

Carrier's responsibility under International Conventions

Tarek Idais

t.idais@tamimi.com

International Convention on the Carriage of Goods by Sea ("Hamburg Rules"), UN Convention Rotterdam Rules ("RR"), Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway ("CMNI"), Convention for the Unification of Certain Rules Relating to International Carriage by Air ("Warsaw") and Convention for the Unification of Certain Rules for International Carriage by Air ("Montreal").

These conventions apply contractually or if the country is a signatory to them. If so, they apply to every contract for international carriage of goods either by road, sea or air. For instance, CMR applies to contracts for the international carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country. However, HVR applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

Moreover, RR will apply to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States. At least one of the above mentioned ports or places shall be located in a Contracting State. Also RR (which are not yet in force) would apply to the carriage of goods by sea which involves other modes, meaning that other modes of transportation, such as carriage by air and road, can be subject to the Rotterdam Rules. However, the RR are not applicable in the event of a multimodal contract limited to air and road carriage, with no sea leg.

Since there are many conventions that deal with the carrier's responsibility in international carriage of goods, this article will examine only the carrier's responsibility under CMR, HVR and RR Conventions.

The main obligations of the carrier under international carriage of goods conventions are:

1. Taking over the goods;
2. Preserving the goods during the voyage;
3. Carrying the goods to their destination by a suitable means of transport & deliver the goods to the holder of the bill of lading.

Thus, the carrier shall properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver goods. The carrier must also carry the goods to the place of delivery within the specified time and deliver them to the consignee in the condition in which they were handed over to him by the shipper or his agent.

In general, the carrier is not an expert in nature and peculiarities of cargo. Therefore, the shipper has the duty to inform, to give proper instructions and to package the goods properly, otherwise the carrier will not be responsible. However, if the carrier specializes in transport of specific cargoes, then the carrier must generally have knowledge and skill required for that particular trade.

Most international transport laws and conventions allow parties to a carriage of goods to decide for themselves whether the carrier or shipper/consignee shall perform the loading, stowage and discharge

operations. And yet, if the carrier performs these operations himself, he will generally be responsible even if it has been agreed that the shipper or consignee shall load or discharge.

Under the carriage of goods the carrier must provide a suitable means of transport and he shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage. Such liability is called absolute responsibility of the carrier which is set out in CMR Convention Article (17.3). However, Article (III.1) of HVR states that "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) 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 duty of care upon carrier." Interestingly, RR impose a continuous duty to exercise due diligence to make and keep the ship seaworthy by virtue of Article (14) of RR.

Accordingly, if a transport vehicle becomes defective during transport the carrier is required to repair the defect without delay as set out in Article (17) of CMR. However, only under HVR is the carrier's duty is to exercise due diligence to make the ship seaworthy, restricted to the period before and at the beginning of the voyage as per Article (III.1). Furthermore, the carrier under HVR must exercise due diligence to avoid not only occurrence, but also its consequences. Unlike RR which impose a continuous duty to exercise due diligence to make and keep the ship seaworthy by virtue of Article (14). Additionally, the carrier must show:

1. the damage was caused by circumstances (i.e. a hidden defect) which he could not avoid and consequences of which he was unable to prevent; or
2. that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences;

otherwise his liability will be unlimited.

Whilst the carrier uses employees, agents or sub-contractors to perform any obligations under the contract of carriage on his behalf, he is liable for any breach of his obligations caused by their acts or omissions. However, some conventions limit the carrier's responsibility for acts or omissions of his performance agents to when they are acting within the scope of their employment as per Articles (3) CMR, (18) RR and (IV.2) (q) HVR.

The responsibility period of the carrier in international carriage of goods, in principle, is between the time of taking over the goods until their delivery as per Articles (4.1) of HVR, (12) of RR, and (17.1) of CMR. Such liability is mandatory, in other words, any clause decreasing the carrier's liability is null and void. The important exception can be found in HVR under Article (I) (e) that states the carriage of goods covers the period from time when goods are loaded on to the time they are discharged from the ship." This implies that mandatory liability rules as set out in Article (III.8) of HVR apply only to the "tackle-to-tackle" period, in other words from the beginning of loading until the end of discharging. Therefore, under HVR, the carriers can validly exclude liability for the period before (loading) and after (discharge) of goods by incorporating a Period of Responsibility Clause into the carriage of goods contract.

Scandinavian countries, although (still) a party to HVR, have extended the carrier's period of mandatory liability to the period from taking over until delivery of the goods. This is not considered a violation of mandatory law, because it only increases carrier's liability, which is not prohibited by Article (III.8) of HVR.

It can be concluded that the main obligation of the carrier under international contract of carriage is to deliver the goods to their destination in the condition in which they were handed over to him by the shipper or his agent, otherwise he will breach the contract of carriage. Also, it must be noted that the RR has not yet come into effect, it will enter into force when it has been ratified by twenty countries as per Article (94) of RR.