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The carrier’s liability is an aspect of the UNCITRAL Convention. The UNCITRAL Convention has as its purpose to constitute the new international law of carriage by sea. It contains numerous innovations which relate to its multimodal character, to the admission of freedom of contract in volume contracts and to the fact that it attempts to cope with all the issues arising in a contract of international carriage of goods wholly or partly by sea: transport documents, obligations of the carrier, obligations and liability of the shipper, delivery, rights of control, jurisdiction and arbitration. For all these issues, the convention offers solutions awaited by professionals. However the text does not omit to deal with older and traditional issues, already dealt with by the conventions: such is the case of the carrier’s liability.

The precedents are Hague-Visby Rules and the Hamburg Rules. The issue of the carrier’s liability remains at the heart of the law of carriage of goods by sea. Damages, losses, delay concern shippers, consignees and potential insurers. It is certain that difficulties and litigation will recur here.

According to the Hague-Visby Rules, the carrier’s liability is based upon quite a balanced system, in the sense that the carrier is fully liable in the case of loss and damage, with the exception of specific circumstances (17 in number) the evocation of which by the carrier relieves him of his liability.

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The notion of fault is not entirely excluded; on the contrary: fault continues to have an important impact, especially in allowing one to neutralize the event invoked by the carrier in order to relieve him of his liability.

In the Hamburg Rules, the carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery (art. 5). However the same text adds that the carrier can prove that he, his servants or agents took all measures which could reasonably be required to avoid the occurrence and its consequences. Of course we know that the courts, as is the case with air law (Warsaw Convention) where the rules are equivalent, remain severe: if the carrier wishes to be relieved of his liability, he must identify the cause of the damage and establish that this cause is not attributable to him. Proof of due diligence is not sufficient; moreover, the Hamburg Rules omit a number of events which are exempt under the Hague-Visby Rules.

The UNCITRAL Convention is a system of liability closer to the Hague-Visby Rules than to the Hamburg Rules. In the course of different sessions of the Working Group, the question of approximation of the systems of liability was immediately raised. The system of the Hague-Visby Rules was imposed immediately, since a number of people demonstrated that the technique of a catalogue with exceptions allowed for the preservation of provisions which were not controversial. Some would have preferred more abstract and simpler provisions, of a continental inspiration, but this was a minority position. We must point out that the technique of exceptions is used not just in shipping law: it can be found in most transport conventions (CMR, CMNI, COTIF-CIM). For the rest, the Working Group did not wish to limit itself only to the provisions of the Hague-Visby Rules. Hence the modernization of the catalogue of exceptions and the abolition of faults of navigation. Hence also the redefinition of the obligations of the carrier and a solution in favour of the continuous character of the obligation of seaworthiness (“seaworthy in the beginning and during the voyage”). Hence, in total, a system of apparently traditional liability, which is not though, in reality, an exact reflection of the Hague-Visby Rules.

The characteristics of the liability of the carrier in the UNCITRAL Convention. The liability of the carrier has from the start had a whole series of characteristics. It is legal (and not really contractual), mandatory, limited, not based on fault and it is a source of numerous difficulties of interpretation and application. Does the UNCITRAL Convention modify this status? The answer is qualified.

– legal liability? In principle yes, since Article 4 clearly specifies that the liability of the carrier is interpreted in the same manner, irrespective of the type of action in question. Whether the suit is based on liability arising from tort or from a contract, in both cases, the rules apply and the carrier is in the same position.