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Violation of Commitment to Provide Seaworthiness and Compensation for Ship Damage by Carrier

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Abstract:

Carrier's obligation of seaworthiness is among the controversial areas in legal systems around the world. Despite The interpretable concept of the commitment to seaworthiness, the damage caused by its violation is not limited to cargo or passengers. Carrier's negligence of this legal requirement may also cause a ship to sink or sustain damage. Nevertheless, lack of clarity about the bilateral attention of commitment to the supply of seaworthiness to ships in addition to cargo or passengers can lead to the identification of this requirement based on legal regulations. The burden of proof in this case could be based on proved fault in contrast with the liability for cargo or passengers. Finally, it is necessary to highlight the importance of identification of such liability for the carrier in maritime law due to the deterrent effect. To achieve the aim of this study, a descriptive method will be conducted in this paper analyzing the carrier liability from a new angle by considering the ship damage resulting from the violation of commitment to the supply of seaworthiness.

Keywords: Freight Transporter, Ship, Seaworthiness, Damage Compensation

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Introduction

The seaworthiness of a ship has no clear definitions in relevant codes. According to the maritime doctrines, it generally means the conditions of robustness, sustainability, and integrity of a ship are met to the point which it allows for the maritime shipment of cargos with respect to the potential difficulties and hazards in the sea (Najafi Asfad., 2008: 118).

The most basic task that should be undertaken by a carrier is to facilitate shipment of cargos. In the maritime shipment of cargos, the presence of a sailing ship is essential for fulfilling carrier's final commitment to the cargo owners, i.e., the safe shipment of cargos within the prearranged deadline.

Regarding the relevance of a carrier's commitments to cargos, insufficient emphasis has been given to this liability for individuals other than the owners or senders of cargos. Nonetheless, carrier's major legal requirement is to supply the seaworthiness of the ship, something which is related to the ship and other potential maritime damage in addition to cargos. In various laws and regulations, verdicts have been reached to compensate for the damaged caused by the violation of this commitment. The Brussels Convention, Iran's Maritime code, and the Rotterdam Rules have also emphasized the maritime carrier commitment based on providing a ship with the seaworthiness at the beginning of a voyage and maintaining this power along the voyage. Unlike the Brussels Convention that only concerns the time prior to and the beginning of a voyage, the Rotterdam Rules present a continuous form that is applicable to the entire voyage period. (Zahiri, Adel; Ranjbar, Masoud Reza*; Zarei, Reza; Askari, Hekmatollah, 2020-p 108). However, the violation of this commitment will not only make the owners of cargos sustain losses but probably also make the entire ship sink. The environmental impacts and damage to the third party are also among the potential consequences of this violation.

This paper analyzes the effect of violation of commitment to provide the seaworthiness on the liability on compensation for damage to ships. Although

this paper does not intend to expand the carrier liability, it only addresses the liability which exists in legal sources and foundations but has not been discussed yet. This paper also analyzes other dimensions of loss caused by the violation of commitment to the supply of seaworthiness. The interesting point addressed in this paper is the liability for violation of the abovementioned commitment by a transporter. The research literature indicates the carrier's liability for the owners of cargos as a result of violation of seaworthiness. However, as mentioned earlier, this is a two-sided commitment that also concerns the ship.

In this paper, a descriptive-explanatory approach was adopted in order to answer the following questions:

Can the violation of carrier's obligation to the supply of seaworthiness cause a liability for the ship?

Are the foundations and cases of exemption from this liability similar to the liability for the senders of cargos?

1. Concept of Seaworthiness

The concept of seaworthiness is of considerable importance, for it basically determines the scope of the carrier's commitments. In all international conventions, providing seaworthiness is considered the first commitment undertaken by a freight transporter. (1)

However, it has no clear definitions in relevant laws. Not only are not there any accurate definitions of this concept in any of the relevant conventions and regulations, but there are also doubts about the limits of this concept. It has only been explained by doctrines.

According to some references, seaworthiness means that a ship is ready to sail without any technical flaws. In this definition, the ship should also be

sufficiently robust and resistant to atmospheric conditions to continue sailing on the sea. It should also be able to withstand usual hazards in order to take cargos and passengers safely to a destination (Omid, Houshang. 1975, p. 236).

The seaworthiness of a ship depends on both its sailing power (2) and its loading power (3) at the same time. (Adel Zahiri, ibid) This commitment includes everything related to the sailing power of a ship. If there is a flaw in its engine or it's fueling system, regardless of cargos, the ship may sustain substantial damage and might even be destroyed.

The carrier commitment to necessary care for providing a ship with seaworthiness can also be considered a kind of instrumental commitment; hence, the use of necessary care by a carrier is described as the efforts made by the cargo father of a family. In other words, as the father of a family is expected apply the necessary attention and care to his moral and legal tasks in charge of his family, a carrier should perform all the essential actions for the maritime shipment of cargos on a voyage.

The carrier should ensure that his vessel is supplied with the necessary equipment to ensure the safe navigation of the vessel; e.g., radar, satellite navigation. In addition, he should ensure that the vessel is provided with the equipment necessary for the safe delivery of the cargo; e.g., refrigeration, ventilation … etc. as will be seen later. But as was shown earlier, the carrier is not required to provide his vessel with the latest technology as long as it has not become widely used or proved to be essential for the increasing safety of navigation. (Bradley v. Federal St eam Navigation, (1926) 24 Ll. L. Rep. 446, at p. 454-455, Virginia Co. v. Norfolk Shipping Co., 17 Com. Cas. 277, at p. 278. See Tetley, supra)

The carrier must also employ on board his vessel an adequate number of crew in order to be able to provide the required service and to ensure that, in an emergency, there are enough seamen to carry out the emergency procedures. (Burnard & Alger, Ltd. v. Player & Co. (1928) 31 Ll. L. Rep. 281, p 248)

Even about human sea worthiness it is important to distinguish between two situations. The first is where the crew is incompetent to manage the ship; in this case the vessel would automatically be unseaworthy. (The Makedonia, [1962] 1 Lloyd's Rep. 316.)

The other case is where the crew is competent and has all the required skills but the carrier failed to communicate to them certain key information about his vessel the awareness of which is important to avoid endangering the ship, its crew and cargo (Ahmad Hussam Kassem, 2006, p 39).

Furthermore, it is important to know how a candidate for employment as crew might behave in a particular situation and how he would manage emergencies which the vessel might face during the course of its voyage. That is because "competence includes the ability to deal with an emergency situation: such a situation might only occur many years after qualification. (Roger White, 1996, p. 24- 25).

The other factor could be shipping documents. The documents that the ship needs on board and which affect its seaworthiness vary and depend on the circumstances of each case and depend on "the law of the vessel's flag or by the laws, regulations or lawful administrative practices of governmental or local authorities at the vessel's port of call. (Alfred C. Toepfer Schiffahrtsgesellschaft G.M.B.H v. Tossa Marine Co, 1985- p. 331).

In addition the concept can be found in the light of court decisions.

The cases of violation of commitment to the supply of seaworthiness include flaws in the lids on storm control valves (River stone Meat Co. v. Lancashire Shipping Company), faults in the cold chambers of ships (Dockery, Martin, 2016 p. 45), lack of cleanliness in transport reserves of ships (Dockery, Ibid), and failure to inspect ships accurately and in time.

in deciding the seaworthiness of the vessel, the court must take into account the existing practice, knowledge and technology available to the shipping industry at the time of the incident; the knowledge of hindsight should not be taken into consideration. But once the new practice, knowledge or technology proves to offer a safer environment to the vessel, its crew and the cargo, and becomes widely used and acceptable, if the ship was not then fitted with such equipment it can be considered unseaworthy. (Bradley v. Federal Steam Navigation, (1926) 24 Ll. L. Rep. 454)

Each of the above cases can cause irreversible damage to ships in addition to the shipment of cargos or the transportation of passengers or even lead to the wastage of both. Apparently, transporters can be held accountable and made compensate for losses by considering all principles of liability.

Many papers have analyzed the carrier commitment to provide seaworthiness and its effect on shipments. However, this paper addresses this commitment from a new angle. Since this commitment is closely related to the health of a ship, its violation will cause liability.

2. Carrier Liability for Ship with Violation of Commitment to provide the Seaworthiness

In legal texts and regulations, the supply of seaworthiness is primarily known as shipowner's obligation.

This commitment was clarified in Act 54 of Iran's Maritime code. In fact, Section 2 of Act 227 in the UAE Maritime Law (i.e., Section 2 of Chartering the Vessel for a Voyage) holds the ship owner responsible for delivering a seaworthy ship both at the beginning of and during a voyage. If the ship is not seaworthy, then the charterer has the right to cancel the contract (Ivami-Hardy/Translated by Pournouri: Mansour, 2019, p. 19).

This commitment can also be observed in other legal texts. It has also been confirmed by court verdicts. In the lawsuit of Kopitoff v. Wilson [(1876) 1 QBD

602], a verdict was reached with respect to the owner's commitment to provide seaworthiness defined as the power to confront and withstand maritime hazards and other potential risks on a voyage (Safi Almobideen-.tamimi.com-2012).

Nevertheless, when the charterer shoulders the shipment liability, the situation will be different.

According to Paragraph 1 of Act 54 Iran's Maritime code.

The carrier is required to take the following precautionary measures prior to and at the beginning of a voyage:

A) The carrier is to prepare the ship for sailing.

B) The carrier is to make proper arrangements for crew, equipment, and logistics.

C) The carrier is to prepare storages, cooling chambers, and other parts of a ship used for the shipment of cargos.

Moreover, act 272 of the UAE Maritime code requires that the carrier should take the necessary precautions to make a ship seaworthy through proper maintenance and supply prior to a voyage. This act also requires that the carrier should completely prepare storages, cooling chambers, and other chambers of a ship for loading, transporting, and keeping cargos.

Evidently, there is a conversion of commitment with the replacement of the committed party in the assumption and atmosphere of a shipment contract. However, this does not mean the absolute acquittal of a ship owner. In fact, a ship owner is to provide a charterer (i.e., a freight transporter) with a seaworthy ship at the beginning of a voyage, after which the carrier is responsible for maintain seaworthiness.

As a matter of fact, If the ship-owner provided his ship with an adequate number of crew, but while she was loading or discharging or in an intermediate port one of them left the vessel and did not come back, the carrier then has to replace the missing member of crew as soon as possible, especially if the role of the missing person was so important that no one else can provide the same service. (Burnard & Alger, ibid)

The verdict reached in a lawsuit at a court in England indicated the carrier was liable for the damage caused to the ship due to the violation of commitment to supply of seaworthiness on a voyage in accordance with the Rotterdam Convention (Naqizadeh, Ebrahim. 2015, p. 344).

According to that lawsuit, a Japanese ship that was put into water in 1980 had an accident in 1985. The ship was equipped with deceleration cogwheels designed and built in a special and advanced way for lifelong use of the ship. Hence, they were covered in a way that made them so difficult to examine. As a result, they were inspected only superficially in 1984. The ship had an accident due to the failure in a washer of deceleration cogwheels, something which increased the pressure against cogwheels and eroded them. Therefore, the ship owner in the lawsuit claimed that the necessary precautions were not taken to make the ship seaworthy. Considering the evidence, the court found out that not only was the 1984 inspection not done as it should have been performed, but also such inspections would not have detected the flaws of deceleration cogwheels even if the utmost accuracy had been employed. Undoubtedly, it was not correct to dismantle the deceleration cogwheels, for they were designed and built to work for the lifetime of a ship. Hence, the court declared that although necessary precautions were not taken in 1984, this had nothing to do with the accident, for only dismantling cogwheels completely could help detect the flaw, something which was considered illogical at that time. Therefore, the carrier was acquitted of liability (Naqizadeh, Ebrahim. 2015, p. 344).

In the abovementioned case, the ship owner filed a lawsuit against the carrier due to the damage caused to the ship as a result of violation of commitment to the supply of seaworthiness.

Apparently, regarding the commitments that should be taken by the ship owner and the carrier in total, we could say that the owner is committed to provide a normal seaworthy ship for the leaser, who is also the freight transporter. However, the suitable conditions for the shipment of cargos or transportation of passengers should be provided by the carrier with respect to the type of cargos.

If the ship is seaworthy when the lack of shipment conditions for a specific or dangerous product causes damage, then the carrier will be held responsible for the violation or lack of seaworthiness.

In the abovementioned verdict, the cause of accident is included among the owner's responsibilities but not those of the transporters. However, what may make the carrier responsible is the commitment to periodic inspections along a voyage. In other words, regardless of the owner's primary commitment to provide a seaworthy ship and regardless of the above reasoning based on the separation of seaworthiness supply cases between the owner and the transporter, it is the carrier's duty along a voyage to pay close attention; otherwise, he/she will be held responsible.

Hence, the carrier is responsible for the supply of seaworthiness not only to the sender of cargos but also to the owner.

This verdict can also be proven through the general laws of civil liability. According to Action 1 of Civil Liability, any party that causes material or moral damage either intentionally or recklessly to others with no legal permits will be held responsible for the compensation of damage.

Based on the three pillars of civil liability, the occurrence of loss to the damaged party is the first step in the principle of compensation. In the problem assumption, damaging a ship or making a ship sink can be considered absolute, direct, uncompensated, and unpredicted loss, which can guarantee with the totality of conditions that the carrier is responsible for the commitment at the time of fault.

According to Marcel Planiol, the renowned French professor of law, a fault is defined as the violation of a commitment that a person had. In a case where damage is caused, it might be due to the person's violation of the commitment given by a law, a contract, or a set of ethical values. When a person is committed to perform a specific task, refusal will be considered his/her fault (Katouzian, Nasser-2006, p. 292).

However, the importance of attributing loss to the violation of a carrier's commitment is undeniable. As mentioned in the common definition of fault, it is considered an illegal action that can be attributed to a culprit. The illegality of this action means that it has no legal permit. In maritime transportation, the joint loss is among the cases where a person has the legal permit to take an action that guarantees loss (Katouzian, Nasser-2006, p. 292).

In one sentence, the lack of seaworthiness from the beginning of a voyage until the end with all the relevant conditions will be considered a case of the carrier's fault.

Nevertheless, Paragraph 2 of Act 113 of Iran's Maritime Laws is another piece of evidence confirming the carrier's liability for a ship in the assumption regarding the violation of commitment to seaworthiness. This paragraph reads as below:

"2 – If death or physical harm is caused by the collision, being stuck, explosion, fire, or sinking of a ship, the accident is assumed to be the freight carrier's fault or negligence or that of the officials unless the reverse is proven."

The final clause of this act can be considered a solution to the problem addressed by this paper. Each of the above legal limits can be due to various reasons such as the violation of seaworthiness. Regardless of the safety of passengers, the above action keeps the carrier directly responsible for the accident happening to a ship. This accident can occur for many reasons such as the flaw of seaworthiness.

In addition to material loss, moral loss can be compensated by faults in seaworthiness. In fact, the damage to the ship or the environment might tarnish the ship owner's reputation. According to Act 10 of Civil Liability, the potential benefits are also considered reversible loss. Even if the carrier's fault results in the loss of the owner's definite or potential benefits, the carrier may even be sentenced to compensate for the loss as well as the damage to the ship.

3. Carrier's Liability to Compensate for Ship Damage Caused by Violation of Seaworthiness

Given the argument for the owner's liability to provide the charterer with seaworthiness and the carrier's liability to fulfill the same commitment, it can be stated that the carrier has the complete commitment from the beginning until the end of transportation.

Since the default liability in our legal system is the theory of fault, and the other liability regimes need the legislator's explanation. What is the accepted liability regime for the carrier to compensate the ship's damage at the time of loss due to the violation of commitment to supply of seaworthiness? Can the second section of Paragraph 1 of Act 55 (i.e., "Whenever the loss or damage results from the lack of seaworthiness, the carrier or other parties that are exempted

from liability in this act are required to prove their efforts and precautions.") be considered true in this question? In the assumption of damage caused by the violation of seaworthiness, what is the acceptable liability regimes for carrier?

According to Act 386 of the Commercial code (4), the carrier's liability is based on the presumed liability. This applies on cargos transporting. However, regarding the commitment analyzed in this paper, Iran's Maritime code should be taken into account.

According to Act 55 of the latter code (5), any loss or damage caused by the lack of seaworthiness requires the carrier to prove his/her efforts or precautions.

If this act is considered presumed liability, will it be applicable to the carrier's liability to the owner as well as which attributed to the sender of cargos in Act 386 of the Iran commercial code?

No codes have clearly stated the carrier's liability to the ship, for the carrier is basically responsible for cargos not the ship. However, Iran's Maritime Law and international conventions introduced providing a ship with seaworthiness as the carrier's first commitment.

According to Section (A) of Paragraph 1 of Act 54 in Maritime code, the carrier is obliged to provide a ship with seaworthiness. The consequences of violating this commitment will not face only the senders of cargos. Any damage to the ship – or if the ship sinks in the worst-case scenario – can be due to the carrier's fault.

Consistent with the liability declared in the commercial code for the carrier, Maritime code's 55 act requires that the lack of fault should be proven with regard to seaworthiness. The proof of efforts and precautions will not be considered sufficient for presumed fault, as Act 952 of the civil code defines a fault or negligence as the failure to perform an action that is necessary for preserving the other party's properties in accordance with a contract or an

agreement. Hence, proving the lack of negligence, the lack of excess, and the lack of fault is a liability based on the assumption of fault.

The first paragraph of Act 55 of Maritime code presented no constraints on the liability to the loss or damage caused by the lack of seaworthiness and caused an ambiguity regarding the generalization of the carrier's liability to all loss and damage caused (even to the ship) by the lack of seaworthiness based on presumed fault liability. However, the legislator only expressed these cases and identified no commitments for the carrier to the owner.

The previous paragraph identified the carrier's commitment to the sender of cargos and the ship owner. Since fault- based liability is accepted in our legal system—and any other liability regime needs clarification—, this will not be effective in the discussion regarding the ship damage. The author believes that Act 55 considered the presumed liability for the carrier to the owner of cargos but not the ship owner, who must prove the carrier's fault in order to sue for compensation. Therefore, if the ship is sunk due to the lack or flaw of seaworthiness, the ship owner or his/her representative can hold the carrier liable to prove the fault. Moreover, act 58 of Maritime Law stated specific contractual conditions for liability to cargos and other relevant problems.

Hence, it is impossible to consider the carrier's liability for sea worthiness two-sided to the owner of cargos or the ship owner based on the presumed fault liability. Like Act 386 of the commercial code, article 55 maritime act considers the assumption of fault for the liability to the owner of cargos and the foundation of fault for the liability to the owner.

4. Commitment to Supply of Seaworthiness in International Conventions

The foundations and conditions for creating and limiting the carrier's liability have been set in Hague, Hamburg, and Rotterdam Conventions concerning the international cases of transportation. Following the previous discussion, this

section analyzes the conditions for liability, basis, and potential exemptions of the freight carrier's commitment to seaworthiness.

4.1 Hague Convention (1924)

The international convention on the unification of certain rules of law relating to bill of lading (Hague convention) approved in 1924 with its additional protocol is known Hague-Visby rules approved in 1968, which is now the most important and pervasive convention on the maritime transportation laws employed to determine the maritime carrier liability regime. In addition to following this convention, Iranian legislators have nearly included its translated version in Iran's Maritime code of 1964.

Accordingly, Iran's Maritime code is inspired by Hague Convention, which clearly identified the carrier's liability to provide the seaworthiness. (6)

According to act 4 of Convention 1924:

"Act 4 – Neither the ship nor the carrier shall be liable for the loss or damage arising from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with Paragraph 1 of Act 3. whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under article."

As we witness, the article concerns the possible exemption from the damage caused by the unseaworthiness. In addition to the necessity of proving due diligence and preserving on the part of the carrier, Paragraph 2 of the same act listed the cases in which the carrier had no liability. This paragraph indicates

that the carrier is basically liable for compensating the damage to the cargos unless the cases in Paragraph 2 of Act 4 occur. The carrier is required to prove the seaworthiness of a ship prior to a voyage and compliance with the necessary precautions in exceptions. Thus, if the ship lacks seaworthiness or has flaws, it will be impossible to resort to exemptions even if the accident is caused by an irrelevant liability to flaws or lack of seaworthiness, for carrier's liability is presumed. In this case, the avoidance of this liability is limited (7).

The Hague/Hague-Visby position on exclusion clauses can be found in Article III r1 and 8 and IV r. 1 and 2. The carrier's obligation to exercise due diligence to make the vessel seaworthy under Art III r1 is an overriding obligation, which means that the carrier should satisfy its requirements before using the protections of Art IV r2. (Maxine Footwear Co. Ltd. and Another. Appellants; v. Canadian Government Merchant Marine Ltd. Respondents, [1959] A.C. 589)

This legal requirement has the perk of exemption from compensation, for a fire will not absolutely free the carrier from the liability. In fact, an accident should be outside the carrier's authorities and should not be caused by the negligence of tasks such as the supply of seaworthiness. Thus, if a fire is caused by a fault in the description of seaworthiness, the carrier will be held liable.

According to the above assumption, if accidents such as fires that can cause a ship to sink occur without the carrier's negligence of his/her obligations, they will be considered cases of exemption. Conversely, if the exemption cases are due to the carrier's negligence, he/she will be held liable for compensation.

Since the basic materials of the discussion were translated exactly into Iran's Maritime code, it can be concluded that Iran's legal system is applicable to carrier's liability regime on the ship owner.

Therefore, according to Hague Convention, if a ship is sunk due to the lack or flaw of seaworthiness, the ship owner or his/her representative can prove the

fault. In fact, act 4 of Hague Convention concerns the carrier's liability to the sender of cargos. The same law is employed to determine the carrier's liability to the owner.

The cases of the carrier's exemption in Paragraph 2 of Act 4 are due to the presumed fault basis of liability. Hence, the carrier's resorting to the cases of exemption from liability to the owner will not be acceptable, for the carrier is not basically considered an authority to the owner to need to prove the cases of exemption.

4.2 Hamburg Convention

In the light of efforts made by the beneficiary countries in 1924, Hague regulations were formed to rule this type of transportation. They are now used as the main source of domestic laws in many countries. These rules were reformed in 1968 and renamed as Hague–Visby Convention. Suiting the countries with maritime fleets, this convention was strongly opposed by the cargos-owning countries, especially the third-world countries. Hence, the international trade Commission set a new series of regulations called Hamburg Rules in 1978 it can be seen that the Hamburg Rules, in contrast to the Hague/Hague-Visby Rules, further increased the carrier's liability. The Hamburg Rules makes the carrier responsible unless he proves that there was no privity on his part, or that of his agents or servants. Moreover, the Hamburg Rules did not allocate a separate Article for seaworthiness; it only used a general article for the carrier's liability, leaving it to the courts to define seaworthiness (Ahmad Hussam Kassem, 2006, 18).

In Hamburg Convention, the supply of seaworthiness was not considered a task undertaken by the freight transporter. In Act 4, the carrier is only held responsible for the cargos, and no other acts concern this liability. Act 5 of Hamburg assumed the carrier's liability to the cargos but did not clarify anything regarding the liability to seaworthiness and its basis unlike Hague Convention. In fact, Hamburg Convention 1978 differs from Hague Convention

in this regard. The duration, basis, and limits of liability belong only to the cargos, and no liabilities were considered for the carrier in Hamburg Convention. Although the term "in any case" is applicable in the above act and can be argued to include the supply of seaworthiness, Paragraph 1 of Act 4 in Hamburg Convention identified the freight carrier's liability clearly to the cargos. Basically, the carrier is responsible for the shipment of cargos in both domestic and international laws. The foundations and regulations in conventions also concern that dimension of liability. This paper also addresses the other dimensions of the carrier's liability such as the liability to ship, something which can be justified through general regulations.

Apparently, other domestic and international governing regulations should be taken into account to determine the carrier's liability to the supply of seaworthiness by assuming the ineffectiveness of Hague Convention.

4.3 Rotterdam Convention

The failure of Hamburg Convention to set maritime transportation laws is the main reason for approving Rotterdam Rules on December 11, 2008. The UN Convention on International Shipment Contract Completely or Partially by Sea, known as Rotterdam Convention, is much more comprehensive than the previous conventions regarding the international maritime transportation of cargos. In fat, Rotterdam Convention answers many questions raised by the previous conventions.

Act 14 of Rotterdam Convention declares specific requirements that the carrier should meet for a voyage. According to this act, the carrier should take logical precautions for the following purposes prior to and along a voyage:

A) Providing a ship with seaworthiness and maintaining the ship seaworthy

This convention clarified the commitment to the supply of seaworthiness. In addition to what was mentioned about this commitment to the cargos but not the ship, Act 11 indicates that the carrier carries the cargos to a destination in accordance with the conditions mentioned in the convention and the shipment contract and then delivers the cargos to a recipient.

Act 17 of Rotterdam Convention applied the basis for the freight carrier's liability based on the fourth chapter of the Convention. (8)

Act 17 of Rotterdam Convention set the following conditions for the carrier's liability:

1) The carrier is responsible for the loss of cargos, damage to cargos, and delayed delivery of cargos if the party that has rights proves that the loss, damage, delay, or the underlying conditions of these cases occur during the carrier's responsibility in accordance with Chapter 4 (kardan-katayoun- 2012- p 260).

Paragraph 1 of Act 17 of Rotterdam Convention brings the theory of fault to the mind, for the party with rights must prove the carrier's involvement in the occurrence of damage. At the same time, the second and third paragraphs concern the carrier's success in proving that the damage is not caused by his/her actions. However, Chapter 4 of the convention indicates the assumption of the carrier's fault. According to the aforesaid act, all liabilities of the carrier are interpreted for the shipment of cargos. In fact, the carrier's commitment to the supply of seaworthiness is of the same importance. If, for any reasons such as the loss or violation of seaworthiness, the cargos are not delivered in the expected conditions (Act 13), the freight carrier's liability is assumed. As discussed earlier, act 14 of Rotterdam Convention addressed the carrier's liability to the supply of seaworthiness. Since this act was included in Chapter 4 of the convention, the relevant rules (in the course of Act 17) and commitment to the supply of seaworthiness will be considered the basis for the assumption of fault.

However, the overall interpretation of the abovementioned cases leads to the same conclusion as the other conventions, which indicated the commitment to the supply of seaworthiness regarding the cargos with the basis of fault.

Therefore, this convention declared nothing explicitly about the carrier's liability to the ship.

As a result, the carrier is held accountable with the assumption of fault along a voyage and can only be exempted from the liability by proving the conditions declared under Paragraphs 2 and 3 of Act 17.

5. Cases of Carrier's Exemption from Compensation for Damage to Ship

Basically, the freight carrier's exemption means being exempted from the damage to the cargos. Are the rules of the carrier's exemption applicable to the ship damage caused by the liability to the supply of seaworthiness in addition to the senders of cargos?

The first section of Act 55 of Iran's Maritime Laws indicates the possibility of the carrier's exemption from liability if he/she proves his/her efforts and precautionary measures. However, the second paragraph lists the cases of exemption clearly. (9)

According to Paragraphs C, D, E, H, G, K, L, M, and N of Section 2 of Act 55 of Iran's Maritime Laws (Paragraphs C, D, E, H, G, K, L, M, and N of Section 2 of Act 4 of Hague Convention), the carrier is exempted from liability.

In this view, the explicit foundation in Act 55 of Iran's Maritime Laws for the sender of cargos and the universal basis for the ship owner were accepted. Apparently, the cases of exemption for liability can be generalized, for the relevant paragraphs were the cases of force majeure. In other words, even if the basis for the freight carrier's liability to the ship owner are considered with

respect to the general laws of civil liability, the cases of force majeure will be included in Act 55 of Iran's Maritime Laws regarding the carrier's liability to the ship. These cases are known as the exemplars of force majeure in French laws. In fact, they represent the cases of force majeure; however, the Maritime Law addressed each case in an English way following Hague Rules. The carrier can be acquitted from the liability by proving any of the above cases. However, French laws indicate that the carrier is required to prove that the cases have been unpredictable and unavoidable and that they have been out of the carrier's control (Rodier, traite, 1968, p 409).

The abovementioned procedure is reversed in cases of fires or collisions of ships. In other words, the carrier is basically exempted unless the noncompliance with logical and necessary precautions are proven by the owner of cargos in an accident.

According to Paragraph B of Section 2 of Act 55 in Maritime Laws (Paragraph B of Section 2 of Act 4 in Hague Rules), the damage caused by fires will not be compensated by the carrier if it is not triggered by the carrier's actions or mistakes.

If a fire on a ship is considered a single criterion for all events that are out of the freight carrier's control in case when the ship and all the aboard cargos are sunk, the carrier is not held accountable.

However, if the damage is caused by the fire when the owner of cargos holds the carrier accountable, then the owner must prove this claim. Hence, the carrier is exempted in case of a fire with unknown causes. The legal procedures of France, Belgium, Italy, and US are also similar. By contrast, in English laws, the carrier must prove both the fire and his/her having no roles in the fire.

Criticizing the English procedure, Professor Rodier considered it against the structures and negotiations prior to the approval of Hague Rules. He also added, "Firstly, only fire was predicted in Hague Rules. Suggested by Americans, a

term was added to the end of the paragraph. The experts have concluded that the text should be interpreted with a glance at the US laws, according to which the owner of cargos must prove the carrier's fault in case of a fire. Hence, the carrier is exempted from liability when a fire breaks out with unknown causes."

Hamburg Rules included fires in the carrier's exemption cases. According to Hamburg Rules, a fire is a case in which the carrier is not held accountable unless the owner of cargos proves that the carrier or his/her agents have caused the fire or have neglected to prevent or alleviate the fire. Thus, the carrier is not accountable to the damage caused by fire from unknown causes. In this regard, Hamburg Rules can be criticized. Moreover, it is not easy to present reasons for this case; hence, it is up to the owner of cargos.

In conclusion, if a ship sinks as a result of fire or collision, the carrier is not held accountable in accordance with the aforesaid cases and the ongoing procedure unless the owner proves the carrier's fault in the event.

Conclusion

Having no clear definitions in any of regulations or conventions, seaworthiness is a commitment held by the freight transporter. Nevertheless, the doctrines have interpreted the commitment to seaworthiness as the case in which a ship is free of any evidently technical flaws and is ready in terms of robustness and resistance to atmospheric conditions for a voyage. By definition, the ship should also be ready to withstand typical hazards to deliver cargos or passengers safely to the destination.

Nevertheless, this commitment represents a two-sided concept that depends on both the seaworthiness of a ship and its ability to load cargos. The nature of this

commitment necessitates that its violation should have certain consequences prior to any damage sustained by passengers or cargos, e.g., damage to the ship.

In conventions and regulations of maritime transportation, a commitment is often analyzed from the perspective of evidence for its relevance to cargos or passengers. For instance, act 4 of Hamburg Convention clearly holds the carrier responsible for the cargos. However, none of these conventions have pointed out the carrier's responsibility for the ship in relation to the commitment to the supply of seaworthiness.

Nevertheless, according to the general laws and previous court verdicts, it is justifiable to hold the carrier accountable to compensate for the damage caused to the ship as a result of failure to provide seaworthiness.

Not only will this conclusion play a preventive role in the freight carrier's negligence of this commitment, but it will also be fair and practical.

Although the reviewed regulations and conventions addressed the commitment analyzed in this study, the available evidence indicates that rejecting this commitment depends only on the aspect of cargos and passengers. Therefore, those conventions are based on this assumption. Regarding the analysis of another aspect in commitment based on the general laws of civil liability, the responsibility is based on the general assumption in the governing legal system, which is the basis for "fault" in Iran as well as the carrier's cases of exemption from accountability.

End notes:

1) Section A of Paragraph 1 of Act 3 in the Brussels Convention; Section A of Act 14 in the Rotterdam Rules

2) The sailing power of a ship means equipping the ship with necessary and sufficient devices and instruments and employing experiences staff to prepare the ship for a specific voyage.

3) The loading power of a ship means that the ship is totally ready to load cargos, transport, store, carry, and unload cargos

4) If the merchandise is wasted or lost, the carrier will be responsible for this cost unless he/she proves that the wastage or loss of the merchandise is related to its material or type, the sender's fault, the training given by the sender, or the accidents that could not have been prevent by any cautious transporter. In this case, the contract sets a smaller or larger sum than the total price of the merchandise for compensation.

5) Act 55 of Maritime Law

Lack of liability by the carrier and the ship
1-The ship and the carrier will not be responsible for the loss or damage caused by the lack of seaworthiness unless they do not make sufficient efforts to prepare the ship for sailing, meet the requirements from the perspective of crew, provide adequate equipment, arrange storages, cooling chambers, and other sections of the ship that carry cargos, and protect the shipment in accordance with Paragraph 1 of Act 54. Whenever the loss or damage is caused by the lack of seaworthiness, the carrier or other parties claiming exemption from liability will be required to prove their efforts and precautions.
6) Act 3 – The carrier is responsible for taking the following precautions prior to and at the beginning of every voyage:
a) The ship is to be prepared for sailing.
7) Paragraph 1 of Act 3 in Hague Convention
8) Chapter 4 – Liabilities of the Carrier – Act 11 – Shipment and Delivery of Cargos – The carrier carries the cargos and delivers them to a recipient in accordance with this convention and the shipment contract. Act 14 – The specific applicable requirements of a voyage – The carrier is required to take logical precautions prior to or along a voyage for the following responsibilities: A) providing a ship with seaworthiness and keeping the ship seaworthy; B) equipping the ship, assigning crew, and storing the ship properly to preserve the

ship, crew, equipment, and storages along a voyage; and C) sorting and arranging storages and other chambers of a ship in which cargos are carried in addition to the containers provided by the carrier for carrying cargos on or inside them by preserving them for reception, transportation, and delivery of cargos.

9) According to this paragraph, the carrier will not be held accountable for the damage as a result of the following conditions:

A) Negligence or fault on the part of the ship captain, crew, guides, or authorized official of transportation while sailing or managing naval affairs;

B) Fires not caused by the freight carrier's faults or actions;

C) Hazards and dangerous accidents or incidences of seas and sailable waters;

D) Natural disasters;

E) War and consequent outcomes

F) Operations by enemies of the state;

G) Apprehension or blockage of the ship as a result of jurisprudential actions or court decisions;

H) Quarantine limitations;

I) Actions or inactions on the part of the sender or owner of cargos or his/her agents or representatives;

J) Strike, shutdown of workshops, and cancellation or obstruction of work in general or in particular for any reasons;

K) Riots and disturbance;

L) Efforts to save people's lives or properties on the sea;

M) Deficiency of weight or size of cargos or any other loss caused by hidden agents or other inherent characteristics of cargos.

N) Flaws in packaging of cargos;

O) Hidden flaws that cannot be detected with accurate attention;

P) Any other problems caused by the carrier's negligence or action or those of his/her authorized representative; however, they should prove in this case that their actions or negligence had no effects on the loss or da

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