

D-5: UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA

Name of the convention: United Nations Convention on the Carriage of Goods by Sea

Acronym or short name: Hamburg Rules

International organisation in charge of it: United Nations Commission on International Trade Law (UNCITRAL)

Summary description (in plain language): One of the main purposes of this convention was to replace the Hague Rules of 1924 by containing a clause obliging new member States to renounce their membership in the Hague Rules. The adherence by some states and not by others to the Hamburg Rules created a dual regime of law concerning the carriage of goods by sea.

The convention applies when a contract is formed between two parties concerning the carriage of goods by ships. Two main factors play a major role in the applicability of the convention. The first condition being that the transport should be "international" according to the convention's definition. Moreover, the convention also requires that a specific document, called "bill of lading", be used.

According to the convention, a transport is international when point of departure and point of destination are positioned within the territories of two different States. The parties can also decide conventionally of the applicability of the convention.

The convention provides the parties with special rules relating to the liability of the carrier whenever a loss, damage or delay in delivery of the goods occurs. All the circumstances surrounding the fault and the damage should be examined before proceeding to the stage of compensation.

A carrier remains responsible for the goods from the moment he takes physical possession of them (port of loading) up until the moment of delivery (port of discharge).

An "actual carrier" can also participate in the successive carriage process after he has been entrusted with the possession of the goods by the contracting carrier (art.1). However, the actual carrier is responsible only for his segment of the delivery while the carrier remains responsible for the entire transit.

Following the shipper's proof that damage to his goods resulted while in transit by the carrier, a presumption of fault is applied against the carrier unless he can prove that he took all reasonably required measures to avoid such consequences. Besides the special case of fire and salvage of life, defences and exception where burden of proof is shifted to the claimant disappear under the present convention.

When the carrier's fault is finally determined, the convention provides limitations for the amount of damages that the shipper can recuperate. Proof of willful neglect by the carrier exposes him to unlimited damage despite the maximal liability provisions.

Finally, jurisdiction of competent courts and a limitation period for the right to bring action are provided for in the convention so as to complete the encompassing legal regime applying to carriage of goods by sea.

Date of first approval: 31 march 1978

Date of coming into force: 1 november 1992

Dates of revision: no

Reasons of revisions: no

Applicability (situation of ratification): 27 ratifications. This convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession ([art.30](#)). No reservations may be made to this convention ([art.29](#)).

Stakes for ports: Ports are not involved in responsibility for the carriage of goods by sea:

- The convention applies when the transport document is issued in a Contracting State or that port of loading or unloading is situated within a Contracting State, so only ports of a Contracting State can be concerned ([art.2](#))
- The responsibility of ports cannot be involved because the carrier remains responsible for the goods from the moment he takes physical possession of them (port of loading) up until the moment of delivery (port of discharge) ([art.4 ii](#)).
- In case of proceeding relating to carriage of goods, the plaintiff may bring an action in a court situated in the port of loading or the port of discharge ([art.21](#)) .

Links with other conventions: [The Hagues-Visby Rules](#) (art.31 “denunciation of other conventions”: Upon becoming a contracting state to this convention, any state party to the International Convention for the Unification of certain rules of law relating to Bills of Lading); [United Nations Convention on the Liability of Operators of Transport Terminals in International Trade \(Vienna, 1991\)](#)

Key-words: Carriage of goods, bill of lading, carrier, consignee, liability, claims and actions

Internet hyperlink with other website:

<http://www.imo.org/>

<http://www.uncitral.org/>

(full text) <http://www.admiraltylawguide.com/conven/hamburgrules1978.html>

(full text) <http://www.uncitral.org/english/texts/transport/hamburg.htm>