Legal Aspects of Seaworthiness in the International Maritime Law based on the Iranian Judicial Precedent

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Abstract

Seaworthiness is a determining factor in maritime transport, but given the scope and importance of this concept, there is no precise definition in the treaties and international conventions and regulations and only the seaworthiness of the ships has been referenced as the ship owner and carrier have been made obliged to provide seaworthiness of the vessel. Seaworthiness covers a broad meaning in terms of vessel's technical field issues, crew and documents as well as the vessel's cargo.

Keywords: International Maritime Law, Maritime Transport, International Regulations, Seaworthiness.
Introduction

Sea transport plays a key role in international trade due to its low cost and moving of grate amount of goods with safety. To create the necessary ground to accomplish these objectives, necessary arrangements should be considered for Maritime safety. In other words, upon determining the shipping safety, the international maritime transport of goods will be done properly. To provide this safety in addition to security of the shipping lines, the cargo carrying vehicle, the vessel, shall also be equipped with legal and technical tools for proper and speedy international transportation of goods. Maritime law has codified various international and domestic rules and has announced seaworthiness as a legal and lawful obligation within different conventions. In this relation, the defined standards from technical points of view such as the age of the ship, its type and size, and its building method and also required standards have been codified even after their construction, in order to maintain security standards through inspection and classification of the ships. In addition, specific criteria for training of manpower and human resources have been considered to apply these features to human resources.

At the same time, seaworthiness is considered as a comprehensive and sophisticated commitment that its enforcement varies by subject, for, violating it in some cases, requires fixing of defects and in others requires seizure of the ship and even scrapping it. In fact, this research is going to find an answer to this fundamental question that what is the nature of seaworthiness commitment from international maritime law point of view and what is legal proceedings for that and what will be legal consequences in case of a breach and whether the existing legislation is adequate to provide for the seaworthiness or not, and otherwise, what will be the legal solutions?

Many of the international maritime claims relates to the sea transport by ships which caused accidents which many of them are due to the lack of the ship's seaworthiness and defect in the ship. There are some shortcomings in the international laws and customs as well as Iranian domestic laws in respect to the seaworthiness concept and its diagnostic and losing criteria during the voyage, and that what person organization is responsible for seaworthiness which are accurately described in this thesis.

There is no comprehensive research done on seaworthiness and the existing maritime law books including "Maritime Law" by Professor Hardy Iwami, translated by Dr. Mansour Pour Nouri in Iran, have talked about this issue in a general sense. Also, there are some international treaties and conventions to which Iran has already joined some of them, Such as the Convention on the Safety of Life at Sea 1974, or 1957 Convention on Limitation of liability of owners of seagoing ships and so on. Unfortunately, but regrettably just having the seaworthiness capability have been referenced in them. Iranian internal guidelines have also referred only to having seaworthiness capability.

This study aims to reach to a precise and legal definition of the seaworthiness concept and its diagnostic criteria as well as to determine the real and legal responsible body of failure in seaworthiness and the consequent damages caused by such failure. Seaworthiness plays an essential role in fast and problem-free transport of the goods by the sea, but technical and legal tools are needed to provide that. So far, treaties, domestic laws and court rulings have been trying to provide for this capability but in view of the incidents that have resulted in grate losses, it seems that provision of legal bases and therefore technical support to provide for seaworthiness is totally doubtful and questionable.
Hypotheses of this study are as follows.
1. Losing seaworthiness en route causes liability for the ship owner.
2. Classification agencies and inspectors play a very critical role in the awarding seaworthiness to the ships and therefore they have greater responsibility in this respect.
3- In case of infringement and wastage, the captain and crew will be responsible to compensate for the damages and losses if the vessel is not seaworthy.

Methodology
The research method is descriptive-analytic together with library and different websites referencing and if necessary, some organizations will be relevant in analysis.

First topic: physical capabilities in terms of seaworthiness
This aspect of the seaworthiness is about the building, age, capacity and type of the ship as well as the equipment used in it and whether the ship is ready to sail and exposure to common risks during shipping and its voyage to or not.
Depending on the type of ship and the age and size of the ship and type of navigable waters and the period of the year in which the ship sails, a kind of seaworthiness is considered. (Ahmad Hussam Kassem October 2006 P .25). In regard to the vessel engines, piping, storage, and before moving of the ship, the carrier is responsible to be sure that the vessel is appropriately ready to sail, and if all his obligations are fulfilled in this respect or not. There is no specific definition of ships in the Iranian maritime law and only in one place, and just once when codifying the regulations of the law and regulations for maritime cargo shipping, in the fourth chapter of the Transit Law and in paragraph 4 of Article 52, the word "ship" has been defined as " a vehicle which is used for transporting cargo at sea. (Dr. Morteza Najafi Asfad, 2011) which is not certainly a general definition of ship and is incomplete and inefficient. In new Maritime rules and from the beginning at definition part, types of ships are defined. France, UK, Canada, China, Croatia are examples of such countries. In 1994 law of Croatia " except warships, ship is referred to any type of vessel which moves to sail and has 12 meters of length and 15 tons capacity and have the licenses to carry more than 12 people".
In the model maritime law prepared by the legal advisor to the International Maritime Organization (IMO) for English-speaking countries of the Caribbean region, the word "Ship" "includes any vessel that is used in shipping." (Dr. Morteza Najafi Asfad, 2011). According to the Iranian rules and regulations, the Iranian ships shall have Iranian names and using the names already registered or are used for the armed forces, are forbidden. The name of the ship, shall be printed on the ship's hull to know if the ship is sailing. The ship's name, specifications and registration port shall be mentioned in the ship's registration document. (http:// daryabary.persianblog).
Having a homeport and is seaworthiness certificate are other characteristics of the ship. Under article 1002 of the Civil Code homeport is too important. In respect to the ships, the place of registration or the registration port has been accepted as its residence place.
Another important feature is the nationality of the ship. In fact, nationality is the relationship between the individual and his government. Some say that in order to obtain citizenship, a number of special procedures shall be followed. Those ships that have nationality, will enjoy some rights through their government and will be subject to its territorial laws. For instance, they
will have the right to fly the flag of their government, and will benefit from all the facilities accordingly.

In a general classification, ships are divided into two categories: Military and civilian. The military ship is applied to any vessel that is under command of the armed forces of a country and with external signs and characteristics of military ships and nationality of that country and registered in the list of her national fleet and under the command of a naval officer in service of the said state having his name registered in the list of naval officers or any other document by the same value (Dr. M.R Ziaee Bigdili, 2007). There are types of this category of ships and every country has one or more military ships in respect to its type of military equipment and maritime borders. According to another category, ships are divided into to seagoing or ocean-going types. Since their building till a certain time which is different between types of the ships, the ship is seaworthy, between 15 and 25 years, and then ships are scrapped and its plates and components are used for other uses and in addition the ship's nationality and registration will be revoked by the court. For example, Article 3 of the Maritime Law considers destruction of the ship as one of the nationality revocation cases. Dramatically, seaworthiness depends on different environmental conditions during the trip including travel time and the Voyage route of the ship and type of water in which the ship moves (Ocean, sea, river, lake, pond, etc.), type of ship and cargo type of knowledge available at the time the ship journey carries on.

Second topic: Seaworthiness from skill training and human resources points of view for ship and its crew

Another important aspect for seaworthiness, is training and skills of the ship's manpower. As in Article XIV of the United Nations Rotterdam Convention on the contracts for the carriage of goods by sea is stipulated, one of the tasks of the carrier is to provide competent staff and Manpower prior to sail and during the sea travel.

As expressed in Resolution 2010 of Manila conference, a main part of maritime accidents and pollution are caused by human error. One of the most effective ways is to ensure that the highest possible standards of training, certificate issuance and qualification of seafarers employed or seeking employment on the ship processes are used to reduce the risks associated with human error in the activities of Sea-going vessels. The International Convention on Standards of Training, Certification and Security of seafarers has been enacted in 1978. In 1971, the draft convention was on the agenda of the Maritime Safety Committee, and in 1978 the final text was prepared for the project at a diplomatic conference. The International Conference ended its work in July 1978, and in accordance with Article XIV of the Convention, its provisions shall come to force twelve months after the date on which at least twenty-five states have been acceded to that, provided that the total gross tonnage of merchant fleet of one-hundred ton vessels and above of the said states are not less than 50% of the gross world tonnage at minimum. Upon fulfillment of these conditions the Convention has been put into force from 28th April 1984. However, in 1995 and 2010 some amendments have been made to the Convention. By the end of July 2012, the Convention contains one hundred and fifty-six members of which 99 members have 22.99% of the world's gross tonnage of merchant fleet. (Dr. M.R. Ziaee Beghdili, 2007).

If the ship loses her crew during the voyage for any reason, such as becoming ill or leaving the ship or death, especially if that person's role is very important in the ship, the ship owner shall replace the missing person as soon as possible by a new crew. The carrier agent is responsible for
loss, damage and delay in delivery of the goods during the period of his responsibility, unless he can prove that the loss, damage or delay is not caused by his negligence or any of the persons listed in Article 18 of the Rotterdam Convention or existence of force majeure and other incidents mentioned in paragraph 3 of Article 17 of the said convention can be proved. In paragraph 2 of Article 55 of the Iranian Maritime Law, the opposite stance has been taken and is said that" the ship and the carrier will not be responsible for loss or damage caused by the reasons set forth below".

Third topic: Seaworthiness by documents
The carrier, in addition to his responsibility to make the ship seaworthy from physical, crew and manpower points of view, is also required to make available certain documents in the ship. These documents are to ensure safer shipping and commitment to international and domestic laws. For example, having some documents is very important for the ship to enter or exit a port, or documents relating to the ISM (safety management rules) Code and other conventions that the flag state has acceded to them, as well as documents relating to goods in transit and documents related to the course, etc.

"The master shall always keep following documents in the office of the ship: (1) the ownership document of the ship or a certified copy thereof, (2) Registration and nationality documents of the ship, (3) List of staff and crew, (4) List of passengers carrying in the ship, (5). List of cargo, (6) shipping documents, (7) Clearance outwards, (8) Certificates of Quarantine, (9) Technical and legal certification, (10) Books related to the Article 13 of this Law, (11) Tonnage Certificate, (12) The list of chose of possession of the ship, (13) Documents and certificates relating to treaties that I.R. Iran's government has acceded to them.
Note: when there is a secure electronic certificate, keeping an electronic version suffices."
Some harbor states have passed special laws and regulations for entry and exit, mooring, unloading and loading for that port and have made having some documents necessary to allow the ship to exit the port, which the carrier is responsible to prepare and keep those documents in the ship in order to provide them to the harbor state, otherwise the lack of said documents is considered as unseaworthiness.

Fourth Topic: Seaworthiness in terms of cargo features
The goods are the main reason for countries' trade and there is a large diversity in terms of type which plays an important role in maritime transport, handling and temporary storage at ports and ship (Dr. Mahmoud Saffaarzadeh, 2006). In the previous section, it was stated that unseaworthiness can be due to the ship and its equipment or crew and documents. Now, it can be added that unseaworthiness may be the result of the ship's cargo meaning that either the ship or the cargo is not appropriate for shipment or it has not properly been loaded and braced according to the rules and regulations that may lead to accident and the damage.
According to the Rotterdam Convention the carrier is responsible for sound and accurate receiving, loading, handling, transportation, preservation, caring, unloading and delivery of goods and unless the contract are entrusted the said responsibility to the shipper. In the Iranian maritime law shipment of live animals has been excepted as in Article 52: shipment, including any cargo, ranging from property and objects any other commodity, except live animals and loads which in accordance with the provisions of the contract of carriage must be shipped on deck, and actually shipped in this way. In the investigations made, it was found that exports from
many developing countries must necessarily be on deck, for example, wood and live animals and etc. for which the committee proposed to define the living animals as the cargo. With the advent and widespread use of container, deck cargo regulations also became important because a great number of containers are carries on deck and additionally, there are some ships which have been made only to carry the cargo on their deck. (Dr. Ibrahim Taghizadeh, 2010).

The legal nature of the obligation and responsibility of the carrier and the effects of breach of undertaking

**Legal nature of seaworthiness**

In domestic law, the obligation is defined as "the act on the right according to others benefit" (Dr. Mohammed Jafar Jafari Langroodi, 2005) and the Black's Law legal dictionary it is defined as "the legal and moral duty that failure to perform it is liable to punishment and restrictions."

Some doctrines consider the legal nature of seaworthiness as an absolute commitment, and others see that as a relative commitment so as to the care within reasonable limits to the extent to which a normal person takes in ordinary conditions. Common Law is more inclined to the former view, the absolute commitment, which in fact, is a sole commitment that imposes an unconditional commitment to the carrier for providing seaworthiness. Absolute commitment does not mean that the carrier to provide a full and complete ship but he should only make the ship ready to face any danger that is likely to come during its voyage, considering the travel time, type of water in which it sails, type of cargo that the ship carries and the space in which the cargo is depoted and as a result, if there is a breach, either by the carrier's fault or not, should that matter is concealed and not revealed by inspection, again the carrier would be is responsible. (Ahmad Hussam Kassem, 2006 P.76). Of the important points of the commitment issue is that whether requiring the carrier to provide seaworthiness is a major and important requirement or a minor one or none of them? The main condition: If not the nature of the contract, it is considered as a very important part of the contract. In general, the main condition, the condition that is the root of the contract and its breach would lead to material breach of the contract and would entitle the injured party to terminate that. On the other hand, some conditions may lead to termination of the contract after the start of the contract if a certain situation arises, such condition is called consequent condition (it must occur after the said certain conditions happen).

Both of these types of conditions that form the subject of the contract and breaching them entitles the injured party to terminate the contract within its term, differ from each other. The other two conditions, entitle the injured party to terminate the contract before its commencement or after that. Breaching of a condition, even a minor one, would entitle the other party to deny the contract. In certain cases, incapability of the carrier company to provide seaworthiness can entitle the charterer or cargo owner to reject the contract of carriage. (Ahmad Hussam Kassem, 2006 P 166).

**Carrier liability in seaworthiness**

"Commitment to carriage is a contractual obligation that its full implementation will lead to the result which will be Safe and sound shipping of the goods to the destination in due course and its delivery to the recipient " (Dr. Morteza Najafi Asfad, 2011). If this result is not accomplished, for example, the goods is damaged or not delivered on time, the carrier will be liable unless the
he proves that his failure to perform its obligations had been due to the reasons beyond his will. (Dr. Morteza Najafi Asfad, 2011). As a result, the liability of the carrier is considered to be as contractual liability and the injured party shall prove incurring of the loss and breach of commitment and the relation between the loss and breach. But according to the Brussels and Hamburg and Rotterdam Conventions, the injured party is no longer needed to prove the breach of commitment and casualty relationship after proving of loss is no longer necessary since upon proving the loss, the other two elements are assumed to be at hand.

**First topic: the nature and basis of carrier's liability**

There is no consensus about the liability of the carrier and there is disagreement between the assumption of liability carrier or of a fault (Articles 516 onward of the Iranian Civil Code). Some researchers consider that based on the real presumption of liability, because mere proving of the committing of fault by the carrier does not removes his liability, therefore he is liable for the damages of unknown causes (Dr. Ar. Mohammadzadeh Vadjany, 2002). In addition, it is one of as an exceptional cases and in accordance with the French and Britain case law ruling it is necessary for the carrier to prove that he had taken necessary precautions. Since according to the rules of The Hague and the Law of the Sea establishment of taking necessary precautions is of the carrier's responsibility. At first it seems that The Hague treaty has adopted fault-based system, that is not true because even upon proving tking of the necessary precautions, will not be discharged of his liabilities, moreover it is necessary to prove one of the exceptional issues. By such proving, of exeptional issues the presumption of liability of the carrier will be excluded.

**Second topic: the basis of the carrier liabilities according to the Brussels, Hamburg and Rotterdam Conventions**

Determining the liability basis in accordance with the Brussels Convention is cimplicated because there are examples of ((fault assumption)) and ((liability assumption can be seen.)). The first paragraph of Article 3 obliges the carrier to take care of necessary issues before every voyage. It is the issue that leads the liability basis towards fault assumption whish the opening of the article 4 also strengthens that: "The ship and carrier shall not be liable for any damage caused by unseaworthiness unless they are at fault in preparing the ship to receive and supply its needs in terms of staff, equipment and adequate supplies in warehouses and cold storage facilities and other parts of the ship in which the goods are kept. “But the first and second paragraphs of Article 4 of this Convention counts the cases that upon proving any of them, the carrier is discharged from liability that it is not compatible with the fault presumption make it closer to the liability assumption (Dr. Ibrahim Taghizadeh, 2010)

**Exemptions and restrictions of the ship owner in respect to the seaworthiness**

The loss or damage to goods already handed over to the ship owner does not necessarily make him loable, for the ship owner may have become exempted from liabilities according to customary law provisions or explicit contractual conditions and even if he is considered liable, such liability may have been limited due to one condition in the contract or by law in a way that the owner cannot fully compensate for the loss incurred (Professor Hardy Iwami, DR. Mansour Pour Nouri, 2005)
In the Brussels, Hamburg and Rotterdam conventions, invalidity of conditions that are followed by non-liability of the carrier have been stipulated. As mentioned before, one of duties and obligations of the carrier is to prepare and make ready the ship which is seaworthy for receiving the goods, carrying it and sailing. To this end, he is obliged to be ensured about theseaworthiness of the ship in terms of equipment, crew and necessary supplies and make the warehouses and cold storage facilities, cargo holds and all parts of the ship ready before and during the trip.

The effects of commitment breach and liability in respect to the seaworthiness
Upon a breach of seaworthiness commotment and incurring losses, the liability for damage compensation becomes the issue and the ship owner or the carrier or the charterer is obliged to compensate the loss for the injured party.

A geneal rule for compensation of losses in the legal systems of all countries is restoration of the status quo ante. Except for the cases where the incurred loss is in cash or a very minor damage restoring the status quo ante cannot be possible. In such cases, this general rule means that compensation provided shall restore the situation of the injured party to the same state as if it was not incurred damage. In fact, the restoration of the status quo may be affected by returning the original and if it is impossible, its substitute can be returned. These two have been discussed in detail in domestic laws which due to restriction of place cannot be discussed here((Dr. Ebrahim Taghizadeh, Tehran, 2010). Most of the courts in different countries apply the said general rule of restoration to the status quo ante of the injured on the basis that the situation of the plaintiff shall be restored to his similar situation prior to incurring the loss(Dr. Ebrahim Taghizadeh, Tehran, 2010).

Persons liable in respect to the seaworthiness
In the shipping and maritime industry, there are people who either directly or indirectly affect maritime safety and environment, people named in various maritime treaties and conventions and have been internationally considered liable against the injured party. These people are obliged to do their utmost to accelerate maritime transport in complete safety to prevent maritime accidents. These include: 1. Shipbuilder, 2. Ship owner, 3. Owner of cargo 4. Insurer 5. Flag State

Conclusion
With development of maritime transport, ships as the means of that are also highly regarded, and the relevant skills and knowledge for shipbuilding have been enhanced day by day and better and more modern ships designed and built in accordance with the mode of transport and sea travel, travel time and cargo volume. Some of these ships are built and began their operation for military purposes, some for commercial and others for tourism. At the start of their voyage, ships shall have some properties and characteristics which on the whole are called saworthiness which is defined according to their specific purpose and shipment. Thus, seaworthiness varies based on the type of cargo, voyage, waterway, crew and documents. According to treaties and conventions relating to the carriage of goods by sea, the ship owner is obliged to take all necessary precautions to prepare the ship for sailing. His allegations on not being informed about the defects cannot be accepted. This commitment is just relates to the marine hazards that may
happen during that voyage and when shipping that specific goods. Surely, he cannot guarantee that his ship is resistant against stormy weather and in fact, this means that seaworthiness is a relative and not absolute commitment. Since the beginning of the construction and launching of the ship and its sailing and cargo transportation, the ship must have a set of standards that is codified by the international treaties and conventions. Conventions such as the International Convention for Safety of Life at Sea (SOLAS 1974) and its related Protocols, the International Convention on Standards of Training, and Security Certification of Seafarers (STCW 1978), Convention for the Suppression of analog sea of waste and other materials (LC 1972) the International Convention for Safe Containers (CSC 1972), the International Convention for the Prevention of Pollution from Ships (Appendices 5, 2, 1) MARPOL 1973/78, and Appendices 3, 4, 6 of the International Convention on the Prevention of Pollution from ships (MARPOL), the international Convention for the measurement of ship capacity (Tonnage Measurement 1969)), the Convention against unlawful acts against the safety of navigation (SUA1988), Seafarers Identification Documents Revising Convention adopted in 2003, (Convention 185), protocol No.108 related to the National Seamanship Identification of the Crew of the ships (Convention 108, 1958), Maritime Labour Convention(MLC 2006) and Convention on merchant shipping (minimum standard 1976) known as ILO C.147 and etc. If the ship has these standards, it will be allowed to sail, otherwise, it may not continue its shipping operations. Further, if such a ship sails and any consequent losses incurs, all individuals working in this relation shall be considered liable in regard to the incurred losses including the owner of the ship, inspectors or agencies that are responsible for inspection and issuance of the relevant certificates, or the master or captain of the ship. Each one of these persons will be considered liable in proportion to his share and responsibility in provision of the ship and maintaining her seaworthiness prior to and during the voyage to compensate for the losses. It should also be noted that lack of the accepted national and international regime and regulations about the accountability and responsibility of the classification societies and ambiguity about the liability basis have led to different reactions in respect to liability of the classification societies regarding the incidents.
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