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On the Effect of the Abolition of the Exemption from Liability for Nautical Fault in the Rotterdam Rules

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Abstract: Whether to cancel the nautical fault exemption has always been the focus of discussion in the international shipping circles. There have always been two views in the field of maritime law: abolishing and retaining the nautical fault exemption. The Rotterdam Rules, on the surface, abolished the nautical fault exemption, but in practice, the burden of proof was borne by consignee, which to some extent retained the exemption. The Rotterdam Rules, as a highly comprehensive international convention, have received much attention since its introduction. The provisions on the abolition of maritime fault exemption are the focus of attention, so it is also very meaningful to study the core of the Rotterdam Rules, namely the preservation or abolition of the maritime fault exemption system. This article analyzes the principle of carrier liability, and discusses the views of abolishing and retaining the exemption from maritime fault in the Rotterdam Rules, in order to study the impact of abolishing the exemption from maritime fault in the Rotterdam Rules. In addition, the article also proposes solutions to the issue of carrier liability principle in the Rotterdam Rules. Identify the loopholes in the opposing views of canceling or retaining the exemption for maritime negligence, and refute them, demonstrating that both views are partially reasonable and not entirely reasonable. And various cases were listed, reflecting the measures taken by British courts to address the issues arising from maritime fault exemption.

Keywords: Nautical Fault Exemption, Carrier Liability Principle, Balance of Interests

1. Introduction

The Rotterdam Rules were introduced after the Hague Rules, Hague-Visby Rules, and Hamburg Rules, and are an important and influential international convention. After the adoption of the United Nations General Assembly in 2008, as a mainland convention in the field of international maritime transport of goods, the Rotterdam Rules had a lot of innovative institutional content, and the number of provisions in the convention increased significantly compared to previous conventions. The Rotterdam Rules, which had 96 articles, were 9 times more than the Hague Rules. This is also one of the reasons why the system in the Rotterdam Rules is worth studying.

Studying the Rotterdam Rules requires attention to its legislative focus. According to recent discussions, one of the controversies is to abolish nautical fault exemption. Nautical fault exemption is also one of the most discussed topics in academic and shipping circles. There have always been two opposing views advocating the retention or cancellation of nautical fault exemption. Regarding the issue of canceling nautical fault exemption, each country has its own position, views, and interests, which has led to a significant controversy on this issue. In some countries, the majority of shippers represent the interests of shippers. In their view, the long-standing clause of nautical fault exemption can no longer adapt to the development of modern shipping, but instead hinders its development due to the existence of multimodal transportation and the increasingly advanced shipping technology in modern society. Previously, it was because technology did not meet the requirements that nautical fault exemption was established. Nowadays, with

the development of technology, this reason no longer exists, which conflicts with the development of modern society. This article explores the impact of canceling the exemption from maritime negligence, which is the core system of the Rotterdam Rules.

2. Historical Evolution of Carrier Liability Principle

Nautical fault exemption refers to the carrier's liability for the loss or damage caused to the goods carried by the captain or crew, or other personnel employed by him. If the damage is caused by their fault in driving or managing the ship, the carrier may not be liable for compensation. The principle of liability for losses caused by the carrier to the goods they intend to transport is a reflection of the exemption from liability for nautical fault. The level of economic development varies in each period, and the development of shipping has always been changing. These changes also affect the changes in the principle of carrier liability, which can be divided into five different stages with a long history.

(1) Period of fault liability system

The principle of fault liability is the earliest of the five stages. According to historical records, the emergence of the principle of fault liability can be traced back to the Roman law period. The provision that "no one is responsible for accidental events" appeared in the ancient Roman Aquilian Law, which stipulated the content of fault exemption in 286 BC. This provision established the exemption conditions and also gave rise to the principle of "no fault, no punishment". Undoubtedly, the established principle is influenced by its influence, promoting the increasingly complete and reasonable rule system of Roman law. It also had an impact on the later development of civil codes in France and Germany, as both 1804 and 1900 civil codes stipulated the principle of fault liability.

In addition, there are other codes that also provide for the fault liability system. If a person hires a boatman and hires a ship to transport goods, carrying grain, food, oil, and other goods on board, but if the ship sinks due to the boatman's carelessness or accidentally damages the goods on board, the boatman should compensate the sunk ship and the damaged goods on board. This was stipulated in the Code of Hammurabi of the 18th century BC. In Article 237 of the Code, carelessness is used to describe the actions of shipworkers, and it is stated that shipworkers are responsible for compensating for the loss of goods. This can also be seen that the provisions of the Hammurabi Code are the fault liability system.

(2) The period of strict responsibility system

A strict liability system requires the carrier to assume full responsibility for the goods. In medieval England, it was stipulated that the carrier must bear the obligation of absolute seaworthiness, with strict conditions. Except for force majeure such as natural disasters and wars, the carrier must bear full responsibility for the goods. This is the beginning of strict responsibility system. The strict liability system is to hold the perpetrator accountable based on the objective results of the damage, rather than whether the perpetrator has subjective fault. Why is it necessary to be so strict with carriers in a strict liability system and to hold them accountable? This also starts with factors such as maritime technology and productivity at that time. It can be imagined that the level of shipping technology at that time was not as advanced as it is now. In the past, sailboats and wooden boats were used for transportation. Compared to current ships, these two types of ships can carry very little cargo and have little ability to resist the risks and accidents that occur during sea transportation. In the 19th century, the level of communication technology was not high, so carriers were unable to communicate and control their hired crew members at all times. Maritime trade was considered high-risk by people at that time. In order to enhance people's confidence in maritime trade and promote the development of maritime trade, strict liability system was implemented for carriers, which could also enhance the safety of trade, This conforms to the development trend of shipping at that time. During the period of strict liability, once the claimant can prove that the carrier was at fault, it can hinder the carrier's right to exemption. On the contrary, if the carrier proves that it was not at fault, most of the time it cannot exempt from damages. Under this principle, the burden of proof on the cargo side is very light. It can be seen that the strict responsibility system is more biased towards the interests of the shipper. However, the strict liability system is not friendly to carriers and restricts their development, which is not conducive to the development of shipping. Although it could play a role in the immature maritime trade at that time, this overly extreme system is no longer suitable for the increasingly mature maritime trade.

(3) Substantial period of no responsibility

In the 19th century, the UK already accounted for 45% of the world's total tonnage of merchant ships, and the world market share of ship exports was the largest. At this time, the principle of strict liability was a great constraint on the British maritime industry, challenged by the principle of freedom of contract, and no longer in line with the interests of 19th century Britain. But the UK did not abolish strict liability system, but encouraged carriers to add exemption clauses in bills of lading, indicating the decline of strict liability principle. Encouraged carriers, in order to break free from the heavy responsibilities under strict liability,

They have come up with some countermeasures, and they will add many exemption clauses in the bill of lading. These clauses not only exempt the crew from liability for navigation faults, but also exempt the crew from liability for losses caused by negligence when they are in charge or delivering the goods.

During this period, the exemption clauses for sea freight carriers include: The Act of God, Thieves, Strikes, Jettison, Accidents of Hull, Perils of Transit, Freedom of Deviation, and Insurance Cargo Exemption, among other 55 responsibilities. A large number of exemption clauses reflect the bias of British judicial policy towards maritime carriers,

which is equivalent to briefly abolishing the strict liability system and entering a period of substantive non liability. By the end of the 19th century, this situation had reached a very exaggerated level, and the number of exemption clauses was shocking to us now. It was indeed a very large number, and it implicitly exempted the carrier from all responsibilities, and the carrier did not need to be responsible for the goods. At that time, contracts for the carriage of goods by sea developed towards liberalization, as the compensation system for damages in the contract was determined by the parties themselves. Undoubtedly, this will lead to adverse consequences. In this situation, the proportion of responsibilities between the ship and the cargo is imbalanced. The United States, Australia, and other shippers have taken measures to limit the numerous exemption clauses and only recognize reasonable exemption clauses. They will stipulate that the parties cannot add exemption clauses to the contract through their own will in order to prevent contract liberalization. Each country's stance on exemption clauses is different, and the handling of exemption clauses is also based on their own interests.

(4) Period of incomplete fault liability system

The substantive period of no responsibility has resulted in a large number of exemption clauses, which were initially reasonable and could serve as a supplement to the statutory exemption clauses in the form of contracts. But later on, the carrier was no longer satisfied with using only reasonable terms and began to add many exemption clauses, which stipulated that even if the carrier caused damage to the goods due to their own or crew's fault, they could no longer be compensated. In this situation, the ones who suffer the most are American importers and exporters. The shipment of American goods into and out of the United States is controlled by British ships and is forced to accept exemption clauses established by British carriers. In the field of maritime transportation, due to the carrier controlling the ship, they often have an advantage in contract negotiations. If contractual freedom is applicable, it is usually only beneficial to the carrier. For disadvantaged shippers, this principle does not make much sense. This will inevitably lead to an unfair allocation of risks in maritime transportation. In such a situation, in order to combat the behavior of British carriers imposing a large number of exemption clauses on bills of lading and protect the interests of domestic importers and exporters, the famous Harter Act was enacted at this time to safeguard the interests of shippers. The Harter Act for the first time stipulated the minimum obligation of the carrier, which was a constraint on the carrier. After this law was enacted, many other countries also followed suit. The Harter Act has gradually gained recognition from the international community by establishing similar laws to limit the liability of carriers. The statutory exemption of the carrier in the Harter Act includes two types: fault exemption and no fault exemption, so it is called the incomplete fault liability system. In 1921, the Maritime Law Committee of the International Law Association was successfully convened in the Netherlands. Through unremitting efforts, the Hague Rules were born, which at that time was also known as the International Convention for the Unification of Certain Legal Provisions on Bills of Lading. In the provisions of the Hague Rules, there are provisions on nautical fault exemption. The carrier's liability is no longer as heavy as during the strict liability period, and the incomplete fault liability system is used to reduce the carrier's liability to the extent that it only bears the responsibility for fault.

The Hague Rules are the result of a struggle between the United States, which represents the interests of shipowners, and the United Kingdom, which represents the interests of shipowners and formulates numerous exemption clauses. Although the Hague Rules were more advantageous for shipowners, they also provided protection for the interests of shipowners, maintained a balance of rights and obligations between carriers and shippers, and were accepted by both parties at the time of shipping, becoming an important achievement in international maritime legislation. Nowadays, the fault liability system of the Hague Rules is still used by many countries and has become a frequently used rule in handling disputes related to the carriage of goods by sea. At that time, it seemed that advanced rules could promote the development of shipping and achieve the unification of maritime legislation, which was also the reason why the Hague Rules would legislate in this way. Because the exemption from nautical fault under the Hague Rules has been imitated by various countries, they may join this rule or establish legal provisions in their domestic legislation with the same meaning as the Hague Rules, which also makes the exemption from maritime negligence widely used in the shipping industry worldwide. Courts in various countries also adjudicate cases related to maritime cargo transport disputes based on the Hague Rules, resulting in a large number of cases and judicial interpretations that are related to nautical fault exemption. This is also a prerequisite for the emergence of the later general average system, mutual fault collision liability system, and marine insurance system. These systems, together with the nautical fault exemption system, became a very important collection of systems in the transportation of goods by sea. In the context of shipping and navigation technology at that time, the principle of liability under the Hague Rules was accepted by both the shipping and cargo parties. The Hague Rules consist of fault exemption and no fault exemption. The fault exemption here refers to the nautical fault exemption mentioned earlier. No fault exemption is divided into three types. The first type is strikes, wars, or some unpredictable and irresistible natural disasters. These things are things that the carrier cannot control with their own ability, so they have an exemption from liability. The second type is exemption from liability for the actions or negligence of the cargo party, such as insufficient packaging; The third category is special exemption clauses, such as potential defects of ships that cannot be detected despite due diligence. It can be seen that the principle of attribution in the Hague Rules is incomplete fault liability.

(5) The coexistence period of incomplete fault liability system and fault liability system

With the development of technology, changes in the economic and political situation, the Hague Rules have gradually become outdated, and the exemption of nautical fault has also been opposed by countries representing the interests of cargo owners. In fact, since the emergence of nautical fault exemption, it has been criticized by many opponents. Opponents of this system believe that exemption from nautical fault does not reflect fairness and justice. In this system, the carrier has an advantageous position, and only needs to bear the minimum obligations, but can be exempted from liability, which is equivalent to damaging the interests of the cargo owner. For this reason, many scholars advocate for the abolition of nautical fault exemption. The Hague Visby Rules still retain the exemption from nautical fault and only modify matters such as liability limits. After the unremitting efforts of developing countries, the Hamburg Rules came into effect in 1992, adopting a new complete fault liability system for carriers, which has substantive significance in increasing the risks and responsibilities of shipowners. However, the Hamburg Rules have fewer contracting parties and do not have broad representativeness. Therefore, the Convention has a relatively small impact in the field of international maritime transportation and has no profound significance in guiding maritime legislation of various countries. Afterwards, the shipping industry entered a period of coexistence of incomplete fault liability system and fault liability system.

From the stages of the carrier's liability principle, it can be seen that: firstly, the level of social and economic development varies in each period, which is also the reason why there are different liability principles in each period. In the past, shipbuilding technology was far less developed than it is now, and maritime trade was seen as a maritime adventure. Therefore, a strict liability system was implemented from a safety perspective, which does not care whether the carrier's behavior is at fault. As long as the goods are damaged, the carrier bears responsibility. When maritime trade gradually became prosperous, a system of liability for negligence was implemented. Because after a certain level of economic development, it is necessary to encourage the development of the shipping industry to promote trade. [1] So the law will to some extent lean towards the carrier. The changes in the level of social development are affecting the shift of the principle of liability from strict liability to fault liability. Secondly, as can be seen from the previous text, with the development of social economy, the allocation of risk responsibilities between the shipping and cargo parties is also changing, resulting in five different periods of carrier liability principles. In summary, the formulation of international conventions such as the Hague Rules and the Hamburg Rules is mainly aimed at maintaining a balance between the rights and obligations of shipowners and cargo owners. The early strict liability system and the actual faultless liability system were both too extreme and no longer applicable to the development of the modern shipping industry. The widely adopted principles of attribution are still the principles of incomplete fault liability and fault liability.

3. The Choice of Liability Principle in the Rotterdam Rules

In summary, the carrier's liability principle has gone through five historical periods: fault liability system, strict liability system, no liability system, fault liability system, and incomplete fault liability system coexist. In the provisions of the Hamburg Rules, the responsibility of the carrier is increased, breaking the balance of interests between the ship and cargo. Therefore, even though it has come into effect, many shipowner countries have not accepted the increased responsibility. Therefore, the majority of countries that have joined the Hamburg Rules are the shipper countries, and the total number of countries that have joined the Hamburg Rules is too small to achieve unified international legislation. As far as the Rotterdam Rules are concerned, the question of the principle of carrier liability is whether the Rotterdam Rules should adopt the fault liability system of the Hamburg Rules or the incomplete fault liability of the Hague Rules. The principle adopted is related to the interests of multiple parties, including the carrier, shipper, insurer, and consignee. The core issue is whether to abolish the exemption from nautical fault, and this is also a question of the distribution of responsibilities between the ship and the cargo. The choice of carrier liability principle is mainly reflected in the preservation or abolition of nautical fault exemption. Based on this theory, there have been a large number of viewpoints on retaining or canceling the exemption from maritime negligence, which can be summarized as follows:

3.1. Reasons for Cancelling Maritime Fault Exemption

With the progress of science and technology and the advancement of navigation technology, ships' ability to resist natural risks is becoming stronger and stronger. [2]

The application of technology in navigation has enhanced ships' ability to resist risks. Since the 20th century, the manufacturing of internal combustion engines has greatly increased the speed of ships and shortened their time at sea. At the same time, the performance of the ship has also been greatly improved. The radar invented in 1935 is now installed on every ship. Even in foggy sea conditions, the ship can detect other ships sailing at long distances, and its early warning capability has increased several times. In the early days, due to the backwardness of navigation technology, it was necessary to apply laws to exempt the carrier from maritime negligence, and the situation of protecting the carrier's interests no longer exists.

3.1.1. Maritime Fault Exemption Is an Obstacle to the Unified Multimodal Transport Liability System

Nowadays, many goods are transported through multimodal transportation. However, apart from sea transportation, the systems used in railway and road transportation are different from those in sea transportation, and a strict liability system is adopted. As explained earlier, even if the carrier is at fault, the strict liability system cannot exempt the carrier from liability. In this way, the system of sea

transportation is different from that of other transportation sections, highlighting the unfairness of using nautical fault exemption in sea transportation and the lack of integration with other transportation methods. For the development of the shipping industry, multimodal transportation plays an indispensable role. [3] Multimodal transport operators are responsible for the entire transportation segment. The carriers of different transportation sections are responsible for their respective sections. If the liability principles of the carriers on each road section are the same, the efficiency of multimodal transport operators and cargo owners in determining compensation for damages will be higher, as there is no need to consider which road section caused the damage to the goods. The unified responsibility system for multimodal transportation is a trend in the development of multimodal transportation, so the exemption from nautical fault should be abolished.

With the development of communication technology, shipowners can maintain close contact with ships and effectively supervise and manage the behavior of the captain and crew.

Communication technology has an impact on shipping, and shipowners' control of ships relies on communication technology. In the past, in the era of underdeveloped communication, it was difficult for shipowners to control ships, and some shipowners were even completely unaware of the situation on board and what happened. [4] This is also one of the reasons for the existence of nautical fault exemption. However, technological progress has greatly improved communication technology, and shipowners are no longer at a disadvantage of lacking control over the captain and crew. Satellite telecommunications or other technologies can enable shipowners to maintain frequent and close contact with ships sailing at sea. Due to the development of these advanced technologies, carriers can reasonably control the captain and crew. Even without complete control, in other modes of transportation, the carrier cannot fully control its captain and crew. There is no difference between sea transportation and other modes of transportation, and there should be no nautical fault exemption clause. This also makes the exemption from nautical fault lose its foundation of existence.

3.1.2. The Establishment of Exemption for Ship Management Negligence Is Not Feasible in Judicial Practice

The words' ship management 'and' cargo management 'look similar, and although their meanings are different, they can also be easily confused. Moreover, it is difficult to distinguish between these two behaviors in practice. Although according to regulations, it was the negligence of the crew who did not take good care of the ship, resulting in damage to the goods and indirectly causing damage to the goods, this should be considered a fault of ship management. But if the crew fails to take good care of the goods to be transported, the goods are directly damaged, which belongs to the fault of cargo management. However, in many cases, it is difficult to distinguish whether the goods are directly or indirectly damaged. Each country has its own set of standards, which also makes it difficult to distinguish between these two behaviors in practice. Some countries have different interpretations of ship management negligence in their laws. There was once a case where a captain encountered a storm while driving, sailing against the wind. Instead of slowing down the ship's speed, he sailed at a faster speed. This driving style resulted in damage to the goods. This case has different verdict results in different countries. In a Canadian court, it was found to be a fault in cargo management, but in a Dutch court, it was found to be a fault in ship management. Because this is driving the ship during bad weather. Due to completely different legal consequences, it is difficult to grasp the boundary between ship management fault and cargo management fault, which can easily cause disputes and make it extremely difficult to provide evidence.

3.1.3. The Simple Exemption from Ship Management Negligence No Longer Exists

Technology has become increasingly advanced. Nowadays, the transportation of goods by sea is mainly carried out by large ships, with the assistance of modern advanced technology. Simple negligence in ship management no longer exists. Previously, carriers could claim exemption from liability for cargo damage due to steering gear malfunctions, hatch covers not closed, and other reasons, but now it is no longer possible. In the data of the Lloyd's Law Report over the past 50 years, there have only been 19 cases of negligence in ship management, of which 13 have been lost by the carrier. The probability of winning the lawsuit is very low, only one-third. It is not easy to claim negligence in ship management, and more evidence is needed to prove it. For example, cargo damage caused by flooding in the cargo hold,

3.2. Reasons for Exemption from Nautical Fault Should Be Retained

3.2.1. The Progress of Science and Technology in Practice Has Not Reduced the Occurrence of Maritime Accidents

Technology and navigation technology have indeed developed rapidly in recent years, and ships' ability to resist risks has become increasingly strong with the enhancement of technology. But this has a drawback, which is that it makes people subconsciously rely on these high-tech devices, relax their vigilance, and fail to fully utilize them. [5]

The role of subjective initiative ultimately leads to accidents. Since the early 1960s, the industry of transporting crude oil by sea has emerged and developed rapidly, with many super tankers emerging as the times require. In addition, some ships are put into use as nuclear powered ships. These are all the results of technological progress. It can be seen that technological progress will enhance the ability to resist risks, but at the same time, it also increases special risks. Once these ships with special raw materials collide, it will cause serious pollution, which may be a devastating blow to the ecology and pose a great threat to the survival environment of humanity. With technological progress, risks are also increasing. We can

no longer only see the side of increased resistance. On November 11, 2007, the Kerch Strait encountered a strong storm, which was very unfavorable for ships to travel. The Kerch Strait connects the Black Sea and the Sea of Azov, and many ships will travel near it. On the same day, 12 ships suffered a maritime accident due to a strong storm, including one Russian cruise ship called "Volga Oil 139". The ship's disintegration on that day caused more than 3000 tons of fuel on board to leak. The shipwreck accident has caused significant damage to the surrounding ecological environment, making it the world's most serious marine ecological pollution accident in the past five years. It can be seen that technological progress does not necessarily make ships safer to travel, but rather brings new risks.

So, the occurrence of maritime accidents has not decreased due to the progress of science and technology. Although the maritime industry is no longer a 'risky industry', the inherent risks of maritime transportation still make significant differences between maritime and land transportation. Maritime cargo transportation is not like land transportation. In the event of an accident, one can immediately call the police to seek timely rescue. At sea, it is difficult for ships in accidents to seek help.

Technological progress has indeed reduced the probability of accidents caused by technology, and many accidents are caused by human factors. After investigation, the overall number of maritime accidents caused by human factors was on the rise from 1997 to 2009. Technological progress cannot eliminate human negligence and negligence, it can only be said to reduce non human factors. In summary, technological progress may not necessarily reduce the occurrence of maritime accidents.

3.2.2. Nautical Fault Exemption Has an Impact on the Carrier's Expenses

When there is a nautical fault exemption, the insurer will compensate for the loss of the goods and will no longer pursue compensation from the carrier. Unless the ship is unseaworthy at the time of departure, the carrier has not fulfilled its seaworthiness obligation. But if the exemption for maritime negligence is cancelled, the carrier will be pursued, and the negotiation and litigation costs of the carrier will undoubtedly increase during the insurer's negotiation process. The negotiation and litigation costs that the carrier overpays will be added to the shipping cost, ultimately resulting in an increase in shipping costs. [6] The current economic development situation has led to a downturn in the shipping industry. If the negotiation and litigation costs of the carrier's wife are increased, it is equivalent to increasing the transportation costs of the carrier, which may make it difficult for the carrier's business to operate and worsen the development of the shipping industry. From this perspective, exemption from maritime negligence can avoid placing too much risk on the carrier and reduce operational costs.

3.2.3. Allocation of Nautical Fault Exemption to General Average Expenses

Many systems in the maritime law system are closely related to the exemption system for nautical fault, which affects the entire system. The cancellation of exemption from nautical fault has increased the operating costs of carriers, as without exemption, carriers have to bear the responsibility for goods damaged due to the risk of exemption. The nautical fault exemption system is the foundation of the maritime salvage system and the general average system, and the abolition of these two systems will also be affected. When the goods encounter a common danger, the carrier takes reasonable measures to cause some damage to the goods. However, due to the cancellation of the nautical fault exemption, the carrier cannot enjoy the exemption for these goods, which will cause the cargo party to refuse to share the general average cost, which is unfavorable for the carrier. For the general average system, it is also unfavorable. In the face of common danger, the carrier may feel constrained due to their inability to avoid liability, and may lose the best opportunity to implement reasonable measures when hesitating, resulting in greater losses.

In summary, the two opposing views of canceling or retaining the exemption from nautical fault have been in conflict for a long time, and the Rotterdam Rules aim to find a balance between these two views.

4. The Specific Content of the Carrier's Liability Basis Under the Rotterdam Rules

The liability of the carrier in the Rotterdam Rules is stipulated in Article 17, which is generally divided into two parts: the claimant's proof and the carrier's proof. If the claimant can prove that the loss caused by the loss or damage of the goods occurred during the carrier's period of responsibility, the carrier shall be liable for compensation. However, if the carrier proves that the loss or delay in delivery was not caused by his fault, or if a part of it was not caused by his fault, he can be exempted from partial or full liability for compensation. In addition to the above two situations, if the carrier can prove that the loss was caused by the following events, it can also be exempted from all or part of the responsibility: first, natural disasters, which are unpredictable and uncontrollable, allow the carrier to be exempted from liability, as well as maritime accidents and wars, including armed conflicts, terrorist activities, etc. There are also quarantine restrictions.

According to Article 17, the evidentiary steps set forth in the Rotterdam Rules are:

Firstly, the claimant shall prove that the damage occurred during the period of responsibility. If the evidence is successful, the carrier shall prove that the cause of the damage is an exemption or prove that the carrier is not at fault. If the proof fails, the carrier is exempt from liability.

If the carrier successfully proves that the cause of the cargo damage is an exemption, then it is the claimant's turn to prove that the carrier is at fault or that there is no exemption, or to prove that the carrier has not fulfilled its airworthiness

obligations. [7] If the claimant proves successful, the carrier shall bear the responsibility, and if the proof fails, the carrier shall be exempted from liability.

If the carrier successfully proves that they are not at fault, the carrier is exempt from liability. If the proof fails, the carrier shall bear the responsibility.

The Rotterdam Rules literally abolished the exemption from nautical faults and established a fault liability system. The revised rules not only establish the basis of the carrier's liability for compensation, but also establish a more operational set of proof rules, effectively solving the contradiction between the incomplete fault liability system and the fault liability system. This is also a characteristic of the Rotterdam Rules. The first paragraph of the Rotterdam Rules stipulates that if goods are damaged during the carrier's liability period, it is presumed that the carrier is at fault and the carrier is responsible. The second and third paragraphs also stipulate that the carrier and the persons employed by them can be exempted from liability if they can prove that they were not at fault. It is not difficult to find from these provisions that the Rotterdam Rules stipulate a system of presumption of fault.

The Rotterdam Rules have removed the exemption from liability for ship management negligence, which will result in a change in the airworthiness obligation. The airworthiness obligation must be fulfilled before, during, and throughout the voyage, as stipulated in Article 14 of the Maritime Navigation Obligation. This is also the impact of the literal deletion of the exemption from liability for "nautical fault" and "ship management negligence".

5. The Resolution of the Liability Principle of the Carrier in the Rotterdam Rules

The integration of incomplete fault liability system and fault liability system is the solution to the issue of exemption from liability for nautical faults in the Rotterdam Rules. This is also the core and controversial aspect of the Rotterdam Rules. There are two opposing views in the academic community on whether to abolish the exemption from nautical fault, and both have sufficient reasons to support these views. These reasons each have their own advantages and disadvantages, and relying solely on these reasons cannot constitute a sufficient and necessary condition for the exemption and abolition of nautical fault:

5.1. Comment on the Reason for Cancelling Nautical Fault Exemption

1. The progress of science and technology has made ships increasingly capable of resisting natural risks, reducing maritime risks and eliminating the need to exempt carriers from liability for maritime errors.

This reason is not valid.

Indeed, technological advancements have enabled ships to use more advanced equipment during navigation, reducing maritime risks. But it increases the danger in certain aspects. For example, with the increasing size of ships nowadays, it is even more difficult to control such a large ship compared to before. Moreover, for ships of huge size, if an accident occurs, the losses will be even more severe. The benefits and risks brought by technological progress coexist.

In addition, technological progress only reduces the possibility of losses caused by technology. But many ship accidents nowadays, after tracing the causes, it is found that many are caused by human mistakes. The progress of technology cannot make people's behavior follow caution, so the progress of technology cannot be a reason to cancel the exemption from nautical fault.

2. The development of communication technology allows carriers to effectively supervise and manage the behavior of the captain and crew, and to effectively control the ship.

The improvement of communication technology has strengthened the connection between the carrier and the captain and crew, but this does not mean that the carrier can effectively control the ship. In navigation activities, ships are constantly facing various complex weather conditions, and the captain has the ultimate disposal right of navigation. The carrier's control and supervision of the ship are very limited. This will basically not change due to the development of communication tools.

3. Nautical fault exemption is an obstacle to the unified multimodal transport liability system

This reason is not valid.

On the surface, sea freight is only one of many transportation methods, but in international cargo transportation, nearly 80% of goods are transported by sea. Sea freight accounts for a large proportion. A unified multimodal transportation system is not necessary. Even if maritime fault exemption is abolished, there are still many differences in liability limitations, rules of proof, and other aspects of various transportation methods, which will not be completely unified.

4. The exemption from liability for ship management negligence is easily confused with cargo management negligence and lacks practicality.

This reason is not valid.

After conducting in-depth research on various cases of ship management negligence and breach of cargo management obligations, it can be seen that the two can be distinguished. In the case of Rowson v. Atlantic Transport Company, the crew members were negligent in managing the ship's refrigeration equipment, which stored the goods to be transported and some crew members' food. The crew members' negligence not only resulted in negligence of the goods, but also in negligence of the ship. The court found that the negligence of the crew belonged to the fault of ship management, rather than the fault of cargo management, and the reason for the court was that from the perspective of the purpose of the crew's behavior, it belonged to the fault of ship management. The court also reflected in The Iron Gippland case in distinguishing which type of fault crew behavior belongs to based on the purpose of the behavior. In this case, the goods were damaged during

inspection and repair due to equipment failure on the ship. The purpose of repairing ship equipment is for the goods, so it is determined that the carrier has violated the obligation to manage the goods. In the case of Gosse Miller v. Canadian Government Merchant Marine, a batch of tinplate was transported from Swans to Vancouver. The collision occurred en route and requires docking for repair. During maintenance, the cabin door was opened. During the maintenance period, it rained several times, but the crew did not manage the hatches or cover them with rainproof cloth in a timely manner, resulting in the cargo inside the cabin being damp and rusty. In this case, the cargo hold hatch has no impact on navigation and has an impact on the cargo, so it is a violation of the obligation to manage the cargo.

From the above cases, it can be seen that negligence in ship management and breach of cargo management obligations are not indistinguishable. Therefore, the reason that "exemption from liability for ship management negligence is easily confused with cargo management negligence, and the carrier will exploit legal loopholes" is not valid.

5.2. Comment on Retaining the Reasons for Exemption from Nautical Fault

1. The development and progress of navigation technology have not reduced maritime accidents, and nautical fault exemption should be retained to protect the carrier.

This reason is not valid.

Nautical fault exemption is not the only way to protect the interests of the carrier. There are many other methods and systems to protect the interests of the carrier. Moreover, exemption from nautical fault may not necessarily protect the interests of the carrier, but it may lead to negligence on the part of the carrier. This system allows the carrier to relax their vigilance in the management of the ship, leading to more accidents and even more severe losses. Cancel the exemption from nautical fault, and the carrier will restrain their own and crew's behavior with higher legal standards, reducing the occurrence of accidents. Greatly reducing the average cost of the entire shipping industry, improving overall efficiency, and promoting the development of the trade and international shipping industries.

Even if nautical fault exemption is not retained, the interests of the carrier can be protected in other ways, such as limitation of liability, burden of proof, etc. The Rotterdam Rules also enable carriers to bear limited risks through other means, safeguarding their interests. From this, it can be seen that the viewpoint of retaining the exemption from maritime negligence to protect the interests of the carrier cannot be established. [8]

2. Impact of nautical fault exemption on general average

Cancelling the exemption from nautical fault will result in the cargo refusing to contribute to general average. This reason is not valid.

For the general average system, it is advantageous to abolish the exemption from nautical fault. The purpose of general average is to avoid larger losses with relatively small losses, which is generally for the common interests of all parties. [9] It does not mean that the shipper is responsible for the mistakes made by the carrier. Moreover, although the scope of general average has been reduced, there are no mandatory provisions to ensure that the scope of general average cannot be changed. In addition, it can also reduce the number of general average adjustments and save adjustment costs.

3. The increase in new maritime accidents and the cancellation of maritime fault exemption will increase the carrier's liability.

This reason is not valid.

The carrier's liability is related to the amount of compensation. The amount of compensation is related to the limitation system of maritime liability, but not to the exemption of nautical fault. On March 22, 1996, the "Minhai 231" ship and the "Chongqing" ship, which were filed by the maritime court, collided, causing serious economic losses to the Chenguang Building Materials Building in the waters near Guangdong. This case can apply for a limitation of liability for maritime claims, with an applicable amount of 1268459 yuan. The limitation of liability system for maritime claims can limit the total compensation to a certain range. [9] Therefore, canceling the exemption from nautical fault will not affect the amount of compensation that the carrier ultimately needs to pay.

4. Cancelling the exemption from nautical fault will have an impact on other systems and disrupt the long-term balance of interests.

This viewpoint is difficult to establish.

Admittedly, the maritime insurance system, general average system, ship collision system, and maritime fault exemption system are closely related, but the impact of canceling nautical fault exemption captain in the system is not that significant. The impact on general average has been refuted earlier. [10] Although the cancellation of nautical fault exemption has led to an increase in carrier risk, and insurance companies may refuse to underwrite or increase freight rates due to this reason, insurance contract terms can be concluded based on the wishes of both parties, and can be resolved independently. Therefore, the impact on the marine insurance system is not significant. The ship collision system is used to resolve disputes related to ship collisions, while the exemption from nautical fault is aimed at addressing liability issues after cargo damage. The two have different aspects of handling the issue and are not related. It won't have a significant impact.

A change in one system will inevitably lead to changes in various other aspects. The balance of interests cannot be broken, and it will also be reestablished. In the historical evolution of the principles of carrier rules discussed earlier, the system has changed in every period. For example, the Hague Rules have also overturned the previous system of de facto non liability. Although this has greatly affected the shipping industry and carriers, the Hague Rules have ultimately been widely used. So there is no need to worry about the impact of breaking the balance of interests when canceling the exemption from maritime negligence.

In summary, the opinions of both parties supporting and opposing the cancellation of nautical fault exemption are not

sufficient. Both parties have indeed provided reasonable reasons to support their views, but these views can find loopholes and are not entirely reasonable. This is also the complexity of whether to cancel the exemption from nautical fault, and there are reasonable reasons for both cancellation and retention. The Rotterdam Rules are also seeking new solutions when canceling the exemption from nautical fault. [11]

In fact, absolute exemption from nautical fault does not exist in judicial practice. The Harter Act once stipulated that the carrier's exemption from nautical fault was conditional on the fulfillment of the seaworthiness obligation. [12] However, the provisions in the Hague Rules do not specify the relationship between nautical fault exemption and seaworthiness obligations. In order to fill the loopholes in legislation and express the provision that carriers must also bear responsibility if they violate seaworthiness obligations, the British court resolved this issue through a case study.

British Justice Somervill pointed out in Maxine Footwear v. Canada Government Merchant Marine thseaworthiness obligation is a primary obligation, and a breach of seaworthiness obligation will deprive the carrier of the right to exemption. [13] In the seaworthiness obligation, there is a requirement for seaworthiness. When hearing cases, British courts make a judgment on whether a ship is fit for crew, which fills the loopholes brought by the nautical fault exemption system and establishes a mechanism for individual case checks and balances.

In the "Roberta" case, nine shippers entrusted Walford Shipping Company to transport a batch of goods from Dordrecht, Netherlands to London. When the goods arrived, the shipper found that the goods had been damaged due to dampness caused by seawater immersion during transportation. According to the terms on the bill of lading, the liability for loss of goods is governed by Dutch law, which is the same as Hague rules in terms of seaworthiness obligations. After investigation, it was found that the moral reason for the damage to the goods in this case was that the faucet had been forgotten to turn off, which was caused by the negligence of the engineer and caused an abnormality in the pipeline. According to the text of the Hague Rules, this originally belonged to nautical fault exemption, but the court ruled that the pipeline system layout of the ship involved was very simple. The chief engineer involved was on duty near the unopened faucet for a long time, but could not detect any abnormalities in the pipeline, indicating that the engineer did not have the ability to work as a seafarer and the ship was not seaworthy.

In the Star Sea case, this is a 26 year old refrigerated vessel carrying mangoes, bananas, and coffee from Nicaragua to Belgium. Two days later, as the ship approached the Panama Canal, the engine room caught fire due to aging electrical wires. The fire lasted for three days, causing the ship to be burned into a pile of scrap iron. The shipowner filed a claim with the insurance company, but it was rejected by the insurance company. The reason given by the insurance company is that during the previous voyage of the ship, the chief engineer cut off the bow suction pipe in order to repair the emergency water pump of the ship, and the captain was unaware of the carbon dioxide fire extinguishing equipment on board. So this ship is not seaworthy. The shipowner sued the insurance company. After investigation, although the fire was the cause of the cargo damage, the captain also made mistakes. The ship is equipped with 44 carbon dioxide fire extinguishers, which will automatically fire out as long as the wrench is turned. In order for the system to achieve better fire extinguishing effect, the fire compartment must be sealed and sprayed within 20 minutes. This means that all dampers, smoke exhaust windows, doors, and skylights in the combustion turbine room must be closed in a timely manner. But the captain hesitated due to concerns about carbon dioxide damage to the turbine, resulting in delayed firefighting time and greater losses. After the fire, the captain did not seal the hatch in time and only released half of the carbon dioxide. The final judgment of the court did not grant the carrier exemption from liability for vessel management negligence in accordance with the Hague Rules, but instead ruled that the captain was not qualified and violated the seaworthiness obligation.

There are many such cases in judicial practice in the UK, which will not be listed in this article. The listing of the above cases is to illustrate that although the Hague Rules explicitly provide for "exemption from nautical fault", in judicial practice, the court may use unsuitable crew members to cancel the exemption from nautical fault in the case. It can be seen that the exemption from nautical fault has been cancelled to a certain extent. The removal of nautical fault exemption from the Rotterdam Rules is an affirmation of the actions of British courts. From the experience of judicial practice, it is difficult for a claimant to prove that the carrier was at fault. So from the perspective of the steps of proof, it can be seen that the Rotterdam Rules still have nautical fault exemption in essence. The two cases mentioned above are a balancing mechanism used by British courts. [14] This is also equivalent to the liability system of the Rotterdam Rules, except that the Rotterdam Liability System has literally removed the exemption from nautical fault, while the British court indirectly cancelled the exemption from nautical fault through unseaworthiness.

In summary, the Rotterdam Rules establish a unique accountability system. In order to achieve a balance of interests, the Rotterdam Rules place the burden of proof on claimants with relatively weak evidentiary abilities. Although retaining the exemption from nautical fault is the mainstream practice in various countries, there is exemption from nautical fault in the Hague Rules and Hague-Visby Rules, and most countries still implement the Hague-Visby Rules. [15] However, canceling the exemption from nautical fault has become a trend. The Rotterdam Rules are aimed at finding a balance between abolishing nautical fault exemption in accordance with the trend and establishing a unique liability system with certain reservations for nautical fault exemption. Laws in different periods may have different tendencies, with some emphasizing fairness, others emphasizing economy for economic development, and others emphasizing legal stability. During the Hague Rules period, it was for the development of

the shipping industry and the economy, and the rules tended to be economic and were bound by this principle. The Hamburg Rules will place greater emphasis on fairness and justice. When the Rotterdam Rules were established, these principles were taken into account, hoping to balance economic and fairness, and safeguard the interests of all parties, whether the carrier, shipper, or third party, in order to achieve a balance of interests among all parties. This legislative purpose has led to the removal of some unfair and one-sided provisions from the Rotterdam Rules. Among them is the exemption from nautical fault, which undermines the balance of interests and does not comply with the legislative core of the Rotterdam Rules. Therefore, it is abolished to increase the carrier's liability. Such legislation has also received approval from many countries. Finally, the Rotterdam Rules chose a compromise approach between the opposing views of abolishing and retaining the exemption from nautical fault, abolishing the carrier's exemption from nautical fault. However, the shipper should bear the burden of proof for any damage or loss of goods caused by the carrier's negligence.

6. Conclusion

The system of exemption from nautical fault only focuses on losses and compensation, and involves economic considerations rather than considerations of fairness. This is also a disguised recognition that the basic law on the responsibility of international maritime carriers cannot control the actions of the carrier and various accidents in maritime transportation. The existence of nautical fault exemption is equivalent to letting the cargo owner pay for the losses caused by the carrier. This is not the purpose of the law, and urging the carrier to be more cautious and take preventive measures to protect the goods is what the law should do. It is precisely because of this that the Rotterdam Rules abolished the exemption from nautical fault.

However, the Rotterdam Rules are not just about canceling the exemption from nautical fault, as no matter how many reasons support it, it will result in the Rotterdam Rules being rejected by many countries, like the Hamburg Rules. However, if maritime nautical fault is retained, it will also lead to an imbalance in the interests of the ship and cargo, which may result in opposition from countries with the interests of the cargo owner. The formulation of the Rotterdam Rules requires a balance of interests in international economic exchanges. Therefore, the Rotterdam Rules cleverly removed the exemption from nautical fault from its provisions, but also established a unique liability system to retain the exemption from nautical fault to a certain extent, which is more widely recognized.

The Rotterdam Rules have abolished the exemption from nautical fault, adjusted the carrier's responsibility to have seaworthiness throughout the entire process, and clarified the requirements for the burden of proof. For ships and goods that have been governed by the Hague Rules for over a hundred years, this change has led to a change in the balance of interests. For shippers and their insurers, they are more likely to claim compensation from the carrier, and the carrier will take care of the goods more carefully. Through the analysis of the principle of carrier liability in the previous text, it can be found that canceling the exemption from nautical fault is a trend in international maritime legislation. Starting from the actual development of international shipping trade, the Rotterdam Rules have abolished the exemption of nautical fault and rebalanced the interests of both shipping and cargo parties. The system construction has obvious characteristics of the times and plays an important role in promoting the development of world shipping and trade.

Conflicts of Interest

The authors declare no conflicts of interest**.**

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