Carrier's Duty to Care for Cargo on Carriage by Sea: Comparative Analysis

''Which rules give the higher liability in the aspect of carrier's duty to care for cargo?''

Candidate:
Ezgi YURDAKUL

Supervisor:
Mr. Gabriele RUSCALLA

Master in International Trade Law
October, 2018

International Training Centre of ILO
Turin School of Development

ITC ILO

International Training Centre

www.itcilo.org

TABLE OF CONTENTS

ABBREVIATIONS

Art.	**:** Article
BGH	**:** Bundesgerichtshof
CMI	**:** Comité Maritime International
COGSA	**:** Carriage of Goods by Sea Act
FIO	**:** Free in out
FIOS	**:** Free in out stowage
FIOST	**:** Free in out stowage trimmed
Hague Rules	**:** International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading
Hague-Visby Rules	**:** amended Hague Rules by the Visby Protocol
Hamburg Rules	**:** United Nations Convention on the Carriage of Goods by Sea
Previous TCC	**:** 6762 numbered TCC
Rotterdam Rules	**:** United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea
RR	**:** United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea
SDR	**:** Special Drawing Rights
TCC	**:** 6102 numbered Turkish Commercial Code
UNCITRAL	**:** United Nations Commission on International Trade
ZR	**:** Zivilrecht

ABSTRACT

Carriage of goods by sea plays a significant role in international transportation, and transportation is one of the fundamental tools of the international trade. It influences many branches such as economics, industry, and logistics. Legal mechanism[1] is also affected by transportation. Contract of carriage and the carrier's liabilities are two of the most important legal issues in maritime law. Also, duty to care for cargo is accepted as the fundamental liability of the carrier. At the international level, the Hague-Visby Rules[2] are the primary set of rules among international conventions for carriage of goods by sea. On the other hand, after new improvements in the maritime sector, new studies have been carried out to establish new legal provisions meeting the requirements and expectations of the transportation sector. For instance, the Rotterdam Rules[3] are the result of these studies at the international level.

The aim of this research paper is a comparative analysis among relevant regimes on the carriage of goods by sea with a focus on the carrier's liability on the cargo. The analysis will compare maritime conventions such as ''Hague-Visby Rules'', ''Hamburg Rules[4]'', ''Rotterdam Rules'', common law[5]rules and Turkish maritime law.

While comparing, the classical legal method will be used. As a result of setting a central question, this research will contain qualitative method. For sources, the conventions and Turkish Commercial Code are available online. Also, academic books, essays, and journals are used. Finally, some cases and judicial decisions are given as examples in Turkish Law system.

[1] Here the meaning of 'legal mechanism' is a process and/or a system that is used to explain legal infrastructure of international carriage (i.e. it is the legal perspective of carriage process.)

[2] ''International Convention for the Unification of Certain Rules of Law relating to Bills of Lading'' (1924), as amended by the protocol done at Brussels on 23 February 1968; available on http://www.fog.it/convenzioni-en/inglese/visby-1968.htm

[3] ''United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea'' (New York, 2008); available on http://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/Rotterdam-Rules-E.pdf

[4] ''United Nations Convention on The Carriage of Goods by Sea, 1978''; available on http://unctad.org/en/PublicationsLibrary/aconf89d13_en.pdf

[5] ''As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which wa' originated, developed, and formulated and is adr. tinistered in England, and has obtained among nost of the states and peoples of Anglo- Saxon stock. Lux v. Haggin, 69 Cal. 255, 10 P. 674. '' BLACK, H.C., *Black's Law Dictionary*, Revised Fourth Edition; St. Paul, Minn. West Publishing Co. 1968; p. 345.

INTRODUCTION

International trade is one of the most relevant aspects of human life since the oldest eras. Transportation is an international business and plays an important role in international trade. It is regulated by international conventions and a set of Rules. Maritime trade is the best option among types of transportation, due to the fact that it is the cheapest and intercontinental and also provides to carry a huge amount of goods. It is safe and secured. The principal aspect of maritime transport is generally the cargo being transported and the commercial gain out of the cargo. Therefore, the legal relationship between carriers and shippers become unavoidable. This relationship generally comes to existence by way of contract of carriage.

Contract of the carriage is a contract concluded between a carrier who undertakes to carry the cargo or a passenger by ship and a shipper who accepts to pay the specific price in return. It is basically a contract for the conveyance of property, persons, or messages, from one place to another.[6] Cargo is defined as goods transported from one place to another. In the maritime field, it indicates "a particular load that is being transported by ship''.[7]

The notion of carriage contract is used for different types of transportation such as road, railway, air or sea transport[8]. In other words, depending on the type of transport, contracts of carriage are divided into those for railway, air, sea and motor transport[9]. In the maritime context, contract to carry goods by sea is called 'contract of affreightment'. An affreightment contract is concluded between the freighter and the ship-owner. According to this contract, the ship-owner undertakes to carry the cargo of the freighter in his ship for a specified time or a specified voyage. The freighter accepts to pay

[6] BLACK, H.C., *Black's Law Dictionary*, Revised Fourth Edition by The Publisher's Editorial Stuff, St. Paul, Minn. West Publishing Co. 1968, p. 269

[7] N.OGUTOGLU, *Essential Maritime English* (DERGAH OFSET Press, İstanbul, Fist Edition, 2006) p.9

[8] KARAN defines ''contract of international carriage of goods as follows: *''A contract between the carrier and the (contracting) shipper / consignor whereby the parties agree that, in return for freight to be paid by the (contracting) shipper / consignor, the carrier shall carry goods in his custody from one country to another.''* KARAN, *Law on International Carriage of Goods* (Turhan Bookstore Publications, Ankara, 2013) p. 27

[9] *Contract of Carriage*, 21 Soviet Stat. & Dec. 343 (1985), available online at HeinOnline, p. 346.

a specific price that is called freight[10]. It is paid in advance when the cargo is loaded for the carriage[11].

The maritime sector is of particular complexity in practice. Disputes mostly arise out of uncertainty to determine the carrier's liabilities. Maritime regulations must include clear rules. Therefore, carrier's fundamental obligations are generally regulated in international maritime law as follows:

1- Seaworthy ship
2- Duty to care for cargo
3- Obligation to issue Bill of Lading.[12]

Due to the obligation of seaworthiness, the carrier has to exercise due diligence before and at the beginning of the voyage. However, the second obligation called ''duty to care for cargo'' contains a going-on duty of due diligence. In other words, *the carrier has an obligation to care for goods being carried. The obligation continues on the whole transport period*[13].

There are two main chapters aiming at analysing the obligation "carrier's duty to care for cargo''. Chapter I will analyse the relevant articles of conventions as the essence of this final thesis. It will define the 'rule' which has a higher liability of the carrier. After that, Chapter II will contain Turkish rules of carrier's duty to care for cargo under TCC (Turkish

[10] In other words, a contract of affreightment is a contract with a ship-owner to hire his ship, or part of it, for the carriage of goods. See: BLACK, H.C., *Black's Law Dictionary*, Revised Fourth Edition by The Publisher's Editorial Stuff, p. 83
There is another definition by Schoenbaum; *''When parties enter into an agreeement for the transportation of goods aboard a ship, their legal arrangement is known as contract of affreightment.''* For details, TEKIN, *Carrier's Liability on Contract of Affreightment*, p. 23

[11] A contract of affreightment may take either of two forms, namely charter party and bill of lading. Charter party is concluded between charterer and ship owner when a ship is hired. The parties confirm the terms, exceptions and conditions in the contract. There are four main categories of charter party: 1- A voyage charter party whereby the vessel is chartered for a specified voyage, 2- A time charter party whereby the vessel is chartered for a specified period of time, 3- A charter party by demise whereby the vessel is leased to the charterer. 4- A bareboat charter whereby the vessel is leased without the ship's crew to the charterer. In this contract, ship-owner has no mandate on technical or commercial management on ship. According to Ivamy; there are three types of charter party. These are: Time-charter party, voyage-charter party and charter party-demise. See *ER Hardy Ivamy; Payne & Ivamy's Carriage of Goods by Sea,* Thirteenth Edition London 1989, p. 5. However, it is required to add the last type called bareboat charter. SENDUR,T., *Ship Chartering and Demurrage-Dispatch Accounts,*(in Turkish) (Nobel, First Edition, Ankara, 2015) p. 42

[12] This obligation is referred as third obligation of carrier. However, it is not accepted by every international or national legislation.

[13] KARAN, *Law on International Carriage of Goods,* p. 69.

Commercial Code)[14]. To conclude this research, the central question will be answered by expressing the 'rule' which has the higher liability of carrier due to which fact and which aspect. The conclusion will be explained on assumption that Turkey ratifies the Rotterdam Rules.

To begin comparing international conventions, it is worth clarifying the origin and the nature of their rules. Global customary development of shipping rules was interrupted around 15th and 16th century. Because carriers began to use their bargaining power against the interests of the other people related to the cargo. They would be excluded from obligations by the use of exceptions clauses. At the end of the nineteenth century, these clauses became so elaborate and complicated.[15] This caused an abuse of freedom of contract. It might distort balance between the carrier's and the shipper's interests. Domestic laws did no longer serve the development of cargo shipping. Therefore, Comité Maritime International (CMI)[16] was created in Antwerp in 1897 with the purpose of harmonising the legal regulations in different areas of maritime law at the international level[17]. The International Convention for the Unification of Certain Rules relating to Bills of Lading (''Hague Rules'') was adopted in 1924; it was later supplemented by the Visby Protocol (''Hague-Visby Rules'') in 1968[18] [19].

[14] Turkish Commercial Code, ''Türk Ticaret Kanunu'', Date: 13.1.2011, No.:6102, Resmi Gazete (Official Reporter) Date: 14.2.2011, No.:27846; Turkish version available on www.mevzuat.gov.tr/MevzuatMetin/1.5.6102.pdf

[15] WOLFSON, R., *The International and Comparative Law Quarterly,* Vol.4, No.4 (Cambridge University Press, Oct., 1955), p. 508

[16] *''It is a non-governmental not-for-profit international organisation established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.''* See website http://comitemaritime.org/

[17] LEINIEKS, *Which Approach to Choose,* p. 303

[18] LEINIEKS, *Which Approach to Choose,* p. 303

[19] The Hague Rules are a pattern to uniform bills of lading adopting the Harter Act of USA to divide the risk between carrier's risks and cargo owners' risks. See: DEGIRMENCI, *Maritime Law in Turkey* (in English) (Onikilevha, First Edition, İstanbul, 2017) p.98. Also see: REYNOLDS, F.: *The Hague Rules, The Hague-Visby Rules and the Hamburg Rules,* MLAANZ Journal 1990, Vol.7,p.18. To explain Harter Act, *''The US of Harter Act was the first legislative attempt to regulate the issue of carrier liability and to protect the interests of shippers.''* See: AL-MARZOUQI, M., *Carrier Liability Regime under the Qatari Maritime Law: A Comparative Study,* Journal of Maritime Law & Commerce, Vol. 48, No: 4, October, 2017, p. 451

CHAPTER I: COMPARATIVE ANALYSIS OF DUTY TO CARE FOR CARGO

1- HAGUE-VISBY RULES

1.1- Regulation under The Hague-Visby Rules

The Hague Rules and the Hague-Visby Rules regulate the only liability of "the carrier''.[20] *The carrier is subjected to certain defined responsibilities out of which he cannot contract himself by the use of exception clauses*[21]. The carrier's duty to care for cargo is the most important obligation pursuant to carriage contract[22].

For a contract of carriage, only two forms apply under these conditions below:

1- *Covered by a bill of lading or any similar document of title, in so far as such documents relate to the carriage of goods by sea* and
2- *Any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such instrument regulates between a carrier and a holder of the same*[23].

The Hague Rules / The Hague-Visby Rules are obligatory legal regimes that regulate carrier's liability within the scope of the bill of lading.[24] Bill of

[20] According to the Hague-Visby Rules, ''carrier'' *is the owner of the vessel or the charterer who enters into a contract of carriage with a shipper* (The Hague-Visby Rules' Article 1.a).
[21] WOLFSON, R., *The International and Comparative Law Quarterly,* p. 509.
[22] GUNAY, *Hague/ Visby Rules- in Comparison with the Rotterdam Rules,* p. 97
[23] The Hague-Visby Rules' Article 1.b.
[24] Bill of lading is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight. *Mason v. Lickbarrow, 1 H.B1.359.* A written memorandum, given by the person in command of a merchant vessel, acknowledging the receipt on board the ship of certain specified goods, in good order or ''apparent good order'', which he undertakes, in consideration of the payment of freight, to deliver in like good order (dangers of the sea expected) at a designated place to the consignee therein named or to his assigns. *Devato v. Barrels, D.C.N.Y., 20 Fed. 510.,*
The term is often applied to a similar receipt and undertaking given by a carrier of goods by land. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. See Civil Code Cal. § 2126a; Aman v. Dover & Southbound R. Co., 179 N. C. 310, 102 S.E. 392, 393; Rudin v. King-Richardson Co., 143 N.E. 198, 201, 311. Ill. 513. It is receipt for goods, contract for their carriage, and is documentary evidence of title to goods. Schwalb v. Erie R. Co., 293 N.Y.S. 842, 846, 161 Misc. 743.

lading includes the basic information regarding the freight and the data about the carrier, the shipper and the receiver of the goods. The Hague Rules[25] / The Hague-Visby Rules apply only to the carriage under a bill of lading[26].

Article 3.2 of the Hague-Visby Rules states that *''Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried''*. If the carrier breaches the contract, he will become liable for damages. Here the carrier's liability is based on ''fault liability''[27].

1.2- Provisions of Liability

The Hague-Visby Rules deal with damage and loss. That means that the carrier will be responsible for ''loss'' or ''damage'' under the Hague-Visby Rules. This rule was implemented due to the fact that the carrier breaches the obligation of duty to care for cargo. But here the system based on the bill of lading was protected.[28] In other words, any person related to carriage process can apply to the carrier's liability by the only bill of lading or any similar document regulating the relations between carrier and holder.

However, there is no regulation for delay of delivery and its results neither in the Hague Rules nor in the Hague-Visby Rules. Does the notion of ''damage'' include the damage caused by the delay of delivery? This issue was left to domestic laws and there is no limitation to clarify this issue within the context of the Hague Rules[29]. Parties may agree on removing it from the scope if the applicable law has no mandatory rules on that liability. For instance, they can put related conditions into the bill of lading[30].

See: BLACK, H.C., *Black's Law Dictionary*, Revised Fourth Edition by The Publisher's Editorial Stuff, St. Paul, Minn. West Publishing Co. 1968, p. 210.

[25] According to Wilson, The Hague Rules are the first international convention based on clause system which is applied in English-American Law, in order to provide the unification to limit the carrier's liability. See: WILSON, *Carriage of Goods by Sea,* p.174

[26] *''….the Hamburg Rules cover the same ground as the Hague-Visby Rules.As before, the carrier's liability for the performance of the carriage and the rules on bills of lading stand in the centre.''* See SELVIG, *Hamburg Rules,* p.16

[27] KARAN, *Carrier's Liability*, p.83

[28] TEKIN, *Carrier's Liability on Contract of Affreightment,* p. 124

[29] GUNAY, *Hague/ Visby Rules- in Comparison with the Rotterdam Rules,* p. 101

[30] SCHWAMPE explains this situation as follows: *''The Hague-Visby Rules do not deal with delay in delivery. This does not mean that a carrier cannot be liable under the applicable law. It only means that there is no mandatory liability. The applicable law can very well provide for liability for delay, but unless such applicable law also provides for its mandatory application, the partieswill be free to negotiate out of this liability, for example by bill of lading conditions.''* SCHWAMPE, Dr. Dieter, *The Liability for Loss of or Damage to the Goods and for Delay in Delivery of the Goods according to Art. 17 Rotterdam Rules*

The Hague-Visby Rules only apply to carriages from contracting States. From this aspect, it is possible to say that the scope is limited in Hague-Visby, compared to other international conventions. Besides, the Hague-Visby Rules cause vagueness on applying clauses such as Free in / Free Out. By these clauses, the parties have the freedom to entrust the carrier's duties. For instance, loading, stowing and discharging the goods may be determined for transferring the obligation from the carrier to the cargo interest. In this way, the parties determine who will bear the cost of loading, stowage, handling, and discharge.

1.3- Limits of Liability

Pursuant to Hague-Visby Article 5.5.a, the carrier's liability is limited to 666,67 units of account per package or unit or two units of account per kilo of gross weight of the goods lost or damage, whichever is the higher.

1.4- Non-Liability

Article 4[31] regulates non-liability situations.

---

with comparative views on the Hague Visby Rules and the Draft German Shipping Law (edited under Recent Developments in Maritime Law) p.96-97.

[31] The main non-liability situations are regulated under Article 4.2:

''Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.
(b) Fire, unless caused by the actual fault or privity of the carrier.
(c) Perils, dangers and accidents of the sea or other navigable waters.
(d) Act of God.
(e) Act of war.
(f) Act of public enemies.
(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
(h) Quarantine restrictions.
(i) Act or omission of the shipper or owner of the goods, his agent or representative.
(j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
(k) Riots and civil commotions.
(l) Saving or attempting to save life or property at sea.
(m) Wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
(n) Insufficiency of packing.
(o) Insufficiency or inadequacy of marks.
(p) Latent defects not discoverable by due diligence.
(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or

- The carrier is not responsible for loss or damage under specified conditions such as *act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship*[32]. This rule contains non-liability for loss or damage of cargo:
    1) Caused by the carelessness of carrier's employees
    2) Caused by negligence in the navigation of the ship.

  Navigational management, i.e. ''error in navigation'' means e*rrors on the part of the carrier resulting in collisions, groundings or violent contact with other perils of the sea.*[33]

  Navigational management and 'the carrier's liability for the damage caused by fire have been criticised in doctrine. For instance; WILSON criticises this situation as follows: *''Both have been strongly criticised by cargo interests and the exception covering navigational error is unique in that no equivalent is to be found in any other type of transport convention.''*[34]

  LEINIEKS thinks that *by the second half of the 20th century, it had become unthinkable that carriers might not be liable for loss or damage of cargo caused by the carelessness of their employees or by negligence in the navigation of the ship*[35].

- A reasonable or justifiable deviation is protected. In other words, a deviation occurs if carrier deviates from the usual and reasonable route which is determined in the carriage contract or from the reasonable way even if it is not determined in the contract. The notion of the usual and reasonable route is important to understand whether there is a justifiable deviation. The 'usual and reasonable route' indicates that if no course of the voyage is prescribed in the contract, the direct geographical route is a ''usual and reasonable route''[36]. Article 4.4 of Hague-Visby regulates that if the carrier deviates from the route to save or attempt to save life or property at sea; he will be protected and will not become liable.

---

privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.''

[32] Article 4.2.a of the Hague-Visby Rules

[33] ARNESS, F.F., *Error in Navigation or Management of Vessels: A Definitional Dilemma,*Willim & Mary Law Review, Vol. 13, Issue , Article 6,p.643. Available:https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com.tr/&httpsredir=1&article=2685&context=wmlr

[34] WILSON, *Carriage of Goods by Sea,* p.194.

[35] LEINIEKS, *Which Approach to Choose,* p. 304

[36] KOSIK, J. *Deviation in English, American and French Maritime Law,* Seminar Papers submitted at the Harvard Law School on April 1958, in the Seminar on Legal Problems of International Trade in Satisfaction of the Requirements of that Seminar., p. 97.

1.5- Burden of Proof

In a situation where damage or loss of the goods occurs, the burden of proof will be on the carrier[37]. The carrier needs to prove the existence of elements justifying the damage of the loss of the cargo[38]. According to the Hague-Visby Rules, the carrier has two options. Firstly, the carrier benefits from the proof that *the loss, damage or delay is not attributable to the fault of the carrier or the fault of any person for whom he is liable.*[39] The other option is that the carrier may benefit from the absence of fault if he can prove that the loss, damage or delay in delivery occurs due to *the excepted perils.*

2- HAMBURG RULES

The Hague-Visby Rules were gradually adopted in all parts of the world. And the Rules sufficed for a while in practice. However, they started not to meet the requirements of sea transportation. There were many questions not resolved by the Hague-Visby Rules[40]. For instance, The Hague-Visby Rules apply to contract for the carriage of goods by sea but only under bills of lading. The use of a bill of lading had a steady decrease due to significant technical and commercial changes in international trade[41]. These important changes caused new problems regarding the usage of containers[42] and multimodal transport modes. Due to all these factors, a revision at the Rules at the international level emerged as a requirement[43]. As a result of the revision, the UN Convention on the Carriage of Goods by Sea (1978)[44] came into force on 1st November 1992.

The Hamburg Rules left the Hague-Visby's regime that was based on the bill of lading. The Hamburg Rules apply any contract for the carriage of goods by sea[45]. It is seen that the contract of carriage is *any contract*

---

[37] BERLINGIERI, *Comparative Analysis,* p. 8

[38] Reasoning from Article 4 of the Hague-Visby Rules.

[39] BERLINGIERI, *Comparative Analysis,* p. 8.

[40] SELVIG,: *Hamburg Rules,* p.3

[41] SELVIG, *Hamburg Rules,*p. 2

[42] ''A container is an article of transport containing goods to be loaded onto and off the vehicle quickly and easily and to safeguard them from external risks. It is usually manufactured from metal for multiple uses.'' KARAN, *Law on International Carriage of Goods,* p. 29

[43] *''……the revision of the Hague Rules was raised in the early 1970'ies as a question of trade policy within UNCTAD, the UN agency for trade and development. The aim was to work out a new convention under auspices of the UN for the establishment of ''a balanced allocation of risks between cargo owners and carriers''* SELVIG, *Hamburg Rules,* p. 11.

[44] ''the Hamburg Rules''

[45] On the other hand, pursuant to the Hamburg Rules, the shipper has the right to demand that bill of lading be issued. Article 14.1: *''When the carrier or the actual carrier takes the*

whereby the carrier undertakes against payment of freight to carry goods by sea has been concluded with a shipper.[46] In this way, the scope of the application of these Rules expanded. On the other hand, the carriage of goods under ''charter party'' has been excluded from the Hamburg Rules.
For the notion of the 'carrier', the Hamburg Rules have a definition as: *''Carrier means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper''*[47].

And the Hamburg Rules brought the notion of ''actual carrier'' whereas the Hague-Visby Rules only regulated ''carrier''. The Hamburg Rules Article 1.2 defines **actual carrier**: ''Actual carrier'' *means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.''.*

Pursuant to the Hamburg Rules, the liabilities are embodied on the actual carrier on the several bases as the contracting carrier. The carrier does not have to possess all the means of transport. He usually uses sub-carriers who perform the carriage. Sub-carriers are ''actual carriers''.

Additionally, the Hamburg Rules left the limited scope of the Hague-Visby Rules. The Hamburg Rules allow the application that either port of loading or port of discharge is situated in such a state, whereas the Hague-Visby only allows the application to carriage from contracting States.

It may be required to emphasise that States can't make any reservation to the Hamburg Rules[48]. In other words, they are not allowed to change the provisions and adapt them into their own domestic law[49].

Above all, the Hamburg Rules regulate stage of the obligation under Article 4[50] differently from the Hague-Visby Rules[51]. We can clearly see that here the scope is extended. The carrier will be responsible for the goods between the period of loading and period of discharge. That means that the carrier is liable if he is in charge of the goods at the port of loading, during the

---

goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.''

[46] Article 1.6 of the Hamburg Rules.

[47] Article 1.1 of the Hamburg Rules.

[48] The Hamburg Rules, Article 29: *'' No reservations may be made to this Convention.''*

[49] TEKIN, *Carrier's Liability on Contract of Affreightment*, p. 115

[50] The Hamburg Rules' Article 4 regulates the period of responsibility. Pursuant to 4/1; '*the responsibility of the carrier for the goods under this Convention 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.'*

[51] The Hamburg Rules regulated neither carrier's seaworthy obligation nor duty to care for cargo.

carriage and at the port of discharge. And the carrier will be mandatorily liable for the goods during the whole period of his custody. SELVIG accepts that it is clear that the carrier receives or delivers the goods at the terminal or another place within the port area. However, he brought a criticism. For instance, what if the carrier collects the goods at the shipper's factory in the loading port? Or what if the carrier delivers the goods at the consignee's storehouse in the port of discharge? According to SELVIG, we must interpret these terms called ''port of loading'' and ''port of discharging'' as ''pick up and delivery service''. In this way, the period for the liability becomes clearer.[52]

Compared to the Hamburg Rules, Hague-Visby Rules accepts that the carrier will be responsible during the period from the time when goods are loaded on to the time they are discharged from the ship. So the Hamburg Rules has left the ''tackle-to-tackle'' regime which was adopted in the Hague-Visby Rules.

2.1- Provisions of Liability

The basis of liability of the carrier for loss, damage, and delay in delivery are regulated in Article 5 of the Hamburg Rules. This article provides for the presumption of carrier's fault in respect of loss or damage to the cargo[53]. With liability provisions, the Hamburg Rules directly apply to loss of or damaged cargo and delay in delivery.

With the Hamburg Rules, it was intended to change the 'Hague-Visby based' legal regime. Despite the fact that the Hamburg Rules reflected a suitable liability system, it was not well-received by States. There are some States like Turkey which has a modified 'Hague and Hamburg' regime.

One of the main differences between the Hague-Visby and Hamburg emerges from the provisions on liability: While delivery of delay and its results are regulated under the Hamburg Rules, there is no regulation for the delay in delivery under the Hague-Visby Rules[54]. The new improvement called ''delay in delivery'' is regulated under Article 5.2 of the Hamburg Rules. Pursuant to this rule; delay in delivery occurs *''when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time which it would be reasonable to require of a*

[52] See SELVIG, *Hamburg Rules,* p. 19.

[53] The Hamburg Rules' Article 5.1: *"The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.''*

[54] Liabilities caused by damage or loss of have the same understanding and here they are also regulated under the Hamburg Rules.

diligent carrier, having regard to the circumstances of the case.'' With this article, the Hamburg Rules state the situation in absence of an agreement: There is a reasonable time for the diligent carrier to deliver the goods if there is no agreement on that.

According to the Hamburg Rules, the carrier will be responsible for the loss of or damage to the goods or delay in delivery because it occurs 'during the goods are in his custody'[55]. In other words, the carrier should carry the goods in his charge. However, the carrier, his servants or his agents can be relieved from responsibility if they prove that they have taken all the measures that are reasonably conceivable to prevent the damage. That is the fundamental way for the carrier pursuant to the Hamburg Rules[56].

There is another new rule in the Hamburg Rules that did not exist in the Hague-Visby Rules. As a matter of fact, the Hamburg Rules provide that if the goods are not delivered on time, there is an opportunity to accept it as the loss of the goods[57]. There is a time period for meeting the requirement of this rule, i.e. sixty consecutive days are required after the expiration of delivery time determined.

2.2- Limits of Liability

Article 6 in the Hamburg Rules has the provision for the limits of liability, which regulates that compensation shall not exceed 835 Special Drawing Rights (SDR) per package or units of the goods or 2,5 SDR per kilo of lost or damaged goods, the higher amount will be applied. Here the limit is higher than the Hague-Visby's. And the Hamburg Rules separate the amount of limitation due to delay in delivery[58]. On the other hand, there are some special regulations for unlimited liability in the Hamburg Rules[59]

---

[55] KARAN; *The Carrier's Liability Under International Maritime Conventions The Hague, Hague Visby, and Hamburg Rules,* p. 225; PING-FAT; *Carrier's Liability under the Hague, Hague-Visby and Hamburg Rules,* p. 21 and 63.

[56] TEKIN, *Carrier's Liability on Contract of Affreightment,* p. 137

[57] The Hamburg Rules, Article 5.3: *'' The person entitled to make a claim for the loss of goods may treat the goods as lost if they have been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.''*

[58] The Hamburg Rules' Article 6.1.b: *''The liability of the carrier for delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.''*

[59] e.g. Article 8, 9.4 and 17.4.

- Article 8: ''*1. The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.*

2.3- Non-Liability

The Hamburg Rules feature, particularly in different non-liability situations. There is no regulation due to the cargo on deck or live animals in Hague-Visby. However, the Hamburg Rules have. In this part, these special situations for non-liability will be explained.

Fire: According to Article 5.4 of the Hamburg Rules, *the carrier is liable for loss of or damage to the goods or delay in delivery caused by fire.* He will be liable due to the fact that fire arises from the fault or neglect on the part of the carrier, his servants or agents[60].

The second situation is if the fire arises from fault or neglect of the carrier, his servants or agents ***in taking all the measures that could reasonably be required to put out the fire and avoid or mitigate its consequences[61].***

Article 5.4 states an exception of the first paragraph of the same article. The main rule (5.1) states that the burden of proof is on the carrier who has to prove that he or his servants and agents have no fault. Compared to the main rule, the burden of proof is upon the claimant -such as the cargo owner- to claim the compensation pursuant to the fourth paragraph. This change is criticised in doctrine because it will be most likely difficult for the claimant to prove the reason of fire or the measures to be taken in order to put out the fire or prevent the consequences[62].

For instance, SELVIG finds that strange. He explains this situation as follows: *''By the first look, the exception appears somewhat strange. The cause of a fire may be difficult to detect, and particularly in the case of fire*

---

2. Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation ofliability provided for in article 6 if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.''

- Article 9.4: ''*Carriage of goods on deck contrary to express agreement for carriage under deck is deemed to be an act or omission of the carrier within the meaning of article 8.''*

- **Article 17.4:** *''In the case ofintended fraud referred to in paragraph 3 of this article, the carrier is liable, without the benefit of the limitation ofliability provided for in this Convention, for the loss incurred by a third party, including a consignee, because he has acted in reliance on the description of the goods in the bill of lading.''*

[60] This fire issue (and also error in management) was one of the main questions to be solved while looking for the new convention after the Hague-Visby Rules. SELVIG states this question as follows: *'' The main question, however, which were to overshadow all the others, was the abolition of the special rules exonerating the carrier with respect to liability for damage due to error in navigation and fire….'',* SELVIG, *Hamburg Rules,* p.4

[61] The Hamburg Rules, Article 5.4.ii.

[62] TEKIN; *Carrier's Liability on Contract of Affreightment,* p. 140

in a ship it is the carrier who has access to the evidence and, therefore, the best chances of clarifying the sequence of events.''[63]

PING-FAT argued that *the carrier's position has been ameliorated under the Hamburg Rules, given in particular, the practical difficulty for the cargo-owner to establish the origin of a fire on board, or reconstruct, after the event, the circumstances surrounding the outbreak of a fire, and furthermore, to prove affirmatively that the fire was immediate cause of the loss or damage in question*[64].

Carriage of Live Animals: There is another new improvement under the Hamburg Rules compared to the Hague-Visby Rules. The Hamburg Rules have a very clear definition for ''goods''. Live animals are regarded as cargo. In other words, the 'goods'[65] includes live animals. *With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from the special risks.*[66] This regulation clearly makes the carrier non-liable from the damages. In other words, by this regulation, the carrier can exonerate himself from the liability for damage caused by the special risks during the transportation of animals.

Cargo on Deck: The Hamburg Rules allow the carrier to carry the goods on deck due to some conditions under Article 9.1 According to this regulation, only if:

- The carriage is in compliance with an agreement with the shipper,
- The carriage is in compliance with the usage of particular trade, or
- The carriage is required by rules or regulations[67].

It is possible to exclude the carrier from liabilities. Compared to the Hague-Visby Rules, it is seen that the Hamburg Rules do not maintain deviation as

---

[63] SELVIG, *Hamburg Rules,* p. 22

[64] PING-FAT, *Carrier's Liability under the Hague, Hague-Visby and Hamburg Rules,* p.90.

[65] The Hamburg Rules' Article 1.5: *'' Goods includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, '' goods'' includes such article of transport or packaging if supplied by the shipper.''*

[66] The Hamburg Rules' Article 5.5: ''*With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused, unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.''*

[67] The Hamburg Rules' Article 9.1: *''The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.''*

a non-liability situation. Besides, there are consequences of unreasonable deviation under the Hamburg Rules[68].

2.4- Burden of Proof

The carrier's liability based on the presumed fault was transferred from the Hague-Visby Rules to the Hamburg Rules. In other words, the Hamburg Rules maintain the carrier's burden of proof that there is no fault or neglect. However, excluding the carrier from liability of error in navigation was removed.

3- COMMON LAW

Common law system adheres to freedom of contract. This understanding can be seen on the carrier's liabilities on the carriage by sea. In the common law system, the carrier's liability during the voyage is examined under the name of ''care and custody'' obligation.[69]

The parties are free for negotiations on terms of affreightment contracts that were covered by a bill of lading and other similar documents. The principle of due diligence is recognised by the common law. It simply refers to the making of the ship seaworthy, properly manned, equipped and supplied, and made fit and safe for the reception, carriage, and preservation of the goods[70] [71].

It would be clearer to explain ''care of cargo'' on specific cases such as *Albacora v Westcott and Laurance Line*[72]. In this case, wet salted fish that was the subject of the contract had been carried from Glasgow to Genoa. There was a clause such *keep away from engines and boilers'* to protect the cargo, but there was not any other clause which should be given by the

---

[68] The Hamburg Rules have no exemption for deviation. Rules give place for deviation only in Article 5 which reguated 'Liability for Delay'. It is explained as ''…….*Because of this unpredictability, the Hague Rules do not cover the liability of the carrier for delay in delivery. However, as a result of modem shipping technology, the proper charting of the oceans and sophisticated and efficient methods of navigation, voyages have become less subject to delays and more predictable.''*.

[69] AKAN, *Carrier's Liability,* p.37; LONGLEY, *Common Carriage of Cargo,* p.86

[70] WOLFSON, R., *The International and Comparative Law Quarterly,* Vol.4, No.4 (Cambridge University Press, Oct., 1955), p. 520.

[71] BLACK defines due diligence as follows: (in common law) Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. *Perry v. Cedar Falls, 87 Iowa, 315, 54 N.W. 225,* See: BLACK, H.C., *Black's Law Dictionary*, Revised Fourth Edition; St. Paul, Minn. West Publishing Co. 1968; p. 544.

[72] [1966] 2 Lloyd's Rep 53

shipper. In other words, the parties agreed to ship the wet salted fish on an unrefrigerated vessel. Later it became clear that wet salted fish should have been carried within refrigeration despite the fact that the carrier was not informed about it. At the discharging port (Genoa), it was found that there was a bacterial action which affected the cargo. In this case, it was discussed that the carrier had 'properly' carried the cargo in accordance with Article 3 of the Hague Rules. The existence of the clauses was evaluated by the House of Lords. Consequently, it was decided that the carrier was not liable; because the shipper had to give enough information to the carrier for protection of the cargo.

There are other cases based on due diligence. For instance; in *Jindal Iron & Steel Co v Islamic Solidairty Shipping Co (Jordan II)* case, the court accepted that the carrier does not have to perform the obligation himself[73]. In another case (*Compania Sud American Vapores v MS ER Hamburg)* it was decided that the carrier was not liable pursuant to Article 3.2 of the Hague-Visby Rules[74].

As another issue, negligence of the carrier is not acceptable as an exemption from the liability. The negligence clauses which excluded all ship-owners' liabilities including their own negligence were valid. Later, English courts presumed acceptance of the liability regarding the care of the cargo. They indicated that the liability was not excluded unless clearly stated.[75] The carrier's negligence which is related to the cargo during the voyage is considered as a violation of the burden of care and custody of the cargo.[76] In a case called *Liverpool and Great Western Steam Company v. Phoenix Insurance Co.*[77] (1889), there was a great interest for the negligence clauses. The U.S. Supreme Court deeply analysed the negligence clauses and found it unreasonable and against public policy[78]. According to almost all the Federal Courts, the carrier could not exclude himself from his negligence. Only a few Federal Courts accepted this exemption only in some specific cases, providing that these clauses had to be reasonable.

---

[73] [2005] 1 Lloyd's 57. For details; see GUNAY, B., *Hague/Visby Rules – in Comparison with the Rotterdam Rules,* p.103

[74] [2006] 2 Lloyd's Rep 66

[75] REYNOLDS, F.: *The Hague Rules, The Hague-Visby Rules and the Hamburg Rules,* MLAANZ Journal 1990, Vol.7,p.17.

[76] AKAN, *Carrier's Liability,* p.37; LONGLEY, *Common Carriage of Cargo,* p.86

[77] 129 U.S. 397, 9 S.Ct. 469, 32 L.Ed. 788

[78] See details in Chacón, V.H., *The Due Diligence in Maritime Transportation in the Technological Era; Chapter II: in The Origin of the Obligation of Practicing Due Diligence in Maritime Transportation,* Springer International Publishing AG 2017, Springer Series on Naval Architecture, Marine Engineering, Shipbuilding and Shipping, p.68. Available online: https://www.springer.com/cda/content/document/cda_downloaddocument/9783319660011-c2.pdf?SGWID=0-0-45-1621257-p181088261.

''Fire'' also is not accepted as an exemption for the carrier to be relieved from the liability. For the case called *Morewood v. Pollok* (1853) 1 E. & B. 743, MEESON explains that *the fire has to be a fire ''on board the ship'', that is the ship whose owners are seeking to exclude their liability. Thus there can be no exclusion of liability where goods were destroyed by a fire on board.*[79]

4- ROTTERDAM RULES

Regulations that came from nineteenth-century regime no longer serve on maritime law. In other words, today's world is very different from the world at the time The Hague Rules, The Hague-Visby Rules and even The Hamburg Rules were negotiated.[80] So it was unavoidable to move into a new regime after realising changes on technology, transport, and industry.

Therefore, this convention has been adopted and regulated by UNCITRAL[81] on 11 December 2008 and opened for signature in 2009 to provide unification in international trade[82] and deal with the relations between the carrier interests and cargo interests under the contract of international carriage of goods wholly or partly by sea[83]. The carrier's liability, fundamentals of liability regime and the burden of proof constitute the core[84]of the Rotterdam Rules. According to SCHWAMPE, The Rotterdam Rules has the target to improve the efficiency and commercial predictability in the international carriage of goods and to decrease the legal obstacles to the flow of international trade among all States and to promote the legal

[79] *Morewood v. Pollok* (1853) 1 E. & B. 743. See MEESON, N., *Admiralty Jurisdiction And Practice,* (Third Edition, LLP, London- Hong Kong 2003), p. 246.

[80] See DEGIRMENCI, *Maritime Law in Turkey,* p.97; and FARIA, J.A.E., Uniform Law for International Transport at UNCITRAL: New Times, New Players, and New Rules, Tex.Int.'l L.J.2009, Vol. 44, p.319. Also CAGA and KENDER support the idea that uniformity of all maritime laws and regulations is in the interest of all seafarer countries. CAGA,T.; KENDER, R., *Maritime Law I,* (in Turkish), (Revised 12th Edition, Beta 2012,Istanbul) p. 16.

[81] United Nations Commission on International Trade Law, established by the United Nations General Assembly by resolution 2205 (XXI) of 17 December 1966.

[82] *''UNCITRAL plays an important role in developing that framework in pursuance of its mandate to further the progressive harmonisation and modernisation of the law of international trade1 by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law.''* A Guide to UNCITRAL Basic Facts about the United Nations Commission on International Trade Law, p.1. Available online at: http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf

[83] KARAN; *The Rotterdam Rules v. the Hague and Hamburg Rules* (edited under Recent Developments in Maritime Law) p.109

[84] Jan RAMBERG, *UN Convention on Contracts for International Carriage of Goods Wholly or Partly by Sea,* at http://www.cmi2008athens.gr/sub3.3pdf. Also see YUZHOU & LI, *The New Structure of the Basis of the Carrier's Liability under the Rotterdam Rules*, p. 931

certainty[85]. However, the Rotterdam Rules (or RR) have not yet entered into force[86].The Rotterdam Rules have a significant impact on law, technology, and logistics. The form of contracting has changed[87].

Contract of Carriage: The definition of ''contract of carriage'' under the Rotterdam Rules is as follows: *'A contract 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.'*[88]

The Carrier: According to the Rotterdam Rules, ''carrier'' means *a person that enters into a contract of carriage with a shipper*[89]. It seems that the carrier's liabilities according to the Rotterdam Rules have the balance the carrier's interests and the shipper's interests. And the Rotterdam Rules pay attention not only to the shipper and the carrier but also to other related people such as sub-carriers. That means that the Hague Rules / Hague-Visby Rules regulate only the liability of the carrier. In contrast, the Rotterdam Rules extend the regulations to sub-carriers who have no actual relationship with the shipper.

The Rotterdam Rules may extend other modes of transport such as road, rail, and air. It is extended as not only from loading to unloading but also from reception to delivery. It symbolises the modern understanding of transport. This is the key for ''multimodal aspect of the Rotterdam Rules''[90]. This aspect is seen in the Rotterdam Rules by expanding legal regime of the international maritime transport of the goods (''port to port

---

[85] SCHWAMPE, Dr. Dieter; *The Liability for Loss of or Damage to the Goods and Delay in Delivery of the Goods, According to Art. 17 Rotterdam Rules with Comparative Views on the Hague-Visby Rules and the Draft German Shipping Law* (edited under Recent Development in Maritime Law) p.94.

[86] Still 20 parties are required for entrying into force. See the status of the Rotterdam Rules:
http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/rotterdam_status.html

[87] Door to door contracts have come into existence to meet industrial requirements. ''Door-To-Door'' service: The sea carrier offers transport from the sender's premises to the receiver's premises rather than offering traditional tackle-to-tackle or pier-to-pier service.
And door to door shipments obtained the norm under the Rotterdam Rules. ULGENER summarises this understanding as follows: *'' The Rotterdam Rules, different from the Hague and Hamburg Rules, framed provisions not only for the carriage of goods by sea, but also for the door-to-door carriage; and thus aims (so far as possible) to cover all types of carriage under the roof of a single legislation.''* See ULGENER; *''Obligations and Liabilities of the Carrier'', The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,* Meltem Deniz Güner Özbek, p.142; TEKIN, *Carrier's Liability on Contract of Affreightment,* p.157.

[88] Article 1.1 of the Rotterdam Rules

[89] Article 1.5 of the Rotterdam Rules.

[90] VAN DER ZIEL, *Multimodal Aspects of the Rotterdam Rules,* p 981.

transport'') to the legal regime for international carriage of goods with all modes of transport (''door to door transport'')[91]. A door to door transport (in other words: ''door to door service'') is the high level of multimodal service. And multimodal transport is simply defined as 'more than one mode of transport on one transport document'.

However, pursuant to its Article 1.6, the Hamburg Rules only apply to the carriage of goods by sea. That means that the Hamburg Rules are not capable to solve the problems of modern transportation, such as the container transportation on door-to-door service. The regulations related to door-to-door service under the Rotterdam Rules may solve this problem and avoid doubts on what happens if carriage by sea combines with any other transport modes.

4.1- Regulation under the Rotterdam Rules

The carrier's fundamental obligation is basically to carry the goods and deliver to the receiver. Compared to previous international conventions, this obligation has been regulated and become a written rule under the Rotterdam Rules' Article 11[92].

According to this article, we can clearly say that the Rotterdam Rules have extended[93] the period of the carrier's obligation by providing that he has to be obliged from receiving the goods to deliver it to the consignee. Indeed, the Rotterdam Rules accepted duration of carrier's obligation as the period from accepting the goods to delivering in[94]. The main reason for extending the obligatory period is that the Rotterdam Rules are regulated in relation to multimodal transport. However, the Hague-Visby Rules took a period of loading and unloading into consideration to determine the period.

Afterward, there is a regulation referring - the local law or regulations. If the authority or other third party hands the goods over, the carrier's obligation

[91] For the same opinion, see KARAN, *Any Need for a New International Instrument on the Carriage of Goods by Sea:The Rotterdam Rules?,* p. 443

[92] General Obligation under the Rotterdam Rules Article 11; Carriage and delivery of the goods**:** *''The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.''*

[93] TEKIN, *Carrier's Liability on Contract of Affreightment,* p. 150; DAMAR; *Wilful Misconduct in International Transport Law,* Hamburg 2011, p. 147; ULGENER; *''Obligations and Liabilities of the Carrier'', The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,* GUNER OZBEK, Springer- Verlag Berlin Heidelberg 2011, p.140.

[94] The Rotterdam Rules' Article 12.1: *'' 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.''*

period starts when the carrier collects the goods from them. And the period ends when the carrier hands the goods over to the authority or another third party[95].

Finally, the Rotterdam Rules allow the parties to determine the carrier's period of responsibility under Article 12.3. In this way, the parties may decide the time and location of receipt and delivery of the goods. However, they are not allowed to put such clauses that regulate to decrease the carrier's period of responsibility from loading to unloading[96].

In the Rotterdam Rules, Article 13[97] completes Article 11. Under Article 13 which regulates specific obligations, *the carrier shall -during the period of its responsibility- ''properly and carefully''* ***receive****, load, handle, stow, carry, keep,* ***care for****, unload and* ***deliver*** *the goods*[98]. As another specific obligation, the clauses that provide transferring performance of loading, handling, stowing or unloading to the cargo interests are regulated under Article 13.2[99].

[95] The Rotterdam Rules' Article 12.2;
''(a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.
(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.''

[96] The Rotterdam Rules' Article 12.3: *'' For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:*
(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
(b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

[97] GUNAY, B., *Hague/Visby Rules – in Comparison with the Rotterdam Rules,* p.104

[98] Article 13.1 of the Rotterdam Rules. Similar with Article 11, the classical adoption of previous conventions has expanded for the period of carrier's liability. Broader period is seen with the wordings which are ''receive, care for and delivery''.

[99] ''*Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.''* In this way, the Rotterdam Rules made clear form of clauses such as Free in and out.

The operations regulated under Article 13 are not only concerning the ship but also concerning other stages of the carriage. With this aspect, the Rotterdam Rules differ from the Hague-Visby Rules.[100]

4.2- Provisions of Liability

Provisions of liability were not regulated with new idea under the Rotterdam Rules. Working Group had a purpose to maintain the vision of Hague and Hague-Visby. The reason for maintaining a similar idea was to realize that the Hamburg Rules did not receive a deal of attention[101]. In other words, the reason to maintain the system of the Hague and the Hague-Visby Rules was the concern if the Rotterdam Rules could not get the attention from the States having a corner on sea trade, like the Hamburg Rules could not[102] [103].

The basis of liability of the carrier for loss, damage, and delay in delivery is regulated in Article 17 of the Rotterdam Rules. In this article, similarities with Hague-Visby are standout such as the liability of the carrier, relieving from liability, exceptions regarding special circumstances and the burden of a proof system for the claimant whose goods has been damaged, lost or delayed in delivery. Nevertheless, there are improvements as new elements in the same article. For instance, some non-liability situations for carrier and additional counter-proof options for both the claimant and the carrier are regulated.

The Rotterdam Rules deal with the delay in delivery, like the Hamburg Rules. Besides that, this regulation creates the main difference with the Hague-Visby Rules which have no regulation for the delay in delivery. In other words, the introduction of mandatory liability for delay in delivery is the most significant aspect as a difference from the Hague-Visby[104].

Compared to the Hamburg Rules' Article 5.2, the Rotterdam Rules Article 17 has no second option for the possibility of lack of agreement. That means

---

[100] TEKIN, *Carrier's Liability on Contract of Affreightment,* p. 153.

[101] According to KARAN, the failure of the Hamburg Rules caused disharmony on international conventions. See: KARAN, *Any Need for a New International Instrument on the Carriage of Goods by Sea:The Rotterdam Rules?,* p. 449.

[102] Because only 34 States ratified the Hamburg Rules. TEKIN, *Carrier's Liability on Contract of Affreightment,* p.157; GUNAY, B**.,** *''Hague/Visby Rules – in Comparison with the Rotterdam Rules''* (in Turkish) (Yetkin 2013) p.136; KARA, *According to Rotterdam Rules Carrier's Liability due to Loss, Damage or Delay in Delivery*, p.190.

[103] *''The Hague-Visby Rules became hugely popular. Some 80 countries –mostly ''traditional carrier'' countries –have either ratified or acceded to the Convention, and many countries have incorporated its provisions into their legislation''* LEINIEKS, *Which Approach to Choose,* p. 304.

[104] Related article is as follows: *''Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.''* The Rotterdam Rules, Article 21.

there is no second option in Article 17 for the reasonable time for the diligent carrier to deliver the goods if parties have no agreement. However, the Hamburg Rules accept required reasonable time for the diligent carrier if there is no agreement between parties.

In Article 17 of the Rotterdam Rules, there are detailed provisions for the allocation of the burden of proof on one hand to the claimant; on the other hand, to the carrier[105]. It is regulated respectively as follows:

1- Basis of liability (The main rule): According to 17/1, the claimant must prove loss, damage or delay. Or he must prove any event that during the period of carrier's responsibility caused this situation[106].
2- Possibility for the carrier to be relieved from liability: This affects the burden of proof as it shifts from the claimant to carrier to rebut the ''fault'' presumption. In other words, if the carrier proves that the reason of loss, damage or delay in delivery did not occur as a result of his fault or related person's fault referred to in Article 18[107], he can be relieved from the liability[108].
3- The alternative by listing non-liability situations for the carrier: There is an alternative for the carrier to be relieved from liability in 17/3. He can also be relieved from liability if he proves that loss, damage or delay in delivery occurred as a result of the list in the third paragraph[109].

---

[105] YUZHOU &LI, p. 931

[106] RR Article 17.1: *''The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.''*

[107] RR Article 18; 'Liability of the carrier for other persons'

'' *The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:*

(a) Any performing party; (b) The master or crew of the ship; (c) Employees of the carrier or a performing party; or (d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.''

[108] RR Article 17.2: ''*The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.''*

[109] RR Article 17.3: ''*The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in*

4- Two situations[110] to make the carrier responsible even if there is a non-liability situation under Article 17.3.
5- Additional situations[111] to make the carrier responsible even if there is a non-liability situation under Article 17.3.
6- The situation for partial responsibility: Article 17.6 regulates that the carrier will be responsible only for attributable part of the loss,

---

paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:
(a) Act of God;
(b) Perils, dangers, and accidents of the sea or other navigable waters;
(c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
(d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;
(e) Strikes, lockouts, stoppages, or restraints of labour;
(f) Fire on the ship;
(g) Latent defects not discoverable by due diligence;
(h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;
(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
(j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
(k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
(l) Saving or attempting to save life at sea;
(m) Reasonable measures to save or attempt to save property at sea;
(n) Reasonable measures to avoid or attempt to avoid damage to the environment; or
(o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.''

[110] RR Article 17.4: *'' Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:*
(a) If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies; or
(b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.''

[111] RR Article 17.5: *'' The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:*
(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and
(b) The carrier is unable to prove either that: (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or (ii) it complied with its obligation to exercise due diligence pursuant to article 14.''

damage or delay when the carrier is relieved from the part of his responsibility regarding this article[112].

4.3- Limits of Liability

The limitation of liability was extended in the Rotterdam Rules. The amount in the Hague-Visby Rules was increased in the Hamburg Rules to 835 SDR and 2.5 SDR respectively. It has been further increased in the Rotterdam Rules to 875 SDR and 3 SDR[113]. Although there is not a dramatic change compared to previous conventions, the level of per package and per kilogram limits layout in the Rotterdam Rules[114].

4.4- Non-Liability

Under Article 17.3 of the Rotterdam Rules; there are new non-liability situations that do not take place in previous conventions.

- 17/3(i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee
- 17/3(n) Reasonable measures for environment protection
- 17/3(o) Acts of the carrier in pursuance of powers.

It is important to state that the Rotterdam Rules removed the carrier's exemption from the error in navigation, while this exemption is regulated under The Hague-Visby Rules. Here the purpose is to find rebalance between the carrier's and the shipper's interests.

---

[112] RR Article 17.6 : ''*When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.''*

[113] RR Article 59.1: *''Subject to articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.''*

RR Article 60 (Limits of liability for loss caused by delay)

''Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.''

[114] LANNAN, *Behind The Numbers,* p. 908

On the other hand, the Rotterdam Rules may apply to cargo carried on deck. However, the carrier is excluded from the liability for the damages arising from the special risks involved in their carriage on deck[115].

4.5- Burden of Proof

Article 17 deals with the full allocation of the burden of proof, which is not regulated under the Hague-Visby Rules and the Hamburg Rules. Compared to the Rotterdam Rules, neither the Hague-Visby nor the Hamburg Rules have a clear expression for the burden of proof[116]. That means that the Rotterdam Rules clearly state that the claimant has the burden of proof.
First of all, if the claimant proves that the loss, damage or delay in delivery occurred during the period of the carrier's liability, the carrier is held liable. On the second level, the burden of proof shifts. This time the carrier needs to prove that the loss, damage or delay in delivery cannot be imputable to his fault, or any person whom the carrier is liable. Also, the carrier can benefit from the excepted perils due to the presumption that the fault is absent. On the next level, the burden of proof on the claimant is stated in details. Because the claimant needs to prove that the excepted perils occurred due to the carrier's fault or the fault of any person whom the carrier is liable.

In addition to that, the Rotterdam Rules give an option to the claimant. The claimant can prove that the loss, damage or delay in delivery **probably** occurred due to the fact that the carrier failed in due diligence to keep the vessel seaworthy. Compared to the Hague-Visby Rules, the Rotterdam Rules allow the claimant that he can prove **probable** loss, damage or delay in delivery. However, pursuant to the Hague-Visby Rules, the claimant needs to prove that the unseaworthiness caused the loss, damage or delay in delivery. It is seen that The Hague-Visby Rules is stricter than the Rotterdam Rules from this aspect of the burden of proof.

---

[115] ANDREWARTHA, J., *English Maritime Law Update: 2008,* Journal of Maritime Law & Commerce, Vol. 40, No.3, July, 2009, p. 397

[116] YUZHOU & LI state: *''In this sense, Article 17 RR marks clear progress since, at any given circumstance or at any given stage, the claimant or the carrier would know exactly what burden of proof or counter-proof it could expect to bear.''* YUZHOU & LI, p. 934.

CHAPTER II: TURKISH MARITIME LAW SYSTEM

1- Carrier's Duty to Care for Cargo

Turkey ratified the 1924 International Convention or the Unification of Certain Rules of Law relating to Bills of Lading ('Hague Rules')[117]. But Turkey is not a party to Hague-Visby, Hamburg or Rotterdam Rules. However, we can see the reflection of the Hague-Visby Rules and some parts of the Hamburg Rules as being incorporated into the Turkish Commercial Code (TCC). In other words, it implemented some provisions of conventions and implemented them into its domestic law to achieve utmost compliance with international provisions.

With respect to carriage contract, provisions of the Hague-Visby Rules were transposed into TCC[118]. For regulations on carrier's liability, Turkish legislation completed its other requirements with provisions of the Hamburg Rules that do not conflict with the Hague-Visby Rules.[119] In other words, provisions under carrier's liability have the main pattern of the Hague-Visby Rules. The Hamburg Rules have the role of filling the gaps of Hague-Visby.[120] However, Turkish courts apply TCC in practice, although there may be some controversy regarding the application of The Hague Rules over TCC[121].

1.1- Comparison with Previous TCC

There is the main difference between previous TCC and new TCC for provisions of lost and damaged goods. Carrier's liability for goods loss of or damaged was in the time between loading the goods and discharging them from the ship. New TCC extended this period. The carrier will be liable

---

[117] In Turkey, the Hague Rules became effective on 04.01.1956. See SAMLI, K.Y. *Seaworthiness on The Hague-Hague Visby, Hamburg and Rotterdam Rules,* İÜHFM C. LXXI, (2013), p.479.

[118] DAMAR, *The Turkish Law fully conforms with the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 1924 as amended by the Protocol of 1968 (''The Hague-Visby Rules''); Non-Contractual Liability and Limitation of Liability in Maritime Law, - A Comparison between the Turkish Commercial Code and the German Draft Bill* (edited under Recent Developments in Maritime Law) p.48

[119] UNAN, *Some Aspects of Maritime Law in the New Turkish Commercial Code,* (edited under Recent Developments in Maritime Law) p.11

[120] ARAS, *Liability of The Carrier for Loss, Damage and Delay According to the New Turkish Commercial Code* (edited under Recent Developments in Maritime Law) p.17

[121] Turkish Commercial Code (TCC) which includes maritime law entered into force on 1st July, 2012.

during the time that he has charge of the goods at the ports of loading and discharging[122]. In other words, he will be liable during ‘’port to port’’ period whereas he was liable during ‘’tackle to tackle’’ period[123]. This change is a reflection of the Hamburg Rules Article 4.

Another difference is on basis of ‘wording’. Previous TCC did not contain *‘’by performing the contract of carriage, in essence’’.* Current TCC includes this structure. Particularly, *‘’in essence’’* means that the rule does not rely on *numerus clausus*, and it may contain another part of carriage process. The lawmaker intended to give samples by putting this term in article. So the parties have the freedom to change the scope of obligation by agreeing on it in the contract. The parties may agree on some of these actions, namely loading, stowing, handling or unloading of the goods to be performed by shipper or consignee[124] [125].

1.2- Regulation under TCC

Pursuant to Turkish maritime law system, the carrier would be deemed liable for:

1- Any loss or damage to the cargo in the event of the vessel being **unseaworthy**;
2- Actions in breach of **duty to care for cargo**; **(Article 1178)**
3- Cargo being carried **on deck[126]** without any instructions from or consent by the shipper;
4- Cargo being **loaded or transferred to another vessel**; and
5- Cargo being carried by a route other than that determined before the voyage. **(deviation)**

[122] According to Article 1178.2 under new TCC.

[123] ‘’Tackle to tackle period is the time after the cargo has been loaded on the ship at the port of shipment and before it has been unloaded at the port of discharge.’’ See DEGIRMENCI, *Maritime Law in Turkey,* p. 98. Also see; STURLEY, M.F.: *Maritime Cases About Train Wrecks: Applying Maritime Law to the Inland Damage of Ocean Cargo,* J.Mar. L. &Com.2009, Vol.40, p.4; Hague Rules Art. 1 para.e.; STURLEY, M.F., *Modernizing and Reforming U.S.Maritime Law: The Impact of the Rotterdam Rules in the United States,* Tex.Int’L L.J. 2009, Vol.44, p. 434; STURLEY, M.F. /FUJITA T./ van der ZIEL, G.: *The Rotterdam Rules,* London 2010, p.59; HASHMI, S.: *The Rotterdam Rules: A Blessing? ,* Loy.Mar. L.J.2012, Vol.10, p. 232; FUJITA, T.: *The Comprehensive Coverage of the New Convention: Performing Parties and Multimodal Implications,* Tex. Int.’L L.J. 2009, Vol.44, p.350; ZIEGLER, A.: *The Liability of the Contracting Carrier,* Tex. Int.L L.J.2009, Vol.44, p.335; TETLEY, W.: *International Maritime and Admiralty Law,* Quebec 2002, p.81.

[124] This indicates Free in and out clauses which are explained below (1.3 Provisions of Liability).

[125] ARAS, *Liability of The Carrier for Loss, Damage and Delay According to the New Turkish Commercial Code* (edited under Recent Developments in Maritime Law) p.19

[126] Article 1151 of TCC which is a reflection of the Hamburg Rules Article 9.1.

Turkish Commercial Code has specific regulation about how the carrier must perform its contract of carriage. According to TCC Article 1178.1; *'' The carrier is under the regulation to serve care and attention as of a diligent carrier, by performing the contract of carriage, in essence, by loading, stowing, handling, caring for, keeping and discharging the goods.''* Here the key is to act as a ''diligent carrier''. That means that the carrier has to perform diligently all the acts that he undertakes in the contract. This regulation emerged from Hague/ Hague-Visby Article 3.2. In other words, the carrier shall exercise utmost care[127] which is expected from a prudent carrier[128] while performing the contract of carriage, particularly in loading, stowing, handling, carrying, keeping and discharging stages of cargo which is being carried. Every stage from loading to discharging is subject to different and separated rules or practices[129]. The carrier is informed about the cargo to be loaded[130].He will be liable for loss of or any damage to cargo while the cargo is in the carrier's possession.

1.3- Provisions of Liability

The third paragraph of TCC Article 1178 regulates the carrier's operational period on the carriage when he keeps the goods in his custody.[131] Basically, the carriage process demonstrates the scope of obligation. The carrier has to perform every aspect of the contract; from loading to discharging properly and carefully.[132]

The carrier is liable for not only the loss of or damage to the goods, but also for the delay in delivery. Delay in delivery is regulated in Article 1178.4 of TCC. This is very similar to the Hamburg Rules' Article 5.2. That means

[127] For similar definitions such as ''*The highest care to be expected from the carrier is the average attention, skill and prudence within the framework of the experience required by the carrier in the standards of an ideal carrier, acting in accordance with the appropriate movement and possible agility during the day.''* See KOLLER, *Transportrecht, Kommentar zu Spedition, Gütertransport und Lagergesschäft,* p. 389. Also see ADIGUZEL, *Transport Law,* p. 158.

[128] ''A*n ideal carrier means a carrier having an overall experience in terms of carrying, eliminating possible hazardous situations.''* from German Federal Court Decision; *BGH 17.03.1992 dated I ZR 62/91 case number, VersR 1992,* p.714. Also see ADIGUZEL, *Transport Law,* p. 158.

[129] GUNAY, *Hague/ Visby Rules- in Comparison with the Rotterdam Rules,* p. 99

[130] There may be a detailed list of quantities, a description of the cargo and the list for destination.

[131] It is deemed that the goods is in his custody until it is delivered to consignee; or if the consignee does not receive the goods, by placing it at disposal of consignee according to contract, law or trade usage, applicable in unloading port; or the carrier should deliver the cargo to an authority or third party to whom, under laws and regulations applicable at unloading port (Article 1178.3 TCC).

[132] ARAS, *Liability of The Carrier for Loss, Damage and Delay According to the New Turkish Commercial Code,* (edited under Recent Developments in Maritime Law) p.18

that, if the cargo is not delivered at the discharging port which is provided in the contract, or in a situation where the agreement is absent within reasonable time for the diligent carrier, then the delay in delivery occurs. Additionally, if the cargo is not delivered as required pursuant to 1178/4, it may be accepted as lost by the claimant. There is a time period for meeting the requirement of this rule. Sixty consecutive days are required after the expiration of delivery time determined (1178/5).[133]

The carrier's liability is based on fault. In other words, the carrier will not have liability if he has no fault. This understanding brings that the carrier (in defendant position) has to prove lack of fault to be relieved from liability. The reason why he has to prove that is based on presumed fault in the beginning. Presumption says that he is already accepted as liable for damage, loss or delay in delivery. Therefore, he has to prove the contrast. The carrier will have to prove: 1- The lack of fault 2- The reason why damage, loss or delay occurred. Here the burden of proof is not only on the carrier but also on his servants and agents.[134] The carrier will also have to prove that his servants and agents do not have the fault for damage or loss.

FIO (Free In and Out) Clause and (FIOS[135] & FIOST[136]): Performance and costs of loading, discharging, stowing or trimming are transferred to the shipper or consignee thorough these clauses. The carrier benefits from them[137]. According to these clauses, if the parties decide on:

- FIO clause: Performance and costs of **loading and discharging;**
- FIOS clause: Performance and costs of **loading, discharging and stowing;**
- FIOST clause: Performance and costs of **loading, discharging, stowing and trimming** are transferred from the carrier to shipper or consignee.

---

[133] These rules are not explained in details because they are reflections of the Hamburg Rules, Article 5.

[134] The carrier's servants and agents are master or crew of ship, employees of carrier and other people who are used for performing carriage. Crew means *''Usually referred to and is primarily thought of as those who are on board and aiding in the navigation.''* BLACK, H.C., *Black's Law Dictionary*, p. 444.
According to Article 1179.2 of TCC; ''Servant'' is referred as person who is in the service of the ship, person who is employed under the carrier's incorporation and person who is assisting the fulfillment of the contract of affreightment, even though he is not employed under the carrier's incorporation.

[135] Free in out stowage.

[136] Free in out trimmed.

[137] *''If a certain operation, such as loading or unloading of the goods, is actually performed by the documentary shipper or the consignee (based on a Free in / out clause), the goods are not in the custody of the carrier during this period. Thus, the carrier is not liable for any loss of or damage to the goods that occurs in this period.''* See ATAMER and the rest, *Transport Law in Turkey,* p. 172.

The carrier is able to be relieved from duties on pre-loading and after discharging. These stages are out of mandatory scope. But in any case, the carrier cannot remove the obligation for duty to care for cargo[138].

We can see an important reflection of the carrier's duty to care due to the fact that it is regulated as a mandatory rule under international conventions. Turkish Law adopted 'duty to care for cargo' as a mandatory rule. That means that the contractual clauses which decrease and/or eliminate the liability based on duty to care for cargo are null and invalid. However, it is possible to increase liability by provisions or contracts.[139]

The Notion of Notice: Notice depends on types of damage. If the damage is apparent, notice should be given latest at time of delivery. If the damage is not apparent, notice deadline is determined as consecutive three days from time of delivery[140] [141]. This understanding comes from international conventions. Here Turkish legislation adopts the same idea of the Hague-Visby. And it is different from the Rotterdam Rules that regulate the notice deadline as seven days from time of delivery.[142]

For the notice of delay, there is a different regulation. Under the Turkish maritime system, notice should be given to the carrier in writing and within sixty consecutive days after delivery. To claim compensation due to the loss, damage or delay, the claimant is able to use his right within one year from date of delivery.

---

[138] For the same opinion, see CAGA; KENDER, *Maritime Law II* p. 135. Also see PRÜßMANN, *Seehandelsrecht,* p.541

[139] ARAS explains this situation as follows: *''As a rule, the provisions relating to liability and obligations of the carrier are compulsory. They indicate the minimum degree of liability, this means the carrier is at liberty to increase its responsibilities.'' Liability of The Carrier for Loss, Damage and Delay According to the New Turkish Commercial Code* (edited under Recent Developments in Maritime Law) p.24.

[140] It is regulated in Article 1185 of TCC.

[141] In a case subject to decision of Turkish Supreme Court, wooden goods being transported from the United States to Mersin (a city in Turkey) were found to be damaged due to the grubby pallets. And the court stated that it was necessary to examine whether the goods became defective or not, and whether the notice is sent in legal period or not. Republic of Turkey Supreme Court Decision, Department of 19th Office, Case No: 2016/12594, Decision No: 2017/7529, Date: 01/11/2017. See in YENIPINAR, B.F.,*Maritime Law- Procedures and Implementation, Supreme Court Decisions, General Inspection, Samples* (Aristo, First Edition, İstanbul, 2018), p. 154

[142] RR Article 23.1 regulates notice in case of loss, damage or delay: ''*The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.''*

1.4- Limits of Liability

Turkish law system maintains the same understanding with the Hague-Visby Rules for limits of liability. Like Hague-Visby Article 5.5.a, the carrier's liability is limited to 666,67 units of account per package or unit or two units of account per kilo of gross weight of the goods lost or damage, whichever is the higher[143].

Afterward, the lawmaker explains how to calculate damages. The amount what the carrier will pay is calculated by reference to the value of goods at the time or the place of delivery. Here the determinant is the commodity exchange price. But if there is no such price, it will be calculated depending on the market price. And if there is no market price, then the normal value of the goods of same kind and quality will be a reference. This regulation is applied to the situation of lost or damaged goods. The other limitation of liability is for the delay in delivery. If the delay in delivery occurs, the compensation's limit will be calculated due to the amount of freight. The amount will be fixed to two and a half times the freight[144]. However, this amount is restricted and it is not possible to exceed as higher than the freight under the carriage contract. The reason why compensation is regulated for the delay in delivery is that it causes economic loss.

Last but not least, there is a rule for loss of right for limited liability. When the claimant demands compensation for his lost or damaged goods, and if he can prove that it caused by:

- An act or omission of the carrier with an intention to cause for loss or delay
- Recklessly or with knowing that loss or delay probably occurred, and then the carrier will fail to benefit from the limitation of liability.

1.5- Non-Liability

The carrier will not be held liable if damage or loss occurs due to a fault in the technical management[145] of the vessel[146] or a fire on board if damage or loss did not arise from the carrier's fault.

Lack of Fault: The carrier is liable as a result of the presumed fault. If he proves:

[143] Pursuant to Article 1186.1 of TCC.
[144] According to Article 1186.6.
[145] KARA, *According to Rotterdam Rules Carrier's Liability due to Loss, Damage or Delay in Delivery*, p. 139.
[146] Error in navigation can be given as example.

- Lack of his fault[147]
- Lack of his servants' and agents' faults[148]
- The reason of damage /loss /delay, then he will be able to be relieved from liability.

Saving or attempting to save life and property at sea: The carrier has no liability if he saves life and property at sea. Or even if he can't fully achieve to save, but if he attempts to save life and property at sea, he has still no liability.[149]

Error in navigation: If the carrier proves that error in navigation did not happen due to his fault, he won't be liable for that. He will be also non-liable from a nautical fault that occurred regarding his servants' and agents' negligence if he has no personal fault on that. This takes place in neither the Hamburg Rules nor the Rotterdam Rules. Turkish Law intended to maintain the system of Hague-Visby for the nautical fault as an exemption.

Fire: TCC excludes the carrier from the liability if a fire occurs regardless of his fault. Also, he won't be liable from the negligence of his servants and agents, if he was not personally at fault.

Additionally, TCC has an article that regulates other non-liability situations for the carrier.[150] Pursuant to Article 1182, the lawmaker accepts that if damage occurs due to these situations below, the carrier and his servants and agents are deemed to be faultless: Act or omission of the shipper or owner of the goods, his agents and representative, strikes, lockouts, other labour obstacles, quarantine restrictions, arrest, legal process, act of war, act of public enemies, marine perils or accidents of sea or other navigable waters.[151]

---

[147] It is regulated under 1179/1 of TCC. Also in the Hague-Visby Rules' Article 4.2.q.

[148] It is regulated under 1182/1 of TCC. Also in the Hague-Visby Rules' Article 4.2.c – k, m – p.

[149] Article 1181 of TCC: *''Except in general average, where loss of or damage to cargo or delay in delivery resulted from measures to save life or property or from attempts to save life or from reasonable attempts to save property at sea''.* Also the Hague-Visby Rules' Article 4.2.1 and the Hamburg Rules' Article 5.6.

[150] For instance Article 1180 regulates the act or omission in navigation or technical management of the ship or fire, which is inspired by the Hague-Visby Rules Article 4.2.a and 4.2.b. Therefore, these are not repeated in Chapter II.
There is another non-liability situation which is regulated in Article 1186.5: *''In any event for loss of or damage to or in connection with cargo, if the nature or value thereof has been knowingly misstated by the consignor.''*

[151] Other situations such as:
In Article 1182.2;

- *Spontaneous decrease of the cargo in terms of its volume or weight or hidden defects or sui generis nature and quality of the cargo*
- *Insufficient packaging*

1.6- Burden of Proof

The burden of proof system is inspired by the Hague-Visby Rules. In a situation where damage or loss of the goods occurs, the burden of proof will be on the carrier. Because when the claimant asserts a damage or loss that occurred during the period of carrier's charge of the goods, the carrier is liable for the presumed fault on damage or loss.

The carrier needs to prove some situations against the claimant whose cargo has been damaged or lost. The carrier needs to clearly prove that he received the goods undamaged. Or the goods were already (before he received) damaged during the period of carrier's responsibility. He can prove that he received undamaged goods with a clean bill of lading[152]. And he can prove if he noticed on time that the goods were already damaged.

2- Turkish Case Study

There is a Turkish case that may be stated by the court as 'loss of the goods in multimodal transport'.

Summary of the Case (Docket Number: 2013/12870; Decree Number: 2014/1853; Date of Verdict: 03.02.2014)

The carrier (the defendant in this case) undertook to carry the shoes that belong to the claimant to Hong Kong. The shoes were loaded to the ship to be carried. It was realised that some part of shoes that had the container numbers was missing.

Claimant Allegations:

The claimant alleged that:
The goods were shipped to be carried. Some part of the goods was missing. This occurred when the goods were in the defendant's custody. The defendant company made out a freight invoice which was numbered as 177960. The defendant undertook this carriage operation by receiving the payment (freight). Therefore, he had to compensate the damages. Due to the damage, the claimant paid 5,320,86 Turkish Lira on 19/10/2006.

- *Insufficient marking*

In Article 1192.1; *''if the carriage where the performance of the carriage or part thereof has been entrusted to an actual carrier''.*

[152] *''A clean bill of lading is* one *which contains nothing in the margin qualifying the words in the bill of lading itself.''* BLACK, H.C., *Black's Law Dictionary*, p.210.

Defendant's Position:

The defendant denied all allegations of the claimant.

The Court's Decision:

The court has evaluated the bill of lading which was regulated between the parties for the goods (shoes) on 29/06/2006, numbered SGS 2585. This document indicated the carrier, the consignee and the relationship between them. According to the bill of lading, the goods were delivered to the carrier and loaded to the ship in a container and under seal. And the carrier annotated these clauses on the bill of lading: ''container sealed by shipper'' and ''weight & measurement declared by shipper''. The carrier confirmed that the amount of the goods was given according to the declaration of the shipper. And the carriage was realised indirectly. It was unclear but some part of the carriage might be on road. According to the bill of lading, discharging place was 'Kumport'. But the date of arriving at Kumport was not understood. The claimant submitted an official report which was signed by the warehouse operator, the customs consultant, and the customs officer and included that 26 numbers of packages were missing; but the official report had no date. Besides, two container numbers were written in the report, although the goods were received in one container. It was not notified to the carrier or his representative that some packages of the goods were missing. There was not any evidence submitted that the consignee or his representative notified the loss of the goods to the carrier. There is not any notice in accordance with the regulations under TCC. Additionally, there was not an official expert report. As a result of that; the presumption arose for the benefit of the carrier pursuant to previous TCC Article 1066 (Article 1186.4 under new TCC[153]). The burden of proof for the contrast of this presumption was on the claimant. But the claimant could not achieve to submit an evidence to prove that the goods were lost regarding acts of the carrier; therefore, he should have been liable for the loss of the goods. Besides, according to the reasons below:

- The annotations which were put on the bill of lading by the carrier.
- The points of multimodal transport could not be determined.
- There was not any notice for the loss of the goods.
- The difference of container numbers in the official report and the bill of lading.
- The claimant could not achieve to prove the carrier's liability for the loss of the goods.

[153] Here the lawmaker accepts that ; if the notice is written on the bill of lading, these recordings are accepted as a presumption. But this presumption is not binding for the carrier.

The court rejected the case on the grounds of these explanations.

This Turkish case study indicates that law of transportation does not have a sufficiency to provide certainty, as a result of that there is non-uniformity on multimodal transport law. This causes vagueness and various legal problems for carriage contracts on multimodal transport; particularly for the carrier's liabilities on the loss of, damage to the goods or delay in delivery.

This case study focused on the reason that Turkish Commercial Code is a similar reflection and a kind of combination of the Hague-Visby Rules and the Hamburg Rules. And it is seen that there are some requirements for modern logistical developments, particularly for multimodal transport.

COMPARATIVE TABLE ON CONVENTIONS

Consequently, comparative analysis for conventions is as follows:

Comparative Analysis regarding:	**HAGUE-VISBY RULES**	**HAMBURG RULES**	**COMMON LAW**	**ROTTERDAM RULES**	**TURKISH COMMERCIAL CODE**
Related rule/article	Article 3.2	No regulation for the carrier's duty to care for cargo	Case by case	Article 11 and Article 13	Article 1178
The Notion of ''carrier''	''Carrier''	''Carrier'' and ''Actual Carrier''		''Carrier'', ''Actual Carrier'' and other people	''Carrier'' and ''Actual Carrier''
The Scope of Obligation	From loading to unloading	From loading to discharging		From receiving the goods to delivering in	From loading to discharging
The Scope of Liability	Loss and Damage	Loss, Damage and Delivery in Delay		Loss, Damage and Delivery in Delay	Loss, Damage and Delivery in Delay
Live Animals	X[154]	✓ [155]		✓	✓
Deviation	✓	X		✓	✓
Error in navigation	✓	X		X	✓
Cargo on Deck	X	✓		✓	✓
Treating the goods as lost (For delay)	X	✓		X	✓

Table 1[156]: Comparative analysis among relative conventions**.**

[154] It symbolises that it is not regulated under related convention.
[155] It symbolises that it is regulated under related convention.
[156] Conventions and set of Rules are the sources of this table.

CONCLUSIONS

This research aimed to compare relevant regimes adopted in international carriage of goods by sea regarding the basis of carrier's liability on cargo. I clearly see that industrial changes, technology, innovation in the maritime sector and improvements in international commerce required an obvious "re-regulation" of international conventions. Today's world has different commercial and business applications. Therefore, regulations such as the Hague Visby Rules no longer met the requirements of the international maritime sector. For instance, harmonisation of provisions of domestic regulations is one of the main concerns to achieve the uniformity.

Research also had a purpose to find answers about which rules give higher liability in the aspect of carrier's duty to care for cargo. From a domestic point of view, liabilities were evaluated in parallel with the question of whether Turkey should ratify the Rotterdam Rules to become open for new improvements on maritime transport.

The comparative analysis among related regimes on international conventions clearly demonstrates that the international regime on the maritime law was always limited. Regulations of the bill of lading under Hague-Visby can be given a striking sample of this situation. The Hamburg Rules are broader with contractual understanding rather than the Hague-Visby Rules that become international only with the bill of lading[157]. Finally, it is clear that the Rotterdam Rules have wider scope compared to previous conventions. Therefore, the Rotterdam Rules may be criticised as a result of having a wider scope, and that makes the international regime more complicated. This analysis indicates that the Rotterdam Rules provide for higher liability in the aspect of duty to care for cargo, as well as provide more control on liabilities on international carriage of goods wholly or partly by sea. In this way, achieving the integration will become easier and effective.

I strongly believe that the Rotterdam Rules would solve various problems. Firstly, these elements can be emphasised as follows:

- To reduce and eliminate differences among laws governing the flow of trade;

[157] ORTIZ explains this situation as Hague-Visby has the documentary approach compared to Hamburg which has contractual approach. See ORTIZ, *What Changes,* p. 899.

- The Rotterdam Rules focus on world-wide harmonisation;
- To provide co-operation and co-ordination with other States those have ratified the Rotterdam Rules;
- The Rotterdam Rules are an outcome of UNCITRAL that is fully aware of the importance of research and studies, and gives importance to the needs of international trade and promotion for unification;
- The Rotterdam Rules are beneficial for avoiding conflicting interpretation and application;
- Modernisation of legal techniques;
- Promoting uniform application;
- Contribution to standardisation. And standardisation brings efficiency on trade and also increases predictability;
- Decreasing legal differences among the States' legislation;
- The role of UNCITRAL is to promote the unification and harmonization of the law of international trade and assisting in domestic law reform;
- The Rotterdam Rules are the core for the new understanding which carries reflection the of the balance of national, regional, economic, legal and other interests.

Today's world is going through a stage that harmonisation has already begun for international trade. And the Rotterdam Rules are one of the main starting points to demonstrate and realise the unification and harmonisation as it was aimed at the Preamble.[158]

If we evaluate the feature of practice area, the maritime sector is very practical and needs to act very dynamically in every stage of the process.

[158] Preamble of the Rotterdam Rules: *'' The States Parties to to this Convention,*

…….

Convinced that the progressive harmonisation and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation among all States on a basis of equality, equity and common interest, and to the well-being of al peoples,

Recognizing the significant contribution of the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed in Brussels on 25 August 1924, and its Protocols, and of the United Nations Convention on the Carriage of Goods by Sea, signed in Hamburg on 31 March 1978, to the harmonization of the law governing the carriage of goods by sea,

Mindful of the technological and commercial developments that have taken place since the adoption of those conventions and of need to consolidate and modernize them,

Noting that shippers and carriers do not have the benefit of a binding universal regime to support the operation of contracts of maritime carriage involving other modes of transport,

Believing that the adoption of uniform rules to govern international contracts of carriage wholly or partly by sea will promote legal certainty, improve the efficiency of international carriage of goods……..''

The potential objective is always to provide unification in international business operations. It will also contribute to providing unification in a legal aspect to this practical maritime area. That means that the more legal unification is provided by regulations such as international conventions, the more it will reflect this practical sector. Also, it will contribute to economics, trade, and development effectively.

Essentially, the Rotterdam Rules offer new solutions to the problems raised in this work and codify much of what was previously decided under the Hague-Visby Rules through interpretation by the courts. Would the Rotterdam Rules be able to fill these gaps? In any case, the maritime sector requires a legal uniformity[159].

To understand why Turkey needs to adopt an approach for the Rotterdam Rules; we might conclude as follows:

- Period of responsibility of sea carrier is unlike the land carrier's under Turkish Rules and it causes disharmony. The Rotterdam Rules will provide a harmony between sea carriage and land carriage relating to the formulation of the responsibility period of the carrier.

- Turkey is a civil law system mainly based on the mandatory force of the legal provision rather than on the contractual provision. Courts tend to interpret literally the provisions in order to find a balance between the parties' interests on the basis of fairness.

- It may become more difficult to keep up with modern-day contractual agreements and practice unless Turkey ratifies the Rotterdam Rules and adopt them into its own domestic law. As a result, Turkey may need to decide whether to ratify the Rotterdam Rules.

- Turkey's geographical and geological location is very important to evaluate the question of whether Turkey should ratify the Rotterdam Rules. That considered ratifying could be beneficial and efficient particularly for economic development, even with more extended liabilities under the Rotterdam Rules.

- Therefore, Turkish legislation should ratify the Rotterdam Rules that are one of the most recent international conventions on the maritime field to harmonise with international trade.

[159] KARAN supports the idea that *'international trade needs uniform rules adopted with worldwide consensus in order to fix the legal risks and consequently costs of merchants at a certain level'.* See: KARAN, *Any Need for a New International Instrument on the Carriage of Goods by Sea:The Rotterdam Rules?,* p. 448.

The Rotterdam Rules also came into existence to improve the norms in matters regarding maritime safety, the efficiency of navigation, prevention and control of marine pollution from ships.

On the other hand, the problem with having need of too much interpretation of current legislation may disrupt the balance between the carrier's and the shipper's interests, particularly on multimodal transport. Some critics find the Rotterdam Rules very complex *maritime plus* regime.[160] And it may seem that the Rotterdam Rules do not have a new understanding for the liabilities of the carriage. However, it was regulated in parallel with a new understanding of multimodal transport.

Multimodal transport simply means more than one transport mode on one transport document.[161] It is also known as combined transport. It is the transportation of goods under ''one contract'', but performed with at least two different modes of transport. From the legal point of view, its importance comes from the carrier's liability. He is liable for the entire carriage, even though it is performed by several different modes of transport (such as by rail, sea, and road).

The Rotterdam Rules should be accepted as an unavoidable requirement; particularly for those elements which the Hague-Visby Rules and the Hamburg Rules are no longer able to provide meeting them:

1) The extraordinary increase in the carriage by containers and the problems encountered in parallel with this increase cannot be overcome with the provisions in the current conventions.
2) The rules concerning the transport documents and the lack of adequate legal support in order to keep them in computers.
3) The need to move the long-term contracts out of the Hague-Visby regime to some large-volume transports due to the development in international trade.[162]

---

[160] On the other hand, there are supporters of maritime regime. See ORTIZ, *What Changes*, p.898

[161]According to Article 1.1 of the United Nations Convention on International on International Multimodal Transport of Goods (Geneva, 24 May 1980) international multimodal transport means *''the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.''*

[162] SOZER, *Combined Transport and The Issues on the Carrier's Liabilities,* (in Turkish) VIII-2/IX-1 Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, p. 487.Also see: STANILAND, Hilton, *"Preface" Rotterdam Rules*, Debattista et al.V; SEKOLEC, Jernej, *"Foreword" XXI Rotterdam Rules 2008,* von Ziegler et al., eds.

The Rotterdam Rules provides written regulations which are spread on trade custom and usage but do not take place in the Hague-Visby or the Hamburg Rules. In this way, these kinds of effective regulations will become a set of rules under one harmonised international convention. Also, it can avert imbalance between carriers' and shippers' (and other people's related to carriage operation) interests. To avert imbalance between interests is one of the main elements to provide unification and harmonisation as bigger purpose.

The Rotterdam Rules need to be supported not only for having new international regimes on the carriage of goods, but also for maintaining the spirit of the Hague-Visby Rules which are the conventional and popular among States.[163] In other words, the Rotterdam Rules can be seen as a return with mentality and spirit to the Hague-Visby Rules which are the most adopted convention on the international area. In the meantime, the Rotterdam Rules are an opportunity to meet current world trade requirements which can no longer be met by the Hague-Visby Rules. In this way, it will be possible both to maintain the tradition and have a modern understanding together.

Other criticism is for the volume of contracts that are newly regulated under the Rotterdam Rules. Does it cause controversy for freedom of contract?

Before the Rotterdam Rules, freedom of contract clause had never been regulated in international regulations relating to the carriage of goods. This happens for the first time in a maritime convention that contractual parties are allowed to deviate from mandatory rules about carrier's liability.[164] In other words, it is possible for the parties to establish a 'volume contract' on the condition that they meet its requirements.[165] This is one of the most significant innovations coming by means of the Rotterdam Rules. ORTIZ finds it as *a huge break with the past, a change consistent with the*

[163] On that matter LEINIEKS states that *The Hague Rules even acquired the status of international customary shipping law, thereby also becoming part of international customary trade law.* See LEINIEKS, *Which Approach to Choose,* p. 304

[164] ORTIZ, *What Changes,* p. 894.

[165] RR Article 80 regulates the special rules for volume contract. Pursuant to 80/2:
''A derogation pursuant to paragraph 1 of this article is binding only when:
(a) The volume contract contains a prominent statement that it derogates from this Convention;
(b) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;
(c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and
(d) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation.''

intellectual and economic mood prevalent at the time when the negotiations were taking place, with its focus on globalization, liberalization, growth[166].

In relation, enforceability of FIO (S) (T) (Free in and out, stowed, trimmed) clauses are presented as a codified solution in the Rotterdam Rules that will be most likely the future regime for the liability of maritime transportation. On the other hand, the common law system adheres to the freedom of contract, and these kinds of exception clauses are very common. Therefore, this may contradict with the common law system.

The research had the target to compare the rules about the carrier's obligations over cargo. But the results of this comparative analysis also demonstrate broader issues such as protection of the environment, electronic commerce, uniformity, and harmonisation at the international level and multimodal regime at the international transportation.

The use of electronic documents is one of the recent developments in transportation.[167] This is one of the fundamental issues which cannot be met by the Hague-Visby Rules and the Hamburg Rules. The Hague-Visby Rules have any mention to the technical issues, due to the fact that it comes from the 1920s. The Hamburg Rules contains only electronic signature. However, the Rotterdam Rules provide the legal predictability for the electronic commerce regarding the new developments in the industry and commercial practices. Chapter 3 of the Rotterdam Rules is called "Electronic transport records", and the Rules enable to use electronic transport documents through Articles 8, 9, and 10.

Additionally, the Rotterdam Rules give a great interest to the protection of the environment. The Rules state that '*reasonable measures to avoid or attempt to avoid damage to the environment'*[168] is accepted as one of the exemptions to exclude the carrier from the liability.

With respect to the scope of these developments, I strongly believe that ratifying the Rotterdam Rules will contribute to international uniformity.

Conclusively, I strongly support the idea that it will never be possible to partially formulate the global means of transport or to limit their regimes to a partial aspect of the contract: The entire monotonous contract regime as a whole has to be fully enacted[169].

[166] ORTIZ, *What Changes,* p. 896.
[167] KARAN, *Any Need for the Rotterdam Rules,* p. 444.
[168] Article 17.3(n) of the Rotterdam Rules
[169] ORTIZ, *What Changes,* p. 894

BIBLIOGRAPHY

Original titles in Turkish language are given only in their English translation.
The information in square brackets indicates *the abbreviations used in the footnotes.*

- **ADIGUZEL, B.,** *Transport Law* (in Turkish) (First Edition, Selmat Basım,Ankara, 2018), pp. 147-169 [Transport Law] ;

- **AL-MARZOUQI, M.,** *Carrier Liability Regime under the Qatari Maritime Law: A Comparative Study,* Journal of Maritime Law & Commerce, Vol. 48, No: 4, October, 2017, p. 451;

- **AKAN,P.,** *Carrier's Liability regarding to Obligation of Duty to Care for Cargo* (in Turkish) (Turhan, Ankara, 2007) pp.16-76 [Carrier's Liability] ;

- **ANDREWARTHA, J.,** *English Maritime Law Update: 2008,* Journal of Maritime Law & Commerce, Vol. 40, No.3, July, 2009, pp. 395-427

- **ARNESS, F.F.,** *Error in Navigation or Management of Vessels: A Definitional Dilemma,*Willim & Mary Law Review, Vol. 13, Issue , Article 6,p.643. Available online:https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com.tr/&httpsredir=1&article=2685&context=wmlr ;

- **ATAMER, K.; DAMAR, D.; ERCIN, F.; OZBEK,D.; BILGIN, B.C.; SANLI, D.B.; GUNAY, B.; ARAS, E.Y.; SUZEL, C.; SAMLI, K.Y.;** *Transport Law in Turkey* (in English), (Second Edition, Kluwer Law International B.V., 2016, The Netherlands) pp. 165-179, [Transport Law in Turkey] ;

- **BERLINGIERI, F.:** *A Comparative Analysis of The Hague-Visby Rules, The Hamburg Rules and The Rotterdam Rules* (2009), pp. 2-65 [Comparative Analysis] ;

- **BLACK, H.C.,** *Black's Law Dictionary* (Revised Fourth Edition by The Publisher's Editorial Stuff, St.Paul, Minn. West Publishing Co. 1968) ;

- **CAGA,T.; KENDER, R.,** *Maritime Law I,* (in Turkish), (Revised 12th Edition, Beta 2012,Istanbul) pp. 1-29;

- **CAGA,T.; KENDER, R.,** *Maritime Law II,* (in Turkish), (Revised 6th Edition, Beta 2001, Istanbul) pp. 134-174;

- **CHACÓN, V.H.,** *The Due Diligence in Maritime Transportation in the Technological Era; Chapter II: in The Origin of the Obligation of Practicing Due Diligence in Maritime Transportation* (Springer International Publishing AG 2017, Springer Series on Navala Architecture, Marine Engineering, Shipbuilding and Shipping) p.68 Available: https://www.springer.com/cda/content/document/cda_downloaddocument/9783319660011-c2.pdf?SGWID=0-0-45-1621257-p181088261 ;

- **COLOMBOS, C. J.** *The Unification of Maritime International Law in Time of Peace*, 21 Brit. Y.B. Int'l L. 96 (1944), p.101. ;

- **DAMAR**, **D.,** *Wilful Misconduct in International Transport Law,* Hamburg 2011, p. 147 ;

- **DEGIRMENCI, K.N.,** *Maritime Law in Turkey* (in English), (Oniki Levha, First Edition, İstanbul, 2017), pp.96-128 ;

- **FARIA, J.A.E.,** Uniform Law for International Transport at UNCITRAL: New Times, New Players, and New Rules, Tex.Int.'l L.J.2009, Vol. 44, p.319 ;

- **FUJITA, T.:** *The Comprehensive Coverage of the New Convention: Performing Parties and Multimodal Implications,* Tex. Int.'L L.J. 2009, Vol.44, p.350 ;

- **German Federal Court Decisions,** available online: www.bundesgerichtshof.de ;

- **GUNAY, B.,** *''Hague/Visby Rules – in Comparison with the Rotterdam Rules''* (in Turkish) (Yetkin 2013) pp.97-105 ;

- **HASHMI, S.:** *The Rotterdam Rules: A Blessing?* ,Loy. Mar. L.J.2012,Vol.10, p. 232;

- **IVAMY, H.,** *Payne & Ivamy's Carriage of Goods by Sea,* Thirteenth Edition London 1989, p.5

- **KARA, H.,** *According to Rotterdam Rules Carrier's Liability due to Loss, Damage or Delay in Delivery* (Second Edition, Legal, İstanbul, 2018) pp.137-191 ;

- **KARAN, H.,** *Any Need for a New International Instrument on the Carriage of Goods by Sea: The Rotterdam Rules?* (in English), Journal of Maritime Law & Commerce, Vol. 42, No. 3, July, 2011 pp. 441-451;

- **KARAN, H.** *Law on International Carriage of Goods,* (in English) (Turhan Bookstore Publications, Ankara, 2013) pp. 27-32, 63-74, 79-96 ;

- **KARAN, H.,** *The Carrier's Liability Under International Maritime Conventions: The Hague, Hague-Visby, and Hamburg Rules,* (Lewiston-Queenston-Lampeter 2004) (in English), pp. 83-225 [Carrier's Liability] ;

- **KOLLER**, **I.,** *Transportrecht, Kommentar zu Spedition, Gütertransport und Lagergesschäft,* (6. Auflage, München, 2007) p. 389 ;

- **KOSIK, J.,** *Deviation in English, American and French Maritime Law,* Seminar Papers submitted at the Harvard Law School on April 1958, in the Seminar on Legal Problems of International Trade in Satisfaction of the Requirements of that Seminar., pp. 97-130.

- **LANNAN, K.,** *Behind the Numbers: The Limitation on Carrier Liability in the Rotterdam Rules,* 14 Unif. L. Rev. 901 (2009); pp. 901-929 [Behind The Numbers] ;

- **LEINIEKS, M.,** *Diverging Solutions in the Harmonisation of Carriage of Goods by Sea: Which Approach to Choose,* 8 Unif. L. Rev. n.s. 303 (2003); pp. 303-307 [Which Approach to Choose] ;

- **LONGLEY, N.H.,** *Common Carriage of Cargo,* 1967, p. 86 ;

- **MEESON, N.,** *Admiralty Jurisdiction And Practice,* (Third Edition, LLP, London- Hong Kong 2003), pp. 245 – 257 ;

- **OGUTOGLU, N.,** *Essential Maritime English* (in English) (Dergah Ofset Press, İstanbul, Fist Edition, 2006) pp. 8-20 ;

- **ORTIZ, R. I.,** *What Changes in International Transport Law after the Rotterdam Rules,* 14 Unif. L. Rev. 893 (2009); pp. 893-900 [What Changes] ;

- **PING-FAT, S.,** *Carrier's Liability under the Hague, Hague-Visby and Hamburg Rules,* Brill – Nijhoff (2002), pp. 21-90.

- **PRÜßMANN**, **H.,** *Seehandelsrecht,* München 1968, p.541 ;

- **RAMBERG, J.** *UN Convention on Contracts for International Carriage of Goods Wholly or Partly by Sea,* available online at <http://www.cmi2008athens.gr/sub3.3pdf>

- **REYNOLDS, F.:** *The Hague Rules, The Hague-Visby Rules and the Hamburg Rules,* MLAANZ Journal 1990, Vol.7,p.18 ;

- **SELVIG, E.,** *Hamburg Rules - Convention on Carriage of Goods by Sea 1978,* The, 1978 Scandinavian Inst. Mar. L. Y.B. [iii] (1978); pp.1-34 [Hamburg Rules] ;

- **SENDUR,T.,** *Ship Chartering and Demurrage-Dispatch Accounts* (in Turkish) (Nobel, First Edition, Ankara, 2015) p. 42 ;

- **SOZER, B.,** *Combined Transport and The Issues on the Carrier's Liabilities,* VIII-2/IX-1 Yeditepe Üniversitesi Hukuk Fakültesi Dergisi, İstanbul, pp. 465-503 ;

- **STURLEY, M.F.:** *Maritime Cases About Train Wrecks: Applying Maritime Law to the Inland Damage of Ocean Cargo,* J.Mar. L. &Com.2009, Vol.40, p.4 ;

- **STURLEY, M.F.,** *Modernizing and Reforming U.S.Maritime Law: The Impact of the Rotterdam Rules in the United States,* Tex.Int'L L.J. 2009, Vol.44, p. 434 ;

- **STURLEY, M.F. /FUJITA T./ van der ZIEL, G.:** *The Rotterdam Rules,* London 2010, p.59 ;

- **Papers Submitted to the Joint Seminars of the German and Turkish Maritime Law Associations,** *Recent Developments in Maritime Law (*Held in Hamburg on 25 August 2011 and in Istanbul on 6 October 2011) (Ozdil Basımevi, İstanbul, 2012) [Recent Developments in Maritime Law] ;

- **TEKİN, S.M.,** *Carrier's Liability on Contract of Affreightment* (in Turkish) (First Edition, On İki Levha, İstanbul, 2017) pp.23-157;

- **TETLEY, W.:** *International Maritime and Admiralty Law,* Quebec 2002, p.81 ;

- **ULGENER, F.,** *''Obligations and Liabilities of the Carrier'', The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,* **ÖZBEK, M.D.G.,** (ed.), (Springer-Verlag Berlin Heidelberg 2011), pp.140-142

- **UNCITRAL,** *A Guide to UNCITRAL Basic Facts about the United Nations Commission on International Trade Law*, United Nations office at Vienna, 2013.Available online at: http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf

- **UNCITRAL,** *Status* available online at: http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/rotterdam_status.html

- **UNCTAD,** *The Economic And Commercial Implications of the Entry Into Force of The Hamburg Rules and The Multimodal Transport Convention,* Report by the UNCTAD Secretariat, United Nations, New York, 1991; TD/B/C.4/315/Rev.1, pp.8-22;

- **VAN DER ZIEL, G.,** *Multimodal Aspects of the Rotterdam Rules,* 14 Unif. L. Rev. 981 (2009); pp. 981-995 ;

- **WILSON, J. F.,** *Carriage of Goods by Sea,* London 2010, pp. 174-194 ;

- **WOLFSON, R.,** *The International and Comparative Law Quarterly,* Vol.4, No.4 (Cambridge University Press, Oct., 1955), pp. 508 -532

- **YENIPINAR, B.F.,***Maritime Law- Procedures and Implementation, Supreme Court Decisions, General Inspection, Samples* (Aristo, First Edition, İstanbul, 2018), pp.117-155 ;

- **YETİS SAMLI, K.,** *Carrier's Liability for Loss, Damage and Delay in Delivery According to TCC numbered 6102,* (in Turkish), (XII Levha, 2013) pp.24-72;

- **SAMLI, K.Y.** *Seaworthiness on The Hague-Hague Visby, Hamburg and Rotterdam Rules,* İÜHFM C. LXXI, (2013), pp. 479-496 ;

- **YUZHOU, S.; HAI LI, H.,** *The New Structure of the Basis of the Carrier's Liability under the Rotterdam Rules,* 14 Unif. L. Rev. 931 (2009); pp.931-943 ;

- **ZIEGLER, A.:** *The Liability of the Contracting Carrier,* Tex. Int.L L.J.2009, Vol.44, p.335

Conventions and Codes

- **The Hague Rules**, *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924)* available on http://www.admiraltylawguide.com/conven/haguerules1924.html

- **The Hague- Visby Rules**, *International Convention for the Unification of Certain Rules of Law relating to Bills of Lading'' (1924), as amended by the protocol done at Brussels on 23 February 1968* ; available on http://www.fog.it/convenzioni-en/inglese/visby-1968.htm

- **The Hamburg Rules**, *United Nations Convention on The Carriage of Goods by Sea, 1978* ; available on: http://unctad.org/en/PublicationsLibrary/aconf89d13_en.pdf

- **The Rotterdam Rules**, *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea* (New York, 2008); available on: http://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/Rotterdam-Rules-E.pdf

- **''Türk Ticaret Kanunu'' (Turkish Commercial Code),** (in Turkish) Date: 13.1.2011, No.:6102, Resmi Gazete (Official Reporter) Date: 14.2.2011, No.:27846; available on www.mevzuat.gov.tr/MevzuatMetin/1.5.6102.pdf

List of Cases

- *Albacora SRL v Westcott & Laurance Line* [1966] 2 Lloyd's Rep 53

- *Bundesgerichtshof BGH 17.03.1992 dated I ZR 62/91 case number, VersR 1992*

- *Compania Sud American Vapores v MS ER Hamburg* [2006] 2 Lloyd's Rep 66

- *Jindal Iron & Steel Co v Islamic Solidairty Shipping Co (Jordan II)* [2005] 1 Lloyd's Rep 57

- *Liverpool and Great Western Steam Company v. Phoenix Insurance Co.* (1889) (129 U.S. 397, 9 S.Ct. 469, 32 L.Ed. 788)

- *Morewood v. Pollok* (1853) 1 E. & B. 743

- Republic of Turkey, Supreme Court Decision, Department of 19th Office, Docket Number: 2016/12594, Decree Number: 2017/7529, Date of Verdict: 01/11/2017

- Republic of Turkey, Supreme Court Decision; Department of 11th Office, Docket Number: 2013/12870; Decree Number: 2014/1853; Date of Verdict: 03.02.2014