ABSTRACT

Based on the importance of marine transportation and as transportation had dedicated the major part via sea and achieving transportation namely regarding the responsibilities and activities in this law as the most important and complex issues of marine law and it has great position. The present study attempted to have a brief investigation of marine law and Hamburg and Brussels conventions. There is no study about the exception cases of transportation carrier and the studies are mostly about the responsibility of transportation carrier. A comprehensives review is done regarding the exemption cases in Hamburg and Brussels conventions.

KEYWORDS: Marine transportation, Hamburg and Brussels convention, Exemption, Rules, Protocol

INTRODUCTION

Marine law in England law is called the law of admiralty and Maritime law and in France law is called Droit maritime. Maritime law is an independent field and it is rooted in the oldest traditions of maritime trips. When human being built ship to overcome beyond the seas and indeed a kind of maritime law was created as initial. The easy and economical transportation is taken into attention by the merchants. From the beginning formation of maritime law even at the initial form considered as traditions was present. For the first time, “International law association” in the convention 921 in Hague was inspired by Harter law and approved the rules that were called Hague rules. Again a conference was formed in 1924 and “an international convention was approved for making some rules of bill of lading as uniform and they were called Hague rules and they were enforced. Thus, Hague rules as the first convention on international marine transportation entered marine law history.

One of the issues of increasing development of using container that was not used during the formulation of Hague rules. These issues raised some propositions about reforming the Hague rules and in 1968, a conference was formed in Brussels and a revised protocol of these rules called “Wisby” rules was signed. This revision couldn’t meet the demands of the goods owners as except some basic changes about maximizing the limitation and responsibility and changing its calculation unit, basic changes were not created about the basics of the responsibility of transportation carrier in wide exemptions of transportation carrier. This thought was created that marine transportation rules need basic revisions. In 1978, according to the invitation of Germany, the general assembly invited UN convention regarding the goods transportation via sea in Hamburg. This conference in which some representatives of 76 countries in the world and active international organizations “UN convention regarding goods transportation via sea that was called “Hamburg rules” were accepted with general understanding regarding the convention.

The exemption cases of marine transportation

Regarding convention 1924 of Brussels, it can be said that in the second section of article 4 of this convention, 17 items were mentioned as exemption cases of marine transportation carrier of the responsibilities. By considering convention 1978 of Hamburg, it can be said that in the convention, there is no list of exemption cases. By the investigation of exemption cases in convention 1924 of Brussels, it can be said that mentioning some of its sections is only repetition. For example, we can refer to sections “d” “e”, “f”, “g” “H” and these sections are the examples of force major and without mentioning these cases, the transport carrier is exempted from the responsibilities based on the force major nature of these events is exempted from the responsibility. Some shortcomings and the protest of some countries owner of the goods, regarding the exemption of carrier caused that convention 1978 of Hamburg took a new procedure and instead of presenting a list of exemptions of transportation carrier created general rules.

According to Hamburg rules of carrier is responsible regarding the losses of goods damage or goods delay on condition that the event “causes damage” as he owns the goods, unless the carriers proves that himself, the staffs and
his representatives took the measurements that are done to avoid the events and results. Thus, the exemption cases of transport carrier are the cases he proves to avoid damage. This criterion alone replaces all the cases mentioned in Hague rules.

In this study, we investigated the exemption cases in Hamburg and Brussels conventions. The investigation is as we investigated the 17 exemptions in Brussels convention as it is associated with the carrier duties or not or there is an exemption in his duties.

**The exemption cases of transportation about his legal duties**

By consideration of Brussels convention, it can be said that the law maker delegated some duties to the carrier to do them and if there is any negligence in these duties, he is responsible unless he proves he did these legal duties and despite it, some damages are occurred.

**Seaworthiness**

Seaworthiness in English and navigabilite in France are the challenging issues in creating responsibility for transportation carrier. Any transportation contract guarantees this commitment that cargo is transported by ship to have seaworthiness unless transport carrier should pay the damage.

**The meaning of seaworthiness**

The meaning of seaworthiness is that the ship should be suitable in aim, structure, condition and tools to be faces with the ordinary dangers of trip.

In this regard the claim Stanton V.Richardsom of steam ship filled with mud of a region of river and broke and the court believed that the ship has no seaworthiness and it can not face with the ordinary danger. In order that a ship has seaworthiness should have qualified commander and qualified sailor.

In the claim modre V.lunn the drunkenness of captain when the trip was started, the verdict was issues as the lack of seaworthiness. The term seaworthiness is a relative term and its structure depends upon the realities of special case and duration and nature of trip.

**Hidden defects**

One of the cases of transportation carrier that is mentioned in convention 1924 of Brussels is the hidden defects. This case is mentioned in section (P) of convention. Before the investigation of this section, we can say this case of exemption is inspired by common law of England.

At first, a definition of exemption is expressed. In convention 1924 of Brussels, this is defined as:

“The hidden defects that are not discovered”

Other definitions are presented of hidden defect as:

“Hidden defect is the defect with the exact investigation of a person”

“Skilful intelligent is not discovered”.

In both definitions, it can be said that appearance of terms is without ambiguity and has not problem and it created some problems in practice.

The initial point in this regard is that in these definitions, hidden defects are used absolutely. It can be said that:

1- Based on the term “hidden defects”, the defects include only ship defects or it includes other defects?

2- Based on the term and not determining the defects, this claim is considered hidden defect or not?

To respond the first question, the law makers and all the authorities as it is in English common law and these defects are only included in the ship, we can say that these defects are only dedicated to the ship.

It can be said that English law included even the goods by which the loading and unloading is done. If unloading tools have any defect, they are not discovered by exact investigations and some damage are imposed on the goods, the carrier is without responsibility.

In response to the second question, it can be said that law makers of convention without considering the defects as hidden defects delegated the investigation to each case to the court and based on the conditions, even this case is exemption case or not?

Regarding this case of exemption cases, it can be said that: Mentioning this case is only repetition and by investigation in convention cases in Seaworthiness, as it was said, the ship should have Seaworthiness to transport goods and Seaworthiness is the example of the absolute nature.

Thus, any defect in the ship can be included in Seaworthiness.

**Saving the ship and helping the wrecked ship**

The carrier is responsible in goods transportation and it is moving in definite path in transport contract. Goods transport from one port to another port starts from departure port and enters international water gradually. In the
water, the path the ship takes is the definite path in transport contract. If this path is not mentioned in transportation contract, this path is determined based on marine custom.

Deviation from the paths from the carrier, it is offence and he will be responsible but sometimes the carrier can deviate from the path. Section 4, article 4 of rules 1924 of Brussels stated that:

“Any change in ship path in the sea for saving and attempt”
“Saving people, property or any good deviation of the ship
“Are not violation of the rules of this chapter and transportation contract”.
“Carrier is not responsible for the damage”.

Based on section 4 of article 4 and the term “anyway” at the beginning of the article, it can be said that convention law makers accepted deviation from the path in bill of lading in case of not mentioning and accepted deviation from the common path with difference that in deviation of the path to save the life of other people, suitable deviation is not important. In other words, if the aim of deviation is saving life or people, this issue makes deviation reasonable and there is no need to prove this issue.

The law maker considered changing the ship path as allowed:
1- To save human and property
2- Any suitable deviation

In the above mentioned issues, it can be said that this lack of responsibility of transportation carrier is referred as the ship deviation is necessary to save the life or property or suitable deviation and if he didn’t take any measurement, they are faced with serious risk.

The cases of exemption of carrier as exception of his duties
Negligence in managing the ship
In convention 1924 of Brussels, section 1 of 17 cases of marine transport exemption stated the negligence of ship commander as:

a. The negligence and action of the commander, staffs and guides.

“It can be said that from historical aspects, the above article is based on article 3 of goods transport of USA approved on Feb 1893 that is called Harter law.

This verdict is observed in goods transport law via England sea and section b article 27 approved on June 18, 1966 of France.

If the damage is occurred due to the error in seafaring or ship managing, the carrier is responsible to prove it but the carrier should prove the measurements as the ship can have seaworthiness.

Based on the above mentioned items and this section of exemption cases, the main reason of the protest of the countries owning the goods to the 17 cases namely this case, the lack of responsibility of carrier in case of negligence of the ship commander causes that carrier in many cases as negligence of the ship commander causes that carrier in many cases as negligence damaged the goods and it was not dedicated to him and it is due to the act of the staffs and made him released of responsibility. The result of such issue is unjust imposing of the damages of negligence of people to the goods sender.

It seems that in this case we can not only consider the duty of transport carrier in selecting commander and qualified staffs and the responsibility of transport carrier due to the negligence of the commander and staffs of the ship and this people are considered as the agent of transport carrier in the ship board to guide the goods to the destination and via taking money from the carrier and the rights of the goods sender is kept and unjust imposing of the damage is prevented and by giving transport carrier right to the ship staffs and commander, imposing damage to the carrier is prevented and any persons should accept is mistake.

Thus, the goods sender can refer to the transport carrier and receives the money. Today, this solution is not a problem based on the development of insurance institutions and its creation is prevented. Unfortunately, Hamburg convention didn’t refer to this issue and despite the disagreement of the goods sender countries, no measurement was done to eliminate these problems.

Fire
Second section of article 4 of Brussels international contract in section (b) of the exemption of transport carrier of responsibility of fire that is not due to the act or mistake of carrier. The section states:

b) The fire that is not due to the act or mistake of carrier.

Before approving convention 1924 of Brussels, this is occurred in article 502 of England trading ship law approved in 1894.

Based on this article, if the damage of the goods is directly due to the fire, the sea ship that is registered in Britain is not responsible on condition that fire is not due to the act or interference of the ship owner.
By reviewing section b of the second section of article 4, it can be said that convention law makers, considering using this exemption dependent upon proving this issue that fire is not due to the act or error of carrier.

Expressing the terms “act” raises this question whether transport carrier in fire is the only responsible person or his act or is responsible for the error and act of the ship commander and other people?

In convention 1924 of Brussels, this is ambiguous and we should resort to the rules in this regard and raise the response of the question and as it was said, carrier accepts his mistake. If it is clear fire is done due to the mistake of the agent, he is not responsible and he should prove the ship has seaworthiness at the beginning of the trip. As it was said, nobody accepts the mistake of another person.

Despite the above comment, convention 1978 of Hamburg in section 4, article 5, it is stated that:

“Carrier is responsible:
In case of perish or damage to the goods due to fire on condition that the plaintiff proves the fire is occurred due to the negligence of the carrier or the crew.

Ignoring the fact that which idea was taken by Hamburg convention, the nature of convention regarding elimination of the existing defect in Brussels is of great importance.

Another issue is that according to section “b” of the second part of article 4 of convention 1924 of Brussels, the carrier to use the exemption should prove his mistake was not the cause of fire and in accordance with convention 1924 of Brussels, the carrier should proves it.

Based on Hamburg convention, it can be said that the law makers of the convention, ignored it and the plaintiff should proves it. In accordance to section 4 article 5 of Hamburg convention, the carrier is responsible if the plaintiff proves the fire is occurred due to the negligence of the carrier or his crew.

The exemption cases of carrier based on the voluntarily reasons out of the duties
The fault of the sender and defects of goods
Based on section second section of article 4 of convention 1924 of Brussels, it can be said that the convention law makers discussed some of the exemption cases of the duties of the cargo sender outside of the duties of carrier.

The fault of goods sender
The initial duty of the goods sender is that the goods are packed in suitable packages. The goods sender packs the goods and transports them for loading to the agreed port. Here, the goods sender is responsible and as it was said nobody accepts another one’s mistake. Some of the law makers based on the verdicts issued by some foreign courts stated that the carrier should reserve to be exempted from the responsibilities otherwise accepting the clean bill of lading shows accepting the goods with good condition. It can be said that the followers of this belief know that the bill of lading is transferrable and they try to support the third party rights. According to section (o) of the exemption cases of carrier, the signs should be written clearly on the packed goods as these signs remain to the end of the trip.

This is done to prevent mixture of the goods and if the signs are on the goods, if the goods are fragile and the sign “fragile” or “be careful” are written, the carrier will be careful when arranging the goods and he doesn’t put the heavy goods on them and if the signs are not adequate, this is out of the duties of carrier and in case of any damage, the carrier is not responsible for damage.

Goods defect
Section m, second section of article 4 of convention 1924 deals with the deduction of weight and volume of the goods. In this section of exemption cases, it can be said that the convention law makers the law makers of convention make the carrier free from the responsibility of weight and goods volume problem due to the inherent defect of the goods and he is not responsible. The inherent defects of the goods are the ones in the goods and the external factors are not effective. For example, an apple box is decayed, this is inherent defect and presenting the definition of inherent defects, guides us in achieving the best goal. If the goods is the fruit and is healthy in loading but if it is decayed without the negligence of the carrier, we can say its decay is due to its inherence.

If there is any decay in the goods, the carrier is responsible and the carrier can prove that moving the goods is done properly and the ship equipment, the heat of warehouse and cool areas are suitable for carrying the goods technically and they can use this exemption. The carrier is not responsible for others negligence. If the carrier carries the goods that transferring this type of goods needs information from the goods sender and he doesn’t give it, the carrier is not responsible for the damage anymore.

The exemption cases of carrier based on non-voluntarily reasons
The dangers and events of sea and dangerous events in shipping sea
Section “c” of the second section of article 4 of convention 1924 of Brussels called exemption cases as sea risks. This section states that:

“The risks and events of sea and the dangerous events in shipping water”
Historically, this section was considered before approving convention 1924 of Brussels regarding the relations between the carriers and goods senders and in the contracts concluded and bill of lading, this case was considered as the exemption case of transportation.

In convention 1924, the marine processes were used more and this section and similar sections entered convention.

Based on the convention, no definition is presented of this exemption and it seems that due to the extension of the concept of marine risks, the convention law makers referred to the court and judge to determine its examples based on the conditions.

Another point is that sea events have close relationship with the ship Seaworthiness, it means that marine events can be used as exemption from the carrier responsibility if it is proved the ship has Seaworthiness and has no defect that is increased due to storm. To refer to this exemption, the carrier should prove Seaworthiness of the ship.

Here, it is necessary to refer to the marine risks and it is not necessary, the risks are due to the sea and as it was said in the definition of marine risks, these risks should arise from the features of marine trip. For example, the ship crash with the wrecked ships or ice berg, great whale that is occurred unpredicted is the marine risks.

Another point is that only these events don’t lead to exemption and based on the article: “Shipping water, it is stated that any path, sea or river lead to the events and the carrier is exempted and this is not specific for marine transportation.

Natural events
Section “D” of second section article 4 of convention 1924 is dedicated to natural events. It can be said that considering a person responsible to the stronger power as he is responsible to be faced with it, is unusual and unfair.

Thus, convention law makers mentioned the natural events as one of the exemption cases in article 4.

Natural events is also called act of god in English. Different definitions are presented of act of god by law makers as:

“Force major or act of god is the event that is only done”
“by nature without human being interference”
“Natural necessity that is occurred only by natural reasons, without any interference of human being
“ it is the event that we can not know the human being as responsible and only it is created naturally”.

Based on the definitions, the act of god meaning is cleared and based on the definitions we can define two regulations to determine act of god:

First: The event should be independent from human being act and a person should be inactive to it.

Second: It should be the event; the carrier can not prevent it or use any tool that is expected. Regarding the first condition, as it was said, that person should be inactive to the action as it can not be attributed to him.

Based on the definitions for act of god, it can be said that act of god has general concept including many cases as exemption in the second section of article 4 of convention 1924 of Brussels.

War and its results
Section “e” of second section of article 4 of convention 1924 of Brussels mentioned war and the results as one of the exemption cases of carrier.

Historically, this section explains that this case of exemption is inspired by common law of England.

Based on the convention, it can be said that there is no definition of war.

Based on the general international law, it can be said that some definitions of war are presented and in international law, war is one of the examples of resorting to force and this force is defined generally and specifically. First, resorting to force is any forceful act that is not considered as military measurement but in the second concept, all the military operations including war are included.

By the investigation of the verdicts, it can be said that the courts considered war case for the lack of qualification of the ship renters to take money. In the case of Uni- Ocean lines Ltd vs. sea trade S-A regarding the damage of the violation of the traffic in safe ports, the England court considered the similar war conditions as the lack of qualification of the ship renters to take money.

After the clarification of the term war in the exemption, it can be said that war in this concept is considered as a barrier for transport carrier. This can be done regarding a ship with nationality of this belligerent government or about other ships with other nationalities. The examples of using this exemption are as this ship belonging to an impartial country or it belongs to one of the belligerent countries. Based on the second section we can say the results of war are considered by the convention makers.

Thus, if a carrier due to the war and results don’t do his commitments and damage the goods, he is not responsible for the compensation.
In order that the carrier uses this exemption, he should:
First, he should prove there is war condition and second the damage to the goods is arising from the direct war.

Operation of the society enemies
Section (f) of the second section of article 4 of convention 1924 of Brussels is dedicated to the society enemies.
Regarding the history of this section, we can say this case is inspired by common law of England and it is included with some changes in convention. In common law of England, this case is considered as “king enemies”. However in convention 1924, most of the participating countries had republic system and this is changed to the society enemies.
The term “society enemies” is not clear and this is raised what are the examples of the society enemies?
The above question is raised in convention 1921 of Brussels and it was said that this term is the pirates and plunderers. Another issue that is raised in this convention is that how is the effect of this exemption regarding the foreign ship. It can be said that in law 1966 of France, nothing is said about this exemption and this case and other cases are included in force major and the carrier can be free from responsibility.

Arresting the ship as the result of enforcing measurements or the act of kings, people or legal authorities
Section (g) of convention 1924 of Brussels refers to one of the exemption cases and it can be said that the convention makers applied the term “(restraint) and this is general compared to the term arrest and it includes various factors.
In this section, the convention makers consider the rules that governments make in terms of their benefits in terms of safety and health issues and govern them.
As it was said, this case of exemption is included in force major and the lack of this section doesn’t make any problem in releasing from the responsibility of the carrier. Based on the items, it can be said that the orders of the governments can be general or specific but the general and specific items can be attributed to a specific ship, or the order is issued about a ship and is generalized to other ships.
Based on this section of exemption cases, the carrier can use it if:
First: He didn’t do any illegal issue leading to arrest.
Second: He is not aware of the rules leading to arrest.
Regarding the first section, we can say that if the carrier without considering the rules carry the smuggled goods and his ship is arrested and he can not use this exemption as arrest is done due to his act and the damage can not be imposed on the goods sender in this way.
Regarding the second section, regarding the actualization of the arrest order, it can be said that based on this description, if the government threatens to arrest or creates some limitations, it is not enough to use this exemption and the arrest order should be issues.
It can be said that if this threat is imminent and serious that no carrier takes the ship in risk and carry the goods to the port, despite the lack of issuing arrest order can use this exemption.

The limitations of isolation
By investigating section (g) of the second section article 4 of convention 1924 of Brussels, it can be said that the orders that are issued as isolation limitations are included in section (g) of convention and these orders are used to keep the safety health issues and all the conditions of section (g) regarding section (h) are enforced.

Riot or commotions
Section (k) of the second section of article 4 of convention 924 of Brussels is dedicated to riot and commotions. This is called Riot or civil commotions.
Thus, to use this exemption, it can be determined that the event the carrier refers is riot or commotions? We should present a definition of these two terms. It can be said that riot and commotions are the examples of force major and if it was not occurred, by referring to force major, we can make the carrier free from the responsibility.
Riot is the disorder in penal code and the offenders are prosecuted. Regarding the commotions, this is the same. Based on some verdicts of England courts, we can say that “riot is the condition between civil war and commotion and there is disobeying in riot but it is not necessary to prove an external organization that riot stimulates it”.
Finally, to determine these two terms, there is no special regulation and its common meaning should be used to determine its examples.
Thus, riot and commotion are different types of collective enforcing measurements leading to disorder.
As it was said, in the riot, the carrier can not do his commitments and the goods are damaged and free from responsibility.
Strike or closing the workshops or preventing the works as generally and specifically with any reason

In section (j) of the second section article 4 of convention 1924 of Brussels was dedicated to strike. In this section, we can say there is no definition of strike. We can consider the definitions presented by the judges in the courts.

Judge sanky in the claim Williams Bors V. Naamlooze vennoots phap, defined strike as:

“I think true definition of strike, I don’t say it”

“is comprehensive, general gathering by the workers to avoiding the work as the result of the complaint”

Based on this definition, some questions are raised and responding it is useful in better understanding of this section of convention.

The first question is that whether the term “strike” is only dedicated to special strike or not?

It can be said that in convention 1924 of Brussels in Netherland marine association, strike as exemption is limited to the strikes with general aspect but this theory was not accepted by the countries participating in convention and interpreted for the behalf of carrier including any type of strike and this is raised by defining “general, partial or any reason”.

Another question is that whether closing the workshop or preventing the work is only including the port workers?

We can say that closing the workshop is not giving up of special group, as sailors and giving up includes all people working in transportation sector. In other words, strike of the employees of the port or workers or sailors can be examples of this section of convention. But, interpreting despite this issue leads to the unfair imposition of damage to the carrier and responds the negligence of others acts and this is not intended by the convention makers.

As strike damages the goods and carrier, some measurements are taken in this regard avoiding the unfair imposing of damage to the carrier.

Regarding the rights of carrier, it can be said that in transportation contracts, an article called “Caspania” is included and the carrier is allowed if the workers and employees of the destination port are at strike during the ship enters, it can unload where there is no strike.

Any other reason that is not arising from the act of carrier or the act of his agent or his representative but in this case the carrier and his agent should prove their act and fault have no effect in the damage.

As it can be said, this section of the article is general and it includes all items in other sections. Based on the above description, we investigate this article. Regarding the existence of this article and whether despite various sections of various issues, expressing a section as generally and specifically is needed or not some views are presented.

Some people believed that the reason of this general term is that in 17 exemption cases, mentioning all cases (rusting or robbing and etc.) are not possible and this general order in section (q) is considered.

Others justify this section in terms of proving as it can be said the carrier should prove the damage is due to his fault and in other cases of exemption, providing the fault of carrier is not considered and if he states, he is free from responsibility.

Based on the above justifications, we can attribute each to the goal of the convention makers and the first justification can be accepted as the convention makers consider the issues being involved based on the exemption cases (17 cases) and by the increasing development of the sciences, new issues are raised and the carrier can not observe all of them and he is exempted. By considering this reality, the convention makers included this section to be referred in ambiguity cases.

In this section, if there is any event not arising from the carrier act or fault, he is free from compensation. To use this section, the carrier should prove these acts are arising from his negligence.

Carrying special and dangerous goods

In Brussels convention, paragraph 6, article 3&4 of Hamburg convention, is dedicated to carrying these goods. Regarding the special and dangerous goods, it can be said that there is no definition of these types of goods.

Regarding the specific goods, it can be said that there are some goods based on their specific condition, the carrier can not accept its responsibility in convention framework.

Thus, specific contracts are made by which they can include some conditions freely. It can be said that determining this issue that which goods is specific needs personal regulation and an specific regulation is not presented.

Regarding the dangerous goods, it is similar to the specific goods and there is no definition of these goods and based on the convention, the descriptions of these goods are shown in paragraph 6 article 4.

In this paragraph, dangerous goods that are exploded are considered.

Regarding these dangerous goods, the same can be said about specific goods and there is no definition of these goods. In the convention, it can be said based on their special feature, the carrier doesn’t accept the risk of accepting
this responsibility of the goods and doesn’t carry them in the framework of their convention. Thus, the carrier without making the bill of lading in these cases by concluding the specific contract, decreases the responsibility of these goods.

As it was said in carrying these goods, the bill of lading is not issued and the document that is concluded between two parties the term “non-transferred” is mentioned. The reason is that these documents are out of the convention framework and it is considered outside of convention.

By mentioning the term “non-transferred”, the rights of the probable recipient not aware of the nature of these goods is kept.

Based on the content of Brussels convention, three assumptions are predicted regarding carrying dangerous goods:

a. The carrier and goods sender consciously concludes the contract of carrying these goods and in this assumption, the responsibilities of two parties are based on the contracts included.

b. The goods sender without informing the nature of goods to the carrier make the bill of lading and the carrier transports it and the damage is for the goods sender. (First section paragraph 6 article 4).

c. If the goods sender and carrier aware of the goods features doesn’t conclude the specific contract and issue the bill of lading, the Brussels convention is used in transportation operation and if during the trip, there is any risk for the ship, crew or other goods, the carrier after destroying or unloading the goods in a place except the destination port, should pay his share in damage. As for destruction, unloading the goods should compensate the damage of the owner of the goods with other people making benefits of this act.

1- Another case not included in Brussels convention is carrying live animals. In these transportations, the animals are lost and no carrier can tolerate this serious risk and included in the convention rules framework. In section 1 of Brussels convention, these goods are not considered as the goods including the convention rules.

In Hamburg convention, section 6 article 5 is dedicated to the transportation of live animals. In this convention, the carrier is not exempted completely free from responsibility and this is on condition with proving the reasons by carrier. In first section of 6, article 5, the carrier exemption is if he proves all the orders issued by the goods sender is used. This part of section 6 of article 5 is regarding the damages dependent upon the nature of this transportation and if the animals are killed due to special disease despite all the orders issued by the goods sender, the carrier by proving to do the orders is free from the responsibility. In second part of this section, the carrier is not responsible for the damage other than the reasons arising from the nature of such transport and proving the responsibility with proving the negligence of the carrier, his agent is created.

In this section of article 5 of Hamburg convention, despite Brussels convention, an attempt is made to enter this transport in convention framework.

1- Another case outside of the Brussels convention rules is carrying goods on board. In order that the transported goods on the board are outside of the Brussels convention, they should be unloaded legally on the board and they should have two conditions:

First: The satisfactions of the goods sender as the goods are transported on the board.

Second: The goods are transported like this.

It can be said that the lack of the mentioned conditions and leads to applying some rules of convention in this transportation and the carrier can not refer to exclusion of the convention rules to be free from the responsibility.

In Hamburg convention, article 9 is dedicated to the goods carrying on board and Hamburg rules based on the shortcomings in convention 1924 had some innovations. Based on section 1, article 9, if it is agreed the goods is carried on board, if there is an agreement between them, the carrier can carry the goods on board. This agreement should be written and included in bill of lading. If without such agreement, goods are carried on the board, the carrier is responsible and if he proves there is such agreement he is free from responsibility. Such agreement and its written form in bill of lading is protecting the third party rights and in case of transferring such bill of lading without such mentioning, we can not refer to such agreement to the third party and be free from the responsibility.

The question that is raised in this section is that some of the goods have the nature that should be carried on the board including iron, wood, can we say that for exemption of the carrier from responsibility, proving the agreement between him and the goods owner is required?

It can be said that if common trading and practical procedure regarding the specific goods transportation on the board is existing. It is not required that the goods owner is agree with the transportation on board and the carrier can prove the contractual relations in case of damage.

Based on the writing manner, of section 1 of article 9 of Hamburg convention, it seems that transporting goods on board is contrary to the principle unless it is regarding the commercial common aspects or legal rules, such transport is required.

The exemption cases of carrier in convention 1978 of Hamburg
Based on the exemption of marine transport carrier in convention 1924 of Brussels, it can be said that this convention has some shortcomings and in making convention 1978 of Hamburg, besides considering the shortcomings, the criteria for carrier exemption are presented.

Based on Hamburg convention, it can be said that like Brussels convention, there is no specific article regarding the exemptions. In this convention, article 5 expresses the responsibility of carrier and in this article, general principles to be free of responsibility are defined.

In this article, carrier responsibility and exemption cases are mentioned briefly. This article at one is replaced by all sections 2, article 4 of Brussels rules, the 17 sections of Brussels rules besides various ambiguities in the meaning of the terms seems dull and extra and Hamburg convention based on the shortcomings considered article 5 as free from the problems and ambiguities.

In this article, the carrier is responsible to the losses of the goods and this article defines the responsibility and apparent reason and considering this responsibility in this article is conditional. In other words, the carrier is responsible if the event is occurred during his work. After the damage, the goods owner makes the carrier responsible unless he can prove the lack of responsibility by presenting adequate reasons.

Despite the attempt of the convention makers that these rules are free from any ambiguity, it can be said that there are some problems in these rules.

By considering article 5 of section 1, it can be said that there are some terms with ambiguity. These terms are including the event leading to damage and “along his responsibility and before investigating these terms, we can say:

Paragraph 1, article 5 states:
“Unless the event leads to the damage, loss or delay during the period”
“Responsibility is occurred in article 4”.

Another case of exemption is in section 4 article 5 of Hamburg convention. By considering this section regarding fire, it can be said that the principle is the lack of responsibility and carrier exemption. This section of article 5 says:
“ The carrier for damage or loss of goods or delay in delivery for the fire”
“is responsible on condition that the claimant proves”
“Fire is occurred due to the negligence of the carrier or his agent”.

As it was said about fire issue in this section, one of the examples un general understanding is attached to convention in which the initial principle is ignored (the principle of carrier responsibility).

One of the justified reasons of exemption from responsibility is section 6 of article 5 of Hamburg convention. This is about rescue operation. If delay or losing the goods is as the result of the carrier measurement in saving people in sea, the carrier is free from responsibility.

Based on paragraph 6, article 5 of Hamburg rules, it can be said that whether the rescue operation leads to result to be considered as justified reason for exemption or not? In other words, whether only attempt to save the property or people life are adequate to use this exemption or not?

This section of article 5 shows that for exemption of carrier from the responsibility, it is not required the saving operation leads to saving and if the attempt is done to save life or property and there is a delay or damage is for the goods or is lost, the carrier is free from responsibility.

Conclusion

As it was said in the introduction of the study, goods transportation via sea is of great importance and its importance is also increased.

As the rules are tools to eliminate the problems in human life, we should move toward human life and it is a good solution. Then, we investigated the legal articles of exemption of marine carrier in Brussels and Hamburg conventions are considered.

The goal is taking a result regarding achieving the weaknesses and strengths of the legal articles to solve the existing problems.

By investigating of the legal articles, some results are used:

First: By considering the exemption of carrier in Brussels convention, as the major part of our discussion, we achieved the weaknesses and strengths of the articles. As the result of the discussion, we can say that Brussels convention as the first international experience is successful in creating the marine rules. One of the successes regarding the exemptions of carrier is that by considering the carrier exemption, we can help the courts dealing with marine files regarding the determining of the exemption examples.

Despite the benefits in this convention, as it was the first international experience in this regard, it had some weaknesses.
One of the weaknesses was as by considering the exemption cases, great support of carriers was made to the goods senders and this issue was protested by the goods sender countries and it was effective in the next revisions. Another weakness in the exemption is extra repetition of some of the exemption cases. For example, some examples of force major is defined in some sections and by expressing a section as general force major we can avoid the extra repetition of other sections. This convention has some weaknesses in other part that is not considered due to the lack of relevance with our discussion. This convention can create collaborate morale at international level to create change in transportation.

The result of this issue is observed in holding Wisby conference in revising some of the articles of convention 1924 and finally convention 1978 of Hamburg and in Hamburg convention, it can be said the rights of his mission based on dynamics is done and changed the marine rights.

This convention compensated the past shortcomings and created new ways. Hamburg convention is also with some shortcomings and this change is continued based on the increasing development of the considerable progresses in transportation industry. These studies emphasized on these changes. Finally, we can review the marine law of Iran and unfortunately, the past rules are not eliminated and we can help this old field in Iran to change it at national and international levels.

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