Gunay Mammadli[*]

LIABILITY ISSUE OF THE SUB-CARRIER IN THE CARRIAGE OF GOODS BY SEA

Abstract

This Article is dedicated to the issue of determining the legal status of the sub-carrier and its responsibility. The Article deals with the interpretation of sub-carrier and how it is defined in different international conventions and focuses on the sub-carrier's liability towards the carrier and the other parties to the contract. These issues are analyzed at national and international levels based on documents including, Hague and Hague-Visby Rules, Hamburg and Rotterdam Rules, and other international legal acts, also Merchant Shipping Code of the Republic of Azerbaijan, Civil Code of the Republic of Azerbaijan. Various cases related to the subject are also enclosed in this article.

Annotasiya

Bu məqalə dəniz daşımaları zamanı faktiki daşıycının hüquqi statusu və məsuliyyətinin müəyyən olunmasına həsr olunmuşdur. Belə ki, məqalədə faktiki daşıyıcının şərhi, müxtəlif konvensiyalarda necə müəyyən olunması, faktiki daşıyıcının daşıyıcıya və digər yük daşınması müqaviləsinin tərəflərinə qarşı məsuliyyətinin həddi analiz edilmişdir. Qeyd olunan məsələlər Haqa, Haaqa-Vizbi, Hamburq, Rotterdam və digər beynəlxalq aktlar, həmçinin Azərbaycan Respublikası Ticarət Gəmiçilik Məcəlləsi və Azərbaycan Respublikası Mülki Məcəlləsi əsasında beynəlxalq və milli səviyyələrdə təhlil edilmişdir. Həmçinin mövzu ilə bağlı bir sıra məhkəmə işləri diqqətə çatdırılmışdır.

Contents

Introduction 20
I. How Does the Hague and the Hague-Visby Rules Determine Carrier? 22
II. How is Sub-carrier Regulated in the Hamburg Rules? 23
III. The New Approach to Sub-carrier within the Rotterdam Rules 25
IV. What Does the Himalaya Clause Mean? 28
V. From the Legal Point of the Azerbaijan Legislation 29
Conclusion 31

Introduction

Recent statistics show that roughly 90% of the traded goods were transported by sea through the operations of over 50.000 vessels, making a contribution of over $380 billion to the global economy and employing over 1.2 million people.[1] In 2017, 10.7 billion tons of goods were shipped worldwide; which is 1.5 billion tons more than it was in 2012.[2] That

[*] Baku State University, 2nd year LL.M. student in Maritime and Energy.

is why the carriage of goods by sea requires more preciseness. It is regulated by contracts of carriage by sea, as well as the bill of lading which originated purely as a receipt for the goods shipped. The parties involved in a contract of carriage are mainly the carrier and the shipper. Their rights and duties are defined by the contract which represents the expression of their wills. The scope of the rules governing the sea carrier's liability is the central part of international maritime conventions. Other than the mentioned contractual parties, there is a multitude of other subjects involved in the transportation of goods by sea. Thus, the carrier cannot perform the work alone and he/she will recruit and rely on other people, on his own employees or other workers, or on other carriers that are hired for specific purposes. However, in this case, the issue of responsibility is questionable and its determination demands a comprehensive analysis.

Today, it is common practice for the carrier to sub-contract the contracted carriage of goods transportation. When the carriage is sub-contracted, the carrier will use other carriers to perform the contractual obligations for him/her,[3] which means that there will be a second, and sometimes a third, contractual layer involved. The sub-carrier's role in transportation law is an interesting contractual issue because, normally, the sub-carrier does not have a contractual relationship with the owner of the goods. The owner of the goods might have contracted with someone he/she considers reliable and does not want his/her goods to be transported by anyone else. Due to this, the use of a sub-carrier without the consent of the shipper was for a long time considered a major breach of the contract. For instance, the Scandinavian legislation evaluates this issue in the same manner as a deviation.[4] The shipper will expect the goods to be carried in accordance with the contract and the carrier should not expose the goods to any risks outside of the scope of that contract. The carrier is strictly liable for any damage and delay that occurs while the cargo is in the custody of the sub-carrier. However, is it applicable to every situation that involves a sub-carrier, and how is this matter regulated in international conventions?

[1] World Seaborne Trade (2018), https://stats.unctad.org/handbook/MaritimeTransport/WorldSeaborneTrade.html (last visited Oct. 27, 2019).
[2] *Id*.
[3] Indira Carr, International Trade Law, 7 (4th ed., 2010).
[4] Falkanger Thor and Hans Jacob, Scandinavian Maritime Law – the Norwegian perspective, 281 (3rd ed., 2011).

I. How Does the Hague and the Hague-Visby Rules Determine Carrier?

Prior to the 1900s, there was no common international law regulating the carriage of goods by sea.[5] Disputes over damage, loss, or delay were, for many years, resolved by resorting to the applicable contract between the contracting parties. Most of the law in this area was based on the legal system of a particular country where the dispute took place. This became a problem as the parties increasingly resorted to shopping for the most favorable jurisdiction to the detriment and inconvenience of the other party. A compromise between the carriers and shippers from the major shipping nations led to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, August 25, 1924.[6] This convention is commonly referred to as the Hague Rules. The Hague Rules entered into force in 1931, and to date, there are 91 contracting parties to the Convention.[7] However, after four decades of existence, due to commercial changes in cargo carriage, the Hague Rules needed major amendments.[8] An international diplomatic conference held in Brussels in May 1967 gave the final shape to the amended protocol and was adopted as The Hague-Visby amendment on 23 June 1968.[9] Nevertheless, with the introduction of The Hague-Visby Rules, some questions were yet left unanswered regarding sub-carriers. One main issue was the uncertainty of the identity of the carrier: who is your contractual party? Is the shipowner carrying the goods your contractual carrier or the sub-carrier? The definition of the carrier in The Hague Rules does not differ from The Hague-Visby Rules' definition. According to these Conventions, "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper. Notwithstanding all, there is no concrete term meant to define the sub-carrier.

[5] Samuel Robert Mandelbaum, *International Ocean Shipping and Risk Allocation for Cargo Loss, Damage and Delay: A U.S Approach to COGSA, Hague-Visby, Hamburg and The Multimodal Rules*, 5 J. Transnat'l L. & Pol'y 1, 21 (1995).

[6] International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (1924).

[7] William Tetley, *Package and Kilo Limitations and The Hague-Visby and Hamburg Rules*, 26 J. Mar. L. & Com. 133, 155 (1995).

[8] Robert Force, *A Comparison of The Hague, Hague-Visby, and Hamburg Rules*, 70 Tulane Law Review, 2051, 2052 (1995-1996).

[9] Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (1968).

II. How is Sub-carrier Regulated in the Hamburg Rules?

The former conventions covered only "tackle to tackle" carriage contracts. The 1978 Hamburg Rules were introduced to provide a more modern framework, as well as less biased in favor of ship-operators.[10] Article 1 of the Hamburg Rules defines the carrier as "any person by whom or on whose behalf a contract of the carriage of goods by sea has been concluded with a shipper. "The carrier" under Hamburg Rules may include the shipowner, charterer or agent of the shipowner, thus it is wider than the definition of the "carrier" under the Hague-Visby Rules. Yet, the real contribution of Hamburg Rules is the definition of the "actual carrier" in Article 1. It means, "any person to whom the performance of the carriage of goods, or part of carriage of goods by sea has been concluded with the carrier, or any person by whom or in whose name or on whose behalf the goods are delivered to the carrier concerning the contract of carriage by sea". In this regard, it must be noted that in many cases, the carrier himself/herself is the actual carrier. An example can be a situation where a liner operator accepts cargo for shipment directly from the shipper. Here, there being no delegation of carriage, the liner operator will be the carrier and the actual carrier as defined in articles 1(1) and 1(2) respectively in the Hamburg Rules. On the other hand, when a shipping agency sub-contracts the carriage to the liner operator, the shipping agency becomes the carrier and the liner operator becomes the actual carrier.[11]

With regard to the responsibility of the actual carriers, notably, the shippers face difficulties when they have to seek compensation from the actual carrier. That carrier might be unknown to the shipper, might have effectively restricted or excluded his liability, or might not be subject to suit by the shipper in any appropriate jurisdiction. The Hague Rules do not deal with the liability of an actual carrier. The need to identify the carrier arises from the fact that The Hague and Hague-Visby Rules will only recognize a single carrier, i.e. the contractual carrier. Nevertheless, the Hamburg Rules provide for the liability of the actual carrier in cases of loss, damage, or delay which occurred in the part of the voyage entrusted to him/her. Otherwise, both the contracting carrier and the actual carrier are jointly and severally liable.[12] Hence, Hamburg Rules, Article 10 defines that

> *where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract*

[10] United Nations Convention on the Carriage of Goods by Sea (1978) (hereinafter The Hamburg Rules).
[11] Ghada Awad M. Shawgi, *Liability of the Sea Carrier in the International Carriage of Goods by Sea*, 122 (2015).
[12] *Id.*, 143.

of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

These provisions will greatly assist the cargo owner claimant who, at present, has the difficult task of unraveling the complicated relationship between owners, charterers, and demise charterers in order to establish the identity of the carrier. It has been suggested that the contracting carrier and the actual carrier may be regarded as a joint venture and therefore are jointly and severally liable. However, it is also stated that this may be a controversial application of the agency reasoning and is more a suggestion for law reform.[13]

We should analyze some cases about liability issues when the actual carrier is on the stage. The problem may, nonetheless, also arise where S, a shipper, contracts with O, a shipowner, for the carriage of goods which are then transshipped onto O1's vessel: who can B sue, O, the contractual carrier, or O1, the so-called "actual" carrier? Clearly, B can sue O, with whom B has a contract. What, however, if O is not worth suing: can B claim against O1, with whom it has no contract? The answer is quite obvious and unremarkable: B can claim against O1 if B can establish a tort committed by O1 or a breach by O1 of O1's duties as B's bailee. Broadly speaking, if B can prove that O1 failed in its duty of care towards B at a time when B owned or was entitled to the possession of the goods, then B has the title to sue O1 in tort or bailment.[14]

Now we should look at the real cases in other jurisdictions, such as in *PICC Qingdao Branch v Xiamen Ocean Shipping Co1.* Indeed, although China government ratified the Convention, they solve such disputes within the local jurisdiction. In Chinese law, if shipper A has an agreement with carrier B, B then entrusts C, C entrusts D or any others to carry them, the cargo owner can sue any or all of B, C, and D. Whoever is sued has the benefit of a legal indemnity against the actual carrier or real wrongdoer. For instance, the contractual carrier has compensated the cargo owner's loss and sought reimbursement from the defendant who was the actual carrier. But the court found there was an insufficient causal link between the rust of cargo and river transport and dismissed it. In *Wuxi Shunlong Special Pipe Fittings Company v Yingkou Chuyun Port Economy & Trade Company* case, clearly, the carrier had no fault and one of the actual carriers had breached the contract; however since he failed to point out which actual carrier caused the damage,

[13] Thomas Gilbert Carver, Gunter Treitel and F.M.B. Reynolds, Carver on Bills of Lading, §9-10 (1st ed. 2001).
[14] Yvonne Baatz, Maritime Law, 191 (3rd ed.2014).

his recourse was dismissed. If he has an amicable settlement with the cargo owner, such an agreement must be reasonable.[15]

III. The New Approach to Sub-carrier within the Rotterdam Rules

Along with the developments of the shipping industry, the previous convention's rules have shown increasing incapability in dealing with modern shipping issues. Accordingly, the UNCITRAL produced a new convention concerning the carriage of goods wholly or partly by the sea at the end of 2008, which adopted the title *the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea* (the Rotterdam Rules). The effectiveness of the Rotterdam Rules still requires ratification or another mode of adoption by at least 20 states.[16] For being able to define the concept of sub-carrier in Rotterdam Rules, one must first look at the concepts of carrier and contract of carriage. A carrier is defined in article 1(5) as a person who enters into a contract of carriage with a shipper. A contract of carriage according to article 1(1) is a contract where a carrier against the payment of freight undertakes to transport goods from one place to another.[17] The sub-contractor is called the performing party in Rotterdam Rules. Three principles were to be considered by the Working Group while drafting the definition of performing party in article 1(6). First, those carriers and sub-contractors should have joint and several liabilities. Secondly, both the carrier and sub-contractors should be vicariously liable for their employees and thirdly, that the protection of the Himalaya clause should apply to the employees as well as the employers.[18]

In the next paragraphs, we will also talk about the meaning of the Himalaya clause. It is also important for the definition to function with the other articles in the Rotterdam Rules. Thus, a performing party is defined in article 1(6)(a) as a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage concerning the receipt, loading, handling, stowage, carriage, keeping, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control. As it seems from the definition, the Rotterdam Rules clarification introduces broad meaning for the performing party in order to

[15] Fan Wei, *The Measurement Of Damages In Carriage Of Goods By Sea*, Dissertation Presented for the Degree of Doctor of Philosophy in the University of Exeter, 167 (2008).
[16] Edward Yang Liu, An Analysis of Carrier's Obligation to Delivery of Goods under the Rotterdam Rules, 2 (2012).
[17] The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2009).
[18] United Nations Commission on International Trade Law, Working Group III 2002-2008, Transport Law, http://www.uncitral.org/uncitral/en/commission/working_groups/3Transport.html (last visited Jan. 6, 2019).

contain all potential parties on the carrier's side. The performing party is broadly defined and includes all other carriers such as road, rail, and air. At first, Rotterdam Rules also define who is not considered as a sub-carrier. So, Article 1(6)(b) notes, "Performing party" does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of the carrier. It means to talk about performing carriage, one party of relations must be a carrier. Another new feature of Rotterdam Rules is a division of the maritime and non-maritime performing party. Under Article 1.7 of the Rules, "Maritime performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party, only if it performs or undertakes to perform its services exclusively within a port area. The reason for this division is to prevent unexpected consequences for sub-contractors. The terms performing party and maritime performing party both depend upon the definition of the carrier, as they must be "a person other than the carrier". This presupposes an independent contractor or an agent. Any employee, master, or crew of the carrier or the performing party does not create a separate performing party. During the drafting this was explicitly stated in the definition of the performing party, however, this was subject to discussion and was later removed.[19] The phrase "undertakes to perform" was included to explicitly state that the carrier always is liable for performing parties and the exclusion of said term could break the linkage of contracts between the parties. Both sub-contractors that actually perform the obligation and subcontractors who only undertake to perform, but then delegate the performance to another, are thus included.[20] Persons acting upon the request of the shipper are explicitly excluded according to article 1(6)(b).

The performing party must perform any of the carrier's obligations under the contract of carriage, which means that the activities must be directly related to the cargo-handling or the carriage under the contract. Different activities are listed in article 1(6)(a): "the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods", to the extent that it is done at the carrier's request or under his supervision. The list is probably not meant to be exhaustive, as the Working Group considered to include the phrase "among others" or "inter alia".[21] The definition should include different actors such as stevedores, warehouse providers, and other

[19] *Ibid*.
[20] Fujita Tomotaka, *The comprehensive Coverage of the New Convention: Performing Parties and the Multimodal İmplications*, 44 Texas International Law Journal 349, 370, (2009).
[21] Berlingieri Francesco, *The Rotterdam Rules: the "the Maritime Plus" Approach to Uniformity*, 2 EJCCL 49, 54-55, (2009).

transport operators. In his article *The Maritime Performing Party in the Rotterdam Rules 2009*, Smeele writes that contractors who only assist in the obligations undertaken by others seem to be excluded, such as port pilots and tugs assisting with the mooring of the vessel.[22] Should these sub-contractors have anything to do with the cargo worthiness, which is the carrier's obligation, then they should fall within article 1(6)(a).[23]

Now we are going to clarify the liability issue for the carrier and maritime performing party under Article 18-19. It seems from Article 18 that the carrier is vicariously liable for all performing parties, both maritime and others, and performing parties' employees. It is explicitly enumerated in Article 18. Whereas sub-paragraph (d) is a little bit complicated. So, if the performing party has sub-contracted the work for the carrier, then it would be important to clarify whether this party would fall within article 18(d) as indirectly acting upon the carrier's request. If this cannot be resolved, then the carrier would not be liable for this sub-contracted performing party.[24]

As mentioned above, the maritime performing party deals with the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. In the Rotterdam Rules 19(1) two requirements are taken into account as to be subject to the obligations and liabilities for maritime performing party imposed on the carrier. Any other performing party does not face the same liabilities as of the maritime performing party. First, the maritime performing party must have received or delivered the goods in a contracting state or performed any of its activities concerning the goods in a port in a contracting state pursuant to article 19(1)(a). It means there have to be relations between the maritime contracting party, the contracting state, and any other sub-contractor in a non-contracting state does not bear any obligation under Rotterdam Rules. Secondly, in article 19(1) (b), the occurrence that caused the loss, damage or delay must have taken place either; (i) during the period of arrival and departure of the goods at the port; or (ii) while in the custody of the maritime performing party; or (iii) any other time to the extent that the maritime performing party was participating in the performance of any of the activities contemplated by the contract of carriage. The first alternative is preferably used against sub-carriers, which focuses on the maritime stage of the transport. The second alternative is aimed at storage keepers, but can also be used against sub-carriers who take over the goods prior to the arrival at the port. The last alternative is aimed at those who never take custody of the goods while assisting the handling of the cargo.[25]

[22] Smeele Frank, *The Maritime Performing Party in the Rotterdam Rules*, 170 Erasmus University Rotterdam 72, 80 (2009).
[23] *Id.*, 81-82.
[24] Baatz, supra note 14, 62.
[25] Smeele, supra note 22, 84.

IV. What Does the Himalaya Clause Mean?

When the subject is about the sub-contractor, the Himalaya clause must be regarded. The Himalaya clause is a contractual provision expressed for the benefit of a third party who is not a party to the contract. Although theoretically applicable to any form of contract, most of the jurisprudences relating to Himalaya clauses relate to maritime matters, and exclusion clauses in bills of lading for the benefit of employees, crew, and agents, stevedores in particular. The Himalaya clause derives from the decision in *Adler v Dickson*[26]. In the case of a passenger on board of the vessel, the Himalaya brought an action in tort against the master and the boatswain following a fall due to an improperly secured gangway. On the backside of the ticket, it was stated that the company would not be liable for any damage or injury whatsoever and the defendants tried to use this statement in their defence, but the Court of Appeal concluded that the statement did not extend to include the company's servants or agents. The case leads to the innovation of the Himalaya clause, extending the defences of the carrier to his servants, agents and independent contractors.[27] Actually, the meanings of the Himalaya clauses are drafted differently, but the most useful example can be put as:

> *"It is hereby expressly agreed that no servant or agent of the Carrier (including every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Merchant for any loss, damage or delay arising or resulting directly or indirectly from any act, negligence or default on his part while acting in the course of or in connection with his employment and[...]every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Carrier acting aforesaid..."*[28]

In *Scruttons Ltd v Midland Silicones Ltd* case, where a drum was damaged by stevedores, who tried to limit their liability through the Himalaya clause in the bill of lading. They claimed, among other things, that through the agency of the carrier they were brought into a contractual relationship with the cargo interests, making the limitation rules available to them. Although the House of Lords concluded that the stevedores could not avail themselves the same limitations as the carrier, Lord Reid suggested that the agency argument could succeed provided that: (i) the bill of lading must make clear

[26] Adler v. Dickson, http://www.bailii.org/ew/cases/EWCA/Civ/1954/3.html (last visited Jan. 6, 2019).
[27] Girvin Stephen, Carriage of Goods by Sea, 34 (3rd ed. 2011).
[28] John F Wilson, Carriage of Goods by Sea, 203 (6th ed.2008).

that the stevedores were intended to be protected by the limitation rules; (ii) that the carrier was contracted as a principal and agent of stevedores regarding the limitation rules; (iii) that the carrier had authority to the stevedores; and (iv) that the difficulties about consideration moving from the stevedores were overcome.[29]

Courts scrutinize Himalaya clauses strictly, enforcing them only where they are clear and explicit as to the beneficiaries, especially with regard to independent contractors.[30]

V. From the Legal Point of the Azerbaijan Legislation

What is the position of the legislation of the Republic of Azerbaijan concerning the sub-carrier? As an answer to this question, we must analyze the Merchant Shipping Code and the Civil Code of Azerbaijan. The Republic of Azerbaijan has not signed and ratified any above-mentioned international Rules. However, if we pay attention to the Merchant Shipping Code of the AR, it reflects the impact of international legislation. The Merchant Shipping Code came into force on June 22nd, 2001.[31] The Civil Code of Azerbaijan, which also takes into account the carriage of goods, came into force on September 1st, 2000.[32] Firstly, let's look through what the contract of carriage is in both legislative acts. Before amendments were made to the Civil Code, Article 850 defined this issue regarding the Freight Contract Transporter that is in charge of transporting goods (items) from one place to place of destination in return for the payment (freight fee), and Owner or Receiver of the goods (items) has to make payment for that.[33] Article 87 of the Merchant Shipping Act notes, the carriage of cargo by sea contract is any contract under which a carrier is obliged to transport the cargo (provided or to be provided by the shipper) to the destination port and deliver it to the person authorized to accept the cargo (hereinafter referred to as a consignee) and payment of the transportation costs (freight) will be borne by the shipper or consignee.[34] It seems, earlier, the Civil Code charged the payment to the cargo owner or receiver of the goods. At the same time, the Merchant Shipping Code charges the payment to the shipper and the consignee. After the amendments to the Civil Code, it is defined the obligation of the payment is in charge of the shipper, consignee, or the person authorized to

[29] Scruttons Ltd v. Midland Silicones Ltd, http://www.casebooks.eu/contractLaw/Chapter26/excerpt.php?excerptId=4744, (last visited Oct 27, 2019).
[30] Robert Force, Admiralty and Maritime Law, 82 (1st ed. 2004).
[31] The Decree of the President of the Azerbaijan Republic on application of the Law of the Azerbaijan Republic on the Merchant Shipping Code, No 594 (2001).
[32] The Law of the Republic of Azerbaijan on entering into force of the Civil Code, May 26, 2000, No 886.
[33] *Id.*, art. 850.
[34] The Merchant Shipping Code of the Republic of Azerbaijan, art. 87.

make payment that. Moreover, while the Civil Code takes into consideration only the place of destination, the Merchant Shipping Code stipulates the place of destination and delivers it to the person authorized to accept the cargo. In the question of which approach is successful, we can say, solving the problems like this detailed definition is more acceptable than others.

As an answer to the afore-mentioned first question, the Merchant Shipping Code of the AR solves this issue under Article 87.4 and 135. First of all, Article 87.4 defines that carrier of cargo will be a person who concludes a sea freight transportation contract between the freight forwarder or freighter or on his behalf. An actual carrier is a person assigned to carry the freight or to implement half of the freight, including any other person to carry out such freight. As it is mentioned there is not any significant difference in the meaning of the carrier and sub-carrier, rather than international aspects. The responsibility matter of the actual carrier is given in Article 135. According to this clause, if the actual carrier is charged with transportation of cargo or part of it, the carrier, independently on this, takes complete liability for transportation under rules, determined under this Code. Regarding transportation of the cargo, carried by the actual carrier, a carrier is responsible for the actual carrier, employees, and agents, acting in frames of his duties. But the next sub-paragraph deems to similarize the actual carrier's responsibility to the carriers'. It is said that in accordance with the contract between a carrier and actual carrier, the rules for liability of the carrier, determined under this Code, are applied to liability for transportation, fulfilled by the actual carrier. In the event of entering the contract, stipulated by Article 135.2 of this Code, the rules, determined by Articles 133.1, 133.2, and 134.2 of this Code are also applied to employees or agents of the actual carrier by laying claims to them. Article 135.5 stipulates if both carrier and actual carrier bear liability, then their liability is combined. But we must pay attention to the subparagraphs of Article 135.7. Regarding this paragraph, the rules, determined under this Code, do not touch the right of the mutual regress of carrier and the actual carrier. Civil Code of the Republic of Azerbaijan also explains the right to regress. Firstly, Article 859, which is about the contract of carriage, determines transporter not only responsible for freight carried out by him/her but also for freight carried out by another person; His/her right to regress to another person whom he/she gave luggage. Article 1114.1 stipulates that the person who compensated the damage, caused by the other person (employee in the course of his official duties or a person driving a vehicle, etc.), shall have recourse to such person in the amount of the compensation paid if no other amount is set forth by law. Eventually, we see that in our legislation there is not any notable difference rather than international conventions on maritime law. This proves that even though the government does not ratify any of them, the impact is inevitable.

Conclusion

Summarizing all that is above-mentioned, it is clear that normally a sub-carrier will not have a contractual relationship with the cargo interest. That is why, when the damage claim is brought into court, firstly, the identity of the carrier and sub-carrier must be determined. The Hague and the Hague-Visby Rules can be considered unsuccessful for the absence of a point of sub-carrier. In the Hague-Visby Rules, the liability of the third-party can be solved from aspects of the Himalaya clause. The determination of sub-carrier stems from the Hamburg Rules and continues to develop in Rotterdam Rules. The Rotterdam Rules may thus not be the solution to all of the problems, nonetheless, it will certainly make the situation for sub-carriers and their relationship with the cargo interests clear. That is to say, the Rotterdam Rules are closer to the new generation of the sea carriage. The matter of the carrier himself/herself to be the actual carrier and the matter of the shipper to be the carrier, through liner operators as an actual carrier is removed in the Rotterdam Rules. It is explicitly noted that for being sub-carrier, the one-party of the relations must be the carrier. In other words, in one way or another, the provision about the sub-carrier does not apply to the link between the shipper and the carrier. To that end, the ratification of Rotterdam Rules is practically important, although, the states run it away for some reason.

Even though regulation in Azerbaijani legislation differs from international conventions, the matter of the liability of sub-carrier has the same legal nature. Nevertheless, it is acceptable to explicitly identify who is not considered as a sub-carrier.