

Improvement of the Carrier Delivery Rules in China's Maritime Law from an International Perspective

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Abstract: This paper examines the impact of carrier delivery rules on China's Maritime Law in the context of international maritime cargo transportation. It identifies significant issues such as the imbalance of interests between carriers and consignees, the challenges in carrier identification, and the inconsistencies in the duration of carrier responsibilities. Drawing on international conventions such as the Hague Rules, Hamburg Rules, and Rotterdam Rules, this study provides comprehensive recommendations for refining China's Maritime Law. Key proposals include improving the legal definitions and criteria for carrier identification, harmonizing liability periods for container and non-container cargo, and strengthening the fulfillment of carrier obligations through robust inspection and supervision mechanisms. These improvements aim to align China's Maritime Law with international standards, enhance the efficiency and reliability of maritime transport, and support the sustainable growth of China's maritime industry. The findings underscore the necessity for ongoing legal reforms to maintain China's competitive edge in global maritime trade.

Keywords: China's Maritime Law, Carrier Delivery Rules, International Maritime Conventions.

1. Introduction

As global trade flourishes, international shipping of goods by sea has become an important part of the international logistics system. However, the rules governing the delivery of goods by carriers in maritime shipping are complex and vary significantly across different jurisdictions. This presents challenges in standardizing practices and ensuring legal consistency, particularly for China, a major player in global shipping.

The Chinese Maritime Commercial Law, which governs maritime transport in China, has been heavily influenced by international conventions such as the Hague Rules, the Hamburg Rules, and the Rotterdam Rules. Despite these influences, there are notable gaps and inconsistencies within the Chinese legal framework, especially concerning the identification of carriers, the delineation of carrier responsibilities, and the handling of liability and exoneration provisions. These issues have led to legal ambiguities and practical difficulties in enforcing the law, thereby affecting the efficiency and reliability of maritime transport.

Given these challenges, there is a pressing need to re-evaluate and improve the Chinese Maritime Commercial Law to better align with international standards and practices. Chinese scholars have

identified problems with the identification of the delivery object of goods and the provisions on the rights and obligations of carriers and consignees. They have proposed establishing delivery rules tailored to different transport documents based on the identity of the delivery subject [1]. Furthermore, there are calls for legislative reforms to address the period of responsibility of the Chinese carrier, exoneration from liability, and the setting of advance liability and proof responsibility. Suggestions also include abolishing the “maritime failure of liability” provisions, extending the duty of navigation throughout the shipping process, and expanding carrier liability [2]. Despite these scholarly contributions, there remains a need for a comprehensive study that synthesizes these perspectives and provides actionable recommendations for legal reform. Current research often highlights individual issues without offering a holistic view of how these elements interconnect within the broader legal and operational framework of maritime transport.

This paper aims to fill this gap by conducting a thorough analysis of the carrier delivery rules in international maritime transport and their implications for Chinese law. By reviewing the relevant international conventions and major shipping nations' regulations, this paper will identify best practices that can be adapted to the Chinese context. Additionally, the paper will evaluate the practical challenges faced in implementing current laws and propose specific reforms to enhance legal clarity and operational efficiency.

The structure of this paper is as follows: Section 2 reviews the international conventions and regulations of major shipping nations that balance the interests of carriers and consignees. Section 3 analyzes the current status and challenges of carrier delivery rules in the Chinese Maritime Commercial Law. Section 4 offers detailed recommendations for enhancing the legal framework related to the transport of goods by sea in China. Finally, Section 5 concludes the paper by summarizing the key findings and emphasizing the importance of these improvements for China's role in global maritime trade.

2. Provisions of International Conventions and Major Shipping States to Balance the Interests of the Parties to the International Transport of Goods by Sea

2.1. The Need to Balance the Interests of Both the Carrier and the Consignee

Maritime transport is an important component of international trade, with carriers and consignees as the main players in the transport of goods by sea. The balance of interests between these two parties is essential for the smooth conduct of international commerce. If either party holds excessive rights or obligations, it can lead to instability in the maritime market, thereby undermining the normal flow of international trade in maritime goods.

Balancing interests ensures that carriers can operate without facing overwhelming liabilities while consignees receive adequate protection for their goods, which promotes trust and cooperation between the parties [3]. Overburdening carriers with too many responsibilities can discourage their participation and investment in the shipping industry, while insufficient protection for consignees can lead to significant losses and reduced confidence in maritime transport. Therefore, it is imperative to establish a fair and equitable legal framework that addresses the needs and concerns of both carriers and consignees.

2.2. Provisions of International Treaties

International treaties play a significant role in establishing standardized rules for maritime transport, aiming to balance the interests of carriers and consignees. The Hague Rules, the Hamburg Rules, and the Rotterdam Rules are among the most influential international conventions in this regard.

The Hague Rules focus on the carrier's liability and provide numerous exemptions to protect carriers from excessive claims. Article 3, paragraph 6, stipulates the duration of the carrier's liability,

while Article 4 outlines exemptions such as non-fault liability and exemptions for shipping breaches. The Hamburg Rules, on the other hand, place greater emphasis on the consignees' protection. Article 4 establishes the period of liability for carriers, extending their responsibility beyond what is stipulated in the Hague Rules. Article 5 defines the basis of the carrier's liability, and Article 6 sets higher limits for compensation, annulling the exemption for navigation errors and extending the carrier's responsibility. The Rotterdam Rules attempt to modernize and harmonize international maritime law by incorporating elements from both the Hague and Hamburg Rules. Chapter IV establishes the obligations of carriers, Chapter V details the carrier's liability for compensation, and Chapter XII addresses excessive liability. The Rotterdam Rules adopt the principle of presumed fault, balancing the interests of both parties by presuming the carrier's fault unless proven otherwise [4].

2.3. Relevant legal provisions of the principal shipping country

Major shipping nations have also developed their own legal frameworks to balance the interests of carriers and consignees, often influenced by international treaties but tailored to their specific legal and economic contexts.

Article 5 and 6 of the United States Maritime Goods Transport Act 1999 explicitly stipulate the rights and obligations of the shipper and the rights of the carrier and the ship. The carrier's liability includes liability for navigability, cargo liability, basic responsibility for reasonable circumference, and liability in respect of delivery of goods, as well as the right to immunity, for example, for loss or damage to goods caused by the fault of the captain, crew, pilot or other employed carrier to drive or manage a ship. In addition, a carrier may also be liable for loss and damage to the goods as a result of force majeure, such as fire, weather, war or armed conflict.

In the Carriage of Goods by Sea Act 1992 of the United Kingdom, the carrier's related liability rights were not separately displayed, but included in the specific content under each heading. According to the common law of the country, if the carrier breaches an obligation to circumvent the shipment, he may become the insurer of the goods and liable for loss of goods, unless the loss is caused by a catastrophe, a governmental act, an act of public enmity or the shipper's own fault. Whether a delay in delivery constitutes a carrier's liability depends on the specific agreement of the contract of carriage and the applicable legal provisions. If the contract clearly stipulates a delivery time, and the carrier fails to deliver the cargo on time, the carriers may have to bear the liability for delayed delivery.

Other national laws, which differ from the specific provisions of the above-mentioned States and international conventions, have mostly the same provisions for the basic process of delivery by the carrier as well as the obligations of liability and the right of discharge.

3. The Status and Difficulties of the Rules of Delivery of Carriers in the Chinese Maritime Commercial Law

3.1. Relevant Provisions of the Chinese Maritime Commercial Law on Carrier Delivery

The Hague Rules and the Rotterdam Rules are the maritime conventions that best represent the current concepts of international maritime goods transport legislation, and some of their provisions on the carrier's liability regime have significant implications for the revision and improvement of the Chinese Maritime Commercial Law. Currently, the types of carrier liability in China are classified into three categories: the principle of strict liability, non-completely defraudable responsibility, and the principles of total defrauded responsibility.

The provisions of Article 46 and Article 51 of the Maritime Code of China on the carrier's liability and the reasons for exemption of Article 51 basically refer to the provisions of The Hague Rules and the Visby Rules. The principle of imputation of incomplete negligence liability is adopted, which

allows the carrier to be exempted from liability under certain negligence circumstances. There are 17 exemption contents in The Hague Rules and Visby Rules, which are different from China's Maritime Code in terms of the number of items and specific expressions, but there is no substantial difference in the contents. They were established under the background of the conditions at that time in order to avoid the carrier from taking excessive voyage risks and to protect and encourage the development of China's maritime industry. They not only transfer the risks of the ship, but also break the balance of rights and interests between the ship and the cargo.

3.2. Issues in Practice

Firstly, the issue of carrier identification and the determination of liability limits is a significant challenge, as exemplified by the "Zhongji case". The main international conventions do not provide a unified concept for carriers, and each major international convention has its own contracting parties. At the same time, each country's legislation has its own standards for defining carriers, which are different from each other. This has led to the lack of a universally accepted carrier definition standard internationally, increasing the difficulty of identifying carriers [5]. Establishing a clear and precise rule for carrier identification in China is essential to facilitate quick determination of carrier identity, clarify compensation liabilities, and protect the legitimate rights and interests of consignees.

Secondly, the determination of the carrier's liability for delayed delivery presents another significant issue. China's Maritime Law does not fully incorporate the definition of delayed delivery as specified in the Hamburg Rules, which includes provisions for delivery within a reasonable time frame even without explicit agreement. This also creates problems in the application of law and is difficult to determine in practice. In practice, it is extremely rare for both parties of the ship and cargo to reach a clear agreement on the delivery time in advance. When signing the freight contract, it is usually difficult for both parties to pay attention to the specific arrival date. The common bill of lading format also does not have a "delivery time" column, and both parties are likely to overlook this point [6]. The conditions for determining delayed delivery are also extremely strict, so it is difficult to determine that the carrier's behavior constitutes delayed delivery in practice, and the interests of the consignee are easily infringed.

Finally, regarding the determination of the scope of the carrier's liability period, the determination of the liability period for Chinese maritime carriers in China's Maritime Law is not mandatory. The Chinese Maritime Code holds that the carrier is only responsible for the damage or loss of goods that occur during this period. But the meaning of international conventions in various countries is that if the cause of damage, loss or delayed delivery of goods occurs during the liability period, the carrier should also be held responsible. In practice in China, the time during the management of goods is consistent with the responsibility period for non-container goods, but there is a certain deviation from the responsibility period for container goods [7]. This regulation is not conducive to determining the carrier's liability in the event of damage or loss of goods, and is not conducive to safeguarding the legitimate interests of the consignee.

3.3. Importance of International Carrier Delivery Rules for the Carriage of Goods by Sea to China

The airworthiness obligation in the Chinese Maritime Commercial Law is mainly a duty of the carrier to carefully handle airworthiness, which is fundamentally different from the "preliminary obligation" under British and American ordinary law. Article 47 of the Maritime Commercial Law stipulates the duty of navigability, which is merely one of the obligations of the carrier, and if a carrier violates the obligation to navigate, the consequences and liability and other breaches of the contract shall be measured in accordance with the specific provisions of the maritime commercial law and shall be

liable for the loss or damage of goods resulting therefrom. With regard to the obligations, liabilities and immunities of carriers, Chapter IV of the Chinese Maritime Commercial Code is basically drawn up with reference to the Hague Rules, even though China has not acceded to the Rules of The Hague.

In the context of the Hague era, the Chinese Maritime Commercial Law can maximize its positive role, but it is not in line with the development of the international shipping environment in the twenty-first century. The provisions of the maritime obligations in the Chinese maritime Commerce Law should also change with the actual development of international Shipping, pay attention to the absorption of the advanced provision of the globalized navigability obligations under the Rotterdam Rules, so that the interests of the carrier and the goods party can reach a new balance, while promoting China's shipping industry development, establish their own discourse in the international shipment market [8].

4. Recommendations on the Improvement of the Legal System Relating to the Transport of Goods by Sea in China

4.1. Improving the Identification of Carriers in Practice

In the context of globalization, the development and division of labor in the maritime transport industry, as well as the irregularity in the signing of the ticket, make the identification of the carrier increasingly complicated, leading to the occurrence of related litigation cases. The complexity of identifying carriers appears mainly in the post circulation of tickets, in our country, the issuer of tickets and carriers can be regarded as the same person, or the issuer of tickets is issued on behalf of the carriers, but in practice, the phenomenon of the abuse of other shipping companies' tickets occurs from time to time, and it is easy to recognize deviations in the case of the identity of carriers without considering the contract process, the payment of shipping fees and the issuance and flow of tickets [9]. Therefore, in this regard, the law should be continuously improved.

First and foremost, the legal definition of the carrier should be clarified, serving as the basis for identifying carriers. Identification criteria should be refined to include specific scenarios such as the conclusion of a maritime freight contract, the issuance of quotations by the captain, and the examination of transport arrangements and delivery orders. Additionally, attention should be given to the delivery process and subsequent dispute resolution mechanisms. For example, when the name of the carrier is not explicitly agreed upon in quotations or other documents and multiple carriers are possible, the law should provide clear guidelines for allocating the burden of proof to determine the responsible party. Furthermore, the establishment of a comprehensive registry for carriers could aid in the accurate identification and accountability of carriers. This registry should be accessible to relevant parties, including shippers and consignees, to verify the legitimacy and credentials of carriers. Regular audits and updates to this registry will ensure that it remains accurate and reliable.

4.2. Clarification of the Duration of the Responsibility of the Carrier in the Delivery Process

Article 46 of the Maritime Commercial Law of China stipulates: "During the period of liability of the carrier, the cargo due to loss or damage, unless otherwise provided in this section, carrier shall be liable for compensation." However, the current law does not clearly define the liability period. It should be explicitly stated that the carrier is responsible for any loss or damage occurring during this period, and that liability extends to cases where the cause of damage occurs within this timeframe [10].

Currently, Chinese carriers provide different liability periods for container and non-container cargo. For container cargo, the responsibility period spans from the receipt of the cargo at the loading port to its delivery at the destination port. For non-container cargo, the liability period extends from the moment the cargo is loaded onto the ship until it is disembarked. This inconsistency can lead to

confusion in cargo management and regulatory difficulties. Therefore, harmonizing the liability periods for all types of cargo is essential to ensure clarity and consistency.

Additionally, the law should include provisions for delayed delivery. The definition of delayed delivery should be expanded to cover situations where, although no clear delivery time is agreed upon, the delivery has not been completed within a reasonable timeframe as would be expected of a diligent carrier. This would protect consignees' interests and ensure that carriers adhere to reasonable delivery schedules.

4.3. Strengthening the Fulfillment of the Obligations of the Carrier in the Delivery Process

Carriers have several fundamental obligations: proper storage, safe transport, notice and timely delivery of goods. To ensure these obligations are met, carriers must strictly adhere to agreed terms with shippers, ensuring that recipients receive their goods in the expected condition and timeframe.

In the process of strengthening the fulfillment of the obligations of carriers, it is necessary to strengthen the inspection and supervision of the carriers in the carriage process by the relevant departments. In addition, an independent third-party monitoring mechanism could be introduced to monitor and evaluate carriers' transport processes through third party bodies that have no interest in either of the shipping parties, to correct the carrier's violations in a timely manner and to guarantee the safe and lawful carriage of goods.

Moreover, penalties for non-compliance should be clearly defined and strictly enforced to deter carriers from neglecting their duties. The establishment of a transparent reporting system where stakeholders can report any discrepancies or issues encountered during the shipping process will also enhance accountability.

5. Conclusions

This paper conducts an in-depth research on the impact of carrier delivery rules on China's Maritime Law in international maritime cargo transportation, and based on the issues of imbalanced interests between carriers and consignees in international cargo transportation, it aims to improve the system of cargo delivery rules in China's Maritime Law to a certain extent.

The Maritime Code of China is a highly foreign-related law and should be consistent with international customary law. When it was enacted in 1993, most provisions of China's Maritime Law were based on international conventions and the relevant laws of other countries. Despite these influences, some provisions were not fully integrated, leading to inherent loopholes and practical problems. These issues have resulted in an imbalance of interests between carriers and consignees during the transportation of goods. China's reliance on international conventions and foreign legislative experiences has provided a solid foundation, yet it has also introduced challenges that need to be addressed.

Judicial practices have highlighted these issues, demonstrating the necessity for ongoing improvement and revision of China's Maritime Law. The global maritime environment has evolved significantly since the 1990s, and China's maritime industry has grown to become a major player in international shipping. Therefore, aligning China's Maritime Law with contemporary international standards and practices is crucial for enhancing its effectiveness and ensuring it meets current industry needs. The proposed improvements include refining the identification of carriers, clarifying the duration of carrier responsibilities, and strengthening the fulfillment of carrier obligations.

With the continuous development of China's maritime transportation industry, the improvement of the Maritime Law is more in line with the needs of the Chinese era and will undoubtedly be an important reform in China's maritime cargo transportation field.

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