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《鹿特丹规则》承运人赔偿责任基础研究

Research on the Basis of Liability of the Carrier under the
Rotterdam Rules

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内容摘要

海上货物运输承运人的责任制度是海上货物运输立法的核心，而承运人赔偿责任基础则是该核心中的核心，它决定了海上风险在船方和货方之间的划分。《鹿特丹规则》第十七条规定的承运人赔偿责任基础是一个由归责原则、免责事由、举证责任组成的综合体系。

在归责原则上，《鹿特丹规则》采用的是与《汉堡规则》同样的过错推定责任。但《鹿特丹规则》的归责原则在严格性方面介于《汉堡规则》和《海牙规则》之间。在立法技术上，《鹿特丹规则》综合了《汉堡规则》的一般抽象式立法方式和《海牙规则》明确列举式立法方式，从而形成一个混合的归责原则体系，公约的这种做法主要是为了获得世界两大法系国家普遍接受从而实现公约统一性目标。

在免责事由方面，《鹿特丹规则》采用《海牙规则》明确列举免责事由的做法，同时明确规定如果免责事由是由于承运人一方的过错造成或促成的，承运人将丧失免责。在具体的免责事由方面，《鹿特丹规则》最大的特点就是删除了航海过失免责，这一做法虽然遭到一些国家的反对，但却符合公约现代化的目标。

在举证责任方面，《鹿特丹规则》明确规定了承运人与索赔方各自应当承担的举证责任和举证的顺序。《鹿特丹规则》与《海牙规则》相比最显著的变化包括：（1）明确了承运人适航义务的违反与货损货差的发生必须存在因果关系时承运人才会丧失免责，并规定索赔人承担船舶不适航的初步证明责任，承运人承担不适航与损害不存在因果关系或其已经恪尽职守的证明责任。（2）明确对于并存原因造成的损害，承运人和索赔方均承担对货损发生的因果关系比例的举证责任，并由法院根据双方的举证确定各自责任的比例。

关键词：归责原则；免责事由；举证责任

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ABSTRACT

Maritime carrier's liability regime is the core of the maritime transport system, while the basis of liability of the carrier is based in the heart of the core. The basis of liability of the carrier determines the allocation of risks of the sea between the consigner and the carrier. The basis of liability of the carrier under Article 17 of the Rotterdam Rules is a comprehensive system which composed by principle of imputation, exemption, burden of proof.

As for the principle of imputation, the Rotterdam Rules adopts principle of presumed-fault liability as the Hamburg Rules did, but its severity is between those of the Hamburg Rules and the Hague Rules. The legislative technique of the Rotterdam Rules combines the general abstract-style legislation in the Hamburg Rules and the specifically enumerated legislation in the Hague Rules and formed a mixed system, because the drafters believe that will make the rules more acceptable by both civil law and common law countries ,and achieve the goal of uniformity of the convention designed .

As for the exemption, the Rotterdam Rules enumerates the exemptions as the Hague Rules did, it also clearly stipulated that if the fault of the carrier caused or contributed to the exempting events, he should be liable for the damage. For the list of the exemptions, the most important change of the Rotterdam Rules is the deletion of the nautical fault, Although the deletion was opposed by some countries, it was considered to be in compliance with the goals of modernization that the convention was designed to accomplish.

As for the burden of proof, the Rotterdam Rules clearly stipulates the burden of proof and the steps of proof of the carrier and the claimant. In contrast with the Hague Rules, the most significant change of the Rotterdam Rules includes: (1) stipulated that only when there is causality between unseaworthiness of the vessel and the damage of the goods can the carrier lost the right of exemption. The claimant bears the burden to establish at least a prima facie case of unseaworthiness, then the carrier has to prove there isn't causality between unseaworthiness and the damage ,or he can prove that he has

exercised the requirement of due diligence. (2) stipulated that for the loss due to a combination of causes, both the claimant and the carrier bear the burden to prove the proportion of the causes to the damage, then the court should assess the proportional liability to the carrier and the claimant.

Key Words: Principle of Imputation; Exemption; Burden of Proof

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