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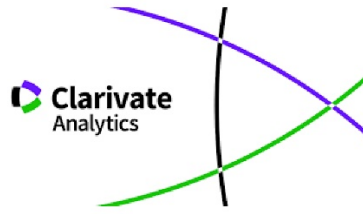
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## REVIEW THE RESPONSIBILITIES OF INTERNATIONAL SHIPPING COMPANIES FOR THE INTERNATIONAL CARRIAGE OF GOODS BY SEA

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### ABSTRACT

*Today goods are transported through various methods from one point to another taking the conditions of the origin and destination countries into account. Meanwhile the existence of transportation contracts and appropriate law is a necessity and the legislators seek to organize the relations between the individuals via legislation of different law and regulations. Transportation contract in most cases determine the mutual rights and obligations of the contract parties, i.e. the sender of good and the transport operator. Sometimes during the transportation the operator who is obliged to send the good safe makes a mistake and the good does not reach the destination or it is damaged. Human individuals have certain rights and obligations before their actions for having performance bond. Among the rights of the sender of goods which are expected to be observed by the transport operator, one can refer to loss and good restitution. This restitution does also include all costs of the sender. Cargo tracking and transport of goods are handled by the international transportation companies and organizations and in all cases the bill of lading is issued. International maritime transport companies owned by the government must develop the culture of cooperation and share the interests achieved via activity with their staff and refuse mere payment. Moreover, international transportation companies owned by government which have taken form for economic emergencies in particular period of time must be managed as the administrative arms based on the principle of cost and benefit. In the present study, we will struggle to answer the following question via library method and in analytic form: what are the specific liabilities and differences of the international maritime transport companies as compared to other transportation organizations?*

**Keywords:** Maritime Transportation, International Transportation Companies, Transport Operator Liability

### INTRODUCTION

Transportation is a dynamic, comprehensive and complicated phenomenon whose various branches improve the roots of economic life of man and gives it spirit and stability. The degree of development and progress of contemporary societies is evaluated based on the indices of progress in transportation and the extent of access of the citizens to the facilities of this sector. Moreover, investment in this sector is one of the key indices of cultural, economic and social progress of nations (Bannister and Givoni, 2014: 134).

Successful maritime transport companies are faithful to certain infallible principles. Most of them believe in the same and common values. In successful companies, the managers are able

to satisfy their own organizational element both from the point of view of the organization and at the same time the individual and personal perspective and in fact with correct management of the individual and social approaches they can make use of them in the form of a balanced combination. As a matter of fact, everyone is interested in knowing what are done by the successful maritime transport companies which others fail to do and what are they doing beyond others and what responsibilities do they have (Bannister and Givoni, 2014: 173).

The tasks of successful international maritime transport companies consist of conclusion of transport contract and issuing the consignment note, preparation of documents for the trip including TIR carnet, carnet de Passage, road usage toll, visa, acceptance note, notifying the required vouchers to the relevant organization for necessary documents, provision of suitable ship for transport within the time table noted in the contract, receipt of the good sent by the sender or forwarder and supervision of the truck loading in view of the compatibility of content of transport documents and the cargo, presentation of the relevant documents to the customs from the origin to the destination of consignment note and taking care of the safety of customs seals, delivery of goods to the consignee in places where have been determined by customs officials, observation of the determined track and the time table of transit goods transport which is decided by the customs officials, observation of the route and time of goods delivery according to the transport contract, discharge or supervision of the discharge and enumeration of goods and ratification of the documents of deficit, surplus and damage, precision in delivery of cargo to the destination and receiving the relevant receipts.

The responsibilities in successful maritime transport companies consist of payment of the freightage as well as demurrage and other relevant rights of the ship captain, acceptance of all liabilities in the field of loss, avoidance of delay in the responsibilities mentioned in CMR as well as the damage and payment of compensation according to the contract or based on the aforementioned convention, taking care of the endorsement of the carnet by the customs officials from the origin to the destination and restitution of retired carnet to the Chamber of Commerce, Industries and Mines of Iran within the time table, acceptance of all responsibilities mentioned in TIR Convention and relevant issues in those cases where the cargo is transported with carnet, the transport companies should monitor the behavior of the driver and other agents involved in the transportation and if any misconduct is reported they must cooperate with the relevant organizations and persons for legal actions. Accordingly, this study intends to study the liability of international transport companies in international maritime transport of goods.



## **THEORETICAL FOUNDATIONS OF THE STUDY**

Transport is a contract between a number of persons and the liability resulted from it is also contractual. Determination of the type of transport contract and analysis of its nature is effective in the knowledge of transport operator's liability because the liability of the transport operator is related to the task he has undertaken (Taqizadeh Baqi, 2011: 40).

Transport contracts have their own legal titles, definition, effects and nature and although they are compared with other contracts including determinate and indeterminate ones, they still enjoy their own particular chapters and features and from the perspective of civil code this type of contracts like other nameless contracts have received the permission to enter the

private system of our country via article 10 of civil code<sup>1</sup> (Akhlaqi, 1993: 137). Often most multimodal transport contracts are assigned to the maritime transport officials. It is needless to say that this type of contract does not include the contracts in which the shipper of the good signs separate contracts with the transport officials in various forms. In this case, the shipper signs a separate contract with each transport operator of vessel, truck or train and each contract will be of unimodal type (Kindred & Brooks, 1997: 5). The other necessary feature of a multimodal transport contract is the transport operator's use of different methods of transportation.

### ***Transport Operator***

Transport operator is the one who is one of the parties of the contract and is obliged to ship the cargo in return of a determinate fee to a destination; no matter if he personally undertakes the shipment or hires some other one or (in view of the article 516 of Civil Code that has enumerated the types of goods transportation through land, sea or air) uses one vehicle or various types of vehicles for transportation. According to the clause 2 of article 1 of Convention of Multimodal Transportation, "Multimodal transport operator" means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the multi modal transport operations, and who assumes responsibility for the performance of the contract." This definition is very similar to the definition that has been acquired though the combination of the article 377 and 388 of Commercial Code and article 516 of Civil Code of Iran.

In the Convention of Multimodal Transport whenever any damage is done to the good shipped by the multimodal transport operator, he will be considered liable even without requiring demonstration of the fault of multimodal transport operator; unless he can provide dependable proofs of his innocence. In other words, if the shipper proves that the cargo has been damaged, the transport operator will be declared liable. According to Iran Commercial Code, if the shipper proves that the cargo is damaged, the transport operator will be considered responsible. He can exonerate himself only if he can prove that the damage is incurred due to an external casue which has nothing to do with him or is related to an accident that nobody could stop it (an unpredictable accident) (Hosseininezhad, 1992: 52).

### ***Nature of the Obligation of Transport Operator***

Obligations from one point of view are divided into two groups: obligation of means and obligation of result. Given the basis of the liability of the transport operator and its related judgements, we should ask the following question: Is the obligation of the transport operator in safe delivery of cargo an obligation of means or an obligation of result? In obligation of result or obligation of end the obligor is obliged to deliver the result of the obligation to the obligee. In this type of obligations, if the obligor does not keep with his obligation he is considered guilty and he is free from the liability if he can prove that an external cause has done the damage; then in this type of obligations the demonstration of result failure is sufficient and there is no need for proving the fault of the obligor.

In obligation of means or obligation of preservation, the obligor's obligation is concerned with the prepration of the preliminary requirements of a determinate task or endeavor or caution in

<sup>1</sup> The article 10 of civil code of private contracts is applicable to those who seal the contract if the latter is not in contradiction with the law.



this course. Failure of reaching the intended result does not prove the fault of the obligor as such and it is up to the obligee to prove the fault of the obligor.

"Earlier it was supposed that all contractual obligations are obligation of result and all requirements are concerned with means; but now we know that a part of the contractual obligations is also concerned with the preparation of means and endeavor towards the fulfillment of result" (Hosseininezhad, 1992: 53).

Now we study the nature of the obligation of the transport operator from the perspective of the Convention of International Multimodal Transport and Iran law.

A) The article 16 of Convention of International Multimodal Transport suggests that if the multimodal transport operator proves that he, his servants or agents or any other person referred to in article 15 took all measures that could reasonably be required to avoid the occurrence and its consequences, he will be free from the charges. This is indeed an endorsement of the supposition of relative liability for the transport operator which is denied by the demonstration of intelligible and common effort (no fault occurrence). On the other hand, this is to say that according to the regulations of the convention, the obligation of the transport operator in safe delivery of the good is an obligation of means not an obligation of the result; because if his obligation was an obligation of result, in order to free himself from the liability the transport operator must have proven the existence of an external cause. An external cause consists of "every accident which is independent from the will of obligor; viz. a cause which is outside the scope of the obligor's will and could not be predicted or overcome. The external cause consists of 1- the obligee's fault, 2- the third party's fault, 3- force majeure and 4- an unexpected accident". While proving the accomplishment of the necessary efforts means that although an external cause has not caused the damage the transport operator is still free from the liability due to his sincere efforts (Tafreshi and Kamiar, 2001: 21).

In domestic regulations of Iranian law (Civil Code and Commercial Code), the transport operator cannot prove his innocence via mere demonstration of his efforts for safe delivery of the cargo; he must deliver the good safe (keep his word) or he has to prove that an external and unavoidable accident has caused the safe delivery to fail. Even if the transport operator proves that he has resorted to all possible and intelligible efforts this could never exonerate him from the charges rather he needs still to prove the occurrence of an external cause which has resulted in the damage. Therefore, according to the domestic regulations of Iranian law, the obligation of the transport operator is an obligation of result; then legal supposition of the fault of transport operator is an absolute supposition and the demonstration of innocence of the transport operator is not sufficient for his freedom from liability, rather he can be exonerated only if he can prove that an external cause has caused the damage. Therefore, "... legislator has not provided merely an evidence of fault of the operator; rather he has considered the failure of safe delivery of good to be the fault" (Hosseininezhad, 1992: 53); and the denial of liability is only possible with the demonstration of force majeure; in other words, the supposition of fault that has been noted in Commercial Code is an absolute supposition; while the supposition of fault as mentioned in the article 16 of Convention of International Multimodal Transport is a refutable and relative supposition.



***Transportation and Its Pillars*****1. Sender/consignor**

The main party of the transport contract against the transport operator is the sender. Moreover, the sender might be different from the one who intends to order the good's transport (shipper). The sender is the direct party of the transport contract and is not necessarily the owner of the good rather he merely has the right to take possession of it (Sadeqi, 2014: 18).

**2. Forwarder**

In the clause 5 of article 1 of Convention on International Multimodal Transport, the consignor has been defined as follows: "Consignor" means any person by whom or in whose name or on whose behalf a multimodal transport contract has been concluded with the multimodal transport operator, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the multimodal transport operator in relation to the multimodal transport contract.

***Executive Scope of Regulations of Maritime Transport Conventions as Compared to the Multimodal Convention*****1. Hague Rules and Hague-Visby Rules**

"Hague-Visby Rules, though date back to 1968, are not basically different from Hague Rules 1921 and have certain deficiencies which are supposed to be overcome by the Hamburg Rules. Among these deficiencies, one can refer to the following: firstly, Hague-Visby Rules do not offer a unique basis for the liability of the operator rather they insist on the condition transportability through the sea and some other exceptions" (Day and Griffin, 1993: 42). Secondly, these rules are merely applied to the maritime transport. Thirdly, Hague Rules is not applicable as an international document as such.

**2. Hamburg Rules**

As to multimodal transport, the Hamburg Rules have expressed their position in clear words in the clause 6 of article 1. Accordingly, "Contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea" (Day and Griffin, 1993: 42).

**3. Rotterdam Rules**

Like other existing European conventions in the field of transportation, the Rotterdam Rules have adopted a contractual approach. According to the clause A of article 1 of these rules, "contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage (Berlingieri, 2009).

This idea which is known as "sea plus". According to the article 6, all types of carriage of goods including the carriage by sea must be international. The Rotterdam Rules have not been prepared in a multimodal convention rather they are focused on the regulation of the contracts of carriage of goods by sea in which the transport operator tries other carriage modes.



### ***Liability Systems in Law of the Sea***

Four systems have been established based on the Presumption of Fault, i.e. presumption of absolute liability. The difference between the "presumption of fault" and "presumption of liability" not only lies in the way that the transport operator defends himself rather it is also reflected in the damage resulted from the unknown causes. According to the system grounded in "Presumption of Fault" the operator can easily defend himself before the damage caused by unknown causes and exonerate himself from the liability; because by proving his innocence he discredits the evidence; but in the "presumption of liability" based system the operator is required to show the cause of damage as well as his exoneration and his claim of the unknown nature of the causes cannot exonerate him (Hashemizadeh, 1999: 67).

### ***Liability of Transport Operator Resulted from the Action of Crew and Representatives***

"Basically, persons are responsible before their own personal action; but sometimes due to certain concerns the legislator has considered the action of other person as the basis of liability; but wherever the liability is resulted from the actions of another person it is an exceptional state and limited to cases that the legislator has accepted it" (Qasemzadeh, 1999: 141).

The legal experts justify this exceptional judgement as follows: "In order to protect the one who has become bankrupt and not to leave a damage unrecompensed the legislator has considered all people who are in some way involved in the damage occurrence liable. Moreover, law has declared the one under the supervision of whom an action is done liable in order to make sure that he will not neglect anything of his supervisory role" (Katoozian, 1983: 116).

The article 388 of Iranian Commercial Code has adopted a similar stance; according to this article "the transport operator is responsible for the accidents and losses that occur during the transportation regardless of whether he himself undertakes the transport or another person is doing it".

The aforementioned articles have assigned a liability for the transport operator that is resulted from another person's action. This liability like the personal liability of the transport operator is resulted from the fault which have been taken for granted in the form of a legal presumption; because the judgements regarding the exemption of the transport operator have suggested that the operator is free from liability when he can prove that both he himself and his staff who were involved in the transport operations have taken the necessary measures in order to avoid the occurrence of the possible damage or its intensification. Of course, one needs to remind that the basis of this type of the liability of the transport operator is not his own fault (for example in selection of the worker or proper means); rather it is the fault of his worker or representative; because if his own fault was the basis of his liability, it would have sufficed him to just prove that he has not made any mistake in selection of the worker or proper means and it is the worker who has neglected certain rules. However, the demonstration of such things is not sufficient for exemption of the multimodal transport operator from his own liability.

### ***Exemption from Liability***

If the transport operator proves that he has made all the intelligible efforts but he has failed to avoid the occurrence of the damage, he is exempted from the liability. Nevertheless, if one of the workers of the transport operator steals a part of the good in the course of the transport due to the negligence of the guard, according to the rules of Iran law, if the transport operator proves that the deficit in the goods is due to the thievery of one of his workers, he will not be exempted from the liability; because the actions of the worker is not considered to be an



external cause so that it may exempt the operator from liability; however, according to the rules of International Multimodal Transport Convention, proving the theft might result in the exemption of the transport operator from the liability because the operator has indeed proven that his worker has damaged the good due to his negligence and violation of the content of the work contract and he has taken all required measures for avoidance of the occurrence of the damage; because in the contract, the worker is required to protect the interests of the employer and stealing the good is certainly outside his tasks. In the time of theft, he is not considered the worker of the operator anymore and he has not stolen anything as the worker (Tafreshi and Kamyar, 2001: 36).

The clause 1 of the article 3 of Brussels Convention obligates the transport operator to take the following necessary actions:

- A. Prepare the vessel for navigation.
- B. Prepare the staff and vessel facilities in proper way.
- C. Check the lodges, cold storages and coolers and all other parts of the vessel where the goods are loaded in order to make sure there is no deficiency.

As to this article, Brussels Convention in the clause 1 of the article 4 deals with the liability of the transport operator in a way that it seems that the basis of the liability is grounded in the "Presumption of Fault":

"The transport operator or captain will not be responsible before the loss or damage resulted from lack of sea worthiness unless the required measures have not been taken by the transport operator in preparation of the ship for navigation and the provision of the needs of staff and sufficient facilities and making the lodges and cold storages safe as well as the protection of cargo based on the clause 1 of article 3. Whenever the incurred damage is the result of lack of sea worthiness the transport operator will be in charge of proving the adoption of required measures for praccidentation from such damage and loss". Accordingly, some legal experts in Iran have suggested that the liability of the transport operator is based on "Presumption of Fault" (Omid, 1974: 256-257; Katoozian, 1995: 430).

However the article 4 of Brussels Convention in its second clause leads the convention towards the Presumption of Liability via enumeration of 17 cases by demonstration of each one by the operator he is exempted from the liability. French legal experts also believe that the maritime transport operators are responsible for the loss or damage done to the good unless they prove that the relevant loss and damage is related to one of the exceptional cases. Then, maritime transport operator is declared liable unless he can prove one of the exceptional cases of Remand Gouilloud (quoted by Mohammadzadeh Vadqani, 2002: 73).

It seems that contrary to what has been proposed by some scholars, the basis of the liability of the operator in Brussels convention is the "Presumption of Liability" (Hashemizadeh, 1999 (b): 167).

In the "Presumption of Liability", the operator must prove the occurrence of an external accident. It is evident that if his will, has been involved in the creation of the external accident his reference to such a cause will not be accepted. In other words, the fault of obligor is not consistent with "force majeure"; in other words, the obligor cannot resort to the force majeure or external accident if he has made a fault. Then, any negligence and fault on the behalf of the obligor that would result in the occurrence of such an accident makes him liable (Taqizadeh, Hashemi, 2012: 166).



The Rotterdam Rules like all maritime transport conventions does not have clear stance as regards the basis of the liability of the operator and as we saw the basis of the liability in The Hague and Hamburg Rules is also disputed by the internal and foreign legal experts. One of the reasons of diversity of ideas in this regard is the confusion of the theoretical and practical aspects of the liability. In all previously mentioned rules one cannot find a phrase that would denote that the basis of liability is grounded in "Presumption of Fault". However, in practice and in the time of defense of the operator before the fault allegation his solutions are so that leads us towards the "Presumption of Liability".

The approach of Rotterdam Rules is to some extent a combination of the procedures of the two existing conventions (Thomas, 2010) and it seems that with the combination of existing factors and effort for liberation from the deficiencies of the current rules a new structure has been founded in the discussion of the basis of liability.

Although the law of Carriage of Goods by Sea has undergone certain changes the concept of "Sea Worthiness" made its way from common law to Harter law and was pursued in The Hague and Hamburg Rules and in this way it remained intact before the changes. In definition of "Sea Worthiness" it has been said: "The vessel's facilities and conditions are arranged by the operator and the crew in a way that it can correctly load the cargo with utmost care and carry it and deliver it safely to the consignee" (Tetley, 1988: 370). In another definition we read: "The vessel from the point of view of facilities, structure, make-up, mechanism, operators, managers, parts and materials is ready for voyage" (Rudrier quoted by Taqizadeh: 179). Iranian legal experts have also defined it as follows:

"The conditions of solidity, stability and safety must be prepared for the transport in order to make sure that the voyage will be done despite the possible difficulties and maritime dangers" (Najafi Asfad, 2008: 118).

What makes sea worthiness in Rotterdam Convention different from that in Brussels Convention is the fact that the obligation of the operator in this regard in Rotterdam Rules is a continuous obligation; while in the clause 1 of article 3 of Brussels Convention the transport operator is obliged to take the required measure only "before and in the beginning" of the voyage. Although the negligence and failure of the operator in this regard under the Brussels Convention will be resulted in guarantee, its difference will be in the mode of demonstration and the burden of the demonstration of the liability.

The condition of sea worthiness of the vessel is a compulsory condition in Rotterdam Convention (Ulgener, 2011: 142) and his negligence in this regard will surely result in liability. In The Hague Rules the liability of the transport operator as regards sea worthiness has been raised in the worst possible place, i.e. the first clause of article 4 and in the beginning of the debate of the basis of liability and exemption of the operator. The effect of this bad arrangement was that when the scholars studied the first clause of article 4 they immediately argued that the liability system of the convention was based on Presumption of Fault and when they continued to read the second clause which has rightly declared the liability system to be based on Presumption of Liability they came across superficial conflict; while the Rotterdam Rules have first discussed the main issues of liability and in the clause 5 of article 17 have paid attention to the issue of sea worthiness.

The clause A 2 of article 4 of Brussels Convention in support of the operators, has considered the negligence and fault of the commander, staff, guides or representatives of the operator





during the navigation to be the basis of exemption of the operator from liability. To put it otherwise, the operator will have no liability before the navigation faults done by the agents. The content of this clause which was mentioned earlier in the lading note as "Presumption of Fault" found its legal value with the ratification of Brussels Convention (Mohammadzadeh Vadeqani, *ibid*: 78). Exemption of the transport operators from the navigation mistakes of the agents causes the shippers and senders to sue the agents and staff of the operator if any fault occurs.

The Rotterdam Convention in an unprecedented action has announced that the liability could be in joint or several form depending on the role of the transport operator or the agents in occurrence of delay, loss and damage.

## CONCLUSION

Every year one hundred billion dollars of goods are exchanged in the world in order to provide various needs of the people around the globe. Although the massive growth of the commercial transactions in recent century has been affected by the surplus production in some countries and also the expansion of the activities of international marketing, one cannot still neglect the major role of world transportation system in providing the ground for increase of the volume of commercial transactions. Transportation is a dynamic, comprehensive and complicated phenomenon whose various branches feed the roots of economic life of man and gives it spirit and stability. The degree of development and progress of contemporary societies is evaluated based on the indices of progress in transportation and the extent of access of the citizens to the facilities of this sector. Moreover, investment in this sector is one of the key indices of cultural, economic and social progress of nations. Transportation is one of the infrastructural affairs and a significant element of the production and consumption cycle. Some scholars have argued that the development of transportation sector is hinged upon the growth of production while other scholars have declared the growth of production to be contingent upon the development of transportation sector. Anyway, due to the expansion of human societies and the complicated social and economic relations it is hard to decide if the priority is with the production or transportation. Successful maritime transport companies are faithful to certain infallible principles. Most of them believe in the same and common values. In successful companies the managers are able to satisfy their own organizational element both from the point of view of the organization and at the same time the individual and personal perspective and in fact with correct management of the individual and social approaches they can make use of them in the form of a balanced combination. As a matter of fact, everyone is interested to know what things are done by the successful maritime transport companies which others fail to do and what they are doing beyond others and what responsibilities do they have.

The tasks of successful international maritime transport companies consist of conclusion of transport contract and issuing the consignment note, preparation of documents for the trip including carnet TIR, carnet de Passage, road usage toll, visa, acceptance note, notifying the required vouchers to the relevant organization for necessary documents, provision of suitable ship for transport within the time table noted in the contract, receipt of the good sent by the sender or forwarder and supervision of the truck loading in view of the compatibility of content of transport documents and the cargo, presentation of the relevant documents to the customs from the origin to the destination of consignment note and taking care of the safety of



customs seals, delivery of goods to the consignee in places where have been determined by customs officials, observation of the determined track and the time table of transit goods transport which is decided by the customs officials, observation of the route and time of good delivery according to the transport contract, discharge or supervision of the discharge and enumeration of goods and ratification of the documents of deficit, surplus and damage, precision in delivery of cargo to the destination and receiving the relevant receipts.

The responsibilities in successful maritime transport companies consist of payment of the freightage as well as demurrage and other relevant rights of the vessel's captain, acceptance of all liabilities in the field of loss, avoidance of delay in the responsibilities mentioned in CMR3 as well as the damage and payment of compensation according to the contract or based on the aforementioned convention, taking care of the endorsement of the carnet by the customs officials from the origin to the destination and restitution of retired carnet to the Chamber of Commerce, Industries and Mines of Iran within the time table, acceptance of all responsibilities mentioned in TIR4 Convention and relevant issues in those cases where the carego is transported with carnet, the transport companies should monitor the behavior of the driver and other agents involved in the transportation and if any misconduct is reported they must cooperated with the relevant organizations and persons for legal actions. Accordingly, this study intends to study the liability of international transport companies in international maritime transport of goods.

These companies in return of their liabilities also enjoy certain rights parts of which consist of the responsibilities of the carrier in paying the limited recompensation to the cases mentioned in CMR Convention provided the content of this convention is observed by the sender and consignor. If an external accident or factors which lie outside the jurisdictions of the carrier (for example force majeure) causes the obligation not be done the carrier will have no liability before the payment of recompensation. The carrier will have no responsibility before the inconsistency of the content of the sealed containers which are delivered to the destination in safe form. If the sender causes any loss or damage with providing wrong information of the content he will be obliged to cover the damages. The carrier has the right not to allow the owner receive his cargo before the whole payment of the bill of transport. In those cases in which the truck is waiting for the loading due to the delay the client will pay the demurrage.

#### ***Suggestons for Success of Transport Companies***

Five factors are involved in the success of transport companies which will be outlined here as practical cues. These factors consist of:

##### ***Marketing Techniques***

Creation of marketing thinking based on a combination of marketing and establishment of marketing system in the international transport companies is one of the key factors of success. In this field such cases as enhancement of marketing skills of the staff of companies through educational centers, consistent marketing along with other transport activities for reaching the goals of company, recognition and introduction of specific values of company by using marketing techniques in dealing with the clients and selection of a group of the specific share of the market, belief in the quality of service presentation in marketing which is of paramount importance.



### ***Organizational Structure***

The organizational structure in the transport companies should be designed in a way for satisfaction of the needs of customers. Organizational Structure in the transport companies which is based on human forces process must be continuously dynamic in service providing. To this end, such cases as creation of proper organizational structure for innovation in service providing for the needs of the customers, existence of organizational structure with a model compatible with the process of human force which should be continuously thinking and innovating, existence of a proper organizational structure for small organizations and professional groups and increase of responsibility in the conditions of friendly competition of the working teams, creation of team structure based on the enhancement of motives of the staff for presence at the scene of activity in the field of service provision in transportation and having simple structures in view of the profession and the type of activity of these companies.

### ***Management Style***

Management quality and style is decisive factor more than every other factor in success or failure and effective management in international road transport companies is of vital importance as much as the huge organizations. To this end, we propose the following measures to be taken: taking advantage of new techniques of management in transportation companies for correct exploitation of the facilities and transport capital, attention of the managers of transport companies to the staff given their service conditions as the capital of the company, the managers of transport companies must have a noble character and acceptability and sufficient influence on the thoughts of the staff, development and promotion of team work by the managers of the transport companies given the simple family structures, attention to the staff as the factor of success for company activities and attention to the aspects of joint aspect.

### ***Ownership in Companies***

The fourth factor is the ownership in companies given the private ownership of transport companies and high efficiency of them as compared to the governmental sectors. Paying attention to the management and redemption of the ownership in private companies of international transport companies is necessary. The international transport companies with governmental ownership must develop the culture of participation and share the interests with them and avoid mere payment. Moreover, the international transport companies with governmental ownership which have taken form for economic emergencies in particular time must be managed as the administrative arms based on the principles of cost and benefit.

### ***Training***

The growth resulted from the continuous training is of paramount importance for the transport companies and for institutionalization of training in transport companies like creation of some centers in the country for transfer of professional themes to the managers and officials of companies in continuous manner, increasing attention of the managers to scientific issues and making use of scientific models in transport activities, investment in promotion of knowledge and skills of human forces and training the professionals through universities, creation of research centers for exchange of educational themes and scientific experiences of transport and investment in the training of the managers in high, middle and administrative levels, personell (administrative, sale, operational) and drivers and evaluation of the educational costs and benefits are suggested.



## References

- Akhlaqi, Behruz (1993): A Discussion concerning the Transportation Contracts from the Perspective of Commercial Law, *Journal of Bar Association*, no. 607.
- Banister, D. and Givoni, M. (2014) *The Economic Case for HS2*. TSU Working Paper Series, Ref. 1066. School of Geography and the Environment, Oxford.
- Berlingieri, Francesco, (2009), "Multimodal Aspect of the Rotterdam Rules", Paper Presented at the Colloquium of the Rotterdam Rules 2009 held on September 21, 2009, *Papers-colloquium*, <http://www.rotterdamrules2009.com/cmsindex.php?page=text-speakers-rotterdam-rules-2009>
- Day, D. M. and Griffin, Bernardette, (1993), *the Law of International Trade*, Second Edition, Butterworths, London.
- Hashemizadeh, Seyed Alireza (1999): *Liability of Transport Operator before Good based on Brussels Convention 1924 and Hamburg Convention 1978*, MA Thesis in Private Law, Imam Sadeq University.
- Hosseininezhad, Hosseinqoli (1992): *Civil Liability*, Tehran, Jahad-e Daneshgahi of Shahid Beheshti University, Second Edition.
- Katoozian, Nasir (1995): *Period of Determinate Contracts*, vol. 1, Tehran, Sherkate Sahami Enteshar.
- Kindred, H. M. and Brooks, M. R. (1997), *Multimodal Transport Rules*, Den Haag: Kluwer Law International.
- Mohammadzadeh Vadeqani, Alireza (2002): *Liability of Transport Operator*, *Journal of Faculty of Law and Political Sciences of Tehran University*, no. 55, pp. 69-101.
- Najafi Asfad, Mortiza (1999): *Law of the Sea*, Tehran: First Edition, SAMT.
- Naqizadeh Baqi, Payam (2011): *Legal Nature of Transportation Contract and Liability of Transport Operator*, *Journal of Law*, Year 4, no. 13 and 14, pp. 39-57.
- Omid, Hushang (1974): *Sea Law*, vol. 1, Tehran, Insurance College.
- Qasemzadeh, Seyed Mortiza (1999): *Civil Liability resulted from Act of Omission (Fault of Negative Action or Act of Omission)*, *Journal of Faculty of Law and Political Sciences*, Year 44.
- Sadeqi, Hossein (2014): *Report of Domestic and International Road Transportation Law*, *Yare Mehraban Magazine*, edited by Deputy of Office of Planning of Information and Communications.
- Tafreshi, Mohammad Eisa, Kamiar, Mohammad Reza (2001): *Basis of Civil Liability of Transport Operator in UN Convention on International Multimodal Transport and Its Comparison with Iran Law*, *Journal of Human Sciences*, no. 21, pp. 21-36.



Taqizadeh, Ibrahim, Hashemi, Seyed Ahmad Ali (2012): *Civil Liability (Delictual Liability)*, Tehran, PNU Press.

Tetley, W, (1988), *Marine Cargo Claims*, (3rd ed), les Editions Yvon Blais.

Thomas, D,R, (2010), *Special Liability Regimes Under The International Conventions For The Carriage of Goods By Sea – Dangerous Cargo And Deck Cargo*, *Nederlands Tijdschrift voor Handelsrecht*, pp. 197-203.

Ulgener M. Fehmi, (2011) *Obligations and Liabilities of the Carrier*, Chapter 5, *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, An Appraisal of the "Rotterdam Rules", Springer-Verlag Berlin Heidelberg. Articles and Journals.

