

## **The Time Scope of the Container Carrier's Liability (A Comparative Study based on International Conventions and Iraqi and Egyptian Laws)**

Shatha Abdul Jabbar Khandan<sup>1</sup>, Dr. Haifaa Mezher Falhi<sup>2</sup>

### **Abstract**

*This research dealt with the time scale of the responsibility of the container cargo carrier at both the domestic and international levels, within two sections. The shipper or his representative or an authority or a third party for the purpose of transporting them by land, sea or air to the place agreed upon and handing them over to the consignee or his representative at the place of delivery. Multimodal transport, which undertakes the process of managing and organizing transport and its implementation by multiple modes of transport with the help of other carriers through contracting with them. As for the second topic, we have touched on determining the time period for the responsibility of the container carrier, and we have found that this period is wide in this type of transport compared to what is commonly known. In conventional transport, it begins from the time the carrier acquires the goods contained or receives them from the shipper or his representative, regardless of the place of receipt or adherence to a specific port, and ends with the delivery of those goods to the consignee or his representative at the place of delivery, even if that is outside Discharging port limits. This is what we noticed with the Iraqi legislator, as he did not specify the place of receiving and delivering the goods, as did the Egyptian legislator and the Hamburg Convention, which linked the time scale of the carrier's responsibility to the port of loading and the port of discharge, and what the Brussels Convention did in linking that scope to the shipping process itself, contrary to the Rotterdam Convention that agreed with the legislator Al-Iraqi decided to adopt provisions according to which it expanded the scope of the carrier's responsibility in terms of time, taking into account the developments in the commercial reality in the field of transport, especially container transport.*

**Keywords:** Duration, Carrier, Goods, Container, Unimodal Transport, Responsibility.

### **Introduction**

The responsibility of the container goods carrier is one of the most important topics of the transport contract. The vast majority of disputes in practice revolve around this issue, so it was the subject of jurisprudence and legislation. As the container transport contract imposes on the carrier an obligation to achieve a result, which is to deliver the contained goods safely to the consignee or his representative at the agreed time, which makes the carrier obligated to preserve the contained goods and the container during shipment, stacking, transportation and unloading until it is delivered to the right holder or his representative. However, failure to achieve that result makes him liable for compensating for damages resulting from loss, damage, or delay in delivery of the container, but the

---

<sup>1</sup> University Of Baghdad, College Of Law, Shatha.Abduljabar1101a@Colaw.Uobaghdad.Edu.Iq

<sup>2</sup> University Of Baghdad, College Of Law, D.Haifaa@Yahoo.Com

responsibility in this type of transport is more severe than it is in traditional transport, and linked to that responsibility is the time scale, which must be changed due to what the containers require. According to its nature, from preparing special places for loading and unloading it away from the port of departure or the port of arrival, which called for the need to expand the scope of the carrier's responsibility in terms of time. For the purpose of understanding this subject in all its aspects, we decided to study and research it.

#### Research Importance:

The importance of the research comes from the role played by containers in the field of transport, as it helped reduce the maximum degree of the total cost of transporting goods from the producer to the consumer, as well as its role in maintaining the safety and security of goods during transportation, and taking into consideration the conditions that Iraq is living and its dependence on Importing all its needs from abroad, it has become necessary to study and develop solutions to emerging problems resulting from this type of transport, which necessitated with it the necessity of specifying the time frame for the responsibility of the carrier.

#### Research Problem:

The subject of the time scale of the responsibility of the container cargo carrier raises a number of problems that prompted us to choose to research it, and they can be summarized as follows:

- 1- The subject of the study did not receive the attention of the Iraqi legislator, despite the importance of the subject and the widespread use of containers in the field of transporting goods.
- 2- The spread of the phenomenon of container transport and the resulting radical changes in the field of transport with the emergence of the door-to-door transport system.
- 3- It is necessary to know whether the rules for the time scope of the carrier's liability under the Rotterdam Rules have been developed for the benefit of the carriers or the shippers.

#### Research aims:

In preparing this study, the researcher aims to find out what is the period of time during which the carrier is sent by containers.

#### Research Methodology:

In our study of this research, we adopted the method of presentation and analysis of the legislative texts of Iraqi and Egyptian laws and international agreements, as well as following the comparative approach to compare them.

#### Research Scope:

The study revolves around the time scale of responsibility of the container cargo carrier, as the container transport of goods is determined to the exclusion of other types of transport, with a focus on the Iraqi and Egyptian national laws in addition to international agreements.

#### Search Plan:

We decided to divide our research into two sections, dedicating the first section to the concept of the containerized cargo carrier. While we talk in the second topic about determining the time period for the responsibility of the container carrier in national laws and international agreements.

## **1st Topic**

### The Concept of Container Goods Carrier

It is no secret that contracts for goods are generally concluded between two parties, the shipper and the carrier, and this is what has been agreed upon. Taking into consideration container transport and as a result of the prevalence of multimodal transport, the contract is concluded between the shipper and the carrier in unimodal transport, or between the shipper and the transport operator in multimodal transport.

As for the consignee, he is one of those involved in the contract of carriage. Frequently, contracts of carriage witness the intervention of several persons, so that there is an overlap between the parties to the contract of carriage and the parties to this international sales contract on the one hand. On the other hand, the consignee intervenes in order to implement the transport contract as the owner of the right to receive the goods transported in the container at the end of the journey. Hence, the role of the consignee appears in the implementation of the contract and not at the conclusion, although his name is mentioned in the bill of lading, as he is often the beneficiary of the contract.

Accordingly, the original parties to the contract for the carriage of goods by container are the shipper, the carrier and the multimodal transport operator. Also, since the axis of the container transport contract revolves around the transportation of the goods contained and their delivery to the agreed place, and this task is undertaken by the carrier, therefore we will shed light on this party by dividing the topic into two requirements, we devote the first to the definition of the carrier, and we drive in the second to distinguish the carrier from the multimodal transport operator.

#### 1st Requirement

##### Definition of the Container Carrier

International conventions organized a definition of the carrier. As according to the Brussels Treaty on Bills of Lading of 1924, Article (1/a) of it defined the carrier as: "Includes the owner or charterer of the ship associated with the shipper in the contract of carriage". As stated in Article (1/1) of the Hamburg Rules of 1978 that: "The carrier is every person who concludes a contract or in his name a contract with the shipper for the carriage of goods by sea."

It seems to us at first sight that what is meant by the carrier taking into consideration the two definitions are the marine carrier, whether he is the owner of the ship or the charterer. He is the one who concludes a contract with the shipper, so he can be described as the contracting carrier. However, the Hamburg rules were not satisfied with defining the contractual carrier, but rather came with the term actual carrier in Paragraph (2) of the same article and defined it as: "every person entrusted with the execution of the contract, whether wholly or partially by order of the carrier".

Thanks to the latter definition, it was possible to distinguish between the contracting carrier and the actual carrier, as the latter is the one who carries out the transport process in whole or in part without contracting with the shipper, while the contracting carrier conducts the transport contract with the shipper, whether he himself took over the transport process or entrusted it to another carrier.

The Rotterdam Convention of 2008 did not neglect to set a definition for the carrier, as Article (5/1) of this agreement included: "The carrier means the person who concludes the contract of carriage with the shipper".

What distinguishes this definition from its predecessors is that the mode of transport is not specified, unlike what is the case in the Brussels and Hamburg Conventions, which restricted the transport of goods by sea, while the Rotterdam Convention permitted the

sea, land or air carrier to enter into a contract of carriage with the shipper for the purpose of transporting goods by any of the modes of transport.

As for jurisprudence, the carrier is every person entrusted with the task of delivering the goods to the consignee or to his representative at the agreed upon place.

Accordingly, if jurisprudence and legislation provided the definition of the traditional carrier, they did not come up with a definition related to the carrier who undertakes the transport process using containers.

So, due to the absence of an explicit definition that specifically defines the concept of container cargo carrier, so we decided to define it as the natural or legal person or his representative, who receives the goods contained or container from the shipper or on his behalf or from any other party for the purpose of transporting it by land "or by sea" or by air", and deliver it to the addressee or his representative at the place of arrival.

This definition is distinguished by the fact that it does not limit the meaning of the carrier to the natural person, as it is often a legal person represented by transport companies, which is witnessed by container transport. The definition also indicates the consideration of the container transport contract and is embodied in the container or the goods contained, because the carrier either receives the container from the shipper for the purpose of filling it with goods or receives it, while it is packed with goods by the shipper, in addition to referring to who is on behalf of the shipper when receiving the container or the goods from him, as well as who performs The position of the consignee for the delivery of the goods or the container to him, and the importance of that reference appears in the extent of the length of time during which the carrier is asked, and finally the definition makes the difference between the term of carrier and the term of transport operator, as the first is singled out for unimodal transport, which is the focus of our research, while the second is restricted to transport multimedia.

As for the container, it is a tool for transporting goods that takes the form of a vessel or a box or the like with certain technical and standard specifications determined by the International Standardization Organization (ISO) and made of wood, iron, aluminum or plastic and is of durability so that it can be used more than once and used to collect goods inside them in order to transfer them between modes of transport without reloading them at an intermediate stage.

## 2nd Requirement

Distinguish the carrier from the multimodal transport operator

The Convention on the International Multimodal Transport of Goods created a new independent legal personality known as (the multimodal transport operator), which is any person who concludes on his own behalf or through another person on his behalf a multimodal transport contract and acts as a principal and not as an agent on behalf of the shipper or the carriers participating in the operations Multimodal transport and assumes responsibility for the implementation of the contract.

It appears from this definition that the aforementioned agreement considered the transport operator to be a unified legal person with rights and obligations under the multimodal international transport contract, whether the contract was concluded with the shipper in his original capacity or relied on his agents and branches, as he represents the second party in the contract for the transport of goods by containers, and he has be a natural or legal person 1.

Despite the participation of the concepts of the carrier and the transport contractor in the original capacity in the contract, the main difference between them appears in the multiplicity of modes of transport. While the transport contractor undertakes the process of organizing and managing transport by multiple means of land, sea and air international, with the help of other carriers to implement all stages of transport.

It is worth noting that the Rotterdam Rules enshrined new concepts on the side of the carrier in line with developments in the field of transport, as it introduced the so-called performing party and the maritime performing party.

In some cases the carrier or the transport operator resorts to contracting with a mediator or a representative. The carrier may represent the captain in a case of a full legal representation, or he may be represented by a representative, or there may be an agent or branch of the multimodal transport operator. A broker may also mediate for the purpose of approximation between the carrier or the transport operator and the shipper without carrier closer to the shipper without incurring any obligation related to the implementation of the contract.

## **2nd Topic**

Determining the time period for the responsibility of the container carrier in national laws and international agreements

The period of time for the responsibility of the carrier means the period during which the carrier is responsible for the goods transported, and each of the domestic laws and international comparative agreements has clearly defined that period. Therefore, we will get acquainted with the details of this topic by dividing the topic into two requirements. In the first requirement, we present the determination of a period in internal laws, and in the second requirement, we deal with the determination of the period in international agreements, as follows:

### **1st Requirement**

Determining the Time Period for the Responsibility of the container Carrier in the light of national laws

Comparative internal laws specified a specific period during which the container carrier is liable for damage to the goods contained, as under the Iraqi Transport Law No. (80) of 1983, Article (131/First) stipulates: "The responsibility of the carrier begins when the thing enters his custody and ends with its delivery to the addressee is at the place of arrival or placed at his disposal in accordance with the contract or the law, or upon delivery to an authorized party.

It is clear from the aforementioned text that the responsibility of the carrier begins from the time the thing enters his custody, and what is meant by custody according to the text of Clause (Second) of the same article is to place the thing under the control or supervision of the carrier, i.e. from the time he receives the container or the goods without specifying it in a specific place or Restricting it to the port of shipment, which prompts us to say that the carrier can receive the thing and then enter it into his custody, even if that happened outside the port of shipment, and that responsibility ends with handing over the thing outside the port of discharge. Which shows us the positivity of this text due to its suitability for the container transport system and the development witnessed by the practical reality in the field of transport. Nor did the legislator specify the party from which the carrier received the goods. Article (27/First) came in an absolute manner when it decided that the responsibility of the carrier should start from the time he received the thing, which indicates that the thing may be received from a party other than the shipper. As for the delivery incident, the legislator stipulated The Iraqi that the goods be delivered to the consignee or to an authorized party, and it is permissible to put the thing at the disposal of the consignee upon its arrival at the place of arrival. This is explained by the possibility of adopting governmental delivery if it is not an "actual" delivery of the goods, and this is what the legislator expressed in the phrase "putting the thing at the disposal of the consignee."

In our opinion, the Iraqi legislator was not successful in permitting voluntary delivery, and the seriousness of the issue lies in allowing the carrier to evade the provisions of liability as long as he is authorized to place the goods at the disposal of the consignee without actually handing them over to him, and without allowing the consignee or his agent to make reservations if necessary. Hence, it is not possible to prosecute the carrier and hold him accountable for the damages caused to the goods.

In light of the provisions of the Egyptian legislation, Article (227/1) of the Maritime Trade Law stated: “The carrier guarantees the loss and damage of the goods if the loss or damage occurs in the period between the carrier’s receipt of the goods at the port of shipment and his arrival at a port to unload and deliver them to the owner of the right to received or deposited in accordance with the previous article.

As stated in Article (1/240) of the Egyptian Trade Law: “The carrier shall be liable, from the time he receives the object of transfer, for its total or partial destruction, for its damage, and for the delay in its delivery.” Also, what was stipulated in Article (241) of the aforementioned law: “The carrier shall not be liable for the loss or damage of the thing after it has been delivered to the consignee or his agent or to the trustee who is appointed by the judge or one of his subordinates”.

It seems that the Egyptian legislator was clearer in his formulation of the provisions related to the time scope of the carrier's responsibility, as he came in brief and clear terms, and defined the period of the carrier's responsibility more clearly, which starts from the time the carrier receives the goods at the port of shipment until its delivery to the right holder at the port of discharge. It also required that the carrier deliver the goods upon their arrival to specific destinations, namely the consignee, his agent, the trustee appointed by the judge to deposit the thing, or one of his subordinates. This indicates that the actual delivery is obligatory without taking the judgmental delivery, contrary to what was adopted by the Iraqi legislature.

## 2nd Requirement

### Determining the Time Period for the container Carrier's Responsibility in the light of International Agreements

International legislators have taken care to establish provisions regulating the period during which the carrier is liable, but these provisions are worded differently in each agreement.

Referring to the Brussels Convention on Bills of Lading for the year 1924, we find that Article (1/e) stipulates that: “The transportation of goods extends to the time that elapses between the loading of the goods into the ship and their unloading from it.”

According to this text, we note that the aforementioned agreement covers only the period of time between loading and unloading, and Article (2) of the same agreement deals with the operations that take place during this period and which the maritime carrier is required to do. The period of the maritime transport contract under this agreement was not subject to any amendment under the 1968 protocol, and this means that the agreement does not include the pre-shipment stage, which begins from the time the goods are delivered to the carrier until the start of their shipment on the ship, nor does it include the subsequent stage of the unloading process, i.e., from the moment Unloading the goods from the ship until it is delivered to the consignee. Hence, the aforementioned agreement is only applicable to the marine phase only. As for the previous and subsequent stage, the contracting parties are not bound by the provisions of the agreement, as the carrier can impose conditions for exemption from liability on the shipper, which are not invalid except in the marine stage only. Thus, we note that there is a clear discrepancy between the provisions of this agreement and what was stated in the comparative national legislation in determining the period of time for which the carrier is responsible, as it was determined according to the internal legislation from the moment of receipt to the time of

delivery. While the Brussels Convention specified it from the time the goods are shipped until they are unloaded, the difference between the two is clear.

Confusion arose about the time of loading and the end of unloading, as well as the legal situation before shipment and after unloading, as the Hague rules (from crane to crane) were applied, i.e., from the time the goods were lifted at the port of shipment until they were lowered from the ship at the port of discharge.

The use of containers in the process of transporting goods had a great impact on the development of the concepts of loading and unloading, and considering the container as part of the ship's hold, which indicates that loading and unloading is loading the container and unloading the goods from it, and the accompanying necessity of expanding the period of the transport contract and extending the period of responsibility of the carrier for the goods transported by containers.

In view of this development, container terminals were established to accommodate all sea voyage operations and customs procedures in order to enable loading and unloading without taking away the carrier's right to supervise and control. This development was accompanied by a review of the carrier's responsibility period through the Hamburg and Rotterdam conventions. As Article (4/1) of the Hamburg Convention states: "The carrier's responsibility for the goods includes the period during which the goods are in the custody of the carrier from the port of shipment, during transport, and at the port of discharge. Paragraph (2) of the same article came with more clarification, as it stipulated that "The goods are in the custody of the carrier".

(A) from the time he receives the goods from:

- 1- The shipper or a person acting on his behalf or
- 2- An authority or other third party to whom the laws or regulations in force at the port of shipment require the goods to be handed over for the purpose of shipment.

(B) until such time as he has delivered the goods and that:

- 1- By handing it over to the sender or
- or
- 3- By handing them over to an authority or a third party to which the laws or regulations in force at the port of discharge require the goods to be handed over."

The Hamburg Rules seems to set the time limit for the carrier responsible more broadly than under the Brussels Convention. The carrier is subject to responsibility as long as the goods enter his custody, whether at the port of shipment, during transportation, or at the port of discharge. Thus, we note the similarity of the Hamburg Convention with Egyptian law in terms of the entry into force of the period at the port of shipment and not before that, which was not specified by the Iraqi legislator. The Hamburg Convention also referred in its ruling to the parties from whom the carrier receives the goods to be transported. It added that the carrier should receive the goods from the shipper himself or from his representative or from an authority or a third party that requires the laws or regulations in force in the port of shipment to hand over the goods to him for the purpose of shipment, such as customs administration, or warehouses. As for the delivery of the goods, the text clarified that the delivery takes place to the consignee, and if the latter did not come to receive the goods, or attended and refused to receive them, then the delivery takes place by placing the goods at the disposal of the consignee in accordance with the terms of the contract or in accordance with what is required by the law or custom followed in this regard. The goods are at the port of discharge.

Thus, it is clear to us the difference between its Hamburg rules and the Egyptian legislation that prohibited voluntary extradition, while the Iraqi legislature derived its

provisions in this regard from the aforementioned agreement, and permitted this type of extradition.

Accordingly, the responsibility of the carrier is determined by its time scope according to the aforementioned period between the carrier's receipt of the goods and until they are delivered to the consignee. As for outside this scope, that is, the operations that take place before the carrier receives the goods, they are subject to the general rules, even if they are operations related to the contract of carriage. These operations are particularly evident in maritime transport, such as the carrier's obligation to prepare a seaworthy ship.

However, if we look at the Rotterdam Convention of 2008, we will find that Article (12/1) of it states that: "The carrier's liability for goods under this agreement begins when the carrier or any executing party receives the goods for the purpose of transporting them, and ends when they receive the goods."

The advanced text dealt with the scope of the carrier's responsibility in terms of time and defined it from the time of receiving the goods until their delivery, as it became clear to us that the aforementioned agreement expanded this scope in comparison with Egyptian law and the Hamburg and Brussels conventions, where the Egyptian legislation and the Hamburg Convention linked the time period of the carrier's responsibility and the place of his receipt The goods from the shipper, and the place of delivery to the right holder. They made the carrier responsible from the time he received the goods at the port of shipment until he delivered them to the consignee at the port of discharge. As for the stage before and after that stage, it is not subject to the provisions of strict liability, as well as what the Brussels Convention did in linking the responsibility of the carrier in terms of the time scale to the process of shipping the goods in the means of transport.

Whereas, the Rotterdam Convention linked the carrier's possession of the goods and the time frame of his responsibility, as stated in the aforementioned article, regardless of the place of possession beginning or ending. In a more precise sense, the aforementioned agreement made the responsibility of the carrier expand in terms of time to include the transfer of goods from the shipper's door to the addressee's door.

Hence, the responsibility of the carrier begins when it receives the goods, even if that is outside the borders of the port of shipment, provided that it has received it for the purpose of transporting it, and ends with its delivery to the consignee.

Thus, it becomes clear to us that what was stated in Article (12/1) of the above agreement coincides with what was stated by our Iraqi legislator in terms of not specifying a specific port related to delivery or receipt, and this means that it is possible to deliver the goods to the carrier outside a port outside the port of shipment, and the time range of responsibility may also apply Until delivery is complete, i.e. if delivery is made to the consignee outside the borders of the port of discharge.

The Rotterdam Rules followed what came in the Hamburg Rules regarding the determination of delivery and receiving destinations, as Paragraph (2) of Article (12) of the Rotterdam Convention stated that: "(a) If the law or regulations of the place of receipt require that the goods be delivered to an authority or another third party from which the carrier can take delivery of the goods, the term of liability of the carrier begins when he takes delivery of the goods from that authority or other third party. goods therefrom, the term of liability of the carrier ends when he hands over the goods to such authority or other third party."

Perhaps the difference that appears between the two agreements at this point is that the Hamburg rules stipulated delivery to the authority or the third party at the port of shipment, while the Rotterdam rules did not stipulate that, and this matter is logical in our opinion because the contract of carriage within the framework of this agreement extends beyond the port of loading and the port of discharge, and its image is reflected by container transport.

This and if the Rotterdam Convention was concerned with actual delivery, but it permitted judgemental delivery in certain exceptional cases, which were mentioned in accordance with (48), as the goods were considered delivered upon their arrival at the place of destination, and the consignee did not accept their receipt, or the controlling or possessing party could not be found or the documentary shipper, or no accused directs instructions to the carrier, or when the carrier is entitled or obliged to refuse delivery, here the delivery is considered to have taken place in a judgmental manner rather than an actual one, and perhaps the purpose of the legislator in setting this exception is to protect the carriers with the intention of achieving a balance between them and the shippers and it seems to us that the logic of this exceptional provision is because it is natural to consider the goods as delivered to the consignee if the latter did not accept them after their arrival at the agreed place, or if the carrier did not receive instructions regarding them from the authorities authorized to issue those instructions, or otherwise, as if the legislator placed the responsibility on the shoulders of the consignee Or the shipper, and this is evident from the text of Paragraph (5) of the same article, which did not make the carrier responsible for what happens to the goods in terms of loss or damage during the time the goods remain undelivered unless the claimant proves that such loss or damage resulted from failure to take What measures should have been taken by the carrier in the existing circumstances to preserve the goods and that the carrier was aware or would have known that failure to take such measures would expose the goods to loss or damage.

As we have already mentioned, the Rotterdam rules do not apply to maritime transport only, but rather include all modes, and this is what was expressed in Article (1) when it defined the contract of carriage, which stipulated that: "A contract whereby the carrier undertakes to transport goods from one place to another for a freight, and the contract must stipulate the transport by sea, and it may stipulate transport by other means in addition to sea transport". This indicates the widening of the carrier's responsibility.

As for paragraph (3) of Article (12) of the same agreement, it stipulated that: "For the purposes of determining the liability of the carrier, the two parties may agree on the time and place of receiving the goods, but any agreement in the contract of carriage is invalid when it stipulates:

A- That the time of delivery of the goods is later than the start of their initial loading under the contract of carriage.

B- That the time of delivery of the goods was prior to the completion of their final unloading in accordance with the contract of carriage.

The implication of this provision is that the parties to the contract can agree to define the scope of the carrier's responsibility in accordance with the principle of contractual freedom, and then the carrier may stipulate a reduction in the period of time during which he is responsible, as if it were agreed to deliver the goods at the port of shipment until they are delivered at the port of discharge to the rightful owner. Thus, we have returned to the stage of responsibility from port to port, hich was adopted by the Hamburg rules.

We believe that allowing a reduction in the time scale of the carrier's responsibility taking into consideration the Rotterdam rules is irrelevant, given that the aforementioned agreement adopted the door-to-door transport system, because the receiving and delivery process may take place outside the ports. If this agreement took into account the interests of the carriers in regulating the provision of paragraph (2) of Article (12), but it did not consider the dominance and economic power that they enjoy against the shippers. Thus it would have been better and more appropriate in order to achieve a balance between the interests of the two parties that the convention makes the text of paragraph (1) ) of Article (12) a provision related to public order, and the principle of contractual freedom cannot be invoked in this matter. In addition to keeping abreast of developments in the transport industry and the emergence of the container transport system.

Through our analysis of the aforementioned texts, it is clear to us that the period of responsibility of the carrier has expanded under the Rotterdam Rules, and that this expansion of the responsibility of the carrier would not have occurred had it not been for the use of the container in assembling the goods as a means of transport and moving them from the place of the source to the place of the importer.

In application of the foregoing, if the shipper, consignee, or documentary shipper proves that the damage to the goods occurred after delivery to the carrier, or if it is proven that the damage occurred before receiving the goods from the carrier or his representative, then the special liability system contained in the Rotterdam Rules applies here. But if it is proven that the damage occurred before the carrier received the goods or after they were delivered to the consignee, the matter is governed by the general rules of liability, and the burden of proving the damage in this case falls on the plaintiff.

Based on the foregoing, the liability of the carrier in the framework of unimodal container transport begins from the time the goods contained or the container entered his custody, regardless of the designation of a particular port or place and whether the goods were delivered to the carrier himself, his representative, or the performing party, or received by any of them directly from the shipper Or from an authority or third party required by laws or instructions to do so, and that liability ends with the delivery by the carrier of the goods contained or container to the consignee or any other authority or party entitled to receive them.

### **Conclusion:**

After we finished the topic of our research marked (the time scope of the responsibility of container goods carrier), we reached a number of results that present the proposals that we consider to be adopted, as follows:

#### **Results:**

- 1- The local and international legislation did not provide an explicit and specific definition for the container carrier, so we provided a definition from our side that the container carrier is the natural or legal person or his representative who receives the goods contained or the container from the shipper or his representative or from any other party for the purpose of transporting it by land or sea or air and deliver it to the addressee or his representative at the place of arrival.
- 2- We concluded that both the carrier and the transport operator the original character in the contract concluded with the shipper, but the main difference between them lies in the multiplicity of modes of transport, so the designation of the carrier applies to whoever undertakes to implement the international sea, land or air transport, regardless of the multiplicity of carriers, while the transport operator undertakes the process of organizing and managing transport by international multiple modes with the help of other carriers to carry out all stages of transport.
- 3- We concluded that the carrier's responsibility period expands in the field of container transport, as it begins from the time the contained goods enter the carrier's possession, that is, from the time he receives those goods at the place of receipt, regardless of specifying a specific port or place for that receipt, and the period ends with the delivery of those goods at the place of arrival without being restricted to the port of discharge or a specific place as well.
- 4- We concluded that the carrier can receive the goods contained or the container from any destination other than the shipper, and the same is the case upon delivery at the place of arrival in line with the time frame of the responsibility of the container carrier.

**Recommendations:**

- 1- We propose the enactment of Iraqi legislation regulating the transport of goods in containers and include in it provisions relating to the definition of the carrier by containers and the clear and precise determination of the responsibility of the carrier in terms of time. The Iraqi legislator, while not limiting the period of responsibility to a particular place under articles (131/1) and (27/1), but he did not clarify whether that period relates to the responsibility of the container carrier or the regular carrier, taking advantage of the provisions of the Rotterdam Convention in this regard.
- 2- We recommend deleting the phrase “or putting it at his disposal” mentioned in Clause (First) of Article (131) because it is not consistent with the reality of container transport due to the seriousness of this type of transport, and therefore the container carrier is not allowed to evade the provisions of responsibility
- 3- We suggest making the provision related to the duration of the carrier’s liability stipulated in Article (12/1) of the Rotterdam Convention a provision related to public order, for the purpose of keeping abreast of developments in the transport industry and the emergence of the container transport system, and not referring to the principle of contractual freedom in this regard, which is presented as a restriction on The general principle stipulating that the period begins to run from the time the carrier receives the goods until they are delivered to the right holder.
- 4- We recommend that Iraq join the Rotterdam Convention and quote from it in the new additions.

**References**

Arabic references

1-Books :

- Dr. Ahmed Mahmoud Hosni, Court of Cassation, 4th edition, Manshaat al-Maarif, Alexandria, 2007.
- Dr. Jalal Wafaa Muhammadin, Maritime Trade Law, New University House, Alexandria, 1997.
- Dr. Hussein Abdullah Abd al-Ridha al-Kalabi, Al-Wajeez in Maritime and Air Law, Dar al-Kutub and Documents, Baghdad, 2012.
- Dr. Samiha Al-Qalyubi, Explanation of the Egyptian Trade Law, 4th Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2005.
- Dr. Susan Ali Hassan, The Legal Framework for the Liability of the Maritime Container Carrier in Accordance with the UAE Maritime Commercial Law, Dar Al Nahda Al Arabiya, Emirates, 2020.
- Sherif Mohamed Ghannam, Shipper Obligations and Responsibility in the Rotterdam Rules 2008 for the International Transport of Goods by Sea, New University House, Alexandria, 2012.
- Dr. Taleb Hassan Musa, Maritime Law, Dar Al Thaqafa for Publishing and Distribution, Amman, 2004
- Dr. Atef Mohamed El-Feki, Maritime Trade Law, Dar Al-Nahda Al-Arabia, Cairo, 1998.
- Abdel Hamid Morsi Anbar, The New in Shipping, Unloading and Container Handling in Ports, Egyptian Book House, no place to publish, 2017.
- Dr. Abdul Qadir Hussein Al-Attar, Containers and their impact on the implementation of the maritime transport contract, Dar Al-Sisban for Publishing and Distribution, Baghdad, 1983
- Dr. Abd al-Fadhil Muhammad Ahmad, Air Private Law, New Galaa Bookshop, Mansoura, without a year of publication.

- Dr. Abd Juma Musa al-Rubaie, Legal Provisions of the Convention on the International Multimodal Transport of Goods, No Publishing House, Baghdad, 2011.
- Dr. Krash Laila, The Effect of Container and Multimodal Transport on the International Transport of Goods, 1st Edition, Al-Wafaa Law Library, Alexandria, 2021.
- Dr. Kamal Hamdi, Maritime Law, 2nd edition, Mansha'at al-Maarif, Alexandria, 2000.
- Dr. Mohsen Shafiq, The New in International Rules for the Transport of Goods by Sea, Dar Al-Nahda Al-Arabiya, Cairo, without a year of publication.
- Muhammad Bahjat Abdullah Qayed, Maritime Contracts, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1996. Dr.
- Mohamed Gharib Abdel Aziz, The Legal System for Maritime Transport and Containers, Dar Al-Fikr Al-Jamei, Alexandria, 2006.
- Dr. Mohamed Farid Al-Arini and Dr. Muhammad Al-Sayed Al-Fiqi, Transportation Law, Al-Halabi Human Rights Publications, Beirut, 2011.
- Muhammad Kamal Hamdi, The responsibility of the maritime carrier for goods in the Maritime Trade Law No. (8) for the year 1990 – a comparative study with the Hamburg Convention – Manshaat al-Maarif, Alexandria, 1995.
- Dr. Mahmoud Mukhtar Bariri and Dr. Omar Fouad Omar, Air Law, Arab Renaissance House, Cairo, 2003.
- Dr. Mustafa Kamal Taha, Maritime Law, University Press House, Alexandria, without a year of publication.
- Dr. Mostafa Mohamed Ahmed Ragab, The United Nations Convention Relating to Contracts for the International Carriage of Goods Wholly or Partially by Sea (Rotterdam Convention), Manshaat Al-Maarif, Alexandria, 2017.

## 2- Researches:

- -Dr. Hussein Abdullah Abd al-Ridha al-Kalabi, The agreement as an element of the contract in the English legal system, a research published in the Journal of Law – Society and Power, Oran University, Vol. 6, p. 1, 2017, <https://www.asjp.cerist.dz/en/article/26430>.
- Dr. Haider Falih Hassan, The moment of conclusion of the contract according to the United Nations Convention on Contracts for the International Sale of Goods (1980) - A comparative study with some Arab and foreign legislations - published in the Journal of Legal Sciences, College of Law, University of Baghdad, 2010, Vol. 25, Issue. 2, pages 194-241. <https://search.emarefa.net/detail/BIM-266796>
- Dradkeh Lafi Muhammad, The Time Scope of the Maritime Carrier's Responsibility – A Comparative Study between the Provisions of the Maritime Trade Law and the Hamburg Rules, research published in Al-Manara Journal for Research and Studies, Vol. 13, no.9, 2007. <https://search.mandumah.com/Record/103312>
- Rahim Rahi Nasser and 2019 d. Khalis Nafeh Amin, “The Responsibility of the Maritime Agent in Iraqi Legislation: A Comparative Study”. Journal of Legal Sciences 34 (5):388-432. <https://doi.org/10.35246/jols.v34i5.316>.
- -Baudelieu S. (2017). The beginning of the responsibility of the maritime carrier for the goods he received in Algerian law and international agreements. Journal of the Human Sciences, 28(3), 87–100. Retrieved at from <http://revue.umc.edu.dz/index.php/h/article/view/2582> DOI, 1034174/0079-0006048,008
- Khandan, Shatha Abdul-Jabbar, and Hussein Akram Muhammad. 2021. “The Basics of Transferring Risks in International Trade Contracts”. Journal of Legal Sciences 35 (3):369-412. <https://doi.org/10.35246/jols.v35i3.347>.
- Ziad Kamel Al-Saadi. (2021). The carrier's liability for the goods. Horizons for Science, 6(1). Retrieved at from <https://afak-revues.com/index.php/afak/article/view/776>.
- Mohamed Abdel Wahab and Dr. Jalil Hassan Al-Saadi, The Modern Concept of the Party in the Contract . Journal of Legal Sciences 32 (5).2017. <https://doi.org/10.35246/jols.v2is.145>.

49 *The Time Scope of the Container Carrier's Liability*  
(A Comparative Study based on International Conventions and Iraqi and Egyptian Laws)

- Dr. Mona Naim Geaz and Dr. Jalil Hassan Al-Saadi, The idea of the content of the contract and the impact of its development on the conditions for the validity of the contract, - a study in French law – a research published in the Middle East Research Journal, Ain Shams University, vol.9, Issue Sixty-second, Year Forty-seven, 2021, Doi:10.21608/MERCJ.2021.166586
  - Dr. Nawras Abbas Al-Aboudi, Abstract Civil Obligation – A Study of Iraqi and Egyptian Civil Laws, research published in the Journal of the College of Law and Political Science, Iraqi University, No. 11, 2021, aliraqia.edu.iq
  - Dr. Hashim Ramadan Al-Jazaery, When is the carrier considered to have received the goods in the contract of maritime carriage of goods, a research published in the Journal of Rights, the tenth year, the first issue, 1986.
  - Al kohaly, Fouad. (2022) 2023. “The Right to Control The Goods In UAE Law and Rotterdam Rules”. Journal of Legal Sciences 37 (2):382-407. <https://doi.org/10.35246/jols.v37i2.554>.
  - Mounes, Hani. 2023. “The Impact of Dangerous Goods Transportation for Maritime Carrier Responsibility”. Journal of Legal Sciences 38 (1):197-238. <https://doi.org/10.35246/jols.v38i1.604>.
  - Haitham Khazal Abdel-Hamid, the contractual responsibility of the land carrier in his transportation of things, a research presented for the purposes of promotion from the fourth class to the third class of judges, unpublished, 1992.
  - Ali Yunus Salah El-Din. 2021 “The Quasi-Contract in the English Law. A Comparative Study With the Unjustly Paid in the Iraqi Civil Law”. Journal of Legal Sciences 36 (1):35-75. <https://doi.org/10.35246/jols.v36i1.381>
- 3- Theses and university dissertations:
- Osama Abdel Aziz Ibrahim Saad, Legal Regulation of Transport by Container, PhD thesis, Faculty of Law, Alexandria University, 2003.
  - Bin Sagheer Scheherazade, The Legal Center for the Parties to the Maritime Transportation Contract – A Comparative Study – PhD thesis, Faculty of Law and Political Science, University of Mouloud Mamari- Tizi-Ouzed, 2011.
  - Salem bin Salam bin Humaid Al-Faliti, The time range of the maritime carrier’s responsibility under the Rotterdam rules 2008 – a comparative study in the light of international agreements and Omani and Egyptian maritime law, PhD thesis, Faculty of Law, Mansoura University, 2015.
  - Nourhan Hafeez, The Legal Framework for the Maritime Carriage Contract, Master Thesis, Faculty of Law and Political Science, Department of Law, Larbi Ben M’Hidi University – Oum El Bawaqi, 2016.
- 4- Electronic Publications:
- Amal Al-Morshedy, International Rules for the Sale of Goods According to the Vienna Convention, a research published on the Internet at the website: <https://www.mohamah.net> Publication date: 5/24/2023.
- 5- National laws and international agreements:
- The Brussels Convention on Bills of Lading of 1924 amended by the Protocol issued in 1968 annexed to it.
  - The United Nations Convention on the Carriage of Goods by Sea of 1978 (Hamburg Rules).
  - Convention on the International Multimodal Transport of Goods (Geneva 1980).
  - Iraqi Transport Law No. (80) of 1983.
  - Egyptian Maritime Trade Law No. (8) of 1990.
  - Egyptian Trade Law No. (17) of 1999.

- The United Nations Convention on Contracts for the Carriage of Goods in Whole or Part of the Sea (Rotterdam Convention) of 2008.

Secondly. Foreign references:

1-Books:

- Alan, E Breanch, Elements of Shipping, Routledge, London, 2008.
- David A. Glass, Fright Forwarding and Multimodal Transport Contracts, Routledge, London, 2012.
- H.G. Schmidt, Multimodal Transport law, Proefschriftmaken.nl, Erasmus Universiteit Rotterdam, 2009.
- Llian Djadjev, The Obligations of The Carrier Regarding The Cargo -The Hague Visby Rules- 1st edition, Springer, 2017.
- Rene Rondiere, Droit Maritime, 2nd edition dalloz, Paris, 1981.
- Simon Baughen, Shipping Law, Fifth Edition, New York, 2012.
- Thomas J. Schoenbaum, Admiralty and Maritime law, Third Edition, West Group, 2001.

2-Researches:

- Drici Amina, Legal Scope of The Carrier's Liability in The Contract of Carriage of Goods by Sea, Journal of Legal Studies (Class-C), Vol.9, No.2, 2.023.

3-Theses and dissertations:

- Louis Chrjsos Bobongo, Prize in the contraté of transport of merchandises, Universite Paris I Pantheon Sorbonne School doctoral droit prive, 2016.

4-Electronic Publications:

- Berlingierl F. and Others, The Rotterdam Rules, an attempt to clarify certain concerns that have emerged, available at: <https://uncitral.un.org/files>, published on 5/8/2009