

# Critical Analysis of The Hauge Visby Rules

Ms. Shreya Kankas

*Teaching & Research Associate, Gujarat Maritime University*

## I. WHAT ARE HAUGE VISBY RULES

The Hague/Hauge Visby Rules are a mandatory framework of rights and obligations that apply to the carriage of goods by sea. Outside of this basic framework the parties to a contract of carriage are free to negotiate additional terms as they wish. The Hague rules were brought into English law by the Carriage of Goods by Sea Act 1924 and were subsequently updated by the Carriage of Goods by Sea Act 1971 which brought into force the Hauge Visby Rules. Unless stated, this publication will focus on the application of the Hauge Visby Rules.

Before the Hague Rules were introduced, parties to a contract of affreightment had freedom to negotiate whatever terms they wanted. This often led to wide-reaching exclusions of liability by sea carriers who could take advantage of their stronger bargaining position. The shipping industry therefore needed a set of codified rules to ensure a fairer system which both defined the rights and obligations of the parties and specified maximum exclusions of liability<sup>1</sup>

if we go back to the history, we find that the contract in respect of carriage of goods earlier they were based on common law so the parties to the contract they were covered by the bills of lading and bills of lading had many clauses the ship owner had tendency to incorporate more and more exclusion clauses in the bills of lading the object

## II. THE OBJECTIVE OF HAGUE RULES

basically, was to protect the cargo owners from the tendency of the shipowner to incorporate more and more exclusion clauses into the bills of lading so this was achieved by incorporating the standard clauses in the bills of lading this has two more advantages

1) what is the risk which the ship owner must take was clearly defined.

2) what is the maximum advantage the ship owner can take in terms of limitation of liability.

What? How? Why?

Earlier in Hauge Rules very limited liability was given to shipowner/ Carrier Therefore Hauge Visby Rules create a higher liability on Carrier, and these are Ratified by Most Nations

Because the dangers are lesser than it used to be on a ship so, it's natural that the ship is requested to share some of the liabilities not a lot but some of the liabilities

## III. ARTICLE I OF HAUGE VISBY RULES: (MEANING)

Carrier, Contract of Carriage, Goods, Carriage of Goods These terms are defined under Article II

Meaning of Carriage of Goods - that means a time between the loading of goods on board the ship and discharge of the same good out of the ship during that period only we have the Hauge Visby rules.

so, when the goods are on the storage or goods on the harbor right when the goods are on the jetty, there the Hauge Visby rules cannot be applied.

rules can be applied only when the goods are being loaded and to the point of discharge of goods

Meaning of Goods - live animals are not considered as goods, the cargo on board the deck of a ship is not coming under these rules or the live animals also don't come under this.

ARTICLE III of Hauge Visby Rules: (Responsibilities of the Carrier)

- Loading
- Handling

<sup>1</sup> "The Rafaela S [2005] 1 Lloyd's Rep. 347."

- Stowage
- Carriage
- Custody
- Care
- Discharge

These are the Responsibilities of the Carrier under Hauge Visby Rules.<sup>2</sup>

#### IV. NOW LET US LOOK AT THE DUTIES OF THE CARRIER

Make the ship seaworthy - the rules don't clearly tell what this meaning of seaworthiness is but we can imply that whatever that is necessary to keep the sea, accepting the ship without damaging<sup>3</sup>, the ship in the reasonable care should be required to keep a ship seaworthy.

Man, equip, supply the ship - right number of crew equipment, the updating of the technologies and the proper maintenance all that is the duty of a carrier. Man is a word that could have been used in the 1960s when almost the entirety of the shipping crews in the cargo ships happen to be men but now in 40-50 years later, we do see lots of women working on board ships as crew so the word man may not be suitable in the current scenarios.

The holds should be clean and fit to receive the cargo - wherever the goods are stored there are refrigerators, there are deep freezers, there are lots of stuff on board the ship. Inside the ship should be clean, and well maintained.

Carrier needs to issue bill of lading after loading of the cargo - The bill of lading must be issued by the master of the ship the captain of the ship, when the goods are put on board the ship.<sup>4</sup>

Also, under article III of the Hauge Visby Rules it is mentioned that the SHIPPER has a duty to give correct information about the cargo loaded.

And if he fails to provide correct information, he's liable to compensate the carrier for the losses. Shipper

needs to mark the goods properly; he needs to provide information in writing.

“Carrier is not liable for incorrect information in Bill of Lading due to negligence by shipper.”

“As per Article III RULE 6 the carrier will be discharged from all liabilities unless the shipper sues the carrier within ONE YEAR from. The delivery of the cargo.”

The goods will be considered delivered upon removal from the ship unless notice of loss or damage is given within 3 days (by the buyer)

Under Rule 6 Meaning of The Word “Shipped”:

When the goods are put on the ship, that means when the loading of the goods has been final and when the bill of lading has been issued, we call it shipped.

the movement that is done the buyer would be informed and the ship would be informing the ship company.

POINT 8 – “Any contract that relieves the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these rules shall be null and void and of no effect.”

A Carrier cannot reduce those liabilities it will not be given as a chance the rules that a shipper must follow as mentioned in the Hague Visby Rules must be followed by the shipper.

Article Iv Of Hauge Visby Rules:(Carrier Is Not Responsible)

“A carrier will not be responsible for the damage, loss or delay if he had not caused it intentionally, provided carrier had exercised DUE DILIGENCE, however he has to prove that he was Diligent.”<sup>5</sup>

Carrier needs to prove damage occurred because of the factor which were not in his direct control.

<sup>2</sup> “Subject to Art III Rule 8 which provides that any attempt to dilute the liability set out in the Rules will be null and void.”

<sup>3</sup> “The Muncaster Castle [1961] 1 Lloyd’s Rep 57”

<sup>4</sup> “See Scrutton on Charterparties p 399.”

<sup>5</sup> “Art IV (2) (q) also allows a carrier to avoid liability if the loss occurred ‘without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier’”

#### V. HOW MUCH COMPENSATION CAN BE CLAIMED FROM THE CARRIER?

The maximum liability for carrier can be 666.67 Special Drawing Rights - (International Monetary Fund) per package or 2 SDR per Kg of the goods damaged or lost, whichever is greater.

Date of actual or probable discharge (in case total loss on mid voyage) will be the date used to calculate the price of the commodity.

Article V of the Hauge Visby Rules: (carrier has the right to surrender immunities)

Under this Article The liberty to the carrier to increase his responsibilities and liabilities. Also, under this Article the right to carrier to surrender his rights and immunities.

For example, ship can take the responsibilities of deck cargo ship, and also can exclude itself that ship is not liable for deck cargo.

“But ship is not allowed to reduce its duties”

Article VI of Hauge Visby Rules (Carrier and Shipper have freedom to make different agreements)

Under this article complete freedom to the shipper and carrier to enter into any agreement irrespective of what is required by other article of Hauge Visby Rules provided.

The bill of lading doesn't have to be there for all kinds of goods. There is a bill of lading for the carriage of goods by the sea. Sometimes the goods transportation may happen inside the nation along the rivers.

Also, carriages contained nuclear material, military weapons, they're not goods, they can't be considered as goods, the ships are free to set up special agreements no need to be bound by Hauge Visby Rules.

Article Vii Of Hague Visby Rules:

Article VII is a simple statement of fact. It states that hague visby rules defines the carrier's responsibilities from the time of loading to the time of discharge.

A shipper and carrier are free to decide the extent of responsibilities and liabilities before loading and after discharge.

Article Viii Of Hague Visby Rules:

As per Article VIII, if there is any other statutory law related to the limitation of liability of the carrier, that law will take precedence over these rules.

Article IX of Hague Visby Rules:

This article states that if these rules contradict any international convention or national law, that convention or law will have priority.

Article X of Hague Visby Rules:

This article defines the extent of applicability of the hague visby rules.

This article states to which contracts or bill of ladings the hague visby rules would apply.

Let us look at the case which summaries The Hauge Rules.

Leigh & Sillivan Ltd v Aliakmon Shipping Co Ltd [1985] QB 350, 368,

“The rules create an intricate blend of responsibilities and liabilities, rights and immunities, limitations on the amount of damages recoverable, time bars, evidential provisions, indemnities and liberties, all in relation to the carriage of goods under bills of lading”

#### VI. CONCLUSION

Even though more current standards for the carriage of goods have been in effect for many years, The Hague Visby Rules continue to dominate the maritime sector. Understanding these laws might provide seafarers with a different perspective on the duties of the carrier for whom they work. “This makes the knowledge of Hague Visby Rules so important for anyone connected with the carriage of goods.”