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E-commerce and COVID-19 Outbreak in Japan

海盜行為及其對貿易出口和航運公司的影響分析




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提高鎳礦裝載安全的建議

朱志統

1、 鎳礦及其他精礦 CONCENTRATES 的主要運輸安全問題是自由液面。有關自由液面而引致的海難，筆者曾在會刊上談論了好幾篇。例如木材船，滅火所引致的自由液面及 2010 年期刊 92 號中論及當時接連二、三起鎳礦船出事沉沒分析。

2、 鎳礦本身不會產生自由液面，但當水份含量達到某個程度，鎳礦變成可以隨船的傾倒而流動，產生自由液面。現在的做法是，把水份控制在某一程度，例如 N%，這個 N% 是裝船之前測量的。這個裝船前所測到的 N%，先不去細究其取樣的技術及人為錯漏，這批含 N% 水份的鎳礦，裝了上船，由於船隻在航程中甚至停航中的船體震動及搖動，加上礦比水重，所以水份會不斷向上滲透。隨時間的伸延，這種滲透會愈來愈強，筆者曾見過印尼裝的鎳礦在抵達中國卸港時，開倉後所見竟然是全倉一片水面（船上發回的照片看到），根本看不到任何鎳礦。

3、 由此可以推斷，雖然總水份和礦比仍為 N%，但由於水向上滲透，而致底層的水份應遠少於 N%，上層則遠大於 N%，表面則全是水。這個現象，我在 2010 年時，因為未有裝載鎳礦的實戰經驗，所以當時把整個倉假設為自由液面，影響是忽略了細節。借此次修正。

4、 由於只是上面的水，及含水量超過 N% 的上層鎳礦才會產生自由液面，情況當然比我 2010 年所說的好一些。但由於不知到底這條可移動的分界線應劃在哪裡，自由液面效應（簡單而言，對穩性的負面作用，應該的 Y 米，Y 定不了），測不準。由於水的比重為 1，鎳礦的比重為 4~5，所以如果鎳礦也有自由液面，則 Y 米變為 4~5Y，後果嚴重。往往足以令 +GM 變為 -GM。（註 1）

5、 應該考慮的因素是，即使船在錨地等候停泊，水份仍會不斷上升。這個潛在危險，不得不防。問題是，根本無法掌握水份的垂直分佈曲線。

6、 建議一，這個方案相當容易做到，但未經實驗。方法是在裝了一半貨後，做少少平倉。然後在鎳礦上面蓋一層不透水的膠布。作用是，阻止水份向上滲透，防止水份集中至超過 N%。要解決的問題是膠布要大面積及不會對鎳礦有品質上的影響，這方面應咨詢貨主。鋪放膠布在鎳礦上面不必要求平坦，因膠布有伸延性。也可考慮，膠布重疊或接合，就算有小面積的穿漏相信也可以把大部份之水份阻隔，有效降低自由液面。

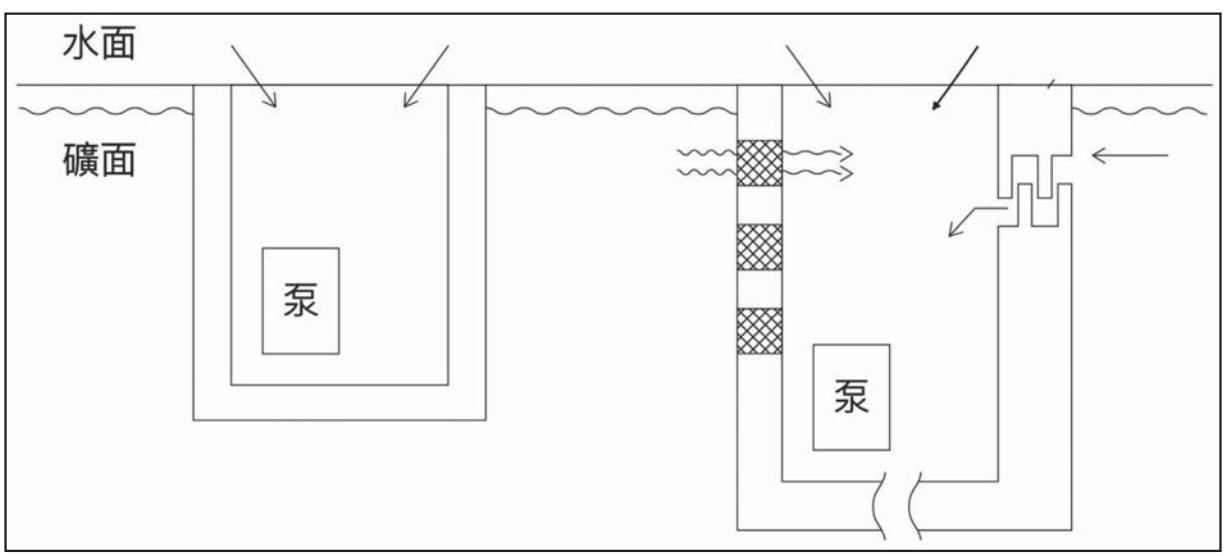
7、 建議二，這個想法未完善，筆者拋磚引玉，要經過一些實驗才能確定方案。

見前文。由於水在鎳礦上面，所以如果能把水泵走，或者用其他方法抽走，則自由液面（水）可以去除。這些水，工廠是要花費加工才能除去的，換言之，水份少了，貨價應該高。

8、 在鎳礦表面開一井，讓表面的水流入井中再泵走。井可以用一個一米直徑的鋼管，在裝貨時先安裝好（靠近船結構方便固定），但井開口要保持高于鎳礦及低於水面不易。故井旁可以設不同高度的開口，讓水橫向流入後泵走。泵就可以用泥漿泵，或其他工業上合用的泵。

井旁開口，可以試用濾網，透水、但不透鎳礦的濾網相隔，估計這種工業用濾網應有供應。

9、 井身的開口，能否用其他物理方法，令水可以流入而鎳礦不能流入井內，例如做內外高低交錯的隔板，令水必須先向上爬再入井，鎳礦較重則不易或不會向上爬。這些效果，也無須去用電腦模擬或計算，做個實驗就可知行不行。（見下圖）



10、 由於工廠也要花費電力或其他工序去排除水分，估計，無論怎樣也會比上述 7-9 所述的花費更大，所以值得在這方面探索。

11、 上述措施只為加強運輸安全，不建議因有這些措施而放寬 N% 水份報告之要求。

12、 從救難角度而言，費用不是一個主要考慮的因素。在如何排除及減低自由液面的作用而令船穩性回復正常，才是唯一要考慮的，所以我們要用盡辦法。譬如（A）用吸水物料把浮上礦面的水吸收，並用簡單機器工具把水擠出及泵出海。有點像在清理海面上浮油的 SKIMMER。（B）貨物自由液面最早源自穀物如小麥，當時解決方案之一是在散裝穀物上堆放幾層的袋裝穀物。用它排除了自由液面。在鎳礦面上，這也可行，但費用甚大。可以考慮在發現水份上升到礦貨表面

時，投入固化劑，例如水泥，令上層凝固。（A）和（B）用作海難預防處理，（A）和（B）是基於船上操作的可行性而提出的一個想法，實際機械設計、物料選擇等，還需花時間精力去深入研究。

（註 1）　GM，衡量船舶初次穩性的數據，簡單地說，GM（單位米 meter）愈大，穩性愈強。

（朱志統 : 2021.12.14）

Law Column - Limitation Of Liability For Parties Other Than Owners, Charterers Or Managers: Who Is An "Operator" For The Purposes Of The Limitation Convention?

Christopher Chan /Alex Kemp / Jenny Salmon
HFW 夏禮文律師行

Splitt Chartering ApS & Others v Saga Shipholding Norway AS & Others [2021] EWCA CIV 1880

The English Court of Appeal have considered the meaning of the word "operator" under the Limitation Convention. Narrowing the meaning of the term, the Court held that an "operator" must be involved in the management or control of the vessel, and not simply provide crew.

The Court of Appeal has handed down its judgment in Splitt Chartering ApS & Others v Saga Shipholding Norway AS & Others [2021] EWCA CIV 1880 last week, overturning the May 2020 decision of Sir Nigel Teare in the Admiralty Court on the meaning of "operator" for the purposes of the Convention on Limitation of Liability for Maritime Claims 1976 ("the Limitation Convention" or "the Convention").

While it is well known that the registered owner of a ship and a charterer (including a slot charterer) can limit their liability under the Limitation Convention in accordance with the tonnage of the ship in question, the Convention also allows the "operator" of the ship to limit their liability in the same way by including "the owner, charterer, manager, or operator of a seagoing ship" within the definition of "shipowner" (see Article 1(2)). However, there is no recognised definition of "operator".

The case concerned damage to a submarine cable owned by Réseau de Transport dÉlectricité ("RTE"), which runs under the English Channel between England and France. In late 2016, the anchor of the dumb barge STEMA BARGE II dragged during a storm. At the time, the barge had been anchored off Shakespeare Beach near Dover and was supplying rock armour for a project to rebuild damage to the railway infrastructure in the area. The rock armour was supplied by Stema Shipping A/S ("Stema A/S"), who had charterered the STEMA BARGE II from its registered owners, Splitt Chartering ApS ("Splitt"). It was recognised that those two entities, both part of the Mibau group of companies, could limit their liability under the Limitation Convention. Another company in the same group, Mibau Baustoffhandel, had initially sought to limit, but dropped its claim.

The proceedings centered around a fourth company in the group, Stema Shipping (UK) Limited ("Stema UK"), who were not the owners or charterers of the barge and did not have any formal role in respect of the barge's management or operation. However, Stema UK's personnel operated the machinery of the barge whilst

it was off Dover and were involved in monitoring the weather and in the decision to leave the barge at anchor during the storm. Stema UK sought to limit under the Limitation Convention on the basis that they were an "operator" of the barge following her arrival off Dover.

The Admiralty Court's Judgment in 2020

The then Admiralty judge, Sir Nigel Teare, had held in the Admiralty Court in *Splitt Chartering ApS & Others v Saga Shipholding Norway AS & Others [2020] EWHC 1294 (Admlty)* that Stema UK was entitled to limit its liability as an "operator" but that Stema UK was not a "manager" of the barge. He concluded that the ordinary meaning of “the operator of a ship” includes the entity which, with the permission of the owner, directs its employees to board the ship and operate her in the ordinary course of business.

The judge noted that although Stema A/S was clearly the barge's "operator" prior to arrival at Dover and retained a role as "operator" while the barge was off Dover, from the time of the barge's arrival off Dover, Stema UK had a "real involvement" with the barge, its employees not only anchoring her but preparing her for lying safely at anchor and, during discharge, operating the barge’s machinery to ensure that she was safely ballasted. The judge observed that "[n]o personnel of Stema A/S were on board; only personnel of Stema UK" (para. 110).

The Judge then asked himself whether it could fairly be said that Stema UK was the operator of the barge off Dover (in which case it could limit its liability), or whether Stema UK merely assisted Stema A/S to operate the barge (in which case it could not limit its liability). He held that:

"Although Stema A/S was the operator of the barge in the sense of being its manager I would not describe Stema UK as merely assisting Stema A/S to operate [the barge] off Dover in circumstances where Stema A/S had no personnel present able to operate [the barge] off Dover. The necessary operation of [the barge] was in fact performed by Stema UK alone, sending its personnel on board to do what was necessary" (Paragraph 120).

As a result, the term "operator" was given a wide meaning. While it was recognised that there can be more than one "operator" for the purposes of the Convention, the Admiralty Court's judgment meant that a party with no formal role involved in providing limited services to a ship for a limited time in a particular location might also be able to rely on the limitation protection of the Convention as an "operator".

RTE's Appeal to the Court of Appeal

RTE’s first ground of appeal was that the Admiralty judge was wrong in construing “the operator” of a ship in the Limitation Convention to include the entity which, with the permission of the owner, directs its employees to board the ship and operate her in the ordinary course of business in this way.

Delivering the lead judgment, Lord Justice Phillips first noted Longmore LJ's summary at paragraph 10 of *The CMA Djakarta* (CMA CGM SA v Classica Shipping Co Ltd [2004] EWCA Civ 114) that, when construing an international convention such as the Limitation Convention, the duty of a court is to *"[...] ascertain the ordinary meaning of the words used, not just in their context but also in the light of the evident object and purpose of the convention. The Court may then, in order to confirm that ordinary meaning, have recourse to what may be called the travaux préparatoires and the circumstances of the conclusion of the convention".*

In the absence of previous authorities on the meaning of "operator" for the purposes of the Limitation Convention, the Court of Appeal considered the official records of the negotiations for the Convention (that is, the "travaux préparatoires"), which revealed that a proposal that limitation protection should extend to include "all persons rendering services in direct connection with the navigation, management or the loading, stowing or discharging of the ship", had been rejected by majority vote of the contracting parties.

The other authority relied on by the Court of Appeal was the judgment of the Australian Federal Court ASP Ship Management Pty Limited v Administrative Appeals Tribunal [2006] FCAFC 23, which concerned the meaning of the words "operated by" in a maritime context for the purposes of Australian legislation concerning statutory compensation for injuries. Lord Justice Phillips adopted the Federal Court's view in that case that the mere provision of the crew for a vessel does not mean the vessel is operated by the provider.

Lord Justice Phillips then went on to find (at paragraph 58) that:

"[...] the term "operator" must entail more than the mere operation of the machinery of the vessel (or providing personnel to operate that machinery) [...]. The term must relate to "operation" at a higher level of abstraction, involving management or control of the vessel, or else [...] categories of service providers would be included notwithstanding their express exclusion by the contracting parties as revealed in the travaux préparatoires."

Applying this to the facts of the present case, the Judge held that Stema UK's actions were for, on behalf of and supervised by Splitt and Stema A/S. To the extent that any of them amounted to operating the barge, he considered that those actions were plainly by way of assistance to Stema A/S in its role as operator, not by way of becoming a second or alternative operator or manager.

Analysis

As a result of the Court of Appeal's judgment, the meaning of "operator" has been restricted to those who also have a degree of management or control over the vessel in question. While there can be more than one "operator", the judgment notes that an alleged second operator may in fact be providing assistance to the undoubted operator, and that the Court should not readily find that there is more than one operator.

The judgment confirms that not all those involved in providing services to ships will be able to limit their liability under the Convention. While there can be more than one owner, charterer, manager or operator for the purposes of the Convention, this latter category is not to be construed widely as a "catch all". Instead, the entities entitled to rely on the protection of the Limitation Convention remain a select group.

The authors of this article, Alex Kemp and Jenny Salmon, acted for the successful Appellants, Réseau de Transport d'Électricité.

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貨物運輸的合同種類與運送的過失責任 - 談海商法修正時的若干爭議性議題

王肖卿

摘要：本文緣起於 2021 年底臺灣海商法對於貨物運送章的再啟修正，發現許多分歧尤其最重要包括運輸合同的種類與過失責任的基礎，都出於缺乏思辨的因循，以及遵循習以為常的錯誤。本文透過不辯自明的道理，予以說明，並提出修正應有的定位。

關鍵字：班輪與非班輪、運輸合同、運輸單證、過失責任

Contracts of Carriage of Goods by Sea in Liner Trade and Fault based Liability –

From some points discrepancy at issue when the revision of Maritime Law in Taiwan

Abstract: This article originated from the reopening the discussion of the Chapter of Carriage of Goods in Maritime Law in the end of 2021. It is found some points at issue and discrepancy especially including the most important of the contract of carriage ruled and fault based liability are resulted from lacking of critical thinking but following the repeated and habitual mistake. This aims at giving clarification through self-evident reasoning and seeks to offer suggestions on the strategy direction.

Key Words: Liner and Non-liner, Contract of Carriage, Transport documents, fault based liability

一、前言－本文緣起

這兩個議題緣起於 2021 年底台灣的新一波海商法修正，看似老生常談，本次修訂卻引發「海上貨物運輸合同」究竟涉及幾種合同的疑慮？以及過失責任基礎的認定，釐清這些問題，許多問題就不辯自明瞭。

「海上貨物運輸合同」章原是海商法中最重要的章節 [1]，長期以來卻習以為常地將班輪運輸與非班輪運輸的航次租用合同相提並論 [2]。對於過失責任的認定，也導致是否應該採納鹿特丹舉證責任的規定。

但看各國海商法 (Maritime Code) 的貨物運送章或單獨立法的海上貨物運送法 (Carriage of Goods by Sea Act, COGSA) 參考的國際公約，便知道這一章是用來定位「班輪」(Liner)[3] 的；不論海牙、威士比、漢堡或鹿特丹公約，主要都在規範運輸單證，排除任何種類的租用合同 (Charter Party)，所以該章所謂的「合同」，主要規範的是運輸單證，也就是單證代表的合同，因為雙方簽字的雙務合同，就像鹿特丹規則第 82 條 [4] 對於批量合同的規定一樣，是不受班輪強制規定所限的，如此單證才應是這一章規範的重點。

租船合同下的運輸單證也在該章範圍之內，因此兩岸都曾誤把租用合同、尤其是航次租用合同納為貨物「運輸」合同；認為整船載運沒有包裝的散裝貨 (bulk cargo) 與裝運包裝雜貨 (packaged cargo) 是同一回事。然而其中的差異卻極大，將在下一單元討論之。

再就運輸單證來說，所謂「海上貨物運輸合同」章同時規範運輸單證，僅只當持有人不是租船當事人，限於該單證持有人與簽發單證的承運人間的權利義務關係時才適用該章的規定，否則還是要按租船合同的約定；光船 (bareboat charter, BC)、定期 (time charter, TC) 與航次 (voyage charter, VC) 租用下的運輸單證都一樣。也就是說，所謂「海上貨物運輸合同」包含租船合同下的運輸單證，但只是當持有單證的人不是租船合同的當事人，才適用「海上貨物運輸合同」章的所有強制規定，否則該種運輸單證還是不適用「海上貨物運輸合同」章的規定，只能依租船合同的雙方約定。這並不限於航次租用下的運輸單證。

「海上貨物運輸合同」章，肯定只能規範班輪運輸，因為班輪才須對運、托雙方的權利義務做強制規定，保障中小出口商的貨物出口，不致因承運人自行印製運輸單證的不合理條件，遭受剝削或挾持，讓小出口商權利受損，達到法律保障弱勢的目的。

至於運送責任，則旅客運送與貨物運送肯定是兩個不同的責任基礎；人不等同貨，是十分清楚明白的道理。可惜卻需要花費唇舌，進行辯論。

二、班輪與非班輪船舶租用之不同

非班輪租船的條件遠高於班輪運輸的標準；光以對船舶的要求為例，班輪運輸的適航性強制要求，不過是最低要求的基本標準，非班輪則這項基本要求只是默示條件，船艙容積、船況與自備之吊具能量、艙面承重、艙口數量與大小、為避免擱淺要求提供之滿載吃水數 [5] 等，必須都能滿足承租人提出的要求，才能達成租用。相對船方對承租方也可提出要求；包括保證最低貨量、貨物的裝載係數 (每一長噸對應之立方呎容積數) 不得超過若干數字，以及最高載重等。對於承租方因貨物裝卸造成對船舶之損害 [6] 亦應負責。因此租用合同當事人都以書面訂定。

因應需求，國際便出現各種租用的格式化合同供選擇使用，航次租船 (VC) 因貨種不同、地區使用慣例的差異，在租用的格式合同中，種類最多；有一般性可用於裝載任何貨物的 GENCON、CENTROCON。地區推出的，如澳洲谷類、南澳小麥、阿根廷穀類、加拿大硫磺等。有承租人 (大出口商貨方) 推出的，針對小麥、糖、工業用鹽、礦砂與礦石等貨物專用的格式化租約。尤其是油貨航次租船合同，更都是油貨商自行擬定，買他的油貨就得用他的合同。依當地慣例，承租人自行繕打運輸單證，交由船長簽字，完成運輸單證的製作與簽發。這與班輪作業程式幾可說是完全相反的過程。光船與定期的格式合同則大多都是由波羅地海協會 (The Baltic and International Maritime Council, BIMCO) 設計的格式，格式合同種類較少，只在個位數。

因此在以下區分上，原文於班輪運輸的部分多來自運輸單證上的英文印刷，或者來自各個國際貨物運送公約。非班輪包括航次租船合同在內的船舶租用合同，則為格式化合同上印刷文字，或者國際慣用語。簡言之，兩者最大的不同是類別不同，班輪 (liner) 與非班輪 (non-liner) 租用重大的不同處如下：

(一) 當事人不同，班輪運輸的當事人永遠是承運人 (carrier) 與托運人 (shipper)。非班輪租用當事人則為船舶所有人 (Owners) 與承租人 (Charterers)。

(二) 公共運送與私有運送不同：站在運輸服務 (line service) 的立場，班輪服務一般大眾的多數人，屬於公共運送 (common carriage)。三種租用都僅為少數人服務，歸屬私有運輸 (private carriage)。

(三) 強制規定與任意規定不同：為保障零星貨 (不滿一整箱) 的小托運人權益，法律做出強制規定，如海商法第四十四條「海上貨物運輸合同和作為合同憑證的提單或者其他運輸單證中的條款，違反本章規定的，無效。」租用合同則沒有這類強制規定，尊重合同自由原則，以雙方的約定為主。

(四) 船舶種類不同：班輪船舶幾已全為單一的集裝箱船，租用的船舶則多元，包含集裝箱船、各種不同裝運米、麥、糖的散裝船、專用以裝載重貨的礦砂專用船、車輛運輸等專用的乾貨 (dry cargo) 船等。以及油輪、化學品船、液化天然氣 (LNG) 與液化石油氣 (LPG) 船等濕貨 (wet cargo) 的船，加上客輪或郵輪等之租用。也由於非班輪租用包括客船，因此在貨物運送涵蓋船舶租用，是最不合理的。

(五) 合同性質不同：班輪運輸合同的種類是本文的重點，將於下一單元專題討論之。

合同性質的不同處更可說是完全相反；班輪運輸的合同除少數書面訂定合同外，其他多數都是證明合同的運輸單證 (transport document)，這些單證由承運人印製，除公司抬頭 (headline)，正背面都是經律師研議後的印刷條款，只有承運人或代表承運人的單方簽名，必須有賴法律強制規定；運輸單證條文與法律抵觸者無效，以保障弱勢貨方權益。運輸單證是合同之證明 (evidence of contract)；包括初步證明 (prima facie evidence)，也是最終證明 (conclusive evidence)，也就是做為證據力的主要 (conclusive) 證據。

非班輪則依書面議定之租用合同 (Charter Party) 國際通用的格式化租船合同，雖有印刷條款，但經當事人雙方同意即可修改，認可條文內容後，由雙方各自簽名，租船合同下的運輸單證就不是合同的證明。對收裝貨物是初步證明，但不是主要證明。

班輪托運人沒有修改合同條件的權利 (在單證上做增刪)，亦無從選擇哪種單證。但租船合同則雙方均有權提出修改合同或附屬合同的意見。

(六) 所載貨物不同：班輪運輸的貨物多數是包裝貨 (package cargo)，並裝於集裝箱。多數是乾貨，體積大於重量，即體積貨多於重量貨。運費多以體積噸 (立方呎) 計算。艙面裝載為正常裝載 (三分之一集裝箱裝在艙面上)。非班輪則航次租用 (VC) 的貨物分乾貨 (米、麥、礦砂、糖) 與濕貨 (原油、成品油)，且濕貨占一半以上，當海商法中的海上貨物運輸合同的一章納入航租 (VC)，卻只針對乾貨做裝卸訂定也是不對的。當班輪的運費多以體積計算的時候，航次租用的運費卻幾乎全以重量噸計算運費。

(七) 裝卸條件完全相反：對於貨物的裝與卸，班輪多由承運人負責 (Liner Term or berth term, LT or BT)。非班輪的航租 (VC) 則裝卸條件是費用多由承租人負擔 (free in, out, stowing & trimming, FIOST)。

(八) 船舶適航性的要求不同：班輪運輸對船舶適航性，為強制要求的最低標準，由法律強制規定。且對於適航性的要求為事後條件，也就是說，貨方選定船舶、洽定裝運後，船舶必須符合適航性的基本要求。這與非班輪租用情況下的適航性有相當的差異；非班輪租用用情形下之船舶適航性，係於合同洽訂前，談妥船況，始能簽訂，除基本的適航條件屬默示規定外，承租人尚可對船舶規格有其他要求，且三種租約均相同。

(九) 責任內容不同：班輪負責的只有毀損、滅失、遲延交付。非班輪船舶租用，則對乾貨責任大多是短少、銹蝕、結塊。至於濕貨如原油責任，多是短少。成品油多是規格不符。且因已有裝卸期限 (laytime) 及裝船時限 (laydays) 的規定，因此沒有遲延交付責任的規定。

(十) 責任限制與免責規定也不同：海商法於班輪訂有強制性之貨損免責規定、責任限制規定。非班輪之三種船舶租用則都沒有基本免責保障，責任限制亦係由雙方議定。

(十一) 安全港的責任完全相反：安全港 (safe port) 是指港口可供包含政治理由在內的安全進出 [7]、船舶在港區內能安全停泊，且不論漲潮落潮、裝前裝後都不會擱淺的港口，因此原文於地理上安全定義，是永遠安全浮著 (always safely afloat)。政治上則指是否因政治理由而無法進出該港 [8]。

班輪運輸的港口係由承運人保證，任何原因無法入港或在港內發生擱淺、或必須等待漲潮後出港的等候時間成本，均由承運人負責。然而三種租用情形下，則由承租人保證，無法入港、船舶在港區內無法安全停泊，須等待漲潮方能進出港口、裝後吃水太深發生擱淺等，均由承租人負責。負責的意思指，如利用駁船卸下部分貨物，使船舶吃水較淺始得入港的額外駁運費用，或等待漲潮才出港的等待時間損失，費用及損失均由該承租人負責。

(十二) 爭議之解決方式不同：班輪對於爭議之解決多以司法訴訟，鮮少以仲裁方式去解決爭端，運輸單證訂有司法管轄及訴訟的准據法條款。三種租用則因適用國際慣例的情形較適用法條解釋的情況更尋常，而常見以仲裁方式解決爭議。

運輸單證適用法律的強制規定，租船合同則尊重合同自由原則的關係，而以仲裁方式解決爭議的情況更常見。租約既成的仲裁條款 (Law and Arbitration)，以兩岸常用的航租合同 GENCON 合同為例，即有仲裁人之選定，以及兩周內應作出仲裁判斷的規定，可較訴訟更為迅速解決爭議。

而班輪獨享的免責抗辯或責任限制，租船亦無權享有。

(十三) 時效規定之差異：班輪訂有訴訟之強制時效規定，船舶租用則多由雙方議定。短期時效且可經雙方同意延長。非班輪之租用則多以仲裁之更短期時效，取代強制規定之一年期訴訟時效。如指定仲裁人之期限。且因仲裁係經雙方合意，因此一人、兩人、或者主仲裁人之裁決即可定案。

這麼多差異皆源於兩者的類別不同。置於同一章，無論如何都是格格不入的。

三、班輪運輸之合同種類

「海上貨物運輸合同」章的重點，應該就是該合同。因此，第一個條文就是定義什麼是「海上物運輸合同」，凸顯的所謂「合同」，只能是承運人與托運人訂定有關全程運輸協定的合同。然則，許多同樣也為運輸目的而洽定的輔助合同或者不是與托運人簽訂的合同，就必須被排除在外了；這些合同中或也有承運人與托運人所訂，關於使用那種單證的合同。因此「海上貨物運輸合同」的種類，實際上有以下幾種。

(一) 書面合同，有不僅因為量大；特殊貨包含特殊性質 [9] 的貨物、貨物本身需要特殊照料 [10] 的貨物、或者有其他特殊需求的貨物，例如裝運軍品武器、運核能物資 [11] 等，都會另外訂定書面合同。總之承運人與托運人簽訂、部分為海運的全程「運輸」目的的書面合同。

(二) 承運人與托運人之間亦有可能簽訂其他的書面合同，如雙方同意以海運單 (seaway bill) 代替提單，或者以電子運輸紀錄取代傳統的書面運輸單證的合同，或者以區塊鏈方式，整體傳遞包括運輸訊息在內的合同。這些合同多數以書面訂定，或者單方提供保證書保證 [12]，但通常不在運輸合同的合同範圍內，因為本章內容主要規範的是運輸責任、責任的開始及解除。這種書面合同就不含委託運輸的內容。

(三) 其他就是未簽訂書面合同，介於運、托之間，僅以「單證」證明之合同，例如無船承運配合信用證要求所簽的收貨憑證 (cargo receipt)。

(四) 從屬的運輸輔助合同；包括港與港之間的駁運合同、小船合同、陸運的集裝箱拖帶合同、火車運輸合同、空運轉運合同，以及港內的拖帶合同，為理貨、為裝卸與為倉儲訂定

之合同。輔助合同對應的，除使用的單證種類，對方多不是托運人，所以也不包括在內。從屬的輔助合同不是主合同，但必須在解釋名詞 (terms definition) 中予以定義，因涉及訴訟中的侵權訴訟及時效中的追償責任 (action for indemnity) 條文。

輔助合同的當事人僅與承運人簽約。因此當托運人的貨損在集裝箱集散站發生、在駁運時發生、在陸運的拖車途中發生，貨方亦可能以侵權理由找集散站負責、找駁船所有人或拖車所有人負責，且只能以侵權的理由提告，或者同案以侵權與合同理由同時對兩者提告，這也是為什麼運送責任須涵蓋合同責任及侵權責任的理由。國際公約自 1968 年威士比修正案 (Visby Amendments, 1968)[13]，即允許同時將合同與侵權責任包括在內，允許追究合同責任與侵權責任。另一與輔助合同相關的部分，就是追償訴訟的時效規定，漢堡規則及鹿特丹規則都允許在訴訟時效屆滿之後的九十天追償時效 [14]。

(五) 因此對於該章第一條的擬議，建議應如下：

1. 班輪貨物運送合同指承運人與托運人間，約定收取運費，全部或一部運程經由海上，將貨物從一港或一地運至另一港或另一地的合同。

2. 為運送之完成，承運人於港區另簽有各式為部分運送、駁運、裝貨或卸貨、堆裝、倉儲或保管等工作相關的運送輔助合同，惟本章就運輸合同之規定，僅適用於與海運的承運人與托運人之間的合同。

3. 班輪之運輸合同分為以下兩種：

   (1) 書面經當事雙方同意後訂定、對特定或定 (批) 量貨物運送訂定的合同。該種合同內容除條文特別說明外，不適用本章之強制規範。

   (2) 未有書面訂定合同之零星貨物，即僅以運輸單證證明之合同，內容以單證之記載為準。其記載有違本章之規定時，不生效力。船舶租用簽發之運輸單證適用本章之單證規定，惟其記載內容之文義，僅適用於非租船合同當事人之間。租船合同當事人仍以租船合同之記載為準。

   (3) 未訂定書面合同亦未簽發運輸單證，僅以電報通知、放貨之作為，不適用本章之規定。

[1] 司玉琢、張永堅、蔣躍川，中國海商法註釋，2019.3., 069 頁。劉宗榮，海商法，「海商法是以海上運送為核心，以提供船舶、船員、資金，滿足海上運送基礎；以解決海上運送可能發生船舶碰撞、海難救助、共同海損的法律糾紛，以及為了減輕承運人責任而制定的船舶所有人責任限制，為了分擔海上冒險損失而建立的海上保險為輔義的法律規範」。2016.9 第三版，序文及頁 1。

[2] 臺灣海商法甚至把三種租船與班輪運輸放在同一章。

[3] 同上註，劉宗榮，海商法，，「從國際公約及海事習慣蛻化為海商法」，序文。

[4] Article 80 (Special rules for volume contracts) 1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention.

[5] 因為租船合同的安全港責任是承租人負責的，跟班輪的安全港責任由船舶所有人負責正好相反。

[6] 非班輪之租用通常裝卸由承租方負責。

[7] "Chartering and Shipping Terms" by J. Bes, vol. III, 1975, p. 62. & "Dictionary of Marine Insurance Terms" by R.H. Brown, 4th Ed, 1973, p. 348.

[8] 臺灣因船舶國旗之外交因素而被阻於港外。

[9] 例如危險品需要特殊固定、違禁品需要裝載於特殊位置。

[10] 例如冷凍品需要特殊溫度、超重超長貨物需要裝載艙面。

[11] 由於需要專人押運，因此裝載時須安排在離開前最後一港裝載，到達時則需要安排在第一個靠泊的港口卸載。

[12] 例如海運單現在多數情形是貨方提供保證書，保證貨物交貨錯誤由托運人自己負責。

[13] Article IV bis of Visby Amendments "1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort."

[14] Article 64 (action for indemnity), (b) of Rotterdam Rules & Article 20 (limitation of actions).

(王肖卿：教授、仲裁人)

E-commerce and COVID-19 Outbreak in Japan

Tomoya Kawasaki

In Japan, COVID-19 began to spread in January 2020. The first infection case was identified on January 16, 2020. As of August 2021, Japan had experienced rapid outbreaks four times (April–May 2020, July–August 2020, November 2020–February 2021, April–June 2021, and July to date, 2021). In the first event, a maximum of 720 cases per day were identified throughout Japan, and the first state of emergency (SOE) was declared from April 7, 2020, until May 25, 2020. During this declaration, teleworking, online classes, and refraining from out-of-home trips, among others, were strongly requested by the government without any corresponding legal challenges, which was different from most foreign countries. For example, there was a decrease in approximately 85% of people near Tokyo station in April–May 2020, measured annually, while the volume of parcel deliveries increased by 11.6% annually in the fiscal year 2020. The second and third outbreaks were more serious, with a maximum of 1,605 and 7,882 cases per day, respectively. During these periods, the number of people near Tokyo station decreased by approximately 50%, and 40%, respectively.

The COVID-19 outbreak also caused major changes in the values and lifestyles of people, such as a decrease in outdoor trips. A significant drop in activity levels in Tokyo, especially for leisure activities and eating out, was observed. Regarding consumers' shopping behavior in Japan, many consumers utilized e-commerce instead of physical stores. In June 2020, e-commerce usage in the country increased by 10.8%, while retail sales decreased by 13.4% annually. Suppose e-commerce becomes the "new-normal" shopping mode, the number of physical retail stores will eventually decrease. Additionally, the penetration ratio of teleworking has drastically increased than before COVID-19: 67.3% of Japan-based companies enforced teleworking in June 2020 when the first SOE was declared. During that time, most universities in Japan were closed to students, who were then forced to take online classes from home. These students are one of the main contributors to e-commerce. Suppose telework and online classes continue in the post-corona era, trips to physical retail stores will further decrease. The continuous use of e-commerce triggered by the COVID-19 outbreak would significantly affect future transport and logistics planning. The shift from physical stores to e-commerce will decrease shopping trips. In contrast, logistics-related trips such as deliveries would significantly increase, requiring changes in logistics policies such as warehouses and logistics center planning, and truck driver shortage issues, among others. Thus, it is necessary to understand the attitude toward e-commerce, which significantly affects transport and logistics-related trips for proper transport and

logistics planning. Nevertheless, such change in shopping behavior, including choosing between e-commerce and retail stores, would differ in terms of geographical characteristics such as city size, population density, and consumer attributes such as age and income. The continuation of e-commerce usage in the post-corona era could change urban planning, including transportation planning. According to the Nationwide Person Trip Survey of Japan in 2015, shopping-related trips account for approximately 15% of the total number of trips. Thus, a shift in shopping behavior towards e-commerce would be a significant factor influencing transport policies. Besides, the intentions toward the use of e-commerce differ among individuals and change over time. The COVID-19 pandemic has changed people's lifestyles (e.g., stay-at-home duration and shopping behavior) and psychological state (e.g., intention towards the use of e-commerce) immediately after the pandemic. Some lifestyle and psychological states may not revert to their pre-pandemic state. Thus, it is important to understand the reasons for using e-commerce by individuals, grouped by chronological changes in the intention to use e-commerce in multiple periods. Therefore, it is important to conduct continuous surveys related to COVID-19 outbreak.

(Tomoya Kawasaki: The University of Tokyo)

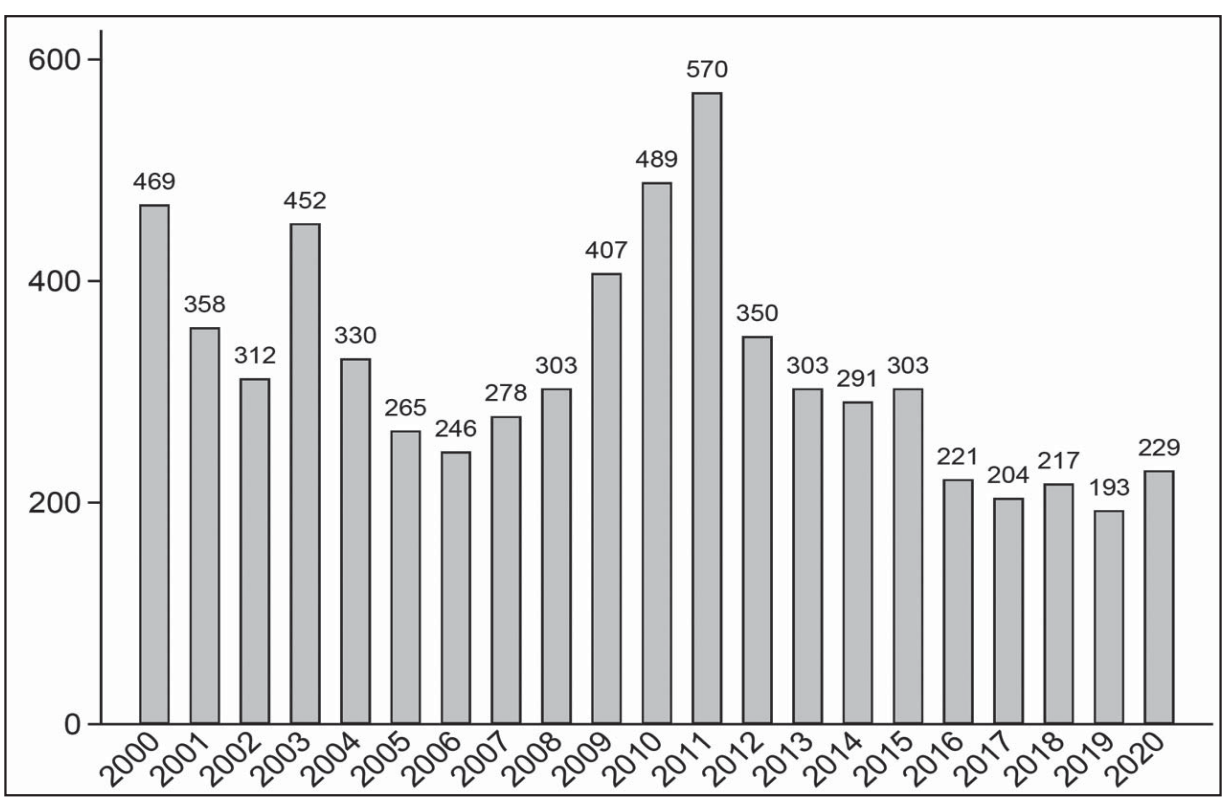
海盜行為及其對貿易出口和航運公司的影響分析

馮佳培

長期以來，海盜行為一直困擾著全球航運業和生活在海岸附近的民眾，曾在2011年達到頂峰，但之後由於相關政府和業界的共同努力，海盜行為已基本從新聞報道中消失。但近年來，海盜行為又有死灰復燃的趨勢。根據ReCAAP的數據，2021年馬六甲海峽的海盜偷襲事件上升到47宗，該地區從2019年始，海盜偷襲事件一直呈上升趨勢。這表明海盜行為仍是威脅海運業正常運行的因素之一，對正常的貿易秩序造成一定程度的破壞。而出口貿易公司應對海盜行為的方式多數是選擇空運並減少海運。而航運公司則採取船舶繞航來避開受海盜影響的地區。這些調整對海運總出口貿易量有一定的影響。

新冠肺炎疫情導致全球港口關閉、「長賜輪」堵塞蘇伊士運河的事件、霍爾木茲海峽各敵對政府之間的軍事衝突以及東南亞地區的海盜襲擊事件的增加等，海盜問題繼續成為國際商船的共同威脅。圖一是全球過去二十年的海盜事件統計，2020年共發生229起海盜襲擊事件，有100多人被扣為人質。

圖一：全球年海盜事件統計

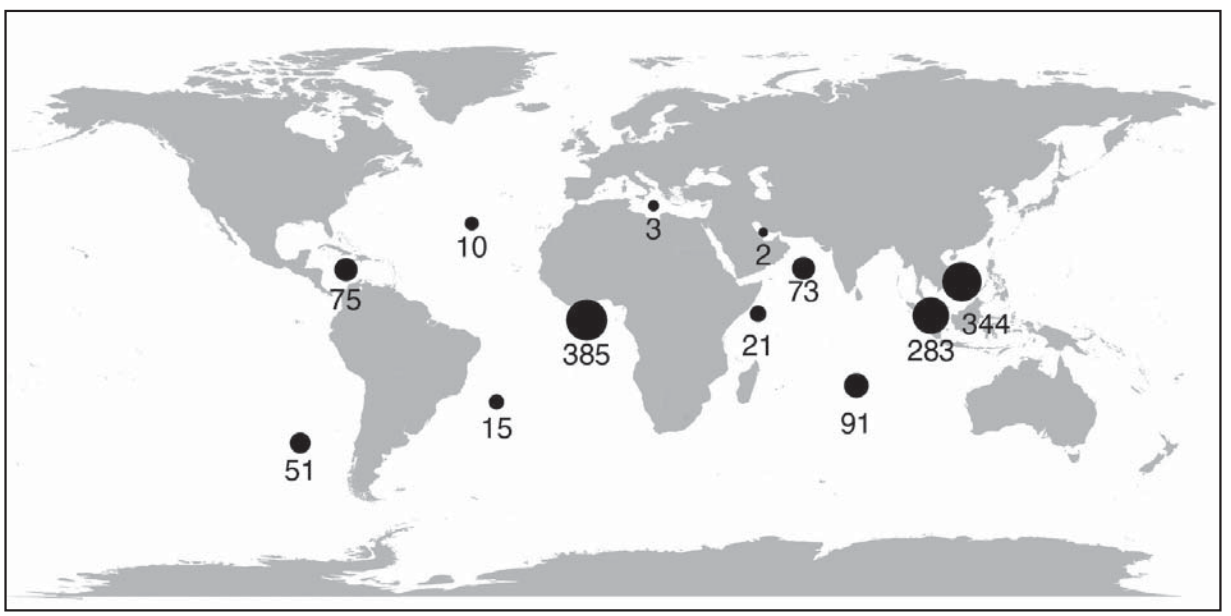


資料來源：國際海事組織

除了對船員的威脅外，海盜襲擊還導致船舶延誤、人命財產的損失。航運公司對付海盜襲擊的手段包括：昂貴的繞航、高價聘請船上武裝安保、電子圍欄和船山設置水炮等。而貨主還需要承擔海盜襲擊的隱性成本，包括增加的工資和保險費用等。所有這些都使貨物運輸的成本攀升，最終影響有關貿易國家的福祉。

海盜襲擊事件在世界各地的分布各有不同，發展中國家沿海地區的頻率高於發達國家。圖二顯示了 2015 年至 2020 年間海盜襲擊的分布情況。大多數海盜襲擊發生在西非，共計 385 起，其次是南海地區，共 344 起，再次是馬六甲海峽，共 283 起。過去十年，海盜襲擊問題在阿拉伯海和印度沿海地區的發展尤為迅速。

圖二：2015 年至 2020 年年間海盜襲擊的分布情況



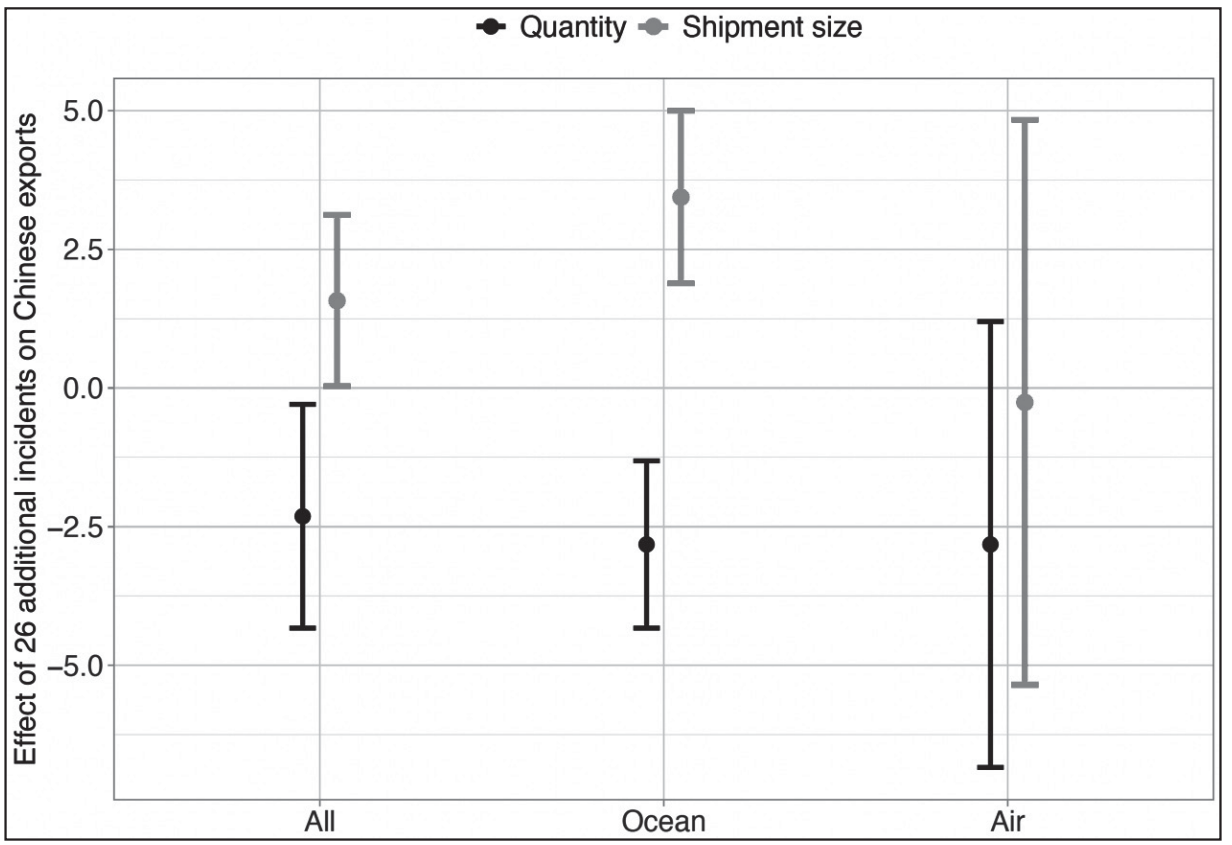
資料來源：國際海事組織

海盜襲擊高發的馬六甲海峽和南海地區是亞歐之間重要的海上貿易通道。因此，海盜行為不僅對海上船員的生命構成威脅，也對全球貿易構成威脅。

海盜行為對出口貿易和運輸方式選擇的影響

根據中國海關 2000 年至 2006 年期間公司產品目的地國家層面的月度出口交易信息及交易的運輸方式數據表明，海盜行為對中國貿易出口到有關國家產生了一定的影響，圖三是海盜行為對中國出口貿易量和裝運規模影響的估計值和 95% 的信心值的結果，對出口數量的影響以深色顯示。結果表明，在連接中國與特定目的地的一系列航線上，每發生一起海盜事件，導致對該地區所有國家的出口量減少了 0.1%。鑒於歐洲航線上每月平均發生 26 起事件，這意味著出口量也將比沒有海盜行為的地區降低 2.3%。

圖三：海盜行為對中國出口貿易量和裝運規模影響的估計值和 95% 的信心值（%）



資料來源：Sandkamp et al. (2021).

在公司交易層面，海盜行為減少了船舶的貨物交易量，但平均裝運規模反而增加（圖三）。中國企業的裝運規模隨著海盜襲擊次數的增加而增加。每增加一起海盜事件，就使遠洋運輸裝運規模增加 0.13%。對於運往歐洲的貨物，增長為 3.4%。此外，每增加一次海盜攻擊，船公司在受影響航線運貨的概率降低 0.02%。因此，海盜行為促使貿易公司選擇空運而放棄海運。

海盜襲擊對貿易出口的影響是持久的，而小規模公司由於其更高保險成本的原因，受到的影響更為明顯。此外，單位價值較低的商品比單位價值較高的商品受到的影響更大。

對船舶行為的影響

根據給定區域內的船舶位置數量與海盜事件數量進行綜合分析的結果表明，海盜活動增加後，船舶會採取繞航。離開港口前往特定目的地的船舶總數因此下降。此外，有初步證據表明，通過受影響區域的船舶會提高航速。增加航行時間和燃料消耗都提高了運輸成本，並在一定程度上解釋了貿易量總體下降的原因。

結論

根據分析表明，海盜在多方面對貿易產生負面影響。貿易出口公司減少了船舶運輸的頻率，並改為空運方式，但剩餘貨

物的平均運輸規模有所增加。集裝箱船通過繞航避開容易遭受海盜襲擊的地區，並提高航速，這兩方面都增加了運輸成本。總體而言，海盜行為減少了受影響航線中國貿易出口量（對歐洲的出口量為2.3%）。

海盜行為對目標船舶的船員構成很大的威脅，海盜行為的貿易抑制效應意味著政府需要積極應對這一問題。增加海軍護航顯然是短期的解決方案，但從長遠來看，海盜活動所在國政府的權威性和人民生活水平的改善將有助於杜絕個人為了養活家人而從事犯罪活動的動機。此外，航運業界與政府的密切合作，對杜絕海盜之患也至關重要。同時，瞭解海盜行為對航運及貿易的影響及其內在因素，將有助於航運公司決策者將海盜行為對航運及貿易出口的影響降至最低。

（馮佳培：香港船東會副總監）

AA Talk

The Relationship between Lettered Rules and Numbered Rules in York-Antwerp Rules

Rocky Siu

Purpose and scope

The York-Antwerp Rules, that is, the Glasgow Resolution 1860, have only numbered rules. It is a set of rules which deals with specific situations. It was not until the York-Antwerp Rules 1924 that the lettered Rules were introduced, which state the general principles of general average.

When there is a potential general average, provided that the York Antwerp Rules apply, it is important to identify which rule, or set of rules, are applicable to the situation in order to determine the properties involved, their contributory values, the amount allowed in general average and whether there is any made good. The relationship between the lettered Rules and numbered Rules plays a critical part in such an exercise.

While the Rule of Interpretation seems to provide an immediate answer to the relationship between lettered rules and numbered rules, the result of its application to any specific situation is not as simple as it first appears. The purpose of this article is to demonstrate the relationship between the lettered Rules and numbered Rules and its effect and implication.

Rule of Interpretation

In the York-Antwerp Rules 2016, the Rule of Interpretation reads as follow,

'In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.'

The Rule of Interpretation was introduced since 1950. There was no material change in its wordings. The only change which has been made since the York-Antwerp Rules 1994 is the introduction of the Rule Paramount.

When the lettered rules, which state the general principles of general average, were introduced in 1924, the set of rules did not mention about the relationship between the lettered rules and the numbered rules. It is for the purpose of bringing in international uniformity in the laws and practices of general average which introduced the lettered rules. The rules before 1924, which had no lettered

rules, were described by G. Hudson and M. Harvey in their book that *'these rules were numbered in no particular sequence and could not be said in any way to comprise a code of general average.'*

The relationship between lettered rules and numbered rules soon became a critical issue in the case *'The Makis'*.

The Makis and 'The Makis Agreement'

The Makis was loading at the port of Bordeaux. During that time the foremast of the ship broke and fell on the main deck which caused a derrick to fall into and damaged the cargo hold. The damage was then repaired and the ship proceeded to her destination. It should be noted that the ship and cargoes were not in peril during the stay in the port of loading. There was a second casualty during the voyage and the ship was being put into a port of refuge, however that is not related to the purpose of this article in explaining the relationship between lettered rules and numbered rules.

The issue on the first casualty was whether the expenses (wages and provisions of master, officers and crew, etc) incurred during the repair of the ship for the safe prosecution of the voyage (while the ship and cargoes were not in peril) should be allowed as general average. It was held by Roche J. that *'none of the above mentioned items of expenses incurred at the port of Bordeaux in connection with the first casualty came within Rules X., XI. or XX. of the York-Antwerp Rules 1924, and therefore they were not recoverable in general average, because they were not incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure, and Rule X did not apply to a case of the repair of accidental damage and the shifting of cargo thereby caused where the ship was in no danger.'*

The decision in the case is closely related to the construction of the York Antwerp Rules made by Roche J, and Roche J. opined that *'the Rules in the first place lay down the general principles which are to apply, and then deal with specific cases, not by way of mere illustration, but in order to make certain what the Rules provide with regard to those specific cases. The Rules must be read together and as a whole, and, not as two codes one of which may contradict the other.'*

If Rule X could be applied without the operation of Rule A, the expenses at the port of refuge/loading could probably be allowed as general average which enable repairs to be affected that are necessary for the safe prosecution of the voyage. However, Roche J. ruled that both of Rule X and Rule A must be applied together, which in his view is the correct construction of the York Antwerp Rules, and thus the expenses in port of loading (Bordeaux) were disallowed by Rule A as both the ship and cargo were not in peril when the expenses were incurred.

It is commented in Lowndes that 'it was clearly the intention of the framers of the 1924 Rules, and of the Stockholm Conference which adopted them, that all cases provided for by the numbered Rules should be considered as general average, and that the lettered Rules laid down the general principles to be applied in those cases not specifically covered by the numbered Rules.'

The decision in *The Makis* was not welcomed by the British shipowners and underwriters, and an agreement was made by them, known as the 'Makis Agreement', as follows,

'Except as provided in the numbered Rules 1-23 inclusive, the adjustment shall be drawn up in accordance with the lettered Rules A to G inclusive.' The Makis Agreement formed the backbone of the Rule of Interpretation.

Whether numbered Rules are exceptions

There is a view that the numbered Rules are exceptions to the general principles of general average, that is, the lettered Rules. John Macdonald described the numbered Rules as 'a series of exceptions to the wider principles of general average.'

Although it is generally accepted that numbered Rules are treated as exception, it should be borne in mind that the numbered Rules pre-dated that lettered Rules. At the beginning of the York-Antwerp Rules (The Glasgow Resolution), there were only numbered Rules and not until 1924 that the lettered Rules were introduced. If the numbered Rules were truly exception, it means that the exception exists earlier than the principle.

In addition, the York-Antwerp Rules are a set of practical rules which deal with general average with the aims of gaining international uniformity in practice. Unavoidably there are compromises between the nations, which have different principles in general average, in order to agree on a set of rules which is acceptable to all. As a result, the York-Antwerp Rules settled somewhere in between the 'common safety' and 'common interest' approaches of the general average. For example, if expenses at port of refuge allowed under Rules X and XI for safe prosecution of the voyage are treated as exception, such view may overlook the fact that such expenses were justified under the 'common interest' approach.

It has long been agreed that sacrifice and expenditure made or incurred under numbered Rules are directly allowed as general average. So, rather than saying that numbered Rules are exceptions, it is perhaps better to treat lettered Rules as principles facilitating and expanding the general average to situations which are not directly deal with by the numbered Rules.

Rule G, Rule XVI and Rule XVII

The first example is about the amount to be made good for cargo loss and/or damage and contributory value of cargo. These items are within the domain of both Rule G and Rule XVI & XVII.

In Rule G, it stated that *'general average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the common maritime adventure ends.'*

In Rule XVI a(i), it stated that *'the amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.*' There is similar provision in Rule XVII a(i) in determining the contributory value of cargo.

It is obvious that there are different provisions from Rule G and Rule XVI &XVII when dealing with the amount to be made good and contributory value of cargo. If the value is determined according to Rule G, such value is potentially affected by the fluctuation of the market because the basis of the value is the time and place that the adventure ends. While it is totally equitable that the value should be determined at the time and place that the adventure ends because that is when and where the right of contribution are crystallised, it may bring practical difficulties in determining such value in practice.

With the operation of Rule of Interpretation, such value is determined by Rule XVI & XVII, rather than by Rule G, and being ascertained by the commercial invoice rendered to the receiver or the shipped value if no such invoice. In addition to free from market fluctuation, the use of value based on the commercial invoice may reflect the value of the cargo at the destination rather than at the port of discharge where the adventure ends, in the case of multimodal transport, which probably is a higher value. The purpose of using the commercial invoice value is to reduce expense and delay in the adjustment process.

However, the first part of the Rule XVII a(i) stated that *'the contribution to a general average shall be made upon the actual net values of the property at the termination of the common adventure...'*, which emphasized that the principle in Rule XVII align with Rule G. The commercial invoice value is used, as a means, to ascertain the contributory value at destination. If the invoice value is wrongly declared, then such situation is being dealt with Rule XIX, which is out of the scope of the article.

It has been pointed out by Lowndes that *'the Rule of Interpretation requires that the numbered Rules shall override the lettered Rules only to the extent that there is inconsistency between them in any particular case. It should not be assumed that inconsistency exists, and an attempt should be made to reconcile all the provisions of the Rules so far as possible.' The Alpha* is a good illustration of this point.

The Alpha, Rule A and Rule VII

In *The Alpha*, the vessel, which is a tanker with mixed products, ran aground on a sand bank in the River Zaire. General average sacrifice and expenditures were made and incurred, including the use of her own propulsion to refloat the vessel. During the refloating, the vessel was further damaged and was treated as a constructive total loss. A clause in the guarantee required that the general average was to be adjusted in accordance with the York Antwerp Rules 1974. It was argued by the defendant cargo owner that the master's behaviour was unreasonable, which did not fulfill the requirement of Rule A, and could not amount to general average act.

The Rule VII stated that *'Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage…'* There is no explicit requirement of reasonableness in Rule VII, if reasonableness is a necessary requirement, it must be imported from Rule A.

It was held by Hobhouse J that *'the true construction of Rule VII of the York Antwerp Rules did not contain an implicit requirement that damage should be reasonably caused. Following the Rule of Interpretation, Rule VII as a numbered as opposed to lettered rule, overrode the general principle requiring reasonableness in Rule A. The claim to general average was established once the general average act had qualified under Rule VII. The damage to the ship was the result of the general average act, namely the attempt to refloat which involved the risk of damage to the engines. The general average sacrifice was the resulting engine damage caused by the intention to refloat. The master's conduct could not be construed as an intervention which raised an issue of causation between the sacrifice and the resulting damage.'* In addition, it was held that Rule C and Rule E remained applicable while Rule A did not. So, the numbered Rules overrides the lettered Rules only to the extent that there is conflict between the Rules, but not beyond that point.

It was commented in Lowndes that, as a matter of construction, the decision in *The Alpha* is correct. However, the decision of *The Alpha* was probably the direct trigger of the Rule Paramount. In the Sydney Conference 1994, the majority view is that there should be a requirement of reasonableness in all claims, no matter based on numbered Rules or lettered Rules.

Rule Paramount

The Rule Paramount stated that *'in no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.'* The effect is that both lettered and numbered rules are now subject to the same requirement of reasonableness.

The York Antwerp Rules with the Rule Paramount is described by G. Hudson as a three-tiered hierarchy within the Rules. On the top of the system are the Rule of Interpretation and Rule Paramount. The middle tier is the numbered Rules, and the bottom tier is the lettered Rules.

If *The Alpha* were to be decided under the 1994 Rules, the application of Rule VII would subject to the requirement of reasonableness. However, it should be noted that if it is the 1974 or earlier version of the York Antwerp Rules were incorporated in the contract of carriage, the Rule VII, as well as other numbered Rules, are not subject to the Rule Paramount.

Conclusion

The relationship between numbered Rules and lettered Rules are mainly governed by the Rule of Interpretation. The requirement of reasonableness is imposed to both numbered Rules and lettered Rules by the Rule Paramount if York Antwerp Rules 1994 or later version is being incorporated into the contract of carriage. While lettered Rules state the principles of general average, numbered Rules are not exceptions, but are Rules directly applicable to specific situations. The numbered Rules override the lettered Rules only to the extent that there is inconsistency.

Rocky Siu: BSc LLM AFNI, Associate of Association of Average Adjusters, Trainee Average Adjuster at Asia Maritime Adjusting (AMAdj)

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DECLARATION

I, the undersigned, hereby apply for admission to membership of the Institute of Seatransport, and do agree, if admitted, to comply with the By-laws and by any subsequent amendments and / or alternations there to which may be made, and by any Regulations made or to be made for carrying them into effect.

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