

**Modernizing and Reforming Pakistan Maritime Law: Developing a New  
Maritime Legal Regime Harmonized with the Rotterdam Rules for  
Sustainable Mobility and Maritime Transport**



By

**Ms. Madiha Muhammad**

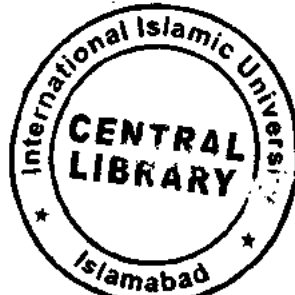
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**Supervised by Mr. Osman Karim Khan**

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**International Islamic University Islamabad**



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**APPROVAL SHEET**

**Modernizing and Reforming Pakistan Maritime Law: Developing a New  
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Mobility and Maritime transport**

**By**

**Madiha Muhammad**

**Accepted by the Faculty of Shariah and Law, International Islamic University  
Islamabad (IIUI) in partial fulfillment of the requirements for the award of the  
Degree of LL.M (Corporate Law)**

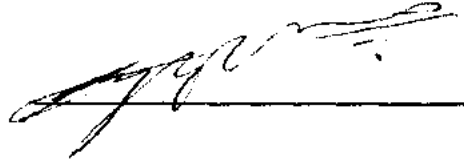
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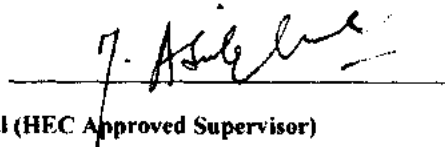
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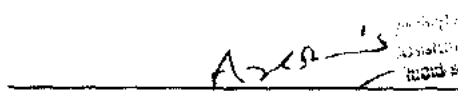
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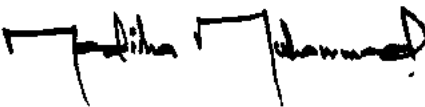


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## DECLARATION

I, **Madiha Muhammad**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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Signature: 

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## **DEDICATION**

**This work is dedicated to my parents.**



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## LIST OF ABBREVIATIONS

<b>CMI</b>	Comité Maritime International
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UK</b>	The United Kingdom
<b>USA</b>	The United States of America
<b>ICC</b>	International Chamber of Commerce
<b>IMMTA</b>	International Multimodal Transport Association
<b>THE HAGUE RULES, 1924</b>	International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924
<b>THE HAGUE VISBY RULES, 1968</b>	The Hague Rules of 1924 as amended by the Visby Protocol, 1968
<b>THE HAMBURG RULES, 1978</b>	The United Nations Convention on the Carriage of Goods by Sea, 1978
<b>THE ROTTERDAM RULES, 2008</b>	The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008
<b>CIF</b>	Cost Insurance and Freight
<b>FOB</b>	Free on board
<b>C AND F</b>	Cost and Freight

## TABLE OF CASES

*E.F.U.I Co. Ltd v. American President Lines*, P L D 1992 Supreme Court 291.

*The Karachi Steam Navigation Company Ltd. v. Messrs Abdul Rahman Abdul Gani And Others*, P L D 1967 Dacca 159.

*East & West Steamship Co. v. Hossain Brothers*, 1968 PLD 15 Supreme-Court.

*Nippon Yusen Kaisha (Nyk) Lines v. Msc Textiles (Private) Limited*, P L D 2008 Karachi 244.

*Crescent Sugar Mills and Distillery Ltd. v. American Export Isbrandt Sen Inc*, 1983 PLD 29 Karachi-High-Court-Sindh.

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*National Insurance Corporation v. National Shipping Corporation*, 1983 C L C 888.

*Messrs Tar Muhammad Janoo & Co. v. Messrs Maldivian National Corporation (Ceylon) Ltd. And Another-Opponents*, P L D 1969 Karachi 495.

*Pakistan National Shipping Corporation v. Adamjee Insurance Company Ltd*, 1993 MLD 1841 Karachi-High-Court-Sindh.

*National Insurance Corporation v. Pakistan National Shipping Corporation*, 1986, MLD 1885 Karachi-High-Court-Sindh.

*Haji Habib Haji Peer Muhammad v. The Karachi Steam Navigation Co. Ltd*, 1957 PLD 97 Karachi-High-Court-Sindh.

*Adam Ltd. v. Muhammadi Steamship Co. Ltd*, 1962, PLD 227 Karachi-High-Court-Sindh.

*Pakistan v. American President Lines Ltd. and Others*, 1962 PLD 87 Karachi-High-Court-Sindh.

*Ahmad Investment Ltd. v. Sunrise Iv*, 1980 PLD 229 Karachi-High-Court-Sindh.

*New Jubilee Insurance Co. Ltd v. P & O And B.I. Cnard Brockle bank Ship. CO*, 1993 PLD 533 Karachi-High-Court-Sindh.

*Messrs Abdul Rahman, Abdul Gani v. Messrs Karachi Steam Navigation Co. Ltd*, 1960 PLD 173 Dhaka-High-Court.

*Crescent Sugar Mills and Distillery Ltd. v. American Export Isbrandt Sen Inc*, 1983 PLD 29 Karachi-High-Court-Sindh.

*Adam Ltd. v. East & West Steamship Co*, P L D 1962 (W. P.) Karachi 715

## **ABSTRACT**

**Modernizing and Reforming Pakistan Maritime Law: Developing a New Maritime Legal  
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Transport**

**By**

**Madiha Muhammad**

Catering the commercial realities of the global maritime regime, for sustainable mobility and maritime transport Pakistan needs to adopt a new and revised carriage of goods by sea laws, a workable and modern piece of legislation protecting all the stakeholders legalizing the issuance of new variety of shipping documentation complying with the Rotterdam Rules, 2008 of the current global maritime standards. The present study signifies the fundamentals of international transportation of goods focusing on various modes of transportation and their importance used in international and national trade and commerce. It highlights the international maritime regimes, their application, important provisions and shortcomings. This study is a comprehensive presentation of the national maritime regime, international standard compliance and the judicial approach towards the sea laws of Pakistan. Furthermore, it brings forth the gaps between the previous legislations considering the use of containerization, multimodal transport and electronic documents in the maritime industry. It also identifies the issues regarding frauds in bills of lading. The study is supported by a detail review of books, scholarly articles, research papers, case references and recommendations

contemplating the ratification of the Rotterdam Rules, 2008 and revision of Pakistan's domestic maritime legislation according to the international standard.

## CHAPTER I

### INTERNATIONAL TRADE AND TRANSPORTATION

#### 1.1: INTRODUCTION

The major characteristic of a worldwide trade is that it includes a transaction between a purchaser in one country and a vendor in another;<sup>1</sup> it requires transportation of goods from seller's country to buyer's country usually by road, air or sea.<sup>2</sup> For that purpose international carrier manoeuvre between states to carry freight or passengers.<sup>3</sup> Transport, therefore performs a central role in exchanging goods from one place to another and to complete international transactions. It is considered as a cornerstone of progressive civilization.<sup>4</sup> It is an important variable in overall economic development of the world and will be considerably more dominant in near future.<sup>5</sup> At domestic level transport likewise

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<sup>1</sup> Soumyadipta Chanda, A Comparison of rights and liabilities under charter party and bill of lading, Gujarat National Law University, 2011, p1-18, Available at <http://ssrn.com/abstract=1919597> (accessed June 13, 2013).

<sup>2</sup> Zulkifli Bin Hasan, The Weaknesses of the Hague Rules and the Extent of Reforms Made by the Hague-Visby Rules, Islamic Science University of Malaysia - Faculty of Shari'ah and Law, Nazli Ismail II Universiti Tenaga Nasional, June 15, 2007, Malayan Law Journal, 2007 available at <http://ssrn.com/abstract=2234211> (accessed July 19, 2013).

<sup>3</sup> Donald F. Wood, James C. Johnson, *Contemporary transportation second edition*, (USA: PennWell publishing company, 1983), p369.

<sup>4</sup> P.C. Stubbs, W.J. Tyson, M.Q. Dalvi, *Transport Economics Revised Edition* edited by Charles Carter, *Studies in economics*: 15, (London: George Allen and Unwin Publishers, 1980-1984), p1

<sup>5</sup> S. Mankabady, Some Legal Aspects of the Carriage of Goods by Container, *The International and Comparative Law Quarterly*, Vol. 23, No. 2 (Apr., 1974), pp. 317-338, available at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1498628&fileId=S0020589300031845> (accessed July 29, 2013).

occupies an imperative position. The uplift of any nation's economy cannot be ensured until it has an effective transport and carriage system. The growing statistics of nations, in the modern industrial world owe a lot to smooth carriage services, making carriers a virtually indispensable element for the social survival. Since science and technology are developing day by day so are the commercial and industrial activities paving the need for an efficient and better transport and carriage system.

## **1.2: CONTRACT OF SALE OF GOODS IN INTERNATIONAL TRADE**

Conflict of interests exists between the principal parties while trading internationally, that need to be identified from the beginning. The seller desire is not to part with the goods unless there is an assurance of payment. Whereas, the buyer wish is not to part with payment unless he receives certain assurance regarding possession of the goods. This can only be solved by a contract of sale, where stipulations must be made by the parties to execute the contract.

There are different kinds of contracts of sale of goods in international trade, some of them are as follows:



### 1.2.1: C. I. F. Contracts

Cost Insurance and Freight (hereinafter referred to as C.I.F.) contracts has its origin in the customs and usages of merchants rather than a mere product of legislation. In this contract, the price covers “cost insurance and freight”.<sup>6</sup> Followings are some of the duties of vendor/ seller and purchasers under the contract of C.I.F.

The duties of vendor under a C.I.F. contract are: to ship the goods of description within the time prescribed in the contract at the port of shipment,<sup>7</sup> to execute the policy or policies of insurance upon the prevailing terms and conditions in the trade,<sup>8</sup> to procure the bill of lading for the goods; to make an invoice; and finally to deliver the policies of insurance, bill of lading and the invoice to the purchaser within a reasonable time of shipment.<sup>9</sup>

The first and foremost duty of the purchaser is to take the delivery of all the shipping documents representing the goods purchased.<sup>10</sup> Secondly, the purchaser must make the payments of the goods on time.<sup>11</sup> If goods are not according to the terms of the contract, then

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<sup>6</sup>Tariq Idais , CIF Contracts in International Sales of Goods, July- August 2013, Al- Tamimi & Co. Available at:

<http://www.tamimi.com/en/magazine/law-update/section-5/july-august-2/cif-contracts-in-international-sales-of-goods.html> (accessed July 19, 2013).

<sup>7</sup> Hinkelman, *Dictionary of International Trade: Handbook of the Global Trade Community*, 8<sup>th</sup> edition, p 46.

<sup>8</sup> Ibid.

<sup>9</sup> Idais , CIF Contracts in International Sales of Goods, July- August 2013.

<sup>10</sup> Ibid.

<sup>11</sup> Rami Al Tal, United Arab Emirates: The Nature Of CIF Contracts, 10 December, 2014, Mondaq connecting knowledge and people, Available at: <http://www.mondaq.com/x/117852/cycling+rail+road/The+Nature+Of+CIF+Contracts> (accessed July 19, 2013).

purchaser may reject the goods and recover the amount.<sup>12</sup> The purchaser may also sue the vendor for damages for breach of contract.<sup>13</sup>

### 1.2.2: F.O.B. Contracts

In Free on board (hereinafter referred to as F.O.B.) contracts the seller or vendor pays the cost of the shipment and makes delivery of the goods as soon as they are placed on board.<sup>14</sup>

### 1.2.3: C and F Contracts

Cost and Freight (C and F) contracts are almost like a C.I.F. contract. The only difference is that the seller or vendor does not take the responsibility of insurance.<sup>15</sup> The purchaser is responsible for arranging the insurance.

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Peter .A. Akhiero Esq. ,A Paper presented on Contracts of Carriage by Sea, Sale, Marine Insurance and Documentary Credits, At the Shippers Enlightenment Workshop on International Trade Contracts And Shipping Procedures , Organised By Nigerian Shippers' Council, 13th Of December, 2005. Available at: [https://www.google.com.pk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBsQFjAA&url=http%3A%2F%2Fwww.nigerianlawguru.com%2Farticles%2Fcommercial%2520law%2FCONTRACTS%2520OF%2520CARRIAGE%2520BY%2520SEA%2520\(CORRECT\).DOC&ei=gIkBVPgZK0qB7Qag44CgDA&usq=AFOjCNHoMJEhmd4WMVZBhIZA5APSp-kESg&bvm=bv.74115972.d.bGE](https://www.google.com.pk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBsQFjAA&url=http%3A%2F%2Fwww.nigerianlawguru.com%2Farticles%2Fcommercial%2520law%2FCONTRACTS%2520OF%2520CARRIAGE%2520BY%2520SEA%2520(CORRECT).DOC&ei=gIkBVPgZK0qB7Qag44CgDA&usq=AFOjCNHoMJEhmd4WMVZBhIZA5APSp-kESg&bvm=bv.74115972.d.bGE) (accessed July 29, 2013).

<sup>15</sup> Ibid.

#### **1.2.4: Ex Ship Contract**

In Ex Ship contracts, it is the duty of seller or vendor to ship the goods to the purchaser at his own risk and to make delivery at a destined port.<sup>16</sup>

#### **1.3: MODES OF TRANSPORT**

Transport system is considered as a jugular vein of any nation and goods transported from one place to another are like blood in circulation. After parties enter into contract of sale of goods the first and foremost task for them is to transport goods, from the place of manufacturing to the place of their consumption, either within the country or abroad. For that they have to choose appropriate mode of carriage of goods keeping in mind various factors such as cost and time available for transit. Carriage of goods can take place through land, sea or air. Usually air carriage is preferred for rapid and speedy transportation but goods must be of the air cargo type. Sea and road carriages are more economical but time consuming; if parties sacrifice time for saving cost on transportation then roads and sea is the best choice. Followings are three modes of transport.

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<sup>16</sup> Hinkelman, *Dictionary of International Trade: Handbook of the Global Trade Community*, 8<sup>th</sup> edition, p 53.

### 1.3.1: Carriage of goods by Air

Transport of goods via air is developed at a higher rate than other two modes of transport.<sup>17</sup> Speed is clear edge of air transport<sup>18</sup> provided goods must be of air cargo type. Goods that can easily and safely be transported through air are usually products of little mass yet high esteem such as diamonds, medicine, fruits.<sup>19</sup> However, air lines also carries cargo in substantial quantities nowadays, as speed of aircraft means certain savings to the concerned manufacturers.<sup>20</sup> The document that is used for carriage for air transport is air waybill.<sup>21</sup> The conventions that deal with carriage of goods by air are Warsaw Convention, 1929<sup>22</sup>, Warsaw Convention as amended at The Hague in 1955<sup>23</sup>, Guadalajara Convention,

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<sup>17</sup>S.Evelyn Thomas, *Commerce its theory and practice 11<sup>th</sup> edition revised by L.B. Curzon*, (London: Cassel Ltd, 1978-1979) p 360.

<sup>18</sup> Henry G. Hughes, John W. Loveridge, *Text book of commerce*, (London: Butterworths & Co Publishers Ltd, 1981), p256.

<sup>19</sup> Thomas, *Commerce its theory and practice*, p 360-361.

<sup>20</sup> Hughes, Loveridge, *Text book of commerce*, p245

<sup>21</sup> James M. Klotz, *International Sales Agreements: An Annotated Drafting and Negotiating Guide*, (Kluwer Law International, 2008), p168, available at: <http://books.google.com.pk/books?id=CiNV06LYHyoC&printsec=frontcover&dq=International+Sales+Agreements:+An+Annotated+Drafting+and+Negotiating+Guide&hl=en&sa=X&ei=93gBVILVFcvy7Abn-4HQBw&ved=0CB0Q6AEwAA#v=onepage&q=International%20Sales%20Agreements%3A%20An%20Annotated%20Drafting%20and%20Negotiating%20Guide&f=false> (accessed July 19, 2013).

<sup>22</sup> Chia-Jui Cheng, Jiarui Cheng, *Basic Documents on International Trade Law*, (The Netherland: Kluwer Academy publishers, 1990), p353 available at [http://books.google.com.pk/books?id=\\_8FEiv2P2q0C&printsec=frontcover&dq=basic+documents+on+international+trade+law&hl=en&sa=X&ei=1cG2UvW-DI2thOf\\_xYHODA&ved=0CD4Q6AEwAA#v=onepage&q=basic%20documents%20on%20international%20trade%20law&f=false](http://books.google.com.pk/books?id=_8FEiv2P2q0C&printsec=frontcover&dq=basic+documents+on+international+trade+law&hl=en&sa=X&ei=1cG2UvW-DI2thOf_xYHODA&ved=0CD4Q6AEwAA#v=onepage&q=basic%20documents%20on%20international%20trade%20law&f=false)

<sup>23</sup> Ibid.

1961<sup>24</sup>, Montreal Convention, 1999<sup>25</sup>. In Pakistan, carriage of goods by air is regulated by the Carriage by Air Act, 2012.<sup>26</sup>

### 1.3.2: Carriage of Goods by Road

Transport by road or land occupies a primary place in today's world as it provides a reach unparalleled by any other contemporary mode. Carriage of goods by road depends upon the type of goods transported, distance covered by road and the weight and volume of such shipment.<sup>27</sup> Low tariff barriers also increase international road transport.<sup>28</sup> A truck bill of lading is used in carriage of goods by road.<sup>29</sup>

Carriage of goods by road is regulated by the U.N. Convention on the contracts for international carriage of goods by road.<sup>30</sup> "However, these are not conventions of worldwide membership and carriage of goods by road and rail is often ruled by specific domestic rules in the country of transit. Special care should be made to review such domestic rules."<sup>31</sup> The carriage of goods by road in Pakistan is presently regulated by the Carrier's Act, 1865<sup>32</sup>, this

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> This Act has repealed the old Carriage by Air Act, 1966 and Carriage by Air Act, 1968.

<sup>27</sup> Thomas, Commerce its theory Curzon, p 349.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> James M. Klotz, *International Sales Agreements: An Annotated Drafting and Negotiating Guide*, p221.

<sup>31</sup> Klotz, *International Sales Agreements*, p169.

<sup>32</sup> Khalid Mehmood Cheema, *Business law*, (Lahore: Syed Mobin Mahmud & Co., 2011), p236.

law is in need of reformation. It does not amply cover the demands of the road transport carrier since it does not lay down any laws that are favorable for the carrier.

### 1.3.3: Carriage of Goods by Sea

Maritime transport is as old as the history of jurisprudence.<sup>33</sup> With the advent of nineteenth century worldwide trade changed considerably, which brought an increase in manufacturing, trade and transport together with technological and infrastructural developments that particularly increased marine transport.<sup>34</sup> Nowadays maritime time transport is progressing vigorously; approximately 4/5<sup>th</sup> of worldwide trade measured by weight of goods is handled by shipping industry.<sup>35</sup> It is considered as a heart of international trade and commerce, it is a machine driving globalization. Cargo ships can transport massive and bulky cargoes which are impossible to carry through air or rail transport.<sup>36</sup> Today majority of the international trade is transacted and carried through sea, it dominates other modes of carriage because of its mobility, low prices, and its capability to transport goods to anywhere on earth.<sup>37</sup> As Soumyadipta Chanda argues in her article that:

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<sup>33</sup>F. Cyril James, Carriage of goods by sea-The Hague Rules, University of Pennsylvania Law Review and American Law Register, Vol. 74, No. 7(May, 1926), pp. 672-690 Available at: [http://scholarship.law.upenn.edu/penn\\_law\\_review/vol74/iss7/2](http://scholarship.law.upenn.edu/penn_law_review/vol74/iss7/2)(accessed July 19, 2013).

<sup>34</sup>Joakim Adamsson , The Rotterdam Rules A transport convention for the future?, thesis unpublished, Lund university,2011, Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=2292311>(accessed July 19, 2013).

<sup>35</sup> Thomas, *Commerce its theory and practice*,162.

<sup>36</sup>*Ibid* , p355.

<sup>37</sup> Nadezda Butakova, Legal Regime of Carriage by Sea, 2013 Russian Presidential Academy of National Economy and Public Administration (RANEPA),1-19, Available at: <http://ssrn.com/abstract=2286999> (accessed September 9, 2013).

Carriage of goods by sea is preferred because of its cost efficiency and also because it connects the remote corners of the earth. It is for this very purpose of transporting the goods from the place of the seller to the place of the buyer that the seller has to make certain arrangements. Such arrangements include entering into a contract of affreightment with the owner of the ship or a sea going vessel which is to transport the goods. It also includes preparing a bill of lading which in essence involves passing over of the property in the goods to the master of the vessel.<sup>38</sup>

#### **1.3.3.1: Contract of carriage of goods by sea**

Contract between the parties and carrier for the carriage of goods by sea is known as contract of affreightment. According to Osborns concise dictionary: "Contract of affreightment is a contract made either by charter party or by bill of lading, by which a ship-owner agrees to carry goods in his ship for reward."<sup>39</sup> In contract of affreightment parties take the services of carriage by hiring either the whole ship or part of it. When the whole ship is hired for carrying goods the agreement made between shipper and ship owner is known as charter party.

#### **1.3.3.2: Charter parties**

Charter-party is a hire or lease agreement between the vessel owner and charterer. Under a charter-party, a vessel is leased for one or more voyages or for a fixed time span. Commonly, the vessel owner keeps possession rights whereas the charterer has the right to

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<sup>38</sup> Chanda, A Comparison of rights and liabilities under Charter party and Bill of Lading, p 1-18.

<sup>39</sup> Burke, Osborn's Concise Law Dictionary, p21.

select the ports of call. Robin Burnett and Vivienne Bath define charter party in their book as:

A written agreement by which a ship-owner lets an entire ship, or a part of it, to the charterer for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the charterer undertakes to pay as freight for their carriage. The principal stipulations refer to the places of loading and delivery, the mode and time of paying the freight, the number of days and the rate of demurrage.<sup>40</sup>

### **1.3.3.3: Bill of lading**

The birth of bill of lading was from the old ship "register," where the character and amount of goods delivered were recorded. Initially, this information was used as a written evidence of receipt of the goods, but later on the terms of a contract of shipment between the seller and the master of the ship were also included in it.<sup>41</sup> Followings are some of the definitions of bill of lading.

According to Black's law Dictionary it is defined as:

Bill of lading is a document acknowledging the receipt of goods by a carrier or by the shippers agent and the contract for the transportation of those goods; a document

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<sup>40</sup>Burke, Osborn's Concise Law Dictionary, p72.

<sup>41</sup> C. S. Duncan Source, The Uniform Bill of Lading, Journal of Political Economy, Vol. 25, No. 7 (Jul., 1917), pp. 679-703, Available at: <https://archive.org/details/jstor-1821773> (accessed September 9, 2013).



that indicates the receipt of goods for shipment and that is issued by a person engaged in the business of transporting and forwarding goods.<sup>42</sup>

Dictionary of commerce defines the bill of lading as: "A document which is signed by the master of the ship on behalf of the owners, acknowledging the receipt of the goods put on board and setting out the terms and conditions under which the goods would be carried."<sup>43</sup>

Davis J. C. in *Malabar Steamship Co. v. Central Bank of India* explained bill of lading as: "Bill of lading is a document of title; it is a symbol of the goods; it represents the goods themselves, and it appears to us that as a document of title it is a document of title to specified goods in specified place."<sup>44</sup>

Bill of lading perform several functions such as; it is considered as good evidence of the contract of affreightment,<sup>45</sup> it is a receipt issued to the shipper and signed by and on behalf of the carrier,<sup>46</sup> it also includes admissions regarding the quantity and condition of the goods when put on board.<sup>47</sup> In addition, bill of lading is an important document of title.<sup>48</sup> However, it should be distinguished from other forms of documents. As C. S. Duncan Source observed in his book that:

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<sup>42</sup> Bryan A. Garner, *Black's law dictionary 8th edition*, (USA: West, a Thomson business, 2004) p( p. 176).

<sup>43</sup> N.R. Pathak, *Dictionary of commerce*, (2004, New Dehli, Murari Lal & Sons), p21.

<sup>44</sup> *Malabar Steamship Co. v. Central Bank of India*, A I R 1939 Sind 225.

<sup>45</sup> Payne and Ivamy's, *Carriage of goods by sea Twelfth Edition* (London, 1985, Butterworth), p 71.

<sup>46</sup> Bill of lading, report by the secretariat of UNCTAD, (New York : United Nation publications, 1971), p5, Available at: [http://r0.unctad.org/ttl/docs-legal/rep-doc/Bills\\_of\\_lading-Report\\_TD\\_B\\_C.4\\_CSL\\_6\\_Rev.1.pdf](http://r0.unctad.org/ttl/docs-legal/rep-doc/Bills_of_lading-Report_TD_B_C.4_CSL_6_Rev.1.pdf) (accessed September 9, 2013).

<sup>47</sup> Payne and Ivamy's, *Carriage of goods by sea Twelfth Edition*, p 71.

<sup>48</sup> *Ibid*.

The bill of lading, however, should be sharply distinguished from other forms associated with it. The freight bill, or the shipping bill, is a receipt for the goods delivered to the carrier, and nothing more. It is a form developed to fulfill that specialized function out of which the bill of lading grew. The bill of exchange, to which the bill of lading is often attached, is an independent, though an interrelated, document. It represents the banker's function in financing the shipment.<sup>49</sup>

#### 1.3.3.4: Electronic Documentation

In trade and commerce documents plays a paramount role, in fact whole transaction of sale of goods depends upon documents. As David j. Sharper and W.Wylie argues in their article that: "International trade and transport are typically conducted by means of documentary transactions. The documents are the means to cement the transaction. They constitute the medium by which commercial information and legal rights are transmitted."<sup>50</sup>

With the emergence of e-commerce in contemporary world, traders and investors preferred to use electronic modes of transactions are well organized, efficient and systematic. Similarly, as a result of development in computer cryptography, now paper bill of lading or way bills are substituted by electronic equivalent to evidence carriage of goods contracts.<sup>51</sup>

Electronic documents are discussed in detail in upcoming chapters.

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<sup>49</sup>Source, The Uniform Bill of Lading, Journal of Political Economy, Vol. 25.

<sup>50</sup> David j. Sharper and W.Wylie, *New directives in maritime law: When bits replace bills, what shall the law bytes on*, (Toronto.London: Carswell. Stevens, 1985), p208.

<sup>51</sup>Simon Baughen, *Shipping Law*, (Milton park: Routledge-Cavendish, 2009), p25, Available at: [http://books.google.com.pk/books?id=EQEiQAUINN8C&pg=PA1951&dq=Simon+Baughen.+Shipping+Law.+\(Milton&hl=en&sa=X&ei=j4DVMPtK8Gv7Abb9YDADw&ved=0CB0Q6AEwAA#v=onepage&q=Simon%20Baughen%2C%20Shipping%20Law%2C%20Milton&f=false](http://books.google.com.pk/books?id=EQEiQAUINN8C&pg=PA1951&dq=Simon+Baughen.+Shipping+Law.+(Milton&hl=en&sa=X&ei=j4DVMPtK8Gv7Abb9YDADw&ved=0CB0Q6AEwAA#v=onepage&q=Simon%20Baughen%2C%20Shipping%20Law%2C%20Milton&f=false) (accessed September 29, 2013).

#### 1.4.3.5: International Conventions on Carriage of Goods by Sea

There are three prevalent legal frameworks that regulate the international carriage of goods by sea namely: International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924, the Hague Rules of 1924 as amended by the Visby Protocol, 1968, and the United Nations Convention on the Carriage of Goods by Sea, 1978.<sup>52</sup> International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 also known as the Hague Rules, 1924 represented the effort made by the international community to achieve uniformity in ocean bills of lading in order to provide a degree of predictability for international shipping.<sup>53</sup> These rules were the outcome of prevalent dissatisfaction among shippers and their insurers with arbitrary limits forced by carriers to limit their liability in case of decrease of, or impairment to, cargo. After half a century of global change, there was a movement to modernize the Hague Rules, 1924<sup>54</sup> and later in 1968<sup>55</sup> they were replaced by Hague- Visby Rules, 1968.<sup>56</sup> The United Nations

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<sup>52</sup> Hasan , The weaknesses of the Hague-Rules and the extent of reforms made by Hague-Visby Rules, p 1-13.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Robin Burnett, Vivienne Bath, *Law of International Business in Australasia*, (Sydney: Federation Press, 2009)p 131 available at <http://books.google.com.pk/books?id=GXHCKbxgpgvC&pg=PA175&dq=time+charter+party&hl=en&sa=X&ei=iO62UrPSEsbxhOeG1oCIBw&ved=0CDkO6AEwAg#v=onepage&q=time%20charter%20party&f=false> (accessed September 9, 2013).

Convention on the Carriage of Goods by Sea, 1978 are a set of rules governing the international shipment of goods adopted in Hamburg in 1978.<sup>57</sup>

## **I.5: Conclusion**

Briefly, in this chapter the introduction of international trade and transport is prescribed that how transport occupies a pivotal role in transferring of goods from one place to another. Efficient transport is important for the economic survival of any nation. The purpose of this chapter is to know the fundamentals of international transportation of goods. The focus of this chapter was merely to understand various mode of transportation used in international and national trade and commerce. Three modes of transport such as; road, air and sea were analyzed but the primary importance was given to transport by sea. As sea is considered as the most cheapest and economical mode of transport. Important definitions such as carrier, shipper consignee, Bills of Lading and charter parties were also discussed in detail. In addition, a brief introduction to electronic documentation and transport conventions was also given.

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<sup>57</sup> Utsav Mukherjee , Hamburg Rules United Nations Convention on the Carriage of Goods by Sea, 1978 - An Appraisal, National Law University Jodhpur (NLUJ),2008,1-21, available at: <http://ssrn.com/abstract=1146818> (accessed September 29, 2013).

## CHAPTER II

### INTERNATIONAL LEGISLATION ON CARRIAGE OF GOODS BY SEA

#### 2.1: INTRODUCTION

Presently, there are three major international conventions which regulates the carriage of goods by sea these are: International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (herein after referred to as the Hague Rules, 1924), The Hague Rules of 1924 as amended by the Visby Protocol, 1968, (herein after referred to as the Hague-Visby Rules, 1968), The United Nations Convention on the Carriage of Goods by Sea, 1978, (herein after referred to as the Hamburg Rules, 1978).<sup>1</sup> The purpose of these international conventions is to encompass the trading activities related to the carriage of goods by sea and to bring uniformity in international trade and commerce.<sup>2</sup> The present chapter aims to analyse these three international regimes, their application, important provisions and shortcomings. Further, a brief introduction of The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea,

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<sup>1</sup> Theodora Nikaki and Barış Soyer, A New International Regime for Carriage of Goods by Sea: Contemporary, Certain, Inclusive AND Efficient, or Just Another One for the Shelves?, *Berkeley J. Int'l Law*. Vol. 30 Issue 2, p 303 (2012). Available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1418&context=bjil> (accessed December 13, 2013).

<sup>2</sup> Fernanda Ruiz, Legal study of sea carrier limitation of liability according to Brazilian law in comparison to the Hague-Visby regime, *New York: Law inter Review*, Volume I, Issue 1, March 2010, p. 144/198. Available at:

<http://www.lawinter.com/4lawinterreview.pdf> (accessed January 24, 2013).

2008 (herein after referred to as the Rotterdam Rules, 2008) will also be given at the end of this chapter.

## **2.2: THE HAGUE RULES, 1924**

The Carriage of goods by sea is a practice beyond borders therefore uniformity in law is paramount for the stakeholders or parties involved. As Miran Marusic in her article argues that: "Several attempts have been made by the shipping industry and the international legal community to adopt conventions providing uniformity and balancing the interests of actors involved in the industry."<sup>3</sup> Consequently, Maritime Law Committee of the International Law Association (ILA) drafted an international convention on the carriage of goods by sea in 1921,<sup>4</sup> this draft was a result of earnest discourse among the representatives from many maritime States. Later on, a conference was held in the Hague where members gave stamp of approval to this draft law which was named as the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (Hague Rules, 1924). The conference gave recommendation of international adoption of these Rules. All stakeholders contributed in the discussion and drafting which resulted in remarkable piece of

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<sup>3</sup> Miran Marusic, A Gateway to Electronic Transport Documentation in International Trade: The Rotterdam Rules in Perspective, 2012, thesis unpublished, Lund university, 2010, Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=2438155> (accessed January 24, 2013).

<sup>4</sup> R. Wolfson Source, The English and French Carriage of Goods by Sea Enactments, The International and Comparative Law Quarterly, Vol. 4, No. 4 (Oct., 1955), pp. 508-532 available at: <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1468636&fileId=S002058930000703X> (accessed January 24, 2013).

legislation.<sup>5</sup> The Hague Rules, 1924 were the result of chain of developments where interest of all stakeholders was discussed with great caution and vigilance. Miran Marusic further stated that:

The Hague Rules were more carrier-friendly than the law at that time in general was. The Hague Rules introduced uniformity in the limitation of liability, which was important at this time as the carriers incorporated clauses in the bills of lading limiting their liability anyway. This way a uniform agreement was achieved and the limitations of liability could be controlled by the convention, instead of the carriers setting up their own standards.<sup>6</sup>

The Hague Rules, 1924 were a successful understanding between the interest of the carrier and the cargo owner. Therefore, they were ratified by majority of the maritime states.<sup>7</sup> The reason of this admiration was also the fact that they depicted almost the same customs which were prevalent throughout the centuries.<sup>8</sup>

The Rules comprised of 16 Articles in total,<sup>9</sup> where Article 1 is a definition clause which defines the terms such as: carrier,<sup>10</sup> contract of carriage,<sup>11</sup> goods,<sup>12</sup> ship and carriage of

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<sup>5</sup> Ibid.

<sup>6</sup> Miran Marusic, *A Gateway to Electronic Transport Documentation in International Trade: The Rotterdam Rules in Perspective*, 2012.

<sup>7</sup> Paul Myburgh, 'All That Glisters': The Gold Clause, the Hague Rules and Carriage of Goods by Sea, (2002) 8 *New Zealand Business Law Quarterly* 260-265, available at: <http://www.maritimelaw.org.nz/myburgh/Gold.pdf> (accessed January 24, 2013).

<sup>8</sup> Ognyan Savov, *Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?* 2011, Sweden, Lund University (Thesis unpublished). Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1895382> (accessed January 24, 2014).

<sup>9</sup> International Convention for the Unification of Certain Rules of Law relating to Bills of Lading also known as the Hague Rules available at <http://www.admiraltylawguide.com/conven/haguerules1924.html> (last accessed) March 03, 2014.

<sup>10</sup> The Hague Rules, 1924, art. 1(a).

<sup>11</sup> The Hague Rules, 1924, art. 1(b).

<sup>12</sup> The Hague Rules, 1924, art. 1(c).

goods.<sup>13</sup> The definition of carrier includes both ship owner and charterer.<sup>14</sup> This means that the charterer enjoys the same immunities as that of the ship owner.<sup>15</sup> There is no particular definition of the shipper under the Hague Rules, 1924; rather indirect reference to the shipper is given. The party who enters in to a contract of carriage with the carrier is basically a shipper.<sup>16</sup> Similarly, Elson Thana in his article noted that, "The Rules does not provide much on the position of shipper's obligations and liabilities."<sup>17</sup> He further recorded that, "In these Rules, one cannot find a clear expression for the obligation and liability of the shipper, but only a small number of provisions that may be extracted from the Rules."<sup>18</sup> The definition of a contract of carriage<sup>19</sup> is significant because it reveals that the charter party is not defined or regulated by the rules only bill of lading or other similar documents of title issued under charter party are regulated.<sup>20</sup> Other important documents such as sea waybills or ship delivery order<sup>21</sup> are not governed by these rules.

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<sup>13</sup> The Hague Rules, 1924, art. 1(d).

<sup>14</sup> The Hague Rules, 1924, art. 1(a)..

<sup>15</sup> Savov, *Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?*2011.

<sup>16</sup> The Hague Rules, 1924, art. 1(a).

<sup>17</sup> Elson Thana, *Shippers' obligations and liabilities under United Nations Convention on Contract for the International Carriage of Goods wholly or Partly by Sea (The Rotterdam Rules)*, thesis unpublished, Lund university, 2010, available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1668846> (accessed January 24, 2014).

<sup>18</sup> *Ibid.*

<sup>19</sup> "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

<sup>20</sup> Shafiq ur Rehman Lt Commander Pakistan Navy, *A Legal Analysis of Upcoming Rotterdam Rules vis-a-vis Present Regimes*, (Phd: International Maritime law institution established under the auspices of International Maritime Organization, a specialized agency of United Nations, 2009).

<sup>21</sup> *Ibid.*



The rules also prescribe the duties of the carrier. The prime duty of the carrier is to make the ship sea worthy and to show due diligence in making her so.<sup>22</sup> The bill of lading can be issued only on the demand of the shipper.<sup>23</sup> As observed by Ognyan Savov:

if the shipper and consignee are the same persons and they are certain of what has been loaded on board, they do not need the B/L. However, if one considers that the B/L is not only a proof of the received cargo but also of its apparent quality, it is advisable that the shipper always require its issuance.<sup>24</sup>

There are certain inherent defects<sup>25</sup> and lacunas in the Hague Rules, 1924 which paved a need to amend this law. To illustrate, the Hague Rules, 1924 only deals with outward shipments and not with inward shipments.<sup>26</sup> In addition, they are also not applicable on carriage of live animals or cargoes which are carried on deck.<sup>27</sup> Furthermore, the development in technology and use of advanced machines and equipment in shipping industry such as containerization of cargoes overtook legislation.<sup>28</sup> The exact words of Zulkifli Hasan and Nazli Ismail well describe the situation as: "The container itself, as distinguished from the individual cargoes contained therein, is normally shipped under an

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<sup>22</sup> The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to: (a) Make the ship seaworthy.

<sup>23</sup> The Hague Rules, article 3(3) : After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading available at: <http://www.admiraltylawguide.com/conven/haguerules1924.html> (last accessed) 02.03.2014.

<sup>24</sup> Savov, Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?2011.

<sup>25</sup> Ibid

<sup>26</sup> Hasan, and Nazli, The Weaknesses of the Hague Rules and the Extent of Reforms Made by the Hague-Visby Rules (June 15, 2007), *Malayan Law Journal*, 2007. Available at: <http://ssrn.com/abstract=2234211> (accessed July 19, 2013).

<sup>27</sup> The Hague rules, art. 1(c).

<sup>28</sup> Joakim Adamsson, *The Rotterdam Rules A transport convention for the future?* 2011, Sweden, Lund University (Thesis unpublished). Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=2292311> (accessed July 19, 2013).

ordinary bill of lading. However the Hague Rules is silent on the interpretation of 'package or unit' which are stored in a container."<sup>29</sup>

### 2.3: THE HAGUE VISBY RULES, 1968

As stated above that the Hague Rules, 1924 does not have any provisions regarding containerization, moreover, due to monetary changes the liability limits in this convention seems to be too low.<sup>30</sup> Therefore, as commercial realities have overtaken legislation the *Comité Maritime International* (CMI) decided to amend the Hague Rules, 1924. As a result the Hague Rules of 1924 as amended by the Visby Protocol, 1968 also known as the Hague-Visby Rules came in to force in 1968.<sup>31</sup>

Introduction of container clause, increase in limitation limits and insertion of weight based calculation alternative were most significant changes made by the Hague-Visby Rules, 1968.<sup>32</sup> In addition, these rules introduced Poincaré francs<sup>33</sup> for the calculation of liability amounts.<sup>34</sup> Another improvement was in the article 4(5) where amount of compensation has

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<sup>29</sup> Hasan, and Nazli, *The Weaknesses of the Hague Rules and the Extent of Reforms Made by the Hague-Visby Rules*.

<sup>30</sup> Adamsson, *The Rotterdam Rules A transport convention for the future?* 2011, Sweden, Lund University.

<sup>31</sup> Marusic, *A Gateway to Electronic Transport Documentation in International Trade: The Rotterdam Rules in Perspective*, 2012.

<sup>32</sup> See the Hague-Visby rules, art. 4(5)a.

<sup>33</sup> See the Hague-Visby rules, art. 4(5)d.

<sup>34</sup> Fernanda Ruiz, *Legal study of sea carrier limitation of liability according to Brazilian law in comparison to the Hague-Visby regime*, New York: *Lawinter Review*, Volume I, Issue 1, March 2010, p. 144/198, available at: <http://www.lawinter.com/4lawinterreview.pdf> (accessed July 19, 2014).

been raised depending upon the type of cargo units.<sup>35</sup> Under the new convention the benefit of limitation of liability is not given to the carrier, if it is proven that the damages are occurred due to negligence and recklessness of the carrier.<sup>36</sup>

The Hague Rules, 1924 are only applicable to outward shipments and not to inward shipments therefore the Hague-Visby, 1968 brought a change in these rules by extending its territorial jurisdiction.<sup>37</sup> Zulkifli Hasan and Nazli Ismail mentioned that:

The Rules clearly provided that when the contract of carriage falls within one of the cases set out in Article X of the Rules, then the Rules must apply whatever be the proper law of the contract. In other words, the Rules apply by force of law and often inwards and outwards shipment.<sup>38</sup>

As already discussed in previous chapter, that one of the characteristics of bill of lading is transfer of title or negotiability. Under article 3(4) of the Hague-Visby Rules, 1968 protection is given to the third person be it consignee or holder of bill of lading in good faith.<sup>39</sup> This provision also protects letter of credit in case where bank is acting as an agent of consignee. Hence, Hague-Visby, 1968 introduced the letter of credit system in the carriage of goods by sea.<sup>40</sup>

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<sup>35</sup> See the Hague-Visby rules, art. 4(5).

<sup>36</sup> Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

<sup>37</sup> See the Hague-Visby rules, art. 10.

<sup>38</sup> Hasan, and Nazli, *The Weaknesses of the Hague Rules and the Extent of Reforms Made by the Hague-Visby Rules*.

<sup>39</sup> The Hague Visby rules, art. 3 (4).

<sup>40</sup> Savov, *Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?*2011.

Although Hague-Visby Rules, 1968 brought significant changes but failed to fix the shortcomings of the Hague Rules, 1924.<sup>41</sup> The rules were neither compatible nor consistent with the change in the modern world.<sup>42</sup> Notably one of the Hague-Visby Rules, 1968 weakness is that; carrier's liability is still for a short period of time. In addition, as Zulkifli Hasan and Nazli Ismail noted down that: "By reason of advance communication technology, vessel navigation and safety the carrier with a higher degree of control of the vessel and cargo should not be exempted".<sup>43</sup>

#### 2.4: THE HAMBURG RULES, 1978

Most of developing countries did not participate in the creation of existing international shipping frameworks therefore they later on observed that these regimes did not strike a fair balance between the interest of shipper and ship-owners.<sup>44</sup> In additions, they noticed that their nationals were mostly shippers and did not have equal bargaining powers as that of ship-owners and these rules are therefore unfair.<sup>45</sup> To overcome these short

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<sup>41</sup> Joakim Adamsson, *The Rotterdam Rules A transport convention for the future?* 2011.

<sup>42</sup> Ibid.

<sup>43</sup> Hasan, and Nazli, *The Weaknesses of the Hague Rules and the Extent of Reforms Made by the Hague-Visby Rules.*

<sup>44</sup> Sinha Basnayake, *Origins of the 1978 Hamburg Rules*, *The American Journal of Comparative Law*, Vol. 27, No. 2/3, *Unification of International Trade Law: UNCITRAL's First Decade (Spring - Summer, 1979)*, pp. 353-355. Available at: <http://www.jstor.org/discover/10.2307/840038?uid=3738832&uid=2&uid=4&sid=21104641213313> (accessed July 19, 2014).

<sup>45</sup> Utsav Mukherjee, *Hamburg Rules United Nations Convention on the Carriage of Goods by Sea, 1978 - An Appraisal*, National Law University Jodhpur (NLUJ), Available at: <http://www.jstor.org/discover/10.2307/840038?uid=3738832&uid=2&uid=4&sid=21104103509061>

comings the United Nations (UN) took the pains and drafted an entirely new regime termed as the United Nations Convention on the Carriage of Goods by Sea, 1978 or the Hamburg Rules, 1978.<sup>46</sup> These rules were adopted in March 31, 1978 and in November 1992 they came into force.<sup>47</sup> They were the outcome of great efforts of the UN. Most of its articles were reformulated from previous regimes with some new additions. According to Erling Selvig: "Among the significant changes made by the new Convention are the solutions to problems that arise when two or more carriers are involved in the contract of carriage or in the carriage of the goods".<sup>48</sup>

The Hamburg Rules, 1978 provides that the carrier must be blamed in case of loss or damage of the goods but if carrier proves that he/she took reasonable steps to avoid the loss then he/she will be exempted from the liability.<sup>49</sup> The Hamburg Rules, 1978 covers less than 5% of global shipping. It is pertinent to mention here that none of the major shipping nations have opted these rules. Although the Hamburg rules, 1978 have provisions regarding the new technologies and new issues but still they have been adopted by few nations.<sup>50</sup>

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<sup>46</sup> Ibid. (accessed July 29, 2014).

<sup>47</sup> Shafiq ur Rehman Lt Commander Pakistan Navy, A Legal Analysis of Upcoming Rotterdam Rules vis-a-vis Present Regime.

<sup>48</sup> Erling Selvig, Through-Carriage and On-Carriage of Goods by Sea, *The American Journal of Comparative Law*, Vol. 27, No. 2/3, Unification of International Trade Law: UNCITRAL's First Decade (Spring - Summer, 1979), pp. 369-389, available at <http://www.jstor.org/discover/10.2307/840040?uid=3738832&uid=2&uid=4&sid=21104103509061> (accessed July 19, 2014).

<sup>49</sup> Sinha Basnayake, *Origins of the 1978 Hamburg Rules*.

<sup>50</sup> Adamsson, *The Rotterdam Rules A transport convention for the future?* 2011, Sweden, Lund University.

Scope of its application is wider as compared to the Hague Rules, 1924 and Visby protocols. The definition of carrier is more extensive. The rules encompass even a person who concludes the contract with the shipper but he has no interest to carry the goods himself.<sup>51</sup> It also defines actual carrier<sup>52</sup>, the person who is actually carrying the goods. Thus, according to the Hamburg Rules, 1978 there are two kinds of carrier: the contractual carrier and the actual carrier as defined above. These rules impose liability on the contractual carrier that he is responsible for the whole carriage.<sup>53</sup> As said by Joakim Adamsson: "The effect of these provisions is that if the Hamburg Rules apply it is easier for a shipper to find a responsible carrier"<sup>54</sup>

The rules are applicable to all contract of carriage by sea along with bill of lading but do not applicable to the charter parties.<sup>55</sup> Hence, salient feature of these rules is that it can operate in all contract of carriage<sup>56</sup> therefore application of the Hamburg Rules, 1978 is wide. The rules also deal with inward shipment as well as outward shipments so its geographical scope of

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<sup>51</sup> Article 1(1): The Hamburg Rules, 1978, "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

<sup>52</sup> Article 1(2): The Hamburg Rules, 1978.

<sup>53</sup> Article 10(1): The Hamburg Rules, 1978. Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment

<sup>54</sup> Joakim Adamsson, *The Rotterdam Rules A transport convention for the future?* 2011, Sweden, Lund University.

<sup>55</sup> Article 2(3), The Hamburg Rules, 1978, The provisions of this Convention are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer

<sup>56</sup> Article 1(6): The Hamburg Rules, 1978.

application is broader.<sup>57</sup> The responsibility of carrier is throughout the entire period of the carriage.<sup>58</sup>

## 2.5: A Brief Comparison between the Hague, Hague-Visby and the Hamburg Rules

1. In the Hague Rules, 1924 and Hague -Visby Rules, 1968 the duration of liability is limited only at the time of commencement of voyage and discharge of goods<sup>59</sup> whereas in case of the Hamburg Rules, 1978 the duration of liability is throughout the voyage.<sup>60</sup>
2. In the Hague Rules, 1924 and Hague -Visby Rules, 1968 there is no liability on cargo owner to inform about dangerous goods<sup>61</sup> whereas under the Hamburg Rules, 1978 it is incumbent upon the cargo owner to inform about dangerous goods if not then he/she will be liable for non disclosure.<sup>62</sup>
3. The limitation of action period in the Hague Rules, 1924 is 1 year<sup>63</sup> and in the Hague-Visby Rules, 1968 it is 1 year but can be elongated by mutual agreement of the parties.<sup>64</sup> Under the Hamburg Rules, 1978 the limitation period is 2 year.<sup>65</sup>

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<sup>57</sup> Article 2: The Hamburg Rules, 1978.

<sup>58</sup> Article 4(1): The Hamburg Rules, 1978, 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.

<sup>59</sup> Article 1(e): The Hague Rules, 1924 and Hague Visby Rules, 1968.

<sup>60</sup> Article 4: The Hamburg Rules, 1978.

<sup>61</sup> Article 4(6): The Hague Rules, 1924 and Hague Visby Rules, 1968.

<sup>62</sup> Article 13 of the Hamburg Rules, 1978.

<sup>63</sup> Article 3(6): The Hague Rules, 1924.

<sup>64</sup> Article 3(6) b: The Hague Visby Rules, 1968.

<sup>65</sup> Article 20: The Hamburg Rules, 1978.

4. The Hague Rules, 1924 and Hague Visby Rules, 1968 only applies to bills of lading or other similar document of title.<sup>66</sup> The Hamburg Rules, 1978 is applicable to any transport document.<sup>67</sup>
5. The Hague Rules, 1924 and Hague Visby Rules, 1968 does not have any provisions regarding the arbitration and jurisdiction. Whereas under the Hamburg Rules, 1978 article 21 and article 22 deals with the jurisdiction and arbitration respectively.<sup>68</sup>

## 2.6: The Rotterdam Rules, 2008

The Rotterdam Rules, 2008 are formally known as the United Nation Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.<sup>69</sup> The rules were adopted in 11 December 2008, by General Assembly.<sup>70</sup> The main objective of these rules was to bring uniformity and consistency in the international trade like its predecessors.<sup>71</sup> Moreover, the Rotterdam Rules, 2008 tends to provide a modern alternative to previous maritime regimes. There are the 25 Signatories of the Rotterdam rules up till now.<sup>72</sup> These rules will come in to force one year after its ratification by 20 nations.<sup>73</sup>

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<sup>66</sup> Article 1(b): The Hague Rules, 1924 and Hague Visby Rules, 1968.

<sup>67</sup> Article 1(6): The Hamburg Rules, 1978.

<sup>68</sup> Article 21 and Article 22: The Hamburg Rules, 1978.

<sup>69</sup> United Nations Commission on International Trade Law, Available at: [http://www.uncitral.org/uncitral/en/uncitral\\_texts/transport\\_goods/rotterdam\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/transport_goods/rotterdam_status.html) (last accessed) March 03, 2014.

<sup>70</sup> Shafiq ur Rehman Lt Commander Pakistan Navy, A Legal Analysis of Upcoming Rotterdam Rules vis-a-vis Present Regime..

<sup>71</sup> Adamsson, The Rotterdam Rules A transport convention for the future? 2011, Sweden, Lund University.

<sup>72</sup> United Nations Commission on International Trade Law.

<sup>73</sup> Adamsson, The Rotterdam Rules A transport convention for the future? 2011, Sweden, Lund University.



The Rotterdam Rules, 2008 deals with provisions that are unregulated by the previous conventions. It provides a legal cover to all transport documents including electronic documentation and multimodal transport.<sup>74</sup> The Rotterdam Rules, 2008 provides a balance universal mechanism to support contracts of carriage that may include more than one mode of transportation (multimodal transport).<sup>75</sup> In the words of Sumita Patwari:

The Rotterdam Rules provide a legal framework that takes into account the many technological and commercial developments that have occurred in maritime transport since the adoption of those earlier conventions, including the growth of containerization, the desire for door-to-door carriage under a single contract, and the development of electronic transport documents. The Convention provides shippers and carriers with a binding and balanced universal regime to support the operation of maritime contracts of carriage that may involve other modes of transport.<sup>76</sup>

The Rotterdam Rules, 2008 will be discussed in detail in chapter 5.

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<sup>74</sup> Savov, *Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?*2011.

<sup>75</sup> Ibid.

<sup>76</sup> Sumita Patwari, *Rotterdam and Hague-Visby Rules -- A Comparative Analysis* (January 21, 2014), independent. Available at: <http://ssrn.com/abstract=2382614> ( accessed March 03, 2014).

## **2.7: Conclusion**

Thus, after scrutinizing the Hague Rules, 1924 and the Hague-Visby Rules, 1968 in details it is concluded that there are certain lacunae in these conventions. The Hague Rules, 1924 only deals with outward shipments and not with inward shipments. The Hague Rules, 1924 does not have any provisions regarding containerization, moreover, due to monetary changes the liability limits in this convention seems to be too low. These rules are not applicable on carriage of live animals or cargoes which are carried on deck. Furthermore, the development in technology and use of advanced machines and equipment in shipping industry such as containerization of cargos overtook legislation. Although the Hague-Visby Rules, 1968 brought a significant changes but failed to fix the shortcomings of the Hague Rules, 1924. The rules were neither compatible nor consistent with the change in the modern world. Notably one of the Hague-Visby Rules, 1968 weakness is that; carrier's liability is still for a short period of time. The Hamburg Rules, 1978 covers less than 5% of global shipping. None of major shipping nations opted for the Hamburg Rules, 1978. Although the Hamburg Rules, 1978 have provisions regarding the new technologies and new issues but still they have been adopted by few nations. As far as the Rotterdam Rules, 2008 are concerned, these rules deals with provisions that are unregulated by the previous conventions. It provides a legal cover to all transport documents including electronic documentation and multimodal transport.

## CHAPTER III

### DOMESTIC LAW OF PAKISTAN RELATED TO CARRIAGE OF GOODS BY SEA

#### 3.1: Introduction

The maritime transport law of Pakistan is regulated by a set of substantive and procedural enactments. These laws are: Carriage of goods by sea Act, 1925, Bill of Lading Act, 1856, the Merchant Shipping Ordinance, 2001 and Admiralty Jurisdiction of High Court Ordinance 1980. Some general statutes, such as: the Insurance Act, 1938, the Contract Act, 1872, Qanun-e-Shahadat Order, 1984, Pakistan Penal Code, 1860, the Code of Civil Procedure, 1908, the Criminal Procedure Code, 1898 ; and in this regard, Ports Act, 1908, Customs Act, 1969 are also important.

The Carriage of Goods by Sea Act, 1925 implements the Hague rules and thereby makes the national maritime regime comply the international maritime norms.<sup>1</sup> This chapter is divided into three parts which runs as follows; Carriage of goods by sea Act, 1925, Bill of lading Act, 1856 and Carriage of Goods by Sea Bill, 2011 and Sea Carriage Shipping Documents Bill, 2011. Some important case laws will also be discussed to give an understanding that how Pakistani court interprets these laws.

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<sup>1</sup> Preamble of Carriage of Goods by Sea Act, 1925.

Accession no. TH-14564

### **3.2: Carriage of Goods by Sea Act, 1925**

The maritime transport regime of Pakistan took its genesis in early twenties where Britain enacted the Hague Rules, 1924 in its domestic law and Pakistan after getting independence from Britain emulated the Carriage of Goods by Sea Act, 1925 of the Indian-sub continent in its local law.<sup>2</sup> Since then this law is dealing with the issues related to the maritime transport.<sup>3</sup> The Act is merely the imitation of the Hague Rules, 1924, where the latter forms the schedule to the former.

The Carriage of Goods by Sea Act, 1925 consists of seven sections and one schedule. The schedule contains the Hague Rules, 1924 governing the rights and duties of the parties. It has IX Articles in total dealing with definitions, risks, responsibilities and liabilities, rights and immunities, surrender of rights and immunities. Preamble is cardinal because it states that the present law aims to give a legal recognition to the international standards of "responsibilities, liabilities, rights and immunities attaching to the carriers under bills of lading." The general scheme of Carriage of Goods by Sea Act, 1925 runs as follows:

#### **3.2.1: Period of responsibility**

The period of responsibility of the carrier and operation of Carriage of Goods by Sea Act, 1925 begins from the time when goods are loaded on the ship and remains until their

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<sup>2</sup> E.F.U.I Co. Ltd v. American President Lines, P L D.1992 Supreme Court 291.

<sup>3</sup> Ibid.

discharge from ship at the port of destination. This is clear from the definition given in Article 1(e) of the rules in the said Act.<sup>4</sup> However, quantum of damages would not be governed by carriage of goods by Sea Act, 1925, if carrier proves that damage to the goods is occurred after their discharge to the port of destination. The decision of full bench in the case of Karachi Steam Navigation Company v. Abdul Rehman Abdul Ghani is important in this regard:

Where the carrier can show that the goods suffered damage after they were discharged from the ship at the port of their destination, the quantum of damage would not be governed by the Carriage of Goods by Sea Act and, any stipulation, if made between the parties, unless it militates against other provisions of law, would, in the said circumstances, govern the case.<sup>5</sup>

### **3.2.2: Responsibilities and liabilities of Carrier**

The responsibilities of the carrier are laid down in Article III of the Schedule of Carriage of Goods Sea Act, 1925. It is a comprehensive Article which deals with the responsibilities of carrier in detail. The Article prescribes that it is the duty of the carrier to exercise due diligence in making the ship seaworthy, equipped, fit and safe for reception, carriage and preservation.<sup>6</sup> Cresswell J defines due diligence as; "The exercise of due diligence is equivalent to the exercise of reasonable care and skill."<sup>7</sup> Seaworthiness was

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<sup>4</sup> Article 1(e) defines Carriage of goods" covers the period from the time when the goods are loaded on the time when they are discharged from the ship.

<sup>5</sup>The Karachi Steam Navigation Company Ltd. v. Messrs Abdul Rahman Abdul Gani And Others, P L D 1967 Dacca 159.

<sup>6</sup> Article III (1) of schedule of Carriage of Goods by Sea Act, 1925.

<sup>7</sup>[2002] All ER (D) 101 (Feb) by Cresswell J at para 130 available at [http://caselawquotes.net/D/Due\\_Diligence.html](http://caselawquotes.net/D/Due_Diligence.html) ( Last accessed 01 June, 2014).

stated in questionable form by Field J; "Was the vessel at the time of her sailing in a state, as regards the stowing and receiving of these plates, reasonably fit to encounter the ordinary perils that might be expected on a voyage at that season...?"<sup>8</sup> The carrier is also bound to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.<sup>9</sup> Words "shall properly and carefully discharge the goods carried" appeared in this Article signifies that the discharge of goods must be followed by the ordinary duty of avoiding negligence.<sup>10</sup> Although these responsibilities are significant but most pertinent of all is the duty to discharge the goods to the right full holder.<sup>11</sup> According to clause 6 of this Article, discharge of goods does not mean to discharge the goods at any port but to the person who is entitled to take the delivery under the contract. Therefore, if consignee due to any reason failed to take the delivery of the goods then it is the responsibility of the carrier to do all the reasonable steps for the preservation of the goods. The judgment of honorable judge is worth to reproduce here, where the judge observed that;

It was responsibility of the carrier, if consignee does not come forward to receive delivery of goods to give a proper notice to him and a reasonable time to pick-up the goods. Even if, no diligent response came to him from the consignee, then he should had followed the local port law, custom and regulation for its careful delivery to the customs authorities.<sup>12</sup>

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<sup>8</sup> Kopitoff v Wilson, (1875-76) L.R. 1 Q.B.D. 377.

<sup>9</sup> Article III(2) of schedule of Carriage of Goods by Sea Act, 1925.

<sup>10</sup> East & West Steamship Co. v. Hossain Brothers, 1968 PLD 15 Supreme-Court.

<sup>11</sup> Nippon Yusen Kaisha (Nyk) Lines v. Msc Textiles (Private) Limited, P L D 2008 Karachi 244.

<sup>12</sup> Ibid.

If date of delivery is not mentioned in the contract of afreightment witnessed by Bill of Lading. It does not mean that the carrier is free to deliver the goods according to its own convenience.<sup>13</sup> The carrier, the master, or carrier's agent are also bound to issue a Bill of Lading on the shipper's demand, evidencing the leading marks necessary for the identification of the goods, the number of packages or pieces, or the quantity, or weight and the apparent order and condition of the goods.<sup>14</sup> If goods are shipped with a specific mark then they must be delivered under the same mark. If they delivered under a different mark then it is not considered as proper discharge of the goods.<sup>15</sup> Bill of Lading serves a prima facie evidence of the carrier's receipt of goods.<sup>16</sup> If the carrier has reservation regarding the accuracy of the particulars mentioned in Article (3)(a)(b) and (c) then he is not bound to issue the Bill of Lading, nonetheless, if he does so then in case of non-delivery, short delivery or damage to cargo the Bill of Lading will be considers as a prima facie evidence of the particulars mentioned in it. However, carrier can still rebut it against the shipper.<sup>17</sup> Onus in this case will lies upon the carrier. As honorable Judges Sajjid Ali Shah and Saleem Akhter observed in a case law that: "Carrier's failure to rebut the prima facie evidence will make such particulars in the bill of lading binding on it."<sup>18</sup> The shipper is bound to guarantee the carrier the accuracy of shipment's time, marks, number, quantity and weight and is also liable to indemnify the carrier against any loss with respect to any such inaccuracy. Carriers

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<sup>13</sup> Crescent Sugar Mills and Distillery Ltd. v. American Export Isbrandt Sen Inc, 1983 PLD 29 Karachi-High-Court-Sindh.

<sup>14</sup> Article III rule 3

<sup>15</sup> Abdul Latif-Abdul Shakoor Madraswalla, Karachi v. Karachi Steam Navigation, 1981 PLD 367.

<sup>16</sup> National Insurance Corporation v. National Shipping Corporation, 1983 C L C 888.

<sup>17</sup> Messrs Tar Muhammad Janoo & Co. v. Messrs Maldivian National Corporation (Ceylon) Ltd. And Another-Opponents, P L D 1969 Karachi 495.

<sup>18</sup> E.F.U.I Co. Ltd v. American President Lines, P L D.1992 Supreme Court 291.

right to be indemnified does not limit his liabilities under the contract of carriage to any other person other than the shipper.<sup>19</sup> Content in the bill of Lading must be entered according to the instructions of the shippers. He is bound to provide accurate information. If goods are short landed due to inaccurate information of the shipper then it was held by the honorable court that the shippers were liable and not the carrier.<sup>20</sup>

The carrier and the ship will be excluded from any liability as to loss or damage if a suit has not been filled within 1 year after the actual delivery or the date of delivery of goods in question. This Article prescribes the Limitation period and this period is fixed by law which cannot be extended or prolonged by the consent of the parties.<sup>21</sup> The question arises as to date from which the period of one year should be calculated? According to Article 1(e) a contract of affreightment ends with the discharge of good from the vessel. Mrs. Yasmin Abbasey and Syed Mehmood Alam Rizvi, JJ prescribes the meaning of discharge as:

The word 'discharge' implies complete discharge of all the goods covered by the consignment. Hence, in a case where the goods are completely discharged, the period of one year shall be calculated from the date of discharge of the goods. However, the time for the discharge of the goods is spread over a number of days, the said period shall be calculated from the date of completion of the discharge."<sup>22</sup>

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<sup>19</sup> Article III rule 5.

<sup>20</sup> Pakistan National Shipping Corporation v. Adam Jee Insurance Company Ltd, 1993 MLD 1841 Karachi-High-Court-Sindh.

<sup>21</sup> National Insurance Corporation v. Pakistan National Shipping Corporation, 1986 MLD 1885 Karachi-High-Court-Sindh.

<sup>22</sup> Nippon Yusen Kaisha (Nyk) Lines v. Msc Textiles (Private) Limited, P L D 2008 Karachi 244.



If there is any clause in bill of lading relieving the carriers liabilities as prescribes in this law it shall be considered as null and void.<sup>23</sup>

### **3.2.3: Rights and Immunities**

Followings are some of the rights and immunities of the carrier and the ship;

1. The carrier and the ship are not liable to any loss with respect to un seaworthiness unless caused by the absence of due diligence on the carrier's part with respect to his stated duties towards the ship. In such a case the carrier or person claiming exemption is bound to prove the exercise of due diligence.<sup>24</sup> The carrier has to prove exception whenever loss of or damage to cargo is proved to have taken place after shipment and before delivery to the consignee,<sup>25</sup> and the burden of proving negligence to defeat it is on the shipper or consignee.
2. The carrier and the ship are not liable to any loss resulting from negligent or default navigation, fire, perils and accidents of other navigable waters, act of God, war, public enemies, arrest of officials, legal processes, quarantine restriction, shipper's act or omission, strikes, riots, life or property saving at sea, wastage in bulk or weight from inherent defect, quality, or vice of the goods, insufficient packing or marks.<sup>26</sup> In

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<sup>23</sup> Haji Habib Haji Peer Muhammad v. The Karachi Steam Navigation Co. Ltd, 1957 PLD 97 Karachi-High-Court-Sindh.

<sup>24</sup> Adam Ltd. v. Muhammadi Steamship Co. Ltd, 1962 PLD 227 Karachi-High-Court-Sindh.

<sup>25</sup> Pakistan v. American President Lines Ltd. and Others, 1962 PLD 87 Karachi-High-Court-Sindh.

<sup>26</sup> Article 4 rule 2.

case of insufficiency or inadequacy of marks carrier or ship cannot succeed without showing goods being unidentifiable owing to insufficiency of marks.<sup>27</sup> In case of goods lost by fire then carriers and its agents are only liable if fire was caused due to their negligence. Onus of proving the fault of carriers and its agent lies on the plaintiff.<sup>28</sup> Latent defects not discoverable by due diligence or any other cause arising without the actual fault of the carrier, his agents or servants. The person claiming exemption from liability has to prove that the loss or damage was not contributed by actual fault or privity of the carrier or his servants or agents.<sup>29</sup>

3. The shipper is not liable for the carrier's or the ships loss caused without the shipper, his agents or his servants negligence.<sup>30</sup>
4. The carrier is not liable for any loss caused during saving or attempting to save a life or property at sea and any of said acts are not considered as a violation of rules.<sup>31</sup>
5. The carrier or the ship are not liable in any case for any loss or damage of goods in an amount exceeding 100% per package or unit, or its equivalent in other currency, unless the nature and value of the same have been declared by the shipper before shipment and so inserted in the bill of lading.<sup>32</sup> This rule is in the favour of carrier. If shipper intends to declare the value to be inserted in the bill of lading then it must be in an unambiguous manner. The insertion in bill of lading clearly states that such

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<sup>27</sup> Ahmad Investment Ltd. v. Sunrise Iv, 1980 PLD 229 Karachi-High-Court-Sindh.

<sup>28</sup> New Jubilee Insurance Co. Ltd

v. P & O And B.I. Cnard Brockle bank Ship. CO, 1993 PLD 533 Karachi-High-Court-Sindh.

<sup>29</sup> Article 4 rule 2(q).

<sup>30</sup> Article 4 rule3.

<sup>31</sup> Article 4 rule 4.

<sup>32</sup> National Insurance Corporation v. National Shipping Corporation, 1983 C L C 888 Karachi-High-Court-Sindh.

inclusion tends to deprive the carrier of its right to claim limitation of liability. The declaration signified in the bill of lading serves as a prima facie evidence, but it is not binding on the carrier.

6. The carrier, master, carrier's agent and the shipper can agree to another maximum amount not less than the figure above named. However, any clause in bill of lading reducing maximum liability of carrier as provided in Article IV rule 5 is considered as null and void<sup>33</sup> and against the provisions of Article III rule 8.<sup>34</sup> The carrier and the ship have no responsibility in any case for loss or damage to the goods if their nature or value has been knowingly misstated by the shipper in the bill of lading. Therefore, shipper cannot seek protection under this rule.<sup>35</sup>
7. If Goods of a dangerous nature so shipped are not consented by the carrier or the concerned persons, they may at any time land the goods to any place or destroy them before discharge without compensation and the shipper will be liable for all direct or indirect damages and expenses of such shipment. If such goods are shipped with the carrier's consent, they may be likewise landed or destroyed with his only liability of general average.<sup>36</sup>

#### **3.2.4: Freedom to make contracts**

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<sup>33</sup> The Karachi Steam Navigation Company Ltd. v. Messrs Abdul Rahman Abdul Gani And Others, 1967 PLD 159 Dhaka-High-Court.

<sup>34</sup> Messrs Abdul Rahman, Abdul Gani v. Messrs Karachi Steam Navigation Co. Ltd, 1960 PLD 173 Dhaka-High-Court.

<sup>35</sup> Crescent Sugar Mills And Distillery Ltd. v. American Export Isbrandt Sen Inc, 1983 PLD 29 Karachi-High-Court-Sindh.

<sup>36</sup> Article 4 rule 6.

Article VII gives liberty to carrier or shipper to enter in to agreement thus they are free to make contracts as they like.<sup>37</sup> Word "the ship" appeared in this Article is important as observed by honorable judge: "The most important term in this Article is the word "the ship". It is, therefore, open to the parties to stipulate the stage from which the responsibility of the Shipping Company shall cease to exist after the goods are free from the tackle of the ship or otherwise."<sup>38</sup> While entering in to agreement following provisions should be taken in to account;

The Act makes it mandatory for all the Bill of Lading or related documents of contracts falling under the said rules, to clearly include an express statement signifying the application of Rules as per law.<sup>39</sup> Moreover, Article V of schedule stipulates that the carrier can wholly or partially surrender or increase all or any of his rights and duties under the rules by embodying the same in the bill of lading issued to the shipper. The rules do not apply to charter parties however, if a ship is under a charter party and a bill of lading is issued thereby, the charter party must observe the rules. Any lawful provision as to general average can be incorporated in a bill of lading. Article VI make it clear that a carrier, master, their agent and shipper can enter into any agreement with respect to any goods, on the rights and

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<sup>37</sup> Article VII of Carriage of Goods Act, 1925 states that Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from **the ship** on which the goods are carried by sea.

<sup>38</sup> Adam Ltd. v. East & West Steamship Co, P L D 1962 (W. P.) Karachi 715

<sup>39</sup> Section 4 of carriage of goods by sea, 1925.

obligations of carrier for said goods or for seaworthiness. It must not be against public policy or against the care or diligence of carrier servants or agents with respect to any process of loading and discharge of goods. No bill of lading should be issued in this case and all the agreed terms must be stated in a receipt a non-negotiable document which must be marked as such. Such an agreement is legally binding. This article is not applicable to ordinary commercial shipments made in the ordinary course of trade however it applies to other shipments where either the carriage items or the circumstance under which carriage is to take place reasonable justify a special agreement. Article VII The carrier or shipper can enter into any agreement with respect to their liability for any damage to the goods while in custody and care before loading or subsequent to their discharge from the ship on which the goods are carried by sea. Article VII the rules do not affect a carrier's rights or duties under any law that limits the liability of owners of sea going vessels.

### **3.2.5: Applicability of Rules**

According to Section 2 the rules prescribed in schedule with respect to the carriage of goods by sea in ships are only applicable "from any port in Pakistan to any port whether in or outside Pakistan."<sup>40</sup>Hence, these rules are not applicable to the carriage of goods by sea

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<sup>40</sup>British India Steam Navigation Co. Ltd. v. Abdul Razak-Abdul Kader, 1967 PLD 68 Supreme-Court.

from a foreign port to a port in Pakistan. Rights and liabilities of parties in this case are to be ascertained by reference to Pakistan law of contract.<sup>41</sup>

### 3.3: Bills of Lading Act, 1856

Bill of lading is the product of centuries old tradition of maritime transport. It was used to evidence contract of affreightment.<sup>42</sup> As already explained in chapter 1 that bill of lading serves three basic purposes;<sup>43</sup>

1. Evidence of contract of carriage of goods by sea
2. Receipt for carriage of goods by sea.
3. Document of title

It is also a negotiable instrument<sup>44</sup> therefore it is transferable by endorsement. The rights in the goods transfer to endorsee. Bill of Lading Act, 1856 defines the rights and liabilities of endorsee. This brief law was promulgated to give protection to the holders of bills of lading. The Act was an early attempt by the legislatures of United Kingdom. Pakistan inherited the same law after its independence. United Kingdom replaced this Act in 1992 by incorporating

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<sup>41</sup> National Electric Radio, Refrigeration Co. (Pakistan) Ltd., Karachi v. Sachiliae Lauro, Naples (Italy), 1977 PLD 264 Karachi-High-Court-Sindh.

<sup>42</sup> Payne and Ivory's, Carriage of goods by sea Twelfth Edition(London, 1985, Butterworth), p 71.

<sup>43</sup> C. S. Duncan Source, The Uniform Bill of Lading, Journal of Political Economy, Vol. 25, No. 7 (Jul., 1917), pp. 679-703, Available at: <https://archive.org/details/jstor-1821773> (accessed September 9, 2013).

<sup>44</sup> Ognyan Savov, Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?2011, Sweden, Lund University (Thesis unpublished). Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1895382> (accessed January 24, 2014).

some of its provisions in Carriage of goods by sea Act, 1992 but Pakistan is still using this law.

### **3.4: Carriage of Goods by Sea Bill, 2011 and Sea Carriage Shipping Documents Bill, 2011**

National Assembly Standing Committee on Ports and Shipping passed a bill named as Carriage of goods by sea bill, 2011 to presents it in the National Assembly.<sup>45</sup> The proposed bills were based on Carriage of Goods by Sea Act, 1992.<sup>46</sup> The purpose of this Bill was to amend the existing maritime transport laws of Pakistan that is Carriage of Goods by Sea Act, 1925 and Bills of lading Act,1856.<sup>47</sup> According to shipping experts, these laws are old and do not comply with the changing environment of the world.<sup>48</sup> Consequently, it affects the import and export of the country.

The proposed bill was aimed to modernize the current prevailing regime and also to bring them in conformity with the international best practices. The emphasis was to use the

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<sup>45</sup> Mazhar Imtiaz Lari, Carriage of Goods by Sea Bill 2011 : A nightmare for Pakistani cargo owners, January 04, 2012, Business Recorder, <http://www.brecorder.com/home/opinion/letter-to-the-editor/article/178-carriage-of-goods-by-sea-bill-2011--a-nightmare-for-pakistani-cargo-owners.html>( last accessed 19 May, 2014).

<sup>46</sup> Parvaiz Ishfaq Rana, NA body okays bill on carriage of goods by sea, Dec 10, 2011, Dawn.com, <http://www.dawn.com/news/679565/na-body-okays-bill-on-carriage-of-goods-by-sea> (accessed 19 May, 2014).

<sup>47</sup> Waqar Hamza, 'Carriage of goods by sea' bill approved, December 27, 2011, Pakistan times, Available at: <http://www.pakistantoday.com.pk/2011/12/27/business/%E2%80%98carriage-of-goods-by-sea%E2%80%99-bill-approved/> (accessed 19 May, 2014).

<sup>48</sup>Hina Mahgul Rind, Pakistan to update shipping laws, March 29, 2011, International The News, <http://www.thenews.com.pk/Todays-News-3-38626-Pakistan-to-update-shipping-laws> (accessed 19 May, 2014).

Electronic Transactions Ordinance, 2002 and to give legal cover to other transport documents such as the sea waybill and the ship's delivery order.<sup>49</sup> Unfortunately, the fate of these two bills is unknown as they disappeared in thin air.

### **3.5: Conclusion**

In short, the maritime transport law of Pakistan is comprised of the Carriage of Goods by Sea Act, 1925 and Bills of Lading Act, 1856. The Carriage of Goods by Sea Act, 1925 consists of seven sections and one schedule. The schedule contains the Hague Rules, 1924 governing the rights and duties of the parties. It has IX Articles in total dealing with definitions, risks, responsibilities and liabilities, rights and immunities, surrender of rights and immunities. Bill of Lading Act, 1856 defines the rights and liabilities of endorsee. This brief law was promulgated to give protection to the holders of bills of lading. Carriage of Goods by Sea Bill, 2011 and Sea Carriage Shipping Documents Bill, 2011 are two laws which were introduced in National Assembly to amend the above mentioned maritime transport laws.

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<sup>49</sup> Payne and Ivamy's, Carriage of goods by sea Twelfth Edition, p 71.



## CHAPTER IV

### NEED FOR MODERNIZATION AND REVISION OF PAKISTAN'S MARITIME LAW

#### 4.1: Introduction

The Carriage of Goods by Sea Act, 1925 and the Bills of Lading Act, 1855 are two legal frameworks that deal with the maritime transport in Pakistan. These two statutes fall behind the development of international trade and commerce as compared to the contemporary statutes of other maritime regimes.<sup>1</sup> The maritime regime of Pakistan simply followed the Carriage of Goods by Sea Act, 1924 of United Kingdom (UK).<sup>2</sup> Here, pertinent to mention is that UK repealed the Carriage of Goods by Sea Act, 1924 and incorporated the Hague-Visby Rules, 1968 in the Carriage of Goods by Sea Act, 1971.<sup>3</sup> Later on in 1992 UK again amended this law and now Carriage of Goods by Sea Act, 1992 is promulgated there.<sup>4</sup> Pakistan's legislation in comparison lagged behind and failed to counteract with the issues related to modern trade and commerce.<sup>5</sup>

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<sup>1</sup> Captain Anwar Shah, Rotterdam Rules: Carriage of Goods by Sea Act, (January 16, 2011) available at <http://portal.riphah.edu.pk/wp-content/uploads/data/11/01/160111rr.pdf> (accessed June 13, 2014).

<sup>2</sup> E.F.U.I Co. Ltd v. American President Lines, P L D 1992 Supreme Court 291.

<sup>3</sup> Ibid.

<sup>4</sup> Robert Bradgate and Fidelma White, LEGISLATION The Carriage of Goods by Sea Act 1992, The Modern Law Review, Volume 56, Issue 2, Article first published online: 18 Jan 2011, Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1993.tb00955.x/pdf> (accessed May 11, 2014).

<sup>5</sup> Parvaiz Ishfaq Rana, NA body okays bill on carriage of goods by sea, Dec 10, 2011, Dawn.com, <http://www.dawn.com/news/679565/na-body-okays-bill-on-carriage-of-goods-by-sea> (accessed 19 May, 2014).

The Carriage of Goods by Sea Act, 1925 is not current because the legal concepts embodied in it is now become out of date.<sup>6</sup> Updating and modernizing the legislation is peculiarly profound when a law is drafted over 88 years ago and still regulates an industry that has undergone a tremendous change. The commercial realities are changed now, world is progressing day by day, problems that arise due to technological progress needs to be addressed properly in the domestic law. The draftsmen of the early twenties did not anticipate the container revolution, multimodal transport and electronic commerce.<sup>7</sup> The old law only talks about the conventional bill of lading to evidence a contract of carriage.<sup>8</sup> However, carriers now use varieties of other documents to evidence a contract of carriage including sea waybills and ship's delivery orders.<sup>9</sup> In addition, some of these documents are also used in electronic formats.<sup>10</sup> There is a need to give legal coverage to all these major shipping documents used by the carriers worldwide. In addition, there is a dire need of a legal mechanism protecting all the stakeholders.

This chapter aims to highlight the gap between the previous legislation. The chapter will also take in to consideration the use of containerization, multimodal transport and electronic

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<sup>6</sup>Captain Anwar Shah, Rotterdam Rules: Carriage of Goods by Sea Act.

<sup>7</sup> Michael F. Sturley, Modernizing and reforming U.S. Maritime law: The Impact of the Rotterdam Rules in the United States, (2009), Available at: <http://www.tilj.org/content/journal/44/num3/Sturley427.pdf> (last accessed March 11,2013).

<sup>8</sup> Carriage of Goods by sea, 1925, art. 1.

<sup>9</sup> Zahid Jamil & Shahid Jamil, Modernizing Pakistan's Carriage of Goods Legislation, Available at: <http://www.nttfc.org/proceed03/proc03-jamil.htm>(last accessed March 11,2013).

<sup>10</sup> Simon Baughen, *Shipping Law*, Fifth edition, (Milton park: Routledge-Cavendish, 2009), p25. Available at: <http://books.google.com.pk/books?id=EOEiQAUINN8C&printsec=frontcover&dg=Simon+Baughen,+Shipping+Law&hl=en&sa=X&ei=3S8HVN2IOe7H7Aa064HACA&ved=0CB0Q6AEwAA#v=onepage&q=Simon%20Baughen%2C%20Shipping%20Law&f=false> (last accessed March 11,2013).

documents in the maritime industry. Furthermore, the issues regarding frauds in bills of lading will also be discussed in this chapter.

#### **4.2: Gap in previous legislation**

The Hague Rules, 1924 are part of schedule of the Carriage of Goods by Sea Act, 1925. Many scholars are of the view that these rules inhibit some inherent defects.<sup>11</sup> Some of those defects are already discussed in chapter II. Despite of the existence of these drawbacks, the Carriage of Goods by Sea, 1925 still operates in Pakistan. Moreover, containerization, multimodal transport, electronic documents are totally ignored, which call forth the revision of this law.

##### **4.2.1: Shipping Documents**

Article 1 of the schedule of Carriage of goods by Sea, 1925 deals with the definitions. The most important is the definition of contract of carriage. Contract of carriage only deals with contract covered by a Bill of Lading or any similar document of title. Hence, this law only envisions the Bill of Lading issued by the carriers to evidence a contract of carriage. Due to efficiency and speed in maritime transport; goods reached to the destined port prior to a bill of lading resulting in delays and inconvenience caused due to unavailability of

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<sup>11</sup> Zulkifli Hasan, and Ismail Nazli, *The Weaknesses of the Hague Rules and the Extent of Reforms Made by the Hague-Visby Rules* (June 15, 2007), *Malayan Law Journal*, 2007. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2234211](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2234211) (last accessed April 22, 2013).

document.<sup>12</sup> Therefore, carrier prefers to issue non negotiable Bill of Lading and other non negotiable documents. The reason of this predilection is that a carrier needs not to wait for the production of the negotiable document before delivery of the goods to the entitled person.<sup>13</sup> It is not legally required to produce a non-negotiable document; in this case carrier is only required to rightly identify the party entitled to receive the delivery.<sup>14</sup> These non negotiable documents are sea waybills ship and delivery orders. Sea way bills and ships delivery order are covered under the Carriage of goods Act, 1992 of UK. However, in Pakistan unfortunately there are no rules regulating these two important documents or any document other than bill of lading.<sup>15</sup>

#### 4.2.1.1: Sea way bills

In land and air transport parties were using the waybills since long and recently they are also introduced in the sea transport.<sup>16</sup> Sea waybills are issued by the carrier to shippers in order to evidence the contract of carriage between them. The bill serves as a documentary proof that the carrier actually received the goods from the shipper<sup>17</sup> and agreed to transport

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<sup>12</sup> Peter Jones, Status of Sea Waybills, Forwarder law.com, Available at: [http://www.forwarderlaw.com/library/view.php?article\\_id=237](http://www.forwarderlaw.com/library/view.php?article_id=237) last accessed (1<sup>st</sup> July, 2013).

<sup>13</sup> Ibid.

<sup>14</sup> CMI Uniform Rules for Sea waybills, art. 7 (i).

<sup>15</sup> Waqar Hamza, Standing committee on shipping defers bill, (2011), Pakistan Today, Available at: <http://www.pakistantoday.com.pk/2011/06/20/business/standing-committee-on-shipping-defers-bill/> last accessed (1<sup>st</sup> June, 2014).

<sup>16</sup> Peter Jones, Status of Sea Waybills, Forwarder law.com.

<sup>17</sup> CMI Uniform Rules for Sea waybills, art. 5(ii).

the cargo to a destined port. The CMI made rules related to the Sea Waybills.<sup>18</sup> These rules addresses many legal issues relating to the right of control and transfer of rights under the contract. The right of control signifies that only shipper is entitled to give instructions to the carrier regarding goods prior to their actual delivery.<sup>19</sup> In addition, shipper can change the consignee and with the consent of the carrier destination of the goods also.<sup>20</sup> However, the shipper also has the option to transfer this right of control to the consignee.<sup>21</sup>

#### **4.2.1.2: Delivery orders**

Consignor who ships the bulk cargo and receives one bill of lading in respect of it, or an endorsee of this bill of lading, may afterwards, while the goods are in transit, sell various unascertained portions of the cargo to different buyers. He clearly cannot transfer the bill of lading to all the buyers and must find some other way to satisfy each buyer's demand for some document evidencing his right to the goods he has bought which will enable him to collect or resell them. In such cases a delivery order may be used, "delivery order" is not a precise term and the legal status and effect of such a document will depend on its nature and

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<sup>18</sup>Comite Maritime International, Uniform Rules for Sea Waybills, Available at: <http://www.comitemaritime.org/Uniform-Rules-for-Sea-Waybills/0,2729,12932,00.html> last accessed (01<sup>st</sup> June, 2014).

<sup>19</sup> CMI Uniform Rules for Sea waybills, art. 6.

<sup>20</sup> CMI Uniform Rules for Sea waybills, art. 6(i).

<sup>21</sup> CMI Uniform Rules for Sea waybills, art. 6(ii).

the circumstances in which it is issued.<sup>22</sup> A delivery order is not a document of title unless proved to be so by reason of mercantile custom.<sup>23</sup>

#### 4.2.2: Electronic documents

Documents are of paramount importance in trade and commerce, in fact whole transaction of sale of goods depends upon documents.<sup>24</sup> In today's world with development in science and technology, e-commerce have emerged due to which traders and investors have started to use electronic modes of transactions, which are well organized and systematic. In addition, computer cryptography has developed and paper bills of lading have been substituted by electronic equivalent to evidence carriage of goods contracts.<sup>25</sup> The system which is used to generate paperless documents is known as Electronic Document Interchange (EDI).<sup>26</sup> It was used in the SEADOC<sup>27</sup> scheme which is first serious attempt to facilitate electronic transfer of negotiable bills of lading.<sup>28</sup>

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<sup>22</sup>Shyana, project on Carriage of Goods by Sea, (M.B.A. & M.B.L.d: National Law University, Jodhpur, April, 2008) Available at: <http://www.scribd.com/doc/20793503/Project-on-Carriage-of-Goods-by-Sea> (last accessed April 22, 2013).

<sup>23</sup> Ibid

<sup>24</sup> David j. sharper and W.Wylie, *New directives in maritime law: When bits replace bills, what shall the law bytes on*, (Toronto. London: Carswell. Stevens, 1985), p208.

<sup>25</sup> Baughen, *Shipping Law*, p25.

<sup>26</sup> Ibid.

<sup>27</sup> Seadocs registry limited was a London based Delaware corporation formed by Chase Manhattan Bank and INTERTANKO, an association of independent oil tanker operators, for the purpose of electronically negotiating bills of lading issued for oil shipment.

<sup>28</sup>A. Athanassios N. Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and Edi Systems*, (Hague, Netherland: Martinus Nijhoff Publishers, 1995), p22, Available at: [http://books.google.com.pk/books?id=PbqvxyHfHLkC&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://books.google.com.pk/books?id=PbqvxyHfHLkC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false) (accessed September 9, 2013).

Use of electronic transport documents is extensive in contemporary international trade. The reason behind their popularity is efficiency, reduction of costs and fast transactions. As the primary motive of a trader is to reduce cost and increase efficiency which cannot be achieved in case of paper document.<sup>29</sup> Therefore, electronic documentation is the best choice for the parties as they are fast and secure.<sup>30</sup>

At the time of Hague Rules, 1924 transport was not as fast as today, now goods reach to the destined ports before bill of lading, results in delays and cost. As Pakistan still follows centuries old shipping policy therefore no provisions regarding electronic means of communication in the issuance and transfer of bills of lading can be found.<sup>31</sup> However, due to the importance of electronic documentation in maritime industry many countries upgraded their laws according to their needs<sup>32</sup> but Pakistan is still stuck in 20<sup>th</sup> century.

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<sup>29</sup> Susan Beecher, Can the Electronic Bill of Lading Go Paperless?, *The International Lawyer*, Vol. 40, No. 3 (Fall 2006), pp. 627-647, Available at: <http://heinonline.org/HOL/LandingPage?handle=hein.journals/intlyr40&div=45&id=&page=> (last accessed 19 May, 2014).

<sup>30</sup> *Ibid.*

<sup>31</sup> Hina Mahgul Rind, Pakistan to update shipping laws, March 29, 2011, *International The News*, <http://www.thenews.com.pk/Todays-News-3-38626-Pakistan-to-update-shipping-laws> (accessed 19 May, 2014).

<sup>32</sup> The fine example of which is carriage of goods by Sea Act, 1924 of United Kingdom that deals with electronic instruments.

### 4.2.3: Containerization

Rapid technological change in the field of maritime transport in the past two decades gave birth to containerization.<sup>33</sup> Containers are different from traditional ships in their designs and structure. Special appliances are used in containers to provide efficiency therefore they are advantageous in many ways. The distinguished feature of containers is that they are less expensive and less complicated.<sup>34</sup> They not only cut costs but also saves time<sup>35</sup> and are considered as the most secure way of transporting the goods. Container is a box capable of transporting goods using different modes of transport.<sup>36</sup> These features of containerization made shipping industry fast, cost effective and sophisticated.<sup>37</sup> Containers were introduced in 1956<sup>38</sup> and now they are everywhere. As far as container handling in Pakistan is concerned Karachi Port and Port Qasim are vigorous in this regard. The Karachi Port has managed 1.591 million TEUs at the end of Financial Year (2013 – 14).<sup>39</sup> Port Qasim

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<sup>33</sup> History of Containerization, World Shipping Council: Partner in Trade, Available at: <http://www.worldshipping.org/about-the-industry/history-of-containerization> last accessed 09 March, 2014).

<sup>34</sup> Hashim R. Al-Jazairy, The maritime carrier's liability under the Hague Rules, Visby Rules and Hamburg Rules, (1983) (PhD thesis, University of Glosgow), available at <http://theses.gla.ac.uk/4392/> (last accessed 19May, 2014).

<sup>35</sup> Jara Costa Conrado, Multimodal Aspect of the Rotterdam Rules: a critical analysis of the liability of the MTO, (Master's thesis, Lund University, 2011), Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1976401> (last accessed 19May, 2014).

<sup>36</sup> Athanassios, Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and Edi Systems*, p22.

<sup>37</sup> Daniel M. Bernhofen, Zouheir El-Sahli, Richard Kneller, Estimating the Effects of the Container Revolution on World Trade, CESIFO Working Paper No. 4136, Category 8: Trade Policy, February 2013. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2228625](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2228625) (last accessed 19May, 2014).

<sup>38</sup> Ibid.

<sup>39</sup> Karachi Port Trust, Available at: <http://kpt.gov.pk/pages/Default.aspx?id=32#page-heading> (last accessed, 24 May, 2014).



have the Qasim International Container Terminal that is designed to facilitate 0.36 millions TEUs / annum.<sup>40</sup>

However, due to container revolution new issues emerged which required serious legislation. The Hague Rules, 1924 failed to determine the per package liability due to containerization. As observed by illustrious judge: "On the other forum the shipping world and maritime nations showed their anxiety and concern with the fluid state in determining per package liability of the carriers caused due to 'Container revolution' as it was felt that The Hague Rules could not meet this problem adequately and determinatively."<sup>41</sup> He further stated that the Hague-Visby Rules, 1968 has:

.....attempted to provide a determinative solution of container problem and perhaps relieving the Courts of embarrassing situations which were required to offer a solution by interpretation for a revolutionary situation which was new and perhaps not contemplated when Hague Rules were framed. However, the difficulty still persists as the Visby Rules are yet to find legislative enactment by several countries. Britain has already incorporated it in its Carriage of Goods by Sea Act, 1971 US and Pakistan have not.<sup>42</sup>

#### **4.2.4: Multimodal transport**

No doubt efficiency of international transport of goods is increased due to extensive use of containers<sup>43</sup> but international transport law failed to cater with this development.

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<sup>40</sup> Port Qasim Authority, port facilities, Available at: [http://www.pqa.gov.pk/port\\_facilities.php](http://www.pqa.gov.pk/port_facilities.php) (accessed, 24 May, 2014).

<sup>41</sup> E.F.U.I Co. Ltd v. American President Lines, P L D 1992 Supreme Court 291.

<sup>42</sup> Ibid

<sup>43</sup> Parvaiz Ishfaq Rana, NA body okays bill on carriage of goods by sea.

Multimodal transport is facilitated by the containers but unfortunately there is no prevailing convention that deals with it.<sup>44</sup> In multimodal transport there is a combination of not less than two modes of transport.<sup>45</sup> The chief characteristics of multimodal transport are transshipment terminals that enable effective cargo handling.<sup>46</sup> Pakistan is fortunate enough to have two working ports<sup>47</sup> and one under construction port<sup>48</sup> with the facilities of transshipment. However, as maritime regime of Pakistan implements The Hague Rules, 1925 which have no provisions related to the multimodal transport. The Carriage of goods by sea Act, 1925 of Pakistan is only applicable to tackle to tackle<sup>49</sup> and not to door to door delivery. Nowadays, because of revolution in containerization multimodal transport has gained popularity, which pave a need for upgrading the Pakistan's domestic law.<sup>50</sup> Even India promulgated the Multi-Modal Transport Operator Act, 1990s to facilitate the change-over to a road, rail and sea route for containerised traffic or simply multimodal transport. Therefore, there is a dire need to update the law covering the aspects of multimodal transport.

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<sup>44</sup> Athanassios, Yiannopoulos, *Ocean Bills of Lading: Traditional Forms, Substitutes, and Edi Systems*, p22.

<sup>45</sup> Multimodal Transport, Log 4 Green, Available at: <http://www.log4green.eu/index.php/topics/multimodal-transport> (Accessed 14th May, 2014).

<sup>46</sup> Ibid.

<sup>47</sup> Port Qasim Authority and Karachi Port Trust.

<sup>48</sup> Gwadar Port Authority.

<sup>49</sup> The Hague Rules, 1924, art. 1(e).

<sup>50</sup> Maqbool Afridi, Importance of Gwadar & Rotterdam Rules, IMMTA, available at <https://groups.yahoo.com/neo/groups/matrahshippingcompany/conversations/messages/446> (last accessed 20 June, 2014)

#### 4.2.5: Documentary Frauds

Fraud is ineluctable even in maritime industry. Perpetrators always use some sort of documents to persuade innocent victims.<sup>51</sup> Documentary frauds in maritime industry are a wide term which includes bill of lading frauds, charter party frauds, letter of credit frauds etc. In recent times plenty of cases are reported regarding documentary frauds.<sup>52</sup> In one case, the Central Bank of the United Arab Emirates suffered losses of some US\$650 million while in another case, losses amounted to US\$450 million with one bank being hit for more than US\$200 million.<sup>53</sup> It is impossible to estimate the total losses due to fraud around the world as a significant proportion of cases go unreported.

Bill of lading has a significant place in maritime industry. Being an important document it is also easily prone to fraud.<sup>54</sup> An important feature of bill of lading is its negotiability, it is considered as a bill of exchange.<sup>55</sup> It is issued by carrier on demand of shipper<sup>56</sup> to deliver the goods to the lawful holder of bill of lading. It is regarded as a proof the goods are

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<sup>51</sup> Pottengal Mukundan, Combating maritime fraud: documentary fraud in shipping and trading transactions is relatively easy to generate March 1 2003, Scribd, Available at: <http://www.scribd.com/doc/40641321/Maritime-Fraud> (Last accessed 19 April, 2012).

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Fraud in bills of lading- Consequences for the beneficiary under a bill of lading, lecture for the 3<sup>rd</sup> general meeting of ship arrest.com, Marseille, 23, June, 2006, Available at: <http://www.shiparrested.com/mm3/udink.pdf> (Last accessed 19 April, 2012).

<sup>55</sup> Ognyan Savov, Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants? 2011, Sweden, Lund University (Thesis unpublished). Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=1895382> (accessed January 24, 2014).

<sup>56</sup> The Hague Rules, 1924, art. 3 rule 3.

received and loaded onboard.<sup>57</sup> Shipper after taking possession of bill of lading from carrier delivers it to the consignee. Now, it is up to consignee whether to keep its possession himself or endorse it to another person. It usually happens in chain sales that consignee sell its interest in the cargo to the buyer while goods are still in transit. Carrier while in transit mostly have no knowledge about this transaction. The duty of the carrier is to deliver the goods to the person who presents the proof of ownership at the destined port.<sup>58</sup> As observed by Mr. Ognyan Savov in his dissertation that;

Such a multiparty relationship, in which the participants do not know each other as well as the probability that the consignee may be replaced without the knowledge/ agreement of the carrier, predetermines the possibility that some of them may be defrauded while taking part in the sale-purchase chain of the goods carried by sea.

One type of bill of lading fraud is issuance of antedated bill of lading which are very common now a day. In *Standard Chartered Bank (SCB) v Pakistan National Shipping Corporation (PNSC)* the court dealt with the issuance of antedated bill of lading by PNSC which was the ship owners. Cresswell, J had very harsh comments for such practices:

Antedated and false bills of lading are a cancer in the international trade. A bill of lading is issued in international trade with the purpose that it should be relied upon by those into whose hands it properly comes – consignees,

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<sup>57</sup> The Hague Rules, 1924, art. 3 rule 4.

<sup>58</sup> *Nippon Yusen Kaisha (Nyk) Lines v. Msc Textiles (Private) Limited*, P L D 2008 Karachi 244.

bankers, and endorsees. A bank that receives a bill of lading signed by or on behalf of a shipowner (as one of the documents presented under a letter of credit) relies upon the veracity and authenticity of the bill. Honest commerce requires that those who put the bills of lading into circulation do so only where the bill of lading, as far as they know, represents the true facts.<sup>59</sup>

Unfortunately, national Laws of Pakistan does not address the current problem of bill of lading. Two principles related to fraudulent bill of lading can be derived from Haji Moosa Han Omer case those are; in case where buyer alleges that the bill of lading was forged and that goods were never shipped then the onus lies on him to prove fraud and secondly, inference as to forgery cannot be raised simply because its terms were not fulfilled by party concerned. However, the questions as what amount to fraud are difficult to answer, as these are not being found in any international and national regulations. Maritime conventions, conventions on international trade, are silent on what is considered as "bill of lading fraud" and what protection is given to the victims of such fraud?<sup>60</sup> Therefore, maritime regimes are not adequate to fight against this fraudulent act and to provide redress to innocent parties.

#### **4.2.6: Arbitration**

According to Article III of Carriage of Goods by Sea Act, 1925; Consignee is required to inform the carrier of the loss or damaged goods by a written notice at the time of

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<sup>59</sup>Standard Chartered Bank v. Pakistan National Shipping Corporation and Others (No 2), [1998] 1 Lloyd's Rep. 684 at 688.

<sup>60</sup> Fraud in bills of lading- Consequences for the beneficiary under a bill of lading, lecture for the 3<sup>rd</sup> general meeting of ship arrest.com.

discharge or within three days of the delivery in case where damage and loss is not apparent. Consignee also brings a claim within one year of reception of the cargo against carrier. If more practical approach is taken into consideration then the period of three days is not sufficient keeping in mind the quantity of goods transported through port. Then only recourse which is available according to this law is to file a case in court which is least desirable by the parties.<sup>61</sup> Therefore, the current law of Pakistan has no provision regarding the arbitration to facilitate the parties.

#### **4.2.7: Delays/ Deviation**

Article IV Rule 4 of Carriage of Goods by Sea Act, 1925 talks about deviation. According to this Article the carrier is not liable for any loss caused during saving or attempting to save a life or property at sea therefore deviation in such situation is allowed and any of said acts are not considered as a violation of rules. Present law is silent about the delay caused due to deviation. In addition, no provisions are there for the protection of the buyer or consignee. Here, pertinent to note is that consignee or buyer is the only party who suffers loss due to delay in delivery. Yet legislators of Pakistan have turned a blind eye on this issue. There is a crying need to modify this law.

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<sup>61</sup> Savov, *Illegal activity in the issuance of negotiable documents in the carriage of goods by sea – do the existing legal regimes provide sufficient protection for the participants?* 2011.

#### **4.2.8: Nautical fault**

Carrier and the ship can escape from liability by claiming defense of navigational fault under Article 4 Rule 2 of the Carriage of Goods by Sea Act, 1925.<sup>62</sup> However, as science and technology has progressed specially in the field of communication technology, vessel navigation and safety provides the carrier with a higher degree of control of the vessel.<sup>63</sup> Therefore, there seems to be no need of this exemption.<sup>64</sup>

#### **4.3: Harmonization with international regime/ Conclusion**

So it is concluded that Pakistan needs to modernize its maritime regime and bring its laws in to conformity with the international best practices. Pakistan has to ratify those international conventions which address the problems of electronic documentation, multimodal transport, bill of lading frauds etc. The Rotterdam Rules of 2008 is a recent attempt to modernize the current prevailing maritime regimes. The purpose of these rules as already discussed in previous chapters that is to bring uniformity and harmonization in the legal frame work related to maritime regimes. It is a comprehensive convention which addresses the electronic documentation, multimodal transport etc. Pakistan must take in to

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<sup>62</sup> "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.

<sup>63</sup> Sturley, *Modernizing and reforming U.S. Maritime law: The Impact of the Rotterdam Rules in the United States*, 2009.

<sup>64</sup> Nicholas J. DiMichael and Karyn A. Booth, *Comparison of the Hamburg Rules, Hague-Visby Rule, and the MLA Proposal to Reform the Carriage of Goods by Sea Act (COGSA)*, available at [www.globalshippersnetwork.net/NorthAm/COGSA.htm](http://www.globalshippersnetwork.net/NorthAm/COGSA.htm) (Last accessed 6 December, 2012).

consideration this convention and recommendation must be given to legislators to ratify these rules. Adoptions of the Rotterdam Rules, 2008 are in the best interest of Pakistan.



## **CHAPTER NO V**

### **RATIFICATION OF THE ROTTERDAM RULE, 2008 BY PAKISTAN**

#### **5.1: Introduction**

The Rotterdam Rules, 2008 fills in all the gaps of previous enactments. These rules provide provisions regarding new innovations in the fields of trade and commerce such as: multimodal transportation, electronic documentation, gives protection to the shipper and the carrier and provides an effective mechanism of arbitration. As for Pakistan, sea is important for frequent trade and transactions, its significance necessitates the review of her sea laws and ratification of the new Rotterdam Rule, 2008 for carrying out safe and legal trade transactions. This chapter will take in to account the number of innovations offered by the Rotterdam Rules, 2008; legal implication of signing and ratifying Rotterdam rules by Pakistan and at the end conclusion and recommendations will also be given.

#### **5.2: Innovations offered by the Rotterdam Rules, 2008**

Followings are the number of revolutionary changes made by the new Rotterdam Rules, 2008 in the field of maritime transport.

### 5.2.1: Scope of Application

The note worthy change is expansion of scope of application. The new convention not only includes port to port transport but also contemplates the legal frame work for the international carriage of goods containing a maritime leg which is door to door transport.<sup>1</sup> This is because of container revolution which involves the use of door to door carriage contracts. The Rotterdam Rules, 2008 broadens the period of responsibility of the carrier.<sup>2</sup> According to the Rules the period of responsibility starts from the time of receipts of the goods by the carrier, usually at some inland place in one country and ends with the delivery of the goods to the consignee at some inland place in another country.<sup>3</sup> The Rotterdam Rules, 2008 are applicable to the contract of carriage of goods; parties are even free to conclude contracts based on port to port or tackle to tackle shipments.<sup>4</sup>

### 5.2.2: Electronic Commerce

The Rotterdam Rules,2008 is the only maritime transport convention that acknowledges the electronic commerce. In this regard entire chapter is assigned to electronic

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<sup>1</sup> Rafael Illescas Ortiz ,What Changes in International Transport Law after the Rotterdam Rules ? 14 Unif. L. Rev. 893 (2009) Available at: <http://heinonline.org/HOL/LandingPage?handle=hein.journals/droit2009&div=36&id=&page=> (last accessed 16 August,2014).

<sup>2</sup> Article 12(1) of Rotterdam Rules provides that “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.”

<sup>3</sup> Tomotaka Fujita, The Coverage of the Rotterdam Rules, Available at: [http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/the%20coverage%20of%20rotterdam%20rules%20\(BA2010\)%20-%20T.Fujita.pdf](http://www.comitemaritime.org/Uploads/Rotterdam%20Rules/the%20coverage%20of%20rotterdam%20rules%20(BA2010)%20-%20T.Fujita.pdf) ( Accessed 13, June 2014)

<sup>4</sup> The Rotterdam Rules, 2008, art. 12(3).

commerce.<sup>5</sup> The Rotterdam Rules, 2008 gives legal cover to electronic transport documents and thus provides an effective legal framework for electronic cargo documents.<sup>6</sup> With electronic documents it will be easier to process the flow of goods using IT (Information Technology) instead of paper documents. The use of electronic documents reduces chance of errors, lower cost, increase speed and also minimize documentary frauds.<sup>7</sup> Two developments are pertinent with respect to electronic commerce. Firstly, the right of control and secondly the transfer of rights.<sup>8</sup> These two concepts dematerialised all transport documents, and hence provides an efficacious legal foundation for electronic commerce.<sup>9</sup>

#### **5.2.2.1 Controlling Party, Right of Control and Transfer of Rights**

Carriage of Goods by Sea Act, 1925 has no provisions regarding the right of control and the transfer of rights. These concepts are important to solve the problem that how to provide for negotiable electronic transport records. Inclusion of these rules in maritime law will increase certainty in respect to the security interest that financial institutions have in the goods. The right to give instructions to the carrier regarding goods allows an owner to

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<sup>5</sup> The Rotterdam Rules, 2008, Chapter 3.

<sup>6</sup> The Rotterdam Rules, 2008, art.8 and art.10.

<sup>7</sup> Miran Marusic, A Gateway to Electronic Transport Documentation in International Trade: The Rotterdam Rules in Perspective, 2012, (Master's thesis unpublished: Lund university, 2010), Available at: <http://www.lunduniversity.lu.se/o.o.i.s?id=24965&postid=2438155> (accessed January 24, 2013).

<sup>8</sup> The Rotterdam Rules, 2008, Chapter 10 and Chapter 11.

<sup>9</sup> Kate Lannan, The Launch of the Rotterdam Rules.

dispose of the goods during the carriage.<sup>10</sup> These rights will also enables a financing institution to have control over the goods in which it has a security interest.

### **5.2.3: Containerization**

The Rotterdam Rules, 2008 is a detailed instrument regulating international contracts of carriage from “door-to-door” that will revamp the existing law. It will make the law well-suited for the needs of today’s trade and commerce. The new Rules provides a plausible number of provisions regarding containerization, which can be seen throughout the text of rules. For example the door to door application of the rules,<sup>11</sup> the extension of liability of carrier, that is, to exercise due diligence in case of container transportation<sup>12</sup> and the provisions regarding “qualifying the information relating to the goods in the contract particulars”<sup>13</sup>, takes into consideration the fact that usually in container transport carrier does not have opportunity to inspect the goods. Another provision related to the shipper is that, in order to avoid causing harm it is the responsibility of the shipper who packs its own container to properly and carefully stow, lash and secure the contents.<sup>14</sup>

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<sup>10</sup> Ibid

<sup>11</sup> Ortiz ,What Changes in International Transport Law after the Rotterdam Rules?

<sup>12</sup> The Rotterdam Rules,2008, art. 14(c).

<sup>13</sup> The Rotterdam Rules,2008 , art. 40.

<sup>14</sup> The Rotterdam Rules, 2008, art. 27(3).

#### **5.2.4: Time for Suit**

Under the Carriage of Goods by Sea Act, 1925 claim against the carrier can be filed within one year. In the Rotterdam Rules, 2008 the time period to file a suit against carrier is two years.<sup>15</sup> The extension of this time period is quite welcoming for the claimant because earlier the time period was very short.

#### **5.2.5: Carriers Liability**

There are number of significant changes made by the Rotterdam Rules, 2008 with respect to the responsibility of the carrier. Pertinent of all is the extension of period of responsibility. According to the Rotterdam Rules, 2008 the carrier is liable to exercise due diligence in respect of the seaworthiness of the ship for the complete duration of the voyage by sea.<sup>16</sup> Furthermore, there are no exemptions or defenses available to the carrier under nautical fault provisions which were present in previous regimes. Moreover, the exemption “fire, unless caused by the actual fault or privity of the carrier”<sup>17</sup> available in the Hague Rules, 1924 and Carriage of Goods by Sea Act, 1925 is narrowed down and now includes “fire on the ship”<sup>18</sup> in the Rotterdam Rules, 2008. These changes made to the carrier’s exemptions depict a modern approach to maritime transport. First one reflects a advanced

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<sup>15</sup> The Rotterdam Rules, 2008, art. 62(1).

<sup>16</sup> The Rotterdam Rules, 2008, art. 14.

<sup>17</sup> The Hague Rules, 1924 and COGSA.

<sup>18</sup> The Rotterdam Rules, 2008, art. 17(3)(f).

navigational systems and second one in limiting the fire exemption to the maritime leg of the transport.

#### **5.2.5.1: Limitation amounts on carrier liability**

Under the Hague Rules per package limitation is £100 sterling,<sup>19</sup> similar is the case under Carriage of Goods by Sea Act, 1925. Whereas under the Hague-Visby Rules per package limitation is 666.67 SDRs<sup>20</sup> and per kilogram limitation 2 SDRs,<sup>21</sup> whichever yields the higher amount. Under the Hamburg Rules these limitation were increased by 25% to 835 SDRs per package and 2.5 SDRs per kilogram.<sup>22</sup> Under the Rotterdam Rules there is a slight increase in the carrier liability that is 875 SDRs per package, and 3 SDRs per kilogram.<sup>23</sup>

#### **5.2.5.2: Delivery of Goods**

One of the major obligations of the carrier is to deliver the goods but current regimes including Pakistani law does not peculiarly include this obligation. To avoid the practical

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<sup>19</sup>The Hague Rules, art. 4(5).

<sup>20</sup> S.D.R. stand for Special Drawing Rights which were a creation of the international banking system to resolve the problem of wide fluctuations between one currency and another. The solution was to create a new international reference calculated using an international "basket of currencies" so that the performance of one currency would not distort individual exchange rates. The S.D.R. is well suited to be an international standard, and is gradually replacing the Gold Proincare Franc. The most recent international transports conventions e.g. the Hamburg Convention for the Transport of Goods by Sea, use the S.D.R. as the basis for limitation of liability.

<sup>21</sup>The Hague-Visby Rules, art. 4(5) and CMC, art. 56.

<sup>22</sup> The Hamburg Rules, art. 6(1).

<sup>23</sup> The Rotterdam Rules, art. 49.

problems that may result from absence of these rules, the new Rules contain explicit provisions on delivery.<sup>24</sup>

#### **5.2.6: Obligations of shipper**

Former maritime transport regimes focused particularly on the obligations of the carrier. The Hague Rules, 1924 and Carriage of Goods by Sea Act, 1925 dealt with the obligations of shipper in two cases. Firstly, to make certain that the shipper and its agents and servants are liable for any negligence.<sup>25</sup> Secondly, the shipper is strictly liable for damage or expenses resulting from the shipment of dangerous goods.<sup>26</sup> The Hague-Visby Rules, 1968 and Hamburg Rules, 1978 embody a similar approach.<sup>27</sup> Whereas, the Rotterdam Rules, 2008 contains expressed provisions regarding the obligations of the shipper.<sup>28</sup> The shipper is still subject to strict liability for loss or damage caused as a result of its negligence.<sup>29</sup> Moreover, the liability of shipper is fault-based, that is, loss or damage caused by its failure to provide required information, instructions and documents to the carrier.<sup>30</sup> Under the Rotterdam Rules, 2008 the shipper is required to guarantee the carrier about the accuracy of information which is given for the compilation of the contract

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<sup>24</sup> The Rotterdam Rules, Chapter 9.

<sup>25</sup> The Hague and the Hague-Visby Rules, art. 4(3).

<sup>26</sup> The Hague and the Hague-Visby Rules, art. 4(6).

<sup>27</sup> The Hamburg Rules, arts. 12 and 13.

<sup>28</sup> The Rotterdam Rules, Chapter 7.

<sup>29</sup> The Rotterdam Rules, art. 30 and 32.

<sup>30</sup> The Rotterdam Rules, arts. 29-30.

particulars.<sup>31</sup>The Rotterdam Rules, 2008 embody a logical codification of the obligations of the shipper to the carrier and thus enhanced the legal and commercial certainty.

To mirror the mutual interest of the carrier and the shipper in the effective and secure carriage of goods, the new regime contains a general obligation on both the carrier and the shipper. Under Article 28 both the parties are required to respond to requests from the other to give information and instructions necessary for the proper handling and carriage of the goods. This provision is incorporated to promote the cooperation between the parties. There are no particular sanctions in the rules for a breach of this obligation.

#### **5.2.7: Jurisdiction and Arbitration**

The Hague Rules, 1924 and Carriage of Goods by Sea Act, 1925 does not contains any provisions regarding jurisdiction and arbitration. Under the Rotterdam Rules, 2008 there are separate chapters dealing with the jurisdiction<sup>32</sup> and arbitration.<sup>33</sup> The arbitration provisions are drafted by keeping in view the principles of commercial dispute resolution set out by the instruments of UNCITRAL<sup>34</sup> in the subject area. The object is to maintain the prevailing freedom of arbitration regarding non-liner transportation. Under the Rotterdam

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<sup>31</sup> The Rotterdam Rules, art. 30 and 31.

<sup>32</sup>The Rotterdam Rules, Chapter 14.

<sup>33</sup> The Rotterdam Rules, Chapter 15.

<sup>34</sup> United Nations Commission on International Trade Law



Rules, 2008 the States that explicitly make a declaration that they are bound by the chapters of arbitration and jurisdiction will be bound by them.<sup>35</sup>

### **5.3: Legal implication of Signing and Ratifying Rotterdam Rules, 2008 by Pakistan**

The need to harmonize Pakistani law with the international legal regime is peculiarly necessary because of the geographical significance of her sea ports. Pakistan needs to keep pace with the developed world for international trade to boost her economy. Therefore, Pakistani ports must be developed and run according to the international rules and best practices to attract foreign investors.

#### **5.3.1: Geographical importance of Pakistani ports and Rotterdam Rules,2008**

Geographically, Pakistan is blessed with a long coastal belt, connects her with the world through different land and sea routes.<sup>36</sup> Additionally, three economically significant regions of the world intersect at Pakistan and thus make her strategically important. These regions are Middle East rich with oil reserves, South Asia with emerging economy and Central Asian Republic (CARs) with copious natural resources.<sup>37</sup> Karachi port and port

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<sup>35</sup> The Rotterdam Rules, arts. 74, 78 and 91.

<sup>36</sup>Maqbool Afridi ,Importance of Gwadar & Rotterdam Rules, IMMTA, available at: <https://groups.yahoo.com/neo/groups/matrahshippingcompany/conversations/messages/446> (last accessed 22 July, 2014)

<sup>37</sup>M. Imtiaz shahid, *Advance World Affairs: The essential one-volume guide to Global current affairs*, Advance AP Publishers, Lahore, 2009, pp 375.

Qasim are two major operational international deep-sea ports in Pakistan.<sup>38</sup> Strategically the location of Pakistan makes her one of the leading trade and transportation corridor.<sup>39</sup>

Karachi Port is located on a strategic point along the 600 miles long coastline which extends from the straits of Hormuz to the border with India.<sup>40</sup> This port is situated in a perfect location having well-developed connections with Afghanistan, Central Asia and Western China.<sup>41</sup> Karachi Port Trust (KPT) is considered as a nation's lifeline, it provides a passage for foreign trade.<sup>42</sup> Therefore, KPT casts an enormous impact on the country's economy. Followings are the facilities provided by the KPT; Ship handling, Discharging / Loading of cargo, Storage of cargo, Clearance of cargo, Security / Safety. KPT is managing approximately 650,000 TEUs and 26 million tons of cargo per annum which contains 14 million tons of liquid cargo and 12 million tons dry cargo.<sup>43</sup>

Table 1 below shows an increase in container handling of the Karachi Port and all the other categories of the cargo such as dry general cargo, dry bulk cargo and liquid bulk cargo at the end of financial year (FY) 2013-14. Furthermore, a growth of 6.44% is registered along with 41.350 million tons of cargo was handled by the port, comparatively at the end of FY (2012 – 13) 38.850 million tons of cargo was recorded. An increase can be seen in total dry

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<sup>38</sup> Salman Qureshi, The fast growing megacity Karachi as a frontier of environmental challenges: Urbanization and contemporary urbanism issues, *Journal of Geography and Regional Planning* Vol. 3(11), pp. 306-321, November 2010, available at [http://www.academicjournals.org/article/article1381827200\\_Qureshi.pdf](http://www.academicjournals.org/article/article1381827200_Qureshi.pdf) (last accessed 16 July, 2014).

<sup>39</sup> Board of Investment, Prime Minister's office Government of Pakistan, <http://boi.gov.pk/Home.aspx>

<sup>40</sup> Karachi Port Trust, <http://kpt.gov.pk/pages/default.aspx?id=39> (last accessed 16 July, 2014).

<sup>41</sup> Ibid.

<sup>42</sup> M. Ikram Rabbani, *Pakistan Studies*, p 190, the carvan book house, Lahore 2007 seventh edition

<sup>43</sup> Karachi Port Trust, Available at: <http://kpt.gov.pk/pages/default.aspx?id=39> (last accessed, 24 May, 2014).

cargo with 28.242 million tons as against 26.829 million tons FY (2012-13) with growth rate of 5.27%.<sup>44</sup> Similarly, a total of 13,108 million tons liquid bulk cargo was managed as compared to 12.021 million tons of the last year with growth rate of 9.04%.<sup>45</sup> As far as container handling at Karachi Port is concerned, The port managed 1.591 million TEUs at the end of FY (2013 – 14), as compared to 1.522 million TEUs in last year; consequently a growth rate of 4.55% is recorded.<sup>46</sup> The ship handling is grown by addition of 78 ships at the FY (2013 – 14) making a total of 1674 ships which was 1596 last year.<sup>47</sup>

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.



# KARACHI PORT TRUST

GATEWAY TO PAKISTAN

## CARGO / CONTAINER HANDLING AND SHIPS MOVEMENT AT KARACHI PORT DURING THE PERIOD 2012-13 & 2013-14

TYPE OF CARGO HANDLED	2012 - 13	2013 - 14	%AGE GROWTH	
<b>IMPORTS (Million Tons)</b>				
Dry General Cargo	11,539	12,641	+	9.55
Dry Bulk Cargo	4,839	5,995	+	23.89
<b>Total Dry Cargo</b>	<b>16,378</b>	<b>18,636</b>	<b>+</b>	<b>13.79</b>
Liquid Bulk Cargo	10,322	11,707	+	13.42
<b>TOTAL</b>	<b>26,700</b>	<b>30,343</b>	<b>+</b>	<b>13.27</b>
<b>EXPORTS (Million Tons)</b>				
Dry General Cargo	8,844	8,991	-	2.88
Dry Bulk Cargo	1,607	1,015	-	36.84
<b>Total Dry Cargo</b>	<b>10,451</b>	<b>9,996</b>	<b>-</b>	<b>5.09</b>
Liquid Bulk Cargo	1,899	1,401	-	17.84
<b>TOTAL</b>	<b>12,350</b>	<b>11,397</b>	<b>-</b>	<b>7.73</b>
<b>TOTAL IMPORTS &amp; EXPORTS (Million Tons)</b>				
Dry General Cargo	20,383	21,232	+	4.17
Dry Bulk Cargo	6,446	7,010	+	8.75
<b>Total Dry Cargo</b>	<b>26,829</b>	<b>28,242</b>	<b>+</b>	<b>5.27</b>
Liquid Bulk Cargo	12,021	13,108	+	9.04
<b>GRAND TOTAL</b>	<b>38,850</b>	<b>41,350</b>	<b>+</b>	<b>6.45</b>
<b>CONTAINER HANDLING (TEUs in Million)</b>				
No. of Import	0.789	0.811	+	6.38
No. of Export	0.752	0.780	+	3.88
<b>TOTAL TEUs</b>	<b>1.541</b>	<b>1.591</b>	<b>+</b>	<b>3.24</b>
<b>SHIP MOVEMENT (in Nos.)</b>				
Container Ships	785	817	+	4.08
Bulk Cargo Ships	199	172	-	13.13
Gen. Cargo Ships	169	223	+	21.18
Oil Tankers	424	455	+	7.55
<b>TOTAL</b>	<b>1,577</b>	<b>1,667</b>	<b>+</b>	<b>5.71</b>

Table 1: Cargo/container handling and ship movement at Karachi Port during the year 2012-13 & 2013-2014<sup>48</sup>

<sup>48</sup> Karachi Port Trust, Available at: <http://kpt.gov.pk/pages/Default.aspx?id=32#page-heading> last accessed, 24 May, 2014).

Port Qasim Authority (PQA) is the second deep sea port.<sup>49</sup> It is located in Indus delta region at an interval of 28 nautical miles in the south-east of Karachi.<sup>50</sup> The port possesses a long channel of 45 kilometers and is dredged up to 12 meters.<sup>51</sup> The port is handling more than 40% of seaborne trade needs of Pakistan which is approximately 25 million tons per annum.<sup>52</sup> Ministry of Ports Shipping, Government of Pakistan is the administrative authority of Port Qasim.<sup>53</sup> PQA is a service oriented organization, which provide shore based services such as; cargo handling equipment, berths/terminals, storage and warehouses.<sup>54</sup>

However, these ports are not spacious or developed enough to keep pace with the rapid growth in demand.<sup>55</sup> Karachi Port has physical limitations whereas Port Qasims speed of development is hindered by its up-stream location which results in a long turnaround time for the ships.<sup>56</sup> Therefore, another project is initiated by government of Pakistan that is the construction of Gwadar port.<sup>57</sup> Gwadar is a small town situated in Baluchistan on the shores of the Arabian Sea with approximately 300 km coastal line.<sup>58</sup> The vision of Gwadar Port prescribes by GPA is as follows;

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<sup>49</sup> Port Qasim Authority, Available at: <http://www.pqa.gov.pk/index.php> (last accessed, 24 May, 2014).

<sup>50</sup> Port Qasim Authority, Introduction, Available at: <http://www.pqa.gov.pk/introduction.php> (last accessed, 24 May, 2014).

<sup>51</sup> Ammad Hassan, Pakistan's Gwadar Port – Prospects of Economic Revival, Monterey, California. Naval Postgraduate School, June 2005-06. Available at: <http://hdl.handle.net/10945/2138> ( Accessed August 04, 2014).

<sup>52</sup> Port Qasim Authority.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Gwadar Port Authority, Available at: <http://www.gwadarport.gov.pk/about%20us.html> (last accessed, 24 May, 2014).

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

“The vision of GPA for Gwadar Port is to be a national gateway port for Pakistan and the region and a world-class maritime hub. Gwadar Port is to complement Karachi Port and Port Qasim in order to satisfy the country’s trading and shipping needs and to stimulate economic growth in the western and northern parts of Pakistan, utilizing the available resources of the country and also providing an outlet for land locked Central Asian Countries and Afghanistan through transit trade and offering transshipment facilities.”<sup>59</sup>

The development of Gwadar is expected to bring in future enormous economic gains for Pakistan. Gwadar is potentially capable to act as a suitable transit and transshipment hub. Followings are some of the economic benefits of Gwadar port; it will capitalize the opportunities for trade with landlocked states such as Central Asian Republics(CARs) and Afghanistan; it will promote trade and transport with Western China; trans-shipment of containerized cargo; initiation of shipping industries, oil storage, refinery and petrochemicals, export processing industrial zones.<sup>60</sup> Gwadar Port will also serve as a gateway of China – Pakistan Economic Corridor (CPEC). The expected trade forecast of Gwadar Port in year 2015 with Afghanistan, CARs and Western China will be as follows; Dry cargo 5.77 million tones, liquid cargo 18.77 million tones, container 295 (1000 TEUs) and Transshipment 300 (1000 TEUs).<sup>61</sup>

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<sup>59</sup> Gwadar Port Authority, Available at: <http://www.gwadarport.gov.pk/vision.html> ( last accessed, 24 May, 2014).

<sup>60</sup> Hasan Yaser Malik , Strategic Importance of Gwadar Port, Journal of Political Studies, Vol. 19, Issue - 2, 2012, 57:69, Available at: <http://pu.edu.pk/images/journal/pols/pdf-files/gwadar%20article-winter2012.pdf> ( last accessed, 24 May, 2014).

<sup>61</sup> Afridi ,Importance of Gwadar & Rotterdam Rules, IMMTA.

#### **5.4: Conclusion**

The facts and figures stated above shows that Pakistani ports have the potential to attract investors and handle all kinds of trade and business at the national as well as international level. To cater this Rotterdam Rules, 2008 provides the rights and obligation of all parties involved. If Pakistan adopts the Rotterdam Rules, 2008 it will increase the importance of her ports especially of newly under construction Gwadar port and therefore attracts more trade and businesses. Gwadar is in its initial stages of development as an international Deep Sea Port. Now at this level if Pakistan develops laws by applying the Rotterdam Rules, 2008 with caution and candour, then she will be able to keep celerity with the international standard. It is necessary that Gwadar must run according to the international standards to attract international trade and commerce. This will help generate finances in trillions which would be helpful for the prosperity of Pakistan for decades to come.

## **CHAPTER VI**

### **CONCLUSION**

Concisely put, the study implies that the maritime regime of Pakistan does not cater the needs of modern international trade and commerce. The deficiencies in the law are so apparent keeping in mind the developments taken place in maritime transport. Since independence there has been no legislation to reform and bring sea laws in line to serve the needs of a modern Pakistan. Pakistani provisions are not comprehensive and do not take in to consideration the multimodal aspects of transport, containerization, bill of lading frauds, arbitration and e-commerce. In addition, the geographical importance of Pakistani ports demands for a sound legal system. The facts show that all the ports of Pakistan have the potential to attract investors and handle all kinds of trade and business at the national as well as international level. Pakistan needs an effective and detailed piece of legislation to ensure legal certainty to the stakeholders. Therefore, if Pakistan intends to revise the Carriage of Goods by Sea Act, 1925 after so many years, then the golden opportunity should not be missed. It should be rather utilised for the betterment of Pakistan's shipping industry, importers and exporters and for all other stakeholders. In this regard, the ratification of the United Nations Convention on Contracts for the International Carriage of Goods – Wholly or Partly by Sea could be deemed as a possible panacea to upgrade Pakistani legislations. The adoption is necessary to bring domestic law of Pakistan align with the international regimes. These rules provide effective and efficacious provisions for the rights and obligation of all



the parties involved. If Pakistan adopts these rules, it will increase the importance of her ports especially of newly under construction Gwadar port and therefore attracts more trade and businesses. Gwadar is in its initial stages of development as an international Deep Sea Port. Now at this level if Pakistan develops laws by applying the Rotterdam Rules, 2008 with caution and candour, then she will be able to keep celerity with the international standard. It is necessary that Gwadar and all other ports must run according to the international standards to attract foreign investment. This will help generate finances in trillions which would be helpful for the prosperity of Pakistan for decades to come. To revamp the maritime transport law of Pakistan following aspects should be addressed in any Carriage of goods by sea legislation.

Under Carriage of Goods by Sea Act, 1925 the period commences from the time when goods are loaded in the ship till they discharged. The approach is tackle to tackle, where carriers take the custody of goods at their container stations before the ship's tackle and delivery is made from the ship's tackle at consignee's premises or any other designated place. The new regime must take in to account the modern needs of multimodal carriage of door to door transport and should govern the entire period of carriage described in the documents. The provision of the Rotterdam Rules, 2008 related to door to door delivery and multimodal transport as discusses in previous chapters is very significant in this regard. Furthermore, there are no provisions regarding the containerization in current maritime transport law of Pakistan. The significance of container transport is already discussed in preceding chapters. It is recommended that as the Rotterdam Rules, 2008 provides a plausible number of

provisions regarding containerization therefore it must be taken in to consideration while reforming and modernizing the law.

Currently, Carriage of Goods by Sea Act, 1925 is applicable to contracts of carriage covered by bills of lading and other similar documents of title. Thus, the ambit of application of this law is very limited. The law does not address the needs of modern world trade and commerce. It is suggested that the new regime must have a wider ambit and should cover negotiable as well as non-negotiable documents such as sea way bills, charter party, ship delivery orders and sea consignment notes etc. The rules must also give legal cover to electronic documents which are now extensively been used in all over the world. Therefore, relevant provisions must be added in Carriage of Goods by Sea, bill of lading Act, 1856 and Negotiable Instruments Act, 1881. The Rotterdam rules, 2008 provides an entire chapter related to the electronic commerce.<sup>1</sup>

As one of the major obligations of the carrier is to deliver the goods but Pakistani law does not peculiarly include this obligation. Hence, most of the cases reported in Pakistan are due to delay in delivery of goods. Delay in delivery means if goods are not delivered within the specified time period mentioned in the contract. If no time period is mentioned then within a reasonable time. Due to these unwarranted delays cargo owners often suffers economic loss. Little recourse is left for these cargo owners under current maritime regime. Present law is also silent about the delay caused due to deviation no provisions are there for the protection

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<sup>1</sup> The Rotterdam Rules, 2008, Chapter 3.

of the buyer or consignee as they are the parties who suffers loss due to delay in delivery. Therefore, it is suggested that provisions must be added in the new regime whereby liability of carrier should be extended. It should include the economic loss incurred by cargo owner due to delay in delivery by carrier. The Rotterdam Rules, 2008 contain explicit provisions on delivery.<sup>2</sup>

Claim against the carrier can be filed within one year according to Carriage of Goods by Sea Act, 1925. This time period is very short therefore it is recommended that the time period must be extended to facilitate the claimant or aggrieved parties. Again the Rotterdam Rules, 2008 provides the solution where the time period to file a suit against carrier is two years<sup>3</sup>, which seems to be quite appropriate.

Carriage of Goods by Sea is a practice beyond borders, worldwide which requires a set of efficient law addressing the new global challenges of the twenty first century. Fraud in bill of lading has proved to be one of such challenges faced by all nations. United Nations played its part and signified three important conventions particular for bill of lading but failed to address the new problem. For this particular issue two recourses are available. Firstly, new electronic paperless systems introduced in the field of commerce are designed to cope up with different kinds of fraud. The old traditional frauds of sellers defrauding the buyer will reduce with electronic documents giving greater credibility than paper documents. Secondly,

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<sup>2</sup> The Rotterdam Rules, Chapter 9.

<sup>3</sup> The Rotterdam Rules, 2008, art. 62(1).

Pakistan should become a member of The International Maritime Bureau (IMB) that is a specialized branch of the International Chamber of Commerce to fight against all kinds of maritime crimes and malpractices.

It is also submitted that there must be appropriate provisions for arbitration, dispute resolution and jurisdiction. As Carriage of Goods by Sea, 1925 has no provisions related to arbitration and dispute resolution. In addition, our Arbitration Act, 1940 is also obsolete and need reformation. Under the Rotterdam Rules, 2008 there are separate chapters dealing with the jurisdiction<sup>4</sup> and arbitration.<sup>5</sup> This can be taken in to consideration while drafting new model law for transport of goods by sea.

According to Article 4 Rule 2 of the Carriage of Goods by Sea Act, 1925<sup>6</sup> carrier and the ship can easily escape from liability by claiming defense of navigational fault exception. However, as science and technology has progressed specially in the field of communication technology, vessel navigation and safety provides the carrier with a higher degree of control of the vessel. Therefore, it is recommended that this exception must be removed from the current prevailing law.

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<sup>4</sup>The Rotterdam Rules, Chapter 14.

<sup>5</sup>The Rotterdam Rules, Chapter 15.

<sup>6</sup>“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.

The primary focus is on the obligations of the carrier and less importance is given to the obligations of the shipper under the Carriage of Goods by Sea Act, 1925. Whereas, the Rotterdam Rules, 2008 contains expressed provisions regarding the obligations of the shipper.<sup>7</sup> The legislator must also keep this important aspect in mind while drafting a law.

Recommendations to all stake holders and to the Government of Pakistan are also given for the submission of the Rotterdam Rules, 2008 in National Assembly and Senate of Pakistan. Furthermore, study suggests that discussions must be carried out regarding the Rules and a resolution must be passed for adoption of rules because such rules meet with the modern and electronic global maritime requirements. It is also recommended that a further research concerning the Rotterdam Rules, 2008 must be carried out. As these Rules cannot become a part of domestic law with the reservations of stakeholders.

Bearing in mind the lack of specialized literature with respect to shipping law in Pakistan, this study propounds that there should be further research and debate on this topic. This is necessary as to prepare practitioners and academics well versed with the domestic and international maritime regimes.

Lastly, it is submitted that only relevant provisions of the Rotterdam Rules, 2008 must be adopted. Those provisions which not only protects the interest of Pakistan but also suits with the practical aspects of the trade and commerce. For that emphasis should be given to the

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<sup>7</sup> The Rotterdam Rules, Chapter 7.

Articles covering the multimodal transport, containerization, arbitration, electronic commerce and put reservations on other Articles.

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