

# Study On Carrier' S Seaworthiness Obligation Under the Background of Revision of Maritime Law

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**Abstract.** The liability of the carrier plays a central role in transport law of goods by sea. The carrier's seaworthiness obligation is the most fundamental and important part among its three basic obligations. The specific content of the carrier's seaworthiness obligation is closely related to the interests of both the shipper and the carrier. With the changing positions of both parties and the development of shipbuilding and navigation technology, relevant regulations regarding the seaworthiness obligation should be adjusted accordingly to achieve a rebalance of the interests of both parties and meet the legislative requirements of the new maritime era. This article explores the development issues of the carrier's seaworthiness obligation in four parts. The first part briefly outlines the development process of the seaworthiness obligation and describes the existing scope and content of the seaworthiness obligation under standard system of China's Maritime Law. The second part analyzes the provisions regarding the carrier's seaworthiness obligation from the perspective of "Maritime Code of the People' s Republic of China (Revision) (Exposure Draft)" (hereinafter referred to as Exposure Draft). The third part identifies the remaining issues and loopholes in the above provisions. Finally, the fourth part provides suggestions and prospects.

**Keywords:** Carrier; Seaworthiness obligation; carriage of goods by sea.

## 1. Introduction

As a party to international maritime cargo transportation contracts, the carrier has the obligation to ensure the seaworthiness of the vessel. This is known as the carrier's fundamental duty, the seaworthiness obligation. The seaworthiness obligation is an ancient institution in maritime law, which has witnessed the evolution of shipping economics and technology, as well as the gradual evolution of the balance of interests and dispute resolution between shipowners and cargo owners. The development of the seaworthiness obligation in Maritime Law signifies the constant exploration and practice of fairness, justice, and the balance of interests, reflecting the arduous journey of pursuing the values of maritime law.

As a major trading and shipping nation, China needs to thoroughly understand and analyze the relevant content of the carrier's seaworthiness obligation in important international conventions governing maritime cargo transportation, in order to achieve sustained and stable development and ultimately become a maritime and trading powerhouse. At the same time, it is necessary to draw on valuable content, analyze the deficiencies in China's regulatory framework for the seaworthiness obligation, and propose effective suggestions based on the "People's Republic of China Maritime Law (Draft for Solicitation of Comments)" and the latest international rules. These suggestions aim to promote the improvement of China's regulatory framework for the seaworthiness obligation and facilitate the stable development of maritime trade.

## 2. Overview of seaworthiness obligation

Since the era of navigation, the seaworthiness obligation has been recognized as one of the fundamental obligations of the carrier and has always been a focus of attention in maritime law. It is part of the foundation of the carrier's liability under international maritime cargo transportation law. After the Hague Rules, the seaworthiness obligation became known as the primary duty of the carrier [1]. The following provides a brief overview of the development of the seaworthiness obligation and the seaworthiness obligation under regulatory framework in the China's Maritime Law.

## **2.1. The development of seaworthiness obligation**

### **2.1.1 Origin of seaworthiness obligation**

The seaworthiness obligation originated during the prosperous period of European shipping and trade. During that time, various compilations of maritime customs and practices emerged, among which the “Oleron Customs Collection” and the “Consulate of the Sea” were the most representative. The “Oleron Customs Collection” stipulated the liability of the shipmaster and crew for breach of the seaworthiness obligation, while the “Consulate of the Sea” contained provisions on the shipowner’s obligation to properly load and protect the cargo of the cargo owner [2].

The seaworthiness obligation at that time had two notable characteristics: first, it expanded its scope beyond just the safety of maritime navigation and began to focus on the fitness of the vessel and crew; second, the liability of the shipper (cargo owner) was significantly reduced, leading to the rupture of the interests of both parties. The seaworthiness obligation for shipmasters and crew gradually became more codified, evolving into the seaworthiness obligation in modern maritime law.

### **2.1.2 Early development of seaworthiness obligation**

In the late 19th century, the British shipping industry flourished and became the center of world shipping. According to the British common law at that time, liner transportation belonged to the field of public transportation, and public carriers had to accept any goods delivered by anyone without the right to refuse transportation. In order to avoid this restriction, public carriers gradually began to include a large number of exemption clauses for compensation liability in bills of lading that represented liner transportation contracts, in order to avoid bearing compensation liability for the loss or damage of goods. Over time, these clauses became extremely, and the abuse of contractual freedom by carriers became widespread, seriously affecting the development of international shipping. This situation caused dissatisfaction in international shipping and gradually gave rise to the movement for standardizing bills of lading. Represented by the United States, many countries adopted various measures of resistance, and the most representative and far-reaching impact was the Hart's Law enacted by the United States in 1893. This law severely prohibited shipowners from arbitrarily reducing their own responsibilities and required shipowners to guarantee the seaworthiness for the entire duration of transportation, thereby increasing the shipowners' responsibilities.

### **2.1.3 Seaworthiness obligation in the Hague Rules**

The Hague Rules improved the strict and absolute seaworthiness obligation that had long troubled carriers. It limited the time period in which carriers were liable for seaworthiness to before and at the time of departure. As long as carriers had taken “due diligence” measures, the “latent defects” that the vessel itself might have would not affect the determination of whether the carriers had fulfilled their seaworthiness obligation, and carriers would not be held liable. Under the Hague Rules, the relationship between vessel seaworthiness and carrier exemption clauses was also crucial. According to the rules, carriers must make the vessel seaworthy, fulfill their seaworthiness obligation, or even if they failed to fulfill their seaworthiness obligation, the infringement caused must not be causally related to the unseaworthiness of the vessel in order for carriers to enjoy exemption clauses. Even if carriers fail to fulfill their obligations of properly handling the cargo or operating on the proper route, it will not affect the implementation of the exemption clauses. Such provisions make the seaworthiness obligation a “primary obligation” for carriers under the Hague Rules. However, with the birth of the Hamburg Rules and the establishment of a regime of strict liability, this situation has changed.

### **2.1.4 Seaworthiness obligation in the Hague Rules**

The Hamburg Rules readjusted the rights and obligations of carriers and shippers, and made more thorough revisions to the Hague Rules, with the most important sign being an increase in carrier liability and the establishment of a regime of strict liability [3]. Moreover, it also modified the provisions regarding the duration of carriers’ seaworthiness obligation [4], specifically stating that carriers should bear the seaworthiness obligation “during the period of their control of the goods”.

Compared to the Hague Rules, the seaworthiness obligation for carriers has been extended to the entire voyage. In addition, unlike the “due diligence” requirement of the Hague Rules and the Visby Rules, the Hamburg Rules require carriers to take “all necessary measures that can reasonably be demanded” to avoid loss or damage to the goods. The revised rules lengthen the duration of carriers’ seaworthiness obligation and increase their responsibilities. Developed countries representing the interests of shipowners have rarely signed or ratified this convention, and the convention has not truly taken effect or had an impact.

### **2.1.5 Seaworthiness obligation in the Rotterdam Rules**

In the Rotterdam Rules, the provisions regarding the seaworthiness obligation explicitly state that the duration of the seaworthiness obligation includes not only the “before departure” and “at the time of departure” as specified in the Hague Rules and Visby Rules, but also “during the sea voyage” [5]. This means that carriers must maintain a state of “due diligence” throughout the entire process of maritime transportation and fulfill their seaworthiness obligation.

## **2.2. The seaworthiness obligation under the standard system of China's Maritime Law**

In China's Maritime Law, the provisions regarding the seaworthiness obligation are concentrated in Chapter 4, which focuses on international maritime cargo transportation contracts. However, the seaworthiness obligation in towage contracts and the seaworthiness guarantee in marine insurance contracts are not within the scope of this discussion.

Article 47 of China's Maritime Law specifies the time, content, and standards for the seaworthiness obligation for international carriers [6]. In terms of the time for the seaworthiness obligation, China has referenced the relevant provisions of the Hague Rules, which stipulate that carriers must fulfill the seaworthiness obligation before departure and at the time of departure. Once the vessel has departed, the carrier is not required to take measures to ensure seaworthiness and will not be held responsible for any adverse consequences. In terms of the standard for the seaworthiness obligation, the Maritime Law requires “due diligence”, which emphasizes the subjective state demonstrated by the carrier in fulfilling the seaworthiness obligation rather than requiring the provision of a seaworthy vessel [7]. In short, “due diligence” requires the carrier to act diligently and take necessary and reasonable measures to ensure the seaworthiness of the vessel. The content of the seaworthiness obligation primarily includes the narrow seaworthiness, the competency of the crew, and the suitability of the vessel for carrying the cargo. Narrow seaworthiness requires that the hull and machinery of the vessel are sufficient to cope with the usual or reasonably foreseeable risks during the voyage, and regular inspections are conducted to eliminate faults. In terms of the competency of the crew, there must be a sufficient number of personnel who meet the minimum safety requirements for watchkeeping and vessel operations, ensuring the necessary onboard personnel. They must be competent for their respective positions and possess the necessary navigational knowledge, skills, and experience, as well as meet the health standards set by the country. The captain and other senior crew members should also hold valid certificates of competency. In terms of the suitability of carrying the cargo, the carrier must ensure the safe receipt, transport, and storage of the goods in accordance with the physical and chemical characteristics of the transported goods and the corresponding loading and handling requirements. The related equipment and rigging must be in effective working order, and where certificates are required, valid certificates must be provided.

Overall, China’s Maritime Law provides a relatively clear and comprehensive framework for the carrier’s liability system. Articles 47 to 56 stipulate the basic rights, obligations, exemptions, and limitations on liability of the carrier. However, the interrelation of these systems is not explicitly stated in the articles and hence needs further improvement.

### **3. Analysis of the provisions on carrier's seaworthiness obligation in the Exposure Draft**

The "Maritime Code of the People's Republic of China (Revision) (Exposure Draft)" issued by the Ministry of Transport on November 5, 2018, is based on the profound changes in China's current level of economic development, economic and trade patterns, shipping industry structure, international and domestic legal environment, and is also the inevitable result of the development of the Maritime Law. The changes to the carrier's seaworthiness obligations in the Exposure Draft mainly focus on the examination of the subject of responsibility, the period of responsibility, and the basis of responsibility.

#### **3.1. Actual Carrier System**

In the Exposure Draft, the concept of "actual carrier" is expanded to include a new category of entity, "persons engaged in goods operations within port areas." This modification effectively resolves the long-standing legal status issue concerning port operators. By distinguishing port operators based on the source of entrustment or re-entrustment, it helps them fulfill their obligations related to cargo transportation. Additionally, including operations within port areas in the scope of the actual carrier system helps expand the responsibility of carriers and encourages them to treat goods more carefully and reasonably to ensure the integrity and safety of the cargo. This modification not only improves the carrier's liability system but also provides clearer legal status for port operators, promoting the development of port operations and cargo transportation.

#### **3.2. Period of carrier's responsibility**

The Exposure Draft adopts a two-tier approach in terms of the period of responsibility, distinguishing between containerized and non-containerized cargo [8]. For containerized cargo, as containers provide a closed and stable storage environment that buffers and protects the cargo during loading and unloading, the risk of cargo damage for the carrier is relatively lower. Therefore, the period of responsibility is defined from receiving the cargo to its delivery. On the other hand, for non-containerized cargo, which is more exposed to risks such as collisions and scratches, the carrier needs to bear a greater risk of cargo damage. The period of responsibility is defined as from loading to unloading.

This provision fully takes into account the characteristics and trends of containerized and non-containerized transportation, drawing from the experience of international rules such as the Hague Rules and Hamburg Rules. By adopting a two-tier approach and specifying different periods of responsibility, it can scientifically allocate the carrier's responsibilities, protect their rights, and better ensure the safety and integrity of the cargo. This modification helps improve the quality and efficiency of cargo transportation in China and promotes international trade and economic development.

#### **3.3. Basis of Carrier's Liability**

The basis of the carrier's liability refers to the process of determining whether the carrier should bear responsibility and what responsibilities they should bear. In the Exposure Draft, the scope of the carrier's exemption grounds has been adjusted. Article 4.11(2) has revised the exemption provisions, replacing "other navigable waters" with "navigable waters connected to the sea," and adding "piracy or terrorist activities" beyond the political factors of "war or armed conflict." In addition, the provision regarding "rescue or attempted rescue of human lives or property" has been expanded to apply not only "at sea" but also to "navigable waters connected to the sea," corresponding to the third exemption ground. These modifications make the language of the article more accurate and comprehensive, meeting the requirements of international maritime practices.

As for the exemption grounds for fires, the Exposure Draft refers to the relevant exemption provisions of the Rotterdam Rules and adjusts it to "fires occurring on the ship." As long as a fire occurs on board, even if it is not within the responsibility period of either containerized or non-

containerized cargo, the protection will be tilted towards the claimant. In addition, the seventh provision also emphasizes marine environmental protection, stipulating that the carrier is not liable for compensation when taking reasonable measures to avoid or attempt to avoid harm to the marine environment, reflecting the principle of protecting the marine environment.

Regarding the allocation of the burden of proof, the Exposure Draft has also made modifications. The Maritime Law adopts a system of liability for not-so-gross negligence. Except for cases of fire, the carrier is not liable to compensate unless they can prove that they were not at fault or that the loss or damage of the cargo was not caused by their fault. However, in the Exposure Draft, the claimant also bears the initial burden of proof when presenting a claim, which requires the cargo interest to demonstrate the existence of cargo damage and prove that the damage or the causes of the damage occurred during the carrier's responsibility period. This modification fully considers the specific requirements of maritime transport and helps achieve a better balance of interests between the shipper and the carrier, improving the allocation of the burden of proof system.

#### **4. Analysis of the existing issues of carrier's seaworthiness obligations in the Exposure Draft**

##### **4.1. The issue of including port operators as the main subject**

The definition of "transportation" has not yet reached a unified understanding internationally, and there is no specific explanation in the Maritime Law. The main business conducted in ports includes cargo loading and unloading, warehousing, and stowage, or a mix of these activities. It is different from the transportation obligations typically fulfilled by actual carriers, which involve the physical displacement of the vessel. Although vessels within the port area may also travel a certain distance, their purposes are often not to transport goods to another port.

Although the Exposure Draft includes ports operators as the main subject of actual carriers, which solves their legal status issue to some extent, most carriers have little correlation with port operators when it comes to assuming responsibilities. In reality, the services provided by ports operators are usually seen as auxiliary activities in the overall transportation process. Therefore, although ports operators are given the status of actual carriers, it is difficult to apply legal provisions for claims. While ports operators can apply the exemption provisions and liability limits of actual carriers, in most cases, the responsibilities assumed by carriers have little to do with ports operators.

##### **4.2. The issue of responsibility period in non-containerized cargo transport**

In the Exposure Draft, the issue of responsibility period for carriers primarily exists in non-containerized cargo transport. According to Article 4.1, carriers are responsible for transporting goods from one country's port to another country's port, and the period of the international sea transport contract is "port-to-port." For containerized transportation, carriers' responsibility starts from receiving the goods at the loading port to delivering the goods at the unloading port, which aligns with the duration of the transport contract. However, in the case of non-containerized cargo transport, the responsibility period of carriers is only from the loading of goods onto the ship to the unloading of goods from the ship. There is a legal gap in liability during the time between receiving goods and loading them onto the ship, as well as between unloading goods and delivering them. Moreover, in the process of loading, moving, stacking, transporting, keeping, caring for and unloading the goods, the carrier has an obligation to receive and deliver the goods as stated in the Exposure Draft, but this does not match the provisions on the responsibility period of non-container transportation.

##### **4.3. The emphasis of unseaworthiness lacks of necessity**

Although at the level of evidentiary responsibility, the claiming party is also set the burden of preliminary proof, which is beneficial for achieving a better balance of interests between the ship and cargo parties, it also increases their evidentiary responsibility to some extent. In addition to the

claiming party's burden of preliminary proof specified in Article 4.12 of the Exposure Draft, it further requires them to prove that the cause of cargo damage belongs to factors of the unseaworthiness. Cargo damage caused by the unseaworthiness does not fall under the carrier's exonerating circumstances, which appears excessively harsh and unfair for the carrier. This is because the unseaworthiness of the vessel may be due to multiple reasons, and it is not appropriate for the carrier to bear all of its responsibility.

## **5. Suggestions for the improvement of the carrier's seaworthiness obligation in the revision of the Maritime Law**

### **5.1. Parallel status between port practitioners and carriers**

Regarding the issue mentioned earlier, where the carrier's liability situation is not closely related to the ports operator and the ports operator faces difficulties in claiming under the applicable legal provisions, reference can be made to the provision in the Rotterdam Rules regarding contractual parties in maritime transport. The ports operator can be included in parallel with the carriers, with corresponding rights, obligations, and liability limitations applying to them. It is also necessary to provide a clear definition of the term "port operator" and its scope in the Exposure Draft, to clarify its position and subject range.

### **5.2. Abolish the provision of a two-tier approach of carrier's liability period**

The provision of a two-tier approach of liability period often leads to gaps in liability and mismatched period regulations, causing confusion. By observing the latest international conventions and domestic laws of other countries, we can find that the practice of adopting a two-tier approach for liability period is generally non-existent. On the contrary, these laws usually adopt a unified standard that applies to both containerized and non-containerized transportation. According to this standard, regardless of the mode of transport, the carrier's liability period is recognized from the receipt of goods at the loading port until the delivery of goods at the unloading port. Therefore, these laws do not separately set liability periods for non-containerized cargo transportation or make specific distinctions. This unified provision can simplify the implementation of the law and improve the carrier's sense of responsibility and management level, thus better protecting the safety and integrity of goods.

## **6. Conclusion**

As a fundamental part of carrier liability, the carrier's seaworthiness obligation has played a crucial role in the history of international shipping, regulating the order of international maritime transportation and safeguarding the interests of both ship and cargo. The outdated provisions in traditional international maritime cargo transportation conventions regarding carrier liability are being gradually replaced. The timely release of the Exposure Draft has laid the foundation for establishing a new carrier liability system that aligns with the development trends of the Chinese shipping industry. Whether the Exposure Draft will eventually come into effect or not, it will have a profound impact on international maritime legislation. The revision of China's Maritime Law is at a critical moment. It is important to thoroughly review and evaluate relevant international rules, especially those concerning carrier's liability, and learn from their essence in subsequent work. By revising legislation on seaworthiness obligation and related issues based on China's actual circumstances, it will contribute to the development of China's shipping industry and the progress of maritime legislation, while also addressing the regrettable inconsistency between current maritime legislation and practice in China to a certain extent.

## References

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- [4] Xie Zhenhui. Carrier's Seaworthiness Obligation in China's Maritime Law [J]. Law Review, 2003(06):87-91.
- [5] Article 63 of the "Consolidated Marine Law" stipulates: "The shipowner and the helmsman shall not load the goods in damp places or inappropriately, so as to cause damage to the goods. Otherwise, they shall be liable to the shipper." Articles 64, 65, and 66 provide: "If the damage to the cargo is caused by leaks in the deck or portholes, as well as the lack of basic proper protection of the cargo, the shipowner shall be liable; but if the damage is caused by a storm, there is no need for compensation, as there is no negligence."
- [6] Article 5, paragraph 1 of the "Hamburg Rules" states: "If the loss, damage or delay of the goods occurs during the period when the carrier has control of the goods, the carrier shall be liable for the loss caused by the loss, damage or delay of the goods, unless the carrier proves that reasonable measures have been taken by himself, his employees or agents to avoid the occurrence of such incidents and their consequences."
- [7] Article 14 of the "Rotterdam Rules" provides the "specific obligations applicable to the maritime voyage": "The carrier must exercise due diligence to (a) put the ship in and maintain seaworthy condition before and at the beginning of the voyage; (b) properly equip the ship, and supply it throughout the voyage, with crew, and stores and other supplies, and (c) make the cargo ship, all other cargo spaces and containers provided by the carrier fit and safe for the reception, carriage, and preservation of the goods, and maintain this condition throughout the period of carriage."
- [8] Article 47 of the "Maritime Law": "The carrier shall exercise due diligence to put the ship in a seaworthy condition and properly equip the ship, and supply it with crew, stores, and supplies before and at the beginning of the voyage, and make the cargo holds, refrigerated holds, air-conditioned holds, and other cargo spaces fit and safe for the reception, carriage, and preservation of the goods."
- [9] Editor-in-Chief Si Yuzhuo: Maritime Law, Law Press·China 2018(85)
- [10] Article 4.6, paragraph 1 of the Maritime Code of the People's Republic of China (Revision) (Exposure Draft): "The carrier's responsibility period for containerized cargo is the period from the time of receiving the goods at the loading port to the delivery of the goods at the unloading port, during which the goods are under the control of the carrier. The carrier's responsibility period for non-containerized cargo is the period from the time the goods are loaded onto the ship until they are unloaded from the ship, during which the goods are under the control of the carrier."