse and cooling chamber and all other parts of the ship for carriage. Also, the expert opinions provided that the water had been penetrated to the storehouse through welded points of store number 5 and had caused the damage, so the sea storm was not adequate reason for loss and didn't have any effect in the loss. Therefore, according to articles 52 and 54 of maritime law as well as articles 377 and 386 of commercial law, the sea carrier was responsible to compensate the loss. As that loss consisted of two damages and the compensation of loss during the voyage due to shipment situation (free in and free out) was on carrier's shoulder and the loss which had occurred at the time of discharge was not the defendant's liability and discharge contractor would be responsible. The damage value was valid and acceptable according to expert opinions and could be complied with. The value of 173.886.480 Rials was estimated and announced as original value. Other claims of complaints were rejected due to lack of adequate reason and documents.

Rotterdam Rules has maintained the traditional obligation of the carrier to exercise due diligence to make the ship seaworthy and to care for the goods, but it demand the continuity of first of such obligations.[31] It can be concluded that, had these cases been under Rotterdam Rules, the carriers would have become liable for not exercising due diligence along the sea voyage. However, since Hague Rules,

[31] Berlingieri, F. (2009, November 5). A Comparative Analysis of The Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules. Paper Delivered at the General Assembly of the AMD, 6-6.

Iranian Maritime Law and Carriage of Goods of Goods at Sea Act require the exercise of due diligence in seaworthiness only before and at the beginning of voyage, the carrier is relieved from liability.

C. Liability Regime and Burden of Proof

Article 55 of Iranian Maritime Code specifies the conditions of immunity of the sea carrier.[32] As Iranian Maritime Law adopts this section from Hague and Hague Visby Rules, it exempts the sea carrier from force majeure and the conditions of article4. However, unless the carrier has carried out due diligence, he is not exonerated from liability; therefore, the proof of exercising due diligence rests upon his shoulder. Also, the loss or damage to the goods arising from fault of the master, mariner, pilots or the servants in navigation or in the management is not sea carrier's liability[33]. After proving due diligence, the claimant must establish causal relationship between damage and unseaworthiness. In this situation, if the unseaworthiness is proved, the sea carrier shall rely on article 4 regarding the events which are considered perils of the sea or act of God.[34]

As Hamburg rules determine the liability of sea carrier to the period of port-to-port, the allocation of the burden of proof is limited only to the period that the goods are in his charge. However, the liability of sea carrier under this convention is based on the presumed fault or neglect, but with respect to certain cases the provisions modify this rule.[35]

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[32] Article 55 of Iranian Maritime Code 1964
[33] Berlingieri, F., *Op. cit.*, p.8

[34] Hague-Visby Rules Article 4,2

[35] Hamburg Convention

The Rotterdam Rules has taken a moderate position between sea carrier and cargo owner with a combination of Hague Rules and Hamburg Rules. Article 17(a) of Rotterdam Rules invites the claimant to prove the attribution of loss, damage or delay to the sea carrier during his period of liability which is door-to-door. So the initial burden of proof is claimant's responsibility. Then the sea carrier will be relieved from the liability if the cause is not concerned to him or any other person under article 18. [36] Besides, the excepted peril of the sea would relieve the sea carrier from liability. Accordingly, if the carrier cannot prove either of the counter proof, the presumption of his fault will remain sustained.[37]However, there is an additional clause in Rotterdam rules in comparison to the Hague-Visby rules in which the claimant can provide the counterclaim in regard to the fault of the carrier and to prove that the event is not one the exemptions enumerated in article 17, or the fault of the carrier or a referred person in article 18 contributed to the event which the carrier relies on, or unseaworthiness, uncargorworthiness, improper crewing, equipping, and supplying the ship caused the event.[38]

The qualifications of the third stage demonstrate that there are only some of the enumerated exception to which the carrier's fault might contribute; naming, saving or attempting to save life at sea (article 17, paragraph 3(l))[39].In fact in contrast to the Hague-Visby Rules in which the claimant must prove his allegation, in Rotterdam Rules the claimant's burden of proof is lighter owing to the fact he

[36] Rotterdam rules, Article17(2)

[37] Yuzhou, S., & Li, H. (2009). The New Structure of the Basis of the Carrier's Liability under the Rotterdam Rules. Uniform Law Review - Revue De Droit Uniforme, 931-943.

[38] Rotterdam Rules article 17,5

[39] Zhao, L. (n.d.). Liability Regime of the Sea Carrier under the Rotterdam Rules. 4-4. Retrieved September 24, 2015, Available at: http://www.hksoa.org/contents/attachments/Presentations/2013/IFSPA2013/Papers/M28.pdf

should just prove the loss, damage or delay was 'probably' due to unseaworthiness.[40] Besides, the exemption list does not put an end to the liability.

The Atlantic Island Case (Cour de Cassation, July 7 1998) was met with criticism. In this case, metal component parts of a grain silo were to be shipped from Europe to the French Caribbean. Metal components of a grain silo were to be shipped from Europe to French Caribbean. They were packed into open-top containers and stowed on deck at the top of the stow. During the crossing they were encountered with heavy weather; however, it was not unexpected for the winter time to face that weather. The court held that the 'peril of the sea' must be distinguished from 'force majeur', for the later the test includes unpredictability and insurmountability. Neither is required for a peril of the sea defense. The court stated that in a combined situation of peril of the sea and fault of the sea carrier, the latter prevails. This would amount to a fault on the part of the carrier and so the carrier wouldn't have the right to benefit from any expected peril under Hague/Hague Visby rules.[41]

This opened up criticism to the critiques since the Brussels Conventions only remove the carrier's right to rely upon an expected peril if he has not exercised due diligence to make the ship seaworthy before and at the beginning of the voyage. Here, the carrier had only improperly stowed the cargo.

[40] Berlingieri, F., Op. cit., p.9

[41]International Law Office - Legal Newsletters, Law Firm Directory and Legal News. (2000, January 20). Last access: September 24, 2015, Available at: http://www.internationallawoffice.com/account/login.aspx?ReturnUrl=http://www.internationallawoffice.*com/Account/Login.aspx?ReturnUrl=http:%2f%2fwww.internationallawoffice.com%2fnewsletters%2fdetail.aspx%3fg%3db43c44fc-d988-433*

In this regard, considering the Rotterdam Rules as the ruling conventions, most the suspicions would be eradicated. Primarily, the Rotterdam Rules expect the sea carrier to exercise due diligence throughout the voyage. Second, when the sea peril and fault of the carrier has combined, the court would be at higher percentage of certainty to announce the dominance of fault, since invocation of peril of the sea might be faced counter proof in Rotterdam Rules as well, and in contrast to Hague Rules it would not put an end to the claims.

What is even more beneficial to the claimant in Rotterdam Rules is the extension of sea carrier's duty to delay of delivery which leads to punctuality of dispatching the goods. Therefore, not only does the Rotterdam Rules keep its distance from the strict regime of liability of Hamburg Rules, but also it ameliorates the Hague Visby Rules by providing 'delay' among the factors resulting in liability and also longer period of liability for the sea carrier. However, it confirms its modest position by granting freedom of contract concerning live animals.[42] This can be an important aspect for Iran since according to the statistics, until January 2014, Iran exported 717'863'000 $ of live animals and animal products which are about 2.8% of Iran total value of exports.[43]

D. Care of Cargo

Article 54 of Iranian Maritime Code is a match for Article 3 of Hague/Hague Visby Rules. Aside from exercising due diligence, the carrier must properly man, equip, and supply the ship, making the holds, refrigerating and cool chambers, and

[42]Rotterdam Rules Article 81. Special rules for live animals and certain other goods

[43] Exchange of 71 Billion Dollar of Iran with 178 Countries/ How much was the Export of Live Animals and Animal Products? (2014, February 11). Last access October 6, 2015.

all other parts of the ship in which goods are carried fit and safe for reception, carriage and delivery. It then explains the duty of loading, handling, stowing, carrying, keeping and caring for and discharging the goods properly and carefully.

Having extended the exercise of due diligence to the whole voyage, the Rotterdam Rules also preserve the carrier's obligation as article 3 of Hague/Hague Visby Rules. Besides, as mentioned previously, the door-to-door obligation of the carrier includes the delivery as a care of cargo obligation.

In September 26, 2009 there was a case was submitted to branch 3 of Judicial court of Tehran, in which Iran Insurance Company claimed 672000 $ and all the redress. In sum the claimant explained that the carrier had undertaken the carriage of insured goods of the company and in the voyage, the insured goods had faced some damages. The insurance company paid for the loss of the cargo owner and sought compensation for the loss. The court held that the loss was one of the applicable inclusions of perils of the sea and so the carrier would not be reliable and dismissed the appeal. And since the carrier sold the unusable goods, and didn't import it to the country, the lawyer of Insurance Company sought redress invoking transaction of other property, since in the Civil Code of Iran transaction of other property is inoperative unless provided by the consent of the owner[44]. The court held that since the cargo owner hadn't paid for the expenses of freight, clearance, marketing, and vending, the cargo owner had waived his right of possession. Therefore, according to The Civil Code of Iran, anyone possessing an unowned property would be its owner,[45] and the carrier was announced free of redress.[46]

[44] Civil Code of Iran, Article 247

[45] Civil Code of Iran, Article 147

[46] Verdict #8809970226300500, September 26, 2015

It goes without saying that the carrier couldn't have been able to sell the cargo, and further he should have been responsible for all the expenses and redress under the Rotterdam Rules.

This can be also taken into consideration in George F. Pettinos, Inc. v. American Export Lines, 68 F. Supp. 759 (E.D. Pa. 1947). The suit was brought for damage and to shortage to one of 666 bags of dust of plumbago and the other 500 bags of lump plumbago, in two shipments of plumbago from Colombo to Philadelphia abroad the "Exbrook". Upon arrival in Philadelphia, a large number of the burlap had burst open in the process of unloading and had been found rotted probably due to fresh water contact. Later on, a bulk plambago was rebagged and shortage in weight had been reported. The claim was for the cost of rebaggaing and other costs, besides short delivery. As the damage had been caused by fresh water, it had been concluded that it might have been due to rain, uncovered ventilators, moisture in other cargo nearby, or sweat. According to the Carriage of Goods by Sea Act U.S.C.A[47], if the carrier showed due diligence in protecting the shipments from moisture during the time they had been in its hand, he wouldn't be bound to show how the moisture had penetrated into the bags. The testimony of the master of the ship was accepted leading to the acceptance that no water had entered No.2 hold and that the due diligence had been exercised. The libellant put forward the counter proof stating that the stowage had been improper. As there wasn't any testimony to this claim it remained a mere argument. The judge held that the respondent had sustained the burden upon it, and concluded that the breaking of the bags had not

[47] The Carriage of Goods by Sea Act, 46 U.S.C.A. § 1300 et seq

been due to the fault of the ship and so the libellant couldn't avail itself of that as an excuse for its failure to have the shipment promptly rebagged and weighed.[48]

E. Innovations of Rotterdam Rules in Comparison and by itself

While Hamburg Rules mention the possibility of the entitlement of the carrier to carry the cargo on deck if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade,[49]the Rotterdam Rules takes another standing. Rotterdam Rules accepts carriage of goods on deck as far as such a carriage is obliged by the law and the cargo is carried on containers or vehicle fit for this type of carriage, and also the carriage on deck is in accordance with the contract of carriage or the customs.[50]

In respect to live animals, the Hamburg Rules regulate the liability of the carrier[51], while Rotterdam Rules provide freedom of contract[52]. It can be noticed that The Rotterdam Rules provide a specific article for live animals and certain other goods reminding of the subtlety of organizing this convention.

The Rotterdam Rules have also kept up with the new trends of maritime tradition by introducing maritime performing party in article 1.7 as a party who performs or undertake any of carrier's obligations during the voyage. His liabilities are mentioned in article 19. It also facilitates the difficulties of jurisdiction in previous conventions. It allows exclusive jurisdiction upon meeting of requirements of

48 George F. Pettinos, Inc. v. American Export Lines, 68 F. Supp. 759 (E.D. Pa. 1947). (n.d.). Last access September 25, 2015, from http://law.justia.com/cases/federal/district-courts/FSupp/68/759/2312819/

49 Hamburg Rules, Article9 Deck cargo

50 Rotterdam Rules, Article25 Deck Cargo on ships

51 Hamburg Rules, Article5, Basis of Liability

52 Rotterdam Rules, Article 81 Special Rules for live animals and certain other goods

article 67(2).[53] In addition, The Rotterdam Rules allow for Arbitration in article 75. The article mentions that the designation of the place of arbitration is binding between the parties. It also elaborates on Arbitration agreement in non-liner transportation in Article 76. All of these regulations can open up a new window of jurisdiction improvement for a country like Iran which is on the milestone of jurisdiction development. It also stand among other conventions by regulating carriage of goods by different modes of transport other than the sea in article 1.1.[54] This also contributes to the door-to door responsibility of the carrier.

Article 8 of Rotterdam Rules establishes electronic transport records with the same effect. Article 9 and Article 10 also regulates the negotiability and replacement of negotiable records. What can better be at the service of Iran as a country which seeks its place in the worldwide speedy progressive maritime industry other than new methods of documentation?

*F. **Conclusion***

The above mentioned aspects of maritime law are only a handful of facets of modern maritime trade. Rotterdam Rules have tried to keep up with the speedy

[53] Rotterdam Rules, Article 67Choice of Court Agreements,

2. A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article only if: (a) The court is in one of the places designated in article 66, subparagraph (a); (b) That agreement is contained in the transport document or electronic transport record; (c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and (d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

[54] Rotterdam Rules, Chapter 1 General provisions Article 1 Definitions, For the purposes of this Convention: 1. "Contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

modernization of multimodal transport and have tried to keep a balance between many interests. Although the set of rules does not have force of law, they expect the carrier to be contractually faithful to his duties which do not decrease the merit of the Rotterdam Rules.

Some scholars have stressed out that the guard of legislator toward Rotterdam Rules is article 90 in which no reservation is permitted and can lead to conflict with other convention. However it is further suggested that these conflicts should not make worries for the legislator since the conflict resolution principles have been governed in the convention especially in chapter6, article 26 and chapter 17, articles 82 to 87.[55] According to the long term objectives of Iran to increase the trade volume with neighboring countries[56], and to make the necessary measurements for the increase of foreign transit goods passage up to 10% each year[57], and since this country should keep pace with the everyday change of modern world of maritime law, should it want a real progress in maritime transportation, Iran should prepare itself for a revolution in Maritime Law. This change will bring up the country to the accessible market of Europe and further to western countries by the improvement of trade exchanges according to the recent hope after lifting up the sanctions.

[55] Simaii Sarraaf, H., & Yari, M. (2012, May 24). Rotterdam Rules' Scope of Application; the Probability of Conflict with other Conventions and Rejection of Reserve. International Legal Journal; Center for International Legal Affairs of the President, 110-110.

[56] ettelaat newspaper. (2015, June 11). Last access September 25, 2015, from http://www.ettelaat.com/new/index.asp?fname=2015/06/06-10/22-45-23.

[57] The Law of Quinquennial Development Plan of Islamic Republic of **Iran (**2011-2016). (2011, January 5). Last access September 25, 2015, from http://rc.majlis.ir/fa/law/show/790196

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