

# Comparative legal study defining the bill of lading significance in maritime transport of goods

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**Abstract.** The given research paper studies the regulatory normative acts of the Russian Federation and foreign states related to the legal meaning of the bill of lading applying the following scientific methods: dialectical method, the comparative legal and historical ones, systematic, formal legal method and special legal interpretation approach. Particular attention is paid to the legal documents of the United States of America and Great Britain as the legal acts of these countries have had the greatest impact on all foreign legislation related to the carriage of goods by sea in general, and the bill of lading, in particular. The authors highlight the points that require a more detailed study as well as other general and different features of the bill of lading in the Russian Federation and in other foreign states legislation. The problematic aspects of the bill of lading caused by the peculiarities of the Russian Federation historical development are also determined in the article. The studied material allows the authors to propose certain amendments to the current legislation of the Russian Federation: to include the legal regulations of the bill of lading into the legislative codified act – the Code of Merchant Shipping of the Russian Federation while at present they are mainly located in by-laws. Keywords: Bill of lading, liner bill of lading, charter bill of lading, comparative law, maritime transport of goods, civil law, merchant shipping code

## 1 Introduction

Nowadays sea cargo transportation is one of the most popular ways to deliver industrial products, agriculture, and other types of goods that are actively used in the global economic system. The United Nations website states that more than 80 percent of all world trade is carried out by sea. The importance of this process has led to the development of different legal regulations and public relations including the ownership right of the shipped goods.

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This right is regulated by the bill of lading, which, as a legal phenomenon, was originally based on the maritime transport of goods and later on used by other types of transport.

However, sea transportation is characterized by the fact that for the most part it has an "international" nature, as the cargo is taken from one state to another. This determines the international nature of such document as a bill of lading. At the same time, the bill of lading legal meaning varies significantly from state to state due to the difference in legal systems. On the one hand, this may complicate trade activities in commodity exchanges between states with radically different interpretations of the bill of lading legal meaning. However, the variety of legal approaches, on the other hand, makes it possible to analyze them in order to borrow and adapt into the national legislation of the Russian Federation as certain approaches have been already successfully accepted in foreign countries. In this regard, it seems quite relevant to conduct a comparative legal study defining the bill of lading significance in maritime transport of goods.

## 2 Methods

The applied dialectical method allows to study the problem comprehensively and to find certain contradictions and interrelations in it. General logical methods of analysis, synthesis, deduction, induction have been also used in the given study.

The comparative legal method is also applied. It helps to study the regulations of various states connected with the bill of lading, specify common and different features that can be borrowed from foreign legal systems into the legal system of the Russian Federation.

The historical method is necessary for a deeper study of normative acts of foreign states that took place in history, but have ceased to operate nowadays. In addition, this method helps to understand the mutual influence of normative acts of foreign states among themselves, the analysis of social relations that existed in history and used as a basis for certain legal regulations and acts.

The system method is applied to analyze the variety of legal acts as a single system that mutually influences each other and is divided into subsystems - the legal systems of national states.

The formal legal method is necessary in order to figure out both external and internal forms of certain legal phenomena, which makes it possible to form legal concepts.

The method of special legal interpretation is applied to specify the legislator's will, which is expressed in certain legal acts.

## 3 Results

First of all, it is necessary to highlight important features of maritime goods transport in the Russian Federation – they are mainly liner: the cargo that needs to be transported arrives at the port before the cargo ship arrival. There is also a second type of sea transportation – tramp - in which the transportation of goods does not have any exact schedule, specific deadlines, as well as ports of departure and destination, and these terms are determined in the contract.

**Table 1.** Distinctive features of sea transportation methods.

Method of transportation	Features
Liner	<ol style="list-style-type: none"> <li>1. Exact schedule of ships</li> <li>2. Rigid delivery terms</li> <li>3. The ports of departure and destination of the vessel are known in advance</li> </ol>
Tramp	<ol style="list-style-type: none"> <li>1. There is no exact ship schedule</li> <li>2. There are no specific terms for the delivery of goods</li> <li>3. The ports of departure and destination of the vessel are specified in the contract</li> </ol>

The liner method of sea transportation differs from the tramp method in the reduced time that a cargo ship spends in the port, which has a positive effect on the cost optimization profitable for the owner of the vessel, which does not stand idle for an extra amount of time, and for the port owner, where a constant turnover of ships is ensured. Based on this specificity, Russian authors study mainly sea cargo transportation in a liner way, and the role of the bill of lading in it (Ivanova, 2015). At the same time, Russian legislation also distinguishes only these types of bills of lading. Thus, the liner bill of lading is mentioned in the Order of the Ministry of Transport of the Russian Federation, enacting the Regulations on Sea Lines (<http://www.pravo.gov.ru>. November 30, 2021 No. 0001202111300136). However, the legislation of foreign states, as a rule, does not divide bills of lading into the types noted above. For example, the British legal system does not single out either a liner or a tramp or a charter bill of lading separately. (Gutsulyak, 2019).

A.G. Kulpin points out that the main function of the liner bill of lading is that it is necessary in a contract execution for the carriage of goods, while at the same time it acts as a carrier's receipt that he has accepted certain goods for transportation. Also, the specified bill of lading is used as a document of title and as a security, according to which the holder can dispose this or that cargo or demand its issuance at the port prescribed in the contract. At the same time, the charter bill of lading is not necessary for this contract conclusion, the terms of which are contained in the charter. The essence of a charter is that bill of lading is still a document of title and security (Kulpin, 1988).

It should be noted that Russian scientific schools, have an opposite opinion that the bill of lading is only connected with the liner method of sea transportation; in tramp shipping a charter is used instead (Churilov, 2021). However, in our opinion, it is not correct, since the current Russian legislation, as well as the legislation of a significant number of other states, does not ban the application of a bill of lading for tramp method of sea transportation. On the contrary, the bill of lading is indispensable in cases where the charterer and the consignee are not the same (Churilov, 2021). Article 119 of the Merchant Shipping Code of the Russian Federation states that the relationship between the carrier of a particular cargo by sea and the recipient, who is not one of the parties to the cargo transportation, is determined precisely by the bill of lading (Rossiyskaya gazeta. 1999. May 1-5).

It is worth mentioning that the bill of lading mentioned above is the only one in the Merchant Shipping Code of the Russian Federation, and basically, the bill of lading provisions are regulated by by-laws. Most foreign countries, especially of Anglo-Saxon legal system, regulate the bill of lading mainly by national laws, as well as by judicial precedents based on these laws.

So, for example, in the UK, relations regarding bills of lading were first mentioned in 1855 Bills Of Lading Act, which laid down the legal basis for the bills of lading application specifically in the sea transportation of goods (Bills Of Lading Act 1855 (repealed 16.09.1992)). This act for the very first time introduced such type of transportation documents as a bill of lading into the other governmental legal systems. The British

experience of the bills of lading legal regulations, legally adapted with certain local specifications, was later borrowed in other countries.

The fact that the bill of lading first appeared in the UK seems absolutely logical, since at that time this state was the most developed one in terms of both the economy and social relations formed on its basis. Besides that, Great Britain had a great maritime power with most of its territories (in India, Africa, Australia, South America, as well as in the Caribbean countries, etc.). British firms extracted resources that were transported by sea to the British Isles from the colonies, where these products of high value were transported from Britain again by sea to other states - participants of the British economy market. The urgent need of cargo transportation by various organizations on different emerging markets required a legal settlement of public relations associated with maritime transportation. This led to the enactment of the British law on bills of lading, which lasted until 1992, when the Carriage of Goods by Sea Act 1992 was passed. (Carriage of Goods by Sea Act 1992).

Unfortunately, due to certain 20<sup>th</sup> century historical episodes in the history of Russia which related to the lack of market relations development, involved into the merchant shipping, the Russian Federation legal system did not accept the British provisions on the bills of lading. At the same time, the regulations of bills of lading in the USA, namely the US Law "On Shipping, Bills of Lading, and Certain Duties and Rights in connection with the Carriage of Goods" of 1893 (Harter Act), which is in force up to this day, had a great influence on the Merchant Shipping Code of the Russian Federation mentioned earlier. The situation was also that the high level of American economy in the 2<sup>nd</sup> half of the 20<sup>th</sup> century involving maritime trade around the world greatly influenced the entire system of bills of lading in the sphere of sea transportation.

The analysis of the above-mentioned normative acts of Great Britain and the USA, leads to the conclusion that, unlike the Russian legal system, the legal systems of these states give an extremely high priority to the legal regulation of the bill of lading. This is due to the fact that the legal protection of such a participant in public relations related to maritime transport, as the consignee, in the event of a conflict or dispute largely depends on the legal validity of the bill of lading. So, for example, in the UK law on goods carriage by sea, it is indicated that the legal grounds for a bill of lading are that this document represents certain goods on board of a cargo ship or accepted for loading, while the bill of lading should have been signed either by the captain of the cargo ship or by a person authorized by the owner of the ship to sign the legal documents analyzed in this research paper. At the same time, the bill of lading acts simultaneously as the evidence that a contract for the carriage of goods by sea was concluded between the parties, and that the cargo from a specific addressee is being accepted for carriage by a specific carrier. It is necessary to say that in a bill of lading, the acceptance of cargo is carried out according to a loading order, while, for example, in an invoice, the acceptance is carried out without one.

Furthermore, the comparison of Russian and other foreign laws points out that basically all national legal systems accept that the bill of lading has a character of a title. Per contra the certain laws in Great Britain state that the document analyzed in this paper is not a basis for any holder to obtain any legal rights, as it only delegates the rights of a person who was the original holder or assignor. At the same time, British law allows contestation of the bill of lading both on the grounds that the carrier committed erroneous actions in its preparation, and due to other factors, the set of which is very wide. Currently, both the United Kingdom and the United States in their legal systems allow a wide list of grounds for contesting a bill of lading, while the Russian legal system does not follow this path.

At the same time, the British courts practice does not allow the contestation of the bill of lading in relation to the clause on the good cargo condition if this cargo was released without a special mark about its bad condition (Scrutton et al, 1996). Almost all legal systems assume that in both charter and liner sea goods transportation, the organization that

provides cargo transportation must indicate the cargo defects detected by external inspection. Otherwise, it is assumed that the consignee cannot refer to defects or shortcomings of the cargo that are not recognizable during an external inspection of this cargo (Revue de droit maritime compare. P. 144).

The study of the bill of lading externally shows that the Russian Federation legislation imperatively establishes a detailed list of bills of lading, which is not present in the legal systems in most other countries of the world. At the same time, the indication on the bill of lading analyzed in this paper of the number of copies in which this document is drawn up is a corresponding characteristic for all legal systems worldwide. (Molchanova, 2018).

Also, common features can be distinguished between the legal regulations of the bill of lading charters in the Russian Federation and foreign states legal systems, especially those related to the Anglo-Saxon origin. In accordance with the Russian legislation certain important conditions of the charter are included in the content of the bill of lading by means of reservations as it is a standard form of the charter often changed by the parties. As the authors point out the use of pro forma or standard form facilitates certain processes of work between the parties that are related to the contractual agreement, but it is necessary to coordinate the content of the charter standard form with the imperative norms of Russian legislation, including by-laws and the RF MLC. (Inshakova, Goncharov, 2019).

A similar system exists in common law countries. Thus, during the judicial debate in "President of India v. Metcalf", 1969, it was found that the charter assumed that the dispute should have been resolved in an arbitration court, while the bill of lading did not imply such provisions. The Court's findings indicated that the charterer's relationship with the cargo carrier should be governed by the charter and not by the bill of lading, despite the fact that the charterer was not the original shipper (Lloyd's Law Reports).

The significant issue of electronic bills of lading should be also raised. Currently the legal systems of states belonging to the Anglo-Saxon legal family carry out the legal regulation of both paper and electronic forms of bills of lading. This is due to the fact that "the peculiarity of an electronic bill of lading – is its security, since electronic signatures cannot be forged and distribution documents can be easily traced by them. Modern aspects of Globalization change the world market and thus, in order to strengthen international relations, modernization is also required in the sphere of document management, which will speed up the process of establishing contractual relations and add value to such a turnover. Consequently, the bill of lading as a paper document is becoming a thing "from the past" due to the development of electronic document flow (Osadchenko, Sokolova, 2021). Nonetheless, there are current difficulties in the Russian legal system in an electronic form of bills of lading application, which are related to the fact that Article 142 of the Civil Code of the Russian Federation considers a bill of lading among the registered securities and an electronic bill of lading in this regard will be recognized as a non-documentary security, to which specific requirements are imposed in accordance with Article 149 of the Civil Code of the Russian Federation (Rossiyskaya gazeta, 8 December 1994). These requirements currently make it extremely difficult to use a bill of lading in electronic forms. There is no such problem in other foreign countries.

## 4 Conclusions

Thus, it should be concluded that the legal regulation of the bill of lading does not differ too much in legal systems of different countries of the world, which is due to the fact that initially the bill of lading as a legal document was introduced in large capitalist states that carried out significant amount of maritime trade - Great Britain, and then the United States of America. Later on the bill of lading legal regulations were introduced in less developed countries considering existing experience and the need to adjust national legislation to the

legislation of the leading economically developed countries which have a long history of trade relations using the bill of lading in its British or American version.

At the same time, the Russian legal system in the 20th century largely fell out of the world economic system, as a result of which legal systems of the Soviet Union and then the Russian Federation formed the bill of lading regulations, different from the same legal regulations in most world states. And although after the collapse of the USSR, Russian law partially adopted the American model of legal regulation of the bill of lading, certain differences still remain. For example, the division of bills of lading into liner, tramp and charter is typical for Russian law, but this division does not exist in foreign regulations. Also, unlike the Russian legal system the legal systems of Great Britain and the United States give extremely high priority to the legal regulations of a bill of lading. Among the similarities one can single out the commodity distribution nature of the bill of lading, the possibility of its contestation, which, at the same time, has fewer grounds in Russia than in foreign countries.

It should be also remarked that Russian legislation on bills of lading is mainly represented by by-laws, while abroad it has the character of a law, which, in our opinion, is a more optimal way to regulate relations in maritime transport. Considering that the Russian Federation has a codified act providing regulations of rules on maritime commercial navigation, it seems necessary in order to optimize the legal regulation of the bill of lading in Russia to adapt such rules to the Merchant Shipping Code of the Russian Federation.

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