Proceedings of the 2nd International Conference on Social Psychology and Humanity Studies
DOI: 10.54254/2753-7048/50/20240832

On the Scope of Liability for Negligence in Maritime Search and Rescue under the Background of the Amendment to the Maritime Code

Lianbo Yu[1,a,*]

[1]*School of Law, Dalian Maritime University, Lingshui Street, Ganjingzi District, Dalian City, Liaoning Province, China*
a. y19862180087@126.com
**corresponding author*

Abstract: In the era of contract-based maritime rescue under the background of amendments to the Maritime Code, disputes arise regarding whether a rescuer who, due to negligence, causes harm to the assisted party should bear tort liability. When a rescuer negligently causes harm to the assisted party during maritime rescue operations, it constitutes concurrent liability for tort and breach of contract. The rescuer should bear the responsibility for compensating the damages. Specifically, in establishing liability, it is essential to adhere to the standards identical to those in the Tort Liability section of the Civil Code. However, in determining the scope of liability, the principle of full compensation should not be strictly applied and can be appropriately relaxed. First, after posing the question, this paper employs a legal normative analysis method to explore the applicable domestic and foreign laws as well as international treaties related to the issue. The current legal system's stance on the matter is derived from legal norms. Analyzing the rights and obligations relationship between the rescuer and the assisted party from the perspective of balancing interests aims to achieve a new balance of interests between the two parties. Secondly, by comparing the Maritime Code with the Civil Code, the specific differences between the Maritime Code and the Civil Code provisions are identified. Additionally, considering the inherent characteristics of the Maritime Code, an analysis is conducted to differentiate the establishment and scope of liability for negligence-induced maritime rescue. Thirdly, through comparative analysis, it is determined that the rescuer should bear liability for damages resulting from negligent infringement, but the scope of liability can be appropriately limited. Moreover, a comparison between the maritime rescue system and relevant systems is made to clarify the relationship between the maritime rescue system and other relevant systems, providing theoretical support for the amendment of the Maritime Code. Finally, solutions and recommendations are proposed for the issues raised in the context of amendments to the Maritime Code.

Keywords: Maritime Rescue, Tort Liability, Negligence, Maritime Liability Compensation Limitations

DOI: 10.54254/2753-7048/50/20240832

1. Introduction

The maritime rescue system, as an ancient and unique legal framework, emphasizes the core design principle of "no result, no reward" with the aim of encouraging and motivating rescuers to actively participate in maritime rescue activities. However, the role designed for the maritime rescue system is to address the unpredictable risks faced directly by vessels, making it substantially different from general civil law theories. To some extent, the fundamental theories of general civil law struggle to cope with and explain the maritime rescue system itself, and there is no equivalent system within the general legal norms of civil and commercial laws.

The subject of maritime rescue, specifically the tort damages resulting from negligent rescue actions, is similarly influenced by its uniqueness. It is both reasonable and necessary to conduct research independently of general civil theories within the basic civil framework. Broadly speaking, maritime rescue theories encompass pure rescue, contract-based rescue, and employment-based rescue. Pure rescue is relatively rare in contemporary practice, and employment-based rescue is essentially contractual in nature, lacking the legal attributes of maritime rescue contracts under Chinese law. In the context of the development of the maritime rescue system transitioning into contract-based rescue, a unique situation arises where damages caused by the rescuer's negligent actions exceed the value of the property saved during the rescue. In such cases, besides the right to claim for breach of contract, can the assisted party also seek damages based on a tort claim against the rescuer? The research on this question from a theoretical perspective, particularly within the realm of maritime law, is relatively limited. Previous studies from a maritime law perspective often focus on the principles of civil torts, providing somewhat rudimentary interpretations of relevant maritime law provisions.

This paper aims to reexamine this issue based on the fundamental principles of civil law and categorically study relevant provisions of maritime law. The intention is to interpret and resolve this issue on the basis of fundamental civil principles, effectively addressing the unique maritime risks faced by vessels. This constitutes the significance of the research presented in this paper.

2. Problem Statement

The severe drought in the Panama Canal and the rapidly deteriorating security situation in the Red Sea have not only led to a significant surge in shipping prices but also caused security threats to spread to surrounding maritime areas [1]. Unpredictable risks at sea form the practical basis for the existence of the maritime rescue system, posing a common threat to both rescuers and the assisted parties, even for those with a strong professional background.

Article 187 of the Maritime Code stipulates that if the rescuer's negligence makes the rescue operation necessary or more difficult, or if the rescuer engages in fraud or other dishonest behavior, the payment of the rescue fee to the rescuer should be canceled or reduced. While this article regulates negligent rescue actions from the perspective of rescue rewards, it triggers another discussion. Regardless of the reasons for the failure of the rescue operation, based on the "no result, no reward" principle, the rescuer does not have the right to claim a reward. However, if negligent actions result in further losses for the assisted party, whether the assisted party has the right to claim for tort and how to determine the scope of that right remains inconclusive. It is undisputed in academia that if a rescuer intentionally causes harm to the assisted party, they should bear tort liability. However, the debate continues regarding whether the rescuer should be liable for damages caused by negligence. In the legal relationship of rescue, the rights and obligations of both parties can be defined through contractual agreements. However, beyond the scope of such agreements, introducing tort theories to adjust for greater damages caused by the rescuer's negligence raises questions about its reasonableness, especially considering the shared risks faced by maritime rescuers and the assisted

DOI: 10.54254/2753-7048/50/20240832

parties. Similar provisions exist in China's Civil Code, Maritime Code, and relevant international conventions, but they lack a systematic approach. Consequently, there is a lack of reasonable expectations regarding the basis and scope of rescuer liability, and there is even a possibility of unjustifiably increasing the rescuer's responsibility. For the assisted party, the protection of their legitimate interests is deficient, and there is a lack of legal safeguards for remedies after suffering damages.

When normative conflicts arise in the right to claim regulations, issues related to the establishment of tort liability and the scope of responsibility can be studied through typological thinking. Against the backdrop of amendments to the Maritime Code, the chapter on maritime rescue should systematically regulate the issue of negligence-induced tort liability for maritime rescuers through the provisions of the Maritime Code.

3. Legal Application and Balancing of Interests in the Negligence of Maritime Rescuers

Numerous issues in maritime rescue involve the Civil Code, Maritime Code, and corresponding international treaties. On one hand, the Maritime Code specifies that the liability for damages resulting from the negligence of maritime rescuers is reflected in contractual matters such as reducing rescue rewards or forfeiting the right to claim rewards. However, it lacks a clear provision imposing tort liability on rescuers for negligent acts. On the other hand, the Maritime Code does not make adjustments from the perspective of tort liability for the negligent acts of rescuers. According to the theory of legal application, factors such as the special risks faced by maritime rescue should be considered when applying the Civil Code. This study investigates the current situation from the perspective of the legal text system and content.

3.1. Current Legal Regulation of Liability for Negligent Acts of Rescuers

3.1.1. Contractual Provisions for Rescuer's Negligent Acts

With the advent of the era of contract-based rescue, the rescue contract has become the primary legal means of regulating the rights and obligations of both parties involved in rescue. The compensation for the rescuer in the rescue legal relationship is stipulated in the rescue contract, with Article 187 being the primary norm governing matters involving the rescuer's negligent acts. By interpreting the text, the rescuer's negligence leading to a more arduous rescue operation is considered a violation of the rescue contract, and the party in breach should bear the responsibility for breach of contract. Additionally, Article 577 of the Civil Code stipulates the ways in which breach of contract liability can be assumed, including continuing performance, taking remedial measures, or compensating for losses. However, Article 187 of the Maritime Code only specifies the cancellation or reduction of the payment of the rescue fee as a way to assume breach of contract liability. According to the principle of legal application hierarchy, when a special law has corresponding provisions, it should be applied, and if not specified, the general law should be applied. Article 187 of the Maritime Code specifies a special mode of behavior and also stipulates special legal consequences, acting as a modification of the provisions in the Civil Code, and should be given priority. In terms of the scope of damages for breach of contract liability, Article 179 of the Maritime Code stipulates that maritime rescue rewards are obtained in compliance with the "no result, no reward" principle, in harmony with Article 180 of the Maritime Code, reflecting the close correlation between rescue rewards and rescue effectiveness. According to Article 584 of the Civil Code, the scope of damages for breach of contract liability adheres to the principle of foreseeability, rather than solely based on the objective outcome. The "no result, no reward" system also has specificity in the scope of damages for breach of contract liability.

DOI: 10.54254/2753-7048/50/20240832

3.1.2. Lack of Explicit Regulation on Rescuer's Negligent Acts in Assuming Tort Liability

From the perspective of legal application, there is a lack of clear basis for the negligence of rescuers in maritime rescue. Article 177 of the Maritime Code stipulates that rescuers should exercise due diligence towards the assisted party during rescue activities. This provision outlines the rights and obligations of both rescuers and assisted parties but cannot serve as a basis for a tort claim. Simultaneously, the 1989 International Convention on Salvage does not provide any regulations on damages compensation for rescuers. This convention only addresses the issue of compensation for rescuers based on the "no cure, no pay" principle, similar to the provisions in the 1910 Salvage Convention. China's Maritime Code also lacks explicit regulations on this matter, aligning with the 1989 International Convention on Salvage. In essence, if the rescuer's negligence during the rescue causes harm to the rescuer or other third parties, their entitlement to compensation may be reduced, but whether negligence in the rescue operation can exempt the rescuer from liability remains unclear. Additionally, according to Article 1184 of the Civil Code, the amount of loss to another person's property is calculated based on market prices or other reasonable methods at the time the damage occurs. This article reflects the principle of complete compensation for tort liability. However, due to the existence of limitations on maritime compensation liability, it is challenging to fully apply the Tort Liability section of the Civil Code from the perspective of the legal text structure. The maritime rescue legal system is an organic whole [2], and the Tort Liability section of the Civil Code is no exception. When the same facts are subject to legal provisions, the behavioral standards and legal consequences should remain consistent; otherwise, there may be deviations in outcomes. Current laws do not explicitly regulate the negligence of rescuers in terms of tort liability. However, in practice, there are precedents recognizing the harmful effects of rescuer negligence, with the most representative being the 1971 "Tojo Mam" case.

3.2. Special Provisions of the Maritime Code in the Civil Code Representing the Balancing of Interests

The maritime risks faced during the operation of vessels differ from those encountered in general land transportation. The Maritime Code, as a special law within the Civil Code, contains numerous specific provisions to address maritime risks, many of which originate from maritime practices. The "no cure, no pay" system represents a unique approach to balancing interests.

Firstly, considering the origin of this system, the "Rhodian Sea Law" stipulated that the expenses for rescuing a ship would be borne collectively by the ship, and the rescuer would have the right to claim one-fifth of the salved property. Initially, the reward for maritime rescue was based on one-fifth of the value of the salvaged property. This reward distribution system is akin to co-ownership of all items. At that time, the rights and obligations bestowed upon both parties were imbalanced in favor of protecting the rescuer's rights, even though there was no explicit provision for rescue rewards at the outset. In terms of interest balancing, the rescuer held an advantageous position. However, considering the immature state of navigation technology and the uncertainty of risks during the origin of maritime trade, the benefits brought by rescuers to the assisted parties through rescue operations were unattainable by the assisted parties themselves. From this perspective, it seems reasonable for the rescuer to sacrifice some benefits to safeguard the interests of the assisted parties. In fact, this bias in favor of interests is an international consensus. It is also a recognition of the special risks faced by rescuers during rescue operations. Various countries have formally granted rescuers the right to claim rewards through legislation, incentivizing active participation in maritime rescue to bring substantial benefits to the assisted parties [3]. As maritime rescue entered the international legislative stage, it became necessary to acknowledge the trend of interest balancing that tends to protect the assisted parties. Today, maritime rescue technologies are more mature, and the costs of rescue have gradually

DOI: 10.54254/2753-7048/50/20240832

decreased. Strict adherence to the "no cure, no pay" system implies that even if there is subjective fault leading to harm to the assisted party, the rescuer is not required to assume tort liability under this system. Additionally, the ability of the assisted party to handle maritime risks has improved, and in non-emergency situations, their interests can be preserved to a certain extent without the assistance of rescuers. However, the "no cure, no pay" system, as the core system of maritime rescue, still has its rationality and should not be shaken by changes in the balance of interests. The question arises: how should the shift in the trend toward protecting the assisted parties be reflected? This paper argues that this trend is not adequately reflected in the maritime rescue contracts signed between the rescuer and the assisted party and further research should be conducted in the field of tort liability.

Furthermore, regarding the salvage contract, although it shares similarities with maritime rescue, the fundamental difference lies in the calculation of remuneration. While maritime rescue follows the "no cure, no pay" principle, this is not the case for salvage contracts [4]. Therefore, norms such as service contracts or agency contracts should be applied to regulate salvage contracts.

Lastly, some argue that the negligent tortious acts of rescuers can be analogously applied to Article 184 of the Civil Code, which pertains to "voluntary acts in emergency." This provision is considered a defense clause for rescuers to avoid liability. However, this paper asserts that there is no regulatory basis for applying Article 184 of the Civil Code to the negligent tortious acts of rescuers. The application scope of Article 184 involves emergency situations, emphasizing the urgency of rescue actions. It is applicable to situations where there is no contractual obligation and no profit motive in assisting in emergencies. Therefore, the exemption from liability serves to alleviate concerns about the consequences of rescue efforts, and damages incurred should not face undue legal responsibility. From the perspective of interest balancing, in emergency situations, the assisted party is unable to self-rescue, and the rescuer, without contractual obligations and with no profit motive, becomes the sole force protecting the interests of the assisted party. In such cases, more favor should be given to the rescuer. The scenarios regulated by the "voluntary acts in emergency" clause can be considered a specific case within maritime rescue, applicable to the rescue of the personal and property safety of the assisted party in emergency situations, rather than the general scenarios encountered in maritime rescue.

4. Examination of the Negligent Tort Liability of Maritime Rescuers

There is no clear legal provision for losses caused by the negligent acts of rescuers, and it is worth exploring whether they should bear tort liability. The examination of the negligent tort liability of maritime rescuers needs to differentiate between the stages of liability establishment and the scope of liability.

4.1. Examination of the Establishment of Tort Liability

The theoretical consensus in tort liability law emphasizes the dual phases of liability establishment and liability scope. The prevailing approach in the academic field is to examine the constitutive elements when assessing the establishment of liability. However, simplifying the issue by merely investigating whether the negligent acts of rescuers constitute tortious behavior by focusing on the constitutive elements oversimplifies the matter. There is no theoretical dispute regarding the legal subjects, infringing actions, and consequential damages in this context. The key element in determining the establishment of tort liability for the negligent acts of rescuers is whether a causal relationship exists. The dualistic theory of tort liability, represented by Germany, asserts that the establishment of tort liability should initially recognize causation from a factual perspective. Subsequently, inappropriate factual causal relationships are eliminated through a value assessment to delimit the scope of liability. The role of causation is to attribute consequences to the actor, forming

DOI: 10.54254/2753-7048/50/20240832

the foundation for assuming tort liability. Therefore, causation is imputability, and imputability issues can only be answered through a comprehensive evaluation method.

Arguments against the imposition of tort compensation liability on rescuers are primarily based on two points: firstly, the absence of provisions in Chinese maritime law and the "1989 International Salvage Convention" concerning compensation for damages caused by rescuers. Secondly, the altruistic nature of rescuers' actions, which lack a defined obligation and should not be subject to the same professional skill level as a general standard. The results of the rescuer's efforts benefit the assisted party, and without the rescuer's service, there would be no salvaged property [5]. The theoretical community opposing the establishment of tort liability answers the imputability issue through a comprehensive assessment method, and the two are consistent.

Firstly, the lack of legal provisions does not imply that the negligent acts of rescuers should be exempt from liability. Article 1165, Paragraph 1 of the Civil Code stipulates that a person who, due to fault, infringes on the civil rights of others, causing harm, shall bear tort liability. Subjectively, fault includes intentional and negligent acts. If a rescuer, in the course of a rescue operation, negligently causes harm to the assisted party, it satisfies the general constitutive elements of tort liability, a consensus within the academic community. Behaviorally, tortious acts include both acts and omissions. Article 177 of the Maritime Law stipulates that rescuers should exercise due care and diligence during rescue operations, and this obligation is derived from legal provisions. Therefore, if a rescuer fails to fulfill the duty specified in the Maritime Law, it can be considered an omission. In terms of causation, the causal relationship between the negligent rescue operation and the harm to the assisted party cannot be denied from a factual perspective. The causation theory of tort liability in English and American law argues that legal causation can only be assessed through a comprehensive evaluation, involving a value judgment. In terms of the defense grounds for tort liability exemption, the General Principles of the Civil Code provide regulations on defenses such as force majeure, justifiable defense, and emergency avoidance, while the Tort Liability section regulates five specific acts that provide defenses or mitigations against tort liability. As mentioned earlier, the "voluntary acts in emergency" clause can be recognized as an emergency avoidance situation as defined in Article 182. However, the scenarios covered by the negligent rescue acts do not fit the provisions of Article 182. Therefore, the application of the most similar clause in the Civil Code, which is Article 182, is not applicable as a defense. Besides legal causation, all other constitutive elements have been satisfied.

The establishment of causation in tort liability can only be confirmed through a comprehensive evaluation. It is unrelated to the scope of liability but closely tied to value judgments. This aligns with the logical content of the second point opposing liability. In value judgments, the first consideration is whether the object being evaluated is worthy of pursuit and commendation [6]. Some theoretical viewpoints argue that the basis for exempting rescuers from tort liability for negligence is the "doctrine of the Good Samaritan." According to this theory, when performing rescue actions, rescuers must act in good faith to be eligible for compensation. Acting in good faith during rescue operations can absolve the rescuer from the consequences. However, the paper suggests that relying on the doctrine of the Good Samaritan to prevent the establishment of tort liability lacks feasibility. The doctrine of the Good Samaritan and the "no cure, no pay" system do not conflict; both involve obtaining rescue compensation. Violating the requirement of acting in good faith merely results in the loss or reduction of the right to claim compensation but does not affect the establishment of damage compensation liability. Instead, as long as a rescuer acts in good faith and initiates rescue efforts, they should fulfill the duty of care and protection, reflecting a reasonable level of caution and skill [7]. Another perspective holds that from the standpoint of value measurement, rescuers lose the right to claim compensation only when the harm caused during the rescue process exceeds the protected interests. In other words, if the harm caused by the rescuer is less than the protected interests,

DOI: 10.54254/2753-7048/50/20240832

they can still claim the right to compensation without having to bear liability for damages. The paper argues that the "greater benefit than harm" principle purely measures the amount of property, confusing contract rights with tort rights and using the public policy of maritime rescue as a "shield" to avoid rescuer liability [8]. Therefore, the theory supporting the exemption of liability for negligent rescue lacks effectiveness, and the reasons for not holding rescuers responsible combine contract claims with tort claims. According to the theory of concurrent liability, the claimant can choose between contractual and tortious liability to exercise their rights, but it cannot deny the existence of tort liability. Considering the unique risks faced by rescuers at sea, with the improvement of technology and professionalism, rescuers engaging in maritime rescue operations have shown noticeable advancements compared to the initial stages of the rescue system. Additionally, there are no legal defenses against tort liability. Therefore, tort liability should be established.

In summary, rescue payments and liability for negligent damages should be treated separately, and liability for damages caused by negligence should establish tort liability.

4.2. Examination of the Scope of Tort Liability

In adhering to the dual perspective of establishing liability and determining its scope, both fault and causation have an impact on the extent of tort liability. However, once tort liability is established, fault will only influence the magnitude of the liability scope. It is evident that the scope of tort liability arising from the rescuer's negligent conduct cannot be conclusively determined solely based on fault factors, and a provision for complete damage compensation may lack fairness. To make an appropriate determination of the liability scope, it is necessary to differentiate between establishing liability and causation in the scope, affirming or eliminating causation through value judgment. Examining causation aims to correctly attribute responsibility and control the liability scope, preventing an infinite extension of the causal chain. Therefore, scrutiny can be conducted from the perspectives of ascertaining the actor's fault and establishing causation within the liability scope.

Firstly, a more lenient approach should be adopted in determining fault. Maritime law is not a simple extension and application of general law to maritime transport; it is a spontaneously formed legal system by maritime merchants to address the specific risks in maritime trade, possessing distinctive characteristics [9]. Therefore, general principles of civil law cannot be universally applied, as illustrated by the maritime rescue system. In terms of the degree of negligence in the rescuer's conduct, a blanket application of the Civil Code, Tort Liability Section, with its subjective fault standard, clearly contradicts the objective of encouraging active rescue efforts. The paper suggests that a reasonable expansion of the compensatory scope arising from the rescuer's negligent conduct aligns with the intrinsic nature of maritime law, helping maintain a balance of rights and obligations between parties in the legal relationship of rescue.

Fault is defined as "anyone's intentional or negligent violation of necessary behavioral standards," where necessary behavioral standards refer to the standards that a rational person should adhere to in a specific situation. The extent of leniency depends on the nature and value of the protected interests, the danger of the activity, the professionalism of the actor, the intimacy or special dependency relationship between the parties, and the cost of obtaining preventive measures or other alternative methods [10]. As mentioned earlier, damages arising from the rescuer's negligent conduct should be considered independently and cannot be nullified simply because the right to claim compensation under the contract is lost. The purpose of this system design is to protect the interests of the assisted party, imposing a "stricter" expectation on the rescuer's obligations. However, in the determination of fault, driven by the encouragement of rescue activities, the balancing of interests should be adjusted toward protecting the rescuer's interests. This value judgment is reflected in a broader scope of compensation to ensure the protection of the rescuer's interests. Considering the danger of the activity and the expected professional knowledge of the actor, the assessment of the establishment of liability

DOI: 10.54254/2753-7048/50/20240832

can follow general civil law theory. The standard for establishing or not establishing tort liability should not be lowered due to the higher expectations placed on the dangers faced by maritime rescue activities and the higher expectations placed on the actor. However, regarding the special interest balancing brought about by the intrinsic nature of maritime law, three degrees of negligence—slight negligence, ordinary negligence, and gross negligence—should be treated differently.

Firstly, from the perspective of civil law, gross negligence is often treated equally with intentional acts and entails similar legal consequences. While slight negligence and ordinary negligence are also elements of tort liability in the sense of civil law, the relaxation of the fault requirement for the actor can only be considered starting from slight negligence and ordinary negligence. In the context of treating gross negligence on par with intentional acts, ordinary negligence becomes a defense to mitigate or eliminate the rescuer's liability for negligence. If further distinguishing between slight negligence and ordinary negligence is theoretically feasible, it is operationally complex in judicial practice, hindering the improvement of judicial efficiency. In cases of slight negligence and ordinary negligence, the rescuer may mitigate or be exempt from liability. Secondly, based on the rescuer's professional knowledge, when performing maritime rescue, they are entrusted with the duty of prudent care. However, as the risk varies with each rescue operation, determining that the rescuer failed to fulfill the duty of prudent care needs to consider the level of danger during the rescue and the type of rescuer. The standard for gross negligence should change with the urgency of the emergency; for example, if there is a risk of a ship overturning, the degree of gross negligence during the rescue operation should correspondingly decrease, and vice versa. The standards for determining slight negligence and ordinary negligence follow suit. Additionally, different standards should be applied to entities involved in maritime rescue based on their professional expertise. Professional technical organizations have a higher level of expertise and should be held to a higher standard. However, in practice, government regulatory bodies, especially maritime authorities participating in maritime rescue activities as rescuers due to administrative duties, should relax the standards for the three degrees of negligence appropriately. Lastly, the objects of damage caused by the rescuer's gross negligence have different attributes and should be subject to flexible standards. For example, when rescuing lives, the duty of prudent care to be exercised should be higher relative to the environment and property. Therefore, a lower standard of gross negligence should be applied to life-saving situations.

Secondly, the "weakening" of the causal relationship within the scope of liability. Given the significant risks involved in maritime distress assistance, if the law stipulates that rescuers must compensate for any harm that occurs, they are likely to act cautiously, and the rescue process may not be carried out with full effort. By legally establishing the causal relationship, the allocation of responsibility for the resulting damage between the rescuer and the victim can be reasonably determined. In the context of modern shipping, the signing of salvage contracts for maritime distress, based on the principle of equal rights and obligations, implies that rescuers, while anticipating substantial rewards, should also bear a certain level of liability for negligent damages. Therefore, both the rescuer's right to claim compensation and the risks associated with the rescue are foreseeable. Foreseeability is a crucial element in examining the causal relationship within the scope of liability and is one of the standards for determining fault.

Article 184 of the Civil Code stipulates that the scope of damages for breach of contract must not exceed what the party in breach foresaw or should have foreseen at the time of contract conclusion as possible losses due to the breach. This article reflects the rule of foreseeability in breach of contract liability. Foreseeability means that a rational person, based on their social experience and intellectual capacity, considers specific damage to be a usual consequence of certain behavior; this specific damage is foreseeable to the actor [11]. Whether in cases of breach of contract liability or tort liability, the actor, when performing an action, can foresee the general range of consequences. Foreseeability

DOI: 10.54254/2753-7048/50/20240832

is at the core of the foreseeability rule. Some scholars argue that when analyzing the foreseeability of consequences, the defendant is only responsible for the consequences foreseeable at the time of the action [12]. According to the legal requirements, the comprehensive compensation theory generally applies to ordinary tortious conduct. However, the uniqueness of maritime rescue allows the application of Article 184 of the Civil Code by analogy to the field of liability for negligence in maritime rescue. In judicial practice in China, courts often consider that the higher the degree of foreseeability of the damage, the greater the possibility of establishing the causal relationship within the scope of liability, resulting in greater responsibility, and vice versa [13]. Foreseeability has practical foundations in the field of tort liability, and borrowing from maritime practices is also reasonable.

5. Improvement Path of Negligence Tort Liability in Maritime Search and Rescue

In order to determine the legal effects in detail, the law often refers to standards of fairness and reasonableness for value evaluation [14]. As a means of social control, legal regulations need to maintain a balance between the interests of different parties to ensure fairness and equity. The system of liability for damages arising from the rescuer's negligence in maritime distress reflects the value hierarchy theory of law. The value assessment of this issue can effectively incentivize rescuers to actively enter into maritime distress assistance contracts with the vessels to be rescued, thereby implementing rescue operations and protecting the safety of lives, property, and the environment at sea. On the other hand, it is also necessary to effectively prevent and protect the interests of the assisted parties. This can be achieved through the specific provisions of substantive laws regarding the elements of constituting negligent rescue tort liability, compensation standards, compensation methods, and other factors.

5.1. Legislation to Clearly Define the Assumption of Liability for Rescuer's Negligence

Clearly defining the liability for the rescuer's negligence is a necessary step in perfecting China's maritime search and rescue system. Against the backdrop of amendments to the Maritime Code, it is proposed that within the chapter on maritime search and rescue, a legal provision should explicitly outline the basis for the assumption of liability for the rescuer's negligence. During the process of amending the Maritime Code, scholars have put forth suggestions for modifying the provisions related to negligence in maritime search and rescue. It is recommended to amend Article 187 by adding a clause such as "If the losses suffered by the rescued party are due to the negligence of the rescuer, the rescuer shall bear the liability for compensation" [15]. This article explicitly stipulates that the rescuer should bear the tort liability for negligence. However, the specific application of this system should be further detailed through interpretations to clarify the assumption of negligence liability and the relationship with similar legal systems. Through comparison, the applicable scope and conditions of this system should be determined.

5.2. Relationship between Rescuer's Negligence Tort Liability and Other Systems

5.2.1. Relationship between Rescuer's Remuneration and Damages Compensation

According to the principles of contract law, breach of contract liability adopts a strict liability principle, and the assumption of liability for breach should be based on objective interpretation rather than subjective interpretation. Therefore, the rescuer's subjective fault has no impact on the assumption of liability. The role of the rescuer's fault mainly lies in the assumption of liability for damages caused by negligent acts. However, whether due to intent or negligence, if the rescuer causes a lack of rescue effectiveness or fails to meet the contractual terms, the rescuer may, in accordance

DOI: 10.54254/2753-7048/50/20240832

with Article 180 of the Maritime Code, proportionally reduce the remuneration or forfeit the right to claim remuneration. According to Article 180, the factors considered when proportionally deducting the rescuer's remuneration generally include the value of the property rescued, the efforts made by the rescuer, and the risks faced during the rescue operation. As mentioned earlier, the determination of the degree of fault of the rescuer should be based on different circumstances during the rescue operation to assume tort liability. From a legal perspective, tort liability implies the compensation for damages caused by the fault of one party to the rights and interests of others, which, to some extent, also has a punitive aspect [16]. However, from an objective perspective without considering the rescuer's subjective fault, the system of deducting the rescuer's remuneration also serves the same purpose. Reducing the rescuer's remuneration is a result of mitigating the rescuer's fault, limiting the blame for negligence to the category of rescue funds. The deprivation of rescue funds is the most serious consequence the rescuer may face. According to the legislative intent of Article 187 of the Maritime Code, when the rescuer's own fault makes the rescue operation more difficult, their remuneration may be further deducted. Therefore, the three scenarios mentioned above play similar roles and can be considered fair and reasonable. After introducing the assumption of liability for rescuer's negligence in tort, fully implementing the system of remuneration reduction may have a negative impact on the enthusiasm of rescuers, but not holding rescuers liable for negligence in the scenario of rescuer's fault is also not conducive to the balance of rights and obligations between the parties. Therefore, some scholars propose that China's Maritime Code does not stipulate that the deduction of rescue funds can replace the assumption of liability for rescuer's negligence. Moreover, the specific boundaries between the two are not defined. After the deduction of rescue funds, the rescuer still needs to bear the liability for damages caused by negligence. This may lead to double legal disadvantages for the rescuer due to the same negligence – deduction of rescue funds during calculation and the liability for damages caused by the rescuer's negligence. Therefore, the system of reducing rescuer's remuneration should be abolished, and the rescuer should only assume tort liability from the perspective of objective damages caused by the rescuer's negligence [17]. This design of the system is believed to be inconsistent with the systemic construction of China's Maritime Code.

Firstly, the system of maritime rescue originated from the "Rhodian Sea Law" and has strong practicality. Over a long period of maritime practice, it has developed its inherent characteristics. The deduction system of rescue remuneration is a lower-level application of the "no cure, no pay" system. As the core of maritime rescue, the "no cure, no pay" system has been tested in navigation practice and widely accepted by countries. Against the background of amending the Maritime Code, if China abandons the "no cure, no pay" system, its legal system may deviate from international common practices and may lack the basis for extraterritorial application. Secondly, the maritime rescue system has evolved from pure rescue to the era of contractual assistance. Signing a maritime rescue contract is the behavioral standard of the parties involved in the legal relationship of rescue, and it is also the main source of their rights and obligations. Therefore, the remuneration for rescue comes from the maritime rescue contract. After abolishing the deduction of remuneration, maritime rescue contracts will be consistent with salvage contracts. The unique rights and obligations granted to the rescuer and the rescued party in maritime rescue contracts will become imbalanced. For example, the rescuer may lose control over the entire rescue operation, which, to some extent, is not conducive to protecting the interests of the rescued party. Abolishing the deduction system will lead to confusion between maritime rescue contracts under the inherent nature of maritime law and ordinary agency contracts or service contracts.

In conclusion, the existence of maritime rescue contracts and even the deduction system for rescue remuneration is necessary. However, how to coordinate the deduction of remuneration and the relationship between the rescuer's fault and tort liability, this paper believes the following points should be considered:

DOI: 10.54254/2753-7048/50/20240832

Firstly, in terms of the legal relationship between contracts and torts, the two should be considered independently. The maritime rescue contract is the basis for the rescuer to obtain remuneration and the justification for its deduction. In the legal relationship, the responsibilities borne by the rescuer for the tortious act causing harm in maritime rescue are aimed at compensating the losses suffered by the victim. At the legal relationship level, the two are not entirely the same.

Secondly, concerning the determination of the amount of liability for the rescuer's tortious act, the remuneration for the rescuer and the amount of liability can be incorporated into the same evaluation system. As mentioned above, the two systems serve the same purpose. It is worthwhile to analyze their relationship from the perspective of objective standards and the amount lost when the damage occurs. Taking the "Tojo Mam" incident as an example, the diver employed by the rescuer punctured the ship's hull with rivets, causing an explosion due to flammable gas remaining in the ship's hull, resulting in a loss of $330,000, while the rescue remuneration was only $125,000. The loss caused far exceeded the rescue remuneration agreed upon in the contract. Without considering the limitation of maritime compensation liability, the amount of liability for the rescuer's tortious damage should be $330,000. According to the "no cure, no pay" principle, the rescuer has no right to claim remuneration, and the rescuer's expected benefit for the rescue remuneration is $125,000. However, there is no right to claim remuneration at this point. From another perspective, the loss of this part of the benefit can be seen as a punishment for the rescuer's tortious act. However, the damage suffered by the rescued party cannot be compensated by the amount of punishment. The rescuer needs to bear additional tort liability to compensate for the loss of the rescued party. Therefore, deducting the punitive amount of $125,000 from the $330,000 can be considered as the amount the rescuer compensates the rescued party. When the damage caused by the rescuer's tortious act is less than the amount of the rescue remuneration, the loss caused directly offsets the rescue remuneration, similarly serving the purpose of punishment. For example, if the rescuer's tortious rescue behavior causes a $100,000 loss, but the rescue remuneration agreed upon is $200,000, $100,000 can be deducted from the $200,000 as a punishment for the rescuer's tortious act, and the remaining $100,000 is the obligation of the rescued party to pay. This standard can be considered as the compensation standard for the rescuer's tort liability in maritime rescue.

5.2.2. Relationship Between Maritime Compensation Liability Limitation and Rescuer's Negligence Liability Range

When a significant maritime accident occurs, parties responsible such as ship owners, operators, and charterers can, according to legal provisions, limit their compensation liability to a certain extent. The limitation of maritime compensation liability is another significant manifestation of the intrinsic nature of maritime law, contradicting the full compensation principle of tort liability law. Under the limitation of maritime compensation liability, ship owners, operators, or charterers can invoke the limitation of liability as a defense against negligence tort liability, thereby affecting the amount of compensation for negligence in maritime rescue. According to the provisions of international salvage conventions and China's maritime law, intentional wrongful acts by rescuers may lead to the loss of the limitation of maritime compensation liability, and the amount of compensation for tortious acts resulting from negligence will be subject to the limitation of the maritime compensation liability system.

As mentioned earlier, in the determination of the amount of compensation for the rescuer's negligence in maritime rescue, it can be unified with the evaluation system that includes the deduction of remuneration. However, the scope of the tort liability for the rescuer's negligence should be restricted, but the degree of restriction and its relationship with the limitation of maritime compensation liability need further clarification, addressing issues such as how to determine the

DOI: 10.54254/2753-7048/50/20240832

amount of compensation for the rescuer's negligence liability under the limitation of maritime compensation liability.

The "1976 International Convention on Salvage" was the first to specify that salvors could limit their liability. The "1989 International Convention on Salvage" and Article 210(2)(5) of China's Maritime Law also stipulate that maritime salvors can be subjects of limitation of maritime compensation liability. The "1976 International Convention on Salvage" has provisions for calculating liability limitation: when the salvor is conducting salvage on the salved vessel, the liability limitation is determined based on the tonnage of the salved vessel; when the salvor is conducting salvage on the salvor's vessel or not on any vessel, the liability limitation is calculated based on a total tonnage of 1500. However, this provision fails to address the issue of determining the liability limitation when the salvor simultaneously employs multiple salvage methods, and the location of negligence occurrence varies.

This article suggests that potential solutions can be explored in the following aspects. Firstly, in scenarios involving multiple rescuers, where some use vessels and others use non-vessels or conduct rescue on the salvaged vessel, the determination of liability should consider whether each rescuer is at fault. For those using vessels for rescue, the liability limitation should be based on the total tonnage of the rescue vessel. For those without fault but using non-vessels, the liability limitation should be determined based on a 1500-ton vessel. Subsequently, the respective compensation shares should be established based on the degree of fault and the contribution of each rescuer to the rescue operation. Secondly, in scenarios involving only one rescuer, whether on the salvaged vessel or using a non-vessel, the liability limitation should be determined based on a 1500-ton vessel. If both vessel and non-vessel methods are employed, the final liability limitation should be determined by the smaller of the total tonnage of the rescue vessel and 1500 tons. If the higher tonnage vessel is used to calculate the limit, rescuers might opt for smaller vessels, reducing the likelihood of rescuing larger vessels or fulfilling their rescue obligations. This reflects a balancing act between encouraging active rescue efforts and maintaining a tolerant attitude towards the rescuer's negligence liability.

6. Conclusion

After the evolution of the ancient maritime rescue system into the era of contract assistance, the lack of clear regulations and legal system support has led to ambiguity regarding whether rescuers should bear responsibility for negligence and infringement. This has resulted in difficulties in maritime practice. Due to the unique risks at sea, historical courts and judicial precedents often adopted a negative attitude towards this issue. However, from the perspective of balancing interests, this paper argues that establishing legal grounds and necessity for rescuers to bear liability for damages caused by their negligence is justified. A new balance should be struck between the interests of rescuers and those being assisted. This approach aims to encourage active participation of rescuers in maritime rescue activities, leveraging their professional expertise to protect the interests of those being assisted while ensuring the safety of their lives and property. Nevertheless, the scope of liability for rescuer negligence should be appropriately limited, and the principle of complete compensation may not be directly applicable. Adopting a more lenient attitude towards maritime rescuers aligns with the fundamental principles for improving the maritime rescue system in China's Maritime Law. This serves as the guiding ideology for clarifying the foundational provisions on rescuer negligence liability in the context of Maritime Law amendments. It is crucial, however, not to confuse legal relationships in maritime rescue with ordinary employment contracts.

References

[1] *Xinde Maritime. (2023, December 26). "Shipping Industry: Ship Operations Will Become More 'Expensive and Chaotic'." WeChat Public Account.*

DOI: 10.54254/2753-7048/50/20240832

[2] Si, Y. Z. Maritime Law (4th ed.). Law Press China, 10.
[3] Li, T., & Xu, J. (2016). "The Legal Essence of 'No Effect, No Reward.'" Journal of Dalian Maritime University (Social Sciences), 5, 2.
[4] Si, Y. Z. A Monograph on Maritime Law (4th ed.). Renmin University of China Press, 316.
[5] Tan, M. (2020). "Research on Compensation Liability for Damage Caused by Fault of Maritime Rescuers." Master's thesis, Southwest University of Political Science and Law, 21.
[6] Larenz, K. (2016). Legal Methodology (J. Huang, Trans.). Commercial Press, 367.
[7] Tan, M. (2020). "Research on Compensation Liability for Damage Caused by Fault of Maritime Rescuers." Master's thesis, Southwest University of Political Science and Law, 23.
[8] Zhang, M. (2006). "The Impact of Rescuer's Improper Behavior on Rescue Remuneration." Master's thesis, Shanghai Maritime University, 32.
[9] Cao, X. G. (2020). Study on the Self-Contained Nature of Maritime Law (1st ed.). Law Press China, 34.
[10] Cheng, X. Tort Liability Law (3rd ed.). Law Press China, 172.
[11] Pan, W. L. (2017). "Constructing Unified Foreseeability Rules in Damage Compensation Law." Jurist, 4, 31.
[12] Wang, L. M., Yang, L. X., Wang, Y. S., & Cheng, X. (2020). Civil Law (6th ed.) (Vol. 2). Law Press China, 1054.
[13] Zhang, P. T., & Zhuang, X. L. (2022). "Judicial Determination of Causation in Tort Liability for Compensation for Damages." South China Law Review, 1, 51.
[14] Larenz, K. (2003). Legal Methodology (A. E. Chen, Trans.). Commercial Press, 317.
[15] Si, Y. Z., & Hu, Z. L. (2003). Draft Articles, Reference Legislative Examples, and Explanations of the Proposed Amendments to the Maritime Law of the People's Republic of China. Dalian Maritime University Press, 453.
[16] Zhang, X. B. Tort Liability Law (5th ed.). Renmin University of China Press, 6.
[17] Gao, J. T. (2020). "Examination of the Fault Damage Compensation Liability of Maritime Rescuers." Journal of Maritime Law, 9, 214.