

NIGERIAN JOURNAL OF BUSINESS LAW

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AN EXPOSITORY STUDY OF THE CARRIERS OBLIGATIONS AND LIABILITIES UNDER THE ROTTERDAM RULES

By

Abdulfatai O. Sambo*

and

Auwal Abdullahi*

Abstract

The modern day has witnessed a sharp advancement in technology and commerce. Yet, the law is not at par with modern development. The carriers' obligations and liabilities governed by some major international legal instruments: the Hague rules, the Hague-Visby rules, the Hamburg rules are no longer in line with technological and commercial development. Many legal uncertainties as a result of conflicts of laws have stained international trade. In order to solve this nagging problem, the United Nations General Assembly on 11 December 2008 adopted United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. It resolved that the Convention be opened for signature at a ceremony to take place in Rotterdam, the Netherlands, on 23 September 2009 and to be named as Rotterdam Rules. Despite this, many countries are yet to ratify or domesticate the Convention. The paper hypothesizes that ratification and domestication of the Convention will provide legal certainty and efficiency in international carriage of goods thus promoting transnational trade and economic development domestically and internationally. It therefore makes an exposition into the carriers' obligations and liabilities under of the Rotterdam rules. Although references are made to previous rules, the focus of this paper is Rotterdam rules.

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Introduction

The carriers' obligations and liabilities have for a long time been governed by three sets of international legal instruments: the Hague Rules,¹ the Hague-Visby Rules² and the Hamburg Rules.³ There are a number of problems with this. First, there is uncertainty in the legal parlance as a result of the issue of conflict of laws.⁴ Second, the laws have not been able to cope with the modern realities of technological and commercial advancement.⁵ The rules are limited in their application "only to contracts of carriage covered by a bill of lading or any similar document of title."⁶ The result of this is inefficiency in international carriage of goods.

In view of the circumstance, international bodies such as, the Committee Maritime International (CMI), Working Group

1. The International Convention for the Unification of Certain Rules Relating to Bills of Lading, 25 August 1924, 1924, 51 Stat. 233, TS. No. 931, 120 L.N.T.S. 155, in this paper referred to as the "Hague Rules".
2. The Protocol to Amend the International Convention for the Unification of Certain Rules Relating to Bills of Lading 1924, 23 February 1968, 1421 U.N.T.S. 121, 1977 Gr. Brit. T.S. No. 83 (Cmd. 6944) (entered into force 23 June 1977), in this paper referred to as the "Hague-Visby Rules".
3. United Nations Convention on the Carriage of Goods by Sea, 31 March 1978, 17 I.L.M. 608, in this paper referred to as the "Hamburg Rules".
4. See Proshanto K. Mukherjee & Abhinayan Basu Ba, "A Legal and Economic Analysis of the Volume Contract Concept Under the Rotterdam Rules: Selected Issues in Perspective," *Journal of Transportation, Law, Logistics & Policy*.
5. Laws should be able to meet the modern technology in order to meet solve societal problems. See Sambo A.O. and A.B. Abdulkadir, "Socio-Economic Rights for Sustainable Development in Malaysia: Lessons from Selected African Countries' Constitutions" (2011) 2(9) OIDA International Journal of Sustainable Development, 10-22.
6. Article 1(b) COGSA, Ch. 229, 49 Stat. 1207 (1936), *reprinted in statutory note following* 46 U.S.C. 30701 (2006). See also Article 1(b) Brussels Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Aug. 25, 1924, 51 Stat. 233, 120 L.N.T.S. 155.

III (Transport Law) of the United Nations Commission on International Trade Law (UNCITRAL) collaborated to promote reform in the law of international sea carriage of goods.⁷ The result of this collaboration is the "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" otherwise known as the "Rotterdam Rules."

The ultimate objective of the Rotterdam rules is to replace the disintegration in the area of maritime law. It is based on the strong belief in international trade, that international trades should be on the basis of equality and mutual benefit. This is necessary for the promotion of friendly relations among the States and unification of international trade law for thus removing legal obstacle in international trade.⁸ The Rule is also put in place in order to allow international trade law to be at par with modern challenges of technological and commercial development.⁹ It therefore aims at benefiting the shippers and the carriers binding universal regime to support the operation of contracts of maritime carriage involving other modes of transport.¹⁰ It also aims at providing legal certainty; improve efficiency in the international carriage of goods, providing new opportunities for the previously remote parties and markets thus promoting transnational trade and economic development domestically and globally. Although some countries have ratified it, many countries are yet to.¹¹ Nigeria is a party to it

7. *Ibid.*

8. See the Preamble to the Rotterdam Rules available at: <http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20XI/XI-D-8.en.pdf>. accessed on 21st January, 2012.

9. *Ibid.*

10. *Ibid.*

11. The sixteen original signatories present a mix of developing and developed countries, including strong seafaring and trading nations, as well as traditional carrier and shipper nations. The original sixteen States are as

but this is not yet a law in Nigeria as it is yet to be domesticated it.¹²

The paper will therefore make an expository study of the obligations and liabilities of the carriers under the Rotterdam Rules.¹³ It will identify that the limit or scope of the

follows: Republic of Congo, Denmark, France, Gabon, Ghana, Greece, Guinea, the Netherlands, Nigeria, Norway, Poland, Senegal, Spain, Switzerland, Togo and the United States of America. Together, the 16 countries represent over 25% of world trade volume. While that figure is sufficiently impressive on its own, it is even more noteworthy when compared with the volume of global trade covered by the 34 Contracting States of the Hamburg Rules, a mere 5%. Since the Signing Ceremony on 23 September 2009, five more countries have added their signatures to the growing list, bringing the total number of signatures to 21. The additional five States are: Madagascar, Armenia, Cameroon, Niger and Mali. China, perhaps, is the number of countries with which China has strong and, in some cases, growing trade and investment relations that have already signed the Convention. Moreover, a number of States that were not yet in a position to sign the Rotterdam Rules due to ongoing internal consultations made very positive official statements at the conclusion of the Signing Ceremony about the aim of the Convention to achieve a global uniform regime for maritime transport. Amongst them are the United Kingdom and Belgium. on 21 September 2009, a Colloquium on the Rotterdam Rules was held by the Dutch hosts under the auspices of UNCITRAL and the Comité Maritime International (CMI). The event brought together 11 authoritative speakers from around the globe to provide in-depth analysis of the Convention to an international audience of several hundred. See generally *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17 (A/63/17)*, para. 298. Information and UNCITRAL documents relating to work on the Rotterdam Rules discussed in this paper may be found in all 6 UN languages (Arabic, Chinese, English, French, Russian and Spanish) on the UNCITRAL web-site at www.uncitral.org. Accessed on 17th October, 2010. See also United Nations General Assembly Resolution 63/122, para. 2.

12. Treaties do not become law in Nigeria unless it domesticated by the legislature. See section 12 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
13. In July 2008, following its 41st session, the United Nations Commission on International Trade Law (UNCITRAL) approved the draft text of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. The text was subsequently adopted by the UN

Convention. From there, it offers and analyses the obligations of the carrier under the Convention by examining obligations in respect of carriage and delivery of goods, the obligations during the period of responsibility, specific obligations and the ones during the voyage by sea. It will also analyse the basis of liability and liability of the carrier in relation to the loss, damage and delay in the delivery of goods. It examines the liability of other persons, maritime performing party and joint and several liabilities. This paper will therefore be useful for many countries that are yet to ratify and domesticate accordingly.

Scope of the Rotterdam Rules

The Convention is limited in its scope because it does not apply to contracts in liner transportation such as charter parties and other contracts for the use of Ship or any of its space.¹⁴ It does not also apply to contracts of carriage in respect of non-liner except there is no charter party or other contract between parties for the use of a ship or any of its space and a transport document or electronic records issued.¹⁵ However, the Convention applies to matters between carriers and consignee, controlling party or holder that is not an original party to the

General Assembly on 11 December 2008. The General Assembly resolution that adopted the Convention also authorized that it be opened for signature at a ceremony to take place in Rotterdam, the Netherlands, on 23 September 2009. In light of its place of opening for signature, and in keeping with the tradition of maritime transport conventions, the General Assembly recommended that the Convention should be known as the "Rotterdam Rules. Thus, the rule can be said to be a 2009 rule although the original document i.e. the UN resolution called United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea is tagged 2008. *Ibid.*

14. See Article 6(1) (a) and (b) of the Rotterdam Rules.

15. See Article 6(2) (a) and (b) of the Rotterdam Rules.

charter or other contract of carriage excluded from the application of the convention but it does not apply to contracts between original parties to a contract of carriage excluded in the convention by virtue of Article 6 of the convention.¹⁶

COGSA and the Hague Rules are limited in their application "only to contracts of carriage covered by a bill of lading or any similar document of title."¹⁷ The Convention largely abandons the old reliance on bills of lading,¹⁸ with the result that otherwise-qualifying shipments are generally covered without regard to the type of documentation issued.¹⁹ Indeed, the Convention applies to otherwise qualifying transactions even if no documentation at all is issued.²⁰ This conventional approach would have changed the result in those rare cases in which a shipment was held to be outside the scope of COGSA because the requirements of section 1(b) were

16. See Article 7 of the Rotterdam Rules.

17. Article 1(b) COGSA, Ch. 229, 49 Stat. 1207 (1936), *reprinted in statutory note following* 46 U.S.C. 30701 (2006). See also Article 1(b) Brussels Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Aug. 25, 1924, 51 Stat. 233, 120 L.N.T.S. 155.

18. See Article, 6(2) of the Rotterdam Rules providing coverage in the non-liner, non charter party context when a bill of lading or other transport document is issued. This provision was designed to ensure that the Convention does not narrow the current scope of the Hague and Hague-Visby Rules, *See generally* Michael F. Sturley, "Solving the Scope-of-Application Puzzle: Contracts, Trades, and Documents in the UNCITRAL Transport Law Project," (2005) 11 *J. INT'L MAR. L.* 22, 39 (tracing the development and drafting of this provision).

19. See Article 5(1) of the Rotterdam Rules.

20. U.S. courts regularly apply COGSA when no bill of lading was issued because the goods were damaged before loading but a bill of lading would have been issued if the transaction had gone according to plan. *See, e.g. Interflow Ltd. v. Burlington N. Santa Fe Ry.*, 2005 AMC 2894, 2900 (S.D. Tex. 2005) (holding that the "standard bill of lading applies, even though no bill of lading issued because the goods were never loaded"). The Rotterdam Rules, however, go beyond this situation to govern transactions in which there was never any intent to issue a bill of lading or other transport document, Rotterdam Rules, see article 5 of the rules.

not satisfied.²¹ Thus, the next is to discuss the carriers' obligation under Rotterdam rules. These obligations are in relation to: carriage and delivery of goods; period of responsibility; and during the voyage by sea.

Obligation in relation to Carriage and Delivery of Goods

The rule provides that the carrier shall in accordance with the terms of the contract of carriage and subject to the provision of the convention carry the goods to the place of designation and deliver it to the consignee.²² During the carriage, the carrier has a general duty of care with respect to the goods. This duty may include the carrier's duty, under certain circumstances, to protect the interests of the controlling party relating to the goods. In the past, during the carriage, no communication was possible between the carrier and the controlling party.²³ Thus, the carrier had to act on its own in these circumstances.

Today, instant communication is widely available, and the carrier should therefore ask for instructions relating to the goods from the controlling party. Similarly, the controlling party is under an obligation to provide such instructions. The controlling party may not always be known to the carrier, or may not be in a position to provide adequate instructions. In such circumstances, the carrier may defer to the shipper. The new Convention does not oblige the carrier to carry out any instruction given under this article. The carrier may not be reasonably able to execute the instructions, or the instructions given are clearly not in the proper interests of the goods. In

21. Micheal F. Sturley: "Modernizing and Reforming U.S. Maritime Law: The Impact of Rotterdam Rules in United States," (2009). Vol. 44, *Texas International Law Journal*, 427 at 432.

22. See Article 11 of the Rotterdam Rules.

23. Gertjan Van der Ziel: "Chapter 10 of the Rotterdam Rules: Control in Transit," (2009), Vol. 44, *Texas International Journal*, 375 at 383.

such cases, the carrier's general duty of care must override the instructions.

Obligation of the Carrier in Relation to the Period of Responsibility

The period of responsibility of a carrier under the convention begins from the time when the carrier or the performing party receives the goods for carriage and ends where the goods are delivered.²⁴ Also, the period of responsibility of the carrier begins when he collects the goods from the authority or third party if the law or regulations of the place of receipt require the goods to be handed over to the third party or authority from which the carrier may receive them.²⁵ On the other hand, the period of responsibility ends when the carrier hands over the goods to a third party or authority where the law or regulation of the place of delivery requires to hand over the goods to an authority or third party from whom the consignee may collect the goods.²⁶

However, the Convention allows the parties to agree on time and location of receipt and delivery of goods in determining the period of responsibility. It however voids a contract of carriage where the period of receipt of goods is subsequent to the beginning of their initial loading under the contract and where the time of delivery is prior to the completion of their final on loading under the contract.²⁷

The Convention, in one of its most significant innovations, adopts a door-to-door approach.²⁸ The carrier is responsible under the new regime for the entire contractual period of

24. See Article 12 (1).

25. See Article 12 (2) (a).

26. See Article 12 (2)(b).

27. See Article 12 (3) (a) and (b).

28. Rotterdam Rules, Article 12(1).

carriage. This in a multimodal shipment will often be from the carrier's receipt of the goods at an inland location in the country of origin all the way to the carrier's delivery of the goods at an inland location in the country of destination.²⁹ This fundamental change in the law was initially controversial,³⁰ but it is the only way to accomplish the most basic goal of a uniform international legal regime in this field; to obtain certainty, predictability, and uniformity, one legal regime must govern the entire performance of the contract.³¹ In practice today, the parties often agree in their contract to extend the maritime regime inland but such a contractual extension takes effect only with the force of a contract. The Convention will apply a uniform legal regime with the force of law.³²

However, the Convention applies to the contract of carriage in which the place of receipt and the place of delivery are in different States and the Port of loading of a sea carriage and the port of discharge are in different States. This is if as stated in the contract of carriage, the place of receipt, the port of loading and, the place of delivery and port of discharge are located in a contracting State.³³ The convention is also made to apply without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee and any other interested party.³⁴

29. Micheal F. Sturley: *Modernizing and Reforming U.S. Maritime Law: The Impact of Rotterdam Rules in United States*, (2009). Vol. 44, *Texas International Law Journal*, 427 at 434.

30. See Michael F. Sturley: "The United Nations Commission on International Trade Law's Transport Law Project: An Interim View of a Work in Progress", (2003) 39 *TEX. INT'L L.J.* 65, 76-79.

31. *Ibid.*

32. *Ibid.*

33. See Article 5 (1) (a)-(d) of the Rotterdam Rules.

34. See article 5(2) of the Rotterdam Rules.

Specific Obligations and Obligations Applicable During the Voyage by Sea

Specific obligation is conferred on the carrier during the period of his liability to exercise all necessary care while unloading and delivering the goods. But, he may agree with the shipper that loading, handling, stowing and unloading of goods should be performed by the shipper, documentary shipper or the consignee with details specified in the contract particulars.³⁵ In this case, the shipper, documentary shipper or the consignee has obligation to take all necessary care during this period of liability.

As regards obligations during the voyage by sea, the carrier is bound to make and keep the ship sea worthy, keep the ship so crewed, equipped and supplied throughout the voyage. He must also make, keep the holds and all other parts of the ship in which goods are carried and the containers supplied by the carrier in or upon which goods are carried and fit for reception, carriage and preservation.³⁶ The carrier is bound to exercise due diligence before and during the voyage by sea.³⁷

This is different from the position under the common law where a carrier has an absolute duty to provide a seaworthy ship. This duty is however discharged at the time of shipment although, subsequent event may be evidence of the fact that the duty is not properly discharged. Therefore, even if the defect in the ship were latent, if the ship was de facto unseaworthy, and the unseaworthiness was the cause of damage, loss, or delay, the carrier remains liable despite the occurrence of other concurrent causes.³⁸ The carrier also undertakes to

³⁵ See Article 13 (1) and (2) of the Rotterdam Rules.

³⁶ See generally Article 14 of the Rotterdam Rules.

³⁷ *Ibid*.

³⁸ See *Monarch Steamship Co v. Karlshamns Oljefabriker* (1949)AC 196.

proceed on the voyage without unjustifiable deviation. If such deviation occurs, the carrier is liable for any subsequent loss unless he shows that loss or damage would have occurred without such deviation.³⁹ The carrier also has an obligation to complete the voyage with reasonable dispatch.⁴⁰ The next therefore is to discuss the carriers' liabilities.

Liability of the Carrier for Loss, Damage or Delay

As regards liabilities of the carrier, the article only deals with liability for loss of or damage to the goods or for delay in delivery. Remarkably, whether a carrier may be held liable for any loss or damage, other than loss or damage of the goods' resulting from non-compliance with any instruction rightfully given, is left to the applicable national law. The limits, referred to, in article 59 also applies to this carrier's liability.

Basis of Liability

The basis of liability under the convention is upon proof of the existence or non existence of certain facts. Thus, where goods are damaged, lost or delayed, the liability or otherwise of the carrier depends on the existence or otherwise of some facts to be established in evidence before the Court or an Arbitral Tribunal as the case may be. Thus, one basis of liability for the loss, damage or delay in the delivery of goods is where the claimant establishes by evidence that the loss, damage, or delay or the circumstances that led to it happened during the period of the carrier's responsibility.⁴¹

However, the carrier will be exonerated from liability if he can show by evidence that the damage, loss or delay was not

39. See *Morrison v. Shaw Saville* (1916) 2 KB 783

40. See *The Athanasia Comninos* (1990) 1 Lloyd's Rep 277.

41. See the combined effect of chapter four and Article 17 (1) of the Rotterdam Rules.

due to his fault. It must also be shown that it was not due to the fault of any performing party, the master or crew of the ship, employee of the carrier or performing party or any other person that performs or contract to perform any of the carrier's obligation under the contract of carriage to the extent that the person acts directly or by implication at the carrier's request or under his supervision.⁴²

The Convention also provides for an alternative way the carrier can exonerate himself from liability apart from showing the delay, damage or loss was not due to his fault. He could show by evidence that it was due to act of God,⁴³ or peril, accident of the sea or navigable waters.⁴⁴ He can also show that it was due to war, hostilities, armed conflict;⁴⁵ or was due to quarantine restriction, interference created by governments.⁴⁶ He can also exonerate himself if he can show that it was as a result of strikes, lockouts or restraints of labours;⁴⁷ or was due to fire on the ship⁴⁸ or latent defects not discoverable by due diligence;⁴⁹ or was due to the act or omission of the shipper or documentary shipper or any other person for whose act the shipper or documentary shipper is liable for his conduct;⁵⁰ or was due to loading, stowing, handling or unloading of the goods performed pursuant to the agreement unless the carrier performs such activity on behalf of the shipper, documentary shipper or consignee.⁵¹ He may also prove that the damage, loss or delay was due to the

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- 42. See Article 17(2) and 18 of the Rules.
 - 43. See Article 17(3) (a).
 - 44. See Article 17(3)(b).
 - 45. See Article 17 (3) (c).
 - 46. See Article 17 (3) (d) and Article 18.
 - 47. See Article 17 (3) (e).
 - 48. See Article 17 (3) (f).
 - 49. See Article 17 (3) (g).
 - 50. See Article 17 (3) (h) and Articles 33 and 34.
 - 51. See Article 17 (3) (1) and Article 13 (2).

weight, bulk or quality of the goods;⁵² or was as a result of insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;⁵³ or was due to saving or attempting to save life in the sea.⁵⁴ Other ways of exoneration are: due to reasonable measures or attempt of saving property in the sea;⁵⁵ due to reasonable measures or attempt to prevent damage to the environment;⁵⁶ as a result of acts of the carrier in relation to goods that may constitute danger to the environment, persons or property.⁵⁷

It can be seen from the foregoing that the Convention even though creates liability against the carrier of goods provides too many ways in which he can reasonably exonerate himself from liability. The exoneration appears to supersede the liability to such an extent that the carrier would hardly be made liable in practice for loss, delay or damage especially upon proof of the facts stated above.⁵⁸ It is however desirable in view of the circumstances or acts of God that may occur during the carrier's period of responsibility.

The Convention however appears to afford protection to the carrier better than the owners of the good. Importantly, the environment is not forgotten in the Convention.⁵⁹ This is because there is the need to protect the environment as the present generation owes the future generation the duty not to destroy the environment. This will make the future generations

52. See Article 17 (3) (j).

53. See Article 17 (3) (k).

54. See Article 17 (3) (l).

55. See Article 17 (3) (m).

56. See Article 17 (3) (n).

57. See Article 17 (3) (o) and Articles 15 and 16.

58. See Article 17 generally.

59. See Article 17 (3) (n).

meet their own needs there by giving room for sustainable development.

It must however be added that the carrier is made liable for all or part of loss, damage or delay if the claimant establishes by evidence that the fault of the carrier or any performing party, the master or crew of the ship, employee of the carrier or performing party or any other person that performs or contract to perform any of the carrier's obligation under the contract of carriage to the extent that the person acts directly or by implication at the carrier's request or under his supervision caused or contributed to the circumstance upon which the carrier relies.⁶⁰

Also, the carrier may be made liable where the claimant establishes by evidence that the circumstance not contained in Article 17(3) contributed to the loss, damage or delay and the carrier cannot show by evidence that it was not due to his fault or the fault of any performing party, the master or crew of the ship, employee of the carrier or performing party or any other person that performs or contract to perform any of the carrier's obligation under the contract of carriage to the extent that the person acts directly or by implication at the carrier's request or under his supervision caused or contributed to the circumstance upon which the carrier relies.⁶¹

Furthermore, it is not enough for the carrier to show act of God or other circumstances examined above, the claimant could make him liable for all or part of the loss, damage or delay if the claimant establishes by evidence that the loss, damage or delay was or probably caused or contributed to by the unseaworthiness of the ship⁶² or improper crewing,

60. See Article 17 (4) (a).

61. See Article 17 (4) (b).

62. See Article 17 (5) (a)(i).

equipping or supplying of the ship⁶³ or the fact that the hold or other parts of the ship or the containers in which the goods are carried were not fit and safe for reception, carriage and preservation of goods⁶⁴ and the carrier is unable to show by evidence that he exercised due diligence⁶⁵ or non of these factors alleged by the claimant caused the damage, loss or delay.⁶⁶

The Convention allows under this circumstance a shift in the burden of proof. Once the claimant proves that the unseaworthiness of the ship or other circumstances mentioned above, the burden of proof shifts to the carrier who must show that none of the circumstances alleged by the claimant caused or contributed to the damage, loss or delay. This is in addition to showing that he acted under due diligence. Finally, it must be said that whenever the carrier is relieved of part of his liability here, he is only liable only for that part of the loss, damage or delay that is attributable to the circumstance for which he is liable.⁶⁷

Liability of Carrier for other Persons

Apart from the liability of the carrier, he is also made liable for the breach of his obligation under the convention or contract owing to the fault of any performing party⁶⁸, the

63. See Article 17 (5) (a)(ii).

64. See Article 17 (5) (a)(iii).

65. See Article 17 (5) (b)(ii).

66. See Article 17 (5) (b)(i).

67. See Article 17 (6).

68. Article 1(6) defines a performing party to mean a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, handling, stowage, carriage, care, unloading, or delivery of the goods to the extent that such person acts either directly or indirectly at the carrier's request or under the carrier's supervision or control.

master or crew of the ship, employee of the carrier or performing party or any other person that performs or contract to perform any of the carrier's obligation under the contract of carriage to the extent that the person acts directly or by implication at the carrier's request or under his supervision caused or contributed to the circumstance upon which the carrier relies. It must be said that a performing party does not include any person that is retained directly or indirectly by the shipper or by the controlling party or by the consignee instead of by the carrier.⁶⁹

The Convention makes the rule of vicarious liability in tort applicable in the contract of carriage. It therefore goes without saying that the carrier is only made liable only to such an extent as the person acted directly or by implication at the request of the carrier. Where it can be shown from the facts of the case that the person went on a frolic of his own without an express or implied authorization on the part of the carrier, then the carrier will be exonerated from liability. Also, the fault of the performing party or the master or crew of the ship, employee of the carrier or performing party or any other person that performs or contract to perform any of the carrier's obligations under the contract of carriage must be established by evidence before the carrier can be made liable.

Liability of Maritime Performing Party

The Convention subjects a maritime performer to the obligations and liabilities imposed on the carrier and he is entitled to the defences and relief of liability under the Convention if the maritime performing party received the goods in a contracting state or deliver the goods in a contracting state and performed its activities with respect to the

goods in a port in a contracting state⁷⁰ and the circumstances that caused the loss, damage or delay occurred during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship⁷¹ or while the performing party had custody of the goods⁷² or at any other time to such an extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.⁷³

A carrier may agree to assume obligation other than the one imposed on him by the Convention or agrees that the limits of liability are higher than the limits, under the circumstance. He is not bound by the agreement unless he expressly agrees to accept such obligations or such higher limits.⁷⁴ A maritime performing party may also be liable for the breach of obligations under the Convention caused by the act or omission of any other person to which it has entrusted with any of the carrier's obligation under the contract of carriage.⁷⁵

Joint and Several Liabilities

The Convention provides for a case of joint and several liability for the loss, damage or delay in the delivery of goods if the carrier or one or more maritime performing parties are liable but their liability is only up to the one provided for under the Convention and the aggregate liability of all persons

70. See Article 19(1)(a).

71. See Article 19(1)(b)(i).

72. See Article 19(1)(b)(ii).

73. See Article 19(1)(b)(iii).

74. See Article 19(2).

75. See Article 19(3).

must not exceed the overall limit of the liability provided for under the Convention.⁷⁶

Conclusion

From the foregoing, proper application of the Rotterdam Rules will provide legal certainty, improve efficiency in the international carriage of goods, providing new opportunities for the previously remote parties and markets thus promoting transnational trade and economic development domestically and internationally. However, many Countries are yet to ratify this Convention. In order to achieve the aim of the Convention, there is the need for wider dissemination of the importance of this Rule. This should be done by way of seminar or conference presentations. This will ensure that many countries especially the developing countries reap the benefit of the Convention.

The paper has therefore made an expository study of the obligation and liabilities of the carrier under the Rotterdam Rules of 2008. The paper identified that the convention is limited in its scope in that it does not apply to contracts in liner transportation such as charter parties and other contracts for the use of Ship or any of its space.⁷⁷ It does not also apply to contracts of carriage in respect of non-liner except there is no charter party or other contract between parties for the use of a ship or any of its space and a transport document or electronic records issued. It also discusses areas covered by the scope of the Convention. From there, the paper makes an expository study of the obligations of the carrier under the Convention by examining obligations in respect of carriage and delivery of goods, the obligations during the period of responsibility and specific obligations and the ones during the voyage by sea.

76. See Articles 20 and 61.

77. See Article 6(1) (a) and (b) of the Rotterdam Rules.

must not exceed the overall limit of the liability provided for under the Convention.⁷⁶

Conclusion

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76. See Articles 20 and 61.

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This is followed by an analysis of the basis of liability i.e liability of the carrier in relation to the loss, damage and delay in the delivery of goods and the liability of other persons maritime performing party and joint and several liabilities.