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The Carrier's Obligation of Delivery in Maritime Transport Contracts: A Comparative Legal Analysis under International Conventions and Sudanese and Saudi Maritime Laws

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ABSTRACT

This study examines the carrier's obligation to deliver goods in maritime transport contracts, as it constitutes the most crucial contractual duty and the basis for the contract's termination. Delivery serves as the pivotal point for determining the carrier's liability and exoneration. The research analyzes this issue in light of international conventions (Brussels 1924, Hamburg 1978, Rotterdam 2008) and national legislation (Sudanese Maritime Transport Act 2010, Saudi Commercial Maritime Law 1440 AH), supported by relevant judicial rulings. The study reveals discrepancies in the definition of maritime transport contracts between international conventions and national laws, as well as differences in the nature of the carrier's obligation—whether it constitutes an obligation of diligence or an obligation to achieve a result. Rotterdam Rules expand the scope of liability to include multimodal transport and introduce electronic records as an alternative to traditional bills of lading, whereas national laws remain limited to conventional maritime transport, with insufficient provisions for multimodal transport. Sudanese and Saudi courts have faced recurrent disputes regarding the validity and proof of delivery, highlighting the need for clearer legal provisions. The research concludes with recommendations to unify the definition of maritime transport contracts in accordance with modern conventions, incorporate explicit provisions for multimodal transport into national legislation, adopt modern proof-of-delivery methods such as electronic records, expand carrier liability to cover the entire possession period from receipt to delivery, and enhance the integration between theoretical texts and judicial practice through interpretive regulations and practical guidelines. It also encourages countries to accede to or adopt the Rotterdam Rules to ensure greater alignment with international legal frameworks.

Keywords: Delivery of goods; Carrier; Shipper; Rotterdam Rules; Hamburg Rules; Saudi Commercial Maritime Act; Sudanese Maritime Transport Act.

INTRODUCTION

The obligation of delivery is considered one of the obligations incumbent upon the carrier under the contract of carriage of goods by sea, and indeed the most important of them, since its performance discharges the carrier from the liability that may arise in the event of non-performance. Moreover, it is the final obligation by virtue of which the contract of carriage by sea is extinguished if it is performed as agreed. In addition to the foregoing reasons that demonstrate the significance of delivery, maritime courts daily witness numerous disputes in which delivery constitutes the common denominator, as it raises several issues relating to its definition, the persons involved, the place and time of its procedures, its instruments, and its types. Accordingly, this study addresses, in

some detail, the legal delivery of goods as one of the carrier's obligations, with the aim of dispelling some of the ambiguity surrounding it.

The research has been divided into several sections: the definition of the contract of carriage of goods by sea and its parties; the obligations of the shipper and the carrier; and then a detailed examination of the carrier's obligation to deliver the goods. The subject has been examined in light of the international conventions namely the Brussels Convention of 1924, the Hamburg Rules of 1978, and the Rotterdam Rules of 2008 as well as national legislation, including the Sudanese Maritime Transport Act of 2010 and the Saudi Commercial Maritime Law of 1440 AH, together with relevant judicial decisions. The study concludes with a number of findings and recommendations.

Significance of the Study

The importance of this study stems from the influential role of maritime transport in international trade, as it represents the means of transporting more than 80% of the volume of global trade, thereby exerting a direct impact on the global economy. What is novel in this study is its focus on the delivery of goods under the contract of carriage by sea, which represents the final and most important obligation of the carrier. This obligation is examined in accordance with a number of international conventions and national laws, while also taking into account the practical dimension reflected in judicial decisions issued by various courts. The importance of linking theoretical study with practical reality has been emphasized in the literature, as noted by Sosedová et al. (2024): "The sustainability of international transport remains a critical topic of concern in both theory and practice. Ideally, scientific literature should align with practical needs, but such concurrence is not always present."

Maritime transport plays a pivotal role in global supply chains, forming a fundamental pillar for achieving economic efficiency and operational reliability. Improving logistics operations, enhancing economic efficiency, and complying with environmental sustainability are essential elements for ensuring the continuity of maritime transport as a principal instrument of international trade (Kee-hung Lai and Dong Yang, 2022).

Research Problem

How have international conventions and national laws (Sudanese law and Saudi law) regulated the maritime carrier's obligation to deliver goods, and what are the aspects of divergence and deficiency that raise practical and judicial problems in this field?

What is the nature of the maritime carrier's obligation to deliver goods: is it an obligation of due diligence or an obligation to achieve a result?

How have the conventions and laws defined the scope of the carrier's liability in terms of persons, place, time, and delivery mechanisms?

What are the legal consequences of the carrier's failure to deliver the goods or of defects in their particulars or delivery procedures?

METHODOLOGY

This study adopts a descriptive and analytical legal methodology, examining international conventions and a number of relevant national laws that regulate the legal delivery of goods under contracts of carriage by sea. Necessary comparisons are conducted, and legal conclusions are drawn in light of judicial rulings.

The Contract of Carriage of Goods by Sea

Definition of the Contract of Carriage of Goods by Sea

The contract of carriage of goods by sea, like other contracts, is concluded through offer and acceptance, with the availability of the general substantive elements of a contract: consent, capacity, subject matter, and cause, and is binding upon its parties. It is defined as "a contract under which the carrier undertakes to transport goods or persons by sea in return for freight or without freight" (Sudanese Maritime Transport Act 2010, art. **5**). It is also defined as "a contract whereby the carrier undertakes to transport goods or persons by sea in return for freight" **(**Saudi Commercial Maritime Law 1440H, art1).

The United Nations Convention on the Carriage of Goods by Sea defines the contract of carriage by sea as "a contract whereby the carrier undertakes to carry goods by sea from one port to another in return for freight, and includes any contract in which carriage by sea forms a substantial part of the entire carriage" (Hamburg Rules, 1978, art. 6(1)). The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea defines it as "a contract in which a carrier undertakes to carry goods from one place to another against payment of freight, and which provides for carriage by sea and may provide for carriage by other modes of transport in addition to carriage by sea" (Rotterdam Rules 2008, art 1(1)).

It has also been defined in doctrine as "a contract under which a person known as the maritime carrier undertakes to change the location of goods by sea in return for freight" (Dowidar, 2004, p. 238).From the foregoing, it is apparent that Sudanese and Saudi law have adopted a simple definition of the contract of carriage by sea, including the carriage of persons alongside goods, while Sudanese law further provides that the contract is maritime even if it is without consideration, which has broad implications. Neither the Sudanese nor the Saudi system addresses other modes of transport that may form part of the carriage process. This contrasts with the Hamburg Rules, which require the maritime leg to be the principal part of the carriage where multiple modes are involved, and with the Rotterdam Rules, which require that the contract provide for carriage by sea while permitting carriage by other modes without specifying the proportion of the maritime leg, thereby representing an expansion of the definition of the contract of carriage by sea compared to other conventions and laws.

Obligations of the Parties to the Contract of Carriage by Sea

The parties to the contract of carriage by sea are the shipper and the carrier. The contract imposes reciprocal obligations upon both parties, as follows.

Obligations of the Shipper

For the purposes of the contract of carriage by sea, the shipper has been defined in various formulations, though with convergent meaning, across all conventions and laws governing maritime carriage. The shipper is defined as "the person who enters into a contract of carriage with the carrier" (Rotterdam Rules 2008, art 1(8)). The Hamburg Rules adopt a broader definition, describing the shipper as "any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name the goods have actually been delivered to the carrier in relation to the contract of carriage by sea" (Hamburg Rules, 1978, art. 3(1)). Under Saudi law, the shipper is defined as "the person who has possession of the goods to be carried and contracts, personally or through an agent, with the carrier or freight contractor to transport them from one place to another in return for freight" (Saudi Commercial Maritime Law 1440H, art 1(15)).

The shipper is subject to a number of obligations stipulated in the Rotterdam Rules 2008, the Hamburg Rules 1978, the Sudanese Maritime Transport Act 2010, and the Saudi Commercial Maritime Law, as follows:

Delivery of the Goods to the Carrier

Once a valid contract of carriage by sea has been concluded, the shipper is required to deliver the goods to be carried to the carrier so as to enable the latter to transport them from the port of loading to the port of discharge (Sudanese Maritime Transport Act 2010, art. 108). The shipper must deliver the goods ready for carriage, unless otherwise agreed in the contract of carriage. In all cases, the shipper must deliver the goods in a condition that enables them to withstand the contemplated carriage, including their loading, handling, stowage, lashing, securing, and unloading, in such a manner as not to cause harm to persons or property. The shipper must also properly and carefully perform any duty incumbent upon him under any agreement concluded between the parties. Where the shipper undertakes to pack the goods into a container or load them onto a vehicle, he must properly and carefully stow, lash, and secure the contents in or on the container or vehicle so as not to cause harm to persons or property (Rotterdam Rules 2008, art 27; Saudi Commercial Maritime Law 1440H, art 200).

Provision of Accurate Information Concerning the Goods

This obligation is inseparable from the obligation to deliver the goods to the carrier and accompanies it at all times. Due to its paramount importance, all legislative instruments have imposed strict requirements in this regard. The shipper must provide accurate particulars concerning the description and marks of the goods, as well as their weight, quantity, and number. Legislation permits the carrier to make reservations regarding the information provided and holds the shipper liable for its accuracy vis-à-vis the carrier, obliging him to compensate for any expenses arising from inaccurate particulars (Saudi Commercial Maritime Law 1440H, art 183).The shipper must furnish the carrier, in a timely manner, with information, instructions, and documents relating to the goods that are not reasonably available to the carrier from another source and that are necessary for the proper handling and carriage of the goods, including any precautions to be taken by the carrier or performing party (Rotterdam Rules 2008, art 29&36).

Payment of Freight

Freight is the monetary amount that the shipper or the consignee undertakes to pay to the carrier in consideration of the latter's obligation to carry the agreed goods by sea (Al-Baroudi, 1975, p. 159). The parties to the contract are free to determine the amount of freight, which may be calculated based on weight, volume, number of units, or value, depending on the nature of the goods carried (Khalid, 1996, p. 60).

As a general rule, the shipper is obliged to pay the full freight to the carrier once the carrier has duly performed the agreed carriage and delivered the goods complete and sound within the stipulated time. The carrier is entitled to claim any unpaid freight from either the shipper or the consignee. Where the freight has not been agreed upon, it shall be assessed according to the customary freight for similar carriage, either by usage or by analogy.

Maritime legislations have granted the carrier specific guarantees to secure the payment of freight, most notably a maritime lien over the price of the goods and the right to seek judicial authorization to sell the goods in order to recover the freight due (Sudanese Maritime Transport Act 2010, art. 113).Accordingly, if the bill of lading does not indicate that the freight, in whole or in part, is payable upon arrival, this shall constitute a presumption that the carrier has already received the freight in full. However, this is a rebuttable presumption, capable of being challenged by proof to the contrary as against third parties acting in good faith. In this context, the consignee is deemed a third party unless he is also the shipper.Where the contract particulars include the statement "freight prepaid" or any similar wording, the carrier may not invoke, as against the holder of the transport document or the consignee, the argument that the freight has not been paid. This rule shall not apply where the holder or the consignee is also the shipper (Article 142 of the Rotterdam Rules 2008). Likewise, this provision shall not apply where the holder or the consignee is the shipper himself (Rotterdam Rules 2008, art 41).

Obligations of the Carrier

The carrier is defined as the person who undertakes the carriage by agreement, either personally or through a representative, with the shipper under a contract of carriage in consideration of freight, whether the carrier is the owner of the vessel, its operator, or its charterer (Sudanese Maritime Transport Act 2010, art. 1(13)). The Sudanese Maritime Transport Act defines the carrier as the shipowner (ship operator) who has contracted with the shipper to carry goods for consideration or without consideration. The Hamburg Rules, however, introduced the concept of the *actual carrier*, defining it as any person to whom the performance of the carriage of goods, or part thereof, has been entrusted by the carrier, including any other person to whom such performance has been entrusted. The Rules also define the carrier, in general terms, as any person who enters into a contract of carriage with a shipper for the carriage of goods by sea.

This distinction under the Hamburg Rules between the contractual carrier and the actual carrier is based on the criterion of contract performance, whereas the Rotterdam Rules suffice with defining the carrier as the person who enters into the contract of carriage with the shipper. Each definition carries significant legal implications with regard to the scope of liability and the determination thereof. All maritime legislations have sought to regulate the legal position of the maritime carrier through mandatory provisions by imposing specific obligations upon him and holding him liable for any breach thereof. These obligations include the following:

Obligation to Make the Vessel Seaworthy

Seaworthiness means that the vessel must possess the necessary strength, stability, and safety, as well as all requirements enabling it to navigate the sea and carry the goods safely to the agreed destination under normal conditions, taking into account the risks that may arise during the voyage. Seaworthiness is not an abstract concept but a relative one, assessed according to the circumstances of each individual case, with due regard to the nature of the goods carried and the type of voyage undertaken (Dowidar, 1997, p. 244).

The carrier's obligation to make the vessel seaworthy is classified as an **obligation of due diligence**, as stipulated in the Brussels Convention of 1924 (Hague Rules). This means that the carrier is required to exercise due diligence only before and at the commencement of the voyage and is not liable for unseaworthiness arising during the voyage unless it is attributable to circumstances existing prior to or at the commencement thereof (Brussels Convention 1924, art 3). The burden of proving the exercise of due diligence rests upon the maritime carrier.Seaworthiness generally encompasses two aspects:

1. ***Nautical Seaworthiness:*** This refers to the vessel's capability and readiness to face maritime navigational risks, including the efficiency of machinery, navigation, steering, and communication equipment, as well as the competence and experience of the crew (Rotterdam Rules 2008, art 14(a)(b); Saudi Commercial Maritime Law 1440H, art 196).

2. ***Commercial Seaworthiness:*** This entails the availability of sufficient strength and stability enabling the vessel to perform the voyage properly and its suitability to receive and carry the goods, including the preparation of holds, chambers, refrigeration, and sanitation (Rotterdam Rules 2008, art 14(C).

Obligation to Load the Goods:

The obligation to load the goods constitutes one of the carrier's essential obligations. It is a physical operation involving the lifting of the goods from the quay at the port of loading onto the vessel. All maritime legislations have expressly recognized this obligation and classified it as an obligation of due diligence under the Hague Rules 1924, as well as under the Sudanese Maritime Transport Act 2010. Loading is typically carried out by a specialized

contractor known as the stevedore, who employs skilled labor and specialized equipment such as barges, pipelines, and cranes (Al-Baroudi, 1975, p. 127).

Obligation to Issue a Bill of Lading:

The bill of lading is a receipt issued by the carrier or the master acknowledging receipt of the goods and their loading on board the vessel. It therefore serves as evidence of both the receipt of the goods and the conclusion of the contract of carriage. This definition is consistently adopted by the Hamburg Rules 1978, the Sudanese Maritime Transport Act 2010, and the Saudi Commercial Maritime Law 1440 AH, and has also been affirmed by Sudanese judicial practice.

In the case of *Owners of the Vessel Hanjwa Express v Danfoodio Charitable Organization*, the Sudanese courts established that:

"The bill of lading constitutes proof of the loading of the goods and includes a statement of their quantity and condition at the time of loading. It operates as a receipt issued by the carrier confirming the loading of the goods described therein."Under the Rotterdam Rules 2008, the bill of lading is referred to as a *transport document*. The Rules further introduced the concept of the **electronic transport record** under Article 18(1), defining it as information generated, stored, or communicated by electronic means, including electronic data interchange or similar methods.

Unlike the Hamburg Rules and national legislations, the Rotterdam Rules expressly allow the bill of lading to be issued in electronic form, granting the electronic transport record the same legal functions as the traditional paper bill of lading. These functions include evidencing receipt of the goods, proving the conclusion of the contract of carriage, and serving as a document of title facilitating the transfer of the goods.

However, the effectiveness of the electronic transport record is subject to specific technical safeguards, including ensuring its authenticity as being genuinely issued by the carrier, the integrity of its data against alteration or manipulation, and its capability of being transferred from one party to another.

Obligation to Stow the Goods

Stowage refers to the proper arrangement and securing of the goods within the vessel's holds in a manner that preserves them from loss or damage. The Hague Rules 1924 classify stowage as an obligation of due diligence. Stowage is a purely physical operation upon which the stability and balance of the vessel depend; therefore, it requires precision and care in its execution (Rotterdam Rules 2008, art 13). With regard to the carrier's obligation to stow the goods upon receiving them on board the vessel, the Hamburg Rules addressed this issue under Article 4(1), imposing general liability upon the carrier for the goods from the time of receipt until delivery, including their safe stowage and storage. This means that the carrier is liable for any loss of or damage to the goods unless he proves that he took all reasonable measures to avoid the occurrence of damage, including proper stowage. Consequently, the carrier's liability during the stowage stage is considered **strict** under the Hamburg Rules.

Turning to the Rotterdam Rules, stowage is governed by Article 13(1), which obliges the carrier to exercise due diligence in stowing, storing, and carrying the goods from the time of receipt until delivery. The scope of liability is further clarified under Article 14, which defines the carrier's responsibility for the goods while they are in his custody, including stowage on board the vessel or on any other means of transport during multimodal carriage. Moreover, Article 25 provides that the transport document is negotiable, thereby encompassing obligations related to stowage and storage, which must be evidenced in the electronic transport record for multimodal transport operations.It is thus evident that the scope of the carrier's liability under the Rotterdam Rules is broader than under the Hamburg Rules.

Under Sudanese maritime law, the carrier's obligation to stow the goods is regulated by Article 152, which requires the carrier to stow the goods in a safe and seaworthy manner, and Article 153, which holds the carrier liable for any loss or damage arising from improper stowage. Similarly, under the Saudi Commercial Maritime Law, Article 235 obliges the carrier to stow the goods safely and guarantees the seaworthiness of the vessel, while holding him liable for any loss or damage caused by defective stowage.

Obligation to Carry the Goods

The carrier's obligation to carry the goods constitutes one of the most fundamental obligations arising from the contract of carriage by sea. It is the core obligation upon which the contract is based and represents a legal undertaking whereby the carrier assumes responsibility for receiving the goods from the shipper, carrying them by sea, and delivering them to the consignee at the agreed port, in accordance with the terms of the contract and the applicable international conventions.

This obligation is recognized under the Hague Rules 1924 and is more comprehensively addressed under the Rotterdam Rules, which provide that, subject to the provisions of the Convention and the contract of carriage, the

carrier shall carry the goods to the place of destination and deliver them to the consignee (Rotterdam Rules 2008, art 11).

Under the Hamburg Rules, Article 4(1) stipulates that the carrier is responsible for the goods from the time of receipt until delivery, which necessarily includes the carriage stage. The nature of the carrier's obligation in this respect is classified as an **obligation of due diligence rather than an obligation of result**, meaning that the carrier is required to exercise reasonable care and professional prudence in carrying the goods safely, without guaranteeing their arrival in all circumstances. Nevertheless, modern maritime conventions—particularly the Hague–Visby Rules—render the carrier liable for loss or damage unless he proves the existence of an exempting cause.It should be noted that the Hamburg Rules have tightened the carrier's liability by placing the burden of proof upon him in the event of any damage to the goods and by extending the period of liability to cover the entire duration from receipt to delivery. The Rotterdam Rules further expanded the carrier's obligation by covering carriage from the moment of receipt until delivery, whether the carriage is performed solely by sea or through multimodal transport. The Rotterdam Rules expressly adopt the concept of **multimodal transport**, allowing part of the carriage to be performed by sea and part by other modes of transport. Articles 12 to 14 regulate this matter, and Article 13(1) obliges the carrier to exercise due diligence in loading, stowing, carrying, and discharging the goods. This obligation gives rise to carrier liability in cases of loss, damage, or delay unless the carrier proves that the damage could not have been avoided despite the exercise of due diligence. Accordingly, the Rotterdam Rules extend the carrier's responsibility to cover **door-to-door carriage**, rather than limiting it to the maritime leg alone, thereby encompassing various modes of transport. Under Sudanese maritime law, Articles 152 and 153 provide that the carrier is obliged to carry and stow the goods in a safe and seaworthy manner and is liable for any loss or damage occurring during carriage unless he proves that such loss or damage was caused by force majeure or the fault of the shipper. Similarly, under Saudi maritime law, Article 235 obliges the carrier to carry and stow the goods safely, while Article 236 holds him liable for any loss or damage occurring during carriage unless it is attributable to the fault of the shipper or the nature of the goods. Article 237 further defines the scope of the carrier's liability and allows him to rely on defenses extending beyond his own sphere of responsibility to include the shipper's liability for damage to the goods.

Obligation to Deliver the Goods

Meaning of Delivery:

Delivery is defined as a legal act whereby the goods are placed at the disposal of the consignee, the shipper himself, or any other person entitled to receive the goods at the port of destination. Delivery constitutes the **final obligation of the carrier**, and upon its proper performance, the contract of carriage by sea is terminated.

Delivery is extensively regulated under the Hamburg Rules, the Rotterdam Rules, the Hague Rules, as well as Sudanese and Saudi laws (Articles 5, 12, 3(2), 183, and 233, respectively). The obligation to deliver differs from other obligations imposed upon the maritime carrier, such as loading or discharging, which are purely physical operations. Loading involves transferring the goods from the quay at the port of loading onto the vessel, whereas discharging involves removing the goods from the vessel onto the quay at the port of discharge.

Delivery also differs from stowage and stuffing operations, which are technical processes related to the vessel's stability and the securing of the goods. Delivery, by contrast, is characterized as a **legal event** marking the termination of the contract of carriage (Dowidar, 2004, p. 261). Consequently, the carrier's liability for loss of or damage to the goods remains in force until the goods are duly delivered in full and in sound condition to the consignee at the port of destination.

Judicial precedents have affirmed this understanding of delivery. In the case decided by the Red Sea Province Court (Civil Circuit) in *Qamar Al-Dawla Mirghani Al-Tahir v Owners of the Vessel Sharshing* (Khalifa, 2003, p. 399), the court held that: "Delivery is a legal act that results in the termination of the contract of carriage by sea."

Accordingly, delivery may be characterized as a legal act with specific persons, time, place, and procedures, the completion of which gives rise to its legal effects. These aspects are examined below:

Persons Entitled to Delivery

An examination of the legal texts governing delivery reveals that the Rotterdam Rules adopt a broader approach in identifying the persons entitled to receive the goods. They provide that the carrier is obliged to deliver the goods to the consignee or any person legally authorized to act on his behalf, and that delivery terminates the carrier's liability (Rotterdam Rules 2008). Unlike earlier conventions, which confined delivery to the consignee alone, the Rotterdam Rules recognize several persons involved in the delivery process, including:

The Carrier: The carrier is the person who concludes the contract of carriage with the shipper and is obliged to deliver the goods subject to the contract to the consignee or his authorized representative at the port of destination. During the voyage, the carrier is represented by the master, who must possess the required navigational, administrative, technical, and legal qualifications and is entrusted with the command of the vessel.

Article 111 of the Sudanese Maritime Transport Act provides that: "The master shall, at the port of destination, deliver the goods to the holder of the bill of lading or to any other person entitled to receive them, after payment of the freight and charges due on the goods."In *The Berge Sisar* [2001] 2 Lloyd's Rep 602, the English Court of Appeal held that: "The carrier's duty of care extends to ensuring that delivery is made to the correct party, and any deviation amounts to a breach of contract."

The Shipping Agent: Practical reality demonstrates the pivotal role of shipping agents in providing navigational and commercial services. The shipping agent is considered one of the persons involved in the delivery of goods to the consignee or his agent, acting as an agent of the vessel. This has been affirmed by judicial precedents, including the case of *African Navigation Company v Vessel Kiri Argus* (Khalifa, Important Cases, p. 362), which established that:"The shipping agency is the maritime establishment that acts as an agent for the vessel berthed at the port or stations and provides the necessary services to the vessel in return for remuneration."

In *Trans Inter Company v Gum Arabic Company* (Khalifa, Important Cases, p. 309), the court held that: "The vessel's agent is liable towards the shipper for damage to the goods if such damage arises from his personal fault or that of his subordinates, such as delay in delivery, failure to preserve the goods after receipt, or defective delivery without the consignee being in possession of the bill of lading."

The Consignee or His Agent: Article 43 of the Rotterdam Rules 2008 imposes a fundamental obligation upon the consignee to accept delivery of the goods at the agreed place and time of delivery. Failure to perform this obligation constitutes a breach of the consignee's duties under the contract of carriage.

In accordance with the international conventions and national laws previously referred to, the consignee is the primary person entitled to take delivery of the goods, and this entitlement varies depending on the nature of the bill of lading. Where the bill of lading is a straight (named) bill, the consignee is the person whose name appears therein; where the bill of lading is a bearer bill, the consignee is the holder of the bill. Delivery shall not be effected except upon presentation of a valid transport document or proof of the right to receive the goods, whether in paper or electronic form (Rotterdam Rules 2008, art 43). Pursuant to the Rotterdam Rules, "the carrier shall deliver the goods to the consignee or to a person legally entitled to act on his behalf, and delivery shall terminate the carrier's liability." Based on the foregoing, it may be concluded that the consignee's agent is the person authorized to act on his behalf in receiving the goods from the maritime carrier. Accordingly, when presenting himself to take delivery of the goods, such agent must comply with the same procedures required of the consignee.

Place and Time of Delivery

The place of delivery is the port designated for discharging the goods and delivering them to the consignee. It is determined by the will of the shipper at the port of loading (Rotterdam Rules 2008, art 11). The parties may also agree on the time and place of delivery of the goods (Rotterdam Rules 2008, art 3(c)). The importance of the place of delivery is reflected in the requirement that it be stated in the bill of lading. Most maritime legislations stipulate that the particulars of the bill of lading must include the port of loading and the port of discharge, as provided under international conventions as well as Sudanese and Saudi law. This requirement is expressly stated in Article 36(c) of the Rotterdam Rules.

Based on the particulars stated in the bill of lading, the master is obliged to carry the goods from the port of loading to the port of discharge agreed upon therein and may not discharge the goods at any port other than that specified in the bill of lading. The parties may, however, agree to designate the port of discharge in the bill of lading while granting the shipper the right to select an alternative port. In such a case, the master must proceed to the first port and await the shipper's instructions, which are usually communicated through any available means of communication.

The contract may also designate two ports, granting the shipper the option to direct the carrier to either of them. Furthermore, the contract may, in certain cases, authorize deviation to a port other than the agreed port where the vessel is unable to enter the designated port due to quarantine restrictions, civil disturbances, war, or where the vessel is otherwise prohibited from entering the intended port. The so-called "war clause" permits the master, during wartime, to discharge the goods at a port other than the agreed port in order to avoid berth congestion or to comply with the orders of maritime authorities, while preserving his right to claim full freight and additional transportation expenses (Khalifa, *Al-Iltizam*, 2007, p. 44).

It was held regarding the safe port in the case of. Leeds Shipping Co Ltd v. Societe Francaise Bunge **(The *Eastern City*).Facts: There was a charterparty agreement stipulating that the vessel *Eastern City* should proceed to 'one or two safe ports in Morocco.' Upon entering the port of Mogador (Essaouira), the vessel was exposed to risks due to the nature of the seabed and the winds, which led to a dispute over whether the port was 'safe' under the contract.** The court laid down a famous definition, establishing a judicial precedent for the concept of a safe port. " A port will not be safe unless, in the relevant period of time, the particular ship

can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship (Lloyd's Rep 1958).

As for the time of delivery, it refers to the period agreed upon by the parties as the delivery date, where such an agreement exists. In the absence of agreement, it is the period within which a reasonable carrier would ordinarily deliver the goods under similar circumstances. Accordingly, where the bill of lading specifies fixed delivery dates, the consignee must proceed to the port of discharge automatically to receive the goods. Where no specific delivery dates are stipulated and the vessel arrives at the port, the master or the maritime agent is obliged to notify the consignee to present himself to receive the goods. In Egypt, the Court of Cassation has imposed this notification obligation upon the carrier (Khalifa, *Al-Iltizam*, 2007, p. 44).

Mechanisms of Delivery According to the Type of Transport Document

The Rotterdam Rules distinguish between three types of transport documents for the purpose of determining the person entitled to receive the goods:

First Type: Delivery Where No Negotiable Transport Document or Negotiable Electronic Transport Record Is Issued :In this case, the carrier must deliver the goods to the consignee named in the contract of carriage, and the consignee must establish his identity when claiming delivery. The carrier may refuse delivery if the person claiming to be the consignee fails to prove his identity.

Where delivery to the consignee is impossible after he has been notified of the arrival of the goods, and he fails to claim them within the agreed time or within the relevant period, or where the carrier refuses delivery because the claimant has failed to establish his identity in a satisfactory manner, or where the carrier is unable to locate the consignee to request delivery instructions, the carrier may notify the controlling party and request instructions regarding delivery. If the carrier is unable to locate the controlling party, he may notify the shipper and request instructions. If the carrier is unable to locate the shipper, he may notify the documentary shipper and request instructions regarding delivery (Rotterdam Rules 2008, art 45).

Second Type: Delivery Where a Non-Negotiable Transport Document Has Been Issued

In this case, delivery is subject to a special regime whereby the non-negotiable document partially performs the function of a negotiable bill of lading. The carrier must deliver the goods to the consignee against surrender of the non-negotiable document and upon presentation of proof of identity. Where more than one original of the non-negotiable document has been issued, surrender of one original shall suffice, and the remaining originals shall have no legal effect or validity (Rotterdam Rules 2008, art 46).

This position is supported by (Girvin ,2022, p. 146), who affirms the fundamental principle that the master or carrier may not deliver the goods except upon presentation of the original bill of lading by its lawful holder. Any delivery without production of the bill constitutes a breach of contract and may amount to an unlawful act.

Third Type: Delivery Where a Negotiable Transport Document or Negotiable Electronic Transport Record Has Been Issued. In this case, the general rule applies that delivery of the goods against presentation of a negotiable bill of lading or its electronic equivalent discharges the carrier by delivery to the holder of the document. The maritime carrier may incur liability for delivering the goods without presentation of the bill of lading (Al-Daboubi, 2021, p. 8).

The holder may be the person to whom the bill of lading has been endorsed (Rotterdam Rules 2008, art 1(10)). Delivery against presentation of one of several original bills of lading constitutes valid delivery (Rotterdam Rules 2008, art 47).

As stated by (Giles and Chorley ,p. 38):"As we have seen, bills of lading are issued in sets of three; nevertheless, the master is entitled to deliver the goods to the first claimant who produces a bill of lading which is in order, provided he has no notice of any other claim to the goods.".

This principle was affirmed in *The Rafaela S* [2005] UKHL 11, where the House of Lords confirmed that a straight bill of lading is to be treated as a document of title to the goods. Accordingly, the carrier may not deliver the cargo except to the holder of the bill, even if the consignee is specifically named therein. This ruling established that the straight bill of lading falls within the scope of a "document of title" under the Hague–Visby Rule.

Failure to Deliver the Goods

International conventions establish a legal framework for dealing with goods that remain in the carrier's custody after arrival at the place of destination. Where the consignee refuses to take delivery or is unable to do so, the carrier is entitled to place the goods in a safe location and at his disposal. The carrier may also, after giving reasonable notice, sell or destroy the goods if they are perishable, if the costs incurred exceed their value, or if they are not taken delivery of within a reasonable period. Any proceeds from such sale shall be subject to the carrier's rights against the shipper or the consignee (Rotterdam Rules 2008, art 48).Where the consignee fails to attend to

receive the goods, the carrier remains obliged to preserve them or deposit them in port warehouses and is not discharged from liability unless he follows the legally prescribed procedures, such as judicial deposit or sale (Girvin, 2022, p. 160). The carrier is also entitled to retain the goods as security for payment of freight and any other sums due under the contract of carriage. This right does not prejudice any other right of retention or sale granted to the carrier under any other applicable law (Rotterdam Rules 2008, art 49).

Before commenting on the above provisions of the Rotterdam Rules, it should be noted that they constitute a comprehensive and integrated regime, unlike earlier conventions and national laws, which largely confined delivery to the bill of lading as the sole instrument of delivery. States that accede to the Rotterdam Rules will inevitably be required to amend their national legislation to align with its provisions once it enters into force.

From the foregoing provisions, it is evident that the bill of lading remains the primary instrument by which delivery is affected, as expressly stated in the relevant texts. It is well established that the bill of lading constitutes the cornerstone of maritime operations. Accordingly, the law requires any person claiming delivery of the goods to present the bill of lading evidencing his right thereto. The master is obliged to deliver the goods only after securing his right to freight, where all or part of it is payable at the port of discharge.

Consequently, upon actual receipt of the goods, the consignee or his agent must surrender the bill of lading to the master for endorsement evidencing completion of delivery and discharge (Rotterdam Rules 2008, art 44). Delivery may not be effected without presentation of the bill of lading. This principle was affirmed in *Owners of the Vessel Medo v Mahjoub Mahmoud Al-Tahir* (Khalifa, Important Cases 2003, p. 347), decided by the Red Sea State Court of Appeal (Port Sudan), where the court held:

"The bill of lading is the instrument that enables the consignee to receive the goods."

"The master is obliged to surrender the bill of lading to the consignee or the vessel's agent for the purpose of delivery."Accordingly, the master must deliver the goods to the person legally entitled to receive them without undue delay and must deliver them in the same condition, quantity, and weight as when they were loaded on board the vessel. The bill of lading constitutes conclusive evidence of the particulars stated therein. In the aforementioned judgment, the court further held:"The bill of lading constitutes proof of the loading of the goods and includes a comprehensive statement of the goods shipped and their condition at the time of loading on board the vessel; it represents an acknowledgment by the carrier of the completion of the loading of the goods described therein."

The bill of lading thus constitutes conclusive evidence in favor of the consignee with respect to the particulars stated therein. Accordingly, the master must deliver the goods to the holder of the bill where it is a bearer bill, to the named consignee where it is a straight bill, or to the last endorsee where it is an order bill. The master must verify that the person claiming delivery is the lawful holder of the bill of lading.In *The Rafaela S* case, the court confirmed that the bill of lading is not merely a receipt for the goods but also a legal instrument transferring rights and obligations, and therefore must enjoy the protection afforded by international conventions. The court clarified that such conventions apply to all bills of lading used as negotiable documents of title, regardless of their form or designation.

Proof of Delivery

The maritime carrier is the primary beneficiary of proof of delivery, as delivery brings the contract of carriage by sea to an end. Proof of delivery constitutes one of the most important procedures between the shipper and the carrier due to the potential liability that may arise in the absence of evidence of delivery.

Accordingly, any person who receives the goods from the carrier is required to acknowledge receipt thereof. The purpose of this acknowledgment is to document the delivery process and to establish the termination of the carrier's legal custody over the goods. Article 44 of the Rotterdam Rules explicitly addresses proof of delivery by providing that:"The consignee shall, at the request of the carrier or the performing party delivering the goods, acknowledge receipt of the goods from the carrier or the performing party in the customary manner at the place of delivery. The carrier may refuse delivery if the consignee refuses to provide such acknowledgment."In practice, this acknowledgment is typically made by endorsing the bill of lading and surrendering it to the master, as confirmed by judicial precedent. In *Qamar Al-Dawla Mirghani Al-Tahir v Owners of the Vessel Sharshing* (Khalifa, Important Cases 2003, p. 203), the court explained the manner of proving delivery by holding that the consignee delivers the bill of lading to the carrier endorsed to indicate clearance.

Types of Delivery of Goods:

As previously noted, delivery constitutes a legal act and represents the final and most significant obligation imposed upon the maritime carrier. Practical reality demonstrates that delivery may take several forms, namely: Actual (Physical) Delivery, Delivery Under the Ship's Tackle (Direct Delivery), Legal Delivery. These forms are examined below.

Actual (Physical) Delivery:

Actual delivery refers to delivery preceded by the inspection and examination of the goods for the purpose of verifying their quantity, weight, and general condition. Such verification can only be achieved if the master delivers the goods to the consignee or his agent, thereby enabling the person entitled to receive the goods to inspect and examine them. Accordingly, the carrier is the only person obliged to perform this task and may not delegate it to another person except his agent. The carrier is not discharged from liability in any event unless the goods are deposited with a custodian or with customs authorities. This principle is consistent with general legal doctrine, which also requires actual delivery of the goods.As stated by Chorley and Giles (1987, p. 48): "As the shipowner is under a duty to make personal delivery of the cargo, he cannot discharge the obligation at common law merely by unloading the goods and leaving them on the dockside."

The purpose of delivery by the carrier to the consignee or his agent is to enable inspection and verification of the goods' quantity, weight, and condition in the presence of the carrier. Accordingly, delivery of the goods to customs authorities or port authorities for purposes other than customs clearance does not constitute actual delivery.Judicial precedents have confirmed that the delivery which terminates the contract of carriage by sea is actual delivery. In the judgment of the Eastern Province Court of Appeal (Civil Circuit) in *Al-Tamaddun Printing Press v Owners of the Vessel De Arvis* (Khalifa, Important Cases 2003, p. 297), the court held that:

"The delivery that terminates the contract of carriage by sea and the carrier's liability is delivery in its legal sense, which consists of several operations."

The court further explained that these operations include:First, placing the goods in the possession of the consignee, that is, physical delivery. Second: verification by the consignee of the goods in his possession.Third: completion of legal delivery, which occurs after such verification, whereby the carrier receives the endorsed bill of lading evidencing discharge and settlement. Delivery is effected to the beneficiary of the bill of lading, regardless of whether he is the owner of the goods, as the bill represents possession rather than ownership.

Delivery Under the Ship's Tackle (Direct Delivery):

Delivery under the ship's tackle constitutes one form of delivery whereby the consignee receives the goods directly on board the vessel prior to discharge. This occurs where the consignee assumes the obligation of discharge pursuant to an agreement between the parties, which must be recorded in the bill of lading (Taha, 1996, p. 246).

In this form of delivery, the carrier is not required to place the goods on the quay and await the consignee's attendance. Rather, the carrier is obliged to enter the waters of the designated port and notify the consignee or his agent of the vessel's arrival so that he may attend to receive the goods.Where entry into the port is not possible, the carrier must prepare a sea protest and notify the shipper or consignee of the vessel's arrival by any available means of communication, such as electronic platforms, email, or other communication methods. Upon receiving such notice, the consignee must attend to receive the goods and undertake the discharge operations and any obligations imposed by the nature of the goods, including contacting the competent authorities for inspection where required.

Legal Delivery:

Legal delivery occurs when the consignee or his agent has taken actual physical delivery of the goods, enabling inspection and verification of their quantity and weight, and subsequently endorses and surrenders the bill of lading to the carrier evidencing receipt and discharge.

Legal delivery does not substantially differ from physical delivery, which is limited to inspection and verification. However, the legal nature of delivery requires compliance with additional procedural requirements beyond inspection and verification. Sudanese courts have consistently affirmed this concept and regarded the cumulative fulfillment of these procedures as constituting legal delivery.

In *Qamar Al-Dawla Mirghani Al-Tahir v Owners of the Vessel Sharshing* (Khalifa, Important Cases 2003, p. 399), upheld by the Court of Appeal and the Supreme Court of the Red Sea State, the courts established the following principles:"The delivery that terminates the contract of carriage and the carrier's liability is delivery in its legal sense, which consists of several operations."These operations are:First: placing the goods in the possession of the consignee, that is, physical delivery.

Second: Verification by the Consignee of the Goods in his Possession.

Third: completion of legal delivery after such verification, whereby the carrier receives the bill of lading endorsed to evidence clearance or any other form of settlement. Delivery is made to the beneficiary holder of the bill of lading, who is entitled to possession of the goods irrespective of ownership. Accordingly, in order for the consignee to exercise his right of receipt upon arrival of the goods, he must present the bill of lading to the shipping company or its agent for endorsement or substitution with a delivery order, in the same manner as a bill of lading.

CONCLUSION

This study has undertaken a comparative legal analysis of the carrier's obligation to deliver goods under contracts of carriage of goods by sea, demonstrating that delivery constitutes the decisive legal act by which the maritime transport contract is extinguished and the carrier's liability is conclusively determined. By examining the relevant international conventions alongside Sudanese and Saudi maritime legislation, the research highlights a persistent misalignment between traditional national regulatory models and contemporary international developments governing maritime transport.

The analysis reveals that, while modern instruments—most notably the Rotterdam Rules—have reconceptualized delivery within an integrated framework that extends the carrier's responsibility throughout the entire period of custody and accommodates multimodal transport and electronic documentation, national legislations remain largely confined to a conventional port-to-port approach. This divergence has generated practical and judicial uncertainty, particularly with regard to proof of lawful delivery and the identification of the entitled consignee.

In light of these findings, the study underscores the necessity of legislative reform aimed at harmonizing national maritime laws with modern international standards. Such reform should include explicit regulation of multimodal carriage, formal recognition of electronic transport records, and a clear extension of the carrier's liability from receipt to lawful delivery. Achieving this alignment would enhance legal certainty, reduce maritime disputes, and strengthen the integration of national legal systems within the evolving international maritime transport framework.

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