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Indicators and Manifestations of the Balancing between International Carriage Parties according to the Rotterdam Rules

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Abstract: The regulations and rules governing maritime transport were not uniform among countries. Such uniformity is due to a failure to accede to a single convention. Countries were either acceded to or withdrawn from the Brussels Convention, and acceded instead to the Hamburg Convention, and so on. As a consequence, international maritime transport provisions no longer have the status of legal unification, making international commercial transactions unstable, in addition to the development in international trade and maritime transport in particular, such as reliance on containerized transport, use of technology in Multimodal transportation and consideration of door-to-door transport as a phase of maritime transport. In response, the United Nations Commission on International Trade Law (UNCITRAL) undertook to prepare a new draft convention on contracts for the international carriage of goods wholly or partly by sea ("Rotterdam Rules"), which was adopted on 11 December 2008. The texts of that Convention are international substantive rules concluded within the framework of an international organization (United Nations), representing a binding and acceptable global regulation, which contain solutions compatible with the relevant international treaties and a balance of the responsibilities and obligations of all parties (carrier and shipper) engaged in the international carriage of goods and associated third parties, And this balance was brought by the rules with many indicators in their rulings that indicated it which govern all different modes of transport as one contract. This is what the study deals with by presentation and analysis, leading to the confirmed results.

Keywords: Rotterdam Rules, Transport Parties and Their Responsibilities, Initial - basic - objective balance indicators.

مؤشرات ومظاهر التوازن بين أطراف النقل الدولي وفقا لقواعد روتردام

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المستخلص: لم تكن قواعد النقل البحري بين الدول موحده نظراً للانقسام الحاصل بينها، ما بين منضمة إلى معاهدة بروكسل ومنسحبة منها للانضمام إلى اتفاقية هامبورغ، فلم يعد لأحكام النقل البحري الدولي صفة التوحيد القانوني، حيث ساد عدم استقرار المعاملات التجارية الدولية، زيادة على التطور الحاصل في مجال التجارة الدولية والنقل البحري بصفة خاصة، مثل الاعتماد على النقل بالحاويات، واستعمال التكنولوجيا في النقل، واعتبار النقل المتعدد بمختلف الوسائط كمرحلة من مراحل النقل البحري، وغيرها. وفي سبيل وضع المعالجات المناسبة لذلك الوضع ، أخذت لجنة الأمم المتحدة للقانون التجاري الدولي على عاتقها منذ العام 1996م إعداد مشروع اتفاقية جديدة متعلقة بعقود النقل الدولي للبضائع عن طريق البحر كلياً أو جزئياً "قواعد روتردام" لتعتمدها بتاريخ 11 ديسمبر 2008م، والتي تعد نصوصها قواعد موضوعية دولية أبرمت في إطار منظمة دولية (الأمم المتحدة)، لتمثل نظاما عالميا ملزما ومقبولا يحتوي على حلول توافقيه بين المعاهدات الدولية ذات الصلة، ومتوازناً في مسئوليات والتزامات أطراف النقل الدولية (الناقل والشاحن) والأطراف الأخرى المرتبطة بهما، وهذا التوازن جاءت به القواعد بمؤشرات عديدة في أحكامها دلت عليه، ولتحكم كافة وسائط النقل المختلفة بموجب عقد واحد، مما يجعلها محط قبول لمختلف الدول. وهو ما تتناوله الدراسة بالعرض والتحليل وصولا إلى النتائج المؤكدة لذلك.

الكلمات المفتاحية: قواعد روتردام، أطراف النقل ومسؤولياتهم، مؤشرات التوازن الأولية - الأساسية - الموضوعية.

1. Introduction

The Maritime Transport is one of the economic development of various counties in the world. It is the backbone and the main pillar of the international trade transactions. To that end, the international conventions promote organization and development of the maritime transport. This objective could be achieved by agreeing to develop terms and conditions aimed at achieving equal rights and obligations among the countries that adopt this type of transport in the carriage of goods, and cooperating to serve the common interests of the countries.

From the early of the 20th century until today, the legal structure governing international transport rules has passed through many international conventions ranging from Hague Rules, Brussels Rules and Hamburg Rules to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (known as "Rotterdam Rules") in question. The Rotterdam Rules contribute to the unification of international trade rules by establishing a binding global regime for shippers and carriers by sea, wholly or partly. This will enhance trade among countries and promote economic development at the domestic and international levels.

1-1 The problem of the study

The problem of the study is that the international legal and legislative reality in maritime transport is still fragmented between under previous conventions (Brussels rules and Hamburg rules) prior to the Rotterdam Rule the controversy that took place at that time - based on the vision of the divided countries with the siding of one of these two agreements with the side of the carriers or shippers - had the main role in maintaining that division on that reality, which led to the reluctance of countries to join that agreement or some others to withdraw from it, and those divergent positions It was based on the interaction and division of states at times on the side of carriers, such as developed countries that own fleets of maritime transport, and at other times on the side of shippers, such as countries that do not own any of these fleets. It ends that division and ensures a balance in its texts and provisions between the obligations and responsibilities of both the carrier and the shipper, and keeps pace with the rapid developments in international trade and maritime transport, and is accepted by various countries.

s and the legal and legislative reality of the Arab States was still affected by that division and delayed in keeping up with the rapid developments in international trade and maritime transport.

The Rotterdam Rules reflect the most far-reaching stage of legal development and modernization of international maritime legislation, it is necessary to shed light on the stages of the preparation of the Convention, its characteristics, indicators and the guarantees it offers in establishing a balanced system of interests among the parties to maritime transport. To answer the important questions of the following: Have international maritime transport provisions become uniform at the international level under the Rotterdam Rules? Have those provisions been able to create a balanced system of responsibilities between the main transporters, the carrier and the shipper? What are the types of indicators for that balance? Do these indicators encourage countries to decide to join them? .

1-2 The assumptions of the study

The assumptions of the study are as follows:

1. International maritime transport rules have become uniform at the international level under the Rotterdam Rules;
2. The Rotterdam Rules have been able to create a balanced system of responsibilities between the main transporters (carrier and shipper) and parties related to them .
3. The indicators and manifestations of balance in the Rotterdam Rules encourage States to accede to the Convention.

1-3 The importance of the study

In contrast to previous maritime transport conventions, the Rotterdam Rules meet the requirements and needs of the modern age. They include many modern legal provisions consistent with current maritime transport requirements such as Container Shipping, integrated door-to-door transport services, multimodal transport, and the electronic exchange of information, bonds, and records. The provisions cover not only the carrier and the shipper but also all parties to the maritime transport, whether loading and unloading contractors and other contributing parties involved in the international maritime transport. The Convention also provides

that the State party is not a party to the act of carriage by sea or of carriage by sea. The Convention has been described as bringing a balanced regime to the need to reconcile the different interests of its signatory countries, especially between such shipping countries, which are always primarily dependent on shipments and imports but do not have large fleets for maritime transport or large shipping lines, such as the Arab countries in general, and the transporting countries, which are rich and have naval fleets and major shipping lines, like most European countries, United States, and China, etc.

The importance of the study lies in highlighting the most important characteristics of the Convention and in clarifying the most important indicators and manifestations of balancing between the interests of international shippers and carriers. The legal and legislative reality of the Arab States is not keeping pace with the rapid developments in the international trade and Maritime Transport.

2. Methodology

2.1 Analysis methodology

The researcher relied on an analytical and original approach to address the problem of research to arrive at a structured objective description that leads to confirmation of research hypotheses, and to the achievement of findings and recommendations.

2.2 Data sources:

The population data used for this study was taken from:

1. Bulletins and reports from the United Nations website, the International Chamber of Commerce, the International Law Commission and the International Trade Commission, which are linked to the subject matter of the study.
2. Previous research-related scientific resources and studies are available in central libraries at specialized law and law universities and private libraries.
3. Articles published on the Rotterdam Rules website.
4. Official reports issued by conferences of Arab States to examine the possibility of acceding to the Convention.

2.3 Limits of the study

1. The study shall only highlight a brief view of origins, characteristics and stages of preparation of the Rotterdam Rules, and the manifestations and indicators of balance in its provisions of the responsibilities of the transport parties in general.
2. The study is based on the analysis of models of the reports issued by the International Law and Trade Commission for the period 1996-2008, which are linked to the rules and positions of the Arab States in general as a model that can be studied.
3. The study shall apply to States not party to the Convention.

3. The structure of the study

The study was divided into three sections. The first section dealt with the Rotterdam rules, their origin, stages of preparation and characteristics, and the second section dealt with preliminary and basic indicators of balance in the Rotterdam rules, while the third section dealt with objective Indicators of balance in the Rotterdam rules.

Section 1

Rotterdam Rules, its origins , stages of preparation and characteristics

We mentioned earlier that the legal structure regulating the rules of international transport passed through many international agreements during the beginning of the twentieth century until today, starting with the rules of The Hague, then Brussels, then Hamburg, and because of the different practical applications of those agreements in the reality of international transport and their disparate results, the United Nations Commission on International Trade Law has taken it upon itself since The year 1996 A.D., preparing a draft new agreement related to contracts for the international carriage of goods by sea, in whole or in part, the "Rotterdam Rules" [(1)] in question, which contributed to unifying the rules of international transport and avoiding deficiencies in previous

(1) The "Rotterdam Rules" is the informal designation of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea of 2008. It is also named after the Dutch city of Rotterdam, in whose territory the agreement was signed.

agreements, through its balanced system between the responsibilities of carriers and shippers, and in this The research will take a glimpse of the reasons for the emergence of the rules and the stages of their preparation and characteristics, in the following demands:

First Demand

Indicators of the division of the international legislative reality of maritime transport before the Rotterdam Rules

The international legal and legislative reality in maritime transport remained divided between the previous treaties (Brussels - Hamburg) and their various practical applications in the reality of international transport, which had many negatives. It is an illustration of some of the most important indicators of division in the international legal and legislative reality in maritime transport in light of the two treaties that preceded the Rotterdam Rules, which we show in the following items:

1- The Brussels Convention did not express all types and forms of maritime transport systems, but as it appears from its name - the international treaty for unifying some rules related to bills of lading - it only deals with bills of lading. (Al-Sharkawy, Al-Qalyubi, 2008, 35). It is taken into account in its definition of the contract of carriage that it came devoid of its content as a contract of carriage, and it only stated its field of application by stating the form in which the contract is emptied, so it limited itself to defining its forms and did not touch on its content and confused it with the tool that establishes it. (Al-Waili, 2008 AD, 4). While the Hamburg Convention came under a different name as the "United Nations Convention on the Carriage of Goods by Sea," it does not apply to all types of transport of goods by sea, as evidenced by its name. Its provisions do not apply to charter parties. And it distinguished between bills of lading and contracts for chartering ships, while not applying its provisions to contracts for chartering ships. (Turk, 2005, 60).

2- The lack of an accurate and comprehensive description of the transport parties and those associated with them in both the Brussels and Hamburg Conventions, but the Hamburg Convention came with rules related to the actual transport and successive transport operations, while the Brussels Convention and its amendments were not known in this field except for the carrier alone, and for this reason the carrier is considered according to the Brussels rules He is the actual carrier and the contracting party that is associated with the shipper in the transport contract, and he is the one who signed the bill of lading himself or through his agent, regardless of his connection to the ship (Hosni, 1998 AD, 34). The party of the original carrier undertakes the full or partial execution of the transfer. (Hamdi, 1998 AD, 60. Shafiq, 61). The Hamburg rules also regulated consecutive transport, which is maritime transport and in all its stages, noting that this transport is not the multimodal transport in which the nature of transport differs, as it is part of the sea transport and another part. By land or air, this type of transport was not defined by the two agreements or regulated in their provisions. (Hosni, 1998, 24).

3- The time range of the carrier's responsibility in the Brussels Treaty was set in the period starting from the time the goods were loaded into the ship until they were unloaded from it, while the time range of the carrier's responsibility was specified in the Hamburg Convention in the period in which the goods are in the custody of the carrier at the port of shipment, during transport and in The port of unloading (Turk, 2005, 66. Shafiq, 34).

4- Determining the scope of the Brussels Convention was limited in its provisions to the fact that it applies to every bill of lading issued in a contracting country (Brussels, 1924 A.D., 10). While the scope of application of the Hamburg rules was to all maritime transport contracts between two ports belonging to two different countries, if the port of shipment was is located in a Contracting State or the port of discharge is located in a Contracting State, or if the optional ports of discharge is the actual port of discharge and located in a Contracting State, or if the bill of lading or other document evidencing the contract of carriage was issued in a Contracting State, or if it is provided for In the bill of lading or other document evidencing the contract of carriage that it is subject to the provisions of this agreement or to the law of a state issued by it for the enforcement of these provisions. (Hamburg, 1978 AD, 2).

5- The Brussels Convention provided for many cases that are excluded and available to the carrier, especially the navigational error that was misused at work until it became the curtain that the carrier would take refuge in whenever he was unable to uphold other defenses to escape liability, while the Hamburg rules deleted the exemptions related to error in navigation and management. The ship, and the rules of Hamburg gave an unreal impression that it had tightened the responsibility of the carrier. (Turk, 2005 AD, 62. Shafiq, 43).

6- The liability rules contained in the Hamburg Treaty apply to loss or damage, as well as to delay in delivery, which is an emerging matter, as the matter was not agreed on this type of liability under the Brussels Treaty of Bonds.

Charging. (Shafiq, 96). And the variation and difference of the provisions related to the legal determination of the responsibility of the marine carrier between the Brussels and Hamburg Conventions, the Brussels Convention was short in the basis that it took to set the maximum limit of liability, as the Convention took the parcel or the freight unit as the sole basis for setting this limit and neglected the weight, while the Hamburg Convention came inclusive of the three foundations in Determining the maximum liability limit, and the amount of that limit in the Brussels Convention is multiple. The maximum liability of the carrier is 100 pounds for each parcel or shipping unit. In the 1968 protocol, it is 0 1 thousand gold francs for each parcel or unit of shipment and 30 francs for each kilogram of gross weight of perishable or damaged goods, whichever is greater, and in the 1979 protocol it is (666,67) special drawing right (2) for each parcel or Shipping unit and 2 special drawing rights for each kilogram. (Bahjat, 2011 AD, 102). As for the maximum liability of the sea carrier in the Hamburg Convention, it is 835 units of account per parcel or freight unit or 2.5 special drawing rights per kilogram of gross weight of lost or damaged goods, whichever is greater. (Shafiq, 107) For non-member states In the International Monetary Fund, whose regulations do not permit the conversion of Special Drawing Units into their national currency, the maximum liability limit is 12,500 monetary units, which is the gold franc containing 65.50 milligrams of (00,900) karat gold for each parcel or shipping unit, or (5.37) monetary units for each kilogram of gross weight of perishable or damaged goods, whichever of the two limits is higher. As for the maximum limit of liability in case of delay, it is an amount equivalent to two and a half times the transportation fare payable for delayed goods, provided that this amount does not exceed the transportation fare Payable under the maritime transport contract. (Turk, 2005 AD, 69).

7- The basis of the carrier's responsibility in each of the Brussels and Hamburg conventions is based on the idea of supposed error, but each of them dealt with it in a different way. The liability of the carrier in the Brussels Convention is generally based on the notion of presumed fault, and the obligation of the carrier to make the ship seaworthy by taking sufficient diligence and reasonable care before travel and at the commencement to bring the ship in a condition for travel. Hence, the owner of the shipment must prove that the loss or damage of the shipment is a result of the ship's unfitness for navigation before the carrier undertakes to prove that he has exerted sufficient diligence. (Hosni, 1998, 59). As for the Hamburg Convention, it establishes the liability of the carrier on the basis of presumed fault (presumption of fault or presumed negligence) and that he is liable for damage (loss, damage or delay) unless it is proven that he or his employees or agents have taken all reasonable measures to avoid the accident and its consequences, that is, the burden of proof rests with the carrier. However, the provisions of this agreement deviate from this rule in some exceptional cases, such as the case of fire, in which we base the responsibility on the idea of the error that must be proven, as the burden of proof falls on the plaintiff. (Bahjat, 2011 AD, 5. Turk, 2005 AD, 64).

8- In the complete absence of modern technology in the Brussels rules, the Hamburg rules did not take into account the new technological developments in the field of maritime transport, so some saw that it was necessary to expedite a comprehensive legal regulation that takes into account the technological progress in information systems and the replacement of electronic bills of lading in place of traditional bills of lading. (Moses, 2005 AD, 22).

9- The total number of countries ratifying the Hamburg Rules has reached only 34 countries - compared to 48 countries that have ratified the Brussels Convention - which underestimates their value in the field of maritime transport, in addition to the fact that most shipping countries in the world have not ratified them. (Ghannam, 2012, 11).

Second Demand

The origins of the Rotterdam Rules and the stages of their preparation

Given to the confusion and inadequacy of international legislation on maritime transport, some States preferred to retain ratification of the 1924 Brussels Convention and non-accession to the 1978 Hamburg Rules, while others preferred to ratify the

(2) The Special Drawing Right is a general international value determined by the International Monetary Fund and declared often day by day. The value of the SDR ranges from $1 to $1.35. (Hosni, 1998 AD, 260. Turk, 2005 AD, 26)

Hamburg Rules and withdraw from the Brussels Convention, and others preferred not to join either. (Basaid, 2012, 5). These duplications were accompanied by the development of economic, technological and navigational conditions worldwide in all sectors, including the maritime sector, as well as container and multimodal transport. In the face of this situation, the need for a new convention to establish a single legal framework for maritime transport worldwide, taking into account the developments that have taken place and the texts of previous agreements, seemed urgent. (Radwan, 2008, 253). At its twenty-ninth session, held in 1996, the United Nations International Trade Law Commission (UNCITRAL) requested the Comité Maritime International (CMI)[(3)] to compile information and data on practical practices in maritime transport, as well as laws governing the carriage of goods by sea, giving an overview of the extent to which uniform rules in this area have been enacted. Since that date, preparations for unified international action have been initiated. (Report 29, 1996, 17).

Subsequently, Comité Maritime International (CMI) and UNCITRAL Secretariat initiated a survey and investigation to collect and analyse information and data on problems and needs arising from commercial practices related to the carriage of goods by sea and modern transport and communications methods. (Shazly, 2014, 54). This information was collected and analyzed. Moreover, the United Nations Commission on International Trade Law (UNCITRAL), in its 3rd meeting, held on 1-12 June 1998, welcomed and expressed support for such efforts such efforts. (Report 31, 1998, 17). The General Assembly, in its 34th session, held in 2001, agreed to establish a committee and working group composed of all States members of the United Nations Commission on International Trade Law (UNCITRAL). The Working Group included, in its membership as observers, Comité Maritime International (CMI), International Federation of Freight Forwarders Associations (FIATA), International Maritime Organization (IMO) Council, International Chamber of Commerce (ICC), International Chamber of Shipping (ICS), International Union of Marine Insurance (IUMI), International Group of Protection and Indemnity Clubs (IG of P&I), Ibero-American Institute of Maritime Law (IIDM), International Bar Association (IBA), Transportation Intermediaries Association (TIA), International Multi-Modal Transport Association (IMMTA) and World Association of Former United Nations Interns and Fellows (WAFUNIF). The tasks of the Subcommittee were to prepare guidelines for the unification of transport law, including liability provisions, and to adapt that instrument to accommodate other forms of transport associated with door-to-door[(4)]carriage by sea. At that meeting, the report of the Secretary-General, which had been prepared in response to the request of the General Committee, was presented. The report outlined the discussions with the CMI's Subcommittee. Those discussions contained in the report had resulted in the mechanisms required for the preparation of an instrument of an international treaty nature that would update the law of the carriage of goods, take into account technological developments including electronic commerce, and eliminate the legal difficulties identified by the Commission in the field of international transport, particularly with regard to the Multimodal Convention, which had not entered into force and was complied with by a small number of States. This necessitated concerted efforts to unify the law, and the Commission was given the broad mandate to do so and to work expeditiously to harmonize existing liability regimes governing modes of carriage, and to create a single international regime governing multimodal transport operations, with reference to the efforts of the European Economic Commission, which had carried out a multimodal transport survey and had been asked to participate in the work of the Commission or the Working Group. After discussion, the Commission, at that session, decided to establish a working group to achieve the above objectives in order to create a uniform and nominal transport law (Working Group on Transport Law) with the need to involve United Nations Conference on Trade and Development (UNCTAD), European Economic Commission (EEC), United Nations Regional Commissions (UNRC), Organization of American States (OAS) and the above-mentioned non-governmental organizations. (Report 34, 2002, 510). At its 35th session, held in 2002 and after several meetings, the Commission together with the Working Group reached a preliminary draft international convention after discussing its

(3) Comité Maritime International (CMI) is an international non-governmental organization established in Belgium in 1897, with the aim of contributing to the unification and harmonization of maritime legislation at the global level. For more information. See website of the Comite Maritime International (CMI), https://comitemaritime.org/en/(23 November 2020).

(4) It is an idea based on merging more than one mode of transport with the aim of transporting the goods from the door of the producer until they are delivered to the door of the final importer of the commodity in a successive chain, unlike the traditional method based on transporting goods by one of the modes of transport by land, sea or air and the application of the system that governs each of the modes transport used. Hence the need to establish a legal system that governs transport by more than one means of transport so that segmented transport is not a burden on its owner, which leads to an increase in the cost of the trip and its efficiency. (Mahmoud, 1997 AD, 5).

clauses and hearing a report on the comments provided by the European Economic Commission and UNCTAD report. (Report 35, 2002, 510).

The Commission noted that, in view of the difficulties involved in the preparation of the draft instrument, the Working Group would require a substantial intensification of its meetings. This has led to twice-yearly sessions. In the meantime, several panel discussions and deliberations were held with the participation of stakeholders in the maritime industry, whether carriers, shippers or insurance companies. Regional economic integration organizations such as the European Union also participated. Government involvement has been effective after hearing carefully the voices of the maritime industry - and not just those on the Working Group. (Shazly, 2014, 64). The focus was on cooperation rather than confrontation (as in the Hamburg Rules) and on efforts to develop a balanced legal instrument.

Accordingly, several sessions were held subsequently in order to achieve those goals. (Report 36, 2003, 57) (Report 37, 2004, 58) (Report 38, 2005, 59) (Report 39, 2006, 60) (Report 40, 2007, 61). At its 41st session (2008), the Working Group decided to establish a final drafting team to assist the Secretariat in preparing a revised draft of the draft convention. The revised text should be the implementation of the amendments to the text decided by the Working Group in all the official languages of the United Nations. At that session, the document was adopted and was the result of negotiations held in the framework of the Working Group from 2002 to 2008. The Working Group further refined and clarified its provisions and took into account the consensus reached. In addition to the deliberations and conclusions of previous plenary sessions of the General Assembly of the United Nations, following the review of the draft Convention and its deliberations at that session, the final version was adopted. (Report 41, 2008, 63).

The final version approved was sent to the United Nations General Assembly, which approved it on 11 December 2008 in the form of an international convention. By resolution 63/122, the General Assembly recognized the official name of the Convention, namely, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. It recommended, however, that the Convention be called the "Rotterdam Rules" as an informal designation[(5)].

The Dutch government organized a large ceremony on 23 September 2009 in Rotterdam and invited all countries of the world to participate and sign the convention. Representatives from nineteen countries[(6)] attended the ceremony. The total number of signatories to the Convention is now 21 states. (Ghannam, 2012, 61). The Convention thus entered into force internationally on the first day of the month following the expiration of one year after the deposit of the twentieth instrument of ratification, acceptance, approval or accession. The international entry into force of the Convention, pursuant to Article 94 of its rules, requires accession, approval, ratification or acceptance by twenty States. (Shazly, 2014, 24).

We note that the countries that signed the agreement in its final form on 23 September 2009, some of which have their own maritime fleets (shipping companies) such as Greece, the Netherlands, Norway, Poland, and Spain, and some of which have no fleet, such as the Americas and African countries such as Cameroon, Madagascar, Togo, and Nigeria. The participation of these countries in maritime trade is 25% of the total volume of the world maritime trade, according to the United Nations Annual Report, 2009 (Shazly, 2014, 25).

As for the position of the Arab States with respect to the Convention, since the Arab States are among the shippers and not among the carriers, their appreciation of the texts of the Convention will take place in this way. For this reason, the Council of Arab Ministers of Transport met in its 43rd session on 27 October 2009, following the signing of the Rotterdam Rules in the Netherlands. The Executive Bureau of the council made a recommendation to the Arab countries to postpone the signing of the agreement for further study and to be aware of the legal implications of the signing of the Arab countries as shippers. Several workshops and conferences were organized in this regard[(7)], including the workshop held on the recommendation of the League of Arab States and the Council of Arab Ministers of Transport, and in the presence of 200 delegates from relevant Arab governmental and civil society

(5)The official website of the United Nations Commission on International Trade Law: (https;//uncitral.org/en/30 Desember 2020).

(6)They are: Armenia, Congo, Denmark, France, Gabon, Ghana, Greece, Guinea, Netherlands, Nigeria, Norway, Poland, Senegal, Spain, Switzerland, USA, Cameroon and Madagascar. We note that there is not yet any Arab country among the signatories, so it was necessary for the Arab countries to move to study the draft convention and sign it.

(7)A workshop was held on 2-3 February 2010, under the title "Identifying and Analyzing the Pros and Cons of the Rotterdam Rules 2008". Available on http://www.marinewstv.com.(12 June 2016) Likewise, the Arab Federation of Chambers of Maritime Navigation held the "Amman Seminar in Jordan on 21 March 2010 at the Sheraton Hotel, Amman. Available on: https://www.arabfcs.org/en/(17 July 2016)

organizations from 15 Arab countries[8]. (Tohamy, 2010). The objective of the seminar was to form a common Arab view as to the extent of adherence to this convention.

The workshop came out with the so-called "2010 Alexandria Declaration on an Arab Vision for the 2008 Rotterdam Rules"[9], which highlighted the advantages and disadvantages of the new agreement. The declaration was concluded with many points, the most important of which are:

The Rotterdam Rules have many advantages, and their entry into force should have the following legal and economic benefits:

1. Rotterdam Rules must take into account the requirements of globalization of trade, transport services and value-added logistics services, in particular the need for a single global law.
2. The Rotterdam Rules must be contemporary by incorporating many modern legal provisions suitable for modern maritime transport in the modern age of containerized transport, integrating door-to-door and multimodal transport services, electronic exchange of information, documents and records, specialization of supply chain management, development of freight relays for logistics service providers operating through large and experienced economic entities.
3. The Rotterdam Rules must extend its provisions to all parties involved in maritime transport, especially the maritime exporting party, to which ship and unloading companies are located in ports and container transfer stations, thus promoting the use of the main ports in the Arab states through the entry into force of these regulations in these states (especially Egypt, Oman, and Yemen).
4. The Rotterdam Rules must clarify the obligations of the contracting parties, which will reduce the possibility of disputes, thereby reducing transportation costs and securing risks.
5. The Rotterdam Rules deny Shipper the right to be relieved of liability for Nautical Fault[10].

The declaration made several important recommendations, including:

- To postpone ratification of this Convention until a set of measures regulating transport and trade between these States, such as the speedy ratification of the Convention on Multimodal Transport among the Arab Countries[11], the challenge of Arab maritime legislation and the unifying acceptance or rejection of the Convention by all States members of the League of Arab States.
- To form a committee under the auspices of the League of Arab States to review the Arabic text of the Rotterdam Rules and to address the United Nations Commission on International Trade Law with the result of the review. The Arab States Committee on International Trade Law (ACGFTC) was formed.

(8)The Arab countries that attended the workshop are (Jordan, Tunisia, Djibouti, Saudi Arabia, Sudan, Syria, Iraq, Oman, Palestine, Qatar, Kuwait, Libya, Egypt, Morocco and Yemen). In addition, five Arab qualitative federations, the Arab Society for Commercial and Maritime Law, many deans of faculties of law and commerce, judges of maritime circuits in Egyptian courts, business, trade and insurance organizations, and a delegation of experts from the United Nations Committee on International Trade Law, led by Mr. Karsten, also attended. Available on : http://www.marinewstv.com.(12 June 2016)

(9)The Syrian Center for Maritime Law, Thursday, 4/8/2010, available on: http://maritime-syria.blogspot.com/2010/04/2010-2008-2008-2-3-2010-2008-327-2009.html?m=1. For more details about the Alexandria Declaration 2010, see: http://www.marinewstv.com. (12 June 2016)

(10)These studies were presented by: the Federation of Arab Sea Ports, the Arab Federation of Chambers of Navigation, the Arab Federation of Maritime Carriers, the Federation of Arab Chambers of Commerce, the Alexandria Businessmen Association, the Federation of Egyptian Industries, the Egyptian Chamber of Commerce in Alexandria, the Arab Society for Commercial and Maritime Law, and the experts of the United Nations Committee on International Trade Law. During their discussion, reservations were recorded by the delegations of the State of Sudan and the objection of the representative of the Arab Union for Deportees of Goods and Logistics. Available on the website of the Syrian Center for Maritime Law: http://maritime-syria.blogspot.com/2010/04/2010-2008-2008-2-3-2010-2008-327-2009.html?m=1.

(11)It is worth noting that, given the urgent need for legal rules regulating the provisions of multimodal transport, the Council of Arab Ministers of Transport approved the multimodal transport agreement between Arab countries according to its decision (315) of 29/10/2008 and with the approval of the League of Arab States by resolution (7123) on 9/9/2009, as this convention entered into force on 11 August 2011, with the accession of three Arab countries, Jordan, Syria, and then Saudi Arabia on 12 July 2011, and then the United Arab Emirates joined it on 20 February 2012, thus becoming the number of member states in the convention Four countries. See website: http://maritime-syria.blogspot.com/2010/04/2010-2008-2008-2-3-2010-2008-327-2009.html?m=1.

The researcher believes that the recommendations contained in the 2010 AD Alexandria Declaration on an Arab vision for the Rotterdam Rules 2008 AD were not at the required level and appropriate to the size and importance of the agreement for the following reasons:

A. Referring to the reports issued by the United Nations Committee on International Trade Law and published on the committee's website from No. (36) to Report No. (41) mentioned above, it is clear that the Arab countries were not contributing regularly, effectively and continuously to the sessions held at the United Nations for the period from From 2002 to 2008, which amounted to 25 rounds of continuous deliberations, and included maritime transport experts from all over the world. Tunisia was one of the most Arab countries participating in the sessions of the third working group, with 11 sessions, followed by Kuwait and Algeria 10 sessions, Morocco 7 sessions, Lebanon and Yemen 6 sessions, Saudi Arabia 5 sessions, and Iraq. 4 sessions, Libya 3 sessions, Egypt, Sudan and Qatar 2 sessions and one session for Bahrain, Jordan and Syria.

B. The contributions of the Arab countries to the preparation and drafting of the agreement are modest and intermittent. The reason for this is that the delegations representing the Arab countries have not always included specialists in the field of international maritime transport and international trade and related laws in most sessions, conferences and discussions related to the agreement, especially since these missions They are appointed according to political determinants, and they continue to work and represent for short periods of time, and they are replaced every once in a while. Therefore, the Arab work did not keep up effectively and regularly with all stages of preparing the agreement from 1996 AD until 2008 AD.

C. C - Despite the modest contributions of the Arab countries to the sessions, conferences and discussions of the agreement, these contributions were not cumulative to present a unified Arab vision in each of the provisions of the agreement and in each session or conference held to discuss the agreement, and the contributions that were presented are individual visions For the Arab countries, it was not presented in a unified coordination container for the Arab countries.

D. The agreement was not discussed at the Arab level until after its approval in the year 2008 AD based on the recommendations of the Council of Arab Ministers of Transport in the Arab League at its 43rd session on October 27, 2009 AD after signing the Rotterdam Rules in the Netherlands, and the Executive Office of the Council issued a recommendation to the Arab countries to postpone signing the agreement. The agreement is for further study and knowledge of the legal implications of the signing of the Arab countries as countries of shippers, and it was necessary that the joint Arab work on maritime transport preceded this recommendation and kept pace with, continuous and regular stages of preparing the agreement from 1996 AD until 2008 AD.

E. What is considered a correct path towards modernizing Arab legislation is supposed to be done through reviewing the agreement, its characteristics, stages of preparation and discussions that are indicated in the reports issued by the International Committee for Commercial Law. In addition, the Arab mechanisms for joint Arab action themselves need to be updated away from Bureaucracy and outdated working mechanisms.

F. Despite the positive aspects of the announcement of the agreement and its virtues, it did not express clear reasons for not joining, or expressing fears of not joining or postponing it in a scientific or realistic manner, which makes the recommendations of the announcement inappropriate and not at the required level in The size and significance of the agreement.

Third Demand: Key features of the Rotterdam Rules

After the failures and all previous efforts by UN committees in the preparatory phases of the Rotterdam Rules for more than twelve years to create a unified international maritime transport regime, Hamburg Rules have developed clear solutions to avoid the legal and judicial shortcomings of international maritime transport, whose provisions are generally characterized by many features.

The Rotterdam Rules of 2008, compared to previous international conventions, have several characteristics:

1. Based on the objective of the international legislator to elaborate an international convention to unify transport law, adopt other means related to door-to-door freight transport, modernize law of freight transport enshrined in previous conventions, take into account the technical and commercial developments, including electronic commerce, eliminate legal difficulties arising from the application of previous conventions in the field of international transport, and to harmonize the responsibility regimes already in place, transport modes through the creation of a single international regime for multimodal transport. The Convention has been represented by its texts as a unified regime that takes into account many of the technological and commercial developments in maritime transport since the issuance of the earlier Conventions, including containerization and

multimodal transport, where door-to-door traffic is carried out under a single contract. The Convention provides for a globally binding regime acceptable to all States, rather than the duplicative regimes in place under the 1924 Brussels Convention and the 1978 Hamburg Rules and the division between these conventions.(Shazly, 2014, 56-57)(Khalil,2019, 20).

2. The Convention is characterized by coherence of its provisions in its different chapters, as well as interrelation and order of these provisions in a way that would lead to their understanding and absence of any contradiction or confusion in understanding of the legal provisions contained in the articles of the Convention, leading to the proper application of these provisions.
3. The Rotterdam Convention has the advantage of removing the ambiguity of the provisions of the two previous conventions (Brussels and Hamburg rules), as it has elaborated on the various details of maritime transport, developed the legal provisions regulating it, envisioned possible assumptions and enacted the appropriate legal rules for it in a way that leaves little room for interpretation. One of the features of the Convention's concern is that it has bridged the gap between the current and the multimodal transport regime, which emerged in the course of the application of the previous conventions and the provisions of which have been incapable. (Ghannam, 2012, 81), by providing a definition of the "contract of carriage" that includes carriage by other modes such as air, land, rail or river transport, provided that there is a sea voyage within it, and does not require the carriage to be fully maritime as the previous two conventions. (Makhlouf, 13) (Ghannam, 2012, 22) (Shazly, 2014, 85).
4. In contrast to previous conventions, the Rotterdam Convention is characterized by using many newly developed terms that have not been used in other conventions, such as Volume Contract[(12)], Performing Party[(13)], Maritime Performing Party[(14)], Documentary Shipper[(15)], Electronic Transport Record[(16)], Electronic Communication[(17)], Controlling Party[(18)], and Right of Control[(19)]. The aim of which is to keep pace with technological and commercial developments, including electronic commerce, and to remove legal difficulties resulting from the application of previous conventions in the field of international transport. (Basaid, 2012, 6) (Rashed, 2017, 3).

(12)The Rotterdam Rules defined the volume contract as (a contract of carriage that provides for the transportation of a specified quantity of goods in a series of shipments within an agreed period of time, and the quantity determination may include a minimum, maximum, or a certain range). See para. (2) of Article (1) of the Rotterdam Rules.

(13)The Rotterdam Rules define the performing party as (any person other than the carrier who performs or undertakes to perform any of the duties of the carrier under the contract of carriage in connection with the receipt, loading, handling, stowage, transportation, safekeeping, care, unloading or delivery of goods, when that person is acting in an appropriate manner), directly at the request of the carrier or under the supervision or control of the carrier). See para. (6) of Article (1) of the Rotterdam Rules.

(14)The Rotterdam Rules define the maritime performing party as (any performing party as long as it performs or undertakes to perform any of the duties of the carrier during the period between the arrival of the goods at the port of loading the ship and its departure from the port of unloading the ship, and the inland carrier is not a performing party at sea unless it performs or undertakes to Performs its services exclusively within the port area). See para. (7) of Article (1) of the Rotterdam Rules.

(15)The Rotterdam Rules define the documentary shipper as (any person other than the shipper who accepts to be called a "shipper" in the transport document or electronic transport record). See para. (9) of Article (1) of the Rotterdam Rules.

(16)The Rotterdam Rules define the electronic transport record as (the information contained in one or more messages issued by the carrier by electronic means of communication under the contract of carriage, including information logically linked to the electronic transport record by means of attachments or otherwise connected to the electronic transport record during or after its issuance by the carrier so that it becomes part of the electronic transport record that proves the carrier's receipt of the goods and proves or contains the contract of carriage). See para. (18) of Article (1) of the Rotterdam Rules.

(17)The Rotterdam Rules define electronic communication as (information prepared, sent, selected, or shameful by electronic, visual, digital, or similar means, leading to making the information contained in the speech accessible so that it can be referred to later). See para. (17) of Article (1) of the Rotterdam Rules.

(18)The Rotterdam Rules define the controlling party as ("a person who is entitled, under Article 5, to exercise the right of control"). See para. (13) of Article (1) of the Rotterdam Rules.

(19)The Rules defined the right of control as (the right required by the contract of carriage to give instructions to the carrier in respect of the goods in accordance with the provisions of chapter 10, see para. (12) of Article (1) of the Rotterdam Rules).

5. The Rotterdam Convention is distinct from previous conventions that it extended the period of a Carrier's responsibility, which was under the 1934 Brussels Convention applied from the time the cargo is loaded to the vessel to the time it is discharged, otherwise known as "tackle to tackle". When the 1978 Hamburg Convention came, it is extended somewhat so include while the cargo is in the carrier's custody at the loading port, during transport and at the discharge port. However, the Rotterdam Convention further extended the period of a Carrier's responsibility for the goods by making it dependent on the will of the parties to the contract of carriage (the carrier and the shipper), and allows the parties to agree on the time and place of receipt and delivery of the goods and include two particular conditions to be retained for the Convention:
   a. The time of receipt of the goods shall not be subsequent to the beginning of their initial loading under the contract of carriage; or
   b. "The time of delivery of the goods to the consignee shall not be prior to the completion of the discharge under the contract of carriage.
   c. The time of delivery of the goods to the consignee shall not be prior to the completion of their final discharge under the contract of carriage."

The Convention also extended its provisions on the period of the goods carriage from the door of the shipper to the door of the consignee, establishing that the period of carrier's responsibility begins with respect to the goods when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.(Rules,2008, 2-3).

6. One of the advantages of the Rotterdam Rules is limitation of the cases of exemption from Carrier's responsibility to the contrary of the Brussels Convention and its amendments. (Brussels, 1924, 4) (Hamdi, 1998, 79). As the Carrier's responsibility for nautical fault and administrative errors was exempted by the Brussels Convention, and as originated from the US Harter Act. (Rashed, 2019, 6). Nautical fault is a professional fault related to the default the master in navigation, management or in the operation of a ship. In addition to the errors in the management of the ship associated with the neglect of the duties relating to the ship, which directly or indirectly damage the goods, such as failure to maintain or fill the ship's tanks to maintain its balance. The Rotterdam Rules abolished the carrier's exemption from nautical fault and management errors, and even it reinforced this by expressly providing for the carrier's length of responsibility to include any act or omission that constitutes a breach of the obligations established by the Rules, whether committed by the carrier or its subordinates. In addition, he Rotterdam Rules made the carrier's obligation to exercise due diligence to get ship ready and navigable before, at the beginning and during the voyage. This is most compatible with recent developments in the transport industry and international standards in the ship making, maintenance, quality control and safety of ships. It is also more suited to the technological revolution whereby ships are under constant control by satellite and GPS. Consequently, it is not possible to rely on the carrier's loss of control of the ship after sailing. (Rashed, 2019, 27-28) (Komani, 1996, 124-125).
7. The Rotterdam Rules provide a significant advantage, compared to previous conventions, to the Shippers by increasing the Shipper's limit of compensation payable by the Carrier to the Shipper for any breach by the Carrier of its duties. This would result in affected cargo owners receiving satisfactory compensation that would cover all damage, whether the carriage by package, unit or kilogram. (Wael, 2013, 110-112). The new limits in the Brussels Protocol of 1968 were "10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher". The new limits in the Brussels Protocol of 1968 were "10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher". In the Hamburg Rules adopted the SDR that has been previously adopted by the Brussels Protocol of 1979, the limits are "835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher". The limits in the Rotterdam Rules are "875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever is higher". In the case of delay, the compensation limit is two and a half times payable for the goods delayed. (Hamburg, 1978, 6). The Rotterdam Rules have increased the maximum compensation for loss or damage by more than in the past, reaching 875 special drawing units per package or other freight unit or three special units per kilogram of total gross weight of goods. The Rotterdam Rules have also increased the maximum compensation for the cases of loss or damage by more than in the past. In the case of delay in delivery of the goods, the maximum compensation, as

was under the Hamburg Rules, is two and a half times the freight payable for the goods in delay. (Wael, 2013, 112) (Rules, 2008, Art. 59).

8. The Rotterdam Rules regulate the bulk transport contract in the electronic transport record, which the Rules defined as the information contained in one or more messages issued by the carrier by means of an electronic means of communication under the contract of carriage, including information logically connected to the electronic transport record by attachments or otherwise connected to the electronic transport record so as to become part of it. (Rules, 2008, Art.18). However, it required the Convention of the parties to the transport contract to use it in place of the transport documents for its use. (Rules, 2008, Art. 10). This is in line with the objectives of the Convention aimed at modernizing international conventions in line with the technological and commercial developments in the contracts for the carriage of goods by sea. (Rashed, 2017, 12).

After reviewing the general characteristics of the aforementioned Rotterdam rules, we find that they dealt with the division in the rules of international transport under the Brussels and Hamburg conventions through the following:

1. The provisions of the Rotterdam Rules were not limited to regulating the bill of lading as it was in the Brussels Convention or limited to regulating maritime transport. Rather, the rules expanded their scope of application and regulated the provisions of the bill of lading, types and forms of maritime transport, in addition to regulating multimodal transport by land, rail, air, river, and the maritime system. As a basic system for the application of the aforementioned multimedia case rules.
2. The Rotterdam Rules exceeded the shortcomings of the accurate description of the tasks and responsibilities of the two transport parties contained in the Brussels and Hamburg conventions, as the rules expanded in their clarification of the tasks and responsibilities of the transport parties (the carrier and the shipper). profile.
3. The Rotterdam Rules expanded the scope of time for the application of its provisions, including the scope contained in the Brussels and Hamburg Conventions, with the scope of its provisions covering the period of transport of goods from the door of the shipper to the door of the consignee.
4. The Rotterdam Rules reduced the cases of exempting the carrier from liability, which were contained in the Brussels Convention and its amendments, and stressed the cases of the carrier's responsibility - in contrast to the Hamburg Convention - by enumerating the type of his obligations, sometimes as to achieve the result or purpose of the transport represented by the arrival of the goods to the place of destination at the specified time in a safe and sound manner. Any partial loss or damage, and at other times that the purpose of these obligations is to exercise due care and not reasonable or sufficient, especially with regard to preparing the ship and making it seaworthy before, at the beginning and during the voyage.
5. The Rotterdam Rules increased the limit of compensation to which the carrier is bound as a result of his breach of his duties, compared to previous agreements, which will lead to the injured owners of goods obtaining satisfactory compensation that may cover all the damages that may befall them.
6. The Rotterdam Rules kept pace with recent developments in electronic technology by updating the provisions of the transport document in accordance with that development and organizing the electronic transport record, contrary to the shortcomings contained in the Brussels and Hamburg Conventions in this regard.
7. The indicators that we will present in the second and third sections are one of the forms of dealing with the Rotterdam Rules for division at the international level in the transport rules under the Brussels and Hamburg Conventions, and according to the following detail.

Section 2

Preliminary and Basic Indicators of balance in the Rotterdam rules

The Rotterdam Rules have provided a balanced regime between the rights and obligations of the parties to the contract of carriage, the carrier and the shipper, manifestations(20) of this balance and its indications, which the study will discuss in the following demands:

(20)To reach the goal of the study, the researcher considers the term "manifestations" in the sense of indicators.

First Demand

Indicators of the balancing of the Rotterdam Rules Prior to its Issuance

The indicators are as follows:

First Indicator: The procedures and stages of Preparation of the Convention. The procedures and stages of Preparation of the Convention are an important indicator of its balancing. The Convention was prepared in several phases that lasted (12) years, starting in 1996 and ending in 2008. This shows that the Convention has taken sufficient time to prepare the questionnaire and to gather information on the legal, practical and logistical problems associated with international transport, the related conventions of many international actors and the application of international and local transport rules at the international or local levels, to gather such considerable information from various sources, to analyze it and to prepare the relevant and related results with a view to determining what is to be addressed in the international convention, followed by the initial drafting of the draft convention in 2001. The project was then discussed, scrutinized and presented views and ideas from 2001 to 2008 and discussed in an effective and international manner, with the participation of international experts from various countries of the world, in addition to the international commissions participating in the event, the competent organizations of the United Nations, civil society organizations and concerned professionals and insurers at the international level. The discussions also took place at the level of the working group in charge, at the International Trade Commission and the International Maritime Commission, or at the general sessions of the General Assembly, and the accompanying introduction of numerous working papers submitted by major States and other States interested in international transport, and the discussion of those ideas and their conclusions and the formation of a group with final legal drafting and legal drafting. All of this is clear evidence that the Convention was prepared with high professionalism and an unparalleled balance in any international convention. (Report 41, 2008, 654).

Second Indicator: Rules for discussion and deliberation in the preparation of the Convention. Through the discussion and deliberation rules in force at the stages of the elaboration of the Convention, those rules have been based on many principles, such as the principle of being professional in legal or craftsmanship, distance from the political atmosphere that affects States, the principle of freedom of expression and the submission of ideas without limits, the holding and deliberation of the debate in general or at the level of the Committees, and the drawing of conclusions that can be drawn in accordance with the principle of conciliation of views as far as possible. In the event of incompatibility, the determination of such issues shall be postponed and resubmitted at the general level for the period of discussion, deliberation or voting. All of these principles are derived from the reports issued by the International Trade Commission of the United Nations, in which each small and large discussion took place, the opinions expressed on them at the internal level in the committees or in general, the submissions of international papers and the results of the discussions drawn therefrom, as well as the reports issued by the Secretariat of the Secretary-General or the General Assembly of the United Nations for the period of preparing for the Convention, which is 12 years. All these principles emphasize high professionalism in the preparation of the Convention and balance in the drawing of opinions and judgments in accordance with professional and legal principles, independent of fanaticism or bigotry. (Report 41, 2008, 63).

The researcher believes that these two indicators are sufficient to confirm the balanced system between the responsibilities of the main transport parties that the agreement came with. Preparation and preparation for it by international committees and specialized bodies and organizations carried out their work with high professionalism, using the means and tools of scientific research in the description, statistics, analysis and comparison of the collected and taken information. From various countries and competent bodies for the period prior to the preparation of the agreement or during the period of preparation and preparation for it, and after that it presented the results of its work for discussion in many sessions and conferences in which most countries of the world participated, whether the shipping countries that have marine fleets and supply chains associated with them, or the shipping countries, which made them a destination Acceptance and recognition, confirmed by the long period of time in the stages of preparing the agreement, which lasted for a period of (12) years to end with outputs that were prepared based on scientific and fair principles and his hadith, and the professional and high professionalism was present in preparing it and extracting the opinions and provisions contained therein, which makes it an unparalleled agreement between international agreements.

Second Demand

Indicators of balance in the legal bases for the responsibilities of the shipper according to the Rotterdam Rules

Legal responsibility, in general, rests on one of the following three bases:

1. Fault To Be Proven. Here, the burden of proving the fault that caused the damage is on the creditor, the shipper or the consignee, who must prove the fault of the defendant, the debtor, the carrier claiming compensation, and, in this case, his obligation to give due care.
2. Supposed Fault. Any presumption of error is the presumption of error on the part of the debtor, the carrier, who has the burden of proving that he or she has not committed such a fault by demonstrating that he and his subordinates have taken all the necessary measures to prevent the injury so that he is exempt from liability, and his obligation is to take care while assuming that he or she has committed the error.
3. Assumed Responsibility. Any presumption of responsibility and here the burden of proof, as in the previous case, lies with the defendant, the debtor, the carrier, but the content of such proof is different this time. It is not enough for the debtor to prove that it did not commit the fault until it is relieved of responsibility. It must prove the foreign cause which caused the damage to which it or one of its subordinates did not cause it, and the carrier's obligation is here to produce a result. (Sharkawy and Qalyoubi, 2008, 454) (Fiki, 2008, 117) (Diwidar, 2001, 108). We will explain the legal basis for liability of the carriers and its balance in the following terms:

a. The Legal Basis for Shipper's Responsibility under the Rotterdam Rules:

The contractual responsibility of the shipper under all international Conventions is based on the fault to be proved and, in this regard, the question of who is the burden of proof is raised. The prevailing view is that it is the responsibility of the claimant to establish evidence of an error by the shipper, its employees or agents, and the causal relationship between the Fault and the Damage. (Hamdi, 1998, 128). The shipper is owed an obligation of care, not supposed to be liable, and the carrier is obliged to provide evidence of the fault of the shipper.

The Rotterdam Rules are effective on the same basis, i.e., liability for fault to be established, which requires the carrier to prove the harm, the fault of the shipper and the causal relationship between the shipper, defined as "the breach of the shipper's obligations under this Convention", the matter of failure to carry out or miscarry its contractual obligations, the shipper is liable for loss or damage resulting from its breach of the obligations set forth in the Convention, , and that is the first indicator of the balance contained therein, and the next indicator is the fulfillment of his responsibility - i.e. the shipper - and for acts or omissions by the person entrusted to perform any of his duties, including employees, agents and subcontractors, which is an indication of the shipper's performance of its contractual liability, and the shipper is liable only for the part of the liability which belongs to the said individuals or persons. (Abbas, 2012, 65).

b. Also the final indicator related to responsibility of the shipper, in accordance with the Rotterdam Rules, is also subject to strict liability for loss or damage caused by a breach of the duty to submit to the carrier in a correct and sincere manner data and information relating to the goods and their nature (whether or not hazardous). (Rules, 2008, Art. 3, 32).

The objective responsibility of the shipper is based on the fact that its act is not based on fault but on the fact that the damage has been caused even if it is proven to have been the result of indifference or force majeure. It depend on the fact that the Rules provide for the shipper to ensure to the carrier the accuracy of the information relating to dangerous goods, and the shipper has all the instructions, information and documents that the carrier may need to avoid loss or damage. (Ghannam, 2012, 210).

Although the Convention has struck a remarkable balance between the rights and obligations of the carrier and the shipper to a great extent, some jurisprudence holds that some of the imbalance embodied in the provisions of this Convention has expanded the limitation of liability to the carrier to cover not only the damage resulting from loss, damage or delay in the arrival of the goods, but also the loss resulting from a breach of its generally mandated obligations under the Convention, such as its failure to provide the shipper with proper information relating to the contract of carriage.(Rules,2008,Art. 59, 79,).

This provision results in an imbalance between the carrier's rights and the shipper's rights, since the shipper is not able to invoke the limited responsibility in the event that it fails to provide the carrier with accurate information about the goods

(Rules,2008,Art.31,79). It follows that a carrier who fails to provide the shipper with information can hold to limited responsibility, and a shipper who fails to provide the carrier with the information is not able to hold to the limited responsibility.(Ghannam,2012, 29).

In the opinion of the researcher, that view is not correct. In practice, shippers are protected from excessive claims because their responsibilities are limited to the extent of harm caused by their failure to fulfil their obligations under international texts. Shippers should not be allowed to shirk their responsibilities in cases where their responsibilities are presumed in accordance with legislative provisions the shipper's breach of certain obligations, particularly when dangerous goods are involved, may harm third parties and endanger the life and safety of mankind, Such damages cannot reasonably be limited by legislative provisions with certain physical limits s obligations to provide adequate information on movable goods. This is not a breach of the Rotterdam Rules' principle of balance.

Third Demand: Indicators of balance in the legal bases of carrier responsibilities according to the Rotterdam Rules

The determination of the basis of the carrier's responsibility is crucial because of different legal regimes of contract liability for default and their repercussions on the evidence, the determination of compensation, and the parties to the claim for liability.(Diwidar, 1999, 250). As such, we need to state that the maritime carrier's liability in contract liability, which is the consequence of its breach of a contractual obligation, is to deliver the goods safely to the port of arrival. The Commission's decision is in accordance with the Convention's decision. To give effect to the rules of contract responsibility, two conditions must be met: first, we must have a contract valid. Second, breach of the obligations generated by the contract may result in damage to the consignee. (Taha, 1992, 228). Some of the responsibilities of the contract may be confused with the default in terms of some of the obligations generated by the contract, which will require that we clarify them in order to prevent such ambiguity. A precise definition of the indicators of balance in the legal bases of the responsibilities of the carrier .We will address the following items:

1- The general basis of the liability assumed on the carrier by achieving a result: The Rotterdam Rules clarified the basis of carrier liability for loss, damage, or delay in general on the basis of the liability of the carrier with a commitment to the performance of a result. The Rotterdam Rules set out the liability of the carrier for loss, damage, or delay in the event of a loss, as well as for the performance of a result of the liability of the carrier. The liability of the carrier as a general asset is based on the alleged fault, or that the liability of the carrier under these rules is not objective to be based on mere injury, but rather personal liability based on the idea of the alleged fault, i.e. the carrier is bound by the presumption of fault so that the claimant needs only to prove that the subsequent damage occurred while the goods were in the carrier's custody, presuming the carrier's fault and the causal relationship between the alleged fault and the actual damage assumes the carrier's liability. (Hatoum, 2011, 361) (Wael, 2013, 95).

The Rotterdam Rules structured the basis of the carrier's liability in a positive and explicit manner, placing the carrier with an obligation to maintain the integrity of the goods and the date of their delivery. The Rotterdam Rules. If the breach of the contract is the fault of the carrier, and its liability is incurred provided that the shipper or the consignee of the claimant proves that the damage occurred during the period of responsibility of the carrier as specified in the Rules, and it does not have to prove the carrier's fault because it is bound by the presumption of fault. (Rules, 2008, Art. 17).

The Rules supported this provision when referring to the provisions in chapter IV, which confirmed the responsibility of the carrier on the basis of the assumed responsibility deriving from its obligation to achieve a result where the Rules provided that [the carrier, subject to the provisions of this Convention and in accordance with the provisions of the contract of carriage, transports the goods to the place of destination and delivers them to the consignee]. From this text the first indicators of the balance contained in the rules for the legal bases in the responsibilities of the carrier, the most important of which are: Several provisions stand out, most notably:

a. Attribution of rules in the carrier's obligations to the terms of the contract of carriage, making it a contractual liability in the essence of them.
b. Statement of the purpose and purpose of the obligations of the carrier which is the carriage of goods to the place of destination and their delivery to the consignee, and the effect of this is to adapt the legal nature of the carrier's obligation as an obligation of result. (Rules,2008, Art. 1, 12, 13, 14, 15, 16).

The Rules also emphasized the time period of liability of the carrier which begins when the carrier or any party of the performing party receives the goods for the purpose of carriage and ends when the goods are delivered, with an indication of the carrier's liability at the place of delivery or its regulations if it requires that it be handed over to an authority or third party, and that liability begins when it is handed over to that third party or that authority. The Rules confirmed the provision of nullity in the contract of carriage if the time of delivery of the goods is required to be subsequent to the commencement of the loading of the goods or the time of delivery of the goods is prior to the completion of their final discharge under the carriage contract.(Rules,2008, Art. 12).

The researcher believes that this confirms the first indicator in the legal basis for the responsibility of the carrier and that it is .This is a confirmation of the legal basis of the carrier's liability as an assumed liability derived from its obligation to achieve a result based on the factor of the time, place and circumstances of the carriage. Based on its judgment that the receipt is invalid if it is subsequent to the commencement of loading of the goods, the carrier's responsibility must begin from the commencement of its receipt and loading, and not later, of its receipt and loading. It ruled that the delivery was void if it predated the completion of the final voiding whereby the carrier's liability must continue until the completion of the voiding and delivery to the final destination in accordance with the contract of carriage. The carrier's liability is to be maintained in accordance with the Contract of Carriage. The United States Board of Auditors' decision. The Board of the Contract of Carriage. That is an affirmation that the legal basis for its responsibility is to achieve a result, as we have already stated.

The rules also confirmed that sign is the legal basis for the responsibility of the shipper and that it resulted from the contractual liability based on the assumed responsibility and derived from the carrier's obligation to achieve a result, as it obliged the carrier during the period of his responsibility, as previously explained in the previous paragraph, to deliver, load, handle, stow, transport, preserve, take care of, unload and deliver the goods in an appropriate and careful manner. (Rules, 2008, Art.12). The phrase (delivering it appropriately and carefully) indicates that the carrier's obligation is an obligation to achieve a result, which is to transport and deliver the goods safely, and then he is responsible for not achieving the intended result due to the loss or damage of the goods or the delay in their delivery. (Fishai, 2016, 88). Of course, the debtor carrier does not exempt the debtor carrier from this responsibility unless it is proven that his failure to fulfill his obligation is due to a foreign reason that he has no control over, such as force majeure, a sudden accident, the fault of the creditor shipper, or the fault of third parties, or the conditions and reasons that lead to his exemption from responsibility. By itself, it is sufficient to cause destruction, damage or delay, and if these cases are proven to have occurred, then they lead to a new legal situation in which there is no causal relationship between the error and the damage. (Rai and Abdulati, 2003, 72) .As we will explain in the following indicator.

2- Basis of carrier responsibility in error to be proved:

The Rotterdam Rules made when enumerating the cases of exempting the carrier from liability, and these cases express the foreign reason in which there is no causal relationship between the error and the damage.(Rules,2008, Art. 17).

Although the rules mentioned 15 cases to exempt the carrier from liability, it can be divided into three types, including all cases, which are force majeure, the shipper's fault, and the self-defect of the goods. These cases exempt the carrier from the assumed responsibility, and here the burden of proof falls on the carrier that the foreign cause is the one that caused the damage that he or one of his followers does not prove and on the basis of the error that must be proven within three cases as follows:

First Case. The Rules provide that the carrier is liable for all loss, damage, delay, or part of the goods if the claimant proves that the fault of the carrier or a person of its dependents caused or contributed to the event or circumstance on which the carrier relies. (Rules, 2008, Art. 17)". From this paragraph, after the enumeration of the carrier's exoneration cases, it appears that the injured person is able to prove that the accident or circumstance on which the carrier bases its disclaimer was the result of, or at least contributed to, an error by him or his subordinate. The injured do not deny that the accident caused damage to the goods, but rather establish that the carrier made an error that led to the accident causing the damage. The act of the carrier is an act. If the carrier has relied on one of the exempt grounds (exemptions) for payment of its liability, the injured person is able to establish that the fault of the carrier or his representative, the parties referred to in the rules by the representatives of the carrier, is the reason for the payment of the liability. (Rules, 2008, Art. 18).

Second Case. The Rules also added to the preceding case another case of the claimant proving that an event or a circumstance other than the previous exemption had contributed to the loss, damage or delay of the goods, and the carrier was unable to prove that the event or circumstance was not attributable to an error committed by the claimant or any of its dependents (Rules,

2008, Art. 17). This paragraph means that it holds the carrier responsible, but it obliges the injured person to establish that the loss, the damage or delay of the goods is the result of an event or a circumstance that is outside the various situations of the carrier's exemption from liability, but that the carrier can evade liability if it proves that the event or circumstance causing the damage is not attributable to its fault or that of its substitute. The carrier's liability is based on the fault duty of proof, and the disclaimer of liability is based on the need to prove the failure to commit the fault. The difference between this case and the first case is that in the former case the burden of proving that the carrier did not commit a fault or contributed to the accident or the circumstances causing the injury is not required, but merely to prove that the accident or circumstance is among the multiple grounds for exoneration in cases where the carrier is exempt from liability, the presumption of responsibility is in the carrier's interest, but is susceptible to the contrary; in the latter case, the burden of negating the fault lies expressly on the carrier, and liability can only be evaded by proving that the damage is not caused by fault of the carrier. (Hatoum, 2008, 394).

Third Case. The rules provide "the carrier shall also be liable, irrespective of the cases of its exemption from the above-mentioned liability, for all loss, damage, or delay to the goods, or part thereof if the claimant proves that the loss, damage, or delay was caused or contributed to it, or is likely to have caused or contributed to it: the ship is not seaworthy; Or the ship was not properly fitted, equipped and supplied, or the vessels or other parts of the ship in which the goods were transported, or the containers in or on which the carrier provided, were not equipped and safe for the receipt, carriage and preservation of the goods or the other parts of the ship in which the goods were transported, or the containers provided by the carrier in or on which the goods were transported, were not prepared and safe for the carriage and preservation of the goods. The carrier was unable to prove: the loss, damage, or delay did not result from any of the events or the circumstances. Or it has fulfilled its duty of due diligence, under the Rules. (Rules, 2008, Art.14-17). This provision has confirmed the carrier's responsibility for damages to the goods resulting from a breach of the above-mentioned obligations, but the liability is based on the error to be proved, i.e. it must be established that the damage to the goods is caused by the breach of one of the said obligations, contributed to it or is likely to be so. The carrier cannot escape liability unless it proves that it has exercised due diligence to carry out those obligations, or that the loss, damage or delay in delivery of the goods is not due to one of the circumstances relating to the breach of those obligations.(Fishai, 2016, 90).

We note that some jurisprudence considers that the international legislature in this article has facilitated the procurator's process of proof by confronting the carrier in this regard. The claimant has merely demonstrated that the cause of the damage to the goods is likely to be due to the non-seaworthiness of the ship, in a broad sense, or that this cause has contributed to the damage. If it proves that there are indications that the damage may have been caused by the ship's unseaworthiness, this would shift the countervailing burden of proof to the carrier. (Hatoum, 2011, 395).

This provision has been criticized by some scholars as biased to the carrier in placing the burden of proof on the shipper or the consignee, whether in the inadequacy of the ship for navigation or in the non-preparation of the ship, blocks or containers for carriage, which is a difficult proof. The Convention should have exempted the shipper or the consignee from proof in these latter cases. The liability of the carrier is assessed on the basis of the alleged fault so as to strike a reasonable balance between the carrier's exoneration from liability and the right of the shipper or the consignee to compensation for damage caused to the transported goods. (Kaid, 2011, 295).

The researcher believe that Returning to the reports of the Commissions, which summarized all the discussions and inquiries received from States, and the Commission in the opinion of the Commission in this, we find that this is a long-mentioned, and has been criticized, as mentioned above, and has been mentioned, and is the end of the Convention The draft law is clear in proving the aforementioned text with several justifications, the most important of which are:

1. Strong support by the Commission in retaining the current version of those paragraphs was expressed in the paragraphs of the resolution on merits.
2. The burden placed on the shipper is not as great as has been said. In fact, nothing in the draft article requires the shipper to provide conclusive evidence of the ship's unseaworthiness, since the burden of proof will be returned to the carrier as soon as the shipper proves that the damage is likely to have caused or contributed to the ship's unseaworthiness. Paragraph 6 has also been the subject of extensive discussion by the Working Group. The current text is the embodiment of a compromise that many delegations consider to be an essential element of the overall balance of the draft article. (Report 41, 2007, 63).

The researcher supports the findings of the international commission formed to prepare the Rotterdam Rules and as stated in the above-mentioned report. The text of the Rules does not make it clear that the shipper must provide conclusive evidence, but rather points to the possibility of providing probabilistic evidence. This evidence can be extracted from the ship's data, date of establishment, and international or national reports in the control thereof. In the light of the recent information technology revolution, it is possible to obtain via Internet networks from data from international organizations, ad hoc committees or specialized transport companies. The ship line can also be monitored via the GBS regime and full details of the movement of goods from their shipment to their arrival through the various stations. Thus, the possibility of providing possible evidence does not impair the shipper at the present time. Whereas the shippers are usually specialized companies which have the capabilities, information and expertise to be able to know the fault of the carrier in this regard and to provide probable evidence of the fault of the carrier in accordance with the above cases in the event of loss, damage or delay to the goods carried. They cannot promise that criticism of the rules in this regard is but a lack of understanding of the Convention and of the reports issued by the committees formed to prepare it, which the researcher considers to be an explanatory memorandum and which explains the purposes of the international legislator.

Fourth Case. The Rotterdam Rules provided that "the carrier shall not be liable for the loss or damage of the goods during the time it remains undelivered under this article, unless the claimant proves that such loss or damage was caused by the carrier's failure to take such reasonable measures in the existing circumstances to preserve the goods, and that the carrier knew, or should have known, that such failure would result in the loss or damage of the goods". (Rules, 2008, Art. 48). In the case where the goods are deemed not delivered. according to that, the damage to the goods is not in principle for which the carrier is asking the carrier only if the injury proves, inter alia, that:

1. Proof that the loss or damage is due to the carrier's fault of negligence in not taking the reasonable measures in accordance with the circumstances, in order to protect the goods from harm caused to them.
2. The carrier knows or should have known that failure to take the appropriate measures will result in the loss or damage of the goods. There is no doubt that the proof required of the injured plaintiff is extremely difficult, and this emphasis is well placed, since the person who has exposed himself to various physical dangers to the goods for not having received them from the carrier at the time they are ready for delivery cannot blame others. Nevertheless, the Convention gives him the carrier liability, not out of compassion, but to punish the carrier for deviating from the principle of commercial integrity in dealings, if the carrier knows or has to know in the normal course of things that failure to take appropriate measures would cause damage to the goods. From the foregoing, we note that this situation parallels indifference accompanied by the knowledge of the possibility of causing harm, i.e., willful error, which is a mistake in its own gravity which is the same as the fault of the injured in not receiving the goods on time. The drafters of the Convention therefore considered the balance between the two, keeping the injured the burden of proving the fault of the carrier, which is difficult proof, and on the other hand holding the carrier responsible for punishing them for their inappropriateness or indifference. (Hatoum, 2011, 397).

Section 3

Objective Indicators of balancing in the Rotterdam Rules

After we clarified the initial indicators of the balance of the rules before their issuance, and the indicators of balance in the legal bases of the responsibilities of the parties to international transport in accordance with the rules, it is necessary to clarify some of the objective indicators that the rules came in within their general provisions and texts, which confirm their balance between the rights and obligations of the two parties to the contract of transport - the carrier and the shipper - This is what we address in this study through the following two requirements:

First Demand

The objective sings describes the two parties to the international transport and those associated with them in a balanced manner in accordance with the Rotterdam Rules

The Rotterdam Rules avoided the errors resulting from the multiple descriptions and names of the two parties to the transport (the carrier and the shipper), and came with a unified description for each of them and their affiliated parties, taking into

account the type of services and works that they provide within limited and specific limits, which we address in this requirement as follows:

1- The correct definition of the carrier and those associated with it:

Exact description of the responsibilities of the carrier and its associated parties.

The Rotterdam Rules have avoided errors resulting from multiple descriptions and names of the carrier or its associated parties. However, the Rotterdam Rules have provided a unified description of the carrier or its parties, taking into account the type of services they provide within clear temporal and spatial limits, as it takes into account the work they do on behalf of the carrier with the aim of expanding to include the rules for the multimodal transport process. Consequently, there is no need for direct or indirect charging bond, as the transfer document issued according to the Rotterdam Rules accommodates unimodal or multimodal transport. The texts of the Rotterdam Rules were tight and far from the violent contradiction between the texts or the branches of opinions in the interpretations of their texts. The carrier is responsible in the face of others for the death or damage of goods or delay in delivery if the actual carrier is disturbed and referred to in the Rotterdam Rules (the contractor) according to the carriage contract. (Rules,2008,Art.18).If the contracting carrier undertakes to perform the contract of carriage to an actual carrier, the scope of liability extends to every carrier even if it does not contract with the shipper, whether wholly or in part at some stages of carriage.(Hasan,2004, 127).

The new nomenclature (performing party) of the Rotterdam Rules requires that the non-carrier entered into the contract of carriage with the shipper, but the Rotterdam Rules have its advantage in contributing to the work on the performance of the contract of carriage. The Rules indicated that it is the person who carries out or undertakes to perform specific duties in lieu of the carrier, and these obligations are limited to receiving, loading, handling, stowing, transporting, caring for, unloading or delivering goods, based on a contract between the carrier, either directly or indirectly, or on the basis of the location of the carrier under his supervision and control.(Fishai, 2016, 136). Therefore, the performing party concept includes both acting on behalf of the carrier in its transport business, whether at sea or on land as the agent of the ship and the contractor for loading and discharging. (Kaid, 2011, 267). The rules of that adaptation to the parties associated with the carrier were aimed at facilitating multimodal transfers that the carrier might entrust to a performing party or performing parties at the moment. The Rules also provide that the carrier may entrust the carrier to a performing party or performing parties at this time. This distinction in designations and liabilities preserves the shipper's rights at all different stages of carriage.

The new nomenclature (maritime performing party) of the Rules also requires that it has assigned a special responsibility that is not within the scope of the responsibilities of the performing party mentioned above. The maritime performing party bears the duties and responsibilities of the carrier just as the latter bears when the damage to the goods is the result of an error or negligence in the performance of one of the obligations assigned to it by the carrier, provided that the goods have been received in a Contracting State, delivered in a Contracting State or carried out their activities in a port located in a Contracting State, and that the incident causing the damage occurred between the arrival of the goods at the port where they were loaded on the ship and their departure from the port where they were discharged from the ship, during the presence of the goods in the custody of the maritime performing of the carrier or at any other time as long as it was engaged in any of the activities contemplated in the contract of carriage. (Rules, 2008, Art. 19).

Any agreement between the shipper and the carrier regarding the increase in the obligations of the maritime performing party from those mentioned in the agreement or raising the maximum responsibility of the maritime performing party does not apply to the maritime performing party unless the maritime performing party agrees to this explicitly. However, the marine executive party is responsible for neglecting or actions on its part. The maritime performing party is also responsible for any neglect or actions on the part of any person or party appointed or sub-contracted by the maritime performing party to perform the duties of the carrier assigned to the maritime performing party originally. The maritime performing party is entitled to adhere to the confrontation of the affected party in this case, also the two bases of compensation and responsibility defenses. On the other hand, it is not permissible for the affected party to file a direct responsibility for one of the employees of the maritime performing party. (Rules, 2008, Art. 19).

If the basis of the maritime performing party responsibility is independent of the carrier responsibility, but the basis is changed if a common fault of the carrier and of the maritime performing party results in loss, damage or delay in delivery of the goods, then two types of "collective" and "individual" responsibility arise. The first responsibility is intended as joint liability, whereby the injured shipper or consignee can sue both the carrier and the maritime performing party and is entitled to claim compensation due to

them together or from one of them. The individual settlement provides that the injured person is entitled to individually claim the damage caused by an independent claim for appropriate compensation in each proportion of responsibility. (Rules, 2008, Art. 20) (Hatoum, 2011, 373).

2- The correct definition of the shipper and those associated with it:

In the face of the precise characterization of those responsibilities relating to the carrier or its associates, the Rules are described as characteristic of the shipper and its associates and are defined as "the person that enters into the contract of carriage with the carrier".

The Rules did not stop with this but came up with new terms for the shipper, namely, the documentary shipper: I defined it as any person other than the shipper who accepts to be called the "shipper" in the transport document or electronic transport record". In so doing, they broadened the concept of the shipper, which is not only "the actual shipper that provides its goods to the carrier for carriage, but also a documentary shipper whose name is included in the transport documents or electronic transport record". (Rules, 2008, Art. 1).

The Rules also introduce a new term "holder" and define it as: "A person that is in possession of a negotiable transport document; and

I. if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or

II. if the document is a blank endorsed order document or bearer document, is the bearer thereof; or The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in the rules. (Rules, 2008, Art. 1). In addition, the rules include a new term "controlling party" and define it as "the person that is entitled to exercise the right of control, and clarified that: "the shipper is the controlling party unless, at the time of conclusion of the contract of carriage, the consignee, the documentary shipper or another person is designated as the controlling party". (Rules, 2008, Art. 51). All of these terms reflect the operational reality of the contract of carriage between many, overlapping parties that exist, even if they do not have a legislative presence in the national laws or in the previous conventions. The terms are generally related to the operation of the contract of carriage. To emphasize the balance of responsibilities between the carrier and the shipper and their associates, the Rules set out a provision exempting the carrier from liability for the act or omission of the shipper, the consignee, or any person whose business the shipper is responsible for.

The reason for the exemption in the Rules extends to the act or omission and negligence of the shipper which caused the damage, as well as the act or omission of the shipper, the documentary shipper, the controlling party and the consignee, any other person appointed by the shipper to carry out the task instead when the contract of carriage is concluded, or any other person for whom the shipper or the documentary shipper is responsible for the performance of the tasks entrusted to him. As the choice of a ship or container to carry out the transport operation knowing that it is inappropriate for the nature of the goods to be transported, the shipper must choose a vessel that does not have cooling rooms to reduce the freight, or the shipper has not notified the carrier of the special care that the goods require in shipping, packing and preserving the goods. (Rashed, 2019, 15).

Second Demand

Objective Indicators of balance in the responsibilities of the parties to international transport in accordance with the Rotterdam Rules

The rules came with objective indicators within their general provisions and texts that confirmed their balance between the rights and obligations of the two parties to the transport contract - the carrier and the shipper, which we discuss in detail in this requirement according to the following items:

1- The Rules affirmed the obligation of the shipper, when packing the goods in a container or loading them into a cart, to properly and diligently stow, tie, and hold the contents in or on the container or carriage, so as not to cause harm to persons or property". (Rules, 2008, Art. 27).

The best way for the shipper to deliver the goods to the carrier is ready for carriage and in a manner whereby the transport conditions allocated to them are borne, bound, packed in containers or loaded in carriages, are by the shipper's proper packaging and

packaging, which is prepared by the shipper in accordance with the various conditions of carriage, as well as by stowage and by the proper and careful fixing of the contents of the container or carriage, all of which are the shipper's duties in preparing the goods for carriage.(Ariny and Fiky,2003, 5).

The Rules bind the shipper to be responsible for the safety of the shipping process if it was carried out in containers. It is responsible for the fixing of the shipment with the container and for the damage caused to the goods because of its being referred to it. In return, the Rules bind the shipper to safe navigation from the point of shipment to the point of discharge. (Ghannam, 2012, 27).

2- It made the obligation of the carrier to provide a rental vessel, to crew the ship, to equip it and to supply it in accordance with the modern requirements in terms of its equipment, crew, space and places of convenience for the carriage commenced before, at the commencement and during the voyage by sea, in other words, it made the carrier's continuing obligation commenced before the voyage and remained ongoing until its termination. (Rules, 2008, Art. 14) (Fiki, 2008, 14). Similarly, the carrier's obligation with respect to the ship's seaworthiness under the Rotterdam Rules is an obligation of public order, and its infringement may not be agreed upon by the shipper to prepare and make the ship seaworthy, since that, Convention excludes the carrier's obligation, which is void in accordance with the express provisions of the Rules. (Rules, 2008, Art. 79). This is an important objective indicators of the balance contained in the rules between the carrier's responsibilities and the shipper's obligations contained in the rules.

3- Full clarity in the responsibilities of the parties to receive goods:

The Rules clearly regulate the actual delivery of goods and responsibilities among the parties to the sea carriage. Actual delivery in accordance with the Rules is to be carried out only if the carrier issues the transport document explaining the apparent state of the goods. (Rules, 2008, Art. 36). If the carrier waives the actual receipt of the goods and issues the transport document after it has obtained the contracting of the shipper in the (contract of carriage) or electronic transport records, it is a declaration of its responsibility in accordance with the provisions of the Rules, which set forth a provision to protect the shipper from the abuse of the carrier.

The rules stated that "in the event of loss or damage of the goods or of an accident or circumstance causing delay in their delivery during the period of responsibility of the carrier, but only before loading the ship or after unloading from the ship. The provisions of this Convention shall not prevail over the provisions of another international instrument at the time of loss, damage, occurrence or occurrence of the event causing delay."

Through this provision, the carrier is responsible for loss, damage, or delay in accordance with the rules, as well as in accordance with any other international agreement that regulates the liability of the carrier at the time of loss occurring before the goods are loaded on to the ship or after unloading them. This provision also provides shippers with legal protection from the arbitrariness of the carrier, whether in the provisions of the rules. Or any international agreement regulating the provisions of that responsibility and in accordance with the conditions contained in the aforementioned rules, and at the same time the rules obligated the consignee - one of the parties associated with the shipper - to receive the goods upon their arrival at their destination, and not only that, but the rules obligated him to acknowledge that receipt to the carrier or the executing party (Rules, 2008 AD, 43-44). This protects the carrier from abuse by those associated with the shipper in receiving the goods and acknowledging that receipt during its arrival at the place of delivery specified in the transport contract. The carrier if he refuses to receive the goods. The researcher believes that it is unfair to say otherwise, especially since the maritime transport process is one of the commercial issues that are subject to supply and demand and the will is free as long as no contract or agreement for transport is concluded between the carrier and the shipper. The fact of receipt is also one of the issues dealt with by contracts between the carrier and the shipper according to the principle of freedom of contract, and this is what the rules have chosen in their provisions and it is unfair to say that it should be codified with a legislative template.

4- Regulation of the Rotterdam Rules on Prior or Subsequent Carriage by Sea Provisions: Whereas the Rotterdam Rules have indicated in their provisions that they shall not prevail over the provisions contained in another international instrument of the time when the loss, damage, type of event or delay-causing circumstance occurred, if that international instrument would apply to all or any of the activities of the carrier if the shipper had entered into a detailed and direct contract with the carrier in respect of the same carriage stage where the loss, damage or accident or circumstance occurred. (Rules, 2008, Art. 26).

It notes that the term (the provisions of this Convention shall not prevail), meaning that the Rules include provisions which regulate the transport operation where there may be overlap or interference between different transport conventions. In order to

achieve certainty, predictability and uniformity,it made sense to ensure the presence of single legal regime to cover the complete implementation of the transport contract whether by road,rail or other inland means,taking into account the limited shipping network at which a stage relating to the international maritime transport is required.(Shazly,2014, 141).

The Rules provide what is known as a limited network solution to solve the problems relating to any transport agreement when implement in the different stages of the journey in accordance with the terms and conditions of the Rules. They give priority to the Rotterdam Rules-based transport agreements only if the required conditions are met.

That is clearly seen through drafting of the rules that [the provisions of this Convention shall not prevail over what is contained in any international instrument]. (Shazly, 2014, 146).

The researcher believes that the apparent reading of the text would be a mistake to understand that the Rotterdam Rules do not apply if other international convention is in force at the time of the event causing the loss, damage or delay. The rules apply to that event insofar as they give priority to other conventions in force. The aim is that the international legislator has abandoned the principle of division of the transport contract into earlier phase, maritime phase and subsequent phase but made all phases of the transport contract subjected to a single approach, whether at the level of responsibilities, duties or effects, exercising high with high flexibility to apply the provisions of other conventions with the rules without prevailing over them.

5- Safeguards to derogate from the terms of the Rotterdam Rules:

The Rotterdam Rules provide transport parties (Shipper and Carrier) with the possibility to deviate from the provisions of the rules, regardless of whether such derogation increases or decreases the parties' obligations as follows:

First Cass: the Rotterdam Rules provide for volume contracts that allow the parties to enter into mutually negotiated agreements, subject to certain safeguards to derogate from the terms of the Rotterdam Rules, regardless of whether such derogation increases or decreases the obligations. (Rules, 2008, Art. 80). A volume contract is defined in the Rotterdam Rules as "a contract of carriage that provides for the carriage of a specified quantity of cargo in a series of shipments during an agreed period of time. (Rules, 2008, Art. 1).

Second case: in the transfer of living animals, as the rules of Rotterdam did not exclude the transportation of animals from the scope of their application, but they subjected this type of goods to some special rules that are different from the provisions of the rules, especially at the level of obligations and responsibilities imposed under the Convention. (Rules, 2008, Art. 8).

The Rules provided that deviation from their provisions may only be made with respect to excluding or limiting the duties and liabilities of the carrier or maritime performing party when transporting live animals. Unless there is a quantity contract, then such liabilities shall be subject to this Agreement and the rules governing such deviation under this Convention provided that the loss of, damage to or delay in delivery of such goods is not caused by the act or negligence of the carrier or its representative with intent to cause such damage or committed recklessly and with knowledge of the possibility of such damage. (Rules, 2008, Art. 81).

Third case: it is the exceptional transfer organized by the rules of Rotterdam within its provisions, so this type of transfer was subjected to some special rules that are different from its provisions, especially at the level of obligations and responsibilities imposed under the agreement, so it was permissible for the transfer contract to exclude the duties of both the carrier and the marine port or their responsibility Or it limits them if: "The nature of the goods, their condition, or the circumstances, terms and conditions under which the transportation will be carried out, are reasonably justified to conclude a special agreement, provided that the transfer contract concerned is not related to usual commercial shipments that are transferred in the usual context of the profession and not issued to transport these goods a negotiable transfer document or a negotiable electronic transfer record".(Rules, 2008, Art. 81). The result of this text is that the Rotterdam Rules allow deviating from their provisions in the event of exceptional transportation under certain conditions, which are:

The first condition: the existence of what justifies the conclusion of a special agreement that departs from the provisions of the agreement. What justifies such an agreement is one of two things:

- That the goods transferred have a special nature or case, as if the goods were atomic or nuclear materials or the like, or if they were paintings of a famous painter, or they were jewelry, or the goods were vulnerable to damage quickly, due to their current condition as the transport of ripe or semi-ripe fruit that would not bear the risks of the voyage.

- That the circumstances, terms and conditions under which the transport would be carried out is exceptional and unusual, as if the goods are required to be transported to a port that is struck by the siege, or passing alongside an area of armed conflict and it requires an increase in the ship's speed to the maximum degree.
- It is clear from the foregoing that the maritime transport contracts, when they contain one of these two matters, the transport becomes unusual, and is not implemented in the usual context of the profession. In this case, the issue is left to the judge of the matter, estimating whether this type of transfer is justified in a reasonable way to deviate from the provisions of the agreement, after estimating whether it is related to usual commercial shipments or not. (Hatoum, 2011, 406).

The second condition: that this type of transportation has not been issued a negotiable transfer document or an electronic transfer recordable record; This means that the Convention wanted to limit this type of transportation and deviate from the provisions of the Convention on the parties only, so the agreement on this type of transport is a special agreement that concludes between the carrier and the shipper and does not apply to a third party, and if this agreement is mentioned in a negotiable transport document or a negotiable electronic transport record is as if it was not applied to the entire provisions of the agreement. (Hatoum, 2011, 407).

6- Balance in estimating the exemptions between the parties: The exemptions of responsibility with the rules of Rotterdam are part of three main types, which are branched from many reasons and are compulsive force and the mistake of the shipper or the self-defect of the goods, and these reasons authorized under the rules for the carrier to adhere to it to exempt it from responsibility if they occur. On the other hand, we find that the rules separated two types of responsibilities on the shipper. There are responsibilities that did not accept the rules from the shipper to adhere to its exemption from responsibility, and that the shipper of the shipper has done in a final way that does not accept the opposite, and it was presented in a conclusive way from the shipper that does not accept suspicion, which is the responsibilities of the shipper according to the rules of Rotterdam related to the sincere statement and data of the goods to be transferred. The carrier must also prove any loss or damage resulting from any failure by the shipper to the aforementioned duties according to the rules. In this case, the responsibility of the shipping party is supposed, and he must prove the foreign cause of the incidence of damage and that the reason for this is not attributed to it or to any subordinate to it as a condition for the exemption from responsibility. (Rules, 2008, Art. 30). While there are acceptable responsibilities according to the rules where the shipper is relieved of responsibility if it is proven that the cause of the loss or damage or one of its causes is not due to a mistake by the shipper or by any person belonging to it. Those obligations that it accepts while were originally the responsibility of the carrier, then the shipper can adhere to the exemption from responsibility, which are the following obligations:

1. Goods ready for carriage shall be delivered in a state that ensures that they are to be carried under the conditions of transport, including loading, handling, stowage, binding, anchoring and discharging, and that they do not cause harm to persons or property. (Rules, 2008, Art. 27).
2. When the shipper or documentary shipper assumes responsibility of the carrier for loading, handling, stowing or unloading the goods. (Rules, 2008, Art. 27).
3. To pack or load goods in a container and cart and must properly and carefully stow, tie, and anchor the contents in or above the container or cart so that they do not cause harm to persons or property. (Rules, 2008, Art. 27).

The Rules have granted the shipper an exemption from liability in these obligations if it has been established that the cause of the loss or damage or one of its causes is not attributable to an error committed by the shipper or any of its subordinates. The shipper must exercise due and appropriate care to give effect to those obligations. If damage is caused, the shipper must only prove the damage and make a claim against the shipper, who is liable for the damage caused by those obligations, unless it is proved that the cause of the damage is not attributable to its fault or one of its subordinates. (Rules, 2008, Art. 30).

Conclusion

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea - the Rotterdam Rules - has established a unified system for international maritime transport and is balanced in the responsibilities and obligations of its parties. The following are the most important findings and recommendations from this study:

Firstly : Results:

1- The study confirmed that the rules of international maritime transport have become unified at the international level under the Rotterdam rules, which came with legislative solutions to the division indicators that the study dealt with - briefly - of the legislative reality of maritime transport under the Brussels and Hamburg Conventions, where the Rotterdam rules dealt with the manifestations of that division in a comprehensive manner. Scientific, legal, practical and modern through what has been highlighted of its distinctive characteristics in this study.

2- The study showed that the unified nature in the preparation of the Rotterdam Rules expanded in its scope to include most countries of the world in the United Nations, and includes the most important international bodies, organizations, bodies and unions specialized in international trade, maritime transport and international trade law, which confirms the comprehensiveness in their preparation at the international level, and confirms That the rules of international maritime transport have become unified at that level.

3- The study concluded that the recommendations contained in the Alexandria Declaration 2010 regarding an Arab vision for the Rotterdam Rules 2008 AD were not at the required level and appropriate to the size and importance of the agreement.

4- The study confirmed the emergence of many forms of legal protection suitable for the parties to international transport as a result of the balanced system in their responsibilities and obligations in accordance with the Rotterdam Rules, which was able to highlight the indicators of that balance in its provisions on all parties according to what the study indicated in its indicators and in a way that leads to the implementation of the transport process in a safe and sound way The forms of such protection are as follows:

   a. Preparing Carefully the texts and provisions of the rules and passing them through many and varied stages. Specialized international committees, organizations and bodies participated in the preparation of each stage for a period of 12 years, from 1996 AD until 2008 AD. It was discussed with the participation of most countries of the world in international conferences and approved in accordance with objective and fair legal rules away from bias and intolerance. This is one of the forms of legal protection on which the Rotterdam Rules are based, and its impact is reflected on the responsibilities and rights of the transport parties contained in the Rules.

   b. The legal basis for the responsibility of the shipper or any person entrusted to him in the performance of any of his duties is based on two elements (the occurrence of the error and the obligation to prove it), which represents a legal protection for the shipper that requires the carrier to prove the damage, and to prove the fault of the shipper and the causal relationship between them, so the carrier is useless to claim the fault of the shipper, but he must prove it, just as it is useless for the shipper to evade his responsibility if it is proven that the fault occurred on his part or on the part of one of his subordinates.

   c. The responsibility of the shipper in accordance with the Rotterdam rules is based on the objective liability for losses or damages resulting from his failure to provide the data and information related to the goods and their nature to the carrier in a correct and honest manner, and that this responsibility is based on the guarantee of the shipper in achieving the supposed result of the safety and integrity of the shipping process, which is confirmed The carrier has the validity and accuracy of information, documents and instructions related to goods, especially dangerous ones, which represents legal protection for the carrier and the safety and security of the transport process.

   d. Not stipulating a specific limit for the responsibility of the shipper and leaving it to the objective assessment related to the amount of damage, as this is what gives the carrier, on this basis, legal protection and sufficient and appropriate security to limit the shipper's mistakes that may result in unlimited damages to the carrier, and legal protection for the transportation process and its impact that may be infringing. to others.

   e. The liability of the carrier is based on the assumed responsibility deriving from its obligation to achieve a result. It is useless for the carrier to carry out the transportation unless the goods are properly and carefully delivered to the specified place of destination without delay. the rules.

   f. The legal basis based on the availability of two elements (the occurrence of the error and the necessity of proving it) in establishing the responsibility of the carrier and paying the exemption cases mentioned in the rules in his favor. On its release, and that the shipper can prove that the reason for paying this responsibility is due to the fault of the carrier or his representative,

so the liability of the carrier is based on this basis, which is one of the forms of legal protection resulting from the indicators of balance in the rules.

g. The liability of the carrier is based on the burden of proving the negation of the mistake from him and his inability to evade the responsibility except by proving that the damage did not result from his fault or the fault of his representative. Those associated with it are safe and appropriate legal protection in one of the forms of legal protection resulting from the indicators of balance in the rules.

h. The legal basis based on the availability of two elements (the occurrence of the error and the necessity of proving it) in the establishment of the responsibility of the carrier in certain cases, and the transfer of the right to the shipper to establish evidence that the damage to the goods was caused by the breach of the carrier or one of his subordinates with one of the obligations related to the ship and what is directly related to it or Possibly, the carrier cannot evade responsibility before the shipper except by proving that he has exercised due diligence to implement those obligations, or that the loss or damage of the goods or the delay in their delivery is not due to a circumstance related to the breach of those obligations, and if the carrier fails to prove that, his liability is based on This basis, which is one of the forms of legal protection resulting from the indicators of balance in the rules.

i. Granting the rules sufficient security and appropriate legal protection for the carrier and the shipper in their provision to change the criterion of error at times to the harmed - the shipper or those associated with it such as the consignee - in not receiving the goods on the specified date, as this is what protects the carrier from the gravity of that error, and at other times to the carrier due to his departure from The principle of commercial integrity in dealing, if the injured party proves that the carrier knew or should have known according to the normal course of things that his failure to take appropriate measures would cause damage to the goods, and accordingly the responsibility of the carrier is based on this basis, which is one of the forms of legal protection resulting from the balance indicators. in the rules.

j. An accurate description of the names of the carrier and those associated with it and their responsibilities resulting from that description, and a description of its continuity at all times and circumstances, whether in whole or in part, and its extension from the carrier to every carrier even if he is not a party to a direct contractual relationship with the shipper, as this description is one of the forms of legal protection The implications of the equilibrium indicators in the rules in all different and intermodal stages of transport.

k. The accurate description contained in the rules for the shipper and those associated with it, which reflected the executive reality of the transport contract between many, overlapping parties and existed in practice, and this indicator gave the carrier sufficient security and appropriate legal protection against any act, omission or negligence of the shipper or any person associated with him in Duties or responsibilities, which is one of the forms of legal protection resulting from the balance indicators in the rules.

l. The rules hold the shipper responsible for the safety of the shipping process and fix it if it is done in containers, and in return, they oblige the carrier to sail safely from the point of shipment to the point of unloading and delivery. This is one of the forms of legal protection resulting from the indicators of balance in the rules.

m. The rules confirm the responsibility of the carrier with regard to the seaworthiness of the ship and that it is an obligation related to public order, and the nullity of the agreement contrary to that is stipulated in the express provisions of the rules, which is one of the forms of legal protection resulting from the indicators of the balance between the responsibilities of the carrier and the rights of the shipper contained in the rules.

n. Complete clarity in the responsibilities of the carrier to receive the goods and issuance of their document provides legal protection for the shipper from the arbitrariness of the carrier during that, and the survival and continuity of his responsibility in the period before loading the goods or after unloading them, and at the same time the rules obligated the consignee to receive the goods upon their arrival and acknowledge that delivery, and that This provides legal protection for the carrier from abuse associated with the shipper, and is one of the forms of legal protection for the parties in various circumstances and as a consequence of the indicators of balance in the rules.

o. The Rotterdam Rules regulate the provisions of prior or subsequent transport by sea and the responsibilities arising from the multimodal transport contract or the obligations arising from other agreements related to the transport process. Other agreements, which confirms one of the forms of legal protection resulting from the indicators of balance in the rules.

p. The rules permitted the parties to the transport contract to deviate from the provisions of the agreement in specific cases - the volume contract, the exceptional transport, or the transport of animals - in accordance with the controls specified therein, and that authorization is one of the manifestations of the positive freedom established by the rules in its provisions, and it is one of the important objective indicators that indicate the balance contained In it, the obligations of the carrier and the shipper and their responsibilities resulting from the application of the rules in the normal case, or in the event of deviating from their provisions based on specific controls, which is one of the forms of legal protection resulting from the indicators of balance in the rules.

q. Cases of rationing exemption from liability stipulated in the rules for both the carrier and the shipper are considered one of the objective indicators of the balance in the responsibilities and obligations related to them, and at the same time one of the forms expressing the legal protection of their rights if the damage occurred as a result of one of the cases of the reasons for exemption mentioned in the rules.

5- The study explained that the primary, basic and objective balance indicators in the Rotterdam Rules, which are explained in the study, will encourage countries to accede to the United Nations Convention on Contracts for International Carriage of Goods by Sea, in whole or in part, 2008, known as (Rotterdam Rules).

Second: Recommendations:

1- The study recommends that countries that have not signed, ratified or acceded to the United Nations Convention relating to Contracts for the International Carriage of Goods by Sea in whole or in part of 2008 AD, known as (Rotterdam Rules), to accede to it, whether by signing it or depositing an instrument of approval, ratification or acknowledgment with the Secretary General of the United Nations, and completing the legal requirements for accession contained in the rules in this regard.

2- In the event that countries do not wish to accede to the Convention - the Rotterdam Rules - the study recommends that legislators in those countries take advantage of the objective provisions and rules contained therein related to the indicators of the existing balance between the responsibilities of the transport parties shown in this study when making updates or amendments to maritime commercial legislation and related legislation .

3- The study recommends for those working in the legal community to be guided by the balance indicators mentioned in this study when preparing international or multimodal maritime transport contracts to ensure balance and clarity of obligations and responsibilities between the contracting parties in those contracts.

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