



Cognitive and Comparative Analysis of the Maritime Performing Party in the Rotterdam Rules

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Abstract

Usually, in the international transportation of goods, the carrier uses various forms to transport, an important part of which is carried by sea, and this causes to governing the several conventions in the legal relationship between the shipper and the carrier. The Rotterdam rules have been set up with the aim of harmonizing the rules governing transportation which the carriage of goods by sea is the one forms of transporting process . The regulations have chosen the "door to door" regime. Persons who performing or undertake the obligations on behalf of the carrier or under his supervision in the port to port area are the same as the carrier in terms of liability and defense conditions, and these persons are called the maritime performing party. The possibility of direct action is an improvement in comparing with prior rules. The present research is an attempt to know what is the performing parties and the rules of them. Anticipating this concept and systematizing it was in line with the unification of transportation regulations.

One of the important branches of international trade is the international transportation of goods, which is often regulated by the conventions approved by the United Nations. Considering the existing capacities and the high volume of sea transportation of goods, attention has always been paid to the approved regulations in this field more than other types of international transportation methods. In this context, the Brussels Convention was approved in 1924 and gained good coverage, and important amendments were made to it in 1968 and 1979, when the name of the convention was changed to the Hague-Visby Rules. The Hamburg Convention in 1978 established regulations in line with the developments in transportation, but it did not meet with much success. The change in the procedure of the contracting parties, the containerization of transport, the increase of electronic transport documents and other factors caused the setting of an advanced convention to be put on the agenda of the United Nations; For this purpose, the negotiations of the Rotterdam Regulations lasted from 2001 to 2008, and the Rotterdam Regulations were officially signed in 2009.

Based on the foreseen components, the maritime performing party must perform or undertake the main obligations of the carrier within the range of port to port, and the implementation of secondary obligations of the transport operator, such as container



construction, cannot make a person subject to the title of maritime performing party. The distinction between main and secondary obligations is determined based on the obligations listed in paragraph six of article one. The main obligations are to receive, load, move, arrange, transport, care, unload or deliver the goods, in this way, although obligations such as maintaining seaworthiness are among the obligations of the carrier, but the implementation of those obligations by non-operators at his request It does not mean that the executors of the obligation of the maritime performing party are considered because the said obligation is not related to the main obligations mentioned.

The shipping agent is subject to the Rotterdam rules, both in terms of liability and in terms of defenses, and he can use the same defenses as the carrier, even if these defenses are related to the contractual conditions between the carrier and the shipper. Based on this, in addition to the fact that the shipping contract and consequently the bill of lading may provide for the conditions for the exemption of the shipping parties and some kind of condition for the benefit of the third party between the carrier and the shipper is stipulated for the shipping party, in Article 4 The Rotterdam rules provide the right for the shipping party to benefit from the carrier's exemption conditions without such an express condition. In order for the maritime performing party to be responsible for the claimant, it must be proven that the damage was related to the time when the maritime performing party fulfilled its obligations. The liability of the shipping agent and the carrier is provided jointly, which makes it easier to compensate for damages, especially since the identification of the carrier faces problems in many cases, and the lack of details of the carrier in the shipping documents invalidates the shipping documents. It is not, therefore, it is easier to recognize the sea executive side that can be recognized by more objective criteria.

Some countries do not want to ratify the convention in order to increase the persons responsible for the beneficiary of the goods, because they have concerns about the flow of many lawsuits against the people covered by the maritime performing party. Although the Rotterdam rules have not yet achieved the necessary conditions to become effective, the experiences gained in approving these regulations and the reactions of countries will be very useful in explaining and examining similar interpretations in possible future regulations.

Keywords: International carriage, Performing party, Himalaya protection, Carrier, maritime transport.



References

Books

1. Baatz, Yvonne, Debattista, Charles, Lorenzon, Filippo, Serdy, Andrew, Staniland, Hilton, Tsimplis, Michael, (2009). *The Rotterdam Rules: a Practical annotation*, London: Informa Law.
2. Basu Bal, Abhinayan, (2009). *A Critical Evaluation of the Rotterdam Rules: Selected Issues in Perspective*, Malmo: World Maritime University.
3. Hoek, Marian, (2010). *Multimodal Transport Law*, New York: Kluwer Law International
4. Rhidian, Thomas, (2014). *the Carriage of Goods by Sea Under the Rotterdam Rules*, New York: Informa law.
5. Sturley, Michael F, Fujita, Tomotaka & van der Ziel, Gertjan, (2010). *The Rotterdam Rules: the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, London: Sweet & Maxwell.

Articles

6. Atamer, Kerim & Suzel Gunyet, "Construction Problems in the Rotterdam Rules Regarding the Identity of the Carrier", Meltem Deniz & Guner Ozbek, (2011). *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Istanbul: Springer, 155-201.
7. Atamer, Kerim, (2010). "Construction Problems in the Rotterdam Rules regarding the Performing and Maritime Performing Parties", *Journal of Maritime Law & Commerce*, 41 (4), 469-497.
8. Berlingieri, Francesco, (2009). "A Comparative Analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules", Paper Delivered at the General Assembly of the AMD, Morocco: Available Online
9. Bond, Nicholas (2014). "The Maritime Performing Party and the Scope of the Rotterdam Rules", *Australian and New Zealand Maritime Law Journal*, 28(2), 95-116
10. Delebecque, Philippe, (2010). "Obligations and Liability Exemptions of the Carrier", *European Journal of Commercial Contract Law*, 2 (1-2), 87-93
11. Legros, Cécile (2012), "Relations Between the Rotterdam Rules and the CMR" *Tulan Maritime Law Journal*, 36, 725-740.
12. Mandić, Nikola & Wolff, Vesna Skorupan (2015), "Maritime Performing Party under the Rotterdam Rules 2009", *TOMS*, 4(2), 132-139.
13. Nikaki, Theodora & Soyer, Barış, (2012). "A New International Regime for Carriage of Goods by Sea: Contemporary, Certain, Inclusive AND Efficient, or Just Another One for the Shelves?" *Berkeley Journal of International Law*, 30(2), 302-348.



14. Nikaki, Theodora, (2009). "The statutory Himalaya-type Protection Under the Rotterdam Rules: Capable of Filling the Gaps?" *Journal of Business Law*.403-421.
15. Nikaki, Theodor, (2011). "Himalaya Clauses and the Rotterdam Rules", *Journal of International Maritime Law*, 17(2),18-32.
16. Smeele, Frank, (2010). "The Maritime Performing Party in the Rotterdam Rules 2009", *European Journal of Commercial Contract Law*, 2(1), 1-23.
17. Sturley, Michael F, "General Principles of Transport Law and the Rotterdam Rules", Meltem Deniz & Guner Ozbek,(2011) *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Istanbul: springer,63-87.
18. Sturley, Michael F,(2016) "What has Become of the Rotterdam Rules", *Association of Transportation Law Professionals*,83(4), 19367-19392.
19. Unan, Samim, (2011). "The Scope of Application of the Rotterdam Rules and Freedom of Contract", Meltem Deniz & Guner Ozbek, *The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Istanbul: Springer,87-107.
20. Von Ziegler, Alexaander,(2011) "The Liability of the Contracting Carrier", *Texas International Law Journal*, 44(3),309-352.
21. Zunarelli, Stefano, (2009). "The Carrier and the Maritime Performing Party in the Rotterdam Rules", *Uniform Law Review*, 14(4), 1011-1023.