

Research on Private International Law of Electronic Bill of Lading

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ABSTRACT. *Bill of Lading, as the most important document in international trade and international shipping, has the roles of cargo receipt, contract certificate, and document of title. In recent years, the Internet wave has deeply affected the changes in international shipping ecology. Based on the traditional paper Bill of Lading, the form of electronic Bill of Lading has been developed as well. The electronic Bill of Lading is based on keeping the functions of the traditional paper-Bill of Lading and is combined with digital message technology. Due to its high efficiency, environmental protection, accuracy, and security, its application scenarios are becoming more and more extensive. Meanwhile, legal issues related to the electronic Bill of Lading cover traditional maritime law and emerging electronic data laws. Because the electronic Bill of Lading is mainly used in international shipping and international trade and financing, it spans different regions in each transaction link. Considering the differences in the laws of E-commerce of the major trading countries and regions, from the perspective of private international law, it is destined that a large number of legal jurisdiction and application problems will arise in the transaction of the electronic Bill of Lading.*

KEYWORDS: *Electronic Bill of Lading, Private International Law, Identification, Jurisdiction, Application of law*

1. Introduction

Breakthroughs in Internet technology have brought new trading methods and expanded trading space for international trade and maritime practices, while the corresponding maritime laws are facing severe challenges. Many tangible legislative principles should be re-examined in the virtual network environment. For example, in determining the jurisdiction of Internet civil and commercial cases, the traditional jurisdictional rules based on countries and regions have encountered difficulties in application due to the characteristics of the Internet's border lessness and vitality.

Generally speaking, as for the traditional paper Bill of Lading, because the abstract rights are tangible, the key to the circulation mechanism is to realize negotiation of rights through circulating paper documents. The electronic Bills of Lading, which is not a mere evolution of the form bills of lading ;it is a creation of new species of bills of lading[1], has replaced the black and white words on the paper with data messages, and the intangible data has been changed from tangible securities, which makes it impossible for all parties to actually possess the electronic Bill of Lading. Therefore, the traditional rights circulation mechanism has been broken, and the traditional operating procedures and legal environment based on this have been challenged.

The electronic Bill of Lading are mainly used in international ocean freight and international trade and financing, which destined to generate a large number of legal jurisdiction and law application problems in transactions. At present, the development of the electronic Bill of Lading is still in an incomplete stage, and there are still many blank provisions in the laws of various countries. Even if a few have already been prescribed, they are quite different from each other. Moreover, besides maritime law, the electronic Bill of Lading also involve issues such as E-commerce law and electronic evidence law, which make the legal conflict of electronic Bill of Lading far more complicated than traditional Bill of Lading. The major difficulty of the international private law of electronic Bill of Lading lies in the issues of identification, jurisdiction, and application of the law.

2. Overview of the characteristics of electronic Bill of Lading and issues related to private international law

2.1 Overview of the characteristics of electronic Bill of Lading

The electronic Bill of Lading is a product based on integrating international shipping practice and Internet technology. It has the form of EDI [2] and does not change the characteristics of the Bill of Lading as security. In deconstructing the basic concept of the electronic Bill of Lading, it is itself a set of digital agreements, and it is also proof of the contract of maritime transport. It relies on electronic data for exchange or disclosure and uses related information networks and high-tech bridges to convey details about international sea freight. Generally speaking, the carrier status, vessel status, trading activities, etc. are among the disclosed information. Please note

that this is clearly different from the traditional Bill of Lading, that is, it uses high-tech means to build a network system.

Therefore, the electronic Bill of Lading has the following characteristics,

(1) Shipping documents can be exchanged in a wider range of time and space, and the transaction time is greatly shortened, which is conducive to breaking the limitation of information circulation during the shipping process and promoting the development of maritime trade.

(2) The transaction information can be transmitted in real-time, which is more accurate; the accuracy of the information further improves the transaction ability.

(3) The electronic Bill of Lading can effectively monitor the behavior of various transaction parties by virtue of a more scientific information management system model. For example, the carrier is in a state of being supervised at all times, which can largely avoid missing goods. The carrier can control the consignee's picking behavior more effectively, and the wrong delivery of goods can be avoided to the greatest extent.

2.2 Brief introduction of issues related to private international law on electronic Bill of Lading

On the basis of the above-mentioned advantages of electronic Bill of Lading, we should also see that the following issues will be involved in private international law,

(1) In the area of conflict of laws, there is no uniform identification index in the world, only an incomplete identification system can be formed according to one's own practical experience, which is easy to cause conflicts in the world. Although electronic bills of lading are essentially documents related to international shipping, there is no doubt about it. The starting point is, thus, that a holder of an electronic bill of lading who is not the shipper cannot assert rights or be subject to liabilities on the basis of the electronic bill as he is not privy to the contract contained in or evidenced by it [3]. What's more, due to changes in their external forms, different countries have different opinions on their characterization and have not yet formed a scientific and complete identification system. As a result, there will be identification conflicts.

(2) Electronic Bill of Lading brings difficulties to jurisdiction, because the openness and diversity of electronic technology make the basis of judicial jurisdiction

bogged down in the mire of rule judgment. This is because the network transmission means enable the circulation of documents to be updated in real time. Especially in the process of transnational shipping, this changing state of documents makes the jurisdiction even more difficult.

(3) The current mainstream electronic Bill of Lading issuance mode is, after loading and checking the condition of various types of goods, the carrier discloses the cargo information to the shipper, and at the same time discloses the same information to the Bill of Lading registration center. With the help of the electronic information system and network technology, an electronic Bill of Lading can be generated, and the shipper has the right to process this Bill of Lading. Since there is no internationally recognized law on electronic Bill of Lading, it is only necessary to rely on agreements to give it legal effect. If the relevant legal provisions of the agreement are not clear enough, it will be difficult to scientifically manage and use the electronic Bill of Lading, and it will not be conducive to the implementation of the statutory principles. How to effectively solve the legal conflicts of electronic bills of lading is an urgent problem to be solved.

3. Legal Identification of Electronic Bills of Lading

Different countries judge the nature of the same foreign-related civil and commercial case differently based on different legal concepts and legal systems. Such as Australia, UK, the Netherlands and other developed shipping countries, the form of bill of lading also keeps pace with the times, which determines that they have the personality of foresight, but this is not the case in every country. For example, in Australia's maritime law, it is clear that the electronic Bill of Lading has the legal attributes of a paper Bill of Lading. As a result, the carrier's liability under the electronic bill of lading is a statutory mandatory liability. And as for UK, development relating to paperless trading have also been anticipated by the Carriage of Goods by Sea Act 1992[4]. The Netherlands is also a country with developed maritime trade. It believes that electronic and paper data should be treated equally. The operation of electronic data systems has the same legal effect as the flow of paper documents. In order to make maritime transactions more honest and orderly, the country has given legal effect to electronic records from the legislative perspective, and has stipulated the principles and standards for the conversion between electronic records and paper

documents. Meanwhile, other countries that do not acknowledge the validity of electronic Bill of Lading, although most of them have recognized the legal effect of electronic contracts in their respective countries. In this situation, the foundation for application of electronic Bill of Lading maybe built, which does not mean that the identification of electronic Bill of Lading can be successfully resolved.

The reason is that the circulation of electronic Bill of Lading requires using electronic agreements, but electronic agreement and electronic bill of lading are different in both content and extension, what's more, bill of lading is a transaction certificate with special provisions. As a result, different rules need to be applied to electronic agreements and electronic bills of lading. The bill of lading model supported by agreements is in a fuzzy state and is difficult to be accurately identified [5].

4. Legal Jurisdiction of Electronic Bills of Lading

Jurisdiction has always been a power related to important national interests. With the development of Internet technology, the phenomenon of "the world is flat" is highlighted, which makes the establishment of jurisdiction over E-commerce related cases extremely uncertain. However, in the legislative process, each country usually wants to expand the jurisdiction of its own court to protect the interests of its own country and parties. The inherent mismatch between the spatial inclusion and expansion brought by informatization and the competition for regional jurisdiction by national legislation is getting worse and worse.

The Internet not only shakes the jurisdiction standard based on "region", but also makes the jurisdiction standard based on "behavior" into a dilemma, and there are differences on the understanding of the jurisdiction standard based on "connection" . The traditional notions of jurisdiction focus heavily on the location where the transaction in dispute took place to determine the proper jurisdiction to adjudicate the dispute. The technological composition of the internet and its decentralized nature makes it extremely difficult to establish clear rules on jurisdiction or even determining the domicile of a party [6]. As for the jurisdiction of traditional bills of lading, various countries have formed their own plans and customs, and have formed their own legal systems, but there is still a lack of uniform provisions in dealing with electronic Bills of Lading. Many countries around the world have criticized the electronic Bill of

Lading. Even the Netherlands, which is highly developed in maritime trade, has been constrained by its limitation, but this is a problem that must be solved. Otherwise, maritime commercial activities+Internet will eventually face various difficulties.

It can be said that the rapid development of the Internet has brought the traditional private international jurisdiction system into trouble. Moreover, the legal provisions on jurisdiction standards for the electronic Bill of Lading cases is not established. No matter in theory or in practice, all countries are still in the exploratory stage. This requires us to explore a relatively reasonable and acceptable new method to deal with the jurisdiction of electronic Bills of Lading through analysis and judgment.

A variety of legal documents determine the particularity of jurisdiction for electronic Bill of Lading. Only real-world locations such as destinations, origins, etc. can still be effective because these elements can get rid of the virtual and intangible constraints of the network. Under such circumstance, it will not make difficult to carry out management activities due to the intangible locations of the network. For example, the United Nations has given a more scientific explanation of jurisdiction in the relevant maritime transport conventions, the actual locations, with their courts as the trial bodies, include the defendant's location, origin, destination, contract signing place, etc.

5. Legal Application of Electronic Bills of Lading

As mentioned earlier, traditional paper Bill of Lading already have more mature legal norms, including applicable rules for conflict of laws. As far as electronic Bill of Lading are concerned, the current mainstream issuance model still needs to rely on electronic registration centers. The registration center of the electronic Bill of Lading plays an important role to ensure the normal circulation of the Bill of Lading. The legal system where the registration center is located can also exert value on the electronic Bill of Lading. At the same time, we should also see that the operation of the registration center is equivalent to being "behind ", so its legal requirements are difficult to be determined, resulting in the blurring of the application of the law. The electronic bill of lading is very different from the traditional bill of lading in the process of signing, registering, circulating and confirming. It uses the individuality of

the electronic system to determine the rules of shipping documents, which increases the uncertainty in the application of the law.

Therefore, how to effectively solve the legal conflicts of electronic bills of lading is an urgent problem to be solved, and of course requires long-term efforts. Generally speaking, two measures can be taken. The first method is to carry out legislation or formulate corresponding measures according to the actual situation, and to restrict and manage the parties involved in accordance with the internationally accepted principles, so as to solve the conflicts and contradictions among them. The second method is indirect adjustment, that is, to adjust the conflict of laws through conflict norms, and to guide the law to adjust the rights and obligations of the parties to foreign-related civil legal relations through the formulation of international or domestic conflict norms, instead of directly stipulating the rights and obligations of the parties. In fact, the contract of carriage certified by electronic bill of lading, like the contract of carriage certified by traditional paper bill of lading, also follows the principle of autonomy of will and applies the law chosen by the parties. If the parties do not choose the law, the applicable law shall be determined according to the principle of closest connection.

6. Conclusion and Prospect

In essence, the electronic Bill of Lading is the digitization of paper Bills of Lading. The most fundamental difference between it and paper Bills of Lading is that the material entity itself is put aside. Its carrier is not paper, but a virtual data space, which is displayed through a computer terminal to prove its existence. In fact, the legal issue of electronic Bill of Lading is not whether it is legal or not, but whether it is given legal status. Once it is given legal status, its advantages can be reflected.

Although the non-uniformity of legislation in various countries brings about conflicts in the legal application process of electronic Bills of Lading, the legal norms of electronic Bills of Lading have begun to follow the legal norms of traditional paper Bills of Lading, showing a trend towards unification in the process of development. The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly (hereinafter referred to as the Rotterdam Rules) adopted by the United Nations in 2008 has recognized the use and effectiveness of electronic

transport records at the level of the Convention on Maritime Transport. It has laid the foundation for the electronic Bill of Lading being widely recognized and used worldwide. The Rotterdam Rules recognize the principle of equal effectiveness of electronic and paper records, and emphasize that the issuance, control or transfer of electronic transport records has the same effect as the issue, control or transfer of paper transport documents. Articles 8-10 of the Convention set out the legal effects of electronic transport records, procedures for usage, and replacement of transferable electronic transport records and paper transport documents; Articles 35-42 stipulate when and to whom the carrier should issue and kind of paper transport documents or electronic transport records, what should be included in the documents, and clarify the legal validity of the matters recorded in the documents. The provisions of the above mentioned of the convention will become a trend to promote the widespread using and recognition of electronic Bill of Lading worldwide [7].

Based on the current status of international commercial exchanges and the nature of electronic Bill of Lading, it is necessary to actively encourage and support the implementation of agreement jurisdiction and reasonable application of the "closest connection principle" between parties to the dispute.

As for the legal application of electronic Bills of Lading, there is the choice of the best legal application between the real right relationship and the creditor's rights relationship. Especially in the legal application of the real right relationship, due to the intervention of the third party registration center in electronic Bills of Lading, whether the adoption of the law of the location of the registration center is a more reasonable choice needs to be compared and studied before a reasonable conclusion can be drawn.

In order to adapt to the development of the Internet, the scope and rules of application of private international law need to be adjusted, especially in the field of international civil and commercial affairs. At the same time, it should be noted that, compared with other legal concepts under E-commerce, the context of electronic Bill of Lading is relatively clear in its arrangement. There are already relatively mature traditional Bill of Lading legal systems for reference, and by virtue of global information resources with huge business opportunities and demands, with the relatively complete registration and using system established, it is both special and lucky to deal with the issues of private international law of electronic Bill of Lading.

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