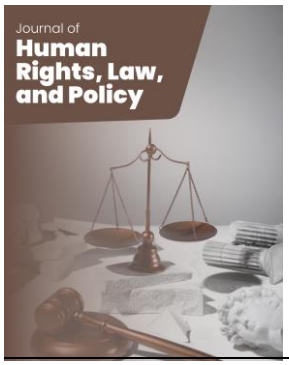

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Examination of the Obligations of the Shipper in Light of Iranian Law and the Rotterdam Rules 2008

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ABSTRACT

The significant role of transportation in trade, the circulation of goods, and the distribution of wealth in the international arena has necessitated the establishment of uniform international laws and regulations. Among the most important conventions—and the most up-to-date development in this regard—is the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, known as the Rotterdam Rules (2008). One of the key issues in maritime transport is the obligations of the shipper toward the carrier. Unlike its predecessors, the Rotterdam Rules dedicate an entire chapter (Chapter 7) specifically to the shipper's obligations and enumerate them in detail. The purpose of this article is to examine the obligations of the shipper toward the carrier, as well as the challenges arising from the breach of these obligations. Finally, based on the policy orientation of the Rotterdam Rules—which establish balanced and reciprocal obligations and liabilities for both parties to the contract of carriage—it is suggested that the Iranian legislature consider acceding to this convention. The research method adopted in this study is descriptive–analytical, and the data collection has been conducted through library-based sources.

Keywords: *maritime transport, Rotterdam Rules, shipper, shipper's obligations*

Introduction

Approximately 90 percent of global trade is conducted through the international transport industry, and although goods transportation can occur through several means, maritime transport occupies the dominant role among them (1). However, what is important is that in both the country of origin and the country of destination, other modes of transport exist before and after sea carriage (2).

The first practical step toward the codification of maritime transport regulations was the enactment of the Harter Act in the United States in 1893, which marked a decisive movement toward balancing the relationship between carriers and shippers (3). Following the adoption of this law, other countries also took steps to enact similar regulations. The lack of uniformity among these domestic rules, which led to conflicts of law at both national and international levels, highlighted the need to establish conventions aimed at harmonizing these regulations (4).

The Hague Rules of 1924 were enacted to unify certain aspects of the law relating to bills of lading. Later, the Hague–Visby Rules of 1968 were adopted to remedy the inadequacies of the Hague Rules. The Hamburg Rules were adopted in 1978, mainly with the objective of harmonizing the rules governing air and rail transport (5).

Due to technological advances, the emergence of concepts such as the electronic bill of lading, the limited accession of major shipping nations to the Hamburg Rules, the rapid growth of regular (liner) and non-liner shipping, and the increasing prevalence of containerization and door-to-door contracts, as well as the need to protect the rights of all parties to the contract of carriage, the Rotterdam Rules (United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea) were adopted in 2008 (6). The Rotterdam Convention was enacted to balance the diverse commercial interests of the parties to carriage and to ensure uniformity in the implementation of international rules governing the carriage of goods by sea. UNCITRAL has described this convention as a "maritime plus" instrument (2).

Before the adoption of the Rotterdam Rules, in both maritime law and international trade law, the carrier was typically regarded as the party responsible for loss or damage, and the scope of the carrier's liability was extensive (7). However, with the introduction of the Rotterdam Convention, major transformations occurred in this legal framework. Previously, the responsibilities and obligations of the shipper had to be inferred indirectly from the provisions relating to the carrier's liability. In contrast, the Rotterdam Rules dedicate an entire section specifically to defining the shipper's obligations and responsibilities. This specification, however, does not imply that such provisions were entirely absent in earlier instruments (8).

This article examines the obligations of the shipper as stipulated in Chapter 7 of the Rotterdam Rules, which contains eight articles, and explains how the obligations of the relevant actors—unlike their predecessors—have reached a balanced state, resulting in a mutually beneficial arrangement. It should be noted that the research method employed in this study is descriptive–analytical (6).

Research Background

Salehi and colleagues (2020), in their article titled *"The Nature of Mutual and Subsidiary Obligations of Primary and Secondary Carriers in the Maritime Carriage of Goods: A Comparative Study of Iranian Law and the Hague, Hamburg, and Rotterdam Conventions,"* argue that according to Iranian law and the three major conventions, the obligations of the parties—and their derived subsidiary obligations—originate from the contract itself. They further examined the legal nature of the carrier's obligation to deliver goods safely and found that under Iranian maritime law and the Hague–Visby Rules, this is an obligation of means rather than of result (9).

Soltani (2022), in her article titled *"Obligations and Responsibility of the Shipper and the Contract of Carriage in Iranian Law and the Rotterdam Convention,"* asserts that the Rotterdam Convention represents the latest international development that explicitly and precisely addresses the obligations and liabilities of the shipper (8).

In his work titled *"Shipper's Obligations and Liabilities under the Rotterdam Rules,"* Fujita (2011) argues that under the Rotterdam Rules, a "breach of obligation" is a precondition for the shipper's liability, and furthermore, the parties cannot expand the shipper's contractual obligations beyond those stipulated by the convention (10).

The Rotterdam Approach to Shipper's Obligations

The following section examines the duties and obligations of the shipper under the Rotterdam Rules (10).

Shipper's Obligations under the Rotterdam Rules

The Rotterdam Rules address the shipper's obligations in a more detailed and comprehensive manner than previous conventions. This extensive attention raises a natural question: *Have the shipper's obligations under the Rotterdam Rules significantly increased?* Some criticisms of the convention are based on the assumption that it imposes heavier obligations on the shipper. However, a closer examination is necessary before reaching such a conclusion.

First, a greater number of provisions does not necessarily mean that more obligations have been created. Second, as some scholars have observed, the shipper has never been exempt from obligations; even where earlier conventions were silent, shippers have long been responsible for a wide range of duties under applicable commercial and operational laws (10). It is also important to note that according to Article 79(2) of the Rotterdam Rules, the parties cannot, by contract, increase the shipper's obligations beyond those defined in the convention. Therefore, in this respect, the shipper enjoys greater protection compared to earlier regimes. Thus, the frequent claim that the Rotterdam Rules have substantially increased the shipper's burden of obligations is not necessarily accurate (10).

In other words, Chapter 7 of the Rotterdam Rules, encompassing Articles 27 through 34, titled *"Obligations of the Shipper to the Carrier,"* specifically addresses this matter. Several key points should be noted regarding this chapter.

First, none of its provisions refer to the obligations or liabilities of the shipper toward any person other than the carrier. Therefore, the shipper's obligations and responsibilities exist solely in relation to the carrier (6).

Second, since the convention pertains exclusively to the carriage of goods and not to the transport of passengers or their baggage, the shipper's obligations toward the carrier are limited to goods. Consequently, damages other than those related directly to the goods fall outside the scope of Chapter 7 of the Rotterdam Rules. It should be noted that the term "damage to goods" refers to both total loss and direct damage, and does not include losses resulting from delay in delivery. This interpretation is supported by the fact that, unlike Article 17, Article 30 makes no mention of damages caused by delay (11).

Third, although Chapter 7 addresses the shipper's obligations, careful examination of certain articles reveals that some provisions also refer to the carrier's obligations—for instance, Article 28 discusses mutual obligations between the shipper and the carrier (7).

As previously stated, the Rotterdam Rules, in Chapter 7, articulate the shipper's obligations and liabilities in greater detail than previous conventions. This may suggest that the shipper's responsibilities have increased; however, a closer analysis indicates that these provisions merely reaffirm pre-existing obligations, the breach of which had already resulted in the shipper's liability under Article 4(3) of the Hague–Visby Rules and Article 12 of the Hamburg Rules (6). In reality, these obligations have not significantly expanded but have been given clearer legal recognition and codification.

To confirm this conclusion, it is necessary to compare the shipper's obligations under the Rotterdam Rules with those established in prior conventions. The provisions of this chapter encompass the following subjects, which will be examined in detail in subsequent sections (8).

Shipper's Obligation to Deliver Goods for Carriage

According to Article 27 of the Rotterdam Rules, unless otherwise agreed in the contract of carriage, the shipper has the duty to make the goods ready for delivery for carriage. In any case, the shipper must deliver the goods to the carrier in a condition suitable for carriage so that the carrier can load, handle, stow, and discharge them in a way that does not pose any danger to persons or property (1).

In other words, under Article 27, the obligation of the shipper to deliver the goods for carriage includes both general duties applicable to all goods and specific duties related to containerized cargo. Paragraph 1 of Article 27 defines the general obligation of the shipper to deliver the goods to the carrier. The first part imposes the duty to deliver goods that are "ready for carriage," while the second part requires that the goods be safe with respect to persons and property. The contract of carriage may alter the first part (as indicated by the phrase "unless otherwise agreed"), but not the second (as expressed by "in any event"). The contractual freedom allowed by the first sentence of Article 27(1) provides the necessary commercial flexibility for the parties to make suitable arrangements for the readiness of the goods, while the mandatory nature of the second sentence safeguards the safety of all persons involved in the undertaking.

The shipper must deliver the goods in a condition fit to withstand the "intended carriage." In other words, the goods themselves must be capable of enduring sea transport (or any other form of transport that forms part of the intended carriage) and must be suitable for the conditions of the voyage, including proper packaging, duration, expected weather, size and type of vessel, type, weight, and volume of the cargo, and the method of loading and discharging (10). Moreover, the goods must not cause harm to persons or property. This requirement applies not only to "dangerous goods" but to all types of goods, including packaging.

If the goods cause damage to the carrier, depending on the cause of the damage, the shipper may be liable under Articles 30, 31, or 32. UNCITRAL deliberately used the term "loss" as a broad concept encompassing various types of damages, including physical damage, consequential loss, and personal injury. It should be noted that this provision does not provide a cause of action to any person other than the carrier whose property was damaged. While paragraph 1 of Article 27 refers to "persons or property" in defining the shipper's obligation, paragraph 3 provides specific rules for containerized cargo.

When goods are delivered in a container packed by (or in a vehicle loaded by) the shipper, the shipper must properly and carefully stow and secure the contents within or on the container (or vehicle) so as to prevent damage to persons or property. Although Article 27(3) arguably adds little to the duty already imposed by Article 27(1), UNCITRAL considered it practically important as a reminder of the significance of proper stowage and securing of goods within the container to withstand the voyage. The focus of Article 27(3) is on the proper stowage of goods, whereas Article 27(1) concerns the condition and packaging of the goods themselves. As in the second sentence of Article 27(1), which also emphasizes safety, no contractual freedom is permitted with respect to the obligation under Article 27(3) (10).

Accordingly, when a container or vehicle is packed or loaded by the shipper, the shipper must carefully check and secure the contents to prevent damage to persons or property. Although the **Hague** and **Hague–Visby Rules** did not expressly stipulate this obligation, it is generally accepted that the proper performance of the shipper's role in the contract of carriage includes taking necessary measures to prevent damage to the ship or other cargo (1). In essence, the rule requiring delivery of goods in a seaworthy condition imposes on the shipper an obligation that

covers loading, transport, stowage, storage, insurance, and unloading. Article 3(5) of the Hague–Visby Rules and Article 12 of the Hamburg Rules impose on the shipper the obligation to ensure the seaworthiness of the goods. However, the carrier may also bear liability under certain conditions such as unforeseen risk or defective packaging (5).

Performance of the Obligation under FIOST Clauses

The validity and effect of FIOST clauses (Free In, Out, Stowed, and Trimmed) are recognized in paragraph 2 of Article 13, which provides that certain obligations of the carrier may be performed by or on behalf of the shipper, the documentary shipper, or the consignee. Therefore, if the terms of the carriage contract assign to the shipper certain duties that would normally fall to the carrier, the shipper must perform them with due care and accuracy. However, if such actions, pursuant to an FIOST clause, are not performed by the shipper but rather by the consignee or another person, the shipper is not liable. None of the Hague, Hague–Visby, or Hamburg Rules imposed such obligations on the shipper. Due to the practical demands of the modern maritime industry, this subject is now addressed in the Rotterdam Rules, which allow for certain carrier duties to be undertaken by the shipper (7).

Shipper's Obligation to Provide Information, Instructions, and Documents

The Rotterdam Rules also emphasize another core aspect of the shipper's obligations—namely, the duty to furnish the carrier with necessary information, instructions, and documentation. Among the most important of these duties is the shipper's obligation to provide accurate information concerning the goods and any instructions that the carrier must follow. It could be argued that the drafters of the convention should have separated these two obligations into distinct articles, as each encompasses its own specific responsibilities (6).

Article 29 of the Rotterdam Rules requires the shipper to provide the carrier with all information, instructions, and documents necessary for the proper handling and carriage of the goods. The Hague, Hague–Visby, and Hamburg Rules contain no such explicit provisions. Although earlier conventions were generally silent on the shipper's obligation to inform the carrier—except regarding dangerous goods—carriage contracts typically required the shipper to provide such information. Thus, rather than creating new obligations, the Rotterdam Rules codify and harmonize existing practice.

Article 29(1)(a) refers to information, instructions, and documents necessary for the proper handling and carriage of the goods (including any precautions required to be taken by the carrier and the parties involved). This obligation arises only to the extent that the information, instructions, and documents are reasonably necessary and otherwise not reasonably available to the carrier (10). Article 29(1)(b) facilitates the carrier's compliance with laws, regulations, and other governmental requirements related to the intended carriage. The shipper must provide such information, instructions, and documents only when the carrier has duly informed the shipper, in a timely manner, of what is required.

The initial draft of the convention proposed strict liability for breach of the shipper's duty to provide information. However, during the UNCITRAL negotiations, the nature of this liability was fundamentally revised. Under the final text, breach of Article 29 gives rise to ordinary fault-based liability in accordance with Article 30(2). Only failure to provide certain specific categories of information triggers strict liability for the shipper (10).

In other words, just as the carrier is required to deliver goods to the consignee in accordance with the bill of lading—failing which it bears liability—the statements made by the shipper are equally significant as they form the

foundation for verifying the claims of the parties. Hence, the shipper must exercise utmost accuracy in declaring information regarding the goods to the carrier. Following the Hague Convention, Iranian maritime law, in paragraph 5 of Article 54, provides that the shipper is liable to the carrier for the accuracy of marks, numbers, quantity, and weight of the goods as declared at the time of shipment. Similarly, under the Hamburg Rules, the shipper, his crew, or agents must exercise due diligence during loading, and in the event of negligence causing loss or damage to the goods, the carrier shall be held liable (11).

Dangerous Goods under Article 32 of the Rotterdam Rules

In Article 32 of the Rotterdam Rules—which contains special provisions concerning dangerous goods—similar regulations exist, and if the presence of dangerous goods on board the vessel creates a real risk to life or property, the carrier may, pursuant to Article 15 of the Rotterdam Rules and depending on the circumstances and the degree of danger, discharge, destroy, or render such goods harmless. (1)

Certain regulations regarding dangerous goods require the shipper, first, to mark or label the goods with appropriate indications and, second, to inform the carrier of the dangerous nature of the cargo and to alert the carrier to the precautions to be taken. (11)

Obligation to Load and Discharge the Goods

Given that a contract exists between the shipper and the carrier under the Rotterdam Rules, the parties enjoy contractual freedom within the limits of the convention and may assume certain obligations of the other party in relation to the carriage of the goods. Among these, the shipper's obligation to load and discharge the cargo may be agreed. Therefore, depending on the contractual arrangement, loading and discharging can be considered among the shipper's obligations—tasks that, due to their technical nature, must be performed with precision. (11)

Obligation to Pay Freight

Payment of freight, according to the contract of carriage and the issued bill of lading, lies with the shipper. This obligation arises from the contract, which compels the shipper to pay the freight, and the amount and method of payment are specified in the bill of lading. (4)

In principle, the parties to a contract of carriage have full freedom to determine the amount and method of paying freight. Sometimes the freight is calculated on a daily or monthly basis, and at other times on a per-voyage basis. In maritime carriage contracts, however, the amount is more commonly determined based on the weight of the goods, and the parties agree on the freight payable per ton or per kilogram. In some cases, freight is calculated on the basis of volume—per cubic meter or hectoliter—typically used for tankers that carry liquids; sometimes it is calculated on both weight and volume, as in timber carriage; and sometimes it is calculated per unit, such as per machine or per vehicle. A recently adopted method calculates freight based on the value of the goods, used for high-value items such as jewelry. (11)

As a rule, freight is calculated based on the quantity of goods stated in the bill of lading; however, sometimes calculation of freight is conditioned upon the quantity or weight of the goods at the port of destination at the time of discharge. The reason for this condition is that it may not be possible to verify the exact quantity at the time of loading. Therefore, where such a condition exists, the master is entitled to request that weighing and counting be conducted at discharge, and the freight is then calculated on the basis of the quantity actually delivered to the

consignee. Consequently, any reduction in weight during the voyage—due to the nature of the goods, pressures applied, evaporation, or similar causes—is excluded from the freight calculation, and no freight is charged for that lost portion. (11)

With respect to additional charges under the contract of carriage and the ship's bill of lading, the shipper, in addition to paying freight, must also pay ancillary costs arising from the carriage. These additions may include demurrage for delay in discharge and gratuities or rewards payable to the master. For example, under clause (a) of Article 15 of the Iranian Shipping bill of lading, freight becomes payable upon the carrier's receipt of the goods and must be paid whether or not the ship or its cargo is lost, and it is in no case refundable. Any carriage-related expenses claimed by the carrier become definitively payable once incurred, and interest at a rate of 5% accrues from the date on which the freight and expenses fall due. Moreover, clause (d) of the same article provides that "in any event, the merchants (shippers) are responsible for freight, accessories, and all other expenses incurred in relation to the performance of the contract of carriage." In any case, payment of freight and its additions is among the shipper's duties and obligations, and failure to do so entails the shipper's liability. (11)

Providing Information Regarding Shipments Containing Dangerous Goods

The maritime carriage of dangerous goods entails significant risks of harm to the vessel and to other cargo. If the shipowner is aware, prior to loading, of the dangerous characteristics of the goods, precautionary measures must be taken to mitigate these risks. This rationale underlies the core obligation imposed by Article 32 of the Rotterdam Rules on the shipper to compensate the carrier for loss or damage resulting from the shipper's fault in notifying the carrier of the dangerous nature of the goods. Article 32 provides: "When goods, by their nature or character, are dangerous, or are reasonably considered dangerous to persons, property, or the environment: (a) the shipper must, in a timely manner prior to delivery of the goods to the carrier or its agent, inform them of the dangerous nature or character of such goods. If the shipper fails to do so and the carrier or its agent is not made aware of the dangerous nature or character of the goods, the shipper is liable to the carrier for loss or damage resulting from the failure to inform; (b) the shipper must mark or label the dangerous goods in accordance with laws, regulations, or other public authority requirements applicable during any stage of the intended carriage. If the shipper fails to do so, the shipper is liable to the carrier for any loss or damage arising from such failure." (1)

Goods may be considered dangerous in two respects: first, where they pose a risk to the vessel itself—such as iron ore concentrates with high moisture content or copper concentrates—and second, where they may lead to the detention of the vessel. For example, in *Mitchell, Cotts & Astle v. Brass*, the charterer shipped a quantity of rice with knowledge that discharge at the port of destination was not permitted without authorization from the local British authorities; without informing the shipowners, discharge was delayed due to the lack of authorization, and the court held the charterers liable for the delay. (7)

The Rotterdam Rules do not define "dangerous goods." They differ from the Hague–Visby Rules and the Hamburg Rules, under which goods are deemed dangerous if they are likely to endanger persons, property, or the environment. Nevertheless, the shipper's obligation is similar to that under other conventions: the shipper must inform the carrier, and failure to do so results in liability toward the carrier. Likewise, as under Article 13 of the Hamburg Rules, the shipper must mark or label such goods; the Rotterdam Rules go further by requiring compliance with any law, regulation, or other public-authority requirement applicable at any stage of the intended carriage. The Rotterdam Convention, in Article 32, seeks to provide a general criterion to avoid ambiguity: the "danger" in

"dangerous goods" refers to risks to persons, property, and the environment. Not every good that may under some circumstances become dangerous falls within the scope; rather, the focus is on goods that are inherently hazardous in their nature—such as flammable, radioactive, petroleum, or gasoline products. (1)

If goods are not inherently dangerous but become hazardous due to circumstances, they are not the primary focus of Article 32. In addition to situations where inherently dangerous goods cause damage, where such goods are rendered harmless by the carrier's measures and damage is thereby averted, any additional costs reasonably incurred by the carrier may, under Article 32, be recoverable from the shipper. This right can be inferred from general principles of civil liability. Even when goods that are not inherently dangerous become reasonably likely to pose a risk during the voyage, if the carrier is able to prevent harm by taking appropriate measures, the carrier may claim compensation from the shipper for the expenses incurred. In this respect, the carrier may rely on Article 15 to undertake reasonable operations to neutralize or render harmless goods that subsequently become dangerous (1).

Conclusion

The Rotterdam Convention represents a significant advancement marked by numerous innovations and positive features. The current conditions of international trade require merchants to engage in transportation contracts with carriers for the shipment of their goods. Most shippers rely on sea routes and international waterways for transporting their cargo. Therefore, maritime transport necessarily involves a contractual relationship between the parties, under which each bears specific rights and obligations toward the other.

With the expansion of maritime transport, the resulting contractual disputes and legal challenges have increasingly led to numerous legal cases. Before the Rotterdam Convention, most litigation arising from contracts of carriage focused primarily on the carrier as the responsible party. However, following the adoption of the convention, the shipper was also explicitly recognized as bearing independent obligations and liabilities, which are detailed in a separate section of the convention. Consequently, the shipper's obligations were systematically organized in Chapter Seven, eliminating the disorder and fragmentation found in previous conventions.

Nevertheless, the scope of the shipper's obligations under the Rotterdam Rules is still not entirely comprehensive. Among the shipper's principal duties are: the obligation to deliver goods in a ready condition (Article 27); cooperation between shipper and carrier in providing information and necessary instructions (Article 28); the shipper's duty to supply documents, information, and training (Article 29); the obligation to provide information for drafting contractual terms (Article 31); and special rules concerning dangerous goods (Article 32).

The inclusion of the concept of the "documentary shipper" is among the innovations introduced by the Rotterdam Convention, addressing gaps in prior conventions and mitigating several practical problems in the maritime transport industry. Under the Rotterdam Rules, a shipper is defined as a person who has entered into a contract of carriage with the carrier or whose name appears on the transport document.

A core objective of the Rotterdam Convention—beyond unifying commercial law—is to ensure a balanced protection of both carriers and shippers. The convention establishes equilibrium between the obligations and responsibilities of the shipper on one hand and those of the carrier on the other, avoiding the unilateral tendencies that characterized earlier conventions. For example, while the Hague Rules were generally viewed as favoring carriers (typically from developed countries), the Hamburg Rules were perceived as favoring shippers (usually from developing nations).

One of the key innovations of the Rotterdam Convention is the introduction of mandatory provisions governing the shipper's obligations, designed to protect carriers from potential negligence or misconduct by shippers. Among these mandatory rules is the shipper's obligation to dispatch goods in a safe manner—a duty that cannot be contractually altered. According to these provisions, under all circumstances, the shipper must ensure that the goods are sent in a condition that preserves their integrity throughout the voyage. In other words, contractual agreements between the carrier and shipper are valid only if they concern aspects of cargo readiness other than safe carriage or other mandatory regulations established by the convention.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adheried in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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