



An overview of how international arbitration handles transportation disputes

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Abstract

The numerous recorded incidents in the transportation sector pose a significant challenge to quantify the extent of the losses encountered by the consumers and the hundreds of lives that have been claimed. Arbitration may be a more effective choice since traditional litigation is a lengthy process that lacks consumer-friendliness. The purpose of the paper is to analyze the approach in which transportation disputes are handled through international arbitration. The method is utilizing the normative legal research with instrument of international law. The result of discussion shows that arbitration has a role in maintaining the fluidity of international trade by providing efficient and often more flexible resolutions decided by qualified professionals with cheap fees compared to traditional litigation in courts.

Keywords: International arbitration, transportation law, UNCITRAL arbitration rules

Introduction

International transportation covers a wide range of legal aspects on the various modes of transport and sectors, including the movement of passengers and freight over road, rail, sea, and air. The main goal of transportation is the presence of security and safety of organizing the transport of passengers and freight from one place to a particular destination.

Nevertheless, the goal remains far from the expected results in giving the security and safety. The current transportation disputes are factored by evolving regulatory frameworks, technological advancements, sustainability concerns, and geopolitical tensions. It is supported by reports from several media sources, which record numerous incidents in the transportation sector, including shipwrecks, plane crashes, train accidents, and traffic collisions. All of incidents lead to contractual obligations, cancellations, delays, and liabilities. It is challenging to quantify the extent of the losses encountered by the consumers and the hundreds of lives that have been claimed. In addition, the broad network triggers various disputes frequently to occur, which pose challenges to the efficiency of trade transactions. Addressing transportation disputes efficiently is crucial to maintaining the smooth functioning of global trade and ensuring the movement of passengers and freight remains uninterrupted. Because of that, it requires resolution legal procedures to overcome geographical and jurisdictional boundaries.

Traditionally, transportation disputes are usually handled by litigation if the disputed parties could not reach consensus on the compensation. However, litigation is a lengthy process that lacks consumer-friendliness. Hence, alternative dispute resolution (ADR), specifically arbitration, could potentially be a more effective choice, considering that most of transportation disputes involve uncomplicated factual distinctions and compensation matters. Therefore, the authors try to analyze the approach in which transportation disputes are handled through international arbitration.

Methods

By utilizing normative legal research, this paper analyzes the connection between theoretical analyzes and practical

application in identifying the issues at the question. The authors rely upon instrument of international law as legal sources, such as United Nations Commission on International Trade Law. Additionally, the material sources for this paper are based on the textbook, journal, online website, and online news collected through literature study and systematic description.

Discussion

1. Transportation in Legal Perspective

H.M.N. Purwosutjipto stated that transportation is a reciprocal agreement between the transport and the passenger or consigner, in which the carrier commits to safely transport goods and/or people from one location to a particular destination, while the passenger or consigner commits to paying the transportation fee. The organizing transportation can be done alone or performed by others under his orders. The important thing in the transportation is safely, in which the movement of passengers are not injured or freight is not damaged in part or in whole. If it is not safe, then the carrier must get the liability as the consequences of his negligence.

Transportation has divided into two principles, which are public nature and civil nature. The principles of public nature on transportation are applicable and useful for all parties that are the parties in the transportation, third party concerned with the transport, and the government, as follows:

- a. **The principle of benefit** stipulates that transportation should provide the greatest advantages for society and humanity, improve the well-being of individuals and communities, and encourage sustainable living conditions for citizens, as well as contribute to the improvement of state defence and security.
- b. **The principle of joint efforts and kindship** stipulates that activities in the transportation sector are conducted in pursuit of the nation's aspirations and ideals, in which activities are imbued with a sense of family and can be carried out by individuals at all levels of society.

- c. **The principle of fairness and equity** stipulates that transportation carriers must be capable of delivering services that are both fair and equitable to all members of society at costs that are affordable to the community.
- d. **The principle of balance** stipulates that the organization of transportation should strive to achieve a harmonious balance among various interests, including infrastructure and facilities, consumer and service provider issues, community and individual interests, and national and international interests.
- e. **The principle of common interest** stipulates that transportation management should give priority to the welfare of the general public through public services.
- f. **The principle of cohesion** stipulates that transportation, whether intramodal or intermodal, must operate as a unified, complementary, and mutually supportive system;
- g. **The principle of legal awareness** stipulates that the government must ensure and enforce legal certainty.
- h. **The principle of believe in yourself** stipulates that transportation should be established upon a nation's character and assurance of its own capabilities and strengths.
- i. **The principle of passenger safety** stipulates that every passenger transportation operation must be accompanied by accident insurance.

Meanwhile, the principles of civil nature on transportation are only applicable and useful for both parties in the transport, namely the carrier and the passenger or consigner, as follows:

- a. **The principle of consensual** stipulates that an agreement between the parties is sufficient in lieu of a written carriage agreement. Nevertheless, in order to support the occurrence or existence of the agreement, it is necessary to provide proof of transportation documents or similar evidence.
- b. **The principle of coordinative** stipulates that the parties in transportation have an equal or parallel position, no party can overcome or supervise another. Although the carrier provides services and carries out orders of the passenger or freight forwarder, the carrier is not subordinate to the passenger or freight forwarder.
- c. **The principle of mixed agreement** stipulates that transportation is comprised of three different types of agreements: power of attorney delegation, goods storage, and labour delegation from the passenger or freight to the carrier.
- d. **The principle of evidence with documents** stipulates that every transport is always proven by transport documents. The absence of transport documents signifies the absence of a transport agreement, unless such situations are customary.

The sources of transportation including of international conventions, customary law, bilateral or multilateral

agreement, national law, jurisprudence (decisions of the court), general legal principles, and others agreement such as agreement between government with the transportation company, agreement between transportation company with transportation company, and agreement between transportation company with public or private. The subjects of transportation are carrier, consigner, passenger, expeditor, travel agent, loading and unloading companies, warehousing company, and consignee receiver.

As explanation before, if the carrier does negligent threatened the safety, he must get liability as the consequences. The liability consists of:

a. **The liability based on fault principle**

Any carrier who made mistakes should be responsible to pay any losses incurred due to errors or negligence. The legal burden of proof is on the injured party rather than the carrier. It usually concerns on the inland transportation, both of road and rail.

b. **The liability based on rebuttable presumption**

The carrier deemed always responsible for any loss arising from the transportation. However, if the carrier can prove it (he was not negligence or has sought to make efforts to avoid losses), then he is free from the responsibility to any compensation. The legal burden of proof is on the carrier. It usually concerns on the sea transportation.

c. **The strict liability**

The carrier shall be liable for any losses that arise without having to prove presence or absence of carrier's mistake. It usually concerns on the air transportation.

Following is the coverage of various modes of transportation completed with the basis of transportation law, as follows:

- a. **Trucking and Road Transport Law** is regulated by national and regional laws from particular country regarding road transport, including regulations on driver hours, cargo transportation, and vehicle standards.
- b. **Railroad Law** is regulated by national laws and regulations from particular country governing railroad operations and safety standards.
- c. **Sea Law** is internationally regulated by United Nations Convention on the Law of the Sea (UNCLOS), International Maritime Organization (IMO) Conventions like Safety of Life at Sea (SOLAS) and Marine Pollution (MARPOL).
- d. **Air Law** is internationally regulated by Civil Aviation Organization (ICAO) Regulations and the Montreal Convention on Air Carrier Liability.

2. **International Arbitration Handles the Transportation Disputes**

Transportation disputes resolved through international arbitration often covers a range of issues within the transport sector, such as: (1) Cargo disputes that can arise from damage, loss, or delay in the delivery of goods through road, rail, sea, or air transport; (2) Charter party disputes are the issues between shipowners and charterers on the terms and conditions of vessel charters, including performance,

payment, or breach of contract; (3) Freight and demurrage disputes is disagreements over the payment of freight charger or demurrage fees for delays in loading or unloading cargo; (4) Insurance and liability is claims involving carriers' liability for accidents, damage to goods, or injuries to passengers; (5) Regulatory compliance disputes is related to compliance with international regulations, safety standards, or environmental requirements in transportation; and (6) Disputes in multimodal transport that arise from the use multiple modes of transport and liabilities of different carriers involved.

Due to traditional litigation is a lengthy process that lacks consumer-friendliness for handling the transportation disputes, arbitration becomes a more effective choice. Several institutions, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Dispute Resolution (ICDR), offer arbitration services tailored to transportation disputes.

The most significant factor in the realm of international commerce, specifically on transportation sector, is bargaining power. It indicates that handling the disputes by concentrating on a disparity in bargaining power is the initial course of action. When disputing parties use to traditional litigation in court, they will almost certainly incur greater losses. Then, the greatest opportunity to benefit is to utilize the bargaining power that arbitration provides.

There are some motivations for disputed parties to choose international arbitration rather than court from available instruments to handle the transportation dispute. *First*, the disputed parties will rely the flexibility of international arbitration, which allows the parties to tailor procedures to their individual preferences. *Second*, the disputed parties are generally sceptical of another country's court, where they believed that the court will only bias or side with one party, so the winner can be predicted. *Third*, the enforceability of arbitration clauses is easy, as known that there is challenging to the enforcement of foreign court decisions. To further boost the aforementioned motivations, it is beneficial to recall the supposed advantages of arbitration, which are frequently outlined as being flexible, cost-effective, expeditious, and managed with a greater number of professionals than courts.

Special rules that provide a framework for resolving transportation disputes through arbitration is United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. An overview of the procedural steps, as follows:

a. Agreement to Arbitrate

The disputed parties are shown motivation to resolve their transportation dispute through arbitration by an arbitration clause in their contract or a separate agreement.

b. Commencement of Arbitration

- Notice of Arbitration: the claimant initiates the arbitration by sending a notice to the respondent, outlining the nature of the dispute and the relief sought.
- Appointment of Arbitrators: The disputed parties may agree on the appointment of arbitrators, if no, the UNCITRAL Rules provide a mechanism for appointing arbitrators.

c. Case Management Conference

To discuss procedural matters, including the schedule, language, place of hearings, and exchange of documents. Specific to transportation disputes, issues related to evidence submission, expert witnesses, and the understanding of industry-specific terms might be addresses.

d. Exchange of Pleadings and Evidence

- Statement of Claim and Defence: The disputed parties present their respective statements of claim and defence, detailing their positions and evidence supporting their claims.
- Document Production and Evidence Submission: The disputed parties exchange relevant documents and evidence supporting their claims or defences.

e. Hearings and Proceedings

The disputed parties present their arguments, examine witnesses, and provide additional evidence. In transportation disputes, the stage may involve expert witnesses or technical assessments related to cargo damage, compliance with industry standards, or contract performance.

f. Deliberation and Award

The tribunal deliberates and renders its final award including of findings on liability, damages, and costs.

g. Enforcement

The final award is binding on the disputed parties and enforced by them.

Conclusion

It concluded that arbitration plays a crucial role in the complexity of transportation disputes guiding the disputes towards a fair conclusion. Through the utilization of flexibility, professional, neutrality, effectiveness, confidentiality, and compliance, arbitration serves to not only reconcile disputes but also facilitate the smooth movement of goods and services within the realm of international commerce.

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