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**RESPONSIBILITIES OF SHIP OWNERS AND CARRIERS DURING  
MARITIME TRANSPORTATION IN BAHRAIN: COMPARATIVE  
STUDY**

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**ABSTRACT:**

**PURPOSE:** The paper intends to study, analyze and compare the maritime laws of Bahrain in light of the various International Rules and Conventions that regulate the maritime shipping and transport industry focusing primarily on the responsibilities and liabilities of shipowners and carriers during the transportation. The paper shall be drawing similarities and differences between the legal position of the domestic law of Bahrain vis-à-vis the Hague/Hague-Visby Rules, the Hamburg Convention and the Rotterdam rules, while analyzing as whether there are any points of differences between these standards that Bahrain has to follow/abide by, through means of its adoption in its domestic laws. Lastly the paper shall also address any significant steps taken by Bahrain to improve their shipping industry and whether or not there are any shortfalls in the rules and standards it is to follow.

**DESIGN/METHODOLOGY/APPROACH:** The paper has been attempted by taking a doctrinal-qualitative analysis approach. The primary sources of research include the various rules and regulations that have been mentioned and a deep understanding and reading has been conducted in order to facilitate the comparison. The paper has also looked into key provisions under the Bahrain Maritime Code and has drawn co-relations with the general set standards and requirements under International Law and has checked if the domestic law is in lines of the set standards and general principles.

**FINDINGS:** Through the means of the research, it has been observed that the Bahrain Maritime Code is the principle law in Bahrain that regulates the functions of ship-owners and carriers and provides for their responsibilities and liabilities has been taken primarily from the Hague-Visby Rules, along with taking a few aspects from the Hamburg Convention as

well. Furthermore, Bahrain has taken the step towards changing, improving and technologically advancing the practice related to the Bills of Lading by adopting a Blockchain and Distributed-Ledger Technology system. Further the amendment made to the Maritime Code imposing stronger penalty looks promising in ensuring that there are no malpractices and such measures are done to increase safety and increase investment in the maritime sector of Bahrain.

**RESEARCH LIMITATIONS/IMPLICATIONS:** The review of the available documents is limited to the position of law in the nation of Bahrain and the general conventions/rules followed in the international level.

**ORIGINALITY:** The paper intends to contribute to the research related to the existing conditions of the laws in Bahrain's maritime shipping industry. The Paper has also tried in drawing close relationships between the domestic legislation and the various treaties governing the liability and responsibility of ship-owners.

## **RESPONSIBILITY OF SHIP CARRIERS AND OWNERS- GENERAL :**

### **INTRODUCTION:**

In Maritime transport, the carrier is obliged to perform essential roles and bears the responsibility related to any issue of shipping. The carrier is to transport and deliver the goods/cargo by ensuring that there is no damage/loss that is caused and such cargo is to be delivered within a fixed timeframe as well. To this effect, international conventions regulating Maritime Transportation tends to fix and determine the extent of the carrier's responsibility and liability for economic losses, damage or loss of cargo, delay in delivery.<sup>1</sup> Such responsibility and liability can be enforced over the entirety of the cargo assigned, or even over a part of the cargo that has been effected.

The practice in International jurisprudence in understanding and ascertaining the rights and liabilities of ship-owners or carriers flows from the Bills of Lading ('B/L'), which essentially is a contract of carriage. This is governed by three International conventions: (a) the Hague Rules<sup>2</sup>, (b) the Hague-Visby Rules<sup>3</sup>, (c) the Hamburg Convention<sup>4</sup> and the (d) Rotterdam Rules.<sup>5</sup> The Bahraini Maritime Law has adopted the principles of the Hague-Visby Rules in its domestic maritime law.<sup>6</sup> Such a contractual relationship ideally exists between the sender-carrier, importer-carrier, consignor-carrier or carrier-consignee.

The abovementioned Rules have laid down the duration and extent of the existence of such a relationship and the liability period thereunder. As per the Hague Rules, the carrier is bound to ensure the maintenance of the goods/cargo from the period of it being loaded on his ship and till it has been discharged/unloaded. The Hague-Visby Rules follow a similar liability period.<sup>7</sup> The Hamburg Rules on the other hand have a 'port-to-port' practice followed where the carrier is liable for the goods/cargo during the period from when the

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<sup>1</sup>Rosaeg E., 2014. *Basis of Carrier's Liability in Carriage of Goods by Sea*.

<sup>2</sup> International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules).

<sup>3</sup> International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules), as amended by the Visby and SDR Protocols 1968 and 1979.

<sup>4</sup> United Nations Convention on the Carriage of Goods by Sea, ("*Hamburg Rules*") ("Hamburg, 31 March 1978").

<sup>5</sup> United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, (*Rotterdam Rules* 2009).

<sup>6</sup> The Bahrain Maritime Law (No. 23 of 1982)

<sup>7</sup>*Hague-Visby Rules*, Article 1(e).

goods are loaded at the starting port, during the carriage and at the port of discharge.<sup>8</sup> As per the Rotterdam Rules, the responsibility would exist from the time the goods have been 'received' and upto the 'delivery' of such goods to the consignee at the arrival port.

### **CHARTERPARTIES AND BILLS OF LADING - A BRIEF:**

Bills of Lading and Charterparties are the two important governing documents in International sea transportation and are used to establish legal and commercial relationships between various parties. Bills of Lading are documents evidencing the loading of goods on a ship. The Hague Rules have not defined as to what Bills of Lading, but does provide for what it should ideally contain.<sup>9</sup> Bills of lading are usually signed by or on behalf of the carrier and issued to the shipper acknowledging the goods are being shipped to a particular destination, or have been received in the shipowner's custody for shipment, or a document through which the consignee can take the delivery of such goods at the destination. Charter-parties are ideally shipping contracts and are of three types ideally under the International trade aspects and include time-charters, voyage charter and demise charters. Voyage and time charterparties are contracts of shipping whereby the ship-owner retains the entire responsibility of the operation of the ship, its navigation and management and the charterer(trader or shipper) is granted a commercial use over the ship. In voyage charterparty, the charterer loads the cargo for transportation and delivery. Time charterparties, as the name suggests the charterer will carry cargo based on a pre-determined duration, range(distance) and conditions, all of which shall be procured by him. Whereas in demise charterparties, the charterer takes over the entire responsibility of the vessel, where he would employ a crew, arrange for equipment and supplies and would run the ship as his 'own'. This approach is taken to 'charter-in' ships into one's fleet alongside their own stock.<sup>10</sup>

### **ESTABLISHING LIABILITY AS PER INTERNATIONAL RULES/CONVENTIONS:**

#### **A. HAGUE AND HAGUE-VISBY RULES:**

The Hague Rules can be said to be the first set of International obligations and guidelines that regulate the relationships between shippers and carriers<sup>11</sup>, governs the basic requirements that are to be followed such as seaworthy ships, duty on the carrier to take due care of the cargo starting from loading to discharge along with covering aspects of liability. These rules are followed by means of a contract, which is better known as a Bill of Lading ('B/L'). The Rules nevertheless general grounds and practices relating to the responsibility and liability.

The Hague Rules does provide for a few grounds of exemption from liability under Article 4, arising out of instances such as unseaworthiness that occurs despite of diligence of the carrier in preparing the ship based on the obligations under Art.3, losses arising due to 'navigation faults', 'fires'. There is an interplay when it comes to evidencing and proving the claims surrounding the losses, whether the claimant is to establish his allegation and the carrier is to establish his due-diligence. The Hague-Visby Rules 1968, that amended and updated the Hague Rules, significantly in the field of restricting the claims of liability exemption by the carrier.

Under the Hague Visby Rules, the responsibility of the carrier regarding the goods/cargo starts from the loading of the goods and goes up until the goods/cargo has been released or unloaded from the ship. The rules of unloading and discharge of goods/cargo vary for different ports, and it is crucial for carriers to follow the rule of the port. In instances of non-

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<sup>8</sup>Hamburg Rules. 1978, Article 4, P.3.

<sup>9</sup> Hague Rules, 1924, Article 3, P.3.

<sup>10</sup> Sweet & Maxwell, e.d 24, 2019. *Scrutton on Charterparties and Bills of Lading*,.

<sup>11</sup>Michael F. Sturley, 1990. *The Legislative History of the Carriage of Goods by Sea Act*.

application of Hague-Visby Rules, uncertainties can arise when it comes to establishing liability.

### **B. HAMBURG RULES:**

The U.N. Convention on Carriage of Goods by Sea (COGSA), better known as the Hamburg Rules 1978, was formulated to harmonise the developing International Trade laws. The Hamburg Rules, shifted the duty of care and the liability towards the carrier, making such grounds of liability stringent by adding grounds such as liability for losses arising from loss or damage of goods, delay in delivery, fires caused due to neglect of industrial standards and provided with narrow grounds of defences.<sup>12</sup> To establish the liability, the claimant has to establish the fault and the contribution of the carrier that caused the loss or delay in delivery of the cargo; and the carrier can evade liability if he is able to establish that the losses were caused despite of taking reasonable steps to avoid such drastic consequences.<sup>13</sup> The Hamburg Rules follow the principle of “diligent carrier” as a standard to fix liability over delay in delivery, which is a more precise standard. Under this approach, the carrier would be responsible for delays if he exceeds the date that a diligent carrier can take in the similar circumstances in case no specified date for handing over the goods was agreed to.

The main benefit of the Hamburg Rules is the prevention of liability uncertainties as the Hamburg Rules define the period of responsibility, in which the goods will be under the custody of a carrier; subsequent to which the carrier will not be held liable for any loss or damage to the cargo. In reality, the objective that the Hamburg Rules ought to have achieved was seen under murky shadows as nations felt that such provisions were against the interest of the maritime industry and portrayed a major imbalance in favor of shipowners, and thus it was not acceded by almost all nations that are parties to various international conventions as it was perceived as a declaration of ‘economic warfare’.<sup>14</sup> Thus, the Hamburg Rules fell short of achieving the objective of a unified and equitable regime, even though it addressed crucial issues.

### **C. ROTTERDAM RULES:**

Realising the shortfall in the Hamburg Rules, the UNCITRAL considered to change the scenario surrounding their approach to ensure a greater uniformity in laws, thus in 2008, the Rotterdam Rules were adopted by the United Nations General Assembly in 2008. The Rotterdam Rules addresses the carriage of goods by sea either wholly or partially. This Rule has approached newer issues relating to liability of carriers in a more ‘tactful manner’. The Rules govern transactions that deal with contracts of carriage of goods by sea between States.

One significant change that was observed that carriers were to follow due diligence, not only at the start of the voyage, but at all stages. The other changes in the liability includes the inclusion of navigation-error liability<sup>15</sup>, management-error liability, but have included the defence of fire-losses<sup>16</sup>.

Under Rotterdam Rules, the carrier will be liable when the goods are handed over to it, and its responsibility will end once the goods are delivered. Under the B/L, the carrier can be provided with certain leverages relating to the conditions imposing/mandating that the goods must be delivered to the prescribed authority. Similarly under the Rotterdam Rules, the

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<sup>12</sup>Hamburg Rules 1978, Article 5.

<sup>13</sup>Berlingieri F., p.9, *A Comparative Analysis of the Hague -Visby Rules, the Hamburg Rules and the Rotterdam Rules*.

<sup>14</sup>Yancey BW, 1983. *The Carriage of Goods: Hague, COGSA, Visby and Hamburg*.

<sup>15</sup> Article IV, r.2 (a) of The Hague and *Hague-Visby Rules*, exclusion no longer available under the *Rotterdam Rules*.

<sup>16</sup>*Rotterdam Rules* 2009, Article 17, P. 3.

hipper has also been vested with certain responsibilities relating to the loading and unloading of the cargo, unlike the practices followed prior to the Rules where the carrier was obliged to perform such functions. Thus, under the practice of the Rotterdam Rules, carriers are exempted from any liability for damages or losses that would occur during loading or unloading, as the responsibility would arise only during the 'custody' over the cargo or goods. As per the Rotterdam Rules, carriers reduce or be exempted from the liability for losses if they are able to provide evidence that the loss or damage to the cargo hasn't arisen occur due to their fault.

The Rotterdam Rules are perceived to bridge a balance between the liberal Hague-Visby Rules approach and the extreme Hamburg Rules approach, but due to its highly technical nature, it has been ratified by 20 Nations, who are dominant in the maritime trade.

## **BAHRAINI LAWS:**

### **A. BAHRAIN MARITIME CODE 1982:**

The governing law related to shipping in Bahrain is the Bahrain Maritime Code of 1982, which has adopted principles from the Hague-Visby Rules. The Code recognizes any pre-existing and subsequent international agreements regulating the aspects of maritime trade and practices to be adopted by nations. This Code is applicable to those ships that sails under the Bahraini Flag and the owner of the ship must be a Bahraini national or any corporation that has a Bahraini nationality. The Code mandates a strict requirement that all such ships that are to be subjected to the laws are to bear the nationality. General principles of criminal liability is also followed. The Code provides for the rights and duties of co-owners of such ships.

The Bahrain Maritime Code provides a plethora of rules, regulations and obligations that would regulate the conduct of ship-captains, the crew, the ship-owner, the charter-party(trader) and all those who are associated to any function related to the ship and the cargo thereof. The Bahrain Maritime Code covers the aspects charter-parties by demise and without demise. Part 3 of the Code deals with responsibilities of charterparties. Such a relationship that would arise by means of charterparties is governed by the general practices of civil law and the provisions under the Bahrain Maritime Code. Chapter 1 under Part 3 deals with charterparties by demise where the vessel is given on lease. A few notable aspects are Art.116 of the that lays down the general responsibility of the chartering party by demise to deliver the ship in a seaworthy condition, and shall also be liable for damages arising from force majeure or on other grounds as mentioned in the contract. Unauthorized sub-chartering is prohibited. The Code also provides for a fine that the chartering party would have to pay for delay in returning the ship as well.

Part 3 Chapter 2 deals with charterparties not by demise and would ideally be leases given for specific voyages. Art.122 provides for the following of customary usages and practices in case the parties fail to agree on a certain interval for loading and unloading of the cargo. The chartering ship-owner is to keep the ship ready for the charterer's disposal and the vessel should be seaworthy. Art.126 lays down that the chartering shipowner is to be liable for any damage that would arise due to unseaworthiness of unless it he can establish that such damages could not have been anticipated or prevented despite the measures taken by the shipowner. Unauthorised sub-chartering is not permitted as well. Art.129 provides for the liability of the charter for all such damages caused due to either his own or acts of servants/agents or even from a deficiency in the goods. The charterer has also been vested with powers to make decisions such as under Art.137 where he can steer the ship a different port closer to the original destination, as such acts would ensure that there is a bigger loss that can be avoided.

Chapter 3 of Part 3 deals with rules surrounding the Bills of Lading, that is made between the shipowner, carrier, operator or charterer, whosoever partakes to transport the goods/cargo for any consideration. The Bill of Lading is to be signed by the carrier or his authorized agent. The Bahrain Maritime Code under Art.147 recognizes three main types of bills that are to be made: (a) straight bill that is governed by principles of civil law relating to transfer of rights, (b) the order bill that is a negotiable bill through means of endorsement and a (c) bearer bill that can be negotiated by way of presentation and is when the order bill of lading is blank. The captain of the vessel is provided with the power to unload or throw overboard any additional or unaccounted goods/cargo to ensure that there is no damage caused on the other goods or even when such goods are prohibited under law for sale or export. As mentioned earlier that the charter-party and the Bills of Lading are two essential documents governing the relationship, responsibility and liability between the parties, in cases of any discrepancy between them, the relationship between the shipowner and the charterer shall be governed as per the terms and conditions under the charter-party.

The Code also provides for ground of liability and immunity from liability of the carrier or shipowner for losses and damages of cargo that would arise from unseaworthiness despite of taking due diligence in ensuring that there is no potential harm, neglect caused by the act of captain, servants of the carrier in the navigation or management of the ship, unanticipated fires, risks/dangers/accidents of the sea, Acts of God, war, piracy, restraint by government authorities or under laws, quarantine, rescue or attempts of rescuing life or property, latent defects that were not detected during due-diligence and other such acts that were caused without the actual fault of the carrier or any other person on board. For any claims of damage or loss, the complaint is initiated by the person taking the delivery of the goods/cargo, where a notice is to be given in writing to the carrier or his agent before or at the time of unloading of such goods, and if such damages are not visible, a three-day period is given to provide the notice for such claims of damages and losses. Liability can also be enforced for delays caused in delivery of goods/cargo.

## **COMPARATIVE ANALYSIS OF CARRIER RESPONSIBILITY AND LIABILITY:**

### **A. BAHRAIN MARITIME CODE VIS-À-VIS HAGUE AND HAUGE-VISBY RULES:**

The Bahrain Maritime Code does follow the general customary principles and usages in shipping if there is a lack of any provision or even when charterparties fail to agree mutually to each other's terms, and the same is supported through Art.122 of the Bahrain Maritime Code. It is observed that the Bahrain Maritime Code and the Hague/Hague-Visby Rules provide for immunity from liability if it can be established that the owner or carrier had taken due reasonable care to prevent any loss, and despite of such acts of care and diligence, the loss has been caused; Art.4 of the Hague-Visby Rule can be seen to have been incorporated in Art.126 of the Bahrain Maritime Code). In situations of not being able to reach the destination port, the charterer is entitled to steer the ship to a nearer port to the said destination port, which has also been seen as a general practice in international shipping due to accidents that may arise during voyage.

The Bill of Lading entered into as under the Bahrain Maritime Code and as under the Rules provide for the responsibility of the carrier to either partake or abstain from recording details relating to the goods, the liability of the carrier for any payment of damages that would arise due his failure of recording details (if mandated to). Such a relationship established through the bill of lading is ideally between the carrier and the consignee/importer and the shipper is kept out of such a contract (but can be added as a party if mentioned under the terms of the contract). The Code also recognizes through Art.152, that the Bills of Lading act as prima facie evidence of the terms and conditions relating to the transportation between the carrier and shipper and towards third parties.

The grounds of defence from liability for losses and damages have been provided in detail under Art.158-159 under the Bahrain Maritime Code. These exceptions are on the principles that there can be no liability that can be attributed if the carrier is able to establish that such losses or damages to the cargo were caused either unintentionally, or despite of taking due-diligence, if there was no negligence. These grounds are similar to the exemptions provided under the Hague-Visby Rules. Both the enactments rely on the fact that the claims for exemption are to be proven by the carrier and the compliant should be established by the consignee/importer.

The amount of liability that can be fixed should not exceed BD 100 (U.S.\$ 265 approx.) per unit, and such amounts are ideally pre-determined. The Hague Rules restricted the carriers' liability to U.S.\$2,000 while the Hague-Visby Rules awarded the cargo owners U.S.\$150,000.

This shows as to how the Bahrain Maritime Code follows the general principles enshrined under the Hague-Visby Rules.

#### **B. BAHRAIN MARITIME CODE VIS-À-VIS HAMBURG RULES:**

Bahrain has adopted a few practices as provided in the Hamburg Rules, 1978 in its Maritime Code. Principles around the aspects of liability, obligations, liability for delay, handling of dangerous goods thereof, maintenance of bills of lading and other documents, general average and insurance, notices for claims are similar to those as mentioned under the Hamburg Rules. It is key to observe that the Hamburg Rules in itself is quite similar to the Hague Rules and has tried to improve the position of law and establish a modern and uniform international legal regime. The wide reach of the Bahrain Maritime Code can be seen to be similar to the Hamburg Rules, even though the Code has been made keeping in mind the principles primarily under the Hague-Visby Rules.

Notable features between the Bahrain law and the Hamburg Rules is that both mandate a Bill of Lading that is the primary contract that would exist between the parties who are from two different States, where one of the Contracting State has to provide with the Bill of Lading. Under both the legal regimes, the Bill of Lading would co-exist with other documents, but the Bill of Lading is the primary evidencing document related to the contract of transportation. The Bahrain Maritime Code varies slightly from the Hamburg Rules on two grounds that are, (a) the Hamburg Rules is not applicable to charter-parties, but are applicable only to Bills of Lading between parties that are not charters and (b) the Hamburg Rules would be applicable even where there is no Bill of Lading. The Bahrain Maritime Code on the other hand mandates the existence of a charter-party and Bills of Lading, where the parties are seen to have some vested interest over the transportation contract, be it directly or indirectly. The liability that exists under the Bahrain Maritime Code extends not only to loading and unloading, but would cover acts during voyage, which can be attributed to the Hamburg Rules which added such a position to improve the regime of the Hague-Visby Rules.

The Hamburg Rules also have provided for an equitable allocation of risks between the shippers and the carriers, and such liability arises from the principles of resumed fault of neglect.<sup>17</sup> This can be related to the Bahrain Maritime Code through the fact that the primary liability would vest on the carrier during his charge, but he can avoid liability if it can be established that such losses could not be prevented despite of taking adequate measures. Both the laws include immunity for liability regarding damages caused to goods due to navigation issues as well if the due-diligence can be established. These enactments also govern the relationship that would exist between the carriers and their servants.

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<sup>17</sup> United Nations Convention on the Carriage of Goods by Sea, 1978, (*Hamburg Rules*).

The last point of relation can be seen as to how both the enactments provide for liability due to delays, which the Hague Rules did not consider. The Hamburg Rules govern the liability, in accordance with the principle of presumed fault or neglect, and the Bahrain Maritime Code provides for the same along with the grounds of establishing no-fault due to due-diligence.

### **C. BAHRAIN MARITIME CODE VIS-À-VIS ROTTERDAM RULES:**

Comparing the Bahrain Maritime Code and the Rotterdam Rules, it is duly observed that the carrier would not be liable for any loss/damage if the carrier can prove his innocence or strong grounds of observation of diligence, this immunity is even provided for instances of fires. Such immunity can be given only after establishing that adequate diligence had been followed and the cargo was handled with care and due responsibility. There is immunity from liability for any acts which was not due to negligence, where the carrier is to provide for sufficient proof.

In cases of delays in delivery of the goods, the carrier would be liable for all the losses or damages that would have arisen due to the delay in delivery, provided that the importer (claimant) establishes the delay and damage to the goods. The carrier is again provided with certain immunity on grounds of establishing that the delay or damage was caused due to the acts of 3<sup>rd</sup> parties, Act of god, piracy, accidents, fire.<sup>18</sup> The immunity would also exist when the goods themselves face any packaging defect/fault. It's a duty of the carrier to deliver the goods to the shipper in the same condition when it was assigned to the carrier by the consignee.

The responsibilities of the shipper include instructing the carrier about the maintenance of the goods, ensuring proper packing, loading-unloading and handling of the goods from/on the ship. In case of any damage that arises during the acts partaken by the shipper, the carrier shall not be liable to compensate, provided that the carrier does not voluntarily opt for doing such acts.

Even though the Bahrain Maritime Code and Rotterdam Rules do provide for several exemptions, the general principle of care, due-diligence and evidence of non-negligence have to be proven to evade liability.

### **ADAPTING THE NEW REGIME OF DISTRIBUTED LEDGER TECHNOLOGY IN 'BLOCKS OF LADING':**

A general principle of transboundary transfer of goods is the maintenance of a system of trust and verification to ensure that the unknown parties can be protected from the perils that may bear an effect on the international contracts that exists between the shipper and the importer. To this extent, based on customary practices, Bills of Lading ('B/L') are instruments of verification for the shipping of such goods.<sup>19</sup> The general practice adopted is to send the Bills of Lading through physical copies that pose issues such as increased costs, delay in courier processes, the importer not having a requisite document of title that can be presented to the carrier.<sup>20</sup>

To tackle such issues, there has been a recent development in the sector where Blockchains have been adopted as a platform for a smoother Electronic Data Interchange ('EDI').<sup>21</sup> Such a platform can be beneficial to record such interactions whilst maintaining the

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<sup>18</sup>Berlingieri, F., 2009. *A Comparative Analysis Of The Hague-Visby Rules, The Hamburg Rules And The Rotterdam Rules*.

<sup>19</sup> W P Bennett, 1914, *The History and Present Position of the Bill of Lading as a Document of Title to Goods*.

<sup>20</sup>*Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] AC 576, 586.

<sup>21</sup> John Livermore and KrailerkEuarjai, 1998, *Electronic Bills of Lading and Functional Equivalence*.



uniqueness and safety of the records and simultaneously reducing costs and delays. The regulation that oversees the Bills of Lading is the Hague-Visby Rules<sup>22</sup>. To tackle the issue of uncertainties relating to the legal value of electronic transferable records that hamper the international trade and to ensure that the technology does not become obsolete, the UNCITRAL adopted the Model Law on Electronic Transferable Records (MLETR) 2017.<sup>23</sup> The MLETR facilitates electronic transfers of records, by means of smart contracts.

Bahrain is the first State to have implemented the MLETR in 2018 into its domestic maritime law, the Electronic Transferable Records Law ('ETRL')<sup>24</sup>. The ETRL oversees and regulates the aspects of transferability of the EDI or B/L by having a 'singularity approach' where each electronic transfer record bears its own individual identity and such documents can be 'incorporated into the transaction record and encrypted or hashed before it is recorded to the blockchain'<sup>25</sup>, which ensures better access and recognition by the contracting parties, while simultaneously ensuring the safety and integrity of the documents/records. The ELTR explicitly defines 'document' to include a 'Bill of Lading';<sup>26</sup> Hence, Bahrain has taken a huge leap towards the changing landscape that would regulate the future systems of DLT-based EDI, which bears the capacity, both functionally and legally, to replace the practice of the orthodox system of Bills of Lading.

### **BAHRAIN SHIPPING LAWS UNDER THE GCC MANDATES:**

The Gulf Cooperation Council (GCC) was established in May 25<sup>th</sup>, 1981 between 6 Arab nations located in the Arabian Gulf, includes Bahrain, Kingdom of Saudi Arabia, Kuwait, Oman, Qatar and United Arab Emirates to achieve political and economic goals along with securing their territories and trade channels. These nations have hence developed their maritime ports for better trade and transportation, fishing, shipping. The GCC also ensures that there is a strong body established that can address regional disruptions that bear impacts on the global energy supply chain. Ministries are established to lay down regulations relating to various aspects of the trade, military or political relations between the states. The Ports and Maritime Authority of Bahrain under the Government had promulgated the GCC Safety Regulations for Non-Conventional ships that deal with GCC Safety regulations for cargo ships that are not covered by the provisions of IMO Conventions and for small ships carrying not more than 200 passengers in 2005 and the same had been approved in 2011 by the Supreme Council of the GCC.<sup>27</sup> This regulation intends to establish regional minimum safety standards for new and existing ships navigating in the GCC regions.

The GCC lays down a plethora of norms governing aspects such as documentations, repair standards, accident liability, surveys, maintenance and production of quality and safety certificates, construction and stricture, equipment used, machinery, fire protection measures, safety of navigation. The Regulation imposes a duty on the shipowner/master and also the owner of the goods to having known and follow the measures and requirements under the GCC Safety Regulations.

<sup>22</sup> International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules), as amended by the Visby and SDR Protocols 1968 and 1979.

<sup>23</sup> United Nations Commission on International Trade Law, Model Law on Electronic Transferable Records (United Nations, 2018) ('MLETR').

<sup>24</sup> Electronic Transferable Records Law, Law No 55 of 2018 (Bahrain)

<sup>25</sup> GSMA, 'Distributed Ledger Technology, Blockchains and Identity: A Regulatory Overview' (September 2018).

<sup>26</sup> Electronic Transferable Records Law, Law No 55 of 2018 (Bahrain), Article 1(e)(i).

<sup>27</sup> GCC SAFETY REGULATIONS FOR NON-CONVENTIONAL SHIPS, available at: [http://www.transportation.gov.bh/sites/default/files/gcc\\_safety\\_regulations\\_for\\_non-conventional\\_ships.pdf](http://www.transportation.gov.bh/sites/default/files/gcc_safety_regulations_for_non-conventional_ships.pdf)

The Regulations also touch upon aspects of pollution. The Ports and Maritime Affairs of Bahrain realizing the importance of preventing pollution due to garbage discharges by ships, has implemented the International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol better known as the MARPOL, as a Directive<sup>28</sup> to follow the same in 2016. The Directive provides for the adaptation of the MARPOL mandates of owners and carriers to report and redress instances of pollution that is caused due to their ships. In cases of accidents that occur due to defects in the ship or from the cargo, the owner is to report the same at the earliest to the Administration authority that is governing the vessel. The directive also provides for the pollution liability arising from cargo residues, operational wastes, food wastes and any other garbage, as provided under Annex V of the MARPOL. There is an exception that is provided by the directive to protect the owners and carriers from liability due to accidents, or discharges mandated to ensure the safety of the vessel or protecting life on board and at sea, accidents that arise despite of taking due care and discharges of gears to protect the marine environment or even for the overall safety of the ship and/or the crew. The owner and the carrier are to establish proper disposal practices and must train the crew as well to deal with proper disposal.

### **RESOLVING CONFLICTS:**

The Bahraini Government has promulgated an enactment in 2015 that deals with resolution of conflict of interests and law in matters that are civil and commercial in nature and possess an element of foreign entities or laws.<sup>29</sup> It is pertinent to note that the 2015 Law dealing with conflict of interest is sacrosanct in its application with the Bahrain Maritime Code.

The Bahrain Maritime Code provides for dispute resolution by means of arbitration that can be seen primarily in Article 195 that deals with dispute resolution during collisions, where such seats are contingent on factors such as defendant's domicile, port-nation where the ship is registered, nation where the damage is caused and even provides the plaintiff to determine the jurisdiction with mutual consultation with the defendant. Further through Articles 161 and 162 of the Bahrain Maritime Code, it can be observed as to how the charter parties can provide for certain grounds of reducing or increasing the responsibility and liability of the parties through the provisions in the bills of lading, provided that such reductions are not arbitrarily low and must abide by the general customary and legal practices.

Under the 2015 Law that deals with conflict of laws, it is observed as to how the Legislature has kept in mind the arising needs of amicable conflict resolution mechanisms involving foreign parties especially in disputes which are of commercial or civil in nature. The Scope of the enactment clearly provides under Article 1 that the rules provided under this enactment covers all disputes that are of civil or commercial in nature between foreign parties and/or having foreign elements associated to it until a treaty or law provides for a different mechanism to be adopted. The enactment also provides through Article 4 that the parties are vested with the power to determine the law applicable to them in matters of Trade law and its customs, but such a proposal shall be examined by a body established under the enactment. When the law that is followed is that of an foreign party, Article 8 provides that when the dispute that occurs is subjected to multiple jurisdictions or there arises a conflict of law regarding the application, then the law of that particular state plays a role in determining the scope of the resolution of dispute. Article 18 which is pertinent to the present discussion provides that the substantial and formal validity of a contract is to be governed by the 'law of

<sup>28</sup> [http://www.transportation.gov.bh/sites/default/files/directive\\_marpol-01.pdf](http://www.transportation.gov.bh/sites/default/files/directive_marpol-01.pdf)

<sup>29</sup> Law No. (6) of 2015 On Conflict of Laws in Civil and Commercial Matters with a Foreign Element.

the state of common habitual residence of the parties' and when no commonality can be established, the law that is applicable is the determined through the place where the contract has been concluded; and the parties are also given the chance to determine various other jurisdictional laws for different parts of the execution or provision of the treaty.

It is primarily observed through customary practices that when Bills of Lading are entered into by the parties, they provide for specific clauses pertaining to how any subsequent disputes are to be resolved, and parties usually would prefer arbitration despite of the additional costs that would arise. The Carriers would ideally provide for clauses that provide for the jurisdiction of the dispute resolution that may be concluded either through arbitration or through the intervention of the courts and in such instances, it is the cargo who would have to travel to attend the proceedings.<sup>30</sup> Nevertheless, the scope of the application of uniform forum law as well as choice of rules differ from nation to nation.

Understanding the issue of conflict of laws and interest in light of the Hague Rules and the Hague-Visby Rules, under the Hague Rule, which is applicable to 'outward shipment' to a contracting state's foreign port, it can be observed that the Hague rule does not apply to 'inward shipment' and in such instances it is the law of the receiving state that would be applicable. Another point of observation is that the Hague Rules through its 'clause paramount' technique has resulted in a loophole where contracting parties can step beyond the scope of the Hague Rules by choosing any other law thus resulting in the foreign law governance of the shipping contract.<sup>31</sup> Hence, in order to resolve such a confusing ground in the law, the Hague-Visby Rules provided that conflict of law shall be resolved by adopting the territorial approach, which essentially would mean that the Bills of lading would contain that the execution shall be deemed to be done in the territory of any state that gives effect to the contract. Thus it is to be understood that such conflict of interest through conflict of laws that arises from shipping contracts where Bahrain is a party, shall be primarily resolved keeping in mind the legal as well as the contractual provisions regarding dispute resolution.

## CONCLUSION:

The Bahrain Maritime Code has taken the principles primarily from the Hague-Visby Rules along with the changes that the Rotterdam Convention brought around regarding the extent of liability on the carriers. The law relating to the responsibility and liability of carriers is seen to be equitable for all parties involved in the transaction of transportation, and the Code provides redressal for all possible issues pertaining to the responsibility and liability of the shipowners and carriers. The Maritime Code of Bahrain and the subsequent regulations made by the Ports and Maritime Affairs have shown as to how Bahrain had implemented the best of practices when it comes to transportation of goods and cargo between States. The laws are well founded on general principles laid down through various conventions and treaties that the Government has included in regulating the sector. The extent of rights, responsibility and liability arise from the general followed practice of charterparty as well as Bills of Lading, and Bahrain laws mandate for the existence of both simultaneously unlike other nations or even under the Hamburg Rules where there is a leeway provided for the law not to be applied for non-charterparties and the adoption of the requirements would arise from either one of these documents itself.

The Code provides for an equitable balance between rights, liabilities and immunities to ensure a beneficial environment for all players in the market and even to attract new parties

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<sup>30</sup> Bills of Lading Report by the Secretariat of UNCTAD, United Nations, TD/B/C.4/ISL/6/Rev.1

<sup>31</sup> Hasan F and Ismail N, *The Weaknesses Of The Hague Rules And The Extent Of Reforms Made By The Hague-Visby Rules*, available at <https://zulkiflihasan.files.wordpress.com/2008/06/microsoft-word-hague-visby-rules.pdf>

to transact with the State. Bahrain has also taken active steps in ensuring that the position of law between the GCC nations emanates from strong and sound practices and sets out the practices that are to be followed. Bahrain has also taken active steps in ensuring that the security in the seas of the Arabian Gulf are duly maintained and Bahrain has established the position of their own forces to ensure the proper functioning and transactions in the seas. After deep analysis and observing the issues relating to sector of maritime transportation, it is observed that the laws in Bahrain are on a pedestal of providing beneficial recourses to any and all parties which include but not limited to primarily the shipowner, carrier, consignee, captain, crew in such a business. Bahrain has also taken the step towards changing the industry of Bills of Lading through its progressive step towards adopting and following the Blockchain approach that can radically change the way transactions at sea would work.

The Legislation of Bahrain has drafted and cleared major amendments to the Maritime Code where the Government with assistance from the International Maritime Organisation has imposed hefty fines and increased the imprisonment duration in order to curb illegal activities in the sea. The amended law has increased the level of punishment for serious offences in sea that covers aspects of criminal harboring, deliberate and unintentional pollution, transportation of harmful materials without a valid license, unlicensed port entry, refusal and lack in ensuring proper means of inspection and checks. The rationale behind such a hefty fine that can go up till BD100,000 is to ensure that Captains and ship-owners ensure that the standards are well maintained, attraction of a higher domestic and international investment in order to boost the maritime transport sector.

#### **ETHICAL STATEMENT:**

The author hereby affirms that all the information provided in this paper is affirmative to the present legal position and in no way whatsoever seeks to claim or provide the reader with any false or misleading information. The author has also relied on prior sources from well reputed books and journals which have been duly cited as and where necessary. The author's opinion wheresoever added has been arrived at only after reading and duly understanding the current legal position.

#### **DATA AVAILABILITY STATEMENT:**

The data used for understanding the jurisprudence in the present paper has been relied upon from commentaries on the various Rules such as Hague, Hague-Visby, Rotterdam Rules that have discussed the Bills of Lading. Furthermore, to understand the legal position of Bahraini laws, reliance has been placed on the official websites of the Government of Bahrain and Bahraini Maritime Authority, where the Bahrain Maritime Code had been referred from. All sources have been duly cited as and where required.

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