

Transit and Transshipment of Arms by Sea - a Transport Law Perspective

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Agenda

I. Introduction

II. Arms Transport by Sea (Private Law)

III. Transit Restrictions in the Context of Transport by Sea
(Regulatory Side)

I. Introduction - Overview

	Private Law	Regulatory
Transport including loading and discharge	Hague Visby Rules or Domestic Law	Firearms Protocol Wassenaar Agreement
Storage Safety		International Convention for the Safety of Life at Sea, 1974 (SOLAS)
Dangerous Goods		International Maritime Dangerous Goods (IMDG) Code
Transit	Hague Visby Rules or Domestic Law	United Nations Convention on the Law of the Sea (UNCLOS)
Arrest	Arrest Convention 1999	Regional: EU Customs Code

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I. Introduction- Transshipment

- Not defined by ATT
- United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991) – not in force
 - Applies to the Terminal Operator performing or precuring transport-related services
- Transport-related services are defined as "*includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing*"
- User's Guide to European Union Council Position 2008/944/CSFSP
- *'Transshipment': transit involving the physical operation of unloading goods from the importing means of transport followed by a **reloading (generally) onto another** exporting means of transport*

I. Introduction - Transshipment

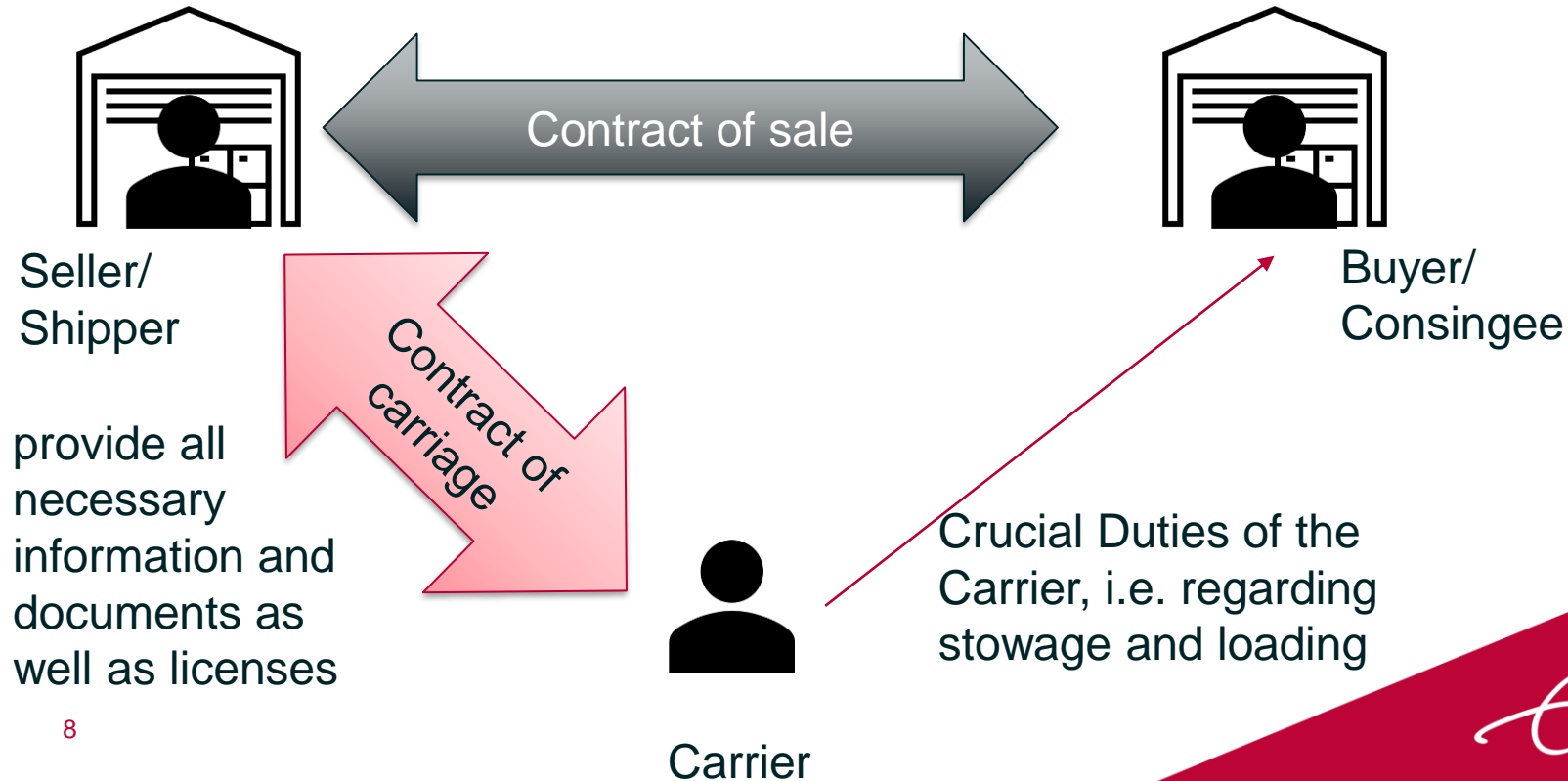
- Relevance for the ATT:
 - Loading Processes
 - Loading on the vessel
 - Stowage Plans/ Storage at the vessels
 - Discharge from the vessels
 - Storage at Port areas
 - Final Destination for (an arrested) vessel
 - Permission to unload – Prohibition or Restrictions

II. Arms Transport by Sea

International

- **Hague Rules (HR)**
 - International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Brussels, 25 August 1924)
 - **Visby Protocol > Hague-Visby Rules (HVR)**
 - Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Brussels, 23 February 1968) – SDR Protocol 1979
 - **Hamburg Rules**
 - United Nations Convention on the Carriage of Goods by Sea (Hamburg, 31 March 1978)
- Bill of Lading or similar document of title required
- Domestic law applies for transport based on waybills

II. Arms Transport by Sea



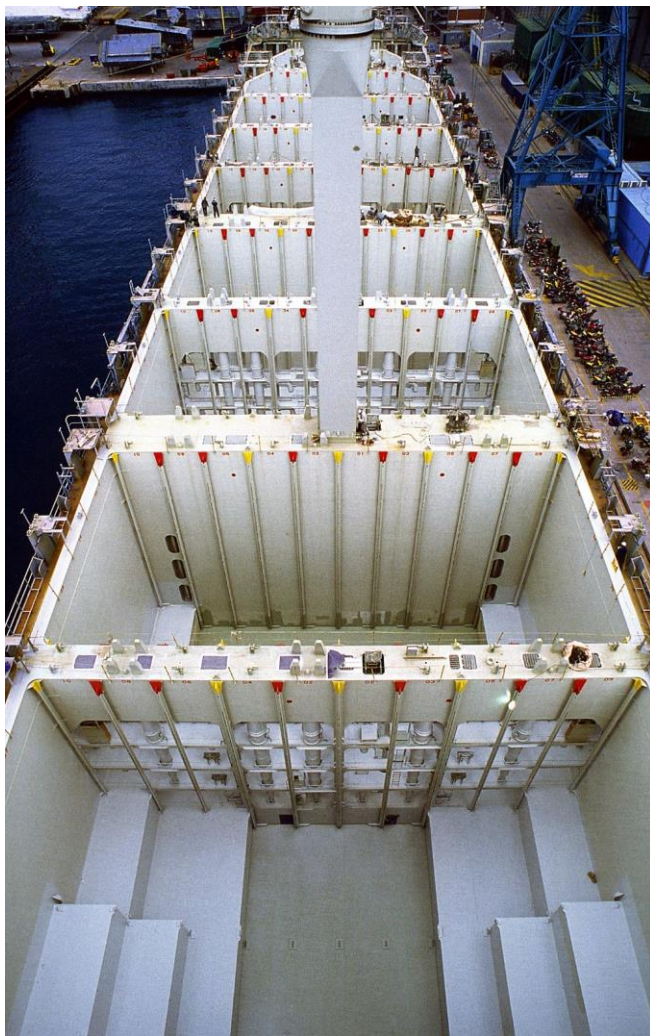
II. Arms Transport by Sea

Article III Hague-Visby Rules

1. *The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:*

- (a) Make the **ship seaworthy**;*
- (b) Properly **man, equip** and supply the ship;*
- (c) Make **the holds**, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.*

2. *Subject to the provisions of Article IV, the carrier shall properly and carefully load, **handle, stow**, carry, keep, care for, and discharge the goods carried.*



- Seaworthiness of Ship may be affected by bad stowage that affects the safety of the vessel
- Bulky cargo, e.g. tanks must be lashed appropriately
- International legal standard:
 - International Convention for the Safety of Life at Sea, 1974 (SOLAS)

II. Arms Transport by Sea

Relevance of Dangerous Goods Regulations?

- International Maritime Dangerous Goods (IMDG) Code
 - Only hazardous, explosive or immediately dangerous goods
 - Not applicable to arms without ammunition
 - Not explicitly relevant for article 9 ATT

II. Arms Transport by Sea

Special Issue: Deviation

- *Permitted by article IV (4) HVR: “Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom”*
- Regulatory aspect: required Transit Permission for this port
 - International Convention for the Safety of Life at Sea, 1974 (SOLAS) – ISPS Code 1.3 4: *preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities;*

II. Arms Transport by Sea

Special Issue: intermediate stop

- Forced stop possible in case of arrest based on maritime claim regulated by Arrest Convention 1999
- Regulatory aspect: required Transit Permission for this port
 - International Convention for the Safety of Life at Sea, 1974 (SOLAS) – ISPS Code 1.3 4: *preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities;*

III. Transit Restrictions in the Context of Transport by Sea

- How do Transit Restriction influence transport by sea
 - Arms are general cargo → merchant vessels
- Issue 1: On sea – during the voyage
- Issue 2: For discharge permission at port of destination

III. Transit Restrictions in the Context of Transport by Sea

Issue 1: Inspections on sea?

- Innocent passage under articles 17ff UNCLOS Convention
- Article 21 (1) f: *the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State*
- Article 25 UNCLOS: right of the coastal state to regulate non-innocent passage
→ Then, right to stop, inspect and diverted from territorial sea
- UN Security Council's arms embargo must enjoy preference over innocent passage (Article 103 UN Charter)

III. Transit Restrictions in the Context of Transport by Sea

Issue 2: At the port – denied unloading

Regional Rules:

- Article 194 EU Customs Code: Release of the goods only if no prohibition

- Practical problem: unloading of other cargo stored lower under deck

- Necessity of intermediate storage at port facilities

Article 198 EU Customs Code: confiscation possible



Thank you for your attention!

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