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Legal scope of the carrier's liability in the contract of carriage of goods by sea

النطاق القانوني لمسؤولية الناقل في عقد النقل البحري للبضائع

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Abstract: The area of responsibility of the sea freight carrier is to determine the scope of liability over time for damage to the goods and is reflected in the search for the beginning and end of its liability; as well as the determination of the damage which triggers the carrier's obligation to compensate for the losses; damage ; and delay.

And determine the persons responsible for the damages for which the recipient or beneficiary of the goods has the right to recourse.

Keywords : Liability- sea carrier- transportation of goods -time scope- material scope-personal scope.

ملخص: نطاق مسؤولية الناقل البحري للبضائع هو تحديد المدة التي يسال فيها الناقل عن الضرر الذي يلحق البضائع و هو ما يتجلى من خلال البحث في بداية مسؤوليته ونهايتها، وتحديد الأضرار التي تلحق البضائع و التي يلتزم الناقل بالتعويض عنها والمتمثلة في الهلاك و التلف و التأخير، وتحديد الأشخاص المسؤولين الذين يجوز للمرسل إليه أو صاحب الحق في البضاعة من الرجوع عليهم .

الكلمات المفتاحية: المسؤولية - الناقل البحري - نقل البضائع - النطاق الزمني - النطاق المادي - النطاق الشخصي.

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1-Introduction:

Maritime transport occupies a leading place in commercial exploitation, as trade exchange is an inevitable necessity because of the industrial countries' need for raw materials that they import from poor countries, and the latter's need for manufactured materials and consumables, which drives them to import them from industrialized countries.

It should be noted that a large part of commercial exchanges take place by sea, due to its low costs compared to air transport, in addition to the ship's ability to transport large loads that exceed those that aircraft can transport even at the current stage of its development. Trade exchanges for these goods[1].

The maritime transport of goods plays an important role in the economic life of various countries, as it is considered an influential factor in the economic development plan, and represents the backbone and the main pillar of the foreign trade movement, and radical technological developments for maritime transport occurred in the period between the Brussels Agreement of 1924, 1968 and the Agreement Hamburg in 1978, which prompted some to call it the technological revolution in maritime navigation[2],and one of the manifestations of this revolution is the participation of developing countries in the maritime transport of goods[3]. Issues that are at the fore in the field of maritime law. This responsibility

[1] H. Dowidar, Al-Wajeez in Maritime Law, New University House, 2004,p. 237.
[2] Helou Abdelrahmane Abu Helu, Delay in the Delivery of Goods in the Maritime Transport Contract - A Comparative Study - Al-Manara Magazine, Vol. 13, No. 8, p. 104.
[3] Said Yahia, Responsibility of the Maritime Carrier in accordance with the 1978 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), Knowledge facility, Alexandria, no publication year, p. 511.

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is the cornerstone of maritime law[4], given the large number of cases that are brought before the courts related to maritime transport, and given the disputes it raises between shippers and carriers and between these and insurance companies to which shippers refer their rights before the carrier[5].

The responsibility of the shipping carrier represents the most important topics of the maritime transport contract, because the vast majority of disputes at work revolve around this issue, so it was of interest to jurisprudence. It should be noted in this context that our study will be limited to the responsibility of the shipping carrier within the framework of the maritime transport contract for goods. Therefore, the responsibility of the shipping carrier is established as soon as this result is not achieved, and if the carrier wants to evade responsibility, he must cut the causal link between this realized or presumed error and the damage suffered by the consignee[6], which requires the carrier, or his representative, to preserve the goods during their shipment, stacking them transported, unloaded, and then delivered to the consignee or his representative. If this result is not achieved and the goods perish or damaged or their arrival is delayed, the responsibility of the shipping carrier to compensate for the resulting damage is based on his failure to implement the obligations imposed on him by law[7].

[4] DRICI Amina, Cases of Paying the Maritime Carrier Liability (cases related to marine dependents and cases related to the maritime facility), Master's thesis, Faculty of Law, University of Sania, Oran, 2008, p. 02.
[5] Ahmed Mohamed Hosni, Maritime Transport Contract in the New Egyptian Maritime Law promulgated by Law No. 80 of 1990, Knowledge facility, Alexandria, 1991, p. 177.
[6] Helou Abdelrahmane Abu Helu, opera citate, p.104.
[7] DRICI Amina ,opéra citate, p. 02- 03,and articles 773,774,775,776,780,781,782 from Order No. 76-80 of October 23, 1976, containing the Maritime Law, Official Gazette April 10, 1976, No. 29, p 496 amended by Law No. 98-05 of June 25, 1998 supplementing and amending Ordinance No. 76-80 containing the Maritime Law, Official Gazette June 27, 1998, No. 47, p. 3.

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Search problem:

Related to the responsibility of the shipping carrier of goods is an important topic, which is determining the time, material, and personal scope of this responsibility. The sea carrier of goods is not responsible for the goods except during the legally prescribed period, and he is only responsible for the damages stipulated by law, and in addition, the sea carrier remains responsible for the damage to the goods when he issues a direct bill of lading in the case of successive transport.

And we may ask about the time scope of the responsibility of the marine carrier of goods, and then the moment of the beginning and end of this responsibility must be determined, and the material scope of the responsibility of the marine carrier of goods, so we determine the damages that the carrier is obligated to compensate for, and the personal scope of the responsibility of the marine carrier of goods, so we identify the persons responsible in the face of the shipper, Or the consignee, or the owner of the right to the goods, and is it permissible for the carrier to evade his responsibility for the damage caused to the goods in the event of a direct bill of lading is issued. The answer to these questions will be in light of the provisions of the Algerian Maritime Law and its comparison with the Brussels Convention for the Unification of Some Provisions on Bills of Lading, concluded in Brussels on 25 August 1924 and ratified by Algeria in 1964[8].

And the reference to some provisions that the legislator was inspired by the 1978 Hamburg Convention.

[8] Decree No. 64-71 of March 2, 1964, containing Algeria's ratification of the Brussels Treaty to unify some rules relating to bills of lading concluded on August 25, 1924, Official Gazette April 7 ,1964, No. 29, p. 429.

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Given the nature of the subject of this study, we will follow the analytical and comparative scientific method based on the study and analysis of legal texts, and judicial rulings, through the study of Algerian maritime law, the Brussels Conventions of 1924, 1968, and the Hamburg Convention of 1978.

Search Plan:

First Axis: The time range for the responsibility of the carrier of the goods.

Second axis: The material scope for the responsibility of the shipping carrier of goods.

Third axis: Personal band for the responsibility of the carrier of goods.

Fourth axis: The time range for the responsibility of the carrier of goods.

2- First Axis: The time range for the responsibility of the carrier of the goods

The Algerian legislator has identified the time range for the charge of the carrier between the cost of goods in the shipping port and to extradite it to the sender or its legal representative in the port of access[9]. In this context, this context has to determine when the maritime carrier's responsibility begins and when it ends? .

2.1- The beginning of the responsibility of the sea carrier of goods:

The carrier is responsible for losses and damage to goods "since its cost" and the cost of goods is the legal behavior that accepts the carrier the goods with the purpose of transfer[10]. The legislator has

[9] Article 802 aritime Law ameded and supplemented.
[10] René Rondière , droit maritime ,2emme edition Dalloz , Paris,1981,p. 138.

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confirmed that the contract of shipping begins as soon as the carrier takes the goods[11].

It is not doubtful that the process of cost of the goods differs from the processing process[12], and the two processes may not comply in times, but the shipping process is often later done for the cost of the goods. Shipping is a core commitment of the carrier[13] and notes that the shipping carrier is often assigned to the shipping contractors to ship the goods on the ship. If the goods are damaged at this stage, are the responsibility of the shipping contractor and falling responsibility for the carrier?.

The carrier is the only responsible for damage to the goods in the face of the charger or the transmission, and that the shipping process is even though other persons - such as the shipping contractor - they are carried out under the responsibility of the carrier because the latter is signed with shipping contractors under completely independent contracts The maritime transport contract, and its authorization of those contracts refer to these contractors when they are being mistaken. Which has confirmed by the Chamber of Commerce and Navy in the Supreme Court, which has been responsible for the losses of goods during the shipping process and based on their judges on article 802 of the maritime

[11] See the first paragraph of Article 739 of the Maritime Law and note that the Algerian legislator has used in the French version of the legal text the phrase « la prise en charge de la marchandise », to denote the phrase "the carrier took the goods", which is the same phrase used by the legislator in Article 802 of the Maritime Law to denote the phrase "cost of the goods",and then the legislator has used the words "taking the goods upon himself" and "Cost of the goods" to denote the phrase « la pise en charge de la marchandise », contained in the French version of the legal texts.

[12] Loading of goods is a physical process intended to place the goods on board the ship at the port of departure agreed in the contract in preparation for their transport to the port of destination, see : Adel Ali Mekdadi, Maritime Law, Library of Culture House for Publishing and Distribution, and International House, 2002, p.118.

[13] The first paragraph of Article 773 of the Maritime Law.

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law[14] , that determines the time range for the official carrier for the goods. The carrier may refer to the shipping contractor if it is mistaken and demanded to compensate for losses and damage to the goods[15].

It exceeded that the responsibility of the maritime carrier has begun since the cost of the goods, and moreover as the carrier asks for losses and damage to the goods during the shipping process even though the process is assigned to the charging contractor because the charging of goods is considered to be considered obligations Arranged the law on the carrier. It notes that the Brussels Convention on the Unification of some provisions on shipping and freight bids on 25 August 1924, has taken into account the risk associated with the commitment of the carrier to ensure the safety of the goods in terms of time on the marine phase "Transport of goods is withdrawn to the time that spends the shipping and unloading of goods in the ship"[16] .This legal text has also sparked a discrepancy on the extent of the marine phase on shipping and unloading[17].

In this context, a side of the jurisprudence believes that the shipping process is within the marine phase[18], and justifying its

[14] Chamber of Commerce-Maritime of the Algerian Supreme Court, 17-03-1998, file no. 163423, referred to in maritime law in the light of judicial practice, Bertie Publications, edition 2009-2010, p. 197.

[15] Hadef Muhammad Al-Saleh, Obligations and Responsibility of the Maritime Carrier, Judges Bulletin, Directorate of Legal Studies and Documents, Ministry of Justice, No. 65, 2010,p.88.

[16] See article I (e) of the Brussels Convention on the Unification of Certain Provisions on Bills of Lading Concluded on 25 August 1924.

[17] We will only study the shipment process in this part, as for the unloading process, see below the study on the end of the maritime carrier's liability for the goods.

[18] Ali Al-Baroudi, Principles of Maritime Law, Modern Egyptian Office, Alexandria, 1970, p. 204 and Ali Al-Baroudi, Principles of Maritime Law, Knowledge Foundation, 1983, p. 205-206.

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trend on the basis of the idea of guard. Some responsible, some confirms that this responsibility remains a list, whether you get the port or outside the port, which is intended to name it with absolute guard[19].

The second trend is to explain the marine phase is narrow and crafted, as the carrier's responsibility begins from the moment of goods on the ship and then does not ask the carrier for the damage to the goods during the shipping process and justify this trend by the idea of hazard The marine stage of transport, as risk is not available only in the maritime part of transport[20].

Some jurisprudence is likely to be the idea of guard to determine the beginning of the schedule for the shipping carrier of goods, which makes the carrier responsible for the goods as long as in his immunity, and confirms this trend he can not be imagined to be the goods with the carrier and not Responsible for the pretext that the carrier's responsibility is limited only on the marine phase only[21]. It is also among the foundations of consolidation of responsibility to be based on one basis period, and there is no better guard as a basis for it.

To approve the idea, the idea of guard is suitable as a standard to determine the start of the official carrier of goods but that the Brussels Convention is 1924 that is explicitly stated that the

[19] See these jurisprudence positions in reference : Latif Jaber Komani, Responsibility of the Maritime Carrier, International Scientific House for Publishing and Distribution and Dar al-Thaqafa for Publishing and Distribution, Amman, 2001, Paragraph 30,p. 51, and see Ali Al-Baroudi, Principles of Maritime Law, Modern Egyptian Office, opéra citate ,p.240, and Mahmoud Samir Al-Sharkawi, Contract for Transporting Goods by Sea, Journal of Governmental Issues Management, No. 4, Year 19, Cairo, 1975, p.805.

[20] Hussein Al-Nouri, Studies in Maritime Commercial Law, Cairo, without publishing house, without publication date, p.232, and see René Rondière ,article published in the French Maritime Law Journal of 1966 citing :Mahmoud Samir al-Sharqawi, opéra citate , p. 805.

[21] Latif Jaber Komani, opéra citate , Paragraph30, p. 52.

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responsibility of the sea carrier starts to ship the goods on the ship, that is, the provisions of the Convention are applied to the marine phase Transport[22], which confirmed by some secretary of the provisions of the Convention on the marine phase of transport, which excludes the previous period of shipping and subsequent discharge[23].

It should be noted that Algeria has ratified the Brussels Convention to unify some provisions for freight bonds and that the agreements approved by the President of the Republic, according to the terms provided for in the Constitution[24].

The provisions of the Brussels Convention are approved by Algeria, and the provisions of the Maritime Law shall therefore exclude in the event of a difference between them and have confirmed the legal provisions as:"... and there is no need for the provisions of international conventions dealing with this field - Shipping to the goods - which joined by Algeria in distinguished maritime transport between the Algerian ports and foreign ports[25]," which was

[22]Article I (e) of the Brussels Convention 1924.
[23]Kamel Hamdi, Maritime Law: The Ship, Maritime Navigation Persons, Use of the Ship (Rent of Ship - Transport of Goods and Persons - Towing - Guidance), Second Edition, Manshaat Al Maaref, Alexandria, 2000, Paragraph813,p.632.
[24] Article 154 Presidential Decree No. 96-438 of December 7, 1996, relating to the issuance of the text of the amendment of the Constitution approved in the referendum of November 28, 1996, Official Gazette December 8, 1996, No. 76, p 6, Law No. 02-03of April 10, 2002, amending Presidential Decree No. 96-438 of December 7, 1996, relating to the issuance of the text of amending the Constitution approved in the referendum of November 28, 1996, Official Gazette of April 14, 2002, No. 25, p. 13, Law No. 16-01of March 06, 2016, amending Presidential Decree No. 96-438 of December 7, 1996, relating to the issuance of the text of amending the Constitution approved in the referendum of November 28, 1996, Official Gazette March 7, 2016, No. 14, p. 3, Presidential Decree No. 20-442of December30, 2020, relating to the issuance of the text of the amendment of the Constitution approved in the referendum of November 28, 1996, Official Gazette December30, 2020, No.82, p 3.
[25] Article 747 Maritime Law.

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dismissed by the Treaty Signing Protocol to Contracting States, where they can exclude national coastal navigation from the scope of the Treaty The command comes with a normal or exceptional transfer[26].

It should be noted that, the Hamburg Treaty has identified the time range for the long-term chartered carrier responsibility in which the goods are in the custody of the carrier, both in the shipping port, during transportation, and in discharge port[27].

The provisions of the treaty confirmed that the goods are prepared in custody as of time in which goods received from the charger, or from a person, or from the authority, or third party other laws or regulations applicable in the shipping port For the purpose of charging[28]. In addition, the provisions of the Treaty emphasized that they are included in the carrier, or sender users, or agents of each carrier or sender[29].

It is noted by extrapolating the provisions of the Hamburg Institutes that the carrier is responsible for the goods entrusted to transport, since their presence at the port of shipment, during transport, and at the port of arrival. And under his control. Hence, the responsibility of the sea carrier includes all operations, which fall from the moment the carrier receives the goods from the shipper at the port of shipment until it is delivered to the consignee at the port of discharge, and this confirms the carrier's commitment to loading the goods on the ship, stacking and

[26] Mahmoud Samir Al-Sharqawi, and Mohamed Al-Qalyubi, Maritime Law, Dar Al-Nahda Al-Arabiya, Cairo, 2008, Paragraph407, p. 414.
[27] Article IV, paragraph 2, of the Hamburg Treaty.
[28] See article IV, paragraph 2 (a), of the Hamburg Treaty.
[29] Article IV, paragraph 3 of the HamburgTreaty.

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transporting them, then unloading and delivering them to the sender to it at the port of arrival[30].

2.2- the end of the responsibility of the shipping carrier of goods:

The responsibility of the shipping carrier ends when the goods are delivered to the consignee[31], and the contract of sea carriage ends with the delivery of the goods to the consignee or to his legal representative[32], and delivery is a legal act by which the carrier is obligated by handing over the transported goods to the consignee or his legal representative, expressing his acceptance of them[33].

Delivery is achieved after the goods are unloaded from the ship, but it should not be confused between the delivery of the goods and their unloading.[34]

Unloading is a physical act represented in unloading the goods from the ship to land at the port of arrival[35], or to the barges that transport them to land. Unloading, then, is a material fact that can be proven by all means, while delivery is a legal act.

Delivery consists of two processes, the first is the presentation of the goods by the carrier or his legal representative to the consignee or his agent, and the second is the latter's verification, examination and acceptance of the goods, and this acceptance is

[30] Lafi Daradkah, The Time Range of the Maritime Carrier's Responsibility: A Comparative Study between the Provisions of the Jordanian Maritime Trade Law and the Hamburg Rules, Al-Manara Journal, Volume 13, Issue 9, 2007, p.124.
[31] Article 802 Maritime Law.
[32] Article 739 ,paragraph 1 Maritime Law.
[33] Article 739 ,paragraph Maritime Law.
[34] Maritime Chamber of Commerce of the Supreme Court of Algeria, 14-01-1990, file No. 62163, referred to in Maritime Law in the Light of Judicial Practice, Berti Publications, 2009-2010, p. 198.
[35] Adel Ali Mekdadi, opéra citate , p.122.

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what confirms the consignee's legal receipt of the goods[36]. However, this acceptance does not negate the carrier's responsibility for all Damage, damage or loss to the goods for which he was assigned the task of transporting.

The Algerian judiciary has settled on the responsibility of the shipping carrier for the losses that occur to the goods during the maritime transport process and during the unloading process, even if the task of unloading is assigned to the port institution[37]. This is what was stipulated in the Algerian Maritime Law, which stipulates the responsibility of the handling contractor towards the one who requested his services if it is proven that he has committed a mistake, but he is not responsible for losses or shortages if the present experience proves that this happened - that is, the damage - before and or after the operation that he undertook [38].

The Supreme Court also confirmed that the marine carrier's responsibility to hand over the goods to the consignee or his legal representative has ended, and that unloading the goods in the port is not considered tantamount to handing them over to the consignee, and therefore the carrier cannot be excused from damage or losses incurred by the goods during the unloading process.[39]

Moreover, the Supreme Court ruled that the unloading contractor can in no way be liable for damages to the goods that he unloaded, and placing the goods in the port is not considered delivery

[36] Maritime Chamber of Commerce of the Supreme Court of Algeria, 17-01-1994, file No. 112383, Judicial Journal, No. 3, 1994, p. 132.
[37] Maritime Chamber of Commerce of the Supreme Court of Algeria, 30-12-1990, file No. 72391, referred to in maritime law in the light of judicial practice, opéra citate , p. 197 and 198.
[38] Article 795 Maritime Law.
[39] Maritime Chamber of Commerce of the Supreme Court of Algeria, 30 06-1991, file No. 115518, Judicial Journal, No. 3, 1991, p. 103.

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according to the text of Article 802 of the Algerian Maritime Code, as the responsibility of the carrier extends Until the final delivery to the consignee[40]. In another case, the same court also ruled that unloading and delivery should not be confused, and that unloading, even if it is within the jurisdiction of the port institution, does not absolve the carrier of his responsibility for the damage to the goods until they are delivered to the consignee. or to his legal representative legally handed over[41].

If the carrier entrusts the unloading contractor the task of unloading the goods, the contract concluded between the two parties does not have any legal effect against the consignee who was not a party to the contract, as the carrier is the only responsible in facing the consignee or his legal representative, but the carrier may refer to a contractor The unloading or any interfering in the transport process if it is proven that one of these people is wrong[42].

Hence, the contract of carriage ends in accordance with the provisions of the Algerian Maritime Law by handing over the goods to the consignee, and that the process of unloading the goods falls within the implementation of the transport contract, whether the carrier resides in it personally[43], or another party under a contract concluded with the maritime carrier, if the consignee refuses to receive the goods or He did not apply for this, or if it was unknown, the carrier may deposit the goods in the warehouse in a

[40] Maritime Chamber of Commerce of the Supreme Court of Algeria, 16-05-1998, file No. 169663, Judicial Journal, No. 1, 1999, p. 152.
[41] Maritime Chamber of Commerce of the Supreme Court of Algeria, 17-01-1994, file No. 112383, Judicial Journal, No. 3, 1994, p. 132.
[42] Maritime Chamber of Commerce of the Supreme Court of Algeria, 26-05-1998, file No. 168786, Judicial Journal, No. 2, Algeria, 2001, p. 211, and see : Hadef Muhammad Al-Saleh, opéra citate, p.88.
[43] According to article 780 Maritime Law.

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safe place at the expense and responsibility of the consignee and he shall immediately inform the shipper of this and the consignee if he is known.[44]

Referring to the aforementioned 1924 Brussels Convention, the responsibility of the marine carrier ends with the unloading of the goods from the ship, and when the unloading process ends, the responsibility of the marine carrier ceases to apply, and therefore the carrier is not responsible for the damages to the goods in the post-unloading stage, which begins with the end of unloading the goods from ship and even delivered to the consignee.

It is noted that, the Hamburg Treaty stipulates that the carrier remains responsible for the goods until they are delivered to the consignee or until they are placed at the disposal of the consignee, in accordance with the contract, the law, or the custom followed in the particular trade at the port of discharge, in cases where he does not receive The consignee of the goods from the carrier[45].

It should be noted that determining the time of the damage is of great importance, according to the Algerian maritime legislation, the responsibility of the carrier begins from the time he is charged with the goods and ends with their delivery to the consignee, or to his legal representative.

The pre-shipment, which begins from the carrier's receipt of the goods from the shipper, and the subsequent stage of unloading, which begins as soon as the goods are unloaded from the ship, and until they are delivered to the consignee, are not subject to the

[44] Article 793 Maritime Law.
[45] Article IV, paragraph 2 (b) , of the Hamburg Treaty.

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provisions of the agreement, but to the contractual freedom of the two parties, which is stipulated in the 1924 Brussels Agreement[46].

The statement that the guarantee runs from delivery at the port of shipment until delivery at the port of discharge, as stipulated by the Algerian legislator, is consistent with the common methods of transportation, but it is not consistent with transport by container, in which goods are transported from the seller's store to the buyer's store, which is what is known In the name of From door and door, as this transport requires the transport of goods by several means of transport while maintaining the responsibility of the carrier during all stages of transport and whatever means of transport used, and this type of transport requires unifying the rules of responsibility[47],and given the importance of this type of transport, the United Nations The multimodal transport agreement was signed in 1980[48].

3- The second axis: the material scope of the responsibility of the shipping carrier of goods

The carrier is responsible for losses or damages to the goods during the time period in which he is responsible for the safety of the goods[49], with the exception of cases of exemption established by law[50]. From there, the carrier is asked about the loss of the goods,

[46] Article VII of the Brussels Convention Treaty to unify some rules relating to bills of lading concluded on August 25, 1924.

[47] Ibrahim Mekki, Cargo Container Transport System, Kuwait, 1975,p.54 and continued.

[48] Latif Jaber Komani, opéra citate, paragraph 30, p. 52.

[49] Article 802 Maritime Law.

[50] The carrier shall not be liable for loss and damage to the goods if they are caused by a change in route to save or attempt to save the lives of persons or money at sea or by any reasonable change of route provided for in article 775, paragraph 2, Maritime Law.The carrier is exempt from liability if the damage is due to one of the exemptions contained in article 803 of the Maritime Code, and also from liability if the shipper intentionally commits a false statement regarding the type or value of the goods in the shipping

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their damage, or the delay in their delivery to the consignee or his legal representative.

3.1- the loss of the goods:

the shipping carrier is responsible for the losses incurred to the goods[51]. The losses are of two types: total destruction - or total loss - and partial destruction - or partial loss.

3-1-1- Total destruction:

Total loss is achieved by the complete loss of the merchandise, such as theft of the merchandise[52], and the total loss is the merchandise's loss of its basic characteristics that it enjoys in normal conditions, because that makes it unfit for commercial dealing[53].

3-1-2- Partial destruction:

Partial loss is achieved when part of the transported goods is lost[54]. Partial loss is the exposure of the goods to a decrease in their weight, amount or number[55]. However, it is customary that the carrier is not responsible for the shortage because of its special nature, or because of the transportation process itself, which is what It was called the road waste, as if the goods were liquid materials and part of them evaporated due to weather factors, or if

document or other supporting document, as provided for in article 810 of the Algerian Maritime Code.

[51] Article 802 Maritime Law.

[52] Adel Ali Mekdadi, opéra citate, p.129.

[53] Mustafa Kamal Taha, The New Maritime Law, The Ship, Maritime Navigation Persons, Ship Lease, Maritime Transport, Maritime Accidents, Marine Insurance, New University Publishing House, Alexandria, 1995,p.307.

[54] Latif Jaber Komani,opéra citate paragraph 55, p.84.

[55] Adel Ali Mekdadi, opéra citate, p.129.

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the goods were grains and a quantity of them fell during the process of loading or unloading.[56]

The loss is either total or partial, as it may be material, such as the burning of goods, or legal, such as not finding the transported goods[57]. In all cases, the loss of the goods must be proven.

3-1-3- Proof of destruction:

We will distinguish in this context between proving total destruction and proving partial destruction.

a- Proof of total destruction:

Proving the total loss of the goods is focused on proving the carrier's receipt of the goods and charging him with them, and this is achieved in our view based on the bill of lading, which is evidence of the carrier's receipt of the goods as indicated by the legal texts[58], although part of the jurisprudence sees that the proof of

[56] Mahmoud Samir Al-Sharqawi, and Mohamed Al-Qalyubi, paragraph 373, p.373.
[57] Latif Jaber Komani,opéra citate paragraph 55, p.84.
[58] Article 749 Maritime Law, in any event, a distinction must be drawn between two imposition:
1-Proof in a clean bill of lading: the consignee with the bill of lading is clean and can easily prove the loss of the goods In the case of total loss, it is established that the goods are not received in full, Partial loss is shown to be incomplete compared to the fixed quantity of the bill of lading and, in any event, the consignee must notify the carrier upon receipt of the goods and is injured in whole or in part.
The question is whether the carrier may prove contrary to the statements on the bill of lading, which are answered by article 761 Maritime Law , according to which the statements on the bill of lading are considered constant by presumption in respect of the carrier's receipt of the goods in the case and in the quantity indicated in the bond, unless the contrary is established. if the bill of lading moves to others and the latter is in good faith, It follows from this that the carrier may establish the invalidity of the statements contained in the bill of lading in relation to the shipper but lose this right if the bill passes to a bona fide holder.
2-Proof when the bill of lading is unclean: if the bill of lading contains reservations entered by the carrier upon receipt of the goods at the port of shipment ", the proof of

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total loss is in all ways Evidence[59]. If the carrier claims that the goods have been delivered to the consignee, he must prove that, since in this case the plaintiff cannot be obligated to prove that the goods were not received because the negative act is difficult to prove materially[60].

b- Proof of destruction:

Partial loss - that is, the lack of goods - is proven through written reservations made by the consignee or his legal representative, to the carrier before or upon delivery when losses or damages are apparent[61].But if the losses or damages are not apparent, the consignee or his legal representative must inform the carrier within three days following the receipt of the goods[62], and the Brussels Treaty provided for the same provisions[63].

3-2 damage to the goods:

Goods damage is one of the most common damages in maritime transport contract disputes.

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damage by the consignee is a difficult matter, Because such reservations are a presumption of the carrier's receipt of the goods as described in the bill of lading and the consignee who wants to benefit from compensation and establish the maritime carrier's liability must destroy this presumption, Proving otherwise that the consignee proves that the goods were delivered to the carrier changes the description specified in the bill of lading s fault that resulted in the damage and thus could break the causal link between the reservations on the bill of lading and the damage to the goods.

[59] Kamel Hamdi, Maritime Law: The Ship, Maritime Navigation Persons, Use of the Ship (Rent of Ship - Transport of Goods and Persons - Towing - Guidance), Second Edition, Manshaat Al Maaref, Alexandria, 2000, paragraph706, p. 527.

[60] Kamel Hamdi, paragraph706, p. 527.

[61] Article 790, paragraph 1 Maritime Law.

[62] Article 790, paragraph 2Maritime Law.

[63] Article III, paragraph 6, of the 1968 Protocol to the Brussels Treaty to unify some rules relating to bills of lading concluded on August 25, 1924.

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3-2-1- Definition of damage:

Some have defined the damage of goods as: "every defect in the material of a thing that affects its value according to the use for which it was prepared"[64], and the defect in the material of the thing or its poor condition means that it is no longer suitable for the use for which it was prepared, or that it no longer has the required effectiveness for the use for which it was intended[65].

Others define it as "the poor condition of the thing upon arrival than it was in good condition at the time of shipment at the place of destination"[66].

Damage is the arrival of goods complete in terms of number, weight, or quantity, or incomplete, i.e. partially destroyed, but damaged in all or part of the shipment, such as rotting of a shipment of fruit, or broken devices...etc[67].

The carrier, in accordance with the legislative provisions[68], shall be liable for damage to the goods discovered at the port of destination, where the carrier is assumed to have received the goods from the shipper in good condition unless he makes reservations in the bill of lading concerning the condition of the goods.

[64] Tharwet Anis Al-Assiouty, Air Carrier Responsibility, first edition, International Press, 1960,p. 288.
[65] Latif Jaber Komani,opéra citate, paragraph63, pp. 91-92.
[66] Taleb Hassan Moussa, Commercial Contracts: A General Introduction, Transport Contract, Dar Al-Horia, Baghdad, 1973,p. 50.
[67] Kamel Hamdi, opéra citate, paragraph 707,p. 525.
[68] Article 802 Maritime Law.

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3-2- 2- Proof of damage:

Proof of damage is subject to the same provisions as for proving loss[69], except in the case of self-defective goods in which the carrier may prove what contradicts the data contained in the bill of lading, whether against the shipper or against the third party to whom the bill of lading was transferred, because the self-defect of the goods is considered one of the cases of exemption of the carrier Maritime responsibility[70].

The Supreme Court has decided to acknowledge the responsibility of the shipping carrier for losses and damages to the goods, from the time he was charged with them and until their delivery to the consignee or to his legal representative, as indicated by the legislative provisions, as the carrier is obligated during this period to take care and preserve the goods[71].

And part of the jurisprudence considers that maritime transport can cause slight damage to some types of goods, such as some bruises that affect cars that are usually transported without covers, and that some goods may be subjected to slight damage even though the carrier takes reasonable care to preserve them during the sea voyage, and this aspect suggested The obligation to forgive minor damages, however, it remains for the subject judge to estimate the damage that occurred and the extent to which it is permissible to forgive[72].

[69] See above the study on proof of destruction .
[70] Article 803 (g) Maritime Law, and see Latif Jaber Komani,opéra citate paragraph63, p.93.
[71] Maritime Chamber of Commerce of the Supreme Court of Algeria, 02-06-1991, File No. 76357, Judicial Journal, No. 2, Algeria, 1993, p. 108.
[72] Latif Jaber Komani,opéra citate paragraph63, p.93.

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3-3- delay in delivery:

The legislator has explicitly stipulated in Article 802 of the Maritime Law the responsibility of the shipping carrier in the event of the loss or damage of the goods, while he did not refer to his responsibility in the event of delay in the delivery of the goods under the aforementioned legal text, and this is similar to the 1924 Brussels Convention that did not include this damage within the scope The material is the responsibility of the shipping carrier.

However, it is noted from the extrapolation of the text of Article 805 of the Maritime Law that the legal provisions included the carrier's delay in delivering the goods in the category of damages that the carrier is obliged to compensate the consignee for, as it was stated in the legal text that the carrier is obligated to compensate the consignee in the event of a delay in the delivery of goods by an amount Equivalent to two and a half times of the transport fare payable[73].

The carrier is deemed to have delayed the delivery of the goods if he does not deliver them at the agreed time, and in the event that the two parties do not agree on a specific period, then the reasonable time required by a careful carrier[74]. Thus, the Algerian legislator has followed the example of the 1978 Hamburg Treaty, which established the carrier's liability for damage resulting from the delay in the delivery of goods[75].

Some assert that the delay in the delivery of goods that requires compensation is the extraordinary delay, and it is determined whether the delay is normal or unusual according to the custom in

[73] Article805, paragraph 1 Maritime Law.
[74] Article805, paragraph 1 Maritime Law.
[75] Article V, paragraph 1 The United Nations Convention on the Carriage of Goods by Sea concluded on March 31, 1978, called the Hamburg Convention.

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commercial transactions[76], and others believe that the delay in delivery is not a reason for compensation and does not assess the responsibility of the carrier unless it is caused charger damage[77].

In all cases, the carrier shall be questioned if he delays in delivering the goods entrusted to him to transport them beyond the agreed-upon date. material, as the significance is not in the personal circumstances of the carrier, but in the transportation conditions in themselves[78].

The burden of proof of the delay falls on the consignee, because he is the one who claims that it occurred. The burden of proof differs between whether the delivery date was expressly specified in the bill of lading or whether it was not expressly specified.

If the delivery date is specified in the bill of lading, the consignee can prove the delay in delivery by comparing the delivery date specified in the bill of lading and the actual delivery date recorded in the delivery receipt. If the two parties do not agree on a specific date for delivery, the consignee must prove the time of the supposed arrival of goods of the same type and for an ordinary carrier in the same conditions as the carrier, and then prove that the delivery took place at a later time as it is supposed to take place. Moreover, the consignee must prove the damage that accompanied the delay, because the consignee has no interest in claiming compensation if he did not suffer any damage, because that is what is consistent with the general rules of liability that

[76] Abbas Mustafa Al-Masry, The Legal Status of the Consignee in the Maritime Maqal Contract, New University Publishing House, Alexandria, 2002,p.196.
[77] Abdelfadil Mohamed Ahmed, Private Maritime Law, first edition, Dar Al-Fikr Legal for Publishing and Distribution, Mansoura, 2011,P. 428.
[78] Adli Amir Khaled, Maritime Transport Contract, (Rules and Provisions), New University House, Alexandria, 2006, p.73.

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require the availability of its three pillars of error, damage, and relationship causation between them[79].

4- The third axis: the personal scope of responsibility of the shipping carrier of goods.

Determining the personal scope of the responsibility of the shipping carrier of goods requires a distinction between the successive transport, which is achieved by issuing a direct bill of lading, and the sea transport in which the contracting sea carrier and the actual carrier appear.

4-1- Successive transportation under the direct bill of lading

The sea carrier is responsible for the losses and damages to the goods, or the damage that the consignee or the owner of the right to the goods may be exposed to due to the delay in their delivery. Therefore, the legislator imposed that the name of the carrier must be mentioned in the bill of lading, and in case it was not mentioned, or if it was mentioned as Inaccurate, or incorrect, counting the supplier of the ship carrying the goods on board as the carrier[80], so that the consignee knows the person to whom it is necessary to return and claim compensation.

The principle is that the carrier who concluded the contract of sea carriage implements the entire contract until the delivery of the goods to the consignee or his legal representative, but it may happen that the carrier designates in the contract of carriage the name of another carrier or other carriers, each of whom undertakes the implementation of a part of the transport that he

[79] Latif Jaber Komani,opéra citate, paragraph 64, p. 95. And see also See also article 124, as amended, of the Civil Code, which states: "Any act whatsoever committed by a person by his fault, causing harm to others, shall be compensated by whoever has caused it".
[80] Article 754 Maritime Law.

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may It is sea, river, land, air, or by rail, and the bill of lading in this image is called the direct bill of lading or the direct bill of lading[81]. Although the multiple carriers whose names are mentioned in the direct bill of lading will undertake a transport process that may be sea, river, or land By air, or by rail, they cannot issue separate shipping documents for the carriage distances completed by them, unless they expressly indicate in the bill of lading they issue that the goods are being transported by a direct bill of lading, and the conditions and reservations included in the bills of lading cannot be invoked. Separate only between successive carriers[82].

Issuance of a direct shipping document does not negate the responsibility of the shipping carrier, as it remains responsible for carrying out the tasks entailed by the carrier who will start implementing part of the transport, whatever its form, during the period of validity of the direct shipping document and until the delivery of the goods to the consignee[83], but this does not exclude the responsibility of the carriers The others, as each of them remains responsible for carrying out the obligations arising from the direct bill of lading within the transportation distance he made, in solidarity with the carrier who issued the direct bill of lading[84].

Hence, the shipper may choose to recourse to the carrier that contracted with him or to each of the successive carriers, and the carrier who has paid compensation to the owner of the goods due to his joint and joint liability resulting from the direct shipping document has the right of recourse against the other carriers and those responsible under this document[85].

[81] Article 763 Maritime Law.
[82] Article 764 Maritime Law.
[83] Article 765, paragraph 1, of the Maritime Law ,as amended by Act No. 98-05.
[84] Article 765, paragraph 1, of the Maritime Law ,as amended by Act No. 98-05.
[85] Article 766, paragraph 1, of the Maritime Law.

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The carrier who paid the compensation is not able to exercise his right of recourse against each carrier who proves that the alleged damage did not occur at the distance in which he started the transportation process[86].

Moreover, if the carrier who has paid compensation to the owner of the goods is unable to prove in any part of the carriage of the direct bill of lading that the goods have suffered losses and damages, each of the carriers is considered liable in proportion to the freight received by him[87].

Direct shipment, the applicable law of the mode of transport applies to transport procedures that are not carried out by sea[88].

4-2- the contracting sea carrier and the actual carrier

It is noted that the Algerian legislator contented himself with stipulating the successive transport by issuing a direct bill of lading[89], and specified the obligations of each carrier when the damage occurred, while he was silent about determining the actual status of the carrier and the extent of his responsibility for the realization of the damage. This is in contrast to some Arab legislation, especially the Egyptian Maritime Trade Law, which distinguished between the contracting carrier and the actual carrier and determined the responsibility of each of them in the event of damage[90], a ruling that was taken from the 1978 Hamburg Treaty[91].

[86] Article 766, paragraph 2, of the Maritime Law
[87] Article 767 Maritime Law.
[88] Article 769 Maritime Law.
[89] The Hamburg Convention provided for successive transport in article 11, entitled "Successive transport".
[90] Article 243, paragraph 1 and 2, of the Egyptian Maritime Trade Act.
[91] See article 10 of the Hamburg convention 1978 entitled "Carrier and actual carrier".

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If the carrier contracting with the shipper entrusts to another carrier to carry out all or part of the carriage, which is the form stipulated under the first paragraph of Article 10 of the Hamburg Convention, which affirmed the responsibility of the contracting carrier for the entire carriage process, whether he personally undertakes the transport process, Or what was carried out by the actual carrier who undertook a part of the trip, and the contracting carrier is even considered responsible for any act or omission on the part of the actual carrier, its employees, subordinates, or agents, and it is the same as what was stipulated in the first and second paragraphs of Article 243 From the Egyptian Maritime Trade Law.

A part of the jurisprudence is seen commenting on the aforementioned Egyptian legal text that the shipper or the owner of the right to the goods may, when the goods are damaged, refer the responsibility to the contracting carrier, and even has the right to refer to the actual carrier also if the goods are damaged while they are in his custody[92].

In our view, if the contracting carrier entrusts the shipper with the responsibility of transporting the goods in whole or in part to another carrier, which is named the actual carrier, then the only responsible towards the shipper is the contracting carrier, but the latter may refer to the actual carrier regarding the damages that occurred during the existence of The goods are in his custody, especially in view of the silence of the Algerian legislator about determining the relationship of the contracting carrier with the actual carrier, and expressly indicating that in the event that the name of the carrier is not mentioned in the bill of lading, the

[92] Fahr Abdelazim Saleh, The responsibility of the shipping carrier for the safety of goods between the provisions of the Hamburg Convention and the Egyptian law, an article published on the website www.eastlaws.com, dated 04-25-2016 at 11:30 am.

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shipowner is considered the carrier against whom the shipper may recourse.

Some assert that what distinguishes between the two hypotheses - that is, the case of the contracting marine carrier and the actual carrier and the case of successive transport under the direct bill of lading - is that in the situation in which the contracting carrier and the actual carrier appear: the contracting carrier entrusts the actual carrier to carry out the transportation or part of it without a license From the shipper, and sometimes even without his knowledge. As for the situation in which the carrier issues a direct bill of lading, there is an agreement between the first carrier, the source of the bill of lading, and the shipper, that a subsequent carrier or two subsequent carriers complete the transportation initiated by the first carrier[93].

Neither the Algerian legislator nor the Brussels Convention of 1924 addressed the distinction between the contracting carrier and the actual carrier, and the question arises: is it permissible for the carrier who has contracted with the shipper to transport certain goods from the port of departure to the port of arrival to entrust the implementation of the contract of carriage or part of it to another carrier? .

The legislator's silence about answering this question made part of the jurisprudence refer to the application of the general provisions in agency[94] and that in the relationship between the two parties, and in all cases the contracting carrier remains the only one

[93] Kamel Hamdi, opéra citate, paragraph 715, p. 535.
[94] Latif Jaber Komani, opéra citate, paragraph 144, opéra citate 170.
The Civil Code provides for the Agency's provisions in articles 571 and seq. of - Ordinance No. 75-58 of September 23, 1975, containing the Civil Code, Official Gazette September 30, 1975, No. 78, pg. 990, amended by -Law No. 05-10 of June 20, 2005, Official Gazette June 26, 2005, No. 44, p. 17.

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responsible in facing the shipper for the damages caused to the goods.

5-Conclusion :

The responsibility of the shipping carrier of goods is a responsibility of a special nature that is distinguished by the nature of the maritime transport contract, which is characterized by the privacy of the place of its implementation, which is the sea. Some provisions of the bills of lading 1924, and the inclusion of most of its provisions in the maritime law when its provisions were enacted in 1976 with a difference in some issues, and although the Algerian legislator tried hard to remedy the shortcomings demonstrated by the practical application of the legal provisions through the amendment of the maritime law in 1998[95] and 2010[96], Studying the scope of responsibility of the shipping carrier of goods made us draw some conclusions and discover some shortcomings and gaps, after which we made some recommendations.

This study reached a set of results, including:

First: The time range of the marine carrier's responsibility goes out to the moment when the carrier is charged with the goods and continues until it is delivered to the consignee, and this is in contrast to the provisions established in the 1924 Brussels Convention, where the time frame of the marine carrier's responsibility is determined from loading the goods on the ship and continues until they are unloaded.

[95] See Law No. 98-05 of

[96] - Law No. 10-04 of August 15, 2010 amending and supplementing Ordinance No. 76-80 of October 23, 1976 containing the Maritime Law, Official Gazette August 18, 2010, No. 46, p 8.

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Second: The principle of the supremacy of international agreements over domestic law is a constitutional principle enshrined in the Algerian constitution. Hence, the provisions of the Brussels Convention concerning the unification of some provisions of bills of lading, concluded on August 25, 1924, transcend the law in the event of conflicting provisions in both, especially since many Judicial rulings emphasized the responsibility of the carrier during shipment, as this responsibility does not go to the stage prior to shipment. 802 of the Maritime Code.

Third: If the consignee refuses to receive the goods, or if the consignee is unknown, the carrier is given the right to deposit the goods in the warehouse in a safe place, at the expense and responsibility of the consignee, with informing the shipper or the consignee of that - if he is known - and thus the carrier is considered to have He fulfilled his obligation to deliver and his responsibility for that has ended.

Fourth: The legislator did not specify what is meant by the terms carrier and consignee, despite the importance of giving a definition of the two terms.

Fifth: Unloading the goods at the port of arrival is not considered a release from the carrier, but the latter must deliver the goods to the consignee.

The most important recommendations extracted from the study:

First: The legislator's determination of the material scope of the marine carrier's liability in Article 802 of the Maritime Law for loss and damage, and its exclusion of damage resulting from delay in the delivery of the goods, then stipulating that compensation for damage resulting from delay in delivery, and determining the meaning of delay in delivery under Article 805 of Maritime law

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requires the re-drafting of Article 802 referred to above and the inclusion of delays in the delivery of goods in the list of damages for which the carrier is liable.

Second: The fact that the legislator did not put legal provisions that define the shipping carrier, and distinguish between the contracting carrier and the actual carrier, made some researchers confuse between the contracting carrier and the actual carrier, and between the successive transportation in which several carriers carry out the transportation process, each one in a specific part, according to the bill of lading. Direct, and in fact, this distinction is taken from the Hamburg Treaty, which laid down provisions for the actual carrier and the contracting carrier and other provisions for successive transportation. The Algerian legislator was satisfied under the provisions of the Maritime Law by providing for successive transportation under the direct bill of lading, while the contracting carrier and the actual carrier are subject to the general provisions of the agency, The contracting carrier remains the only one responsible in confronting the shipper, and it is desirable that the Algerian legislator intervene in this issue by setting legal texts through which the contracting carrier's relationship with the actual carrier, and the relationship of both of them with the shipper, the consignee, or the owner of the right to the goods.

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