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# Special liability regimes under the international conventions for the carriage of goods by sea – dangerous cargo and deck cargo

## 1. INTRODUCTION

One of the customary ways of characterising the international conventions relating to the carriage of goods by sea is by reference to the nature of the core liability regime established under each convention. Thus the Hague Rules<sup>1</sup> and Visby Protocol<sup>2</sup> (hereafter the Hague Rules) are described as a fault based regime; the Hamburg Rules<sup>3</sup> as a presumed fault regime, and the Rotterdam Rules<sup>4</sup> as a qualified presumed fault regime.

The approach is both accurate and useful; it indicates fundamental differences of approach which touch materially on the position of cargo claimants. Under both versions of the Hague Rules the burden of proof is borne by the cargo claimant to establish a breach of duty on the part of the carrier;<sup>5</sup> under both the Hamburg and Rotterdam Rules, once the cargo claimant has established loss occurring within the period of responsibility of the carrier, the carrier is presumed to be at fault unless the proper exercise of care can be established.<sup>6</sup> The Rotterdam Rules differ from the Hamburg Rules in that they specify the duties owed by carriers,<sup>7</sup> and thus provide a road map by which the carrier may establish the proper exercise of care,<sup>8</sup> and also set out defences.<sup>9</sup> It is because of these additional features that the core liability regime is described as ‘qualified presumed fault’.<sup>10</sup> The liability regime under the Rotterdam Rules is to a degree a hybrid of the two preceding international conventions.

There are, of course, many other elements to the core liability regimes established under the international con-

ventions but to pursue them here would be to deviate from the thesis I wish to pursue in this article, which is the following. Notwithstanding that a core liability regime may be associated with each of the international conventions, in none is that regime universal, in the sense that it applies to all claims in all circumstances. There are also present what may be described as satellite or micro liability regimes, at variance from the core liability regime, which apply in specifically prescribed circumstances. Each of the international conventions manifests this practice and as a group they are more or less consistent in their identification of the situations when a micro-liability regime is justified. They exist in relation to:

- a. deck cargo;
- b. carriage of animals;
- c. dangerous cargo;
- d. extraordinary commercial shipments, and following the emergence of the Rotterdam Rules;
- e. volume contracts.

In relation to these specific aspects of carriage of goods by sea there is not to be found precise uniformity of practice in all the conventions. Dangerous cargo is identified as a special situation in all the conventions but the applicable provisions are different.<sup>11</sup> Only under the Hamburg and Rotterdam Rules are micro-liability regimes laid down for deck cargo<sup>12</sup> and the carriage of live

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1. International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1924 (Hague Rules).
2. Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (Visby Amendments establishing the Hague Visby Rules).
3. UN Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules).
4. UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (Rotterdam Rules).
5. Hendrikse and Margetson, ‘Division of the Burden of Proof under the Hague-Visby Rules’, *JIML* 2006-12, p. 25-34.
6. Hamburg art. 5.1; Rotterdam arts. 17.1 and 17.2.
7. Arts. 13 and 14.
8. Under art. 17.2.s
9. Art. 17.3.
10. Thomas, ‘An analysis of the liability regime of carriers and maritime performing parties’, chp. 3, in Thomas(ed) *A New Convention for the Carriage of Good by Sea – The Rotterdam Rules*, Lawtext Publishing Ltd 2009.
11. Hague art. IV(6), Hamburg art. 13, Rotterdam arts. 15, 30(2), 32 and 33.
12. Hamburg art. 9, Rotterdam art. 25.

animals,<sup>13</sup> and again the precise provisions are different. The recognition that contracts relating to extraordinary commercial shipments are non-mandatory is restricted to the Hague Rules<sup>14</sup> and Rotterdam Rules<sup>15</sup> and, further, a much qualified provision for non-mandatory regulation is made in the Rotterdam Rules in relation to volume contracts, a species of service contract.<sup>16</sup>

In this article my intention is to isolate two of the identified special situations for detailed consideration, namely dangerous cargo and deck cargo. In general terms each is identified for special treatment in the international conventions because of the potential additional risks that they may involve for carriers.

## 2. DANGEROUS CARGO

The conventions have consistently drawn a distinction between dangerous and what for convenience may be described as ordinary cargoes. It is a branch of the law which inevitably places additional responsibilities on the shoulders of shippers, and at the same time raising problems of definition and policy. When cargo is to be considered as dangerous is increasingly a searching question, and how risk is to be distributed between shippers and carriers in respect of dangerous cargo raises difficult policy issues.

Although the international conventions consistently make special provisions in relation to the carriage of dangerous cargo, the approach varies. It is difficult to discuss the different approaches without reproducing the individual convention articles, but, at the same time recognising that this is not the occasion to analyse them in detail.

### 2.1. Hague Rules

Article IV(6) provides:

‘Goods of an inflammable, explosive or dangerous nature to the shipment whereof the Carrier, master or agent of the Carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the Carrier without compensation and the Shipper of such goods shall be liable for all damages and expenses directly and indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the Carrier without liability on the part of the Carrier except to general average, if any.’

To look at this provision very briefly. It defines the concept of dangerous goods by reference to danger to the ship or cargo,<sup>17</sup> and confers on carriers rights of action and indemnity. Interestingly, it does not expressly impose an obligation on shippers; the focus is wholly on the rights of carriers.<sup>18</sup> These rights vary depending on whether or not the dangerous goods have been shipped with knowing consent, meaning with knowledge of their dangerous nature.

Where knowing consent is absent the carrier may at any time before discharge take steps to dispose of or render innocuous the cargo and also claim an indemnity for any losses and expenses incurred. On the other hand, where knowing consent has been given, the carrier may take steps to dispose of the cargo or render it innocuous only if a danger to ship or cargo actually arises. In this event the carrier does not bear any liability for his actions and also has no right to an indemnity. Presumably, in this circumstance, the rights of action arise out of the proper exercise of the carrier’s duty of care.

In respect of all rights arising under the sub-article the position of the carrier may be undermined if breach of duty on the part of the carrier amounting to an *actus novus interveniens* can be established by the shipper.<sup>19</sup>

This is in many regards a remarkable and impractical provision, but for present purposes its signal impact, at least as interpreted in English law, is in relation to goods shipped without the parties possessing knowledge of their dangerous nature, which goods subsequently manifest danger. In this circumstance the risk is borne wholly by the shipper, even if the shipper had no reasonable means of knowing or discovering the potential dangerous nature of the goods shipped. To this extent the liability to indemnify carriers is strict.<sup>20</sup>

### 2.2. Hamburg Rules

Article 13 provides:

- ‘1. The Shipper must mark or label in a suitable manner goods as dangerous.
2. Where the Shipper hands over dangerous goods to the Carrier or an actual Carrier, as the case may be, the Shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the Shipper fails to do so and such Carrier or actual Carrier does not otherwise have knowledge of their dangerous character:
  - a. The Shipper is liable to the Carrier and any actual Carrier for the loss resulting from the shipment of such goods, and

13. Hamburg art. 5.5, Rotterdam art. 81(a).

14. Hague art. VI.

15. Rotterdam art. 81(b).

16. Arts. 1.2 and 80.

17. The *Giannis NK* [1998] AC 605; [1998] 1 *Lloyd's Rep* 337; The *Darya Radhe* [2009] 2 *Lloyd's Rep* 175.

18. The *Fiona* [1993] 1 *Lloyd's Rep* 257.

19. *Ibid.*

20. The *Giannis NK*, *supra*.

b. The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

3. The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.

4. If, in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute to general average or where the Carrier is liable in accordance with the provisions of article 5.’

This provision follows the basic pattern of the Hague Rules but with some necessary modifications.

The concept of danger is extended to include danger to life and an obligation is imposed on shippers to inform carriers of the dangerous nature of goods shipped and, if necessary, of the precautions to be taken. This duty exists alongside a duty to properly mark and label dangerous goods.

If the shipper is in breach of the obligation to disclose and the carrier does not otherwise have knowledge of their dangerous character, the shipper becomes liable to the contractual or actual carrier for losses resulting from the breach and the goods may be disposed of or rendered innocuous without compensation.<sup>21</sup>

Where the carrier receives the goods into his charge with knowledge of their dangerous character, in the event of the goods becoming an actual danger they may be disposed of or rendered innocuous ‘as the circumstances may require’ without compensation except ‘where the Carrier is liable in accordance with the provisions of article 5’. The latter phrase clears up an ambiguity ever present in the Hague Rules and confirms that if the manifestation of danger can be attributed to carrier fault, the carrier will not be protected by article 13 from liability.

### **2.3. Rotterdam Rules**

The position under the Rotterdam Rules is more complex because the duty of the shipper, the nature of the duty and consequences of breach, can only be arrived at following an examination of several articles, namely articles 32, 30(2), 15 and 13. It is proposed to set out the first two only in the text.

Article 32 provides:

‘When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

a. The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and

b. The shipper shall mark or label dangerous goods in accordance with any law, regulation or other requirements of public authorities that apply during any stage of the intended carriage of goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.’

Article 30(2) provides:

‘Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.’

To make just a few general comments on these provisions.

The concept of dangerous goods is extended to include danger to the environment and the shipper (including the documentary shipper)<sup>22</sup> is identified as having two general obligations, a duty of disclosure and a duty to mark or label the goods as required by law. The rights of carriers to dispose of or render harmless dangerous goods are set out in article 15.<sup>23</sup>

In article 32(a) it appears to be contemplated that the shipper will only be liable for loss or damage resulting from a breach of the obligation to disclose where the carrier does not have knowledge of the dangerous nature or character of the goods. By implication it appears to be assumed that if the carrier does have such knowledge at the time he accepts the goods into his charge, there is no exposure to liability under article 32(a). In this circumstance the core liability regime of the convention applies.

What is left in some doubt is the precise circumstances the shipper’s obligation of disclosure operates. The duty applies ‘before they [the goods] are delivered’ and relates to goods which are or reasonably appear to be likely to become a danger. It would also seem to be the case that the impact of article 30(2) is to render the liability of the shipper for breach of the duty to disclose strict, but this sub-article does not otherwise amend or reformulate the duty arising under article 32(a). If this is a correct interpretation, it changes the liability of shippers significantly, at least under English law. Where, for example, goods shipped are not dangerous per se and there also does not exist any reasonable reason for believing that they will become a danger, a duty of disclosure does not arise. It

21. It is a feature of the Hamburg Rules that both contractual and actual carriers are embraced by the convention.

22. Art. 33.1.

23. Art. 15 states, ‘Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier’s period of responsibility, an actual danger to persons, property or the environment’.

follows that shippers of benign cargo which for any reason subsequently becomes dangerous in the course of its transit will not bear responsibility for any resulting loss. The risk under the Rotterdam Rules is allocated to carriers, who, also, are not even given the benefit of an indemnity under article 15. This is a significant change compared with the Hague Rules, under which the risk is borne by shippers.<sup>24</sup>

### 3. DECK CARGO

The Hague Rules, on the one hand, and the Hamburg and Rotterdam Rules, on the other, take very different approaches to the question of deck cargo.

#### 3.1. Hague Rules

The Hague Rules treat deck carriage as a mode of carriage outside the mandatory ambit of the Rules, with freedom of contract applying. But, thereafter, the concept of deck carriage is defined in such a precise and technical manner that most cargo actually carried on deck will not fall within the definition and would consequently continue to be governed by the Rules.

Under article 1(c) of the Rules ‘Goods’ is defined in the following way:

‘...includes goods, wares, merchandise and articles of every kind whatsoever *except* live animals *and cargo which by the contract of carriage is stated as being carried on deck and is so carried*’.<sup>25</sup>

There are, under this definition, two conditions which must be satisfied before cargo can be characterised as deck cargo. First, the contract of carriage must state that the goods will be carried on deck. In practice this condition will be satisfied if the bill of lading, sea waybill or other transport document so states. The condition is not satisfied if the transport document merely gives the carrier the right to carry the good shipped on deck, as most transport documents do in modern shipping practice.<sup>26</sup> Nor is it satisfied if the transport document gives the carrier the right to carry on deck in the absence of an instruction from the shipper to the contrary.<sup>27</sup> Secondly, the goods must be actually carried on deck, which is, of course, a question of fact.

If both conditions are satisfied, the cargo carried on deck is not within the definition of ‘goods’ for the purpose of the Hague Rules and the mandatory legal regime established under the Rules does not apply. This leaves the parties free to negotiate a contract on their own terms. But if the conditions are not satisfied, notwithstanding

that goods are actually carried on deck the Rules continue to apply.

Under the Hague Rules, therefore, the purpose underlying the designation of cargo as deck cargo is to determine the ambit of the application of the Rules. The Rules do not establish a distinct micro-liability regime applicable to deck cargo.

#### 3.2. Hamburg and Rotterdam Rules

The approach under the Hamburg and Rotterdam Rules is very different. Each convention embraces deck cargo bearing its ordinary meaning and establishes a distinct liability regime applicable to carriage on deck. A much more entire approach is also taken to the subject, with the circumstances when a carrier may carry goods on deck stipulated, the validity of agreements to carry on deck and their enforceability against receivers addressed, as also is the nature of the liability incurred by a carrier when carriage on deck is in breach of contract.

##### 3.2.1. Hamburg Rules

Under the Rules the term ‘goods’ is predominantly left undefined, with all manner of cargo, including deck cargo, consequently falling within the definition.<sup>28</sup> This approach is in turn affirmed by the fact of the existence of article 9, which sets out special provisions relating to deck cargo.

Art 9.1 sets out the only circumstances when a carrier is entitled to carry on deck. He may so carry if it is in accordance with the:

- i. agreement of the parties, or
- ii. usage of a particular trade, or
- iii. requirements of statutory rules or regulations.

Where the parties agree that the goods shall or may be carried on deck, the agreement must be inserted in the bill of lading or other transport document evidencing the contract of carriage. Failure to do this has two consequences. First, the burden of proving the agreement is borne by the carrier. Secondly, the carrier loses the right to invoke the agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.<sup>29</sup>

It follows that where deck carriage is permissible, the core liability regime of the Hamburg Rules based on presumed fault applies.<sup>30</sup>

In contrast, where cargo is carried on deck in an impermissible circumstance or where the carrier is prevented from invoking an agreement to carry on deck against a third party, the carrier is absolutely liable for any loss

24. It would seem that the issues arising on the facts in *The Giannis NK*, above, would be decided differently under the Rotterdam Rules.

25. Italics added for emphasis.

26. *Svenska Traktor Aktiefbolaget v. Maritime Agencies (Southampton) Ltd* [1953] 2 QB 295, [1953] 2 Lloyd’s Rep 124.

27. *Encyclopaedia Britannica Inc v. The ‘Hong Kong Producer’ and Universal Marine Corporation* [1969] 2 Lloyd’s Rep 536.

28. Art. 1.5. ‘Goods’ includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, ‘goods’ includes such article of transport or packaging if supplied by the shipper.

29. Art. 9.2.

30. Art. 5.1.

resulting solely from the carriage on deck, but retains the right to limit liability under the terms of the Rules, unless such right is lost.<sup>31</sup>

This modifies the liability under article 5(1) because the carrier is not given the opportunity to avoid liability by proving the exercise of due care. The presumed fault regime which applies generally is displaced by the introduction of an absolute liability regime, but with the right to limit liability retained. It must also be noted that the liability regime provided for in article 9(3) only applies to losses 'resulting solely from the carriage on deck'. It follows that where a peril engulfs the whole adventure, as where a fire on board spreads through the ship and fire damage is caused to deck cargo, the question of liability is determined not by reference to article 9 but article 5(1), which sets out the presumed fault principle.

A final variation is where the carrier carries cargo on deck in breach of an express agreement to carry under deck. In addition to being absolutely liable, as above, the carrier loses the right to limit liability.<sup>32</sup> There is in this provision an element of penalty for breach of the express agreement, which carries the promissory implication not to carry on deck.

### **3.2.2. Rotterdam Rules**

Under the Rotterdam Rules it is again the case that deck cargo falls within the Rules, the term 'Goods' being defined broadly,<sup>33</sup> and with a special liability regime established in article 25. The article follows, with some modifications, the approach adopted by the Hamburg Rules.

In the first place, deck carriage is only permitted if:

- i. such carriage is required by law, or
- ii. the goods are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles, or
- iii. the carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.<sup>34</sup>

A very noticeable feature of this provision is the expansion of permissible deck carriage to include containerised transportation, which is synonymous with deck carriage, but the qualifications must also be carefully noted.

There is no express indication given as to the form in which a contractual agreement is to be expressed, but sub-article 4 indicates that a carrier is not entitled to invoke (iii) above against a third party who has acquired a negotiable transport document or negotiable electronic

transport record in good faith, unless the contractual particulars state that the goods 'may' be carried on deck. This provision is restricted to negotiable transport documents, but it is sufficient that they merely give a right to carry on deck. It may be presumed that the requirement will be satisfied if the right is set out in the negotiable transport document or record.

Where permissible deck carriage is undertaken the core liability regime established under the Rules is applicable, in other words the qualified presumed fault regime, subject to one important qualification. Where the cargo is carried pursuant to (i) or (iii) above, the carrier is not liable for any loss 'caused by the special risks involved in their carriage on deck'.<sup>35</sup> The 'special risks' are not identified, but examples would probably include washing overboard and defective lashings. This is a surprising protection for carriers and extends the protection beyond the provisions of the Hamburg Rules. Significantly, this immunity does not apply to the carriage of containers on deck.

Where cargo is carried impermissibly on deck the carrier is liable for recoverable loss which is 'exclusively caused by their carriage on deck' and cannot raise any defence provided for in article 17.<sup>36</sup> This implies absolute liability but with the right to limit liability retained. The restriction of liability to loss 'exclusively caused' by the deck carriage is likely to cause many interesting problems of causation.

Where the carriage on deck is in contravention of an agreement to carry under deck the carrier is liable for loss that 'resulted from' the deck carriage and also loses, in addition to the loss of any defences, the benefit of any right to limit liability.<sup>37</sup> Somewhat awkwardly the causation test is suddenly and for no apparent reason changed, and the preceding analysis of the implications has been based on the assumption that sub-article 5 is to be read together with sub-article 4, though this is no expressly indicated in the article itself.

### **3.3. Deck cargo and the doctrine of fundamental breach**

As will be clear from the preceding analysis there is to be found in the Hamburg and Rotterdam Rules a penal element when a carrier transports cargo on deck impermissibly or in contravention of an express agreement to carry under deck. Not only is the carrier made absolutely liable but he may also lose the right to rely on prescribed defences and the right to limit liability. This resonates with elements of the doctrine of fundamental breach for

31. Art. 9.3.

32. Art. 9.4.

33. Art. 1.24 'Goods' means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.

34. Art. 25.1.

35. Art. 25.2.

36. Art. 25.3.

37. Art. 25.5.

contractual deviation which is variously adopted in many jurisdictions.<sup>38</sup>

The doctrine was originally associated with navigational deviation,<sup>39</sup> but in some jurisdictions it has been developed to include other contractual deviations, including carriage on deck.<sup>40</sup> The underlying premises on which the doctrine is founded is that certain breaches are considered to represent such a material deviation from the proper performance of the contract of carriage of goods by sea that the breach has to be characterised as fundamental, with the consequence that the contract is abrogated from the moment of the deviation. The ultimate result is that the carrier assumes the status and liability of a common carrier and loses all benefits under the special contract abrogated, including defences and right to limit liability.

There exists a readily identifiable association between the provisions of the Hamburg and Rotterdam Rules and the doctrine of fundamental breach. It is, of course, the case that a State which ratifies the Rotterdam Rules will not have to concern itself with the question of the relationship between deck cargo carriage and fundamental breach because article 25 sets out equivalent penal provisions. The Rotterdam Rules do not take a position on the doctrine of fundamental breach, but they do attempt to undermine its impact. In article 24 it is provided that where under the applicable law of the contract of carriage a deviation constitutes a breach of the carriers' obligations 'such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention' except where the carrier by his conduct loses the right to limit.<sup>41</sup> Very unhelpfully the article does not provide a definition of what is a deviation, but otherwise the Rules attempt to undermine the doctrine by removing its most telling consequences.

#### 4. CONCLUSION

In conclusion, I raise the question whether the continued existence of the micro-liability regimes I have identified for particular attention is justified. Their existence was not questioned by the many committees of experts who fashioned the substance and structure of the Rotterdam Rules. There is, however, a danger that we become so familiar with that which has always existed that we are incapable of contemplating its absence. Nevertheless, it is doubtful if the law and practice relating to the international carriage of goods by sea would be undermined or adversely affected if the carriage of dangerous cargo and deck cargo ceased to be considered special categories and

were integrated into the core liability regime of whichever international convention was applicable.

The carriage of dangerous cargo and deck cargo can hardly be described as extraordinary modes of carriage in the modern world of maritime transportation. Vast quantities of dangerous cargo are carried in bulk or containerised in specially constructed or general cargo ships, and largely incident free. In the early history of maritime transport deck cargo might have been exceptional and risky, and rightly castigated as an improper system of carriage, but that response cannot survive into the contemporary realities of the subject. Containerisation has revolutionised and now dominates the carriage of break-bulk cargo, and even outside the sphere of container vessels, developments in the design and scale of ships have made deck carriage much more feasible.

It appears to me that these changes in the structure and organisation of maritime transport have made the special place dangerous cargo and deck carriage occupy in the international conventions anomalous. They could be expunged without adverse consequence and with the distribution of risk as between carriers and shippers determined by the application of principles relating to the application of the core liability regime of the relevant convention. This exercise would necessarily involve an examination of such matters as the contractual terms agreed, the actual and constructive knowledge of the parties with regard to the fact and nature of the risk, and, more widely, industry standards and levels of awareness.<sup>42</sup> It is difficult to understand why in the contemporary world of shipping carriers who carry dangerous cargo or deck cargo should be treated in the eyes of the law any differently from other carriers.

This approach, if adopted, would not necessarily alter the distribution of risk radically, but there would, potentially, be changes. To examine the potential impact on the Rotterdam Rules, the approach would, in all probability, give carriers less protection with regard to the deck carriage, but more protection in respect of the carriage of dangerous goods. It seems questionable that a carrier of deck cargo should be immune from liability for loss caused by the special risks associated with carriage on deck. It is equally questionable that a carrier should bear the risk of dangerous cargo which has been shipped without knowledge of its dangerous or potentially dangerous nature.

Finally, the further benefit would be a simplification of the structure of the convention legal regimes.

38. Tetley, *Marine Cargo Claims* (Fourth Edition), Vols. 1 and 2, chps. 5 and 35.

39. *Hain SS Co Ltd v. Tate & Lyle Ltd* (1936) 41 Com Cas 350.

40. This would appear to be the case in US law, see *Jones v. The Flying Clipper* (1954) 116 Fed Supp 386 (S.D.N.Y. 1953); *Encyclopaedia Britannica Inc v. The 'Hong Kong Producer' and Universal Marine Corporation* [1969] 2 *Lloyd's Rep* 536. This is probably not the case in English law, see *Kenya Railways v. Antares Co Pte Ltd (The Antares)* (Nos. 1 and 2) [1987] 1 *Lloyd's Rep* 424 (CA).

41. In its entirety the article provides, 'When pursuant to applicable law a deviation constitutes a breach of the carrier's obligation, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in article 61'.

42. Cf *The Athanasia Comminos* [1990] 1 *Lloyd's Rep* 277, 283, per Mustill J (as he then was).