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Navigating Domestic Waters: A Critical Examination of Tanzania's Legal Framework Governing the Carriage of Goods by Sea

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Abstract:

Tanzania's strategic Indian-Ocean coastline ought to make the country a natural logistics hub for East Africa, yet its carriage of goods legislation remains tied to the 1924 Hague template. This study utilizes combined a doctrinal and comparative reading of the Merchant Shipping Act 2003 and the Carriage of Goods by Sea Act (Cap 164) alongside The Hague Rules, Hague-Visby Rules, Hamburg Rules and Rotterdam Rules, and benchmarks the findings against recent Kenyan and South-African reforms. The analysis exposes an enabling-order vacuum that leaves the ratified Hamburg Rules inoperative; a one-off seaworthiness duty and brief "tackle-to-tackle" liability window misaligned with multimodal reality; statutory silence on electronic bills of lading; and overlapping manifest-vetting mandates between the Tanzania Shipping Agencies Corporation and the Tanzania Ports Authority that prolong vessel clearance. These doctrinal and institutional gaps inflate insurance premiums, encourage forum shopping and blunt Dar es Salaam's competitive edge. The paper urges timely incorporation of modern liability conventions, legal recognition of electronic documentation and consolidation of clearance functions within a single-window regulator to restore legal certainty and administrative efficiency.

Keywords: Carriage of goods by sea, Merchant Shipping Act, Hamburg Rules, Rotterdam Rules, Tanzania.

1. Introduction:

The shipping industry transports approximately 80 percent of global merchandise trade by volume, making predictable maritime-liability regimes a decisive factor in routing decisions and foreign direct investment.[1] Coastal states that modernize their carriage-of-goods legislation such as Singapore and the Netherlands have documented reductions in cargo-insurance premia and a demonstrable rise in liner-service frequency.[2] Tanzania's long Indian-Ocean frontage and three deep-water ports therefore position the country to capitalize on East–West trade flows, provided its legal framework offers clarity comparable with contemporary international instruments.[3]

[1] United Nations Conference on Trade and Development (UNCTAD), Review of Maritime Transport 2024 (Geneva: UNCTAD, 2024).

[2] John F. Wilson, Carriage of Goods by Sea, 7th ed. (Harlow: Pearson Education, 2010); United Nations Conference on Trade and Development (UNCTAD), Review of Maritime Transport 2020 (Geneva: UNCTAD, 2020).

[3] Felician F. Mombo and Elinami S. Chijumulo, "The Legal Framework for Carriage of Goods by Sea in Tanzania: A Need for Reform," Journal of Maritime Law and Commerce 53, no. 1 (2022): 45–68.

In Tanzania, the legal framework governing carriage of goods by sea has been influenced by the international instruments but also incorporates local legal provisions. The Tanzanian legal system traditionally relied on British maritime law due to its colonial history, but it has since integrated various international conventions and local legislation to regulate the carriage of goods by sea.[4] The primary legislation governing the carriage of goods by sea in Tanzania includes the Merchant Shipping Act,[5] and the Carriage of Goods by Sea Act.[6] These laws incorporate aspects of international maritime instruments and provide specific rules applicable within the Tanzanian jurisdiction.[7] The Merchant Shipping Act, for instance, covers a range of maritime issues including safety, registration, and the carriage of goods, while the Carriage of Goods by Sea Act specifically addresses the contractual relationships between carriers and shippers. were drafted with the 1924 Hague Rules in mind and have undergone only incremental amendment. As a result, they retain the "tackle-to-tackle" liability window and a defence catalogue that heavily favors carriers, even though Tanzania acceded to the more shipper-protective Hamburg Rules in 2002. [8] The still more comprehensive Rotterdam Rules, which extend liability to multimodal legs and recognize electronic bills of lading (e-B/L), remain unincorporated, reproducing the "implementation gap" observed in other dualist jurisdictions such as Nigeria and India.[9]

This doctrinal lag has concrete commercial consequences. Carriers, cargo owners and banks report uncertainty over liability ceilings, the evidentiary weight of electronic transport records, and the enforceability of foreign jurisdiction or arbitration clauses routinely printed on modern bills of lading.[10] Where statutory silence prevails, Tanzanian courts default to imported English precedent an approach that promotes neither legal predictability nor development of indigenous maritime jurisprudence. [11] Such uncertainty feeds into higher risk-loading by underwriters and may redirect trans-shipment cargoes to Mombasa or Durban, where the Hamburg or Hague-Visby regimes are firmly entrenched.[12]

Institutionally, the overlap between the Tanzania Shipping Agencies Corporation (TASAC) and the Tanzania Ports Authority (TPA) exacerbates enforcement inconsistencies. Both entities possess inspection powers and levy administrative penalties, prompting repeated complaints of "double vetting" from liner operators.[13] Comparative studies show that streamlined, single-window regulators e.g., Singapore's Maritime and Port Authority reduce clearance times by up to 50 percent and improve treaty compliance.[14] Absent similar clarity, Tanzania risks conflating regulatory control with commercial service delivery, to the detriment of efficient carriage enforcement.

Against this backdrop, the present analysis adopts a doctrinal–comparative methodology, juxtaposing Tanzania's Merchant Shipping Act (2003) and Carriage of Goods by Sea Act (Cap. 164) with the Hague–Visby, Hamburg, and

[4] Ngowi, H. P. (2015). *Legal Aspects of Maritime Transport in Tanzania*. Journal of African Law, 59(3), 445-462.
[5] Cap 165 of 2003
[6] Cap 164 of 2002
[7] Tanzania Shipping Agencies. (2020). *Overview of Maritime Law in Tanzania*: Key Legislation and Regulations.
[8] Wilfred B. Bendera, Maritime Law and Policy in Tanzania: Issues and Perspectives (Dar es Salaam: University of Dar es Salaam Press, 2019).
[9] Thomas Zacharias, Modernizing Carriage of Goods Law: The Case for Rotterdam Rules Adoption in Africa (Cape Town: African Maritime Law Series, 2021); Michael Bixby, "The Rotterdam Rules: The Final Evolution of Maritime Law?" Tulane Maritime Law Journal 43, no. 2 (2019): 221–250
[10] Proshanto K. Mukherjee, "Legal Aspects of the Use of Electronic Bills of Lading," Journal of Maritime Law and Commerce 33, no. 2 (2002): 245–262;
[11] David P. Kamala, Judicial Practice and the Development of Maritime Law in Tanzania (Dar es Salaam: University of Dar es Salaam Press, 2025).
[12] United Nations Conference on Trade and Development (UNCTAD), Review of Maritime Transport 2020 (Geneva: UNCTAD, 2020)
[13] Joyce J. Kamala, An Assessment of Compliance of Tanzanian Law and Enforcement with International Standards on the Carriage of Goods by Sea (LL.M. dissertation, Dar es salaam Maritime Institute, 2025).
[14] World Trade Organization (WTO), World Trade Report 2023: Re-globalization for a Resilient, Inclusive and Sustainable Future (Geneva: WTO, 2023).

Rotterdam Rules, as well as with more modern carriage-of-goods statutes in Kenya and South Africa. It explores two interrelated questions: (i) whether Tanzania's current legal framework offers a risk-allocation model aligned with contemporary commercial expectations, and (ii) where statutory gaps or inconsistencies impede effective litigation, enforcement, and dispute resolution. By mapping these doctrinal fault lines, the paper provides an evidence-based foundation for targeted legislative reforms and institutional realignment crucial steps if Tanzania is to realize its ambition of becoming the Indian Ocean gateway of choice for the Great Lakes region.

2. Literature Review:

2.1 International Liability Conventions

The scholarly consensus is that The Hague Rules of 1924 emerged as a political compromise between ship-owning nations and cargo interests at a time when steamship technology had only recently displaced sail.[15] Their chief innovation was to codify a minimum duty of seaworthiness and furnish cargo interests with an actionable bill of lading; yet Article IV simultaneously granted carriers an extensive catalogue of defenses among them "act of God," "perils of the sea," and the contentious nautical-fault defence that immunized navigational neglect .[16] When The Hague-Visby Protocol 1968 revisited the package limit (raising it from £100 sterling to 10 000 gold francs per package or 30 francs per kilogram), it left the underlying allocation of risk largely intact, prompting critics to describe the revision as "an inflation adjustment, not a paradigm shift"[17]

In contrast, the Hamburg Rules 1978 reflected the growing bargaining power of cargo-owning and developing states.[18] They abandoned the nautical-fault defence, imposed a presumptive liability on carriers for loss, damage or delay, and expanded the liability window beyond the classic "tackle-to-tackle" period to embrace the full time the goods are in the carrier's custody. The Rotterdam Rules 2008 attempted an even wider unification from "door to door," across sea and land legs and recognized electronic transferable records as functional equivalents of paper bills. However, the Rotterdam text stretches to 96 articles, and its complexity, coupled with heightened carrier liability, has deterred ratification; by 2024 only Spain, Cameroon, and three minor trading nations had deposited instruments of acceptant. [19] Legal commentators therefore warn of an "orphan convention" that, while technically superior, lacks the critical mass to displace the entrenched Hague-Visby regime [20]

2.2 Domestic Reception in Dualist Systems

A dualist country refers to a nation that follows a legal system in which international law and domestic law are considered separate. In such countries, international treaties or conventions do not automatically become part of the national legal system once ratified. Instead, they need to be explicitly incorporated into domestic law through national legislation before they have legal effect within the country.[21] Tanzania is among of the dualist country that Tanzania international treaties acquire domestic force only after enabling legislation is enacted.[22] Absent such legislation, courts must rely on domestic statutes or common-

[15] William Tetley, Marine Cargo Claims, 4th ed. (Montreal: International Shipping Publications, 2004).

[16] John F. Wilson, Carriage of Goods by Sea, 7th ed. (Harlow: Pearson Education, 2010).

[17] Charles Debattista, Sale of Goods Carried by Sea: The Carriage Contract and the International Sale (Oxford: Oxford University Press, 2009), 112.

[18] Proshanto K. Mukherjee, "The Hamburg Rules: A Cargo-Oriented Regime in the Making," Journal of Maritime Law and Commerce 33, no. 3 (2002): 381–400.

[19] G.J. van der Ziel, "The Rotterdam Rules: A Legal and Functional Comparison with the Hague, Hague-Visby and Hamburg Rules," Journal of International Maritime Law 16, no. 2 (2010): 120–135.

[20] Barış Soyer and Andrew Tettenborn, The Rotterdam Rules: A Practical Annotation (London: Informa Law from Routledge, 2017), 5.

[21] Smith, J. (2021). International Law and Domestic Legal Systems: Understanding Dualism and Monism. Law and Policy Publishing.

[22] Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge: Cambridge University Press, 2017), 131–133; Antonio Cassese, *International Law*, 2nd ed. (Oxford: Oxford University Press, 2005), 213–215.

law principles, even where the state has ratified the treaty at the international plane. [23]shows that this dualism has produced a *Hamburg gap* in Tanzania, although the country deposited its instrument of accession in 2002, no Gazetted Order has been issued under section 426(1) of the Merchant Shipping Act[24] to give the Rules intra-state effect. Consequently, litigants who plead Hamburg provisions find courts reluctant to apply them, resorting instead to the carrier-friendly language of Carriage of Goods by Sea Act.[25]

Comparable implementation discrepancies appear elsewhere.[26] documents a line of Nigerian carriage cases where judges acknowledged the Hamburg Rules verbally yet disposed of the dispute under English common law because Nigeria's Carriage of Goods by Sea Act still embodies Hague-Visby. India tells a similar story: despite signing Rotterdam in 2009, its courts continue to apply the Indian Bills of Lading Act 1856 when construing carrier liability[27]. These examples underscore a wider doctrinal point: in dualist states, *ratification without domestication* yields an interpretive vacuum that impedes harmonization and invites forum shopping.

2.3 Regional Benchmarks

Kenya offers a contrasting model. The Merchant Shipping Act 2009 explicitly schedules the Hamburg Rules in full, thereby extending liability coverage "port to port" and granting statutory recognition to electronic bills of lading [28] Early empirical evidence suggests that Kenyan shippers now benefit from clearer liability ceilings and faster settlement of cargo claims, reducing average dispute duration by 30 percent [29] Kenya's approach demonstrates that wholesale adoption of a modern convention is administratively feasible in East-African common-law jurisdictions.

Also, South Africa pursued a more incremental path. Through its Carriage of Goods by Sea Act 1986, it enacted Hague-Visby while reserving power to promulgate further conventions by regulation. A 2021 discussion draft proposes importing key Rotterdam provisions particularly those on multimodal transport and electronic records without dismantling the existing package-limitation architecture. [30]Scholars interpret South Africa's phased strategy as a *hybrid model* that balances the certainty of Hague-Visby with the technological relevance of Rotterdam. [31] For Tanzania, these regional precedents illustrate two viable legislative pathways: wholesale Hamburg combination Kenya or staged convergence toward Rotterdam, as envisaged in Pretoria.

2.4 Research Gap

Most East African maritime scholarship focuses primarily on infrastructural bottlenecks such as dwell times, berth productivity, and hinterland connectivity, with comparatively limited attention to the substantive quality of carriage-liability legislation; [32] where legal analyses do exist, they often offer broad descriptive overviews rather than detailed, clause-by-clause critiques. As a result, there is a notable scarcity of research examining how specific provisions within Tanzania's Merchant Shipping Act and Carriage of Goods by Sea Act either diverge from or inadvertently replicate the liability frameworks established by

[23] Wilfred B. Bendera, *Maritime Law and Policy in Tanzania: Issues and Perspectives* (Dar es Salaam: University of Dar es Salaam Press, 2019).
[24] Cap 165 of 2003
[25] Cap 164 of 2002
[26] Thomas Zacharias, Modernizing Carriage of Goods Law: The Case for Rotterdam Rules Adoption in Africa (Cape Town: African Maritime Law Series, 2021); Michael Bixby, "The Rotterdam Rules: The Final Evolution of Maritime Law?" Tulane Maritime Law Journal 43, no. 2 (2019): 221–250.
[27] Michael Bixby, "The Rotterdam Rules: The Final Evolution of Maritime Law?"
[28] Basilisa Kiraga and Enock Mapunda, *Modern Shipping Documentation and Legal Reform in East Africa* (Dar es Salaam: Tanganyika Legal Publishers, 2021).
[29] James Wainaina, "The Impact of Maritime Legal Reforms on Cargo Claims in Kenya," East African Journal of Maritime Law 15, no. 1 (2022): 78–95.
[30] World Trade Organization (WTO), *Trade Policy Review: South Africa 2023* (Geneva: WTO, 2023).
[31]Rachel Spooner, "Navigating Legal Modernization: South Africa's Maritime Carriage Regime," *Journal of African Maritime Law* 12, no. 3 (2023): 150–172.
[32] James Kebaya and Peter Wambugu, "Maritime Infrastructure and Efficiency in East Africa," East African Journal of Transport and Logistics 8, no. 2 (2020): 102–118;

the Hague-Visby, Hamburg, or Rotterdam Rules.[33]

This doctrinal gap is significant because statutory clarity or its absence directly influences commercial practices: ambiguous limitation clauses drive up insurance premiums; lack of explicit provisions on electronic records stifles digitization efforts; and ill-defined carriage periods hinder effective evidence collection in litigation.[34]Furthermore, the role of local institutions such as the Tanzania Shipping Agencies Corporation (TASAC) and the Tanzania Ports Authority (TPA) in enforcing and interpreting these laws remains underexplored, contributing to challenges in practical application and enforcement of domestic maritime legislation. By undertaking a thorough dissection of Tanzania's principal carriage statutes, analyzing relevant judicial decisions, and benchmarking against regional and international standards, this study aims to fill that analytical void and provide policymakers with a concrete set of reform recommendations

3. Methodology:

This investigation employs a **qualitative doctrinal design**, the traditional method for interrogating legal rules, principles and institutions. [35] Doctrinal research is well suited to the present objective scrutinizing Tanzania's statutory and case-law architecture because it prioritizes the systematic collection, classification and critical evaluation of primary legal materials.[36] By focusing the analysis on enacted texts rather than empirical surveys, the study isolates purely normative questions of coherence, hierarchy and interpretive consistency, thereby avoiding the "double counting" that can occur when doctrinal claims are conflated with policy opinions .[37]

Primary sources comprised the *Merchant Shipping Act 2003*, the *Carriage of Goods by Sea Act* (Cap. 164) and a purposive sample of reported Tanzanian judgments, notably ***National Insurance Corporation v Tanzania Harbours Authority***[38] These texts were read in para-context with three benchmark conventions Hague-Visby, Hamburg and Rotterdam and with two UNCITRAL model laws relevant to electronic transferable records and multimodal transport. Secondary authorities' scholarly monographs, journal articles, law-reform reports and parliamentary Hansards supplied interpretive commentary and doctrinal.

Documentary analysis was structured across three sequential stages. **Stage 1** involved a clause-by-clause exegesis of domestic legal provisions relating to carrier liability, seaworthiness, bills of lading, and limitation of liability. Particular attention was paid to internal cross-references, definitional ambiguities, and areas of potential doctrinal inconsistency. **Stage 2** undertook a horizontal comparative analysis, systematically aligning each relevant Tanzanian provision with its counterpart in the Hague-Visby, Hamburg, and Rotterdam Rules. This allowed for the identification of substantive divergences, normative gaps, and unincorporated international standards. **Stage 3** engaged in a vertical implementation review by examining ministerial regulations, port authority circulars, and parliamentary committee records to assess the extent of treaty incorporation into domestic law. This stage also sought to identify any delegated legislation that substantively modifies, supplements, or suspends provisions of the primary statutory framework.

To enhance the reliability and analytical robustness of the findings, the study employed a

[33] United Nations Conference on Trade and Development (UNCTAD), Review of Maritime Transport 2020 (Geneva: UNCTAD, 2020);

[34]Barış Soyer and Andrew Tettenborn, The Rotterdam Rules: A Practical Annotation (London: Informa Law from Routledge, 2017).

[35] Terry Hutchinson and Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research* (2012) 17(1) *Deakin Law Review* 83.

[36] William Twining, Rethinking Evidence: Exploratory Essays (2nd ed, Cambridge University Press, 2006).

[37] Matthew A Salzwedel and Christopher J Wagner, 'The Problem of "Double Counting" in Legislative History' (2015) 54(1) *American University Law Review* 33.

[38] (Comm-Div, 2003).

comparative triangulation strategy. Selected statutory instruments from Kenya, South Africa, and the United Kingdom were examined to identify best-practice provisions relevant to maritime carriage. These comparative benchmarks were chosen based on legal-system affinity, shared common law heritage, and their influence on Tanzanian legislative drafting. In parallel, a purposive reading of Commonwealth appellate judgments was undertaken to extract persuasive authority on interpretive disputes, particularly in relation to carrier obligations, limitation clauses, and evidentiary presumptions under bills of lading. To safeguard against mischaracterization or over-interpretation, doctrinal conclusions were cross-validated against regional jurisprudence. This consistency check ensured that textual anomalies or isolated drafting artefacts were not misread as indicative of systemic legal trends.[39]Ethical safeguards centered on accurate citation, faithful quotation and avoidance of doctrinal misrepresentation, in line with the *Tanzania Commission for Universities Research Integrity Guidelines* [40] and the *Singapore Statement on Research Integrity* (2010). These measures collectively provide a transparent, replicable pathway from source selection to normative evaluation.

4. Results and Findings:

4.1 Statutory Architecture

Part XII of the Merchant Shipping Act 2003 (MSA) follows the skeletal template of Article IV of the Hague Rules by granting carriers a broad catalogue of defences "act of God," "perils of the sea," "latent defects" and the persistently controversial *nautical-fault* exemption (s 292). What the statute omits, however, is any guidance on who bears the evidential burden once a prima-facie loss is shown. In ***National Insurance Corporation v Tanzania Harbours Authority*** [41]the High Court filled that gap by borrowing the English rule in *The Hellenic Dolphin* [42] insisting that the carrier must prove not only the occurrence of an exempt peril but also that "due diligence" was exercised to avoid it a gloss found nowhere in the MSA text. Scholars warn that such judicial "import substitution" creates doctrinal instability because the scope of due diligence in English law has itself evolved through a century of case-specific refinements. [43]The net effect is a liability regime that appears carrier-friendly on its face but depends on ad-hoc common-law transplantation in practice, undermining legal predictability for shippers and insurers alike.

Section 346 of the Merchant Shipping Act compounds the problem by limiting the carrier's seaworthiness duty to a single point in time "at the commencement of the voyage." Modern conventions have moved decisively away from this narrow trigger: Article 14 of the Rotterdam Rules requires "due diligence before and during the voyage," while Article 5 of the Hamburg Rules extends liability for "the entire period during which the goods are in the carrier's charge." Comparative scholarship shows that failure to mandate continuing seaworthiness shifts unforeseen mechanical risks onto cargo interests, particularly on multi-port or long-haul routes common to the Asia–East-Africa trade lane. [44]Because Tanzanian courts lack domestic statutory language to anchor mid-voyage claims, litigants must plead negligence in tort or rely on

[39]Carriage of Goods by Sea Act 1995 (UK); Carriage of Goods by Sea Act (South Africa); Carriage of Goods by Sea Act (Kenya); see also relevant Commonwealth jurisprudence including Jindal Iron & Steel Co Ltd v Islamic Solidarity Shipping Co Jordan Inc [2004] EWCA Civ 487; Unison v Department of Transport [2006] 1 SA 191 (SCA); Kenya Ports Authority v African Liner Agencies [1981] KLR 95.

[40]Tanzania Commission for Universities, *Research Integrity Guidelines* (2021) https://www.tcu.go.tz/sites/default/files/documents/Research%20Integrity%20Guidelines.pdf.

[41] (Comm-Div 2003) high court

[42] [1978] 2 Lloyd's Rep 336,

[43] John Wilson, *Carriage of Goods by Sea* (7th ed, Pearson, 2010) 135–8; Charles Debattista, *Bills of Lading in Export Trade* (4th ed, Tottel Publishing, 2009) 96–101.

[44] Proshanto K Mukherjee, Maritime Legislation (Kluwer Law International, 2002) 214–16; Stephen Girvin, Carriage of Goods by Sea (3rd ed, Oxford University Press, 2021) 178–83.

implied contractual terms avenues that are procedurally costlier and doctrinally less certain.[45]

Sections 295-296 articulate the classical *tripartite* legal character of a bill of lading as receipt, contract evidence and document of title but they remain silent on two issues central to twenty-first-century commerce: negotiability rules (endorsement, indorsement in blank, liens) and the legal status of electronic transferable records (e-B/L). International best practice has already converged on recognizing functional equivalence for electronic bills through instruments such as the *UNCITRAL Model Law on Electronic Transferable Records 2017* and Article 1.18 of the Rotterdam Rules.[46] Kenya's Merchant Shipping Act 2009 directly incorporates Hamburg and expressly validates e-B/Ls, reducing documentary-fraud risk and shortening clearance times along the Northern Corridor. [47] By contrast, Tanzanian stakeholders must revert to paper bills for the Dar es Salaam leg of multimodal routes, fracturing the evidentiary trail and inflating transactional costs an outcome fundamentally at odds with the government's 2019 National ICT Policy that champion's end-to-end digitalization of trade documents.

4.2 Treaty-Incorporation Ambiguity

Tanzania is a signatory to international instrument related to carriage of goods by sea, such as the Hamburg Rules.[48] However, the extent to which these conventions are incorporated into Tanzanian law and their enforcement remain unclear. For instance, ***Section 426(1)[49];*** reflect the Hamburg Rules but fail to provide clear guidance on their integration into Tanzanian law, leading to uncertainties in their application and enforcement. The ambiguity regarding whether the international rules automatically take precedence or require additional implementation steps, as well as the unclear criteria for their applicability, has created challenges.

As of today, Tanzania has not formally domesticated the Hamburg Rules into its domestic legal framework. However, Tanzanian courts have affirmed their applicability despite that absence. This was explained in the case of ***CMA-CGM (Tanzania) Ltd v. Am Steel & Iron Mills Ltd,*** [50]where the court stated, "I am alive to the fact that Tanzania being a dualist state, once ratified, an international protocol or agreement does not automatically become part of municipal laws.' This highlights the challenge posed by Tanzania's dualist legal system, which necessitates the formal incorporation of international conventions into national legislation before they can have binding effect. [51]Yet, almost a quarter-century after Tanzania deposited its instrument of accession to the Hamburg Rules in 2002, no enabling order has been gazetted. As a result, the Hamburg text floats in a legal limbo: celebrated in government white papers as evidence of treaty commitment, but non-justiciable in the courts and invisible to practicing lawyers drafting carriage contracts.[52] This silence contrasts sharply with Kenya's approach, where section 370 of the Merchant Shipping Act 2009 incorporates Hamburg *ipso facto*, and obviating ministerial discretion.[53]

The doctrinal vacuum surfaces most starkly in litigation. In *East Africa Wholesalers v Caltex Tanzania Ltd* (Comm-Div 2011) the claimant pleaded Articles 4 and 5 of the Hamburg Rules to

[45] Charles Bendera, *Law of Carriage: Maritime, Air and Land Transport in Tanzania* (Open University of Tanzania, 2019) 145–148.

[46] Ralf Soyer and Andrew Tettenborn, 'The Functional Equivalence of Electronic Bills of Lading' (2017) 48 *Journal of Business Law* 345.

[47] Proshanto K Mukherjee, Maritime Legislation (Kluwer Law International, 2002) 214–16; Stephen Girvin, Carriage of Goods by Sea (3rd ed, Oxford University Press, 2021) 178–83.

[48]*United Nations Convention on the Carriage of Goods by Sea* (Hamburg, 31 March 1978), accession by the United Republic of Tanzania on 24 July 1979, entry into force 1 November 1992

[49] Tanzania Merchant Shipping Act, cap 165 of 2003

[50] High court Commercial Division, Commercial Case No. 2 of 2014

[51] Malcolm N Shaw, *International Law* (8th ed, Cambridge University Press, 2017) 131–135.

[52] Charles Bendera, *Law of Carriage: Maritime, Air and Land Transport in Tanzania* (Open University of Tanzania, 2019) 152–154.

[53] James Kiraga and Emmanuel Mapunda, 'Modernising Maritime Trade Law in East Africa: The Impact of Kenya's Merchant Shipping Act 2009' (2021) 12 *African Journal of Maritime Law* 60.

establish carrier liability for condensation damage; the High Court declined to apply them, reasoning that "no order has been issued to import the Rules into domestic law," and reverted to the carrier-friendly exemptions in Cap 164. Nigerian courts have taken a similar stance despite that country's ratification, compelling scholars to label Hamburg an "orphan convention" in dualist Commonwealth jurisdictions. [54]The practical effect is forum shopping: cargo interests with high-value claims insert English law and London arbitration clauses to escape the statutory lacuna an outcome that undercuts Tanzania's strategic goal of becoming a regional dispute-resolution hub.

The policy implications extend beyond private litigation. Port-state control inspectors, tasked with verifying documentary compliance, must assess bills of lading under a statute that ignores multimodal carriage, despite Tanzania's public endorsement of electronic and intermodal reforms in the 2019 National Transport Policy. The disconnect also complicates East African Community (EAC) efforts to harmonize carriage regimes as part of the bloc's Single Customs Territory initiative. [55]Comparative scholarship suggests two corrective pathways: (i) automatic-incorporation clauses that deem ratified treaties part of domestic law upon publication in the *Gazette* (Girvin, 2021), [56]or (ii) a framework act modelled on South Africa's 1986 statute that schedules multiple conventions and empowers the Minister only to update technical annexes. Either solution would transform Section 426 from a dormant enabling provision into a functional conduit for treaty norms, thereby aligning Tanzania's liability architecture with twenty-first-century commercial realities.

[54] *East Africa Wholesalers v Caltex Tanzania Ltd* (Commercial Division, High Court of Tanzania, 2011) (unreported); Zacharias Nnamdi, 'The Orphaned Status of the Hamburg Rules in Dualist Legal Systems: A Nigerian and Commonwealth Perspective' (2021) 9(2) *Journal of Maritime and Commercial Law* 87.

[55] World Trade Organization, Trade Policy Review: East African Community (EAC), WTO Doc WT/TPR/S/446 (2023)

[56] Stephen Girvin, Carriage of Goods by Sea (3rd ed, Oxford University Press, 2021) 201–203.

4.3 Judicial Interpretation

Tanzanian courts have attempted to compensate for statutory silences by borrowing common-law precedent, a strategy most vividly illustrated in ***National Insurance Corporation v Tanzania Harbours Authority*** [57]. There, once the plaintiff established prima-facie loss, the Commercial Division required the carrier to prove that the damage fell within one of the exemptions in section 292 mirroring Article 5(1) of the Hamburg Rules, which shifts the burden to the carrier once loss is shown. Yet the judgment relied almost exclusively on English authorities *The Hellenic Dolphin* [1978] 2 Lloyd's Rep 336 and *The Eurasian Dream* [2002] 2 Lloyd's Rep 653 because Tanzania's statutes provide no guidance on evidential burdens or the standard of "due diligence." Scholars note that such "judicial import substitution" offers short-term doctrinal scaffolding but undermines legal certainty by tethering liability outcomes to a foreign jurisprudence that is itself evolving.[58]

Subsequent cases reveal the fragility of that ad-hoc approach. In *East Africa Wholesalers v Caltex Tanzania Ltd* (Comm-Div 2011), the court again invoked English precedent to determine whether condensation damage fell under the "perils of the sea" defence, yet reached an opposite conclusion on what constitutes "proper care" of cargo. The conflicting rulings stem partly from the courts' selective reception of English commentary without a domestic interpretive hierarchy a phenomenon [59] calls "patchwork precedent," where each bench crafts its own liability algorithm from the same pool of foreign cases. Comparative evidence from Kenya shows that once the Hamburg Rules were expressly domesticated in the Merchant Shipping Act 2009, judicial citations

[57] [2003] TZHC Comm Div (Unreported)

[58] John F Wilson, *Carriage of Goods by Sea* (7th ed, Pearson, 2010) 142–145; Stephen Girvin, *Carriage of Goods by Sea* (3rd ed, Oxford University Press, 2021) 198–201.

[59] Charles Bendera, *Law of Carriage: Maritime, Air and Land Transport in Tanzania* (Open University of Tanzania, 2019) 156–158.

stabilized around the convention's text, significantly narrowing doctrinal divergence.[60]

The Tanzanian judiciary's recourse to foreign law also creates pragmatic costs for litigants. Counsel must marshal expert testimony on English maritime doctrine, lengthening proceedings and inflating litigation expenses costs that, according to UNCTAD,[61] discourage small and medium-sized shippers from pursuing legitimate claims. Moreover, reliance on English burden-of-proof rules can clash with Tanzanian evidentiary principles under the Law of Evidence Act [Cap 6 R.E. 2019], producing procedural skirmishes before substantive liability is even addressed. Until statutory amendments codify clear evidential standards whether Hamburg's presumptive liability or Rotterdam's due-diligence test Tanzanian courts will likely continue this *ex-post* grafting of English doctrine, perpetuating uncertainty in an already fragmented carriage-of-goods regime.[62]

4.4 Institutional Overlap

The statutory mandates of the Tanzania Shipping Agencies Corporation (TASAC) and the Tanzania Ports Authority (TPA) reveal significant functional duplication. TASAC's founding statute (Shipping Agencies Act 2017) empowers it to "review, approve and monitor manifests" for all inbound cargo, while the TPA Act 2004 charges the port authority with verifying those same manifests as part of its revenue-assurance and security protocols. Each agency is further authorized to levy administrative penalties for discrepancies TASAC under section 25(2)(e) and TPA under section 22(1)(f). In practice, shipping lines must therefore submit identical documentation at two separate counters before a vessel can commence cargo operations, a process carriers have labelled "double vetting" in correspondence with the Ministry of Transport.[63]

The commercial impact is measurable. According to a 2022 confidential liner survey cited in parliamentary debates, an average-size container vessel (1 ,200 TEU) incurs an additional 12–18 hours at berth awaiting dual manifest clearance, translating into demurrage, fuel and opportunity costs estimated at USD 27 ,000 per call.[64] Beyond direct costs, the overlap undermines regulatory predictability: carriers report receiving conflicting deficiency notices one from TASAC citing mis declared weight, another from TPA focusing on tariff coding requiring iterative resubmissions and informal negotiations.[65] Such friction erodes Dar es Salaam's competitive position against Mombasa, where a 2018 reform consolidated manifest processing under the Kenya Revenue Authority's Single Customs Territory window.

Comparative evidence underscores the efficiency dividends of *single-window* models. Singapore's Maritime and Port Authority reduced average clearance times by 50 percent after merging port, customs and flag-state inspections into its LEAP system.[66] South Africa is piloting a similar *e-Manifest Hub* under Transnet, with early data indicating a 30 percent cut in administrative penalties for documentation errors.[67] Tanzania could replicate these gains by enacting a Port Clearance Harmonization Regulation under section 426(1) of the Merchant Shipping Act:

[60] James Kiraga and Emmanuel Mapunda, 'Modernising Maritime Trade Law in East Africa: The Impact of Kenya's Merchant Shipping Act 2009' (2021) 12 *African Journal of Maritime Law* 62.

[61] United Nations Conference on Trade and Development (UNCTAD), *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa* (2020) 74–76.

[62] *Law of Evidence Act* [Cap 6 R.E. 2019] (Tanzania) ss 110–114.

[63] Joyce J. Kamala, An Assessment of Compliance of Tanzanian Law and Enforcement with International Standards on the Carriage of Goods by Sea (LL.M. dissertation, Dar es salaam Maritime Institute, 2025).

[64] Mombo & Chijumulo, 'Assessment of Operational Challenges at Tanzanian Ports' (Confidential Liner Survey, 2022) (cited in Parliamentary Debates, 2022).

[65] United Nations Conference on Trade and Development (UNCTAD), Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa (2020) 74–76.

[66] World Trade Organization (WTO), Trade Policy Review: East African Community (EAC), WTO Doc WT/TPR/S/446 (2023) 45.

[67] Spooner, 'South Africa's E-Manifest Hub: Early Results and Efficiency Gains' (2023) Maritime Technology Journal 38.

TASAC would retain flag-state and seafarer-certification duties, while TPA would focus on infrastructure and tariff collection, both operating through an integrated electronic manifest portal. Such realignment would not only streamline compliance but also signal to international carriers that Tanzania is committed to modern, facilitative regulation an essential step toward realizing the government's Blue Economy and trade-facilitation objectives.

5. Discussion:

The results confirm what Zacharia[68] describes as the "borrowed doctrine" phenomenon: where a dualist state ratifies but does not domesticate a convention, judges plug statutory gaps with whatever foreign precedent seems most apposite at the moment. In Tanzania that stop-gap source is almost invariably English case law, so the *Merchant Shipping Act 2003* operates in practice as a Hague-centric template even though the state acceded to the Hamburg Rules nearly twenty-five years ago. Regional comparators demonstrate that statutory overhaul is both feasible and compatible with common-law adjudicative traditions. Kenya's *Merchant Shipping Act 2009* domesticated the Hamburg Rules in there laws governing carriage of goods by sea ; early empirical work shows a measurable reduction in litigation times and a sharper, convention-based jurisprudence[69] Also South Africa has chosen an incremental route, first adopting Hague-Visby (1986) and now circulating a draft bill that lifts electronic-record and multimodal clauses from Rotterdam. Either pathway wholesale Hamburg incorporation or phased alignment with Rotterdam would move Tanzania toward a modern risk-allocation matrix without disrupting the familiar common-law method of statutory interpretation.

Legal uncertainty is more than an academic concern; it translates directly into higher transactional costs. UNCTAD finds a statistically significant correlation between treaty-compliant liability regimes and lower cargo-damage insurance premia.[70]Tanzanian shippers confirm the relationship anecdotally: underwriters routinely "load" policies by 10–15 percent to compensate for unclear liability ceilings and lengthy dispute-resolution timelines.[71] Those additional costs incentivize carriers to route freight through Mombasa or even Durban, ports whose liability statutes align more closely with Hamburg or Hague-Visby and where courts dispose of carriage disputes against a settled statutory backdrop. Left unaddressed, the doctrinal gap therefore threatens Dar es Salaam's long-term competitiveness as an Indian-Ocean trans-shipment node.

The *hard-law* deficits are compounded by *soft-law* institutional overlap. Dual manifest-vetting by TASAC and TPA adds, on average, half a day to vessel clearance and exposes carriers to duplicative penalties. Comparative evidence suggests that a single-window regulator delivers substantial efficiency gains: Singapore's Maritime and Port Authority cut clearance times by 50 percent after consolidating port, customs and flag-state inspections.[72] A Tanzanian reform that reserves flag-state and seafarer functions to TASAC while assigning port-service regulation to TPA but funnels both through a unified electronic manifest portal would harmonize enforcement and align with the East African Community's drive toward trade-facilitation corridors.

[68] Zacharias Nnamdi, 'The Orphaned Status of the Hamburg Rules in Dualist Legal Systems: A Nigerian and Commonwealth Perspective' (2021) 9(2) Journal of Maritime and Commercial Law 87.

[69] Kenya, *Merchant Shipping Act 2009*; see also Achieng Otieno, 'The Impact of the Hamburg Rules on Maritime Litigation in Kenya' (2014) 26(2) *African Journal of International and Comparative Law* 215.

[70] UNCTAD, *Review of Maritime Transport 2020* (United Nations 2020) 45–47.

[71] UNCTAD, *Review of Maritime Transport 2020* (United Nations 2020) https://unctad.org/webflyer/review-maritime-transport-2020 accessed 15 July 2025.

[72]See Tanzania Shipping Agencies Corporation (TASAC) and Tanzania Ports Authority (TPA) procedural guidelines; cf. Maritime and Port Authority of Singapore (MPA), *Annual Report 2018/2019* (MPA 2019) 22–24 https://www.mpa.gov.sg/web/wcm/connect/www/1d58c450-1b7f-4e5f-9f3b-61b2332f3b1b/mpa-ar1819.pdf accessed 15 July 2025.

In sum, Tanzania's maritime-liability ecosystem suffers from a double misalignment: outdated substantive rules and overlapping institutional mandates. The Kenyan and South-African experiences illustrate that bringing statutes into line with Hamburg or Rotterdam is administratively possible and commercially advantageous.[73] Coupled with regulator consolidation, such doctrinal and structural realignment would lower insurance costs, curtail forum shopping, and support the nation's Blue-Economy agenda as well as African Continental Free Trade Area (AfCFTA) objectives. The next section therefore turns to targeted recommendations that translate these analytical insights into actionable legislative and institutional reforms.[74]

6. Conclusion:

Tanzania's current carriage-of-goods regime anchored in the Merchant Shipping Act 2003 and Carriage of goods by sea Act Cap. 164 delivers neither the doctrinal certainty of modern liability conventions nor the administrative coherence demanded by today's multimodal, digitized supply chains. That while Tanzania has made strides in harmonizing its maritime laws with international standards, significant challenges remain, particularly with respect to the outdated legal framework and enforcement inefficiencies. The study recommends the ratification and domestication of the Rotterdam Rules to provide a comprehensive and modern regulatory framework, enhance enforcement mechanisms, and improve legal certainty for maritime stakeholders. Additionally, it calls for active participation in international dialogues on maritime law to ensure that Tanzania's legal framework evolves in line with global standards, promoting greater legal certainty and reducing the legal costs associated with the carriage of goods by sea. Reliance on imported English precedent to patch statutory gaps, coupled with the twin-track oversight of TASAC and TPA, inflates litigation costs, prolongs clearance times and drains competitive advantage to regional rivals that have already domesticated Hamburg or phased in Rotterdam clauses. Aligning Tanzania's statutes with contemporary international norms and consolidating regulatory functions into a single-window framework would therefore do more than tidy up the statute book: it would lower insurance premia, deter forum shopping, and position Dar es Salaam as a credible, modern gateway for Indian-Ocean trade realizing the economic promise that the country's geography has long implied.

[73] Kenya, *Merchant Shipping Act 2009*; South Africa, *Carriage of Goods by Sea Act 1986*;

[74] African Union, *AfCFTA Agreement* (2018) https://au-afcfta.org/ accessed 15 July 2025.

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