我國海上旅客運送責任之探討

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中文關鍵詞: 海上旅客運送、海商法旅客運送規範、海上旅客運送相關國際海事公約、雅典公約

Key Words: ROC Maritime Law, carriage of passengers by sea,
international maritime conventions, Athens
Convention relating to the Carriage of Passengers and
their Luggage by Sea

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投稿日期: 99年7月10日: 審查通過日期: 99年10月25日。

中文摘要

我國海商法第三章「運送」第二節「旅客運送」,是我國海 商法幾乎完全荒蕪的地方,亦與國際旅客運送海事公約完全脫 節。其幾全靠本節第一個條文一海商法第 79 條「旅客之運送, 除本節規定外,準用本章第一節之規定。」予以規範。我國海商 法將「旅客運送」與「貨物運送」之法律性質同視,優先準用我 國海商法採自海牙威士比規則之規定, 使我國海商法「旅客運送」 之法律規範欠缺健全之法理基礎。「旅客運送」係牽涉及人身之 死亡與傷害,「海上旅客運送」之運送人自應負較「海上貨物運 送| 之運送人更為嚴格之責任, 始為合理, 此應為「旅客運送| 法律規範之基本法理。本論文爰觀察國際社會關於旅客運送相關 國際公約,包括(1) International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, 1961; (2) International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, 1967; (3) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974; (4) 1976 Protocol to the 1974 Athens Convention、(5) 1990 Protocol to the 1974 Athens Convention: (6) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, 以瞭解國際社會關於海上旅客運送法律規範之基本 法理, 對我國海商法「旅客運送」法律規範之修正, 提出適當的 建議。

Abstract

The law relating to the carriage of passengers by sea provided in ROC Maritime Law is a law having no reasonable grounds. It has no

connection at all with international maritime conventions relating to the carriage of passengers. The most important provision in ROC Maritime Law governing the carriage of passengers by sea is Art. 79, which reads: "Subject to the express provisions provided in this Session, the carriage of passengers shall apply mutatis mutandis the provisions as provided in Session 1 of this Chapter." As such, the jurisprudence adopted in the law relating to the carriage of passengers is the same as the law relating to the carriage of goods by sea, which should be entirely unacceptable. It would be obvious that the carrier's liability for the carriage of passengers by sea should be substantially stricter than the liability for the carriage of goods by sea. Thus, the aim of this paper is looking into the international maritime conventions relating to the carriage of passengers, including (1) International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, 1961; (2) International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, 1967; (3) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974; (4) 1976 Protocol to the 1974 Athens Convention; (5) 1990 Protocol to the 1974 Athens Convention; (6) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, and making efforts to review the law relating to the carriage of passengers as provided in ROC Maritime Law and to submit some proposals for its future amendments.

壹、緒論

我國海商法第3章「運送」第2節「旅客運送」,於我國海 商法與第1節「貨物運送」同等重要,但卻迄今仍受完全地忽視。 我國海商法「旅客運送」之法律規範,自第79條至第91條總共 13 個條文, 除第 81 條強制意外保險之規定尚有其法律之重要性 外, 幾全靠第一個條文一第79條「旅客之運送, 除本節規定外, 準用本章第一節之規定。| 予以規範。本條條文規定有兩方面重 要的影響。第一方面,我國海商法將「旅客運送」與「貨物運送」 之法律性質同視,意謂「旅客運送」運送人與「貨物運送」運送 人之責任基礎(the basis of liability)相同,此恐係忽視了國際社 會對「海上貨物運送」之法律規範因二十世紀初期海洋大國強力 干預之影響, 致 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924(1924 年關於 載貨證券法律規則統一國際公約),簡稱「海牙規則」(The Hague Rules), 特別是其第4條第2項總共17款「免責事由」之規定(即 我國海商法第69條),係給予「海上貨物運送」運送人極為特殊 的寬容。但觀察國際社會關於「旅客運送」之國際公約,並無此 特殊之背景與情形。我國海商法將「旅客運送」與「貨物運送」 之法律性質同視, 致認為「旅客運送」運送人與「貨物運送」運 送人之責任基礎(the basis of liability)相同,恐係對國際社會之 國際海事公約未予深入瞭解所致。另一方面,是我國海商法「旅 客運送 | 優先準用我國海商法「貨物運送 | 之規定, 致相對確立 了我國海商法「貨物運送」有規定時,海上「旅客運送」即無準 用我國民法第2編「債|第2章「各種之債|第16節「運送| 第1款「通則」(自第622條至第623條,總共2條)及第2款 「旅客運送」(自第654條至第659條,總共6條),共8條條文

之可能。我國民法第 654 條第 1 項規定:「旅客運送人對於旅客 因運送所受之傷害及運送之遲到應負責任。但因旅客之過失,或 其傷害係因不可抗力所致者,不在此限。」此較接近於 1974 年 聯合國國際海事組織旅客運送國際公約以「過失責任主義」(the fault-based liability system) 為基礎之規範-旅客運送人或其履行 輔助人有過失即應負責 1 (1974 年雅典公約之 2002 年修正附約議 定書再修正為「嚴格責任」, 見其後之討論)。我國海商法將「旅 客運送 | 與「貨物運送 | 之法律性質同視,優先準用採納自早期 國際海上貨物運送公約: 1924 年「海牙規則」之我國海商法第 69條總共17款海上貨物運送人「免責事由」之規定,而不準用 我國民法第 654 條第 1 項此較接近於旅客運送相關國際公約以 「過失責任主義」或「嚴格責任」(strict liability)為基礎之規範, 使我國海商法「旅客運送」之法律規範欠缺健全之法理基礎。 旅 客運送 | 係牽涉及人命之死亡與傷害,「海上旅客運送 | 之運送 人自應負較「海上貨物運送」之運送人更嚴格之責任,始為合理, 此應為我國「旅客運送」法律規範之基本法理。

故觀察國際社會關於海上旅客運送相關國際公約,以瞭解國際社會海事法關於旅客運送法律規範之基本法理,對我國海商法 「旅客運送」法律規範之未來修法,當係有其重要之助益。

國際社會關於海上旅客運送相關國際公約計有如下:

¹ 參聯合國國際海事組織(International Maritime Organization)網站 http://www.imo.org (最後瀏覽日: 2010/7/1): "A Conference, convened in Athens in 1974, adopted the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Convention is designed to consolidate and harmonize two earlier Brussels conventions dealing with passengers and luggage and adopted in 1961 and 1967 respectively. The Convention establishes a regime of liability for damage suffered by passengers carried on a seagoing vessel. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier."

- ☐ International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, 1961(1961 年海上旅客運送法律規則統一國際公約)²。
- ☐ International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, 1967(1967 年海上旅客行李運送法律規則統一國際公約)³。
- 四 The 1976 Protocol to the 1974 Athens Convention(1974 年 雅典公約之 1976 年修正附約議定書)5。
- 田 The 1990 Protocol to the 1974 Athens Convention(1974 年 雅典公約之 1990 年修正附約議定書)。

1974 年雅典公約之 2002 年修正附約議定書明示規定: 1974 年雅典公約之第 1 條至第 22 條如 2002 年修正附約議定書修正之規範,及 2002 年修正附約議定書之第 17 條至第 25 條及其附件,共同構成並被合稱為「Athens Convention relating to the Carriage of Passengers and their Luggage by Sea,2002」(2002 年雅典海上旅客與其行李運送國際公約) 8 。

² The Kaharaj Nagendra Singh, International Maritime Law Conventions, Stevens & Sons, London, 1983, pp. 2992-2996.

³ Id., pp.2997-3003.

⁴ Id., pp.3003-3013.

⁵ Id., pp.3014-3019.

⁶ Christopher Hill, Maritime Law, Lloyd's of London Press, London, 2003, pp.557-562.

⁷ Id., pp.543-556.

⁸ 同前註 1: "The Protocol states that Articles 1 to 22 of the Convention, as revised

上開六個國際社會關於旅客運送相關國際公約(conventions) 或修正附約議定書(protocols)中,1961年海上旅客運送法律規 則統一國際公約及 1967 年海上旅客行李運送法律規則統一國際 公約,係屬國際社會所謂之「Brussels conventions」(布魯塞爾公 約),即由傳統之國際海事組織一國際海事委員會(Comite Maritime International – CMI) 推動草擬,交由比利時政府召開「海 事法外交會議」(Diplomatic Conference on Maritime Law),依其 決議制定之國際海事公約。而 1974 年雅典海上旅客與其行李運 送國際公約則係由「聯合國國際海事組織」(International Maritime Organization – IMO) 推動綜合前二布魯塞爾公約制定 %。1974年 雅典公約之 1976 年及 1990 年兩個修正附約議定書主要在提高 「海上旅客與行李運送」運送人之單位責任限制金額。2002年修 正附約議定書變動之幅度較大, 並要求採納 2002 年修正附約議 定書之國家,均須廢除 1974 年雅典海上旅客與其行李運送國際 公約及其 1976 年及 1990 年兩個修正附約議定書,故 2002 年修 正附約議定書已形成一獨立之「2002年雅典海上旅客與其行李運 送國際公約 10。

深入瞭解國際社會關於旅客運送相關國際公約之進展,應能 為我國海商法「旅客運送」法律規範之未來修法尋得適當之規 範,以健全我國海商法「旅客運送」之法理基礎。

by the Protocol, together with Articles 17 to 25 of the Protocol and the Annex thereto, shall constitute and be called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea,2002."

⁹ The Kaharaj Nagendra Singh, supra note 2, p.2953.

¹⁰ Id.

貳、英國普通法旅客運送之法律規範

由於國際海事委員會(Comite Maritime International – CMI) 傳統上與英國海上保險業有深厚的關係,特別是全球四分之三以 上之船舶均加入英國人管理之「防護與補償保險協會」(protection and indemnity insurance associations) 簡稱 P. & I. clubs), 自然國 際海事委員會所推動之「布魯塞爾公約」(Brussels conventions), 亦常受英國普通法之影響。於英國普通法,「旅客運送」與「貨 物運送」一樣區分為「公共運送人」(common carrier)與「私運 送人」(private carrier) "。故 1961 年海上旅客運送法律規則統一 國際公約 (International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea,1961) 第1條第 (b)款「運送契約」(contract of carriage)之定義即謂: "contract of carriage" means a contract made by or on behalf of a carrier to carry passengers, but does not include a charterparty. (「運送契約」指運 送人所訂立或為運送人訂立之旅客運送契約,但不包含傭船契 約。)2使本公約僅規範「公共運送契約」,而不適用於「私運送 契約 | (即傭船契約)。

但於英國普通法,「旅客運送」運送人之責任,是以適當之 注意,於合理的期間以合理之速度,將旅客運送約定之目的地 ¹³。

¹¹ Carver's Carriage by Sea, Stevens & Sons, London, 1973, p.1254.

¹² The Kaharaj Nagendra Singh, supra note 2, p.2992.

Carver's Carriage by Sea, supra note 11: "The common law duty of a carrier of passengers is to take them to their agreed destination with due care, within a reasonable time and with reasonable speed." **Description** Christopher Hill, supra note 6, p.446: "Contracts to carry passengers at sea are subject to the ordinary rules governing contracts generally and are not in any sense specialized or out of the ordinary so far as the rights and liabilities of the two parties to the contract are concerned."

其責任僅係以適當之注意運送 - 即以一謹慎之運送人得以被 合理地期待之注意運送 14。如是,於私法之領域,「旅客運送」區 分為「公共運送人」與「私運送人」, 並無實質上之意義。此項 區分主要是於公法領域,「公共運送人」係向公共大眾要約提供 公共服務,因此「公共運送人」不得無故選擇或拒絕旅客,此係 「公共運送人」之公法義務 15。由於私法之領域中,「旅客運送」 區分為「公共運送人」與「私運送人」, 並無實質上之意義, 因 此於「聯合國國際海事組織」(International Maritime Organization – IMO) 推動建立之 1974 年雅典海上旅客與其行李運送國際公約 第1條第2款「運送契約」 (contract of carriage) 之定義即已刪除 1961 年公約「but does not include a charterparty」(但不包含傭船 契約) 之規定: 2. "Contract of carriage" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be. (「運送契約」指運送 人所訂立或為運送人訂立之海上旅客運送或旅客與其行李運送 契約。) 16

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Carver's Carriage by Sea, supra note 11: "his obligation is no more than to carry with due care – namely, the care to be expected of a reasonably careful carrier."
 Carver's Carriage by Sea, supra note 11, p.1259: "It is submitted that ... a sea carrier of passengers is a common carrier only if he holds himself out as such, subject to any statutory or common law obligations to give a public service, an

carrier of passengers is a common carrier only if he holds himself out as such, subject to any statutory or common law obligations to give a public service, and that he is not a common carrier if otherwise he reserves to himself the right to accept or reject requests by passengers for passage."

¹⁶ The Kaharai Nagendra Singh, supra note 2, p.3005.

參、國際公約上海上旅客運送人之責任基礎 (basis of liability)

一、1961年海上旅客運送法律規則統一國際公約

1961 年海上旅客運送法律規則統一國際公約(International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea,1961)是國際社會關於海上旅客運送相關國際公約之起始。其所規範之海上旅客運送人之責任基礎,與英國普通法採取之「過失責任主義」原則類似,海上旅客運送人僅負「盡適當注意義務」(due diligence)之責任,但因船舶海難、碰撞、擱淺、爆炸或火災產生旅客之死亡或傷害時,運送人推定為有過失,採取「推定過失責任主義」。本公約第 3 條至第 5 條規定之海上旅客運送人之責任基礎如下:

本公約第3條規定運送人之「適航性義務」如下:

- (1)當運送人即為載運船舶之所有人時,其於運送之開始 及運送過程中,均應盡適當注意,並使其使用人及代理人於僱用 範圍內盡適當注意,使船舶有安全航行能力,使船舶配置適當之 船員、設備及供應,並於各方面均得確保旅客之安全。
- (2) 當運送人非為載運船舶之所有人時,其應使船舶之所有人或營運人,及其使用人及代理人於僱用範圍內,盡適當注意履行本條第1項之義務 17。

¹⁷ Id., p.2993: Article 3—

⁽¹⁾ Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy

公約第 4 條並明定:運送人之責任原則上採「過失責任主義」,運送人對其履行輔助人之過失產生傷亡仍應負責維持「vicarious liability」之原則,並採部分的「推定過失責任主義」,其規定如下:

- (1) 運送人對於旅客運送過程中,因運送人或其使用人及 代理人於僱用範圍內之過失,產生旅客之死亡或傷害所致之損害 應負賠償責任。
- (2)除有相反之證據外,旅客之死亡或傷害係因船舶海難、碰撞、擱淺、爆炸或火災產生,或與此等事故有關時,運送人及其使用人與代理人推定為有過失。
- (3)除本條第 2 項有特別規定外,損害賠償請求權人對運送人及其使用人與代理人之過失,應負舉證責任 ¹⁸。

公約第5條並規定:如運送人證明旅客之死亡或傷害係因旅客之全部或部分過失產生,法院得依據其適用之法律規定,免除運送人全部或部分之責任 19。

and properly manned equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure the safety of the passengers.

- (2) Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment exercise due diligence in the respects set out in paragraph (1) of this Article.
- ¹⁸ The Kaharaj Nagendra Singh, supra note 2, p. 2993: Article 4—
 - (1) The carrier shall be liable for damage suffered as a result of the death of, or personal injury to a passenger if the incident which causes the damage so suffered occurs in the course of the carriage and is due to the fault or neglect of the carrier, or of his servants or agents acting within the scope of their employment.
 - (2) The fault or neglect of the carrier, his servants and agents shall be presumed, unless the contrary is proved, if the death or personal injury aroses from or in connection with shipwreck, collision, stranding, explosion or fire.
 - (3) Except as provided in paragraph (2) of this Article, the burden of proving the fault or neglect of the carrier, his servants or agents shall be on the claimant.
- ¹⁹ Id.: Article 5—

If the carrier proves that the death of, or personal injury to the passenger was

1961 年海上旅客運送法律規則統一國際公約第 1 條第(c)款及第(e)款對「旅客」及「運送」特別定義如下:「旅客」僅指船舶依運送契約運送之人。「運送」指旅客於船上之時間,包含其上船或下船之時間,但不包含旅客於海運候船站、碼頭或其他港埠設施之時間。此外,如客運票價包含經陸運至船或下船後之陸運,或使用於此等輔助運送之船舶已由運送人提供予旅客使用時,「運送」亦包含此等時間在內 20。

1961 年海上旅客運送法律規則統一國際公約上開旅客運送人責任基礎之規定,與我國海商法第79 條規定準用之「本章第一節」海上貨物運送,其為實質上之「海牙規則」(The Hague Rules)(1924 年關於載貨證券法律規則統一國際公約 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading,1924),或「海牙威士比規則」(The Hague-Visby Rules)(1968 年修正關於載貨證券法律規則統一國際公約之議定書 Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Rills of Lading,1968),有如下重要之不同之處,值得我國關注:

(1) 1961 年海上旅客運送法律規則統一國際公約最核心的 法理,其與影響我國海商法海上貨物運送規範之「海牙規則」或 「海牙威士比規則」不同之處,是 1961 年海上旅客運送法律規

caused or contributed to by the fault or neglect of the passenger, the Court may exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law.

Id., p. 2993: "passenger" means only a person carried in a ship under a contract of carriage; "carriage" covers the period while a passenger is on board the ship, and in the course of embarking or disembarking; but does not include any period while the passenger is in a marine station or on a quay or other port installation. In addition, "carriage" includes transport by water from land to ship or vice-versa, if the cost is included in the fare, or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier

則統一國際公約維持著基本的"vicarious liability"之法理,亦即旅客運送人本人有過失固需負責,而如其過失為旅客運送人之履行輔助人之過失,並非旅客運送人本人有過失時,旅客運送人仍應負其責任;不得因其過失為旅客運送人之履行輔助人之過失,並非旅客運送人本人有過失,而有權主張免除責任。此觀諸 1961 年海上旅客運送法律規則統一國際公約第 3 條及第 4 條文義,極為清楚。而 1924 年「海牙規則」主要的核心思想,是要區分海上貨物運送人本人之過失與其履行輔助人之過失:最典型之規定為「海牙規則」第 4 條第(a)款、第(b)款及第(q)款如下規定:

Article 4

- 2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from -
- (a) Act, neglect, or default of the master, mariner, pilot, or servants of the carrier in the navigation or in the management of the ship.
- (b) Fire, unless caused by the actual fault or privity of the carrier.²¹

「海牙規則」此部分規範,我國海商法第 69 條採納規定如下:「因下列事由所發生之毀損或滅失,運送人或船舶所有人不 負賠償責任:

一 船長、海員、引水人或運送人之受僱人,於航行或管理 船舶之行為而有過失。

.

三 非由於運送人本人之故意或過失所生之火災。|

1961 年海上旅客運送法律規則統一國際公約維持著基本的

²¹ Michael Bundock, Shipping Law Handbook, Informa, London, 2007, pp. 269-270.

"vicarious liability"之法理,與 1924 年「海牙規則」如此重要不同,應係本於運送人對「海上人命」之責任應較「海上貨物」之責任為重之關係。

(2) 1961 年海上旅客運送法律規則統一國際公約第 3 條規 定:

「當運送人即為載運船舶之所有人時,其於運送之開始及運送過程中,均應盡適當注意,並使其使用人及代理人於僱用範圍內盡適當注意,使船舶有安全航行能力,使船舶配置適當之船員、設備及供應,並於各方面均得確保旅客之安全。

當運送人非為載運船舶之所有人時,其應使船舶之所有人或 營運人,及其使用人及代理人於僱用範圍內,盡適當注意履行本 條第一項之義務。」

而 1924 年「海牙規則」第 3 條第 1 項卻有不同之規定如下 ²²: Article 3

- 1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to -
 - (a) Make the ship seaworthy.
 - (b) Properly man, equip and supply the ship.
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

「海牙規則」本項規範,我國海商法第 62 條第 1 項採納規 定如下:

「運送人或船舶所有人於發航前及發航時,對於下列事項, 應為必要之注意及措置:

一 使船舶有安全航行之能力。

²² Id., pp. 268.

- 二 配置船舶相當船員、設備及供應。
- 三 使貨艙、冷藏室及其他供載運貨物部分適合於受載、 運送與保存。」

1961 年海上旅客運送法律規則統一國際公約第 3 條第 1 項末 段規定:「並於各方面均得確保旅客之安全」"(and in all respects to secure the safety of the passengers."),此用以取代海上貨物運送公 約「海牙規則」第 3 條第 1 項第(c)款「使貨艙、冷藏室及其他供 載運貨物部分適合於受載、運送與保存」之義務。

1961年海上旅客運送法律規則統一國際公約將「運送船舶適 航性義務」擴大至航程之全部,並擴大至船舶所有人、船舶營運 人及其使用人及代理人,亦應係本於運送人對「海上人命」之責 任應較「海上貨物」之責任為重之關係。

1961年海上旅客運送法律規則統一國際公約第5條「如運送人證明旅客之死亡或傷害係因旅客之全部或部分過失產生,法院得依據其適用之法律規定,免除運送人全部或部分之責任」之規定,則是一般之法理,無論何種運送皆是如此。(參見我國民法第217條:「損害之發生或擴大,被害人與有過失者,法院得減輕賠償金額,或免除之。」,並參見我國海商法第69條第15款如下規定:「因下列事由所發生之之毀損或滅失,運送人或船舶所有人不負賠償責任:十五 貨物所有人、託運人或代理人、代表人之行為或不行為。)。

二、1967年海上旅客行李運送法律規則統一國際

公約

1967 年海上旅客行李運送法律規則統一國際公約

(International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea,1967),係國際海事委員會(Comite Maritime International – CMI)繼 1961 年海上旅客運送法律規則統一國際公約後持續推動制定之國際公約。因海上旅客運送中通常均會隨身攜帶或另行託運行李,甚至攜帶或另行託運車輛,因此 1961 年海上旅客運送法律規則統一國際公約僅針對海上旅客運送之旅客規範,顯為有所不足。

海上旅客運送之運送人,對「海上人命」之責任應較對「海上行李」之責任為重,此似為 1967 年海上旅客行李運送法律規則統一國際公約之觀點,因此 1967 年海上旅客行李運送法律規則統一國際公約之運送人責任基礎係介於 1961 年海上旅客運送法律規則統一國際公約與 1924 年「海牙規則」 [924 年關於載貨證券法律規則統一國際公約)之間。

1967 年海上旅客行李運送法律規則統一國際公約第三條所 規範之運送人「運載船舶適航性」之規定,除第一項末尾將「旅 客」改為「行李」外,餘均與 1961 年海上旅客運送法律規則統 一國際公約第 3 條實質上完全相同:

- (1) 當運送人即為載運船舶之所有人時,其於運送之開始 及運送過程中,均應盡適當注意,並使其使用人及代理人於僱用 範圍內盡適當注意,使船舶有安全航行能力,使船舶配置適當之 船員、設備及供應,並於各方面均得確保行李運送之安全。
- (2) 當運送人非為載運船舶之所有人時,其應使船舶之所 有人或營運人,及其使用人及代理人於僱用範圍內,盡適當注意 履行本條第一項之義務²³。

²³ The Kaharaj Nagendra Singh, supra note 2, p. 2998: Article 3—

⁽¹⁾ Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy

但 1967 年海上旅客行李運送法律規則統一國際公約第 4 條 對行李為車輛時之責任顯受 1924 年「海牙規則」之影響,對運 送人之船長、海員、引水人或使用人之過失所生損害,不負責任, 對貴重物品除有書面相反之意思以外,亦不負責任。其對舉證責 任亦有特別規定如下:

第4條

- (1)運送人對於行李運送過程中,因運送人或其使用人及代理 人於僱用範圍內之過失,所致之損害應負賠償責任。
- (2)無論第 3 條及本條第 1 項如何規定,運送人對車輛因船 長、海員、引水人或運送人之受僱人,於航行或管理船舶之行為 而有過失,所發生之毀損或滅失,不負賠償責任。
- (3)除當事人另有書面明示同意外,運送人對金錢、債券及其 他貴重物品,如金器、銀器、手表、珠寶、飾品或藝術品之損失 不負賠償責任。
 - (4)旅客對如下事項應負舉證責任:
 - (a)損害之程度,
 - (b)造成毀損或滅失之事件,係於運送過程中發生。
- (5)(a)如行李發生毀損或滅失,除第 5 項第(b)款另有規定,或有相反之證據外,運送人或其使用人及代理人推定為有過失。
- (b)如客艙內之行李發生毀損或滅失,旅客對過失應負舉 證責任,但毀損或滅失係因船舶海難、碰撞、擱淺、爆炸或火災

and properly manned equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure the safe transportation of the luggage.

⁽²⁾ Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment exercise due diligence in the respects set out in paragraph (1) of this Article.

產生,或與此等事故有關時,不在此限24。

1967年海上旅客行李運送法律規則統一國際公約第5條「如運送人證明行李毀損或滅失係因旅客之全部或部分過失產生,法院得依據其適用之法律規定,免除運送人全部或部分之責任」之規定 25,則是一般之法理,與1961年海上旅客運送法律規則統一國際公約第5條實質上相同。

三、1974年雅典海上旅客與其行李運送國際公約

1974 年雅典海上旅客與其行李運送國際公約(Athens

1. The carrier shall be liable for loss of or damage to luggage if the incident which causes the loss or damage occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

- 2. Notwithstanding the provisions of Article 3 and of paragraph (1) of this Article, the carrier shall not be liable for loss or damage to any vehicle, arising or resulting from any act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship during the carriage.
- 3. Unless agreed expressly and in writing, the carrier shall not be liable for loss of or damage to monies, bonds and other valuables such as gold and silverware, watches, jewellery, ornaments or works of art.
- 4. The burden of proving
 - (a) the extent of the loss or damage,
- (b) that the incident which caused the loss or damage occurred in the course of carriage shall lie with the passenger.
- 5.(a)If luggage has been lost or damaged, the fault or neglect of the carrier, his servants or agents, shall, subject to paragraph (5)(b), be presumed unless the contrary is proved.
- (b)If cabin luggage is lost or damaged, the burden of proving such fault or neglect shall lie with the passenger except when the loss or damage arises from, or in connection with, shipwreck, collision, stranding, explosion or fire.
- 5 Id., p. 2999: "If the carrier proves that the loss of or damage to the luggage was caused or contributed to by the fault or neglect of the passenger, the Court may exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law."

²⁴ Id., pp. 2998- 2999: Article 4—

Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974)係由「聯合國國際海事組織」International Maritime Organization – IMO)推動綜合前二布魯塞爾公約制定成為聯合國之國際海事公約。其運送人責任之規範仍維持原布魯塞爾公約「過失責任主義」之原則與部分「推定過失責任主義」,及"vicarious liability"之法理(旅客運送人之履行輔助人有過失,並非旅客運送人本人有過失時,旅客運送人仍應負其責任),其規定如下:

1974 年雅典公約第 3 條規定運送人之過失責任與推定過失責任為:

- (1) 運送人對於運送過程中,因運送人或其使用人及代理 人於僱用範圍內之過失,產生旅客之死亡或傷害及對行李發生毀 損或滅失,所致之損害應負賠償責任。
- (2) 損害賠償請求權人,對於事故於運送過程中發生毀損或滅失,及所生毀損或滅失之程度,應負舉證責任。
- (3)除有相反之證據外,旅客之死亡或傷害及對客艙行李發生毀損或滅失,係因船舶海難、碰撞、擱淺、爆炸或火災產生,或與此等事故有關時,運送人及其使用人與代理人推定為有過失。對於其他行李之毀損或滅失,依其產生毀損或滅失事件之性質,推定為有過失。此外其他所有之情形,損害賠償請求權人對於過失應負舉證責任 26。

²⁶ Id., pp. 3006-3007: Article 3 Liability of the carrier—

^{1.} The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

^{2.} The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

1974年雅典公約第 4 條維持著"vicarious liability"之原則,規定全部或一部之運送委由履行運送人履行時,運送人對履行運送人之權利義務,公約第 4 條規定一

第4條 履行運送人

- 1.如全部或一部之運送係委託由履行運送人履行,運送人仍 應依依本公約之規定對全部運送負責。此外,履行運送人對其履 行之部分運送,應依據本公約之規定履行,並得依據本公約之規 定行使其權利。
- 2.關於由履行運送人履行之部分運送,運送人對履行運送人 及其使用人及代理人於其僱用範圍內之行為及不行為應負責任。
- 3.任何運送人承擔本公約規定以外之責任或拋棄本公約規定 之權利之契約,僅於其以明示書面同意時對履行運送人有拘束 力。
 - 4.當運送人與履行運送人均需負責之時,其責任為連帶責任。
 - 5.本條規定不影響運送人與履行運送人間之追索請求權 27。
 - 3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.
- ²⁷ Id., p. 3007: Article 4 Performing carrier—
 - 1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.
 - 2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.
 - 3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention

1974年雅典公約第1條第1項對運送人及履行運送人,分別 定義為:「運送人」指自行或由他人代為訂定運送契約之人,無 論該運送是否實際上是由運送人自行或委由履行運送人予以執 行。「履行運送人」指運送人之外,以船舶之所有人、租傭船人 或營運人身分,實際上執行全部或一部運送之人 28。

1974 年雅典公約第 5 條並明定運送人對貴重行李之責任為:運送人對金錢、流通證券、金器、銀器、珠寶、飾品或藝術品或其他貴重物品之損失不負賠償責任,除該貴重物品已寄存予運送人保管,於此情形,運送人應於第 8 條第 3 項所定責任之上限負其責任,但依第 10 條第 1 項協議有更高之責任限額者不在此限 29。

1974 年雅典海上旅客與其行李運送國際公約第 5 條對貴重物品責任之規範,與 1967 年海上旅客行李運送法律規則統一國際公約第 4 條第 3 項比較,1974 年雅典海上旅客與其行李運送國際公約要求貴重物品必須寄存予運送人保管,運送人始於公約規定責任限制之上限負其責任。而 1967 年海上旅客行李運送法律

shall affect the performing carrier only if agreed by him expressly and in writing.

^{4.} Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

^{5.} Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

Id., p.3005: "Carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier; "Performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;"

Id., p. 3007: Article 5 Valuables —

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purposes of safe-keeping in which case the carrier shall be liable upto the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

規則統一國際公約第4條第3項則規定,僅要求「當事人另有書面明示同意」運送人即應負責,顯有不同。此外「手錶」於1967年海上旅客行李運送法律規則統一國際公約第4條明定為貴重物品,但1974年雅典海上旅客與其行李運送國際公約未明示規定,法理上應係依其情形判斷是否應列於「其他貴重物品」。

至於 1967 年海上旅客行李運送法律規則統一國際公約第 4 條第 2 項對車輛之特別規定:「運送人對車輛因船長、海員、引水人或運送人之受僱人,於航行或管理船舶之行為而有過失,所發生之毀損或滅失,不負賠償責任」其顯受 1924 年「海牙規則」之影響。而 1974 年雅典海上旅客與其行李運送國際公約並無此項特別之規定。但 1974 年雅典海上旅客與其行李運送國際公約第 1 條第 4 項「旅客」與第 5 項「行李」之定義中依然確認「車輛」得為旅客之隨身攜帶之行李,但其如另訂立傭船契約、載貨證券或其他貨物運送契約運送,則為非本公約規範之行李,依法理此時應依海上貨物運送之公約或法律處理 30:

無論 1974 年雅典海上旅客與其行李運送國際公約或 1967 年海上旅客行李運送法律規則統一國際公約皆將「活的動物」(live animals)排除於公約規範之「行李」(luggage)之觀念之中,1924年「海牙規則」亦將「活的動物」排除於公約規範之「貨物」之觀念之中,此應皆係「活的動物」之「固有瑕疵」(inherent vice)難予控制之故。1967 年海上旅客行李運送法律規則統一國際公約

³⁰ Id., p.3005: 4."Passenger" means any person carried in a ship, (a) Under a contract of carriage, or (b) Who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention.

^{5. &}quot;Luggage" means any article or vehicle carried by the carrier under a contract of carriage, excluding: (a) Articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and (b) Live animals:

第 1 條第(d)(1)款之「行李」之定義為:「行李」指運送人依旅客運送契約載運之物品或車輛,但不包括:

- 1.依據傭船契約或載貨證券運送之物品或車輛;
- 2.依據旅客與行李鐵路運送國際公約運送之物品或車輛;
- 3.活的動物。31

1974 年雅典海上旅客與其行李運送國際公約第 6 條亦規範:如運送人證明旅客之死亡或傷害或對行李發生毀損或滅失,係因旅客之全部或部分過失產生,案件之管轄法院得依據其適用之法律規定,免除運送人全部或部分之責任 32。1974 年雅典海上旅客與其行李運送國際公約本條規定與 1961 年海上旅客運送法律規則統一國際公約第 5 條及 1967 年海上旅客行李運送法律規則統一國際公約第 5 條完全相同,係屬一般之法理。

四、2002年雅典海上旅客與其行李運送國際公約

1974 年雅典公約之 2002 年修正附約議定書第 15 條第 3 項明示規定: 1974 年雅典公約之第 1 條至第 22 條如 2002 年修正附約議定書修正之規範,及 2002 年修正附約議定書之第 17 條至第 25 條及其附件,共同構成並被合稱為「Athens Convention relating to the Carriage of Passengers and their Luggage by Sea,2002」 2002 年

³² Id., p.3007: Article 6. Contributory fault-

³¹ Id., p.2997: "luggage" means any article or vehicle carried by the carrier in connection with a passenger's contract of carriage, excluding:

^{1.} articles or vehicles carried under a charter-party or bill of lading;

^{2.} articles or vehicles, if the carriage is governed by the International Convention concerning the carriage of passengers and luggage by rail;

^{3.} live animals;

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

雅典海上旅客與其行李運送國際公約)33。

2002 年雅典海上旅客與其行李運送國際公約對 1974 年雅典海上旅客與其行李運送國際公約之增修,主要在使運送人對船上旅客死亡與傷害之責任由一般之「過失責任主義」加重至「嚴格責任主義」,並提高其責任限制之金額,為因應此項轉變,要求運送人強制保險,以保護旅客之權益。(此等規範係參考國際社會海洋環境汗染之責任與強制保險機制) 34。

2002 年雅典海上旅客與其行李運送國際公約新規範之強制保險機制,係要求運送人維持保險或其他財務保證,如銀行或類似機構之保證,以確保其公約上要求對旅客死亡與傷害之嚴格責任:每一事件每一旅客二十五萬特別提款權計算單位 35。

2002 年雅典海上旅客與其行李運送國際公約規範之運送人 對旅客死亡與傷害之「嚴格責任」,是運送人除能證明有如下免 責事由外,均應負責:戰爭、內戰、敵對行為、叛亂、天災或不

³³ Christopher Hill, supra note 6, p.550: "Article 15 Interpretation and application 3 Articles 1 to 22 of the Convention, as revised by this Protocol, together with articles 17 to 25 of this Protocol and the annex thereto, shall constitute and be called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002."

同前註 1: "The Protocol introduces compulsory insurance to cover passengers on ships and raises the limits of liability. It also introduces other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims."

同前註 1: "A new Article 4bis of the Convention requires carriers to maintain insurance or other financial security, such as the guarantee of a bank or similar fainancial institution to cover the limits for strict liability under the Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other fainancial security shall not be less than 250,000 Special Drawing Rights(SDR)(about US \$ 3255,000) per passenger on each distinct occasion."

可抗力、第三人故意之行為或不行為 36。但如旅客死亡與傷害所生損害非因「航運事故」產生,運送人僅就其過失所生損害負責。此時請求權人對運送人之過失應負舉證責任 37。同時,運送人僅對運送過程中發生之損害負責,因此請求權人對損害發生於運送過程中,及其所生損害之程度,亦應負舉證責任 38。

1974 年雅典公約之 2002 年修正附約議定書(The 2002 Protocol)第 4 條規定: 1974 年雅典海上旅客與其行李運送國際公約之第三條「運送人之責任」(Liability of the carrier)被修正並被新條文代替如下:(此係 2002 年修正附約議定書建立海上旅客運送人對人命之死亡或傷害新的「嚴格責任」(strict liability)最重要之條款。)

第3條 運送人之責任

1.對於因航運事故造成一旅客之死亡或人身傷害所產生之損害,運送人除能證明事故係因如下原因發生外,應對該旅客於每一事件之損害,於不超過250,000特別提款權計算單位範圍內負賠償責任:(a)因戰爭、敵對行為、內戰、叛亂、天災或不可抗力發生;或(b)全部因第三人故意之行為或不行為所發生。

如損害超過上開限制數額,運送人除能證明其並無過失外, 對超過之損害仍應負賠償之責。

³⁶ 同前註 1: "The carrier is liable, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistiable character, or was wholly caused by an act or omission done with the intent to cause the incident by a third party."

³⁷ 同前註 1: "For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect lies with the claimant."

³⁸ 同前註 1: "The liability of the carrier only includes loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, lies with the claimant."

- 2.對於因航運事故造成旅客之死亡或人身傷害所產生之損害,如運送人因其過失致使航運事故造成損害,運送人應負賠償責任。損害賠償請求權人對運送人有過失應負舉證責任。
- 3.對因客艙行李之滅失或毀損發生之損害,如運送人因其過 失致使該事故造成損害,運送人應負賠償責任。如因航運事故造 成損害時,推定運送人為有過失。
- 4.對因其他行李之滅失或毀損發生之損害,運送人應負賠償 責任,除運送人證明對該事故造成損害運送人並無過失。
 - 5. 為本條之目的:
- (a)「航運事故」指船舶之海難、翻覆、碰撞或擱淺,船上之爆炸或火災,或船舶之瑕疵;
- (b)「運送人之過失」包含運送人之使用人於其僱傭範圍內行為之過失;
- (c)「船舶之瑕疵」指任何功能不良,未遵守關於船舶任何部分或設備應適用之安全規範,該設備係使用於旅客逃生、清空、上船及離船;或使用於推進,駕駛、安全航行、繫泊、錨泊、駛抵或駛離泊地或錨泊之處、或洪水後之損害控制;或使用於救生設備之卸放;及
 - (d)「損失」不包括懲罰性或警告性之損害賠償。
- 6.本條規定之運送人責任,僅係發生於運送過程中之事故產 生之責任。損害賠償請求權人對損害係發生於運送過程中之事故 所產生,及損害之程度,應負舉證責任。
- 7.本公約不影響運送人對第三人之追索權,或本公約第六條 因與有過失得主張之抗辯。本條規定亦不影響本公約第七條或第 八條主張責任限制之權利。
 - 8.當事人過失之推定或舉證責任之分配並不阻止對當事人有

利之證據得被考慮。39

³⁹ Christopher Hill, supra note 6, p.544:

Article 3 Liability of the carrier

- 1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident:
- (a)resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

- 2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall be lie with the claimant.
- 3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.
- 4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
- 5. For the purposes of this article:
- (a) shipping incident means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
- (b) fault or neglect of the carrier includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;
- (c) defect in the ship means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers; or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and
- 6. The liability of the carrier under this article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.
- 7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under article 6 of this Convention. Nothing in this article shall prejudice any right of limitation

1974年雅典公約之 2002年修正附約議定書第 3 條規範運送 人對旅客傷亡之責任,由 1974年雅典海上旅客與其行李運送國際公約之一般之「過失責任主義」加重至「嚴格責任主義」,所 顯示的是國際社會對旅客人身之越來越珍視,相信我國海商法未 來此方面之發展趨勢,亦應是如此。此種發展對我國海商法第 79 條「旅客之運送,除本節規定外,準用本章第一節之規定。」致 準用「海上貨物運送」1924年關於載貨證券法律規則統一國際公 約(即「海牙規則」)之規範,確應具有重大的參考價值。

肆、海上旅客運送人之單位責任限制(unit

limitation)

國際海事法上運送人之責任限制有二,其一為運送人或船舶所有人對一海事事件整體全部責任之責任限制(total limitation of liability 或稱 global limitation of liability)。我國海商法第 21 條第 4 項業已參考國際公約(主要係參考 1957 年海船所有人責任限制公約(International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships,1957)及聯合國國際海事組織(International Maritime Organization – IMO)之 1976 年聯合國海事請求權責任限制公約(Convention on Limitation of Liability for Maritime Claims, 1976)分別就「對財物損害之賠償」及「對人身傷亡之賠償」分別規定如下 40:

under articles 7 or 8 of this Convention.

^{8.} Presumptions of fault or neglect of a Party or the allocation of the burden of proof to a Party shall not prevent evidence in favour of that Party from being considered.

⁴⁰ 参吳庚、王仁宏、蘇俊雄、謝在全編,月旦六法全書,元照,2001年3月,

「第一項責任限制數額如低於下列標準者,船舶所有人應補 足之:

- 一 對財物損害之賠償,以船舶登記總噸,每一總噸為 國際貨幣基金,特別提款權五四計算單位,計算其數額。
- 二 對人身傷亡之賠償,以船舶登記總噸,每一總噸為國際貨幣基金,特別提款權一六二計算單位,計算其數額。
- 三 前二款同時發生者,以船舶登記總噸,每一總噸為國際貨幣基金,特別提款權一六二計算單位,計算其數額。但人身傷亡應優先以船舶登記總噸,每一總噸為國際貨幣基金,特別提款權一〇八計算單位計算之數額內賠償,如此數額不足以全部清償時,其不足額再與財物之毀損滅失,共同在現存之責任限制數額內比例分配之。

四 船舶登記總噸不足三百噸者,以三百噸計算。|

其二為運送人或船舶所有人於海上貨物或旅客運送中對一運送單位之責任限制,如對一件貨物之責任限制,對一公斤貨物之責任限制,對一旅客傷亡之責任限制,或對一行李之責任限制。此等責任限制國際社會通常稱為「單位責任限制」(unit limitation of liability)。

我國海商法第70條第2項及第3項規定:「除貨物之性質及價值於裝載前,已經託運人聲明並註明於載貨證券者外,運送人或船舶所有人對於貨物之毀損滅失,其賠償責任,以每件特別提款權666.67單位或每公斤特別提款權二單位計算所得之金額,兩者較高者為限。前項所稱件數,係指貨物託運之包裝單位,其以貨櫃、墊板或其他方式併裝運送者,應以載貨證券所載其內之包

頁 2-375: 立法院 88 年修正理由「增訂第四項:係參酌一九五七年海船所有人責任限制公約第三條及一九七六年聯合國海事求償責任限制公約第六、第七、第八條...」。

裝單位為件數。但載貨證券未經載明者,以併裝單位為件數。其使用之貨櫃係由託運人提供者,貨櫃本身得作為一件計算。」本條項係參考 1968 年海牙威士比規則(The Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading,1968)第 4 條第 5 項訂定 41。

基於人命應較物受重視之基本原則,責任限制之規範,應區分對人傷亡之請求權責任限制金額及對物損害之請求權責任限制金額應較對物損害之請求權責任限制金額應較對物損害之請求權責任限制之金額為高,此應為責任限制規範之基本法理。我國海商法第79條規定「旅客之運送,除本節規定外,準用本章第一節之規定。」致對旅客死亡與傷害所生損害請求權責任限制之規範,係應準用我國海商法第70條第2項上開規定,使我國海商法對旅客傷亡之賠償責任限制為:每人特別提款權666.67單位或每公斤特別提款權二單位計算所得之金額,兩者較高者為限。此於國際社會,是絕對不合理與不可接受的。

1961年海上旅客運送法律規則統一國際公約第6條第1項規定:對一旅客死亡與傷害所生損害請求權責任限制金額為25萬法朗42。此項責任限制金額,於1974年雅典海上旅客與其行李運送國際公約,調整為每人70萬法朗43,1976年修正附約議定書調整為每人特別提款權46666單位(約4萬1千美元)44;1990年修正附約議定書調整為每人特別提款權175000單位45;而2002

⁴¹ 同前註,頁 2-383:立法院 88 年修正理由「本條第二、三、四項係參照一九六八年海牙威士比規則第四條第五項有關款項修訂...」。

⁴² The Kaharaj Nagendra Singh, supra note 2, p.2993: Article 6 (1) The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 250,000 francs, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900."

⁴³ Id., p.3007.

⁴⁴ Id., p.3016.

年雅典海上旅客與其行李運送國際公約更調整為每人特別提款權 250000單位(約32萬5千美元)46。此與海上貨物運送公約之1968年「威士比規則」(The Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading,1968)第2條將對貨物損害賠償請求權責任限制金額訂為每件10000法朗47,及1979年「特別提款權議定書」 \$DR Protocol)將對貨物損害賠償請求權責任限制金額訂為每件特別提款權 666.67單位48,差距甚大。海上旅客運送相關國際公約單位責任限制金額之規範,值得我國海商法未來修法時,審慎考慮予以參酌。

伍、時效期間

我國海商法第79條準用海商法第56條第2項如下規定: 貨物之全部或一部毀損、滅失者,自貨物受領之日或自應受領之日起,一年內未起訴者,運送人或船舶所有人解除其責任。

我國海商法第 56 條第 2 項規定係採納自 1968 年海牙威士比規則第 3 條第 4 項,此亦即係 1924 年「海牙規則」 【924 年關於載貨證券法律規則統一國際公約)第 3 條第 6 項第 4 款如下規定⁴⁹:"In any event the carrier and the ship shall be discharged from all

⁴⁶ Christopher Hill, supra note 6, p.547.

⁴⁷ The Kaharaj Nagendra Singh, supra note 2, p.3046.

⁴⁸ Id., p.3050-3051.

⁴⁹ 參吳庚、王仁宏、蘇俊雄、謝在全編, 同前註 40, 頁 2-380: 立法院 88 年海商法第 56 條修正理由「三、第二項參照一九六八年海牙威士比規則第三條第六項修正,現行條文係於五十一年修法時所增訂,第二項之立法理由為『...從美國海上貨物運送條例之規定訂為一年』,查美國海上貨物運送條例及一九六八年海牙威士比規則均訂明:『一年內未起訴者,運送人或船舶所有人解除其責任』之規定,爰依國際公約修正之。另貨物之全部或一部毀損滅失,均需於貨物受領之日或自應受領之日起一年內起訴,否則運送人解除

liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered."(其直接文字得譯為:於任何情形,運送人及船舶被解除所有關於滅失或毀損之責任,除非訴訟業於自貨物受領之日或自應受領之日起一年內被提起。)

1924年「海牙規則」(1924年關於載貨證券法律規則統一國 際公約)上開規定,固可以參考英美法通常採用之「訴權消滅主 義」(請求權人於時效期間內未提起訴訟,其請求權之訴權消滅, 不得再起訴)50,中國大陸之民法通則第七章亦採取「訴訟時效」, 其第 135 條規定:「向人民法院請求保護民事權利的訴訟時效期 間為兩年,法律另有規定的除外。」51,但本公約條文文字為「the carrier and the ship shall be discharged from all liability in respect of loss or damage」,即海上貨物毀損滅失之損害賠償請求權人於一 年期間內未提起訴訟,其法律效果依其文義直接逐字翻譯為「運 送人及船舶被解除所有關於滅失或毀損之責任1,故其被解除之 責任為「貨物滅失或毀損所生損害賠償責任」,故其法律效果係 採「債務人之債務消滅主義」、從另一方面觀之、亦即是債權人 之債權消滅,即類似於「請求權消滅主義」。如主張「債務人之 債務消滅│ 並不等同於「債權人之債權消滅」,則其法律效果應 即為「債務人之債務消滅、故債務人得拒絕給付」、即類似於我 國民法第144條第1項「時效完成後,債務人得拒絕給付」之「請 求權減弱主義 | 或「抗辯權發生主義」。我國學者以條文中使用

其責任。」公約本條原文規定參 The Kaharaj Nagendra Singh, supra note 2, p.3038.

⁵⁰ Cheshire Fifoot & Furmston, Law of Contract, Butterworths, London, 1986, p.618: "The Limitation Act 1980 contains three provisions that impose a time limit within which an action for a breach of a contract must be brought."

 $^{^{51}}$ 參中華人民共和國現行法律法規,智識產權出版社,2002 年 11 月,頁 331 。

「解除」二字,即認為此期間為「解除權之除斥期間」⁵²,而非「時效期間」似有誤解。

海上貨物運送發生毀損滅失或遲到所生損害賠償請求權之「期間」問題於 1978 年聯合國海上貨物運送公約(United Nations Convention on the Carriage of Goods by Sea,1978)即「漢堡規則」The Hamburg Rules)第 20 條則回復至英美法通常採用之「訴權消滅主義」,其規定如下 53:

Article 20. Limitation of actions

- 1. Any action relating to carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.
- 2. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.
- 3. The day on which the limitation period commences is not included in the period.
- 4. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.
 - 5. An action for indemnity by a person held liable may be

⁵² 參賴來焜,新海商法論,學林,2000年1月,頁645:「通說採限期起訴之 『除斥期間』];並參楊仁壽,海商法修正評釋,自版,1997年12月,頁191 及張天欽,海上貨物運送法修正專論,海國法律事務所,1986年6月,頁 357-359。

⁵³ John F. Wilson, Carriage of Goods by Sea, Financial Times Management, London, 1998, p.365; see also Payne & Ivamy, Carriage of Goods by Sea, Butterworths, London, 1989, p.364.

instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

本條依聯合國官方之中文版本譯為:第二十條 訴訟時效 1.有關按照本公約運送貨物的任何訴訟如不在兩年期內發動 司法或仲裁程序,即失去時效。

- 2.時效期間於運送人交付貨物或部分貨物之日開始,如貨物 未交付,則自貨物應當交付之最後一日開始。
 - 3.時效期間開始之日不算入此種期間內。
- 4.被要求賠償的人可於時效期間進行中隨時向要求賠償人提 出書面聲明,將此種期間延長。此種期間並可再以一次或多次聲 明予以延長。
- 5.在以上各款規定的時效期間屆滿後,仍可對認為負有賠償 責任者提出要求賠償的訴訟,但此項訴訟必須在提起訴訟地國家 法律准許的限期內提起。但准許的限期不得低於九十日,自提起 此項要求賠償訴訟者已解決索償要求或對其本人所提訴訟的傳 票送達之日起算。

上開 1978 年聯合國海上貨物運送公約之中文官方版本參見聯合國國際貿易法委員會之官方中文網站資料,原版為大陸簡體中文,本文除將其改為正體中文外,未更動任何文字。故聯合國官方之觀點將 limitation of actions 認為訴訟時效,將 limitation period 認為時效期間,應屬明確。聯合國全程或者部分海上國際貨物運輸合同公約第十三章「時效」、聯合國國際貿易運輸港站

經營人賠償責任公約第 12 條「訴訟時效」及聯合國國際貨物銷售時效期限公約中文官方版本亦均相同。此種訴訟時效期間,亦為 1961 年海上旅客運送法律規則統一國際公約、1967 年海上旅客行李運送法律規則統一國際公約及 1974 年雅典海上旅客與其行李運送國際公約所採納,其規定分別如下:

- ─ 1961 年海上旅客運送法律規則統一國際公約第 11 條第 2 項至第 6 項規定:
- (2)旅客死亡或身體傷害所生損害之訴訟權利因二年間不行 使而消滅。
 - (3)關於身體傷害之訴訟期間,自旅客離船之日起算。
- (4)關於運送過程中死亡之訴訟期間,自旅客應離船之日起 算。
- (5)關於運送過程中身體傷害致於離船後死亡之訴訟期間,自 旅客死亡之日起算,但期間自離船之日起不得超過三年。
- (6)案件繫屬法院地法得規範本條訴訟期間權利之停止與中 斷,但本公約之訴訟權利於期間自離船之日起超過三年均不得行 使 54。

(2) Actions for damages arising out of the death or personal injury of a passenger shall be time barred after a period of two years.

⁵⁴ The Kaharaj Nagendra Singh, supra note 2, p.2994: Article 11-

⁽³⁾ In case of personal injury, the limitation period shall be calculated from the date of the disembarkation of the passenger.

⁽⁴⁾ In the event of death occurring during carriage the limitation period shall be calculated from the date on which the passenger should have disembarked.

⁽⁵⁾ In the event of personal injury which occurs in the course of carriage and results in death after disembarkation the limitation period shall be calculated from the date of death, provided that this period shall not exceed three years from the date of disembarkation.

⁽⁶⁾ The law of the Court seized of the case shall govern rights of suspension and interruption of the limitation periods in this Article, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

- ☐ 1967 年海上旅客行李運送法律規則統一國際公約第 10 條 第 2 項及第 3 項規定:
- 2.行李滅失或毀損所生損害之訴訟權利因自離船之日起二年 間不行使而消滅,如船舶發生全部損失時,自應離船之日起算。
- 3.案件繫屬法院地法得規範本條訴訟期間權利之停止與中 斷,但本公約之訴訟權利於期間自離船之日起超過三年均不得行 使,如船舶發生全部損失時,自應離船之日起算 55。
 - 1974 年雅典海上旅客與其行李運送國際公約第 16 條規定:第 16 條 訴訟權利因時效消滅
- 1.旅客死亡或傷害之損害或行李之滅失或毀損所生之訴訟權 利因二年間不行使而消滅。
 - 2.訴訟時效期間依如下規定計算:
 - (a)關於身體傷害之訴訟時效期間,自旅客離船之日起算;
- (b)關於運送過程中死亡之訴訟期間,自旅客應離船之日起算,而關於運送過程中身體傷害致於離船後死亡之訴訟期間,自旅客死亡之日起算,但期間自離船之日起不得超過三年。
- (c)關於行李滅失或毀損之訴訟期間,自離船之日或自應離船之日起算,依發生在後者為準。
- 3.案件繫屬法院地法得規範本條訴訟期間權利之停止與中 斷,但本公約之訴訟權利於期間自離船之日或自應離船之日起

⁵⁵ Id., p.3000: Article 10-

^{2.} Actions for damages arising out of loss of or damage to luggage shall be time-barred after a period of two years from the date of disembarkation, or, if the ship has become a total loss, from the date when the disembarkation should have taken place.

^{3.} The law of the Court seized of the case shall govern the grounds of suspension and interruption of limitation periods in this Article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation, or, if the ship has become a total loss, from the date when the disembarkation should have taken place.

算,超過三年均不得行使,起算日依發生在後者為準。

4.無論本條第一、二、三款如何規定,訴訟原因發生後,訴訟期間得以運送人之聲明或當事人之協議方式延展。該聲明或協議應以書面為之 56。

建議我國海商法旅客運送規範,參考 1974 年雅典海上旅客 與其行李運送國際公約第 16 條之規定及我國民法之損害賠償請 求權消滅時效原有法律措詞,建立適合旅客運送之時效期間規 定,不再準用海上貨物運送一年時效期間之規範。

陸、結論與建議

我國海商法旅客運送之規定,自民國 18 年商法起草委員會

⁵⁶ Id., p.3009-3010: Article 16. Time-bar for Actions-

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

2. The limitation period shall be calculated as follows:

(a) In the case of personal injury, from the date of disembarkation of the passenger;

(b) In the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;

(c) In the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

4. Notwithstanding paragraphs 1,2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

之「海商法草案」57迄今,僅於民國 51年立法院修正海商法時,增訂旅客應強制投保意外險,保險金額載入客票,視同契約,其保險費包括於票價內,並以保險金額為損害賠償之最高額,並得自行加保任意意外險之二條規定為較有實質重要之意義(即現行海商法第 81 條及第 82 條),其餘大體並無實質重要意義之變動58。旅客運送規定最重要之第一個條文,亦僅由「旅客之運送,除本節另有規定外,準用關於貨物運送之規定」,修正為「旅客之運送,除本節規定外,準用本章第一節之規定」,實質上並無變動59。

民國 88 年立法院修正海商法時,對旅客運送一節完全未予 更動,無視於旅客運送國際公約之存在 60。由於立法之疏漏,以 致於國內海商法之著作,對旅客運送亦鮮少予以論述。其中有完 全未予論述者 61,有僅依據現行法條文義予以闡述者 62,其中具有 參考價值者為:

一桂裕,海商法新論,國立編譯館,民國 63 年初版,第 374 頁:「關於海上旅客運送,國際間於 1957 年 10 月 7 日在比京布 魯塞爾訂立「統一海上旅客運送規定草約」,經 25 國簽字,嗣於 1961 年 4 月 17 日,國際海事委員會建議比利時政府與國際原子 能總署,在布魯塞爾召開第 11 次海事法外交會議,同月 29 日就

⁵⁷ 民國 18 年商法起草委員會之「海商法草案」,參立法院公報第 13 期,頁 60-81,「海商法起草報告」附「海商法草案」。

⁵⁸ 立法院民國 51 年修正海商法旅客運送節,參立法院公報第 29 會期第 16 期, 頁 101-106。

⁵⁹ 同前註,頁 101。

⁶⁰ 參張新平,同前註 45,頁 305。

⁶² 參鄭玉波著,林群弼修訂,海商法,三民,2005年10月,頁221-226。並 參楊仁壽,最新海商法論,三民,2003年3月,頁421-423。

原草約加以修正成立統一海上客運規定國際公約共 22 條,我國亦參加簽訂。|

口梁宇賢,海商法論,三民書局,民國86年10月再修訂初版,第543頁;並引於邱錦添,海商法,五南圖書公司,民國87年4月二版,第361頁:「關於旅客之責任,我國海商法並無明文。依1961年統一海上客運公約第4條規定,運送人對旅客之死亡或其身體傷害所生之損害,如其損害事由發生於運送過程中,由於運送人或其受僱人、代理人在僱傭職務範圍之過失或疏忽所致者,運送人應負責任。關於運送人或其受僱人、代理人之過失或疏忽,由請求人(旅客)負舉證責任。」

一柯澤東,海商法,元照出版公司,2006年6月初版,第 265 頁:「由於海上旅客運送保留旅客在船上之行動自由,因此由 旅客本身肇禍比例高於運送人, 此不同於陸上及航空之旅客運送 因旅客行動受拘束,不能有自由活動之空間,或受限於航行之安 全,必受管制或不得有自由之行動,以免造成航行之安全。故海 上旅客運送人固應負安全責任,但非為全部保證。而以上亦為旅 客海上運送異於貨物海上海上運送者。若運送人之責任比照海商 法海上貨物運送,亦有不當之處。故 1961 年布魯塞爾旅客運送 統一規定國際公約,及1974年旅客及其行李海上運送雅典公約, 為對我國修法上之參考。該二公約後者較前者為大,擴及旅客之 行李,且賠償額亦提高。惟該二公約就旅客運送言,運送人之責 任均有其共通點,可供參考: ... 二、責任基礎 一對旅客,運送 人應負善良管理人之注意義務。一船舶航行中對船舶之安全、適 航性應負善良管理人之注意義務。 [基以上|及]之義務,於旅 客在船上發生傷害事故時,應由旅客證明運送人對未盡 (一)、(二)之 過失。四若由海難、碰撞、觸礁、爆炸、失火所致發生旅客之傷 害事故,則由運送人負責舉證證明非其過失,否則推定為運送人

之責任。」

我國海商法第79條規定「旅客之運送,除本節規定外,準 用本章第一節之規定。| 因此我國海商法係明定海上旅客運送人 之責任準用海上貨物運送人之責任, 並非我國海商法未規定海上 旅客運送人之責任,而我國海商法海上旅客運送人之責任亦非可 適用我國民法第二編「債」第二章「各種之債」第16節「運送」 第1款「通則」(自第622條至第623條,總共2條)及第3款 「旅客運送」(自第654條至第659條,總共6條) 共8條條文, 特別是不得適用我國民法第654條第1項「嚴格責任」之規定: 「旅客運送人對於旅客因運送所受之傷害及運送之遲到應負責 任。但因旅客之過失,或其傷害係因不可抗力所致者,不在此限。] 63 我國曾簽署 1961 年海上旅客運送法律規則統一國際公約 1 (International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea,1961), 因此我國海商 法民國 51 年修正及民國 88 年修正時, 我國政府似不得謂對國際 社會中有海上旅客運送國際公約之存在稱並不知情。而國內學者 對海上旅客運送人之責任準用海上貨物運送人之責任認為並不 妥當,未來應參考國際社會之海上旅客運送國際公約予以修正應 已有相當程度之共識 4。

由於 1974 年雅典海上旅客與其行李運送國際公約係由「聯合國國際海事組織」(International Maritime Organization – IMO) 推動綜合前二布魯塞爾公約(1961 年海上旅客運送法律規則統一國際公約及 1967 年海上旅客行李運送法律規則統一國際公約)

⁶³ 参張新平,同前註 45,頁 310,但海上旅客運送人之責任於我國法制現況,依我國海商法第 79 條規定,逕谪用我國民法第六五四條之規定,恐非妥適。

⁶⁴ 參柯澤東,海商法,元照,2006年6月,頁265;梁字賢,海商法論,三民,1997年10月,頁543;邱錦添,海商法,五南,1998年4月,頁361;張新平,同前註45,頁310。

制定成為聯合國之國際海事公約。本公約運送人責任之規範仍維持原布魯塞爾公約「過失責任主義」之原則與部分「推定過失責任主義」,及"vicarious liability"之法理(旅客運送人之履行輔助人有過失,並非旅客運送人本人有過失時,旅客運送人仍應負其責任),尚屬公平合理。1974年雅典海上旅客與其行李運送國際公約亦已於1987年4月8日生效,英國亦於

1979 年及 1995 年將其納入其國內法 Merchant Shipping Act 中⁶⁵,未來我國海商法修法時,建議刪除第 79 條海上旅客與其行李運送準用海上貨物運送之規定,參酌 1974 年雅典海上旅客與其行李運送國際公約建立適當之旅客運送規範。至於 2002 年雅典海上旅客與其行李運送國際公約,其現尚未生效 ⁶⁶,且其「嚴格責任」之規定恐大幅增加我國海上旅客運送人之營運成本,可能引起我國海上旅客運送業相當之疑慮,暫續觀察其於國際社會之發展,似較屬妥當。(參酌美國紐約州法,旅客公共運送人之責任亦僅係盡適當注意之義務之「過失責任主義」,並未採「嚴格責任」) ⁶⁷。至 2002 年雅典海上旅客與其行李運送國際公約第

Aengus R. M. Fogarty, Merchant Shipping Legislation, Lloyd's of London Press, 2004, p.509; Christopher Hill, supra note 33, p.450: "The Athens Convention relating to the carriage of passengers and their luggage by sea 1974 came into force internationally on 28 April 1987. It was originally brought into effect in the U.K. by section 14 of the Merchant Shipping Act 1979 has now been repealed by the Merchant Shipping Act 1995, which states that the convention relating to the carriage of passengers and their luggage by sea shall have the force of law in the United Kingdom (see section 183, 184 and schedule 6).

⁶⁶ 同前註1網站資訊。

⁶⁷ New York Jurisprudence, The Lawyers Co-operative Publishing Co., New York,1981,p.442: "A common carrier for passengers is not an insurer against accident, but is liable to a passenger only where there has been a lack of proper care and diligence upon the part of the carrier or its employees. That the circumstances of the particular case may require the carrier to exercise a high, or the highest degree of care, does not make the carrier an insurer of the safty of its passengers. A carrier of passengers is not responsible for an injury caused by an unforeseen accident against which human care and foresight could not guard."

5條強制保險之規定我國海商法第81條已有規定,且已於交通部「船舶運送業及船舶出租業管理規則」第27條予以實際執行⁶⁸,應無庸再予增訂。

中國大陸已於1994年8月30日正式簽署1974年雅典海上 旅客與其行李運送國際公約及其1976年之修訂附約議定書 69,並 將其相關之海上旅客與其行李運送人之責任及責任限制之規範 採納於其海商法中 79,中國大陸海商法海上旅客與其行李運送相 關規定,深值我國未來修正海商法之參考。

⁶⁸ 交通部「船舶運送業及船舶出租業管理規則」第27條規定:「船舶運送業經營旅客運送者,應於開始營運前,為旅客投保人身傷害險,並將合約報請當地航政機關備查。每一旅客保險金額為新台幣二百萬元,但保險法令另有規定者,從其規定,並於客票內載明保險金額。」旅客運送之強制保險應為「人身傷害保險」或為「責任保險」,學者間有不同之看法,但責任保險於事故發生後之理賠,常會涉及確定法律責任有無(contesting legal liability)之訴訟程序,耗費時日,可能緩不濟急,不如傷害保險之理賠迅速,受害之旅客得迅速獲得補償,故似以投保傷害保險較為妥適。

⁶⁹ Aengus R. M. Fogarty, supra note 65, p.510.

⁷⁰ 中華人民共和國現行法律法規,同前註 51,頁 695:中華人民共和國海商法第 114 條:「在本法第一百一十一條規定的旅客及其行李的運送期間,因承運人或者承運人的受雇人、代理人在受雇或受委託的範圍內的過失引起事故,造成旅客人身傷亡或者行李滅失、損壞的,承運人應當負賠償責任。請求人對承運人或者承運人的受雇人、代理人的過失,應當負舉證責任;但是,本條第三款和第四款規定的情形除外。旅客人身傷亡或者自帶行李滅失、損壞,是由於船舶的沈沒、碰撞、擱淺、爆炸、火災引起或者是由於船舶的缺陷所引起的,承運人或者承運人的受雇人、代理人除非提出反證,應當視為其有過失。旅客自帶行李以外的其他行李的滅失或者損壞,不論由於何種事故所引起,承運人或者承運人的受雇人、代理人除非提出反證,應當視為其有過失。」本條文義顯係採自 1974 年雅典海上旅客與其行李運送國際公約第3條,參前註 26;同法第 117條規定對旅客人身傷亡之責任限制為 46666計算單位,則顯採自 1974 年雅典海上旅客與其行李運送國際公約 2 1976 年修正附約議定書,參前註 44。大陸海商法關於海上旅客與其行李運送相關規定,確較我國海商法準用貨物運送之規範(海牙威士比規則)為妥適。

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