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Corresponding Author	**Aytac CƏFƏROVA** Baku State University, Public International Law Department, aytac199031@gmail.com	
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Author / Authors	**Aytac CƏFƏROVA**	**ORCID:** 0000-0003-0624-4498
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Azerbaycan Cumhuriyeti'nin Denizyolu Yükümlülüğünde Taşıyıcının Sorumluluğunun Hariç Tutulmasına İlişkin Uluslararası Normları ve Mevzuatı

Aytac CƏFƏROVA [1]

ABSTRACT:

The article examines international standards and domestic legislation on maritime freight, the foundations of the implementation of international standards in domestic law. It is noted that the effective functioning of mechanisms of international legal regulation is impossible without ensuring the implementation of international legal treaty norms in the field of domestic law in the proper manner. International treaties apply not only when different rules are identified, or a contradiction arises. Depending on the level of relations, especially relations of an international character, the legislation proposes to indicate international business customs as a source and recognize the possibility of direct application of international treaties. Attention is drawn to the fact that the location of Azerbaijan on the historic Silk Road makes it necessary to participate in modern multimodal conventions (for example, by incorporating the Rotterdam Rules into domestic law), and therefore the choice of the reception method for the implementation of international treaties is not enough for integration policy. Rotterdam rules excluding liability of the carrier according to the catalog of immunities implemented not only The Hague rules, but also certain rules of the Hamburg rules. In this sense, as an act of synthesis, the Rotterdam rules should be adopted as a criterion for legislation. Also, Formula 3.1 of the Civil Code "on the direct application of international treaties" should be fixed in the CMS of the AR.

KEYWORDS: International law, Hamburg rules, Rotterdam Rules, international carriage, carriage of goods by sea.

[1] Ordu University, Faculty of Agriculture, Landscape Architecture Department, perviny48@gmail.com

ÖZ:

Makale, uluslararası standartların iç hukukta uygulanmasının temelleri olan deniz taşımacılığına ilişkin uluslararası standartları ve yerel mevzuatı incelemektedir. Uluslararası hukuk sözleşmelerinin normlarının iç hukuk alanında gereği gibi uygulanması sağlanmadan uluslararası hukuk düzenleme mekanizmalarının etkin işleyişinin mümkün olmadığı belirtilmektedir. Uluslararası anlaşmalar, yalnızca farklı kurallar belirlendiğinde veya bir çelişki ortaya çıktığında geçerli değildir. İlişkilerin düzeyine, özellikle uluslararası nitelikteki ilişkilere bağlı olarak, mevzuat, uluslararası ticaret geleneklerini bir kaynak olarak göstermeyi ve uluslararası anlaşmaların doğrudan uygulanma olasılığını tanımayı önermektedir. Azerbaycan'ın tarihi İpek Yolu üzerindeki konumunun, modern multimodal sözleşmelere (örneğin, Rotterdam Kurallarını iç hukuka dâhil ederek) katılmayı gerekli kıldığı gerçeğine ve dolayısıyla uygulama için kabul yönteminin seçimine dikkat çekilmektedir. Uluslararası anlaşmaların sayısı entegrasyon politikası için yeterli değildir. Bağışıklıklar kataloğuna göre taşıyıcının sorumluluğunu hariç tutan Rotterdam kuralları, sadece Lahey kurallarını değil, Hamburg kurallarının da bazı kurallarını uygulamıştır. Bu anlamda bir sentez eylemi olarak Rotterdam kurallarının yasama kriteri olarak benimsenmesi gerekmektedir. Ayrıca, "uluslararası anlaşmaların doğrudan uygulanmasına ilişkin" Medeni Kanun'un Formül 3.1'i AR'nin CMS'sinde sabitlenmelidir.

ANAHTAR KELİMELER: Uluslararası hukuk, Hamburg Kuralları, Rotterdam Kuralları, uluslararası taşımacılık, deniz taşımacılığı.

"International Norms and Legislation of The Azerbaijan Republic for Exclusion of Carrier's Liability in Maritime Freight"

1. Introduction

Maritime freight has an undeniable advantage in referring to other transport systems (Condall, 1978: 264). The superiority of the carrying capacity of merchant shipping over all other modes of transport makes the transportation process less costly. And as a result, international trade shipping is developing steadily. For example, during the global economic crisis of 2008-2009, sea freight accounted for 80% of total freight traffic (Rotterdam Rules, https://jurisprudence.club). The calculations of 2018 also showed the preservation of the previous percent and annual growth after the negative consequences of the crisis (Baatz Y, 2014: 578). Many maritime states approach maritime merchant shipping as a source of employment, budget revenue and other economic qualities. By January 2016 (deadweight), China, Germany and Singapore which have the large fleets, and Greece, Japan and Panama, Liberia, Hong Kong, Singapore, and the Marshall Islands which have the large fleets in terms of flag registration, continue to support ship owners, shipping companies. Also, the Republic of Azerbaijan (AR) continues to regulate merchant shipping in the direction of attracting capital (service), as well as expanding employment. For example, in the first half of 2018, maritime freight in relation to the state of the same time in 2017 (4 million tons) was accompanied by a 9% increase. The activities of international seaport infrastructures (Baku International Sea Trade Port, Hovsan International Sea Port, and Alat International Sea Port) relate to the importance that our state attaches to commercial shipping.

One of the main issues that determine the relevance of the topic of carrier liability *is the existence of various modes and practices; business customs standards* under the Brussels International Convention (Hague Rules) on the unification of certain rules relating to the Bill of Lading of August 25, 1924; The Brussels Protocol (Visby Rules) of February 23, 1968, amending the Brussels International Convention on the Unification of Certain Rules Relating to the Bill of Lading and the SDR Protocol (The Hague-Visby Rules) 1979; The UN Convention on the Carriage of Goods by Sea (Hamburg Rules) of March 31, 1978, and finally, the UN Convention on the International Contracts for the Full or Partial Carriage of Goods by Sea (Rotterdam Rules) of 2008. The non-recognition of any of the rules as universal, the problems of the Hague and Hague-Wisbian rules in the legal regulation, the adoption of the Hague rules by a small number of states, and the non-entry into legal force of the Rotterdam rules give grounds for scientific research.

Another issue that determines the relevance of the problem is related to the 1999 Code of Merchant Shipping (CMS). The main problem is the non-participation of the AR in any of the international rules we have designated, but only the reception in one form or another of the international rules in the Merchant Shipping Code. And such a rule is not enough for legal regulation. The solution of two important tasks should be ensured at the intersection of the consignor with the carrier in maritime freight relations. The first task is to ensure the protection of the legal interests of persons using the shipping service; the second task is the establishment of effective legal protection mechanisms that stimulate the activities of all carriers providing shipping services will protect them from complex unreasonable disputes. And effective legal mechanisms consist of historically established transnational standards, domestic legal and international treaty norms.

2. International (Transnational) Standards and Domestic Legislation

As transnational legal norms, “business customs” or “international trade customs” is endowed with an important function in regulating maritime trade and shipping relations. Business customs are defined even in civil law (AR Civil Code, Article 10).

These norms have the property of individual regulation, as well as the norms that the participants of turnover in international trade turnover determined themselves (Alekseeva, 1987: 448). There are different opinions about the nature of business customs. In the literature, customs and "established rule" or "experience" differing from them are shown (Lunts, 1973: 1007). The main difference between the customs of merchant shipping and the practice of merchant shipping is that their application does not require the consent of the parties, since they are a legal source. And for practice, on the contrary, in each case, mutual agreement is the main condition for its application. In regulating maritime merchant shipping relations, the applicable customs should be reasonable; specific; relevant to the contract; suitable for universal use and not contrary to law (Sadikov, 1981: 288). As an example of the customs of maritime trade, we can mention a link to “the value of the cargo at the time of placement and delivery” in case of loss or damage, when determining the amount that the carrier will have to pay and other rates. “Reasonableness”, “compliance with the contract”, “compliance with the contract of carriage” is expressed in international rules, including the 2008 Rotterdam Convention (Article 43). International customs are widely used in the regulation of relations emanating from merchant shipping. For example, the York-Antwerp international rules (customs) on a general accident (Ivanov, 1984: 32). Basically, solve the following questions; about the type of accident and whether it is general or not; the amount of damage caused as a result of a general accident; the question of the distribution of responsibility for a general accident between the participants (Əliyev, 2006: 360). The reference to these rules’ sanctions by the internal legislation of the states, for example, article 390.7 of the Criminal Code of the Republic of Azerbaijan (... *business customs* applicable to the relations of the parties) Art. 224.2 CMS (... *international rules on general crash and other international customs of merchant shipping* apply). In the 43-rd article of the Rotterdam Convention, there is a reference ... to the custom, experience, rules, and conditions of transportation of that …sphere. Although these rules reflect the will of business participants, they are closely connected with state regulation and, as we noted, they interact with both domestic legislation and international treaties. Since maritime trade customs were established by the subjects of the relevant relations, in this area these rules are implemented more flexibly, and unlike the norms of international treaties, protracted legislative recognition does not threaten them.

3.Framework for the Implementation of International Norms in Domestic Legislation

Effective legal regulation is possible on the basis of a mutual combination of domestic law with international law (Galligan, Maraist and Maraist Thomas, 2003: 860). States purposefully expand the possibilities of internal regulation in the field of transport relations at the expense of international standards. Regulation in this form is enshrined in a number of legislations of the AR. For example, article 1.2 of the AR CMS says that ... relations arising from merchant shipping ... are regulated by international treaties to which the Republic of Azerbaijan has joined, and normative legal acts adopted on their basis. As can be seen, the domestic legal system has become a prerequisite for the regulation of international legal norms. The forms and methods of implementing international law within the framework of the system of internal law vary depending on the interests of the state. International law with the participation of domestic law system defines the forms and methods of, as well as the unifying mechanisms for its implementation (Chernichenko, 1999: 336).

There are different opinions about the combination of international law with domestic or methods of implementing international law in the system of domestic law. Since the methods of implementation ("reception", "adaptation", "legitimation", "incorporation", "reception", etc.) (Zimnenko, 2003: 188) are not the objectives of our study, we note only that the combination of international law and domestic law, mainly carried out in two forms: incorporation and reception. In the first case, official recognition, joining is carried out. In the second case, entrenchment (reception) is carried out in domestic law without official recognition. At the same time, the state that receives international rules does not bear any obligation towards other states and, in general, has the competence to more freely revise its legislation based on international rules. Article 27 of the Vienna Convention on Contractual Rights emphasizes that a state cannot take as a base its domestic law's provision as an excuse for not fulfilling a treaty. The state must build its legal system so that the implementation of international obligations is ensured. In the case of the reception expressed by us, the 27th article is not valid. The Republic of Azerbaijan also did not officially recognize the various, sometimes contradicting, international rules in the maritime transportation of goods; it merely reciped their main content into domestic law (for example, the 1924 Hague; 1968-1979 Hague-Wisby and partially Hamburg rules). Contradicting moments were either left to the discretion of domestic law or remained unresolved. Although the reception is a simpler and "non-binding" way of implementing the international pro-government norm in domestic law, it cannot but affect the political and legal authority of the state and, finally, its economic potential. The incorporation of an international legal norm into domestic law makes the state obligated both to partners and to persons belonging to them. The adaptation of domestic legislation to international obligations is being addressed, the issue of priority in a comparatio. The reception, as a rule, is applied to "selfexecuting" international legal norms, that is, having a specific content, fully regulating the rights and obligations, the activities of the subjects to which it is directed, and not requiring additional regulatory regulation. The "self-executively" of international legal norms, thereby contribute to the formation of the soil and for their direct application in interstate law. International agreements in the field of maritime transport are indicated as examples of such acts (Maryshevoy, 2000: 532). The content of international treaties such as the 1978 Hamburg Convention (Rules) on the Carriage of Goods by Sea and the 2008 United Nations Convention on the International Contracts for the Full or Partial Carriage of Goods by Sea (Rotterdam Rules) governs the rights and tasks of the parties in the context of domestic legislation. The literature also focuses on the self-executing features of the Rotterdam Rules. *The direct application* of international treaties that have been recognized or supported by our legislation is provided for in the Civil Code of the Republic of Azerbaijan. The direct application of international treaties is more characteristic of regulating relations with an external element (international). The Law of 2000 on Private International Law, the Law of 2000 on International Arbitration, the Maritime Code etc., fix the reference to the norms of international treaties.

For the direct application of an international treaty, its inclusion in the legislative system is required. Led by the Constitution of the Republic of Azerbaijan, many normative acts concerning maritime freight have fixed "the belonging of the international agreements of the Republic of Azerbaijan to the legislative system". The fact that an international treaty is included in the legislative system also determines its direct application (Ignatieva, 2001: 41-50). The legislator also decided the case when international norms directly applicable by an internal regulatory act in the relevant field could create a collision (Huseynov, 1998: 16-46). In addition to the legal grounds for the direct application of international treaties in the field of international trade (commercial) relations, in many codes and legislative acts establishes the basis for resolving priority or contradictory cases. In most acts, the provision that *"if the cases provided for in this code will differ from the rules in the international treaties of the AR, then the international rules apply"* also confirms our idea. Led by the constitution (Article 151) in legislative acts determine the ratio between international treaties AR and internal regulatory acts. This approach is enshrined in Articles 3.2 of the Civil Code of the Republic of Azerbaijan, 335 of the CMS of the AR.

Interstate standards of international treaties arise in connection with issues of technical safety, saving lives, etc. in the field of civil aviation, maritime trade shipping. For example, the technical suitability of a vessel for navigation must comply with international requirements. The first part of article 16 of the CMS of the Republic of Azerbaijan states that a vessel can be set sail only when it meets the safety requirements of sea navigation and *international contracts* (italics by the author) of the AR in the field of trade shipping.

The international legal regulation of liability in the international maritime freight cannot be limited only by contractual norms. International norms of custom, which are *the general basis* of international legal regulation, define

the parameters as of conventional (as stated in the preamble of the 2008 UN Convention on Contracts for Full or Partial Sea Shipping "considering the special importance of the element of international trade based on *equal and mutual benefit* in promoting friendly relations between states ... agreement on the following), as well as domestic law. Thus, the general principles of international law are of orienting importance in the regulation of relations related not only to the international activities of states, but also to individuals and legal entities (Galenskaya, 1996: 1-2). International norms of custom can be found both in the Constitution (Art.10; 69 (II) and 70 (I)) and in sectorial legislation. It would be advisable to emphasize in the AR's CMS the presence of the expression "implementation of regulation in accordance with generally recognized norms and principles of international law". Being the legislative base for regulation in a contract form in international commercial relations as peremptory norms (for example, exclusion of the carrier's liability in case of deviation to save human life at sea) defines the framework of the general rule (social and humanitarian, economic security, etc.).

4. Cases of Exclusion of Carrier Liability

According to the general rule, the carrier is obliged to deliver the goods in the same way as he accepted. However, immediate delivery or acceptance of goods may not be possible for various reasons. As problems in the delivery of goods, one can note a complete loss, partial loss of cargo, lack of quantity and weight, damage, etc. Under the influence of the Brussels Convention or the Hague Rules (Art. 4.2. (c) (k)) 130.1 article of the AR's CMS contains a list of cases that may cause loss, damage or delay in delivery of goods. In the cases set forth in that list, the carrier is not liable. The significance of the issue of limiting the liability of the carrier or "cases of exclusion", "the catalog of immunity" is so high that as a result of this, it has appeared *"The Doctrine of the individual contract"*. The absence of a legislative or regulatory concept of "Cases of Exclusion" led to the adoption of judicial (arbitration) practice in this area. For example, the position of US, French, and other vessels in relation to "maritime threats" is that these threats are "such cases of customs" that a professional and careful sailor who has a "good practice", and usually deliver cargo or a ship to a port safe or sound, could unable to take safety measures that would prevent such cases (https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/8457/index.do). The threat is unforeseen, unavoidable and outwardly directed intervention. The threat is unforeseen, inevitable and directed by outside intervention. For example, if we even know about the arrival of the storm, it is impossible to determine when and where from it will appear. For example, if we even know about the arrival of the storm, it is impossible to determine when and where from it will appear. The peculiarity of the "Catalog of exclusion or immunity" is that the influence of unforeseen, inevitable events is not accepted in relation to the obligation of the carrier. If systematized, then both conventional and legislative exceptions are associated with factors that have a natural (force majeure), geographic and territorial (sea threats such as landing a ship aground, collision with tides, reefs, scuba diving objects), administratively - political (sanctions against the vessel or cargo), social (popular unrest, rallies, protests, etc.) nature, and with non-fulfillment by others own duties (action or inaction of the cargo owner, consignor for, etc.).

The 12th paragraph of the 130th article of the CMS AR we have expressed should be taken as a complete circle of the "catalog of exceptions", which are more often encountered in practice. The disadvantage of the 1st part of the 12th paragraph of the 130th article of the CMS AR is undoubtedly the preservation of the open circle of cases of exclusion of the carrier's liability with "*other cases* (italics by the author) that arose not through the fault of the carrier, its employees or agents". As we noted, the Azerbaijani legislator, with this article, mainly receipted The Hague rules. But in resolving this issue The Hague rules was formed in the interests of the carrier in accordance with English law. This regulatory format has been eliminated by the new international legal regulation. So, the corresponding list of The Hague Rules (Art. 4. Clause II) - (17 cases of exclusion) is limited to one case in the Hamburg Rules (1978 Convention, Art. 5.6). According to the Hamburg Rules (Art. 5.6), the carrier, except for the general case of an accident, is not liable for the loss or damage of goods taken for transportation as a result of reasonable measures to save lives or property at sea, or for delaying the delivery of goods. The article of the Hamburg Rules expressed by us is identical to the editing in article 130.3 of the CMS AR. True, the term "general accident" is not used there. And for the damage caused in the event of a general accident, the carrier is responsible. When rescuing property, the carrier must take the necessary care in relation to the transported goods. When saving another ship and the property on board, he must act in the interests of the cargo for which he has vouched. He should also be able to pre-evaluate rescue operations, monitor reasonable activities.

As it was stated by us, in the CMS of the AR (Article 130) there are 12 direct points that can be eliminated as a result of proving the carrier's liability and this case was expanded by "other cases" (Article .130.1.12) enshrined in The Hague Rules (Article 4.2 (q)). And the Rotterdam Rules (Art. 17.3 (a-o)), 17.4 (a-b), 17.5 (a-b), 17.6), unlike the Hamburg Rules, defined a more extended catalog that forms the immunity of the carrier as in The Hague Rules (Article 4.2 (q)). By these rules, or rather the Rotterdam rules, should be eliminated "other cases" enshrined in the CMS AR. In practice, other cases, as in the Rotterdam Rules (Art. 17(g), (j)), include "hidden flaws", "defects". At the same time, it becomes impossible for a caring carrier to establish the resulting loss, damage and related cases.

The Hamburg Rules seriously curtailed the catalog of The Hague Rules, which excludes carrier liability. It can be assumed that this fact has become one of the main reasons why the Hamburg Rules are not encouraged in international maritime shipping. Section 17.2 of the Rotterdam Rules provides for the right to fully or partially release the carrier from liability, with only one condition, if he proves that the caused damage was not his fault. However, article 17.3 of the relevant Convention covers a list of additional grounds for exempting the carrier from liability or its limitations. Fixing such grounds as cases (force majeure, war, fire, etc.) enshrined in The Hague rules is an issue that should be paid attention to. The unions of international carriers in the preparation of the Rotterdam Rules undoubtedly influenced the work of UNCITRAL. Otherwise, the "exclusion catalog" for the carrier's responsibility would not be reinstated. Although the restoration of these rules brought a new regime in maritime transportation - the Rotterdam Rules, nevertheless, it has both supporters and opponents (Ivanov, 1984: 32).

Cases excluding the carrier's liability as a rather problematic issue were the subject of a dispute between carriers and cargo owners. In particular, the differentiating between damage to cargo that occurred as a result of inevitable force (force majeure) from damage caused by dangers and accidents at sea became the cause of the dispute. Unavoidable power - these are extraordinary natural phenomena independent of human will. Unfortunately, the legislation, including the CMS AR (Art.130.1.1), does not define unavoidable force. The occurrence of unavoidable force alone is not enough to relieve the carrier of liability. For this, the carrier must prove the causal link between this incident and the loss or damage of the cargo, the adoption of measures to prevent damage, protect the cargo. For this, the carrier must prove the causal relationship between this incident and the loss or damage of the cargo, as well as the adoption of measures to prevent damage, protect the cargo.

The liability of the carrier as a result of unavoidable force has repeatedly become the subject of arbitration. This problem also arose in a dispute ending in a conciliation procedure between *Allami Bistoshito* and *Baltic Sea Shipping*. The damage caused by the sweating of coffee is associated by the Baltic Sea Shipping Company with force majeure. The carrier said that with a sharp change in air temperature in the ocean, cargo was damaged. However, to prove this fact was also not possible. Since the shipping company associated the hydration of coffee with unavoidable force, in this case it should have explained it as follows: there really was a sharp change in temperature; a sharp change in temperature conditions also affected the specific feature of the cargo; there was a causal link between the natural phenomenon and partial damage to the cargo; all reasonable measures were taken to prevent the harmful effects of the corresponding natural phenomenon. Since it is problematic to establish a connection between damage resulting from an unavoidable force and the fault of the carrier, this usually leads to a long lawsuit (Davis, 1998: 27-31).

Although the CMS of the AR (Art.130.1.2) sets out "risks and accidents on the seas or in other waters of navigation of ships", this case is not defined. As an example of the risks at sea, one can note a collision of a vessel with various underwater barriers, an iceberg, floating underwater barriers, another ship, etc. (Chiristy, 1991: 786-791). The obligation of the carrier to prove the damage caused during sea risks is also confirmed in judicial (arbitration) practice (MAK Case, 1995: 25-26). Cases in article 130.1.2 of the CMS AR include cases that are random in nature or non-self-sufficient (non-intense) and therefore not amenable to foresight. Risks and accidents at sea, although they are unforeseen events, they nevertheless differ from unavoidable natural cases. It is not pervasive and, in some cases, tends to be overcome. If the carrier is prepared for the alleged incidents and subject to the procedures, the court makes a decision excluding liability (Healy, 2011: 931). For example, in case of danger, proper maritime protest should be provided in a timely manner, and coincidence and danger should be established by facts. The Hamburg Rules (Art.5.1) state that the carrier during the cargo stay with him is liable for damage caused by loss, damage to the goods, as well as in cases of delays in the provision of cargo, if he and his employees have not been proven to take

reasonable measures to eliminate the relevant cases. The Rotterdam Rules (Art.17) also establish an appropriate regime. In addressing this issue, the Rotterdam Rules specifically covered the Hague Rules.

In general, judicial, arbitration practice takes various criteria as a basis for marine risks. For example, the Australian High Court in the case of Bunga Seroja (1998) "in assessing marine risk" confirmed general practice. The ship's captain, when transporting cargo from Sydney to Taiwan, had to go through the Great Barrier Reef. The captain knew about the harsh weather. And the owner of the damaged cargo claimed that in this case, the liability of the carrier cannot be excluded. The Great Barrier Reef Threat is a known fact. However, the court exempts the carrier from liability and states that the vessel was suitable for navigation and was equipped with the necessary personnel (Mankababy, 1978: 727-730).

One of the grounds for the release of the carrier from liability is reasonable measures to save human life or property at sea (CMS AR, art.130.1.3). Article 5.6 of the Hamburg Rules, Article 17.3. (i), (m) The Rotterdam Rules enshrine the resolution of this issue. If the damage caused because of loss, damage, or delay in the delivery of the goods to the buyer due to the experience of the carrier and his employees helped to save a human life, then liability is excluded. Saving a human life is a must. In accordance with the 1958 High Seas Convention (Art. 12.1), a captain who receives a danger signal should help people in danger. Saving property at sea is not as important as saving lives. If the salvation of human life in any case relieves the carrier of liability, then there is a disparity regarding property. In the second case, the ratio of the saved property and the transported cargo will be considered. The international obligation to save human life arises from the International (Brussels) Convention of 1910 to combine some rules on rescue or assistance at sea, the Convention (SOLAC) for the protection of human life at sea from 1974, etc. The SOLAC 74 Convention entered into force in 1980 (Torskiy, 2002: 288). The SOLAC-74 Convention establishes an unconditional rescue liability for the master of a ship. The liability established by the SOLAC-74 Convention excludes any liability for any damage that may be caused to the cargo. It was after the 1910 Brussels Convention that both the Hague rules and the domestic legislation of individual states take the salvation of human life at sea as a priority. CMS AR also accepted this priority (Art. 130.1.3). The wording in the article, which gives, in accordance with the Hague rules, the saving of human life together with the saving of property may be considered unacceptable. As we have stated, it is not by chance that these questions are given in the Rotterdam Rules in separate subparagraphs (Art. 17.3 (i) and (m)). Since the regime that excludes the carrier's responsibility for saving property is legally different from the regime for saving human life, their statement in separate norms is more correct.

One of the serious difficulties of sailors is also the case of fire. Article 130.1.4 of the CMS of the AR is devoted to a fire that occurred not through the fault of the carrier. Regulation of carrier liability for fire was established by the Brussels Convention, The Hague Rules. Section 17.3 (f) of the Rotterdam Rules addresses the issue of "fire on board a ship". Long before the adoption of international legal regulation in English law (1894 Merchant Shipping Act) regulated the exclusion of liability of the carrier during a fire. And here the exception was bound to a certain condition. The fire should not have occurred "by mistake due to the fault of the carrier and his employees".

The Rotterdam Rules (a.17.3 (f)) set out by us, when regulating the liability of a carrier related to a fire event, come up with the "fire on board" formula for a more specific and limited space. It is known that in accordance with the Rotterdam Rules, the carrier's liability period covers the period "from door to door". However, limiting the case of fire only to a "ship" could lead to the conclusion that the carrier is responsible in the period before and after the ship. In fact, this question should be explained by the semi-multimodal nature of the Rotterdam rules. A fire incident was on the agenda when preparing the draft Convention at UNCITRAL. Each vehicle has a specific liability regime associated with the carrier. Fully multimodal conventions (for example, the 1980 Convention on Multimodal Transport) establish a unified liability regime on transport and the mode of transport does not matter. However, international treaties adopted by mode of transport act in the mode of network and sectorial liability, and in accordance with the mode of transport, specific liability is established for the loss or damage of cargo. And an exception to this is the application of "general rules" in the event that it is impossible to establish at what phase of transportation the cargo was damaged.

Issues such as the degree of fire, including cargo heating, smoke, affect the liability regime directly. In accordance with both domestic (AR Art. 130.1.4) and international legislation, if the cargo is not in a state of ignition, there will be no talk of exposing it to fire. In accordance with both domestic (CMS AR Art. 130.1.4) and international

legislation, if the cargo is not in a state of ignition, there will be no talk that it was exposed to a fire. The occurrence of a fire because of natural phenomena completely eliminates the principle of guilt. Also, in case of a fire resulting from uncertain, unknown cases, the carrier is not able to provide evidence about his innocence. Therefore, a practical approach also plays an important role in resolving the issue.

Another case that excludes the carrier's liability is related to the apparently invisible defects of the cargo, its properties or natural loss (Art. 130.1.8 of the CMS AR). Externally invisible cargo flaws or natural loss are established in such international standards as The Hague (Art. 4.2) and Rotterdam (Art. 17.3. (j)) rules. There are some cargoes that undergo constant changes in terms of weight and quantity. Therefore, when receiving such goods, the carrier is forced to pay attention to their natural features. However, it is not always possible to establish these features. In this sense, in case of damage or shortage of cargo in appropriate conditions, the carrier's liability is excluded. For example, the Maritime Arbitration Commission (Moscow) when relieving the carrier of liability during transportation on a Novokuznetsk cargo ship proceeded from the CMS article 166.1.8 of the RF (Borinov, 24: 1988) and noted that the carrier could not know the moisture level of the specific upper shell soybeans. Due to the lack of knowledge of specific features, when receiving cargo, the carrier is not responsible for damage.

In many cases, some goods enter the process of weight loss after a certain time. However, here it is worth paying attention to one detail. When transporting such goods, the mode of transport is also significant. In particular, in the process of transportation by sea and in essence, the property of natural reduction of cargo may change. The case of a natural decrease in the weight of the cargo is established when transferring from one type of transportation (for example, by sea) to another (Zemlyansky, 29-35: 2004), as well as in the case of completion of transportation. The adoption in the legislation of norms that may contain an appropriate classification of special cargoes according to their properties and features can ensure the reduction of disputes between the parties.

It should distinguish between reduction and storage of cargo depending on the natural properties from the provision of cargo for transportation in the necessary situation. Article 130.6 of the CMS AR states that for the loss or damage of cargo arriving at the designated port in safe cargo places and with the security seals of the consignor delivered in intact packaging without signs of opening, also transported with the representative of the consignor or consignee, the carrier does not liable if the receiver is unable to prove the loss or damage to the goods accepted for transportation as a result of the fault of the carrier.

In this case, the principle of innocence of the carrier applies. The article 130.6 noted by us does not introduce any adjustments to Articles 130.5 and 130 of the CMS AR, which cover the basis of carrier's responsibility for the safe delivery of goods. It only provides for the separation between the parties of the obligation of proof from the general rules on the liability of the carrier, established in article 130 of the CMS AR (Gutsulyak, 2003: 416). The bottom line is that the one who failed to fulfill the contract, or the contract obligation is guilty. The injured party should not prove whether the other party is guilty or not, but only the fact of non-fulfillment of the contract, which was the cause of damage to the cargo. And the party that violated the contract in this case must prove his innocence. The responsibility of the international carrier is based on the alleged fault (Chartseva, 2004: 32).

The carrier is exempt from liability if the cargo on the container was delivered to the destination without any signs of damage, even if the carrier, despite the necessary attention to it, was not able to establish the corresponding shortcomings when receiving the cargo (Snopkov, 2001: 520). Uncertainty associated with packaging is interpreted in favor of the carrier. For example, when considering a claim of the Warta Insurance Society (Poland) against the "Dalniy Vostok" Shipping Company, the court "as a reason for partial loss of cargo" indicated a shortage of containers (Davis, 1998: 27-31) and the carrier's liability was excluded. The 7th clause 130.1 of the CMS AR article also excludes the carrier's liability in the event of loss, damage and detention as a result of actions and omissions of the consignor and the consignee. Unlike the CMS AR (Art. 130.01.7), the Rotterdam Rules (Art. 17.3 (h)) govern the issue of shipper's responsibility separately from the issue of responsibility of the shipper. The issue related to the actions and omissions of the consignee is governed by Article 17.3 (i). This exception is related to the rights and obligations of the other party to the carriage contractual relationship. The 9th chapter of the 2008 Convention, which established the Rotterdam Rules, establishes the obligations of the consignee to accept the goods. The Rotterdam Rules provide the carrier with regulatory regulation to protect their rights and exempt from liability in case of loss, damage, or delay in delivery as a result of the actions and omissions of the shipper and the consignee.

One of the main responsibilities of the carrier is to prepare the vessel for the voyage. However, if a latent defect or deficiency situation is proven, the carrier is exempt from liability. The corresponding exception (latent defect (flaw)) established in the Rotterdam Rules is usually one of those cases that cannot be established by an honest carrier. For example, if a ship has a defect, the carrier must prove that it has ensured the technical suitability of the ship for navigation. The 93rd article of the CMS AR is devoted to "Preparing a vessel for a voyage". The second part of that article states that "if it is proved that the condition of the vessel unsuitable for navigation, despite due care, has arisen from externally invisible defects, the carrier is not responsible for the condition of the vessel unsuitable for navigation". Since part 2 of the 93rd article of the CMS AR relates to a case that excludes the carrier's liability, it was more appropriate to give this norm in the 130th article.

"Hidden defects that cannot be established by an acceptable inspection" in the Rotterdam Rules (Article 17.3 (g)) are not directly identified in the CMS of the AR. In article 130.1.12 of the CMS AR, the carrier's liability in the event of those shortcomings should be excluded only within the framework of "other cases". In Article 130.1.12 of the CMS AR only within the framework of "other cases", in the case of those deficiencies, the carrier's liability should be excluded. We noted this that the indefinite list of the exclusion catalog can create an abnormal situation. We believe that instead of the 130.1.12 article of the CMS AR, it is precisely in this case that the corresponding separate article of the Rotterdam Rules should be established.

The Rotterdam (also The Hague) rules contain a situation which excludes the carrier's liability for loss, damage, or delayed delivery of cargo because of war, military operations, military conflicts, piracy, terrorism, rebellion and unrest. The carrier is obliged to take all measures to prevent lesion due to loss, damage, or delay in the delivery of goods in similar situations. The actions or omissions of the crew, including the captain of the vessel, fetter the carrier. The Rotterdam Rules (Article 18 (b)) states that the carrier is liable for the violation of its obligations under the Convention due to the actions or omissions of the master or crew of the vessel. In the 53rd article of the CMS AR, it is said that during military operations, as well as in the presence of other cases of military threat in the area of the ports of flight or destination of the vessel, in the area of passage of the vessel, the master of the vessel must take all measures to prevent destruction, damage and capture ship, people on board, documents, cargo and other property. From the editorial point of view, article 130.1.6 of the CMS of the AR is established more narrowly (as military operations or popular unrest). Since the Rotterdam Rules (Art. 17.3 (c)) cover a wider situation, there is a need, at least for the reception of that rule in domestic law.

The Rotterdam Rules (Art. 17.3 (d)) establish the exclusion of liability for damage resulting from loss, damage or delayed delivery of goods as a result of quarantine restrictions that arose not due to the fault of the carrier and are specified in article 18: (a) of any executor; b) the master or crew of the vessel; c) employees of the carrier or the performing party; d) any other persons acting on behalf of the carrier; interventions of authorities and state structures, obstacles created by sovereigns or peoples, including detention, arrest or confiscation.

130.1.5-th article of the CMS AR says that the carrier is not liable ... for damage caused ... as a result of actions or orders (detention, arrest, quarantine, etc.) of the relevant authorities. Although the relevant provision of the CMS AR (Art. 130.1.5) has a more limited version than the Rotterdam Rules, other articles govern certain aspects of the issue. In particular, the carrier must perform actions proving his innocence. For example, 89, 118 articles of the CMS AR should be noted. The 89th article of the CMS AR says that if it is impossible to provide services in the port or sea terminal in emergency situations, an unlawful act of interference, ship and other accidents, as well as in case of danger to human life or health, the threat of damage and (or) destruction of property and cargo, for the provision of services, the port authority immediately applies to the relevant executive authority for temporary closure of the port. The relevant executive authority takes a decision if it considers it necessary to temporarily close the port for the provision of services, determines the time period for temporary closure and sends a written notice on the same day to the port authority and organizations operating in the field of shipping. The relevant executive authority takes a decision if it considers it necessary to temporarily close the port for the provision of services, determines the time for temporary closure and sends a written message about this to the port authority and organizations operating in the field of shipping on the same day. In connection with the situations noted, the carrier must receive an appropriate message and inform the cargo owner about this.

One of the cases that completely or partially excludes the carrier's liability for loss, damage, or delay in delivery in the Rotterdam Rules (Art. 17.3 (e)) is related to the case of "suspension or delay of work, strike". And 130.1.11 article of the CMS AR has almost the same content. In resolving this issue, domestic law has receipted the rules of international law. According to the Rotterdam Rules (Art.17.4 (b)), the carrier is liable for loss, damage or delay during the liability if the plaintiff proves that the carrier is responsible for loss, damage or delay. When filing such a claim, it is doubtless if the carrier proves that those cases connected with the cargo did not occur through his fault or through the fault of any performing party, the master or crew of the ship, the workers of the carrier or any other person who, according to the contract, fulfills or is required to fulfill any carrier's obligation, may exercise the right to full or partial exemption from liability. The novelty of the Rotterdam Rules is that they separately establish Article 18 (Carrier Responsibility to Other Persons). It is unnecessary to mention the captain and crew of the ship, and it probably only pursues one goal - the irrevocable, permanent departure of the norm, relieving the carrier of responsibility for the "navigation error" (Ivanov, 1984: 32). It is known that in The Hague Rules, on the contrary, the carrier is not responsible for the actions or omissions of the ship's crew and its employees (Gutsulyak, 2003: 416). For the first time, only the Hamburg rules brought the opposite of this norm, and the Rotterdam rules, as we have noted, receipted it. The absence of an appropriate norm both in the domestic legislative act and in the CMS of the AR is connected with the adoption of The Hague Rules by the Code (Article 130.5). Of course, this fact does not comply with the principle of the Rotterdam Rules on the carrier's responsibility for the activities of its employees. No matter how much the Rotterdam rules accepted The Hague rules; they implemented the Hamburg rules in resolving this issue.

One of the circumstances of exclusion of liability is associated with the loss, damage or delay in the delivery of goods in order to protect the environment. The case expressed by us in the legislation of the Republic of Azerbaijan is not established in the "catalog of exceptions". The Rotterdam Rules associate this issue with special cases. Paragraphs "n" and "o" 17.3 of the Article of the Convention establish that the carrier, in accordance with the priority value of the environment, is not liable in case of loss, damage or delay in the delivery of goods. Article 17.3 (n) of the Convention establishes how to "avoid harming the environment or acceptable measures". Again, article 17.3 (n) with reference to the 15th (possibly dangerous cargo) and 19th (sacrificing cargo during a sea voyage) excludes liability arising from damage, loss, etc., which may be inflicted by the competence carried out by the carrier in order to ensure environmental protection, preservation of human life and general safety. Although the CMS of the Republic of Azerbaijan has established a settlement of damage that may be caused by non-contractual obligations to the environment, the problem of the carrier's liability for the cargo remains uncertain.

Due to circumstances that exclude carrier liability (under the influence of paragraphs c and k of article 42 of the Brussels Convention), The Hague rules have significantly affected the legislation of the Republic of Azerbaijan in the direction of the carrier's innocent liability, and the Rotterdam rules in the form of international legal implementation. The Rotterdam Rules implemented not only The Hague Rules, but also certain rules of the Hamburg Rules. In this sense, only the Rotterdam Rules should be adopted as more effective norms as criteria for legislation.

5.Conclusion

The Republic of Azerbaijan has receipted in domestic law the main content of the conventions establishing international rules for transportation in maritime shipping. Although the reception is a simpler and "non-binding" way to implement the international legal norm in domestic law, it cannot but affect the political and legal authority and, finally, the economic potential of the state. And the incorporation of an international legal norm into domestic law makes the state obligated both to its partners and to persons belonging to them. Considering the international nature of merchant shipping as a source of regulation, "business customs" should be given in article 1.2 of the CMS AR. Formula 3.1 on "Direct application of international treaties" of Civil Law of the Republic of Azerbaijan should also be established in the CMS of the Republic of Azerbaijan. Rotterdam rules excluding liability of the carrier according to the catalog of immunities implemented not only The Hague rules, but also certain rules of the Hamburg rules. In this context, as an act of synthesis, the Rotterdam Rules should be adopted as a criterion for legislation. In this context, as an act of synthesis, the Rotterdam Rules should be adopted as a criterion for legislation.

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