

Obligations and liability of the maritime carrier of goods in the light of the Algerian legislation and international conventions

التزامات ومسؤولية الناقل البحري للبضائع على ضوء التشريع الجزائري والاتفاقيات الدولية

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Abstract:

We aim to identify the obligations of the maritime carrier as well as the cases in which it is responsible, that is why we have used the descriptive and analytical approach. And we concluded that, the obligations related of the ship, the cargo and the voyage, and in the case of loss, damage or delay in delivering the goods his liability established, However, he could exempt himself from it in accordance with article 803 of the Maritime Code or article 5 of the Hamberg Convention.

key words:

Maritime carrier - ship - cargo port – liability –goods

: الملخص

نهدف إلى تحديد التزامات الناقل البحري وكذلك الحالات التي يكون مسؤولاً فيها، ولهذا استخدمنا المنهج الوصفي والتحليلي. وخلصنا إلى أن الالتزامات تتعلق بالسفينة والبضائع والرحلة ففي حالة الهلاك أو التلف أو التأخير في تسليم البضاعة تثبت مسؤوليته ، ومع ذلك يمكنه إعفاء نفسه منها ، وفقا للمادة 803 من القانون البحري أو المادة 5 من اتفاقية هامبرغ.

: الكلمات المفتاحية

الناقل البحري - السفينة - ميناء الشحن - المسؤولية - البضائع.

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Introduction:

Transport is a service industry responsible for carrying or transferring people and goods⁽¹⁾ from one place to another. Without it, a country's trade, its progress, and even its very life would be possible. In effect, links between the members of a community, between cities, regions and countries depend on the availability of transportation⁽²⁾.

And maritime cargo transportation it's a kind of maritime transport. So that's it 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⁽³⁾.

That's explains the legislative interest in regulating its provisions internally and internationally.

So, a contract for the carriage of goods by sea is one in which a person, the shipper, undertakes to pay a specific cargo to another person, the carrier, who in turn undertakes to transport a specific cargo from one port to another. It's sort of a contract whereby the marine carrier undertakes to transport goods from one port to another with the payment of a certain amount called cargo⁽⁴⁾.

And this leads us to look at the obligations of the maritime carrier of the goods and to raise the following problems: What are the obligations does national and external legislation impose on the maritime carrier of goods? And when is the responsibility of this letter?

Therefore, the purpose of this study is to find out what the obligations are imposed on the maritime carrier of the goods, In addition to knowing the cases in which it is responsible, without losing sight of the cases from which he is excused.

That's why we have relied on the descriptive and analytical approach by describing these commitments and analysing the various legal texts to answer to the following plan:

- 1- Concept of the contract for the carriage of goods by sea
- 2- The obligations of the maritime carrier
- 3- Liability of the maritime carrier
- 4- Exemptions from maritime carrier liability in Algerian law and international convention.

Section I: Concept of the contract for the carriage of goods by sea

Through this chapter, we will address the definition of a contract for the carriage of goods by sea first, and then we will address the characteristics of this contract.

A) Definition of the contract for the carriage by sea:

With reference to Algerian maritime law, he defined the contract for the

carriage of goods by sea as: "Under the contract for the carriage of goods by sea, the carrier⁽⁵⁾ undertakes to deliver certain goods from one port to another and the shipper undertakes to pay it the so-called Cargo fare ⁽⁶⁾".

And article 739/01 also states that: "The contract of carriage by sea begins as soon as the carrier has taken over the goods and ends up delivering the goods to the consignee or its legal representative."

However, this definition did not explain the intent of the goods, but by extrapolating the convention of Brussels we find that "goods" includes animals, vehicles, trailers, containers, flats, packages, or other equipment or goods declared for shipment together with their contents, if any, and personal property of any description whatsoever⁽⁷⁾.

Also in international conventions, as the Brussels Convention in article 1/b: "Transport contract" applies only to the transport contract entered into by a Bill of lading or any similar document forming title for the carriage of goods by sea; it also applies to a bill of lading or similar document issued under a charters issued from the time that that title governs the reports of the carrier and the holder of the bill of lading."

And in another definition of the contract of carriage by sea, but broadly speaking, we find the 1978 Hamburg convention⁽⁸⁾ gives a definition to transport contract that means any contract by which the carrier undertakes, on payment of freight, to transport goods by sea from one port to another; however, a contract which involves, in addition to sea transport, carriage by any other mode shall be considered as a contract of carriage by sea for the purposes of this Convention only to the extent that it is related to sea transport⁽⁹⁾.

B) Characteristics of a maritime contract:

The contract for the carriage of goods by sea is different from other contracts, Nevertheless often subject to international law because of the extraneity of transport, the contract of maritime transport contains almost systematically clauses designating the law applicable to the contract, the so-called Paramount clauses. The validity of these clauses gives rise to a great deal of contention which will be assessed by the state judges under their internal law⁽¹⁰⁾.

The characteristics of a maritime contract include:

Binding on two sides, where each of its parties has specific obligations. The carrier is obliged to carry the goods by taking delivery on a seaworthy vessel, to carry out the carriage, to deliver the goods to the consignee, and the shipper has an obligation to ship the goods at the time of the performance and to pay the freight on them.

International Nature, that the ocean-going vessels flying the flag of a state operate in all waters throughout the world and sail from country to country. Vessels often are supplied and repaired in foreign ports. Cargo may be damaged or lost while at sea in the course of an international voyage or in a foreign port, and likewise seamen may be injured on the high seas or in the waters of foreign countries. Such background facilitated the development of common international

usage and practice since antiquity. The common universal usage and practices were subsequently adopted by national laws. Maritime law is thus a specialized domestic law that cannot avoid international influences⁽¹¹⁾.

Commercial contract, so that all contracts relating to maritime trade are considered business by subject matter⁽¹²⁾.

A contract of carriage is considered to be a contract of Subcontract Works, because the content of the contract is to carry out the carriage of the goods in which one party undertakes to perform work for the remuneration paid by the other party.

The carrier creates a contract, including an appropriation of minutes, features, and all essential conditions on a take-it or leave-it basis. The purchaser has no ability to negotiate specifics such as arbitration clauses, penalty for late payments, or options for dispute resolution and the contract of carriage by sea has the status of compliance, since the shipper cannot discuss the contract terms imposed by the carrier⁽¹³⁾.

So, he is obliged to accept the carrier conditions.

Section II: The obligations of the maritime carrier

Among the obligations of the maritime carrier are those relating to the ship (1), to the goods (2) and to the voyage (3).

A) Carrier's obligations relating to the ship:

With reference to the Brussels Convention, the Carrier will be required to exercise due diligence prior to and at the commencement of the journey to:

- a) Put the vessel into seaworthiness;
- b) Properly arm, equip and supply the ship;
- c) Appropriate and put in good condition the holds, cold rooms and refrigerators,

and all other parts of the ship in which goods are loaded for acceptance, transport and conservation⁽¹⁴⁾.

Which is the same think in common law, the carrier has an absolute obligation to provide a seaworthy vessel when the loading of cargo begins⁽¹⁵⁾, As a result, the carrier must ensure that the vessel it operates meets all the requirements in terms of safety and security, but also that the goods it supports will be transported in good conditions.

On the other hand, the continuity of the carrier's duty of care throughout the voyage is also justified by the fact that, in view of technological developments, he may keep control of his vessel even remotely⁽¹⁶⁾.

B) Obligations of the maritime carrier relating to the goods:

During its cruise, the carrier shall be bound by the duty of care after receipt of the goods from the shipper and whit this way, the contract of carriage begins⁽¹⁷⁾ as soon as the carrier has taken charge of the goods at the time they are placed at its disposal or the conduct of its legal representative.

After receipt of the goods, the carrier issues the bill of lading⁽¹⁸⁾ on the order of the shipper and this was confirmed by the Brussels Bill of Lading Convention through article 3/3⁽¹⁹⁾, which linked the fact of delivery to the bill of lading and indicated the data to be found therein.

While the Hamburg Convention linked the receipt of the goods simply by placing them at the disposal of the carrier or its agents through article 4.1.

Since the carrier is bound by an obligation of result, he is obliged to drive the goods to their destination and also to shipment, arrange, unloading it. Because he must transport the goods to the place of destination provided for in the contract and He is free to choose the route provided he arrives on time at the destination. Even, during the journey, the carrier may not follow the route chosen by him for a safety reason or for any other reason⁽²⁰⁾.

C) Obligations of the maritime carrier during the voyage:

During the voyage, the carrier is obliged to deliver the goods at the agreed place.

However, in order to protect those on board the ship, the carrier could follow a secure route⁽²¹⁾. Moreover, he was bound by the necessity stubbornness for the goods, such as being kept in a cold place or ventilating and rearranging the place if it's necessary.

Section III: Liability of the maritime carrier

In this chapter we will address the time range of liability of the maritime carrier of the goods(A) and the Situations of such liability (B).

A) The temporal scope of liability of the maritime carrier in Algerian legislation and international conventions:

The Algerian legislator limited the period of liability of the maritime carrier by stating: "The contract of carriage by sea begins as soon as the carrier has taken over the goods and ends up delivering the goods to the consignee or its legal representative⁽²²⁾."

Besides article 802 of the same Law, the carrier is liable for losses to goods from the time they are secured to the time they are delivered to the consignee or its legal representative.

And this was confirmed by the Supreme Court through its decisions⁽²³⁾, which affirmed that the contract for the carriage of goods by sea ends with the delivery of the goods to the consignee.

According to Article 4/1 of the Hamburg Rules⁽²⁴⁾, the period of the responsibility of the carrier for the goods covers the period during which the carrier is in charge of the goods at the port of loading during the carriage and at the port of discharge⁽²⁵⁾.

It is the same as what is found in the Brussels Convention through article 1/e by saying, "The carriage of goods is reduced to the time between the shipment of goods on the ship and the discharge thereof."

However, this created controversy between these two processes: who

entered it during the cruise and who took it out of the voyage.

As a result, only a special agreement extends the carrier's obligation to ensure the safety of the goods at the pre-shipment and post-discharge stages.

B) Situations of maritime carrier liability:

The maritime carrier is liable in three cases for loss of the goods (1) or for damage (2) or any delay in delivery (3).

1 - Loss of goods may be in two cases:

The case of total loss in which the goods lack their basic commercial qualities⁽²⁶⁾.

The second case is where the loss is partial in the sense of the loss of the goods⁽²⁷⁾, which is the result of their theft or a difference with the quantity in the bill of lading.

The Algerian legislator spoke about it and expressed it in the word loss⁽²⁸⁾.

2-damage to the goods:

By definition, damage refers to all kinds of damage or loss resulting from a marine event. It has a fortuitous or accidental character.

Initially, the carrier undertook to take over the goods in good condition and must therefore deliver them as they are. So there is a transfer of risk. The condition of these goods may cause harm to the consignee and may result in liability to the carrier⁽²⁹⁾. It is preferable for the carrier to express reservations on the document because the absence of reservations presupposes the good condition of the goods⁽³⁰⁾.

3 - Delay in delivery of goods:

With reference to the text of article 775 of the Maritime Act, it requires the maritime carrier to deliver the goods at the specified and agreed time and place. In the event that it does not agree, the goods are carried over the ordinary route, and it is the commercial custom that determines the form of delay if it is ordinary or not, and also his personal errors, when he failed to perform the contract within the agreed period and thus caused damage to the consignee or the shipper.

As a result, we say, the maritime carrier is liable contractual either as a result of total or partial loss of or damage to the goods or as a delay in the time of receipt. However, he could be exempt from liability in certain cases, which we will address later.

Section IV: Exemptions cases from maritime carrier

liability in Algerian legislation and international conventions

The Algerian legislator lists exemptions from the liability of the maritime carrier exclusively⁽³¹⁾ as fire, navigational errors, a hidden defect or a subjective defect to the goods during travel.

And It's the same way international conventions go, According to the Hamberg Convention⁽³²⁾, the carrier shall not be liable, except on the basis of the common incident, where the loss, damage or delay in delivery results from

measures taken to save lives or from reasonable measures taken to save property at sea.

Proof of foreign cause and force majeure is a ground for non-liability of the maritime carrier in accordance with general provisions and is also found in the Hamberg Convention.

Besides the case of transport of live animals, the transporter is not responsible for any loss, damage or delay in delivery that the particular risks inherent in this type of transport.

If the carrier establishes that it has complied with the instructions concerning the animals⁽³³⁾ given to it by the consignor and that, in the circumstances of fact, the loss, damage or delay may be attributed to those particular risks, the loss, damage or delay is presumed to have been so caused, unless it is proven that the loss, damage or delay results, in whole or in part, from fault, or negligence of the carrier, its servants or agents.

Also in article 4 of the Brussels Convention, exemptions were also listed exclusively, as adopted by the Algerian legislature, the Convention invalidated any exemption or reduction of liability.

While in the Algerian maritime law, it may be agreed to specify the liability of the maritime carrier of the goods⁽³⁴⁾ which is for the period between the receipt of the goods by the carrier and the commencement of their placement on board the ship and until the end of their discharge and delivery, and also when the animals and cargo are transported on the deck, as mentioned earlier.

Conclusion:

At the conclusion of this paper, we say that the maritime contract for the carriage of goods is a contract between the carrier, the consignee and the shipper, and the Algerian legislature has taken an interest in this contract through various legal acts, including maritime law. In addition, international attention has been given to it through international conventions, primarily the Rotterdam, Bruxel and Hamberg Conventions.

And we have also come up with a set of conclusions, which we outline in the following points:

- The maritime carrier has various obligations, including those relating to the ship, to the cargo and those relating to the voyage by sea.
- His obligation also begins in the period between the delivery of the goods at the port of charge and the delivery of the goods to the consignee or its legal representative at the port of discharge, as specified in article 739 of the Algerian maritime law.
- In the event of an harm by reason of the damage to the liability of the maritime carrier, which is similar to the Hamberg Convention, it is in the case of loss, damage or delay in delivery of the goods.
- Noting that exemption cases of liability are limited to maritime law, as envisaged by the Bruxel Convention.
- In addition to the possibility for the carrier to exempt itself from liability

in accordance with Algerian legislation or international conventions.

Despite all the above, there are lapses that the legislature must correct. We therefore propose these recommendations:

- The Algerian legislature has taken a great deal of interest in the relationship between the carrier and the consignee and has overlooked the shipper.

- Developing laws in line with the movement of the international economy, which is reflected in international and national dealings in the affirmative.

- Exemptions to the maritime carrier have been frequent and are not in the interests of the shipper and must therefore be reviewed.

- The Algerian legislature has applied delay in delivery of goods to general provisions, but it is desirable, however, that these provisions be applied subject to the same liability for loss or damage.

- The bill of lading serves as evidence that the sea carrier delivered the goods, but in practice, however, it is different depending on the nature of the goods carried, So it's got to be incumbent upon the legislator to determine precisely which goods are proven on the bill of lading.

Bibliography:

⁽¹⁾Artical 1/C from bruxel convention: "Goods' includes goods, objects, goods and articles of any kind, with the exception of live animals and cargo which, by the contract of carriage, is declared to be placed on the deck and, in fact, is thus transported ".

⁽²⁾ Santiago, Chile, Basic concept of maritime transport and its present status in ltinamerica and the caribbean, united nations publicationd, 1987, p 9

⁽³⁾MahdiehPazouki, Ali Zare, Legal and social responsibility of maritime carriers in accordance with international law and conventions, Legal and social responsibility of maritime Volume 1, Number 5, 2017, p 204.

⁽⁴⁾TahinafidyZafigodo Florentine Alexendrie, La responsabilité du transporteur maritime de marchandises sous connaissance, master II, Droit des affaires, université d'Antananarivo, 2017-2018, p 01.

⁽⁵⁾Artical 1/3 from hambourg convention: The term "loader" means any person by or on whose behalf or on whose behalf a contract for the carriage of goods by sea is entered into with a carrier and must also include any person by or on whose behalf or on whose behalf goods are actually delivered to the carrier in relation to the contract of carriage by sea.

⁽⁶⁾Article 738 of Order 76-80 of 29 Shoal 1396 of 23 October 1976, containing the Amended and Supplemented Maritime Act.

⁽⁷⁾Article 1/ C FromBruxel Convention of 25 August 1924 for the unification of certain rules on bills of lading as amended by the Protocol of 23 February 1968 and the Protocol of 21 December 1979, Algeria acceded to it on 13-04-1964.

⁽⁸⁾ Article 1/6 Hambourg Convention on carriage of goods by sea, 1978

⁽⁹⁾ However, the Rotterdam Convention 2008 provided a broader and more comprehensive definition of the Bruxelss and Hambourg Conventions through its article 1.

⁽¹⁰⁾RymBoukhari, Le contrat de transport maritime de marchandise sous connaissance contentieux France-Algérie, thèse de doctorat, Droit des affaires, université Paris 1, PANTHEON SORBONNE, 26 avril 2017, p84.

⁽¹¹⁾ Lora Hopkins, MARITIME LAW Teaching Material, Sponsored by Justice and Legal System Research Institute, HAILE GABRIEL GEDECHO FEYISSA, 2009, p 3 last view: 29-08-2021 at. 1: 30, web site <https://silo.tips/download/maritime-law-teaching-ial#modals>

(12) Article 2/18 of Order No. 75-59 of 20 Ramadan 1395 of 26 March 1975, containing the amended and completed Commercial Code

(13) Gabriel Benjamin Herman, *Contracts of Adhesion & Arbitration Agreements*, LAP LAMBERT Academic Publishing, 2011, p8.

(14) Article 3 of the *Bruxel Convention*

(15) HusamBotosh, *The Carrier's Duties and Liability under the Carriage of Goods by Sea: Common Law, International Conventions and the 1972 Jordanian Maritime Trade Act Compared*, Kuwait International Law School Journal - Volume 5 - Issue 1 - Ser. No. 17 - Jumada Al-Akhirah 1438 - March 2017, p 38.

(16) SokhanaDiop, *Les parties exécutantes maritimes dans les Règles de Rotterdam, Master II Droit maritime*, l'Université d'Aix Marseille, 2016-2017, p 44.

(17) See article 739/1 of the *Algerian Maritime Code*

(18) "Bill of lading an instrument that authenticates the transfer of property in goods sent by carrier - whether ship, overland or by air; in form, it is receipt given by the captain to the shipper or consignor, undertaking to deliver the goods, on payment of the freight, to some person whose name is stated in it or indorsed on it by the consignor. A bill of lading is used both as a contract for carriage and a document of title. It is not, however, a negotiable instrument, and a bona fide purchaser for value obtains no better title to the consigned goods than that enjoyed by the consignor (though it is possible for him to defeat the right of stoppage of an unpaid seller). Nevertheless, it has similarities to a negotiable instrument in that if it is drawn 'to the order' of a person it may be endorsed and transferred by delivery". last view: 29-08-2021 at. 2: 00, web site: www.legal-dictionary.thefreedictionary.com

(19) Artical 3/3 from *bruxel convention*: " After receiving and taking charge of the goods, the carrier or the master or agent shall, at the request of the shipper, issue to the shipper a bill of lading bearing other things:

a) The principal marks for the identification of the goods as supplied in writing by the loader before loading of such goods begins, provided that these marks are clearly printed or otherwise affixed to the goods not packaged or on the cases or packings in which the goods are contained, so that they should normally remain visible until the end of the journey;

b) Or the number of packages, or parts, or the quality or weight, as the case may be, as they are provided in writing by the loader;

(c) The condition and apparent packaging of the goods. However, no carrier, master or agent of the carrier will be required to declare or mention, in the bill of lading, marks, a number, a quantity or a weight a serious reason to suspect that they do not accurately represent the goods currently received by him, or that he did not have reasonable means to verify".

(20) TahinafidyZafigodo Florentine Alexendrie, *op.cit*, p 19.

(21) See article 775 of the *Algerian Maritime Code*.

(22) Article 739 of the *Maritime Code*

(23) - (In which she addressed the liability of the maritime carrier for loss and damage to the goods carried until delivery to the consignee or its legal representative with acceptance unless otherwise provided in the bill of lading) Decision of the Supreme Court (Chamber of Commerce and the Navy) of 26 March 1998, file No. 168786, *Judicial Journal*, Algeria, No. 2. 2001, Which can be downloaded through this site. <https://droit.mjustice.dz/ar>

(24) Artical 4 from *hambourg convention*: " 1. In this Convention, the liability of the carrier in respect of the goods shall cover the period during which the goods are in his custody at the port of loading, during transport and at the port of unloading. 2. For the purposes of paragraph 1 of this Article, goods are deemed to be in the custody of the carrier a) From the moment the latter takes them in charge of the hands: (i) The magazine or a person acting on its behalf; or (ii) an authority or other third party to which the goods are to be delivered for shipment in accordance with the laws and regulations applicable to the port of loading; b) Until the time of delivery: (i) by delivering the

goods to the consignee; or ii) Where the consignee does not receive the goods of the carrier, by making them available to the consignee in accordance with the contract or the laws or customs of the the relevant trade applicable to the port of discharge; or iii) By handing over the goods to an authority or other third party to be remitted in accordance with the laws and regulations applicable to the port of discharge. 3. In paragraphs 1 and 2 of this Article, the reference to carrier or consignee also means their agents, or respective agents.’

⁽²⁵⁾ Su Tong-jiang & Wang Peng, *Carrier's liability under international maritime conventions and the uncitral draft convention on contracts for the international carriage of goods wholly or partly by sea, Transport*, 24: 4, 2009, p 346.

⁽²⁶⁾ كمال مصطفى طه، القانون البحري، دار الجامعة الجديد، القاهرة، 1995، ص 307.

⁽²⁷⁾ Custom usually tolerates road failure, which means the normal decrease in goods due to their nature.

⁽²⁸⁾ See article 802 of the Maritime Code .

⁽²⁹⁾ In maritime law, there is always the division of responsibility, hence the term “maritime assistance”. In order for the damage to be common, there must be a common interest to save the ship from sinking.

⁽³⁰⁾ Tahinafidy Zafigodo Florentine Alexendrie, *op.cit*, p 24.

⁽³¹⁾ article 803 of the Maritime Code.

⁽³²⁾ Article 5/6 of the Hamberg Convention

⁽³³⁾ Article 5/5 of the Hamberg Convention

⁽³⁴⁾ See article 812 of the Algerian Maritime Code.