

Research on the Legal Nature of Bill of Lading (BOL) in International Cargo Transportation

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Abstract: The Hague Rules, Hamburg Rules, Maritime Laws of the People's Republic of China, Uniform Transportation Laws and The United States Freight Act of 1999 have similar but different provisions on the nature of bill of lading. The Hague Rules use covered to stipulate that the bill of lading is the proof of carriage contract, while covered also means including. The Hamburg Rules and Maritime Laws of the People's Republic of China use evidence to stipulate that the bill of lading is the proof of carriage contract, while the United States Freight Act 1999 considers the bill of lading as the carriage contract directly. For this problem that the nature of the bill of lading is proof of the carriage contract or the carrier of the carriage contract, this paper adopts the methods of literature research and comparative study, starting from the relevant legal provisions of bill of lading, progressively analyze the legal nature of bill of lading and draw a conclusion from the perspective of the conclusion of carriage contract, the relationship between bill of lading and carrier of carriage contract and carrier of carriage contract three dimensions. That is, the bill of lading is not the carriage contract and the rights and obligations of both parties are subject to the carriage contract in the non-public carrier contract of human transport. In the public carrier contract of human transport, the bill of lading is the carrier of the carriage contract in some cases, but only the proof of the carriage contract in some cases.

Keywords: Bill of Lading, International Cargo Transportation, Maritime Law

1. Introduction

The main international conventions on contract of goods by sea have similar but different provisions on the nature of bill of lading. International conventions are: 1. International convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rule); 2. Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading ("Visby Rules"); 3. United Nations Convention on the Carriage of Goods by Sea, 1978. Maritime Laws of the People's Republic of China also stipulate the same article. this paper adopts the methods of literature research and comparative study, starting from the relevant legal provisions of bill of lading, progressively analyze the legal nature of bill of lading

and draw a conclusion from the perspective of the conclusion of carriage contract, the relationship between bill of lading and carrier of carriage contract and carrier of carriage contract three dimensions.

2. Relevant Provisions on the Legal Nature of Bill of Lading

The bill of lading is the proof of the carriage contract as stipulated in *the Hague Rules*. Article 1 (b) of *the Hague Rules* shows its description of the legal nature of a bill of lading in the definition of a carriage contract that 'carriage contract' applies only to a carriage contract evidenced by a bill of lading or any similar document of title, provided that these documents relate to the carriage of goods by sea; bills

of lading or any documents of title issued under or under a charter party are included when they govern the relationship between the carrier and the holder of the documents. 'The word "proof", as "covered" in the articles, has been translated in different ways and said that according to the meaning of the English word and the function of the bill of lading, it should be translated as "including" or a similar meaning in Chinese. Obviously, "proof" and "including" mean different, the meaning is different in terms of the nature of the bill of lading. [2] Because of the long history of *the Hague Rules*, it is not clear what legislators intended at the time.

However, after *the Hamburg Rules*, such disputes seem to be meaningless from a law enforcement perspective. Article 1, Clause 7 of *the Hamburg Rules* directly regulates this legal nature of the bill of lading that 'bill of lading' means a document used to prove the carriage contract by sea and the taking over or loading of the goods by the carrier, and to guarantee the delivery of the goods by the carrier...." "Evidence" used in the provisions is the same as the words used in Article 71 of the Maritime Laws of the People's Republic of China and that in the Hamburg Rules.

The Uniform Transport Act deals with this legacy issue from a more abstract and balanced perspective. Its Article 1, Clause 20 states that 'Transportation document' mean the document issued by a carrier or a performing party under a carriage contract, which is to: (a) certify that a carrier or a performing party has received the goods under the carriage contract, or (b) certify or document the carriage contract, or both. In the article, 'evidence' means certificate in English 'containing' means contained in English, which are the similar use with 'cover'. This provision of *the Uniform Transport Act* is clearly in view of the fact that some national legislation still wishes to treat bills of lading as contracts of carriage, such as *the United States Freight Transportation Act of 1999*.

Is the legal nature of bill of lading proof of carriage contract or carriage contract itself? To study this problem is not only of theoretical value, but also of significance in judicial practice.

3. Analysis of Bill of Lading from the Perspective of Concluding the Carriage Contract

From the conclusion of the carriage contract to see, the legal nature of the bill of lading has certain inspiration. International contracts for carriage of goods by sea fall into two categories. One is common carrier carriage contract, also known as liner carriage contract, including liner carriage contract, irregular liner carriage contract and multimodal carriage contract [3]; the other is non-public carrier carriage contracts [4] including voyage charter party, voyage time charter party, consignment contract and towage contract.

3.1. Public Carrier Contract for Human Carriage

The offer and acceptance in the course of concluding

liner carriage contract are the behaviors of shipper booking space and carrier accepting transport. [5] The shipper can book space directly from the carrier, but it is more popular for the shipper to book space through the forwarder. In terms of business documents, if the shipper books the shipping space through the forwarder, it usually sends the self-made booking note to the forwarder, who fills out the uniform booking document of the shipping company and sends it to the carrier. After receiving the receipt of the shipping order, the carrier will send the shipping order to the customer for filling if it is groceries. After the return of the bill of lading, the carrier will sign on the bill of lading indicating the acceptance of consignment. Some carriers require the shipper to send the goods to the designated dock after the release of the bill of lading signed by the dock or other organizations, so that the act of the carrier to release the bill of lading itself shows that it has accepted the consignment. In the case of containerized cargoes, the carrier will accept the shipment by way of booking confirmation upon receipt of the booking form. After that, the carrier shall prepare a booking list, and distribute it to the dock yard and freight depot for the arrangement of empty containers and handover of the goods. [6]

The conclusion process of liner carriage contract is not different from the general requirements of law and the conclusion process of other contracts. However, liner carriage contract will not form a written contract jointly signed by the shipper and the carrier, which is quite different from the general contract at the point of view of formal requirements. Liner shipping contract nor oral contract and the process can be found it is made in written form from the above contracts to the shipper and the carrier of the contracting activity with consignment note, booking note, shipping order and booking confirmation, as well as fax, E-mail, etc in the process of circulation of these documents are part of the written form. Of course, as long as both parties agree or one party holds evidence, part of the contract content in the form of oral agreement will also appear in the contract.

3.2. Non-public Carrier Carriage Contract

The Non-public Carrier carriage contract with voyage charter party as the main body is mainly used for bulk cargo transport, and the towage contract is specially used for towing barges, unnavigable ships and drilling platforms and other maritime facilities. The shipment of such goods is different from liner transportation. The shipper can look for a suitable vessel in the market, but more often, the shipper will hand over the goods to the charterer (shipping company) for transportation, and the charterer will look for a vessel in the market or transact a charter ship through a chartering broker. Unlike liner carriage contracts, voyage charter, voyage charter, charter and towage contracts are negotiated by both parties during the conclusion of each variation of the contract. The contents include name of vessel, nationality of vessel, specification of vessel, type of cargo, quantity of cargo, freight and payment method, loading port and loading

port agent, unloading port and unloading port agent, loading time, demurrage and dispatch, loading and unloading costs, arbitration, etc. In the international carriage of goods by sea, this kind of contract usually has its standard form, and the two parties must also determine the standard form used in the contract and its modification in the process of contract offer and commitment beyond agreeing on their respective rights and obligations one by one. Once all the details of the changes are worked out, both sides need to sign a "fixture note" and a charter contract is also required to sign as customary. Although the lessor and the charterer have written fax, E-mail and other exchanges in the process of negotiating the contract, neither party can cite these written documents to contend with it once the "charter Confirmation" is signed. When the official text of the charter party is signed, the charter party becomes the sole basis for the rights and obligations of both parties.

4. Bill of Lading and Carriage Contract

The premise of talking about carrier of carriage contract is that there is no single carrier of liner carriage contract such as written contract, while this problem does not exist in charter transportation. Voyage charter party, voyage time charter party, charter party and towage contract are carriers of the same kind of carriage contract. Therefore, unless otherwise specified, the term "carriage contract" refers to a liner carriage contract including a multimodal bill of lading.

4.1. The Hague Rules

The Hague Rules, whose full name is the International Convention on the Unification of Certain Legal Provisions concerning Bills of Lading, focus on bills of lading, but also refer extensively to carriage contracts:

Article 1 (a): The definition of carrier refers to a carriage contract, but it refers to a contractual relationship rather than a carrier of contract from its expression.

Article 1 (b): In the application of contracts of carriage, it is provided that the act applies to a carriage contract evidenced by (or translated into) a bill of lading. The carriage contract here can also be regarded as a contractual relationship of transportation.

Article 1 (c) refers in the definition of goods to the composition of cargo on deck, that is, "goods as stated in the carriage contract on deck and so shipped". Obviously, the carriage contract here has a specific carrier, however, what kind of carrier, the law is not clear.

Article 2 stipulates the rights and obligations of the carrier under the carriage contract for the management of the goods in 7 acts. Obviously, the service of the carriage contract also refers to a contractual relationship actually.

Article 3, Clause 5: the shipper shall be liable for the carrier's loss resulting from incorrect consignment information, but the carrier shall not be relieved of the liabilities under the carriage contract to persons other than the shipper. The carriage contract called here can be understood as the contractual relationship of carriage.

Article 3, Clause 6 stipulates the evidentiary effect of the act of delivery when the goods are delivered to the consignee of the carriage contract, where the carriage contract obviously refers to a particular carrier and usually refers to the bill of lading.

Article 3, Clause 8 stipulates that any clause, agreement or agreement in the carriage contract shall be null and void if it relieves the carrier or the ship from liability for loss of or damage to the goods or in connection with the goods due to negligence, fault or failure to perform its responsibilities and obligations under this article, or mitigates such liability in a manner different from the provisions of this Convention. This provision of *the Hague Rules* is very famous and often cited. It is also a legal guarantee to eliminate any exemption clauses in the carriage contract and bill of lading. However, although it can be seen in the litigation that the terms of the carriage contract here are mostly expressed in the terms of the bill of lading, it is still not clear in the provisions.

Article 4, Clause 4 stipulates that no deviation or any reasonable deviation in the saving or attempting to save life or property at sea shall be deemed to be a breach or breach of this Convention or of a carriage contract. The carrier of the carriage contract here is still unclear.

By analyzing the carriage contract involved in *the Hague Rules*, we can find that its carrier is not very clear in most cases and some provisions are difficult to operate in judicial practice. For example, with regard to deck goods, according to *the Hague Rules*, as long as the carriage contract specifies, the carrier can load the goods on deck. In the case of the consignee's claim, the operation of this clause is no problem if the carriage contract here specifies that it is specified in the bill of lading, but the dispute is inevitable if this is not the case.

4.2. Hamburg Rules and Maritime Laws of the People's Republic of China

The basic mode of the *Hamburg Rules and Maritime Laws of the People's Republic of China* is to make a series of provisions on the carriage contract, and the bill of lading, as a transport document, is only a part of this series of provisions. *The Hamburg Rules and Maritime Laws of the People's Republic of China* clearly stipulate that the bill of lading is the proof of the carriage contract, thus excluding the possibility that the bill of lading is the carrier of the carriage contract. The meaning of this in judicial practice is that the bill of lading is the bill of lading, and all documents proved by the bill of lading including part of the contents of the bill of lading and other documents in the process of concluding the contract are contracts.

In terms of *Hamburg Rules and Maritime Law of the People's Republic of China*, we should pay attention to treat the carriage contract and bill of lading separately in some aspects with strong operability. However, in this regard, the practice of *Maritime Law of the People's Republic of China* has defects compared with *the Hamburg Rules*.

4.2.1. About Delayed Delivery of Goods

Article 5, Clause 2 of *the Hamburg Rules*: "Delay in delivery occurs if the goods are not delivered within the time expressly agreed or, in the absence of such a contract of carriage, at the port of discharge specified in the contract of carriage by sea within such time as the circumstances would reasonably require of a diligent carrier."

Article 15, Clause 1 (n) of *the Hamburg Rules*: one of the particulars which must be included in the bill of lading is: "If expressly agreed by the parties, the date or time limit for delivery of the goods at the port of discharge".

Article 50 of *Maritime Laws of the People's Republic of China*: "Delay in delivery shall be deemed if the goods are not delivered at the agreed port of discharge within the time clearly agreed."

Article 73 of *Maritime Laws of the People's Republic of China*: there is no corresponding provision for the record of the bill of lading specifying the date of delivery.

Obviously, the 'agreed' delivery date between the carrier and the shipper is the carriage contract of goods delivery date "convention" belongs to the content, it can appear in the bill of lading in the carriage contract of the carrier, may also exist in the carriage contract of other carrier, but the two types of vehicle performance way and the legal effect is different, therefore, must be the difference, visible, the provisions of *the Maritime Laws of the People's Republic of China* for misconduct. [7]

4.2.2. For Compensation Exceeding the Statutory Limit

Article 6, Clause 4 of *the Hamburg Rules*: "The carrier and the shipper may agree by agreement beyond the limit of liability prescribed in Clause 1."

Article 15, Clause 1 (o) of *the Hamburg Rules* stipulates that one of the particulars to be included in the bill of lading is: "any increased limit of liability agreed in accordance with Article 6, Clause 4".

Article 56 of *Maritime Laws of the People's Republic of China* stipulates that after listing the statutory compensation liability limits of carrier, "except that the shipper has declared the nature and value of the goods before shipment and stated in the bill of lading, or that the carrier and the shipper have otherwise agreed that the compensation limit above the provisions in this section". [8]

Article 73 of *Maritime Laws of the People's Republic of China*: In the relevant bill of lading records, there is no corresponding provision that above the statutory limit of liability recorded in the bill of lading.

An agreement between the carrier and the shipper above the statutory limit of liability, if it is not recorded in the bill of lading, it will increase the difficulty of making the proof available when the consignee make a claim reference to the agreement of the carriage contract in this respects as evidenced by a bill of lading. For this regard, *the Hamburg Rules* model is that it must eventually be embodied in the form of a bill of lading if such an agreement exists. Certainly, under the application of *the Hamburg Rules*, if such an agreement in the case, it is not recorded in the bill of lading

and the claimant would seem to be able to proceed. It is obvious that the system and legislative techniques provided in this respect of *the Hamburg Rules* are impeccable. On the contrary, the provisions of *Maritime Laws of the People's Republic of China* still stay on the uncertain carrier of the carriage contract, which will inevitably reflect the problem of proof in the lawsuit. [9]

4.2.3. About On-deck Goods

Article 9 of *the Hamburg Rules* stipulates that if the carrier and the shipper have an agreement that the goods should or may be carried on deck, the carrier must record and list the corresponding description on the bill of lading or other documents proving the maritime carriage contract. Without this description, the carrier has obligation to evidence that an agreement was ever reached to carry it on the deck. But the carrier is not entitled to invoke such an agreement against a third party including the consignee who believes and holds the bill of lading.

Article 15, Clause 1 (m) of *the Hamburg Rules* stipulates that one of the records that must be included in the bill of lading is: "A statement that the goods should or may be carried on the deck, if belongs to the goods on deck".

Article 53 of *Maritime Laws of the People's Republic of China*: "The carrier loading the on-deck goods shall reach an agreement with the shipper, or in line with shipping practices, or comply with the provisions of relevant laws and administrative regulations. The carrier shall load the goods on deck in accordance with the provisions of the preceding paragraph and shall not be liable for the loss or damage to the goods caused by the special risks of such loading. If the carrier loads the on-deck goods in violation of the first paragraph of this Article causing loss or damage to the goods, it shall be liable for compensation."

Article 73 of *Maritime Laws of the People's Republic of China*: There are no corresponding provisions in records of the bill of lading for the on-deck goods.

It can be seen that in the terms of the goods on deck, the agreement between the carrier and the shipper (the carriage contract) has the different legal effect from the record in the bill of lading. *The Hamburg Rules* is handled in this way enhancing the operability in the practice. But, the same content is handled differently in *Maritime Laws of the People's Republic of China*. [10]

There are also some specific provisions of the bill of lading in *the Hamburg Rules* and *Maritime Laws of the People's Republic of China*, However, these provisions apply in cases which have effect only as recorded in the bill of lading, and it is impossible to mix with other carriers of the carriage contract. For example, Article 16 of *the Hamburg Rules* and Article 75 of *Maritime Laws of the People's Republic of China* provide that how to make reservations on the bill of lading when the goods data may not comply with the actual situation, since this is directly related to the validity of the evidence recorded in the bill of lading, it cannot be replaced by other carriers of the carriage contract.

4.3. The United States Freight Transportation Act of 1999

U.S. *Freight Transportation Act of 1936* is reformulated in accordance with the *Hague Rules*, There is no change in the definition of the carriage contract, that is, under the U.S. Laws, the relationship between the bill of lading and the carriage contract remains "covered". However, the definition of the carriage contract was greatly changed by [11] the proposed U.S. *Freight Transportation Act of 1999*, the Article 2 Clause (a) Item (5) (A) of this Law stipulates that: " ' the carriage contract' is refers to that: (i) the carriage contract of goods that carriage by sea or in part by sea, by one or more modes of carriage including bills of lading (or similar documents), whether they are transferable or not, whether they are printed or electronic. And (ii) bill of lading (or similar documents) under the charter contract or issued according to the charter contract, whether they are transferable or not, whether they are printed or electronic, from the time that such documents adjust the relationship between the carrier and the bill of lading or other contract holders." The provisions of Article 7 of this Law about the issuance of contracts of carriage are more special: " After the carrier takes over the goods, at the request of the shipper, the contract carrier shall issue the carriage contract to the shipper in the following form: (1) transferable bill of lading; or (2) non-transferable bill of lading with the consent of the shipper."

Obviously, under this Law, the bill of lading is a carriage contract, and more so, in the mode of this Law, the carriage contract is unilaterally issued by the carrier.

4.4. The Uniform Transport Law

The Uniform Transport Law still governs the contracts of carriage, not just the bills of lading, this is the same as *the Hamburg Rules* and *Maritime Laws of the People's Republic of China*. However, it uses an auspicious or slight technique in the relationship of the contracts of carriage and the bill of lading, carefully avoiding the problem and being as operational as possible. [12]

4.4.1. Avoids the Problem of the Relationship Between the Bill of Lading and the Carrier of the Carriage Contract

The way to avoid it is to mix the two concepts of that the bill of lading is proof of the carriage contract and that the bill of lading contains the carriage contract. Article 1.20 of this Law provides that: "Carriage Documents' means a document issued by a carrier or a participating performance party according to the carriage contract, it's effect is to: (a), evidence that a carrier or a participating performance party has received the goods under the carriage contract, or (b) evidence or contains a carriage contract, or both." In the article, 'evidence' means certificate in English 'containing' means contained in English, which are the similar use with 'cover'.

4.4.2. Clarifies the Relationship of the Bill of Lading and the Carrier of the Carriage Contract If Necessary

Article 1.6 of *The Uniform Transport Law* stipulates that:

"The clauses of the contract mean any information on carriage contract or goods (including details, annotation, signing and endorsement of the contract) that contain in the carriage documents or electronic records." Article 8.2 of this Law named as "Contract Details" stipulates that the carriage documents and electronic records shall include the following matters: "(a) Description of the condition of the goods. (b) Main necessary signs provided by the shipper to easily confirm the goods, before receipt of the goods by the carrier or the contractor; (c) Indicating the number of (1) package, pieces or quantity, and (2) weight provided by the shipper, before receipt of the goods by the carrier or the contractor; (d) Description of the appearance condition of the goods to be loaded are received by the carrier or the performance party; (e) Name and address of the carrier; and (f) date: (1) Date of the receipt of the carrier or the performance party, or date of shipment of (2) goods, or (3) date of issuance of carriage documents or electronic records."

In articles of the freight law, *The Uniform Transport Law* makes the provisions similar to *the Hamburg Rules* and *Maritime Laws of the People's Republic of China* for freight collecting, that is, if the carriage documents or electronic records have signed the clause of freight collecting or the similar expressions, it indicates that the consignee may assume the obligation to pay the freight. [13] It can be seen that although *The Uniform Transport Law* does not list the freight in the contract details with the carriage documents as the carrier, the record related to the freight on the bill of lading and other carriage documents becomes the contract details in fact through the special provisions on the freight.

By analyzing of the above provisions of *The Uniform Carriage Law* and the actual situation of the transport operation, we can reach this conclusion that any contents directly recorded in the bill of lading and those that may change due to each carriage need can become the direct carrier of the relevant contents of the carriage contract. In this case the bill of lading is not the proof of the carriage contract, but directly proves or contains part of the carriage contract. In judicial practice, its legal effect is generally not easy to be denied because the content recorded on the frontage of the bill of lading is not printed in advance and have a more obvious notice function.

5. The Carriers of Carriage Contract

The carriage contract is known as a "triangle contract", which can also be considered as a contract signed by the shipper with the carrier for the benefit of the consignee (third party). This is the premise of discussing the carrier of carriage contract, unless the shipper himself is the consignee.

5.1. The Bill of Lading as the Carrier of the Carriage Contract

According to the current transportation laws, the bill of lading is the proof of the carriage contract. In this case, how does the bill of lading become the carrier of the carriage contract? While *the Hague Rules*, *the Hamburg Rules* and

Maritime Laws of the People's Republic of China stipulates that the bill of lading is the proof ("covered" in *the Hague Rules* may exceed the meaning of "proof".) of the carriage contract, the expression of the carrier relationship between the bill of lading and the carriage contract is vague. However, judicial practice shows that such carrier relationship should sometimes be recognized in individual cases. The expression of the relationship in the *U.S. Freight Transportation Act of 1999* and *The Uniform Carriage Law* may be based on this situation. We will now make the following analysis on this issue.

First, the statutory recorded matters. Matters recorded in the bill of lading refer to the contents of the carriage recorded in the frontage of the bill of lading. [14] *The Hague Rules* list three necessary record matters, the record matters of *the Hamburg Rules* and *Maritime Laws of the People's Republic of China* are Clause 15 and 11 respectively, and they stipulate that the default item does not affect the nature of the bill of lading. All three laws provide that the recorded items contained in the bill of lading constitute the preliminary proof of the carrier receives the goods listed in the bill of lading, among which, *the Hamburg Rules* and *Maritime Laws of the People's Republic of China* further provide that the third person is the final proof, and the effect of evidence of the items recorded in the bill of lading is the same after *the Hague Rules* is reformulated by *the Visby Rules*.

The preliminary proof is proof that can be proved to overturn, which seems to mean that between these two contract subjects of carrier and shipper, anyone can prove to overturn the record of bill of lading. The proof purpose of the [15] carrier is self-evident: Facing the claim of the consignee upon the issuance of the cleaning bill of lading, the carrier may be showing the bill of shipment, the mate's receipt, the security of the shipper in loss at delivery of the goods, the agreement between the consignor and the carrier on the deck carriage, etc., to provide that the state of the carrier at the time of delivery is the same or related to the state when acceptance, but different from the record in the bill of lading. But such proof of the carrier has been prohibited with the introduction of *the Visby Rules* and *the Hamburg Rules*. The record of the bill of lading is final proof to the consignee, which means that the carrier can only apply this proof to the shipper's claim or recovery, and that the shipper as consignee occurs only in few cases where the goods are returned. So, may the consignee have used this provision to prove it? Clearly, such proof by the consignee is similarly prohibited under *the Visby Rules* and *the Hamburg Rules*, because the law is clear that the bill of lading contains final proof between the carrier and the holder of the bill of lading including the consignee, any evidence to the contrary is not admissible. Even if *the Hague Rules* apply, the character of the consignee's proof is different from that of the carrier. Carrier and shipper have common behaviors in the process of shipment of goods and produce consensus documents, which are used against the record of bill of lading. Although it is unfair to the consignee, there are still certain business factors. The basis for the provision of *the Hague Rules* is found here.

However, the consignee was not a participant in the shipment of the goods and made no effect in the production of these documents. More importantly, the way of the consignee to obtain a bill of lading is the conveyance or concession of the bill of lading and we should analyze the validity of the conveyance or concession of the bill of lading from the letter of contract of credit rather than the commercial contract. That is, the consideration is itself is the goods recorded in the payment and bill of lading under the contract of credit. As is commonly said, the assignee pays the goods on the basis of the bill of lading. This shows that the stipulation that the bill of lading is recorded as proof evidence in *the Hague Rules* and does not have effect on the evidence of the consignee.

Since the matters recorded in the bill of lading constitute final proof between the carrier and the consignee, it necessarily becomes the carrier of the carriage contract. However, it should be noted that there may be variable in the contents of the carriage contract stated in the bill of lading: Although the contents of these contracts of carriage cannot be changed between the carrier and the consignee, as limited by the validity of the proof recorded in the bill of lading. However, between the carrier and the shipper, because the laws give the carrier the right to prove the records of certain bills of lading, some change may occur in the relation between these recorded items and the specific content of the carriage contract. This is due to the particularity of the carriage contract.

Second, other recorded matters. In addition to the statutory recorded matters, the carrier and the shipper may reach some other agreement on case carriage, items of which are recorded in the bill of lading become the recorded matters of the bill of lading and thus the carrier of the carriage contract. Some of the so-called other recorded matters may arise from different legal provisions or be blamed on the default of the provisions of the law and the needs of the transport business. For example, *Maritime Laws of the People's Republic of China* does not have any provisions on the statutory recorded matters such as goods on deck and delivery period, etc. Therefore, these matters actually recorded in the bill of lading are the carriers of the carriage contract under the application of the China's laws. For another example, neither *Maritime Laws of the People's Republic of China* nor *the Hamburg Rules*, there is no provisions on the statutory recorded matters of the date of shipment, but this date relation is significant for carriage and usually appears in the bill of lading records. Thus, although the law has no provision of this recorded matters, it will be considered the content of the carriage contract. Furthermore, the records of carriage conditions such as CY—CY in the bill of lading may also be considered as carriers of carriage contract.

Third, certain printed clauses on the frontage of the bill of lading. The printed clause on the frontage of the bill of lading is less, some have been included in the statutory recorded matters, but others seem to be as carriers of the carriage contract. For example, the bill of lading issuers and their legal status. In some bills of lading, the name of the issuer is generated by seal, whose identity, that is, the relation with the

carrier, is provided by the clause of the bill of lading, for example, the printed clause is "signed for master" "signed for carrier" and "signed for owner of the vessel" indicating the identity of the bill of lading issuer and the legal nature of the issuing act. On the premise that these expressions are in accordance with the agency law and other civil laws and administrative regulations, they actually record the subjects other than the shipper of the carriage contract. In individual cases, there is sometimes an inconsistency between the carrier identified under the bill of lading and the carrier identified by the booking relation. However, as far as the consignee's claim is concerned, the court will not accept proof from the carrier or others regarding the booking information and this indicates that these records on the bill of lading themselves constitute the clauses of the carriage contract, which are the final result of the change in these booking information.

5.2. Other Transportation Documents

Some transportation documents record the actual situation at the time of shipping the goods, and according to the current transport law, they can be proof between the shipper and the carrier to overturn the record of the bill of lading, such as the mate's receipt. [16] The mate's receipt records the number of pieces, weight and outer packing situation when the goods are loaded on board. In the case of bulk goods carriage, the mate's receipt also records the intuitive physical quality of the goods. According to the normal business procedures, any bad condition of goods such as short number of pieces, broken packaging, mixed inclusions, etc, will be recorded in the mate's receipt, and reprinted by the bill of lading. However, the shipper always hopes to exchange the bill of lading for a clean bill of lading, so that the goods condition recorded in the bill of lading does not conform to the actual situation of the mate's receipt and the goods. According to the current transportation laws, the carrier may prove proof against the shipper to overturn the record of the bill of lading against the shipper. In this sense, the mate's receipt is the carrier of the carriage contract.

Although some transportation documents recorded some cases of goods and carriage, they could not be the carrier of the carriage contract between the shipper and the carrier such as the freight bill. The freight bill besides record the contents of the bill, and also record the situation of freight, recording that are not possible against the bill of lading, even between the shipper and the carrier. The freight bill is an internal circulation between the ship company and its port agents, and its source is the shipping information of the goods. The shipper did not do anything involved in making the freight bill, and it did not even have the opportunity to see the document, which is very different from a bill of lading. The contents of the bill of lading are from material provided by the shipper on the consignment. The carrier generally passes the text to the shipper for review, after the issuance of the bill of lading after the completion of the bill of lading; the process of the shipper accepting the bill of lading is also the process of reviewing the bill of lading; and the shipper

accepting the bill of lading is the expression of recognizing the matters recorded in the bill of lading. Therefore, if the bill is used as the carrier of the carriage contract, it will be found that the carrier does not reflect the process and characteristics of the shipper and the carrier, and all this is necessary to the contract. There are two kinds of situations inconsistent with the freight bill and the bill of lading. First, the business personnel made the mistake when entering the materials and making the freight bill such as the pre-attached freight is recorded as the arrival freight. Another was an error when the bill of lading was made. The former need not be discussed under the view that the freight bill is not possible against the bill of lading, while the latter is more complicated. Even if the error was established in the bill of lading, the bill could not be regarded as proof material for disproof. In this case, the carrier should issue other information on the shipment of the goods to confirm the error of the bill of lading such as the consignment note, shipping order, booking confirmation, etc. However, between the carrier and the consignee, even if the documents may justify the bill of lading records, they can not be directly used to overturn the bill of lading records. In this case, the carrier should apply the principle of civil laws acquired in good faith to require the consignee to prove that it has paid the freight at the time of receiving the bill of lading or the freight has been included in the consideration of the bill of lading transaction. In other words, the error in the bill of lading can be corrected only if the consignee knew or should know that it was required to pay freight in extracting the goods.

5.3. Other Transaction Documents

Other transaction documents refer to the agreements, commitments or other transportation conditions between the shipper and the carrier during the shipment of goods. The characteristic of these documents is that they do not take the transportation documents as the form of expression, and do not involve the number, weight, outer packaging status and other contents of the goods. For example, the agreement on exceeding the legal limit of compensation does not record on the bill of lading, the agreement on deck transportation does not record on the bill of lading, the transportation period does not record on the bill of lading, and so on. There seems to be no problem in using these documents as the carrier of the carriage contract to overturn or change the records of the bill of lading between the shipper and the carrier, but the problem is more complex in the relationship between the carrier and the consignee.

According to *the Hamburg Rules*, since the above contents are not recorded in the bill of lading, the carrier will be deemed not to have prepared the bill of lading in accordance with the legal requirements. When the bill of lading without the above matters is transferred to a third party who believes in the matters recorded in the bill of lading, the evidences provided by the carrier contrary to the bill of lading may not be accepted, and the evidences provided against the third party for the agreement on deck loading has been explicitly denied by the Hamburg Rules.

The situation is more complex under the premise of applying *the Maritime Laws of the People's Republic of China*. According to Article 56 of *the Maritime Laws of the People's Republic of China*, if the shipper has declared the nature and value of the goods before shipment and stated it in the bill of lading, the carrier shall not enjoy the right of limited compensation. This provision is not controversial because it explicitly refers to the record of the bill of lading. However, the next provision of this article is that the carrier and the shipper have separately agreed to be higher than the legal limit of compensation, and the carrier cannot exercise the right of limited compensation, and the carrier of "separately agreed" can obviously not be the bill of lading here. Therefore, the corresponding question is that if the bill of lading does not record that this agreement in the carriage contract exists in some other transaction documents referred to in this section, and the evidences of the consignee are flawless in terms of procedural law, then whether should this content of the carriage contract be recognized? [17] When considering this issue, we should pay attention to Article 78 of *the Maritime Laws of the People's Republic of China*: "The rights and obligations between the carrier, the consignee and the holder of the bill of lading shall be determined according to the provisions of the bill of lading". The provision seems clear, but it is vague in fact. According to the provisions of *the Maritime Laws of the People's Republic of China*, the bill of lading is the proof of the carriage contract. From this law, it seems that the contents of all carriage contracts should be included in the scope of the bill of lading. However, from another perspective, this article should emphasize the provisions of the bill of lading in addition to the legal rights and obligations, the rights and obligations of the carrier and the consignee can only be specified in the bill of lading. Therefore, any agreement between the commitment not recorded in the bill of lading cannot become the specific rights and obligations of the carrier and the shipper, so the bill of lading is the law of proof of the carriage contract, which can not be applied because of the specific provisions of Article 78. It can be concluded that whether the consignee can regard the above other transaction documents as the carrier of the carriage contract or deprive the carrier of the exercise of relevant rights is not conclusive at the legislative level.

6. Conclusion

6.1. Carriage Contract Under Different Modes of Transportation

The carriage of goods by sea can be divided into carriage contracts of public carriers and private carriers. Public carrier carriage contracts include regular liner carriage contracts, irregular liner carriage contracts and multimodal carriage contracts, while private carrier carriage contracts include voyage charter party contracts, voyage time charter party contracts, charter party contracts and towage contracts. In public carrier transportation, the carrier and the shipper

generally do not enter into a traditional written contract, but it is through the consignment note, shipping order, loading note and booking confirmation as well as fax and e-mail in the process of circulation of these documents. In private carrier transportation, the shipowner and the charterer generally conclude standard charter party contracts including ship name, nationality, ship specifications, type of goods, quantity of goods, freight and payment methods, loading port and loading port agency, unloading port and unloading port agent, loading and unloading time, demurrage and dispatch, loading and unloading expenses, arbitration, etc. The charter party contracts shall be the sole basis for the rights and obligations of both parties.

6.2. Contract Carriers Under Liner Transportation

In *the Hague Rules*, the carriage contract refers more to the contractual relationship of transportation and the carrier of the carriage contract is not clear. If the both parties fail to agree the bill of lading as the carrier of the carriage contract, it is very easy for both parties to dispute the carrier of the carriage contract.

The Hamburg Rules and Maritime Laws of the People's Republic of China clearly stipulate that the bill of lading is the proof of the carriage contract, thus excluding the possibility that the bill of lading is the carrier of the carriage contract. In judicial practice, that is, the bill of lading is the bill of lading, and all documents proved by the bill of lading including part of the contents of the bill of lading and other documents in the process of concluding the contract are contracts.

The Freight Transportation Act of 1936 of the United States is revised according to *the Hague Rules*, in which the definition of the carriage contract has not changed, that is, according to the United States laws, the relationship between the bill of lading and the carriage contract is still "covered". However, the bill of lading is directly stipulated as a carriage contract in the draft of *US Freight Transportation Act of 1999*.

The Uniform Transportation Laws still restrict the carriage contract, not just the bill of lading, which is the same as *the Hamburg Rules* and Maritime Laws of the People's Republic of China. In terms of the relationship between the carriage contract and the bill of lading, the concept of the bill of lading is the proof of the carriage contract and the concept of the bill of lading includes the carriage contract are confused by means of auspicious or omitted.

6.3. Bill of Lading Is Not Only the Proof of the Carriage Contract, But Also the Carrier of the Carriage Contract

Bill of lading is not only the proof of the carriage contract, but also the carrier of the carriage contract. First, the legal recording refers to the contents related to transportation recorded on the front side of the bill of lading. *The Hague Rules*, *Hamburg Rules* and *Maritime Laws of the People's Republic of China* all stipulate the necessary record items

respectively, and the lack of items does not affect the nature of the bill of lading. All three laws stipulate that the record items recorded in the bill of lading constitute the preliminary evidence of the carrier's receipt of the goods listed in the bill of lading. Second, other record items. In addition to the legal record items, the both parties may reach some other agreements on the case transportation. If these agreements are recorded in the bill of lading, they will become the record items of the bill of lading, and thus become the carrier of the carriage contract. There are fewer printed clauses on the front side of the bill of lading, some of which have been listed in the legal record items, but others seem to be still regarded as the carrier of the carriage contract.

References

- [1] Dong Luyu, "On the Legal Nature of Marine Bills of Lading from the Perspective of Historical Development", *Journal of Southeast University (Philosophy and Social Science)*, Jun. 2021 Vol. 23 Supplement.
- [2] Hu Meifen, Wang Yiyuan, *Ocean Transportation Business*, China Communications Press, P22, (2007).
- [3] Hu Meifen, Wang Yiyuan, *Ocean Transportation Business*, China Communications Press, P23, (2007).
- [4] Yao Hongxiu, Li Feng, "Discussion on some Issues on the conclusion and effectiveness of Maritime Contracts and Charter Contracts under the new Contract Law", *Annual Journal of Maritime Law of the People's Republic of China*, 1st issue, 1999.
- [5] Huang Yongfu, *Operation Skills of Bill of Lading in International Maritime Logistics*, Logistics Engineering and Management, 2019, 41 (06).
- [6] He Lixin, Liang Jiacheng, *Research Report on Judicial Application of Maritime Law in the Past 25 Years*, *Annual Journal of Maritime Law of the People's Republic of China*, 2018, 29 (02).
- [7] Tang Shuyuan, "Improvement of calculation rules for damages of carriage contract of goods by sea in China under the background of amendment of maritime law >", *Shipping Management*, 2020, 42 (12).
- [8] Provisions on Several Issues concerning the Application of Law to The Trial of Cases of Goods Delivered without Original Bill of Lading (Law Interpretation [2009] No. 1, effective from March 5, 2009).
- [9] Chen Bizhen, *Research on Legal Issues of Deck Transportation*, Strait Science, 2007, (04).
- [10] Wang Peng, *Brief Introduction of the 99 Draft Law of the United States on the Carriage of Goods by Sea, Containerization 1999*, (10).
- [11] Hou Jiajie, "Performance Party System of the Unified Law on International Cargo Transport (Draft) -- The Golden Key to Open the Door to the Unification of International Cargo Transport Legislation", *Shipping Management*, 2008, 30 (11).
- [12] Jiang Zhengxiong, *Introduction to Ten Legal Issues of Container Transportation*, *Containerization*, 2003, (01).
- [13] Huang Yanyun, *Research on Risk Analysis and Control Measures of Ocean Bills of Lading*, *China Storage & Transportation*, 2018, (03).
- [14] Si Yuzhuo, *Maritime Law*, Law Press-China, 2018, 4th edition, P65.
- [15] <http://news.csi.com.cn/20070928143608.html>.
- [16] Lin Yuanming, *Rediscovery on carriage contract of Goods by Sea -- Comments on amendment of Maritime Law*, *Chinese Journal of Maritime Law*, 2020 (8).