

# Research on “Control Right” in Civil Aviation Cargo Transportation

Zhongyi Zhao

Guangzhou Civil Aviation College, Guangzhou, Guangdong, China

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**Abstract:** In 2009, the United Nations established the legal system of control over goods transported by sea, which guaranteed the shipper's right to control goods under certain conditions. The “control right” of civil aviation transportation also needs to be guaranteed by system. This is to improve the legal system of civil aviation cargo transport, and to guarantee the control rights of Civil Aviation Cargo shippers over cargo. Civil aviation control right differs from real right, but in terms of subject, cargo control right plays a part of real right. With the continuous development of China's civil aviation cargo industry, China needs to solve the problem of “control right” in civil aviation cargo transportation from both judicial and cubic aspects.

## 1. Research background

### 1.1 Literature review

In 2017, Kuang Xujuan and others believed that with the growth of China's international trade, air transport plays an increasingly important role in the whole freight transport system. The proportion of freight it undertakes is increasing year by year. The economic scale of China and its trading countries has more and more influence on China's air cargo. This has no obvious impact on the signing of free trade agreements. International air cargo and China air cargo show differences (Kuang and Xie, 2017). In 2017, Li Yaning believed that there was a mismatch between demand and supply in China's civil aviation cargo transport. This mismatch cannot reflect the air freight rate. The reason for this phenomenon is the lack of a clear information market. Through the establishment of civil air cargo market, China can ensure the value-keeping ability of aviation enterprises. In order to continuously tap the potential of air cargo market and establish a new order of air cargo (Li, 2017). In 2017, Zhong Wei and others believed that in recent years, China's civil aviation industry has developed rapidly. Civil aviation has the ability to transport a large number of goods while guaranteeing a large number of passengers. This enriches the performance of the airport to a certain extent. With the increasing passenger and cargo volume of CAAC, real-time monitoring system plays an increasingly important role in this process (Zhong and Liu, 2017). In 2017, Shen Jianming believed that civil aviation transportation belongs to labor-intensive industry, and there is a high level of insecurity in both human and physical aspects. In order to deal with these unsafe conditions, it is necessary to have a perfect emergency plan in civil aviation transportation. The formulation of emergency plans should be based not only on Minhang enterprises, but also on different laws of different countries (Shen, 2017).

### 1.2 Purpose of research

The enactment of Air Transport Law not only establishes the legal system in the process of civil aviation cargo transportation from the legal level. It is also conducive to the connection between the legal system and trade system of civil aviation cargo transportation. But this law does not specify the issue of “control right” in the process of civil aviation cargo transportation. It also needs to be continuously established and improved in China's future civil aviation development. Previous regulations on the right of control over goods in the course of maritime transport have not been established, which has led to numerous problems concerning the right of control in the course of maritime transport. The signing of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea has a great impact on the legislation and judicature of China's

maritime transport. It can also promote research on relevant laws and regulations (Chen, 2017). In the development of civil aviation cargo, such a convention is also needed to stipulate the control right of cargo. This paper is a series of research on this issue, which provides a theoretical basis for the later formulation of laws and regulations.

## **2. The proposal and significance of “control right” in civil aviation cargo transport**

The control right of civil aviation cargo has not yet been clearly defined. But we can learn from the relevant provisions of maritime transport to constantly improve. This proposal is also based on the right of control of goods by sea. The right of control over goods by sea means that the shipper is identified as the controlling party in accordance with international regulations, and during the period of the carrier's carriage, according to relevant international regulations, the shipper has the right to operate normally under the limited conditions or to deliver the goods on the premise of the interests of the shipper. This right mainly includes such matters as carrier's change of destination or consignee. Therefore, civil aviation cargo can also introduce relevant international regulations to clarify the control rights in the process of cargo transportation (Li, 2018).

Solving the problem of civil aviation control right has the following two important meanings. Firstly, we can realize the connection between the construction of the relevant legal system of civil aviation cargo transport and the legal system of international cargo trade. Because in the modern civil aviation cargo transportation, the related international cargo trade will involve the international sales contract and the international cargo transport contract. This kind of goods guarantee system can not only guarantee the transaction security in international trade, but also safeguard the legitimate rights and interests of buyers and sellers from being infringed. It also guarantees the theory of the right of uneasy plea in contract law. Secondly, it guarantees the rights and interests of both parties in international trade and the related rights of third-party holders. Specifically, the purpose of establishing control right is to provide certain remedial measures for the seller when the sales contract can not be performed normally. Because in the international trade of goods, the seller mainly sells the goods as soon as possible, while the main purpose of signing the contract is to prevent the buyer from paying the goods in time or changing the address of the consignee (Xu, 2018).

## **3. Legal attributes of control of goods**

Some international viewpoints hold that the right of control of goods in the course of transportation is a form of creditor's rights. Because the control is based on the contract rights in the process of cargo transportation. This is a contract of carriage signed by the buyer and seller, and also between the shipper and the carrier. If contractual claims arise in the course of cargo transportation, the right of control will arise and can be enforced when the corresponding conditions are met. The right of control is not exercised directly against the goods themselves, but through the actions of the carrier. This legal relationship refers to the creditor's claim for compensation from a particular debtor, which is of the same nature as the property law (Li et al, 2017).

In addition, time limit is also a condition for the existence of control rights. That is to say, it is valid within the period of liability if it is not within or beyond the period of liability of the carrier. Such control does not exist. This is consistent with the description of the characteristics of creditor's rights in property law, and can not exist indefinitely. As long as it expires or expires, such claims will automatically disappear and no longer have utility (Hao, 2017). Academic circles believe that control right belongs to creditor's rights, but there is no clear type of creditor's rights. Therefore, some scholars believe that the right of control of goods can only be realized if it meets the requirements of relevant laws and agrees with the carrier. In this way, the right of control is not a unilateral right, it does not belong to the right of formation. The right of formation refers to the right of legal effect produced according to the requirements of one party. It is the result of unilateral exercise of the legal relationship without the consent of others (Zhao, 2017).

## **4. The impact of control right on china's legislation and judicial practice**

### **4.1 How China's Legislation and Judiciary Deal with Control Rights**

Firstly, China's legal system should be improved by improving the control right of civil aviation cargo. The construction of a reasonable system of civil aviation cargo control right is conducive to the connection between the legal system of China's transport contract and the system of cargo sale. It also guarantees the rights of buyers, sellers and third parties in international trade. In China's current transport system, the form of bill of lading does not exist. However, the transfer of goods occurs from time to time in the course of transportation. This requires the shipper to transfer and control the goods in the process of cargo transportation. It is of great significance for the actual transportation to grant the right of control to the goods.

Secondly, it is a necessary step for China's long-term development of civil aviation cargo to establish reasonable and perfect cargo control rights. Although the relevant international regulations on the control of civil aviation cargo have not yet been promulgated. However, from the current international trade control problems, and related scholars in this field of research. This shows that the international community also attaches great importance to the control of civil aviation cargo. If the relevant provisions similar to the maritime control right system can be introduced, it will inevitably be recognized by most countries. China will also fully support the promulgation of such regulations, which can solve some legal problems related to control rights in the current civil aviation cargo transportation from the practical level.

Finally, if China does not join the relevant state regulations on the control of civil aviation cargo. However, the laws applicable to the control of civil aviation cargo transport in China can also be formulated according to these international laws and regulations. If these problems are involved in some overseas cargo cases. Instead of passively waiting for solutions, it is better to introduce advanced international systems to improve domestic legislation. This is also conducive to China's establishment of an international shipping center for the relevant legal supporting system.

### **4.2 Suggestions on China's Legislation and Justice**

Legislation. Firstly, the control right system is introduced through the Maritime Code. This provides a reference for the establishment of civil aviation cargo control system. The formulation of civil aviation cargo control rights should be regulated separately, and the following aspects should also be involved. Specifically, it includes the scope of the exercise of control, such as changing the destination and consignee, while the substance of the contract of carriage will not be changed. Transfer of the subject of rights, such as issuance of bearer bills of lading, bearer bills of lading, knowledge bills of lading. Conditional restrictions on control rights, such as limits of scope, time and impact. It stipulates the responsibilities and obligations of the buyer and seller, such as the carrier's compensation for loss, the third party's reasonable guarantee and so on. Second, amend the Civil Aviation Law. As mentioned in the previous article, the implementation of civil aviation cargo control rights may involve other provisions of the Civil Aviation Law, such as the absence of carrier's lien under the control rights system. Therefore, in order to cooperate with the effective implementation of civil aviation cargo control rights, other legal provisions in the Civil Aviation Law can be amended. Thirdly, the relevant provisions of civil aviation freight transport should be further improved. Civil aviation cargo control has its unique characteristics. When the carrier fails to fulfill its obligations according to the instructions of the controlling party, the interests of the controlling party will be in a very urgent state. At this time, other relevant provisions of civil aviation freight transport will play a key role. It should be perfected according to its characteristics.

Judicial aspects. While carrying out the legislative reform of control rights, civil aviation freight can also issue relevant judicial interpretations to solve the actual disputes about control rights. First of all, we should make judicial interpretation according to the latest civil aviation laws and regulations in China. Through the following internationally recognized civil aviation cargo system, to investigate the carrier's civil liability. However, in this process, the shipper's control over the goods in the bill of lading transportation is not clearly stipulated, which requires judicial intervention. Under the control right system of civil aviation related laws, the Supreme People's

Court of China has made judicial explanations on the control right of shipper's goods in non-bill of lading mode of transport. Secondly, in the process of civil aviation transportation, when the control right of goods is exercised to the third party and has caused damage, it will cause disputes between the third party and the controlling party. Therefore, in the case of legal disputes, the choice of litigants will become a complex issue in this process. In order to ensure the smooth progress of civil aviation cargo litigation, judicial interpretation can be used to guide this issue.

## 5. Conclusion

Civil aviation cargo transport has reflected the issue of control right at the international level. Relevant scholars have begun to study its relevant legal system. This will play an important role in improving the legal system of civil aviation cargo control. Whether these legal systems can be implemented smoothly or not. As an important supplement to civil aviation cargo transport law, the control right system will also be accepted or used for reference by most countries. On the basis of a thorough study of the civil aviation cargo control system. China should take the amendment of the Civil Aviation Law as an opportunity and draw lessons from other relevant international regulations. In China's Civil Aviation Law, the freight control right system should be established. This is also an important means to improve China's Civil Aviation Law and the only way for China to integrate with the world's civil aviation cargo.

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