

Research on the Liability of Carriers under the Maritime Law of the People's Republic of China

Jiawen Li*

Guizhou Qiannan College of Science and Technology, Qiannan, Guizhou, China
reid1994@yeah.net

*Corresponding author

Abstract: Maritime Law of the People's Republic of China has been in effect for over thirty years and has been controversial since its promulgation. Academic circles have different focuses on amending the Maritime Law. Some focus on the overall situation and elaborate on the revision suggestions for other chapters; some focus on amending the carrier's liability attribution, liability exemption, etc. The Maritime Law takes ship relations and transportation relations as the adjustment objects, so balancing the interests of ships and cargo parties is a close concern of the Maritime Law. Therefore, this Article takes the responsibility basis that determines the balance of interests between the ship and cargo parties as the starting point to reflect on and reconstruct the Maritime Law. The basis of liability here includes the ship's liability, exemption, proof, liability period, and compensation limit. Among them, liability and exemption are two inseparable contents, which involve the exemption of a ship's navigation negligence and the exemption of fire fault; the period of the ship's cargo management obligation should also be discussed in the liability period.

Keywords: Principle of Liability, Reasons for Exemption, Period of Liability

1. The Concept of Basis of Carrier Liability

The so-called foundation refers to the foundation or starting point for developing things. There are no explicit provisions based on the carrier's liability. Therefore, based on the existing theory, the author believes that the basis of the carrier's liability, in a narrow sense, only refers to the liability principle if the goods are damaged or lost while being carried by the ship, the principle based on which the ship's liability is determined. It is not only the attribution of liability within the liability period but also includes exemptions, limits of compensation, and proof. The relevant content of Chinese responsibility basis should be understood broadly. This has the same characteristics as the "Rotterdam Rules" adopted in 2008, which can adapt to technological and commercial developments and integrate and update the "Hague Rules" and "Hamburg Rules"^[1].

For a long time, ocean transportation has been an essential means of transportation to achieve international trade, especially with the development of container transportation. Bulk cargo transportation is more dependent on ocean transportation. From this perspective, carriers play a role that cannot be ignored in maritime transportation, and cargo owners play a role that cannot be ignored. The effect appears to be smaller. However, without the cargo owner's demand for shipping, the carrier cannot play any role unilaterally. Since the beginning, to encourage the development of maritime trade and enhance people's confidence in the marine industry, the concept of strictly restricting carriers has become mainstream; with the improvement of productivity, freedom of contract has flourished, and carriers have begun to act as the "leader" in maritime transportation. In response to this change, the principle of incomplete fault liability has entered the stage of history; this principle of liability, which favors the carrier, is not in line with people's pursuit of fairness, so the relevant principle of liability has been adjusted to the principle of complete fault liability. The weaker party among the shipping and cargo parties will do its best to protect its old interests when faced with the issue of fundamental interest distribution so as not to be at a disadvantage at the starting point of the shipping activities, and the stronger party will not do anything about this issue^[2]. Look the other way and maintain good cooperation between the two parties. We will not increase the pressure at every level, but we will not give in every time. How to build a carrier responsibility basis to maintain such a balance and ensure that maritime cargo transportation can be carried out in an orderly and well-functioning manner is a vital issue for our country.

The scope of the law is not unlimited, and the real-life it has to deal with is diverse, which makes the law show a certain lag. Pursuing legal liability requires facts as the basis and law as the criterion; the same principle applies to the maritime field. Everyone in the world is interested in profit. How to determine the carrier's liability for cargo losses that occur in the field of marine cargo transportation, how to stipulate statutory exemptions, how to allocate the burden of proof, and how to define the scope of compensation for cargo damage have become unavoidable topics for both shippers and cargo parties. These must be adjusted and implemented by corresponding international conventions or domestic laws.

If the relationship between the shipping and cargo parties can be adjusted well, other problems can be easily solved. The situation during the voyage is complex, and the environment is ever-changing. The issues and emergencies we encounter may be unexpected. The carrier's exemption clause should be as reasonable as possible and not be too harsh or loose^[3]. Only in this way can the airline be provided with a better legal environment, free from worries, and at the same time be able to fulfill the obligations of an excellent manager to safeguard the interests of the cargo owner; for the cargo owner, if the carrier has too many exemption clauses, then To protect their interests, cargo owners have to reach more supplementary agreements with carriers, which poses challenges to the stability and authority of the law. In addition, there may be situations where the parties must give up their legitimate rights and interests, which makes fairness and justice based. All land is lost. Maritime cargo transportation is based on legal regulations. Both parties to the ship and cargo will abide by these regulations, gradually forming a more trustworthy cooperative relationship, a more stable transportation environment, and longer-term market development.

2. Investigation of the essential legislation of carrier liability in international conventions

2.1. Examination of the principles of liability and reasons for exemption

Article 4 of the Hague Rules stipulates the reasons for the carrier's exemption. Paragraph 2(q) states: Cargo damage caused not by the fault of the carrier or its agents or servants can be exempted from liability. In other words, the shipowner shall be responsible for cargo damage caused by the negligence of its agents and servants. The principle of carrier liability in the Hague Rules is the principle of negligence. Item (a) of paragraph 2 of this Article shall exempt the carrier from liability for the negligence of its servants and agents in driving and managing the ship, and paragraph (b) shall exempt the carrier from liability for the negligence of its servants and agents in case of fire. 7 Therefore, we believe that the principle of fault liability in the Hague Rules is incomplete, which is called the principle of incomplete fault liability. It stipulates a total of 17 grounds for exemption. Except for fire and navigational negligence, other exemption reasons can be classified as beyond human control. Article 4, paragraph 1, of the Hague Rules, as long as the carrier fulfills its duties to make the ship seaworthy, the crew suitable, and the cargo hold convenient before and when the ship sets sail. Then, the carrier can also be exempted from liability if the goods are damaged or lost due to unseaworthiness, unfitness for passengers, or unfitness for cargo during the voyage. This is another reason for the carrier to be exempted from liability. Article 5, paragraph 1 of the Hamburg Rules stipulates that the carrier and its servants shall take all necessary and feasible measures to protect the goods from damage, and the established liability principle is the principle of presumed fault liability. The "Hamburg Rules" do not stipulate the grounds for exemption^[4]. From this point, it is clear that the carrier's exemption for fire and navigational negligence has disappeared.

The Rotterdam Rules are consistent with the contents of the first two conventions, but they have a different approach in terms of liability attribution. There was no disregard for fairness to safeguard the rights and interests of one party, nor was the wording of the provisions unduly harsh. Instead, it returned to the mainstream of total fault liability based on a neutral position. The exemption part retains other contents in the Hague Rules except fire negligence and navigational negligence, a total of 15 items. The three major international conventions reflect different value orientations regarding carrier liability principles. The Hague Rules pay more attention to the protection of carriers, the Hamburg Rules pay more attention to the safety of the interests of cargo owners, and the Rotterdam Rules pay more attention to the balance of interests of both parties. Whether to retain the carrier's navigational negligence and fire negligence has become a key factor among them. The author will also talk about how our country should choose these two exemptions to meet our country's actual needs better.

2.2. Examination of the burden of proof

Article 4, paragraph 1 of the Hague Rules stipulates that the carrier's burden of proof for its

seaworthiness, crew-worthiness, and ship-worthiness obligations is that the airline can be exempted from liability if it proves it has fulfilled its duties. For the 17 exemptions stipulated in Article 4, Paragraph 2 and the loss or damage of goods caused by other negligent acts, the burden of proof shall be distributed according to the principle that whoever makes the claim shall provide evidence^[5]. The Hamburg Rules first presume that the responsibility for cargo loss lies with the ship. To eliminate adverse consequences, the boat must actively fulfill its burden of proof and show that it has done its best to avoid the loss. There is an exception, however, in Article 5, paragraph 4(a), where the claim for fire exemption, although asserted by the ship, is proved by an unrelated claimant. The “Rotterdam Rules” are a breakthrough in the burden of proof. They have their system, and generally, they maintain the principle that whoever asserts must provide evidence. Different from the Hague Rules, the carrier can not only be exempted from liability by claiming that it has fulfilled its obligations of seaworthiness, crew-ability, and ship worthiness with due diligence but can also prove that although it has not fulfilled its duties with due diligence, the loss, damage or delay in delivery of the goods was not caused by the ship being seaworthy, unfit for crew, and unsuitable for the boat. In addition, the claimant can prove that the carrier and its servants and agents caused the damage or loss of the goods by one or more of the 15 exemption reasons due to their negligence. In this case, the carrier cannot be exempted from liability.

The “Hamburg Rules” appear immature in handling the issue of the burden of proof. According to the principle of presumed fault liability, there is no problem with the carrier entirely bearing the burden of proof. However, the exception of evidence of fault in fire contradicts the original intention of protecting the interests of the cargo owner. It is challenging for a cargo owner who cannot understand the actual situation during the voyage to prove that the cargo was damaged or lost due to a fire caused by the negligence of the carrier, its servants, and agents.

The Rotterdam Rules are more reasonable in allocating the burden of proof and consider issues not considered in previous conventions. For example, suppose the claimant proves that the negligence of the crew and others caused the ship to catch fire or flood, which reduced the ship’s ability to respond, which triggers the circumstances mentioned in the exemption. In that case, the carrier should bear the accident caused by such negligence and the loss of cargo^[6]. This is the protection of the interests of the cargo owner, and considering that even if the carrier fails to fulfill its duties and renders the ship seaworthy, the loss or damage of the cargo cannot be attributed to the seaworthiness of the vessel, this is the protection of the interests of the carrier. The detailed distribution of the burden of proof in the Rotterdam Rules is reasonable. It stands from a neutral perspective and tries to protect the interests of both parties involved in shipping and cargo.

3. Investigation of the primary legislation of carrier liability in shipping conventions

The Warsaw Convention is based on considerations of fairness. On the one hand, due to the high professionalism and technical requirements of air transport, it is difficult for passengers to bear the burden of proof, so it is first presumed that the carrier is at fault; on the other hand, the development of air transport does not have as long a history as land transport, and there is a lack of practical experience. If an accident occurs, all accidents must be carried out. The strict liability of the carrier is also not conducive to balancing the fairness of both parties. Therefore, the Warsaw Convention finally determines the presumption of liability for the carrier’s fault. Article 20, paragraph 1 of the Warsaw Convention stipulates that the carrier and its agents must prove that all necessary measures were taken to avoid the loss or that losses caused when measures cannot be accepted exempt from liability. Since the Warsaw Convention does not meet the needs of aviation practice, conflicts of interest have arisen between contracting states, especially in the 1992 Japanese air crash that resulted in passenger casualties, and the Japanese airlines directly abandoned the application of the provisions of the Warsaw Convention due to a compensation dispute. This made the “Warsaw Convention” . The Warsaw Pact exists in name only. To resolve this crisis, the Montreal Convention established the “dual gradient liability principle” of the carrier based on the Warsaw Convention.

The compensation limit determined by the Warsaw Convention is relatively low. Article 22 of the Convention stipulates that the liability for passengers is limited to 125,000 francs, and the compensation limit for passengers’ luggage and cargo is 250 per kilogram. Franc. The Montreal Convention increases this compensation limit across the board. In addition to determining the limit of compensation for passenger casualties in a hierarchical manner under the dual-gradient liability principle mentioned above, the Convention also clarifies the limit of compensation that passengers should bear for economic losses caused by flight delays. Whether from the perspective of the carrier’s liability principle or the compensation limit, the Montreal Convention is more progressive than the Warsaw Convention. It not

only considers the carrier's interests but also protects the legitimate rights and interests of passengers, focusing on efficiency while considering fairness. If our country's maritime law can maximize fairness and take efficiency into account, it will also greatly benefit the improvement of our country's legal system.

4. Analysis of the basics of carrier liability under Chinese Maritime Law

The formulation process of my country's Maritime Law took a long time and went through two stages. It took 40 years to be completed finally. The "Maritime Law" came out in a specific era. It is Chinese "first" and "Chinese highest" law. It ends my country's state of being unable to rely on the field of international shipping. It is consistent with the rules and principles of international conventions in shipping. It resolves disputes in international shipping more conveniently and has epoch-making significance^[7]. Since the implementation of the Maritime Law, the practice has fully proved that it has standardized our country's shipping market, expanded our country's foreign trade while narrowing the gap between our country and the international shipping market, improved our country's comprehensive national strength in the field of shipping, and promoted our country's shipping industry. The industry is moving closer and transforming towards internationalization. However, the Maritime Law has a deep historical imprint and lags due to economic and political constraints. The most important thing that cannot be ignored is the lack of practical accumulation. Now, we see that the guiding principles based on my country's maritime practice in the first stage of legislative work are still of practical significance today. It is very correct and necessary to use maritime practice as the basis for legislation. Legislation is a technology, and good law is an art. The revision and improvement of the Maritime Law cannot be completed overnight. It is a long-term work. Although this law has many imperfections, it is still indispensable, and its value cannot be belittled and ignored. The correct approach should be to continuously improve it to be flexibly adjusted, change backward regulations, add innovative content, and constantly adapt to the ever-changing maritime practices.

The Carrier's Liability Section in Chapter 4 of the Maritime Law stipulates the ship's liability period, liability, exemption, proof, and compensation. Article 51 of the Maritime Law stipulates the exemption clauses enjoyed by boats. These provisions copy the provisions of the Hague Rules. The last item of the first paragraph of this Article stipulates that the carrier shall not be held liable for damage to cargo that is not due to the fault of the airline and its servants and agents. In other words, the carrier shall be held liable for negligence. It can be seen that the carrier's liability under the Maritime Law adopts the principle of negligence. However, items 1 and 2 of paragraph 1 of this Article retain the liability for the carrier's negligence of its servants and agents causing fires (fire negligence), negligent driving of the ship, and negligent management of the vessel (navigation negligence).

5. Reflection based on carrier liability in Chinese Maritime Law

The liability principle established in my country's Maritime Law is the principle of incomplete fault liability, and the carrier enjoys immunity from liability for navigational negligence and fire negligence^[8]. The exemption of liability for maritime negligence originally came from the Hart Act in the United States. The introduction of this exemption clause impacted the long-standing fairness principle. However, because they represent the interests of the ship-owning country, the Hague Rules, strongly supported by major maritime powers, have been retained and are still used in shipping practice today. The legislative review section shows that Japan still maintains the carrier's navigational negligence exemption system in international shipping. Although this regulation is biased, it is an indispensable gear for the regular operation of the giant machine of maritime transportation. It adapts to the insufficiently advanced shipbuilding technology, the insufficient supervision of shipowners on crews, and the low quality of crews to deal with naval risks.

Although the harsh natural shipping environment has not changed, we have accumulated enough shipping experience and used technical means to make the ship no longer a small wooden boat swaying in the depths of the sea but equipped with accurate positioning technology and clear communications. The right crew and cabin environment during the voyage are particularly important. In the face of maritime risks, we no longer look shaky but avoid losses and deliver goods safely through the comprehensive use of technology and human resources. Among the many reasons in favor of retaining the immunity from liability for maritime negligence, the most popular one is that it is unjust for shipowners to pay for cargo damage caused by the negligent behavior of the captain and crew.

Article 51, paragraph 1, item 2 of the Maritime Law stipulates the carrier's liability for fire negligence.

We know that there are many reasons for fires. The author summarized various opinions and outlined the following: ① Natural disasters, such as fires caused by lightning at sea; ② Fires caused by inherent defects in the cargo; ③ The carrier's damage The fire is caused by the intentional behavior of the employer or agent, such as throwing cigarette butts and deliberately setting the fire; the fire is caused by the negligence of the carrier's agent or employee, such as the fire caused by improper management of goods due to negligence; ④ The intentional and negligent behavior of the carrier The scope of fires caused by ships is more comprehensive, such as fires caused by the seaworthiness of vessels; due to the carrier's low standards for selecting crew members, poor quality of crew members, resulting in crew members being suspected of negligence in cargo management; or because the carrier did not actively supervise its crew members. Behaviors lead to a significantly increased probability of manufactured fires and so on. According to the provisions of the Maritime Law, in addition to the fact that the carrier can evade liability for fires caused by natural disasters, inherent defects in the goods, and improper conduct of employees (that is, the above ①②③), the carrier cannot be acquitted of fires caused by its misconduct in any case.

It is worth noting that the Maritime Law's expression of the carrier's liability for fire negligence slightly differs from the Hague Rules provisions^[9]. The Hague Rules exclude the case of a fire caused by the carrier's intentional behavior. Our country's maritime law only excludes cases of carrier negligence. However, according to the principle of minimizing the accident's severity, the carrier's intentional cause of fire cannot be exempted from liability. The above fire causes summarized by the author can be translated into three major categories. One category belongs to the "natural disasters" among the exemption reasons stipulated in Article 51, Paragraph 1, including ①; The "natural characteristics or inherent defects of the goods" among the exemption reasons include ②; the first category belongs to human causes, including ③④, and there is a specific correlation between the two. The author noticed that the fire-causing circumstances summarized in the first and second categories have been included in other exemption clauses and will be adjusted by other exemption clauses. The carrier does not need to provide evidence for this. For the first category of the third category, it is reasonable to say that the carrier's agents and servants are exempt from liability for damage to the cargo due to negligence. However, if the carrier's agents and servants deliberately set fire and caused damage to the cargo, it was evident that the carrier is an "A" "Party" and is not exempt from liability. Moreover, when cargo damage is caused by the negligence of the carrier's agents or servants, the carrier is already suspected of improper management. For the latter category of the third category, the carrier's failure to perform its airworthiness obligations, negligence, and intentional damage to the cargo must not be exempted from liability, so we will not go into details here.

6. Reconstruction of the Carrier's Liability Basis in Chinese Maritime Law

The provisions based on carrier liability in China Maritime Law are no different from the Hague Rules in terms of spirit, except that the law's wording has been adjusted to better suit my country's national conditions. During the early voyages, the quality of the ships owned by the carriers was not high, and their ability to resist and respond to the harsh marine environment was insufficient. We sacrificed the interests of the airlines for the transportation of sea goods. Proper carrier protection is essential to affirm the carrier's contribution to shipping. As far as our country is concerned, on the one hand, as early as the early 20th century, the quality of our ships, crew quality, and ship management technology were far behind those of developed shipping countries. Facing the vast sea, the probability of maritime accidents was also higher, so we engaged in navigation. Trade has become a high-risk industry. To stimulate the naval economy and improve my country's comprehensive national strength, it has become the mainstream to protect the interests of ships.

On the other hand, satellite positioning technology was poor due to the outdated communication equipment and underdeveloped technology at that time. The carrier cannot manage the sailing ship in every detail, like on land. As long as it can ensure that the various equipment of the vessel has been tested before sailing and the debugging equipment is in good condition at the time of sailing, later due to the low quality of the equipment, insufficient ship handling skills, or inability to cope with problems caused by specific maritime environments lead to cargo damage caused by poor ship conditions. The shipowner is exempted from liability. It was very reasonable and practical under the historical conditions at the time. With the advancement of science and technology and economic development, carriers, as rational economic persons, from the perspective of seeking advantages and avoiding disadvantages, it is difficult to say that they will not update their ship equipment and put forward higher requirements for ship quality. Such updates and improvements mean that carriers are no longer the weakest party in maritime trade,

and the economic basis for special protection, immunity, and privileges given to shipowners in legislation almost no longer exists.

First, combined with the reflection on the exemption of liability for maritime negligence, the author recommends that the first item of Article 51, paragraph 1, of the Maritime Law be deleted. The exemption of carriers for navigational negligence in Chinese Maritime Law has been canceled regarding the issue of whether the shipping fee will increase after the cancellation of the navigation fault exemption. The author believes that since the carrier has increased the cost and risk of maritime transportation due to the cancellation of the navigation negligence exemption, the increase in freight is inevitable.

Secondly, from the content of the above fire causes, we can see that for fires caused by natural disasters and inherent properties of the goods, the carrier is exempted from items 3 and 9 in paragraph 1 of Article 51 of the Maritime Law, that is, It is exempt-able and does not need to be used as a reason for fire exemption; fires caused by human causes can be included in the fire caused by the carrier's intentional or negligent behavior, and the provisions of Article 51 have already stated that the carrier's negligence caused the fire. There is no exemption, so the claimant does not have the corresponding burden of proof. Even if the carrier's fire negligence exemption is not deleted, due to the vague provisions of the law, we cannot determine whether the claimant's burden of proof falls within the scope of the former or one of the third categories of human causes, or whether both fall within the scope of proof. Regardless of whether the scope of evidence is one or both, the author believes this is extremely difficult for claimants to complete. Based on exploring the legislative spirit and balancing the interests of the cargo, the author believes that the claimant here should only provide evidence to prove that the fire was caused by the carrier's fault to complete the burden of proof. Suppose the airline wants to be exempted from liability. In that case, it should first prove that I did not have any intention or negligence in causing the fire^[10]. This does not mean that the carrier will be exempted from liability after the carrier's fault is eliminated. To eliminate the ship's responsibility, the airline must also prove that it has fulfilled its duties before and at the time the ship sailed. Only in this way can the carrier be excluded entirely from liability. Therefore, the author suggests that the second item of the carrier's exemption from Article 51 of the Maritime Law should be handled as follows: delete "fire, except if caused by the carrier's fault." Therefore, based on deleting the exemption of navigation negligence and fire negligence in the Maritime Law, we finally determined the principle of complete fault liability of the carrier.

Chinese Maritime Law distinguishes between container and non-container cargo during the carrier's liability period. The advantages of adopting universal conventions are worth encouraging, but improper adoption will increase the burden of legal application, complicate simple issues, and lead to application errors in judicial practice. For example, some courts will hold that as long as the carrier unloads non-container goods from the ship, the airline has nothing to do with any further damage or loss of the goods, regardless of whether the delivery is completed, even if the goods are still in the carrier's control. Apart from differences in packaging specifications, we know there are no substantial differences between containerized goods and non-containerized goods in other aspects. Therefore, it is unreasonable to differentiate the carrier's liability period only based on different packaging specifications. Article 46 mentions that in addition to the reasons for exemption, the carrier shall be liable for the loss or damage of the goods during its liability period. However, the law does not stipulate that the damage to the goods occurs only after the carrier delivers the goods. For example, if the fruits and vegetables are not found to be rotten or deteriorated at the time of delivery, this result is because the carrier did not maintain dryness and ventilation during the transportation of the goods. If it is caused by the cabin environment, the airline must also bear responsibility.

7. Conclusions

The provisions on the carrier's liability period do not need to differ based on the packaging form of the goods. At the same time, it is clear that the airline shall bear the liability for compensation if the cause or consequence of the cargo damage occurs within the carrier's liability period; the ship has the responsibility to control the cargo. For obligations, then this obligation period is the liability period. In the trial practice of our country's courts, the period of cargo custody obligations and the liability period are not applied differently, so we should avoid confusion in the application of laws caused by the separation of the two; the actual seaworthiness period of a ship. It also falls within the scope of the liability period. The Article discusses it in the context of maritime negligence because maintaining the vessels in good condition and operating and managing the ship are closely related to cutting off the water.

If the navigational fault is eliminated, the seaworthiness period is the entire liability period. Only one Article in the Maritime Law stipulates the allocation of specific evidence content. The carrier shall

provide evidence and bear liability for cargo losses to the extent that it cannot be exempted from liability. This content contains limited information, and the author could not discuss it. Similarly, there are few articles on the compensation limit for late delivery, and I hope to explore it in depth in my future academic career.

Regarding the carrier's compensation limit provisions, the Maritime Law does not consider the impact of the floating price of goods. It is a mistake to mindlessly use the price of goods at the port of loading as the content to determine the limit of compensation. The correct approach should be to use the purpose. The market price of goods in the port serves as a reference for carriers to implement compensation.

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