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A Critical Analysis of the Laws Relating to the Carriage of Goods by Sea: Bangladesh and Türkiye Perspective

Deniz Yoluyla Eşya Taşınmasına İlişkin Kanunların Eleştirel Bir Analizi: Bangladeş ve Türkiye Perspektifi

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ABSTRACT

Despite its centrality to international trade, maritime law remains a patchwork of uneven regulations across countries. As Bangladesh and Türkiye demonstrate, the carriage of goods by sea is governed by a complex interplay of international conventions and domestic statutes, with varying degrees of protection for both shippers and carriers. While Bangladesh clings to the outdated Hague Rules, favoring carrier interests, Türkiye navigates a more balanced landscape with Hague-Visby and Montreal rules. However, both countries struggle with the potential for conflicting laws when domestic legislation adds another layer to the regulatory mix. The emergence of the Hamburg and Rotterdam Rules, with their emphasis on shipper-carrier equity, offers a glimpse of a fairer future. Yet, their limited ratification demonstrates the reluctance of some developed shipping nations to cede their advantage. This discrepancy highlights the need for developing countries like Bangladesh to consider embracing the modern conventions. Doing so could not only protect their shippers but also simplify dispute resolution and foster legal certainty in a globalized trading environment. Modernizing domestic legislation and dispute resolution mechanisms would further strengthen this position. Ultimately, navigating the legal terrain of the seaway requires understanding the complex interplay of regional nuances and global aspirations. In this context, Bangladesh and Türkiye offer valuable case studies for charting a course towards a more equitable and efficient maritime legal framework. Its originality lies in the focus on the adoption of modern maritime conventions by developing countries, providing a unique perspective on an issue that predominantly affects these nations in the global trade arena.

ÖZ

Uluslararası ticaretin merkezinde yer almasına rağmen deniz hukuku hâlen ülkeler arasında yeknesak olmayan, parçalı ve farklı düzeylerde düzenlenmiş kurallar bütünü olarak varlığını sürdürmektedir. Bangladeş ve Türkiye örnekleri, deniz yoluyla eşya taşınmasının, uluslararası sözleşmeler ile iç hukuk normlarının karmaşık bir etkileşimi çerçevesinde düzenlendiğini ve gönderici ile taşıyan lehine sağlanan hukuki korumanın ülkeden ülkeye farklılık gösterdiğini ortaya koymaktadır. Bangladeş, taşıyanın menfaatlerini gözeterek ve artık çağın gerisinde kalan Hague Kurallarına bağlı kalırken; Türkiye, Hague-Visby Kuralları ve Montreal Sözleşmesi ile daha dengeli bir düzenlemeye yönelmiştir. Bununla birlikte, her iki ülke de iç hukuk düzenlemelerinin getirdiği ek norm katmanları sebebiyle normlar çatışması riskiyle karşı karşıyadır. Taşıyan ile gönderici arasındaki menfaat dengesini daha açık şekilde gözeterek Hamburg ve Rotterdam Kuralları, daha adil ve eşitlikçi bir uluslararası rejim için umut vermektedir. Ancak bu sözleşmelerin sınırlı sayıda ülke tarafından onaylanmış olması, denizcilikte güçlü konumda bulunan bazı gelişmiş ülkelerin mevcut avantajlarını kaybetmeye yönelik isteksizliğini ortaya koymaktadır. Bu fark, Bangladeş gibi gelişmekte olan ülkelerin daha modern konvansiyonlara yönelme gerekliliğini gündeme getirmektedir. Bu tür bir dönüşüm, yalnızca göndericilerin korunmasını değil, aynı zamanda uyumsuzluk çözümünde öngörülebilirliği artırmayı ve küresel ticaret ortamında hukuki belirliliği sağlamayı da mümkün kılacaktır. İç mevzuatın güncellenmesi ve etkin uyumsuzluk çözüm mekanizmalarının benimsenmesi ise bu süreci daha da güçlendirecektir. Sonuç olarak, deniz yolu taşımacılığının hukuki çerçevesinde yol alabilmek, bölgesel hukuki farklılıkların küresel normlarla olan etkileşimini derinlemesine anlamayı gerektirir. Bu bağlamda Bangladeş ve Türkiye, daha adil ve etkin bir deniz hukuku sistemine ulaşma noktasında önemli örnekler sunmaktadır. Bu çalışmanın özgün yönü, modern denizcilik sözleşmelerinin gelişmekte olan ülkeler tarafından benimsenmesini ele alması ve bu konunun küresel ticaret sisteminde esasen bu ülkeleri etkileyen bir mesele olduğuna dikkat çekmesidir.

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Introduction

The carriage of goods by sea is crucial in global trade, and its governance by maritime law is essential for facilitating international commerce. This research explores the diverse legal frameworks of maritime transportation, focusing on the differing approaches of Bangladesh and Türkiye. Historically, pre-20th century sea trade resembled a perilous wild west, where shippers ventured at the mercy of carriers protected by expansive immunities. In 1924, recognizing this injustice, developed nations crafted the Hague Rules, setting the first global benchmarks for the carriage of goods. While taking a step forward, these rules tilted the scales towards carriers, shielding them behind the infamous “nautical fault” escape hatch. As the 20th century progressed, trade boomed and technology evolved, rendering the limitations of the Hague Rules starkly evident. The Hamburg Rules of 1978 emerged as a bold challenge to the nautical fault exemption and championed a more balanced shipper-carrier equation. With the transformative power of containerization in mind, the Rotterdam Rules followed in 2008, further refining legal clarity and efficiency. The evolution of maritime law has been significant, adapting to the changing needs of global trade (Islam, 2004). These conventions cater to different aspects of maritime law, reflecting the evolving requirements of international trade.

Yet, despite these four distinct conventions, the reality of maritime regulations resembles a patchwork quilt woven with national preferences. Developed nations, often clinging to vested interests, favor the earlier, carrier-friendly Hague and Hague-Visby frameworks. Furthermore, they subtly integrate elements of newer conventions into their domestic legislation, creating overlapping and sometimes conflicting legal threads. The adoption of these conventions varies, with developed nations often favoring established practices like the Hague and Hague-Visby Rules. In contrast, developing countries such as Bangladesh exhibit a slower adoption rate, leading to a varied legal landscape. This disparity is crucial for understanding how different legal frameworks affect the efficiency and safety of maritime transport. Nations unaffiliated with any modern convention and lacking domestic legislation that reflects their spirit risk getting tangled in the legal barbed wire spun by dominant shipping nations (Arafat & Islam, 2023). This vulnerability underscores the urgency of understanding the complex legal landscapes in which global trade operates. This analysis dives deeper into the specific contexts of Bangladesh and Türkiye, dissecting their unique legal frameworks and their impact on shippers and carriers.

The research also addresses specific responsibilities in sea carriage, such as the shipper’s duty to inform carriers of dangerous cargo, highlighting the complexity of maritime law. Additionally, it examines the theoretical aspects of maritime contracts and their impact on legal structures. Globalization has introduced new dynamics in maritime law. The increasing integration of countries like Bangladesh and Türkiye into global trade networks calls for a nuanced understanding of the legal conditions of maritime transport in this context (Sosedová et al., 2021). In summary, this study provides insights into the varied maritime legal frameworks of Bangladesh and Türkiye, offering a perspective on how these nations navigate the complexities of maritime law amid the evolution of global trade. This research will rely on a comprehensive literature review of secondary sources to analyze the laws relating to the carriage of goods by sea in Bangladesh and Türkiye.

Comparative Analysis of International Legal Frameworks for Carriage of Goods by Sea

The international trade of goods across oceans relies heavily on a complex tapestry of legal frameworks regulating the responsibilities and liabilities of carriers and shippers. International maritime transport of goods is governed by four pivotal conventions: the Hague Rules (1924), Hague Visby Rules (1968), Hamburg Rules (1978), and the Rotterdam Rules (2008). While the first three have been effectively implemented, the Rotterdam Rules,

formulated in 2008, remain unenforced due to insufficient ratification (Anthony Rogers, 2019). These rules represent a significant shift in maritime law, extending the scope from traditional sea routes to a comprehensive door-to-door approach (Katsivela, 2010).

Nature and Application of the Contract of Carriage

In the realm of maritime transportation, the nature and application of the contract of carriage have evolved substantially, as demonstrated by the progression from The Hague and Hague Visby Rules to the Hamburg and Rotterdam Rules. This evolution reflects the increasing complexity of maritime contracts and the expanding responsibilities and obligations of carriers and shippers. Initially, The Hague and Hague Visby Rules, established in the early 20th century, do not explicitly define the contract of carriage. They primarily recognize the bill of lading as the cornerstone of the carriage contract, setting a precedent where the contractual terms are often inferred rather than explicitly stated. This approach, while foundational, does not encompass the full breadth of modern shipping practices and the intricacies of carrier and shipper obligations (Lubis, 2020). In contrast, the Hamburg and Rotterdam Rules, though not providing a precise definition of the carriage contract, significantly elaborate on the various obligations of the parties involved. This expansion in scope reflects the evolving nature of maritime contracts, acknowledging the complexities and varied nuances of modern shipping agreements.

The application of these rules also varies. The Hague Rules hinge on domestic legislation, with the laws of the enacting country primarily governing the contract. This approach places considerable emphasis on national legal frameworks, potentially leading to inconsistencies in international contexts. The Hague-Visby Rules introduced the concept of a “contracting state,” necessitating the involvement of a signatory nation, either through the bill of lading or the port of loading, for the rules to apply (Bradgate & White, 1993). This amendment aimed to create a more uniform application of maritime law across different jurisdictions.

The Hamburg Rules further extended the application scope. Unlike their predecessors, they apply irrespective of the contracting state, provided both the loading and discharge ports are involved. This broader application signifies a shift towards a more inclusive and comprehensive legal framework in maritime law. Finally, the Rotterdam Rules, aligning with the door-to-door concept, utilize “place of receipt” and “place of delivery” instead of focusing solely on ports. This change marks a significant departure from traditional maritime law, expanding the applicability of these rules beyond sea voyages to include the entire transportation chain, encompassing all stages and modes of transport involved in delivering goods from origin to destination (Donovan, 1979). The Hague and Hague-Visby Rules to the Hamburg and Rotterdam Rules in maritime law illustrates an ongoing adaptation to the changing landscape of global trade and transportation (Djadjev, 2017b). It highlights a shift from a narrow, sea-centric view of shipping contracts towards a more holistic, door-to-door understanding, accommodating the complexities and multifaceted nature of modern shipping operations.

Stages and Period of Carriage

In the evolution of maritime law, the stages and period of carriage have significantly developed, transitioning from the narrow scope of The Hague and Hague-Visby Rules to the expansive framework of the Rotterdam Rules. Initially, The Hague and Hague-Visby Rules confined their coverage strictly to the sea voyage, with the period of carriage limited to the duration when goods are on board the vessel, focusing primarily on the loading and unloading phases. This “tackle-to-tackle” perspective emphasized the carrier’s responsibility during the sea leg of the journey, overlooking the complexities of modern multimodal transport (Ping-Fat,

2021). The Hamburg Rules, introduced later, broadened this perspective by extending the carrier's liability from the time they take charge of the goods at the loading port until their discharge at the destination port, thereby acknowledging the various stages of handling and custody at ports.

Marking a more significant shift, the Rotterdam Rules encompass the entire transportation process, adopting a door-to-door approach. This modern framework starts from the moment the carrier receives the goods, potentially at locations beyond the traditional port settings, and continues until the final delivery to the recipient. This approach reflects the evolving nature of global trade and transportation, where goods often journey through multiple stages and modes of transport, not limited to sea routes. The Rotterdam Rules thus capture the full spectrum of the transportation chain, recognizing the complexities and varied stages involved in modern shipping logistics (Castelein et al., 2019). This progression in maritime law from the Hague and Hague-Visby Rules through the Hamburg Rules to the Rotterdam Rules mirrors the industry's adaptation to the intricacies of global logistics, marking a shift from a sea-centric view to a more holistic perspective of maritime transportation.

Carrier Duties and Liabilities

The evolution of carrier duties and liabilities across various maritime conventions reflects the changing landscape of maritime transportation and the increasing emphasis on carrier responsibilities. Under The Hague Rules, the primary focus of carrier duty is maintaining the seaworthiness of the vessel. This fundamental responsibility, though essential, is relatively narrow in scope, primarily concerning the vessel's condition at the beginning of the voyage. The Hague-Visby Rules extend this perspective slightly but still revolve predominantly around the concept of seaworthiness. However, these rules do not explicitly mandate the carrier to ensure the delivery of goods to the consignee, a gap in the legal framework that limits the carrier's responsibilities (Girvin, 2019).

The Hamburg Rules mark a notable shift by introducing a broader spectrum of carrier liabilities. These rules reduce the exemptions previously available to carriers under The Hague and Hague-Visby frameworks, thus holding carriers more accountable. In addition to maintaining vessel seaworthiness, the Hamburg Rules state that the carrier is liable unless they prove due diligence in preventing the occurrence and consequences of any damage or loss. This change indicates a move towards greater protection for cargo interests.

The Rotterdam Rules take an even more progressive stance. They extend the duties of carriers beyond the traditional concept of seaworthiness, mandating them to ensure the safety of goods throughout the entire journey. This holistic approach aligns with the modern complexities of maritime shipping, where cargo safety is a continuous responsibility, not confined to specific stages of the journey. The Rotterdam Rules explicitly require carriers to deliver goods to the consignee, a duty that was previously implicit or unaddressed in earlier conventions (Sooksripaisarnkit, 2014).

Traditionally, under the method of seaworthiness, the carrier's duty ended with the safe departure of the vessel from the port of loading, unless a breach of due diligence or negligence on part of the carrier or its agents was proven. However, the Hamburg and Rotterdam Rules modify this approach by stating that carriers are always liable for loss, damage, or delay caused by their fault or that of their agents. This signifies a shift in the burden of proof, where the carrier must demonstrate due diligence in case of any loss or damage, as opposed to the shipper disproving seaworthiness under the earlier rules. The progression from The Hague and Hague-Visby Rules to the Hamburg and Rotterdam Rules illustrates an increasing emphasis on carrier responsibility in maritime law. This evolution not only broadens the scope of carrier duties beyond seaworthiness but also enhances the protection for shippers and consignees by holding

carriers more accountable throughout the shipping process. It reflects a recognition of the complexities of modern maritime transport and the need for a legal framework that ensures comprehensive safety and reliability in the carriage of goods by sea.

Shipper Rights and Liabilities

Under the Hague and Hague-Visby frameworks, the shipper encounters more liabilities than rights. The Hamburg and Rotterdam Rules, however, aim to balance this equation, delineating the shipper's responsibilities more explicitly, particularly concerning the transportation of dangerous goods (Sefara, 2016). The Hague and Hague-Visby Rules favor carriers, imposing numerous liabilities on shippers, including strict penalties for undeclared dangerous goods, inaccurate information, and causing carrier losses. These Rules also grant the carrier various immunity clauses, making it challenging for shippers to claim compensation. The Hamburg and Rotterdam Rules introduce a more equitable balance. While upholding shipper liabilities for dangerous goods and inaccurate information, they provide clearer guidelines and limit carrier immunities. Additionally, the Rotterdam Rules impose specific documentation requirements on shippers, ensuring smooth contract execution.

The Hague-Visby Rules establish shipper liabilities in three scenarios: shipping dangerous goods without notification, ensuring accuracy of provided shipment information, and being responsible for loss or damage due to their fault or negligence (Kasi, 2021). The Hamburg Rules are similar but explicitly require informing carriers about hazardous cargo. The Rotterdam Rules, more detailed in Chapter Seven, impose additional duties on shippers, like providing necessary legal documents and ensuring goods are fit for transport, with stricter provisions for dangerous goods (Rose, 1996).

While all four conventions cover a shipper's right to safe and timely delivery, they differ in terms of claim nature, immunities, and burden of proof, with the Hague and Hague-Visby Rules favoring carriers and the Hamburg and Rotterdam Rules offering more balance between shipper and carrier rights.

Settlement of Claims

In maritime shipping, a nuanced and complex interplay of rights and claims exists between shippers and carriers. Disputes typically arise from situations like damage or loss of goods, theft or pilferage, and failure to deliver goods within the stipulated time. These disputes are intricately governed by international conventions, which significantly influence the resolution process and the burden of proof. Shippers commonly lodge claims in three primary scenarios: First, in cases where goods are damaged or lost during transit, they seek compensation for the losses incurred. Second, if goods are stolen or pilfered while under the carrier's responsibility, shippers look to hold the carriers accountable. Third, shippers file claims when goods fail to reach the consignee within the agreed timeframe, impacting business operations or customer relationships. Conversely, carriers might face claims from shippers for unpaid freight, damages arising from the shipper's negligence, or instances where the consignee fails to take delivery of the goods in a timely manner.

Most disputes, however, center around the shipper's right to the safe and timely delivery of goods. In such situations, carriers often attempt to avoid liability by claiming immunities. A critical aspect of these disputes is the allocation of the burden of proof. Under The Hague and Hague-Visby Rules, the onus is largely on the shipper to demonstrate the carrier's failure in maintaining due diligence or ensuring the ship's seaworthiness (Sefara, 2016). This requirement often poses a significant challenge to shippers, as proving a carrier's negligence or a vessel's unseaworthiness is a complex and demanding task.

In contrast, the Hamburg and Rotterdam Rules adopt a more balanced approach regarding the burden of proof. These conventions require that both the claimant (typically the shipper) and the defendant (usually the carrier) present evidence to substantiate their claims or defenses. This paradigm shift in the burden of proof under the Hamburg and Rotterdam Rules creates a fairer legal environment. It not only allows shippers a more reasonable chance to pursue their claims but also prevents carriers from escaping liability without adequate evidence.

The transition from The Hague and Hague-Visby Rules to the Hamburg and Rotterdam Rules marks a significant evolution towards a more equitable legal framework in maritime shipping. This shift is particularly important in an industry where the stakes are high, and the impact of disputes can be far-reaching. By ensuring a level playing field where both shippers and carriers are held accountable, the maritime industry moves closer to a system that prioritizes fairness and justice, as elucidated by Semenov (2022). This evolution reflects a growing emphasis on balanced legal practices, ensuring the rights and responsibilities of all parties in maritime transportation are adequately addressed and protected.

Liability of Subsequent Carriers

The liability of carriers in maritime law, particularly concerning subsequent carriers, has evolved significantly, reflecting the industry's transition towards more comprehensive and integrated shipping practices, especially in door-to-door contracts. The initial conventions, notably The Hague and Hague-Visby Rules, focus predominantly on the sea voyage, limiting their scope to the carrier directly involved in the sea leg of the journey. These conventions do not explicitly address the liability of subsequent carriers, those who might handle the goods after the sea voyage, often leaving a gap in accountability for the entirety of the shipping process (Mammadli, 2020). This limited perspective aligns with the era's shipping practices, where the focus was primarily on the segment of carriage by sea.

However, as global trade expanded and shipping operations became more complex, involving multiple carriers and modes of transportation, the need for a broader legal framework became apparent. The Hamburg Rules marked a significant shift in this regard. For the first time, these rules acknowledged the liability of actual or subsequent carriers, equating their responsibilities with the carrier who initially undertook the freight contract (Al-Marzouqi, 2018). This development represented a move towards greater accountability and continuity in the shipping chain, ensuring that all parties involved in the transportation process are held liable for their respective stages of carriage.

The Rotterdam Rules further advanced these concepts, introducing the notion of "maritime performing party" liability. This innovative approach extends the original carrier's responsibility to any intermediary party handling the goods within the overall contract. It encompasses a broader range of entities involved in the carriage process, including those responsible for land and other non-sea segments of the journey. By defining the liability of the "maritime performing party," the Rotterdam Rules pioneer a comprehensive framework that encapsulates all parties performing any part of the carrier's obligations, from the receipt of goods by the first party to their delivery to the actual consignee.

This progression in maritime law, from The Hague and Hague-Visby Rules through the Hamburg Rules to the Rotterdam Rules, demonstrates an adaptation to the evolving nature of global trade and transportation. The expansion of carrier liability, especially in the context of door-to-door contracts, highlights a significant move towards ensuring seamless accountability and protection of shipper interests throughout the entire carriage process. It reflects the contemporary reality of shipping, where goods often pass through multiple hands and transit modes before reaching their final destination, necessitating a legal framework that comprehensively addresses the responsibilities of all parties involved.

Ratification Challenges of the Rotterdam Rules

The Rotterdam Rules, adopted in December 2008 to modernize and expand the legal framework for maritime transportation, have faced significant challenges in gaining global ratification, primarily due to their requirement for signatory states to denounce existing conventions. Despite their comprehensive approach to the door-to-door concept in shipping, these rules have not come into force as they have only been ratified by a limited number of countries, predominantly in South Africa (Hashmi, 2012).

A critical factor in the slow pace of ratification is the requirement that signatory states must simultaneously denounce other prevailing conventions, notably The Hague-Visby and Hamburg Rules. This stipulation poses a substantial hurdle, particularly for developed shipping nations. These countries often perceive potential disadvantages in abandoning established legal frameworks that currently govern their shipping interests. The Rotterdam Rules, necessitating the ratification of twenty countries for enforcement, confront a catch-22 situation. The requirement for denunciation of existing conventions creates reluctance among nations to adopt the new rules, as it involves a significant shift from their established legal maritime frameworks.

This hesitancy is rooted in the apprehension about the implications of transitioning to a new legal system, which might disrupt existing shipping practices and contractual arrangements. Developed countries, with well-established maritime industries operating under the long-standing Hague-Visby and Hamburg frameworks, face potential uncertainties and risks in adopting the Rotterdam Rules. These risks include redefining liability norms, altering contractual obligations, and adjusting to new regulatory environments, which could impact their established maritime commercial interests.

The reluctance to ratify the Rotterdam Rules, therefore, reflects broader concerns about the impact of legal transitions in the maritime sector, highlighting the complexities involved in international lawmaking and adoption, especially in a field as globally interconnected and economically significant as maritime transportation. The challenge lies in balancing the need for modern, comprehensive legal frameworks that reflect contemporary shipping practices with the stability and predictability provided by established conventions.

Comparative Legal Analysis of Carriage of Goods by Sea in Bangladesh

The Current Maritime Legal Framework in Bangladesh

Bangladesh, as an emerging maritime player, navigates the challenges within the complexities of global trade with a legal framework comprising a patchwork of domestic statutes and elements of the Hague Rules. While this approach offers familiarity, it exposes Bangladeshi shippers and carriers to a landscape riddled with outdated provisions and ambiguities. The maritime law framework in Bangladesh is a unique blend of domestic legislation and general legal principles, distinct from direct adherence to international maritime conventions. It includes specific acts and statutes addressing various aspects of sea carriage and related activities. The primary governing law, the Carriage of Goods by Sea Act, (COGSA) 1925, incorporates the Hague Rules. This Act, an early attempt to standardize international maritime law, has become outdated in the face of contemporary challenges. COGSA heavily favors carriers, granting them extensive immunities under the “nautical fault” clause, often leaving shippers inadequately protected (Rahaman & Hasan, 2015).

Alongside COGSA, Bangladesh’s legal framework includes the Bills of Lading Act, 1856, and the Merchant Shipping Ordinance, 1983, among other statutes. These laws address merchant ship regulation and safety but are limited due to COGSA’s overarching. General statutes like the Marine Insurance Act, 1906, and the Contract Act, 1872, provide a broader context for maritime operations. The framework also comprises the Ports Act, 1908, and the Port Rules,

1966, focusing on port administration and ships' jurisdiction in ports. The Customs Act, 1969, regulates ships, goods, and personnel in import-export activities. In addition to its domestic legal frameworks, Bangladesh also adheres to international soft law mechanisms in specific domains associated with international organizations. It is worth noting that soft law instruments encompass non-binding legal frameworks, including rules, principles, guidelines, and recommendations, which-despite lacking formal enforceability-exert significant influence on the conduct of states and institutions (Hasan, 2025).

International Standards and Comparative Analysis and Limitation

A key area where existing laws fall short is in their treatment of modern shipping practices. Bangladesh's maritime laws, still influenced by the Carriage of Goods by Sea Act (COGSA) 1925, starkly contrast with international standards set by the Hamburg and Rotterdam Rules. The Hamburg Rules, established in 1978, provide a more balanced approach between shipper and carrier rights and liabilities, addressing the inadequacies found in the Hague Rules (Yilmaz, 2021). The Rotterdam Rules, introduced in 2008, further modernize maritime law by accommodating technological advancements such as containerization (Sturley, 2011).

Notably, Bangladesh's laws do not mention volume contracts, increasingly prevalent in contemporary maritime contracts. The issue of containerization is also overlooked, with no specific definitions or provisions for containerized cargo, a crucial component of modern shipping logistics. Moreover, the laws do not address the growing importance of electronic transport documents, which are essential in today's context of door-to-door shipping. The Hamburg and Rotterdam Rules, in contrast, appear as advanced legal frameworks, offering equitable distribution of rights and liabilities. They address contemporary challenges in maritime law, such as containerization, multimodal transport, and environmental concerns, and propose streamlined dispute resolution mechanisms and enhanced cargo protection.

Under COGSA 1925, carrier liability is significantly limited, contrasting with the more balanced approach of the Hamburg and Rotterdam Rules. These modern conventions provide stronger protections for shippers, a vital aspect missing in Bangladesh's maritime law. The outdated COGSA provisions, favoring carriers, represent a significant obstacle to fair treatment of shippers, leading to imbalances in dispute resolutions and increased risks for shippers. Furthermore, the compensation limits set by COGSA are inadequate compared to the potential value of modern cargo, leaving shippers with limited recourse in cases of loss or damage. COGSA also fails to address complexities of modern maritime transport, such as issues related to containerization and multimodal transport, creating legal uncertainties.

Legal provisions concerning bills of lading in Bangladesh are limited, focusing primarily on shipped bills of lading and neglecting other types such as switch bills or through bills of lading. This limitation poses challenges in addressing the carrier's liability to third parties, a crucial aspect in maritime law dispute resolution. Additionally, the laws do not distinguish between negotiable and non-negotiable transport documents, a crucial differentiation in contemporary maritime trade.

International maritime conventions also have their shortcomings. For instance, there is no standardized mechanism for the burden of proof, often interpreted in favor of carriers. The liability exceptions in the Hague Rules, especially those favoring ship owners, are problematic from a policy standpoint, allowing carriers to escape liability for negligence. Unfair clauses in bills of lading, exploiting loopholes in these frameworks, can further skew the balance in favor of carriers. Furthermore, the "tackle to tackle" formula in the Hague Visby Rules inadequately addresses issues related to lighthouse and transshipment (Djadjev, 2017a). Other concerns

include provisions in the conventions that permit carriers to deviate from their course for saving property, potentially giving them an unfair advantage. The conventions are also unclear about loss due to delivery and have impractical time limits for legal actions, often less than a year, which is insufficient in many maritime dispute cases. Lastly, the lack of specific provisions on jurisdiction and arbitration in these conventions leads to the inclusion of unfair clauses in bills of lading.

In Bangladesh, maritime disputes fall under the jurisdiction of the Admiralty Court Act, 2000. This Act empowers the admiralty court to settle disputes related to the loss or damage of goods in carriages. However, the domestic Carriage of Goods by Sea Act, 1925, has been criticized for its bias in favoring carriers over shippers. This imbalance, combined with the application of *lex fori* (law of the forum) in international disputes, creates challenges in achieving equitable dispute resolutions within Bangladesh's maritime law context (Sayed et al., 2021). Therefore, while Bangladesh's legal framework for maritime law is extensive, it requires significant updates and reforms to align with modern shipping practices and ensure fair dispute resolution.

Beyond COGSA: Exploring International Conventions

Bangladesh's reluctance to ratify the Hamburg and Rotterdam Rules puts its maritime legal framework at a disadvantage. These conventions offer comprehensive protection and adaptability to contemporary challenges (Farah, 2021). The combination of COGSA, the Bills of Lading Act, and other statutes creates a complex and inconsistent environment for maritime trade in Bangladesh, leading to ambiguities and dispute resolution challenges. Bangladesh's hesitation reflects broader trends among developing nations, where concerns about costs and disruptions to established practices prevail (Hussain et al., 2019).

Comparative Legal Analysis of the Carriage of Goods by Sea in Türkiye

The carriage of goods by sea is a critical component of international trade, and it plays a pivotal role in Türkiye due to the country's strategic geographic position. The Turkish legal framework for this sector blends established international conventions with domestic statutes, creating a complex and fascinating legal tapestry.

Integration of Hague-Visby Rules and Turkish Commercial Code

The Hague-Visby Rules, an amendment of the original Hague Rules, standardize certain terms in the carriage of goods by sea, particularly focusing on the rights and duties of carriers and shippers under a bill of lading. Türkiye has adopted these rules within its national legislation, as seen in the Turkish Commercial Code (TCC), providing a foundation for maritime trade law (Karan, 2002). However, the integration includes certain reservations and modifications, such as different liability limits compared to those set by the Hague-Visby Rules. Türkiye's Commercial Code contains specific provisions governing maritime trade. These provisions cover various aspects, including carrier liabilities, shipper obligations, and dispute resolution mechanisms. The Code aligns with many international standards but also has unique features reflective of Türkiye's maritime commerce needs.

One critical note in this duet concerns the burden of proof. Article 4(f) of the Hague-Visby Rules shifts the onus onto the carrier to disprove liability when specific exceptions apply. The TCC echoes this in Article 1181, but adds additional exceptions favoring carriers, like acts of war or the inherent vice of the goods. This can create rough sailing for shippers seeking compensation, especially when evidence lies buried in the ocean's depths (TaŞKin, 2023). Another key measure rests in the limitation of liability. Hague-Visby Rules Article 4(5) imposes a fixed ceiling on carrier liability per package or unit. The TCC, in Article 1183, follows suit but allows for higher liability through special agreements. While this offers flexibility, the cap

itself can significantly mute the crescendo of compensation, particularly for valuable cargo shipments.

Exceptions that Dance in the Shadows

The legal framework also considers exceptions to liability. The Hague-Visby Rules and the TCC both include extensive exemptions, such as nautical fault and perils of the sea, with the TCC adding provisions like strikes and riots. These broad exceptions often protect carriers, potentially to the detriment of shippers. Article 4(2) of the Hague-Visby Rules lists extensive exemptions for carriers, including nautical fault, perils of the sea, and acts of war. The TCC, in Article 1182, harmonizes with this chorus, adding provisions like strikes and riots, potentially offering an even stronger shield for carriers (Yeni & Esmer, 2021). These broad exceptions can throw lifebuoys to negligent carriers, leaving aggrieved shippers adrift in a sea of frustration.

Additional Domestic Legislation

While the Hague-Visby Rules and TCC play the lead roles, additional domestic statutes add their voices to the legal chorus. The Maritime Trade Act regulates maritime trade practices and port operations, influencing cargo carriage indirectly. The Marine Insurance Act, meanwhile, governs marine insurance policies, providing an additional layer of protection for cargo. These supporting melodies play a crucial role, impacting dispute resolution and risk mitigation strategies for Turkish shippers.

Influence of Other International Conventions

The legal scenario in Türkiye is also shaped by the potential influence of international conventions like the Montreal Convention, the Hamburg Rules, and the Rotterdam Rules. While not yet ratified or adopted by Türkiye, these conventions offer modern frameworks for liability and dispute resolution in maritime trade. The Hague Rules, the precursor to the Hague-Visby Rules, laid the initial groundwork for uniformity in bills of lading. Although superseded in many respects by the Hague-Visby Rules, the Hague Rules still influence Turkish maritime law in areas where the latter is silent (Karan, 2011).

While the Montreal Convention primarily governs air transport, its provisions on the unification of certain rules for international carriage by air have indirect implications on multimodal transport involving sea legs (Aybay & Oral, 1998). Turkish law adopts some principles from this convention, particularly in the context of international transportation. A critical ear reveals discordant notes within this legal symphony. The reliance on the Hague-Visby Rules, with its outdated provisions and carrier-friendly exceptions, can leave Turkish shippers feeling unheard. The TCC, while offering some additional protections, largely echoes the Hague-Visby framework, raising concerns about fairness and adequacy. Moreover, the absence of the Montreal Convention's modern voice creates a silent gap in legal protection for Turkish stakeholders.

Recommendations and Conclusion

The evolution of maritime law, transitioning from carrier-centric rules like the Hague and Hague-Visby to more equitable frameworks such as the Hamburg and Rotterdam Rules, mirrors the evolving dynamics in the carriage of goods by sea. This historical progression holds particular significance for countries like Bangladesh and Türkiye, each grappling with distinctive challenges and opportunities within their maritime sectors.

For Bangladesh, a developing nation aspiring to deepen its maritime engagement, the imperative lies in the modernization of its maritime legal framework. The reliance on antiquated British-era legislation, exemplified by the Carriage of Goods by Sea Act, 1925, and the Bills of Lading Act, 1856, impedes its ability to effectively participate in contemporary maritime

commerce. The adoption of the Hamburg and Rotterdam Rules would bring Bangladesh's legal infrastructure in line with international norms, fostering fairer practices for both carriers and shippers.

Türkiye, situated uniquely with its strategic geographic position and adherence to the Hague-Visby Rules in its Turkish Commercial Code, incorporating elements from the Hamburg and Rotterdam Rules, particularly in areas where the Hague-Visby Rules prove inadequate. This alignment would enhance the legal framework, better addressing the intricacies of current maritime trade practices. In their pursuit of alignment with contemporary maritime practices and international standards, both Bangladesh and Türkiye should embark on comprehensive legislative overhauls in the domain of carriage of goods by sea.

The recommended legislative reforms should explicitly incorporate the door-to-door concept, aligning with both local practices and global trends. Additionally, to address challenges posed by modern cargo transport methods, provisions for containerized transport and electronic documentation must be introduced. The legal frameworks of both countries should expand their coverage of transport documents beyond traditional bills of lading, encompassing switch bills and through bills, to accurately reflect the diverse nature of contemporary maritime contracts. Recognizing the unique characteristics of deck cargo and volume contracts, specialized regulations in these areas are deemed crucial.

Furthermore, in the evolution of liability aspects, both nations should abolish the presumption of nautical fault, revise immunity provisions, and introduce regulations for carrier liability to third parties, especially in the context of the door-to-door system involving multiple stakeholders. Emphasizing the importance of a balanced legal framework, these reforms aim to address the complexities of modern shipping practices, fostering a more efficient and equitable maritime trade environment. Additionally, both Bangladesh and Türkiye are encouraged to collaboratively promote global maritime standards, ensuring fair trade practices, and enhancing legal certainty in international maritime law. This joint effort is anticipated to contribute significantly to the establishment of a harmonized and contemporary legal foundation for maritime trade in both countries.

The challenges in the carriage of goods by sea, particularly the historical dominance of carriers and conflicts with consignors and consignees, underscore the need for legislative measures. The progression from early rules favoring carriers to more balanced frameworks reflect global efforts to address the evolving dynamics of maritime trade. Consignors and third parties dissatisfied with contractual terms have spurred governments to enact protective legislation, leading ship-owning states to adopt rules like the Hague and Hague-Visby.

In conclusion, the call for a unified global standard, codified in conventions like the Hamburg Rule and Rotterdam Rule, is imperative for maintaining a consistent framework for world trade and the carriage of goods by sea. Developing nations must enact national legislation tailored to their interests, resembling the practices of developed countries. Bangladesh, as a non-ship-owning country, should enact legislation by repealing outdated acts, acceding to new conventions, and considering the outlined reforms to address contemporary challenges and foster a balanced maritime trade environment.

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