

Responsibility and Rights of Multimodal Transport Operator in Geneva Convention 1980

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ABSTRACT

Increasing trade exchanges between depends on moving in groups of agriculture, industry and commerce, transport sector in trade has the key role. Considering a remarkable share of transportation is inevitable. The transit of goods from manufacturer to dealer shop located in the international arena from a country to the other countries requires multiple and diverse set of affairs such as: collecting the goods, classification of goods, insurance affairs, tax, customs affairs, transport by other means, transport to the port, airport or terminal that all these affairs in freight transport is done by intermediaries. This article studies further understanding of transport and multimodal transport and obligations and responsibilities regarding this issue.

As there is a few studies on the obligation of transport, I will check on this important issue in Iran and identification of it in the Geneva Conventions.

KEYWORDS

multimodal transport, multimodal transport operator, multimodal transport operator in Iranian law and the Geneva Conventions, custodian of transport.

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Introduction

Transport the or movement of goods, objects and people from one point to another is the lasting human traits, thus, the history of the relationship between human beings with this phenomenon goes back to ancient times; and one of the oldest trade routes is known as exchange of goods with other goods. So, there is an urgent need to shift goods. The other urgent need that have a significant role in the development of transport phenomena in terms of time and a special place is military matters, Any government or political organization without having chain transport and communications will not be able to consolidate its existence because of the principles and the laws and administer internal organization and the movement of military and security in the light of a transport system is reliable and based on strong correlation.

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In the old days, the covenant was enough to spend some time talking and talking until the shipment was consigned to the caravan democracy such as Abrisham Road, but the trade exchanges were expanded as the parties of contract do not meet each other. After war, this phenomenon has become industry phenomenon. In a general classification, transportation is divided into three major fields, shipping, air transport, and road transport. Road transport is divided into three branches (urban, intercity), railway (railroad) Wail (for transportation of oil and gas and water) (Tofiq Erfani, 2006: 7-8-13).

Definition of Multimodal transporter operator

The operation of this method of transport is done by a unit person that the unit person is called multimodal transport operator. As the article is about the responsibilities and law related to this operator according to the Geneva Convention in 1980, we should present a comprehensive definition. The multimodal transport operator according to the Article 2 of Geneva Convention is defined as follow:

The multimodal transport operator means a person who conclude a contract of the multimodal transport operator, he is responsible for implementing it; he is not as the representative of sender or transporter in the operation.

As there is no proper legal definition for the job of the multimodal transport operation, everybody can select this job.

Today, in different countries, every transport entity provide some services. The important point is that providing these services is the responsibility of persons who are able in financial affairs and having facilities, and there are some representatives in different areas. As their most important responsibility is setting cooperation between persons and various institutions in transport affairs, they should understand different types of transport to achieve the success.

According to the above, the multimodal transport operator can be defined as the natural or legal person who is responsible for the operation from the first to the end. He as the designer of operation should select the proper path and the custodian of transport who is responsible for the transfer of goods. He must have a planning for concluding the contracts regarding the transfer of goods. The transfer of goods are often done by the representatives with other custodians who are the parties of contract, however, they do it sometimes.

As in the multimodal transport, the person is responsible for transfer of goods, the customer is owner of goods. Therefore, the operators of transport are considered as two faces; he is responsible for transfer of goods that should select the proper way, on the other hand, he is responsible for concluding the contract. In other word, we can see the second face of the operator as the reputed owner and in the role of representative of the real owner (Mohammadzadeh and Adqani, 2000: 50).

The important point is that as those participate in the operation of multimodal transport conceal their personality to shrink the responsibilities, the court face with some problems in definition of the multimodal transport operator. As it was mentioned, the multimodal transport operator can be a legal or natural person who concludes a contract, despite the legal limitations, provided that he has issued the multimodal bill of lading; and he is responsible for issuing the multimodal bill of lading. Thus, shipping, road transport, air transport, transits, and commissioners provide extensive services. Nowadays, the companies not only transfer the goods from a port to the other, but also they provide services from source to the goal. Therefore, as there is no law regarding this issue, the companies shrink the responsibility in a way other than shipping.

The transport companies in addition to the type of transport that they are responsible for that, they expand their operations, even that they have to use other transport that is related to their

rival, they select this method despite the economic crisis (Mohammadzadeh and Adqani, 1993: 110). The multimodal transport operator is one of the brokers of transport that is responsible for transfer of goods from source to the goal. It is necessary to mention that the broker of transport is only written in the law of France that have some common with the multimodal transport operator. This legal issue as it was mentioned already s called Commissionnaire de Transport that we are going to compare it with multimodal transport operator.

In France Law, contract of transport and contract of commissionaire de transport are distinguished, while, in other countries, the brokers of transport are known as the transporters because there is no specific law for that. According to what has mentioned regarding commissionaire de transport; despite some differences between them, there are some similarities regarding their responsibilities. It is necessary to mention that the responsibility of operator is more than other brokers such as forwarder or transitor (Mohammadzadeh and Adqani, 1993: 114 quoted from les auxiliaries de transport dans les pays du marche commun document idit. octobre 1977).

The definition of the multimodal transport operator is presented in various models regarding to multimodal transport. It can be seen in Article 2 paragraph B and Article 5 of Geneva Uniform Law on International Chamber of Commerce written in Journal of 298: The multimodal transport operator is a person who issues the document of multimodal transport:

A: He is obliged to provide services for transfer of goods from the time of receiving it to deliver it, he should accept the responsibility for transfer of goods.

B: He is responsible for the operations of representatives.

C: He is responsible for those who participate in concluding the contract.

D: He is obliged to deliver the goods. He is responsible for the damages to the goods.

Convention 24, 1980 Geneva in Article 1, Paragraph 2 defines the multimodal transport operator as: The multimodal transport operator means a person who conclude a contract of the multimodal transport operator, he is responsible for implementing it; he is not as the representative of sender or transporter in the operation (Mohammadzadeh and Adqani, ibid: 115).

Obligations of the Multimodal Transporter Operator and Custodian

A- Geneva Convention

According to Article 5 of Geneva Uniform Law on International Chamber of Commerce written in Journal of 298: The multimodal transport operator is a person who issues the document of multimodal transport:

A: He is obliged to provide services for transfer of goods from the time of receiving it to deliver it, he should accept the responsibility for transfer of goods.

B: He is responsible for the operations of representatives.

C: He is responsible for those who participate in concluding the contract.

D: He is obliged to deliver the goods. He is responsible for the damages to the goods.

E: He is responsible for damages to the goods regarding to the obligations.

According to Paragraph 3 of Article 1 in Geneva Convention, the operator is responsible for the multimodal transfer as the participator or the representative who employed by him.

According to Paragraph 4 of the Article, another responsibility of the operator is to receive the goods to deliver it based on the contract that the obligations related to this issue are mentioned to Article 14 of Convention. In Paragraph 4 of this Article, the multimodal transport operator is responsible for the representatives and other person who participate in the operation. According to Article 15 of Convention, the operator is responsible for those who shrink the responsibility in transfer of goods. So, he should monitor the operation. As a result, he is responsible to deliver the goods properly without delay, and he is obliged to the mentioned obligations related to the third person and representative in providing services. He must monitor the operation because he is responsible for the actions.

B- Law of Iran

According to Article 377 on trade law, the custodian should oblige to transfer of goods by receiving wage. Therefore, he is obliged to deliver the goods properly because he is responsible for it according to the obligations. Article 516 of civil law, the custodians are responsible as the trustees. Therefore, the custodian is to deliver the goods properly.

According to Article 221 of civil law, as the person is obliged to do an action; if he shrink the responsibility, he would pay the compensation. So, the custodian is responsible to deliver the goods properly. Therefore, according to the Articles 386 and 387 of trade law, if the goods are lost, as it is mentioned in the law, the custodian is responsible for that (the first part of Article 386). If the goods is damaged, the custodian is responsible for that to repair it.

The custodian is also responsible for damages to the goods. If it is delayed in delivering the goods, the custodian is responsible for it (Article 387).

As a result, it can be said that the custodian of transport is obliged to deliver the goods properly without delay. He would be responsible for paying the compensation in the lack of observation of these affairs.

The nature of obligations related to the multimodal transport operator and custodian

In a view, the obligations are divided into two categories: 1. obliged to the result 2. Obligated to the goods. Considering the responsibility of the custodian regarding the transport, a question is presented: Is the custodian responsible for the result or the goods? The first type is called as the commitment to the end. The custodian is responsible for providing services. He can shrink the responsibility in the cases that he is not responsible for that.

In the second type or commitment to the goods, the custodian is responsible for delivering the goods properly. In these cases, there is no need to present the document.

In the second type or commitment to the goods, the custodian is responsible for providing services in this way. The deliverer should prove the error of the custodian.

It has been thought that all obligations are the commitment to the result, the word of rules is related to the goods. Now, we know that some obligations are related to the result (Tafreshi and Kamiar, 2001: 27).

Now, we study the nature of commitment related to the custodian of transport in the Geneva Convention (1980) and Law of Iran.

A- Geneva Convention

According to Article 16 of convention, if the transport operator proves that he has done all obligations, he is free of compensation. This rule is about the operator by proving the efforts regarding the transfer of goods, he would be free of compensation. On the other hand, this rule can be based on the obligations of convention, the custodian is responsible for delivering the goods properly; this commitment is the commitment to the goods. In the case of commitment to the result, the operator should prove the external reason. The external reason is any event other than the action which is the custodian is responsible for them.

The external reason is:

1. Error related to the goods
2. Error related to the third person
3. Force majeure
4. Fortuitous event (ibid)

Proving some efforts related to the commitment means the operator is responsible for every errors other than the external errors (Tafreshi and Kamiar, 2001: 52-53).

B- Law of Iran

According to civil law and trade law that are considered as the local obligations, proving the legal efforts are sufficient for being free of responsibility, but the custodian must deliver the goods properly or he must prove the external reason that prevent the lack of implementing the responsibility.

We can conclude that according to the local law in Iran, the responsibility of the custodian is the responsibility to the result. Therefore, the legislator has known the error of not delivering the goods properly and by proving it, he can shrink the responsibility. In other word, the specified error in trade law is the absolute assumption that is mentioned in Article 16 of convention (Tafreshi and Kamiar, 2001: 52-53).

Conclusion

In Geneva Convention, the multimodal transport operator is the broker between the owner and the custodian. So, he is not the custodian who accepts to deliver the goods properly by receiving some wage.

In the mentioned convention, the type of responsibility in the form of stable system regarding to the cost of compensation is accepted.

In relationship between the owner and operator and proving the error, the operator is responsible for that.

As the multimodal transport operator proves that he and the representatives do not commit the error, he is free of responsibility. In other word, proving it is not enough.

In Geneva Convention, the commitment is related to the goods because the Article 16 has accepted the custodian's shrinking the responsibility for implementing the contract.

Certainly, lack of International obligations regarding the multimodal transport is an obstacle for the type of transport. It is important to mention that because the contracts are contradicted with the legal systems, this leads to lack of validity for the mentioned convention.



In law of Iran contrary to France law, proper understanding of the multimodal transport requires the establishment of local law in the country. The words of the multimodal transport operator is not known as there is no law regarding this issue that the authorities have selected the word forwarder for the equivalent of this word.

Therefore, in law of Iran, it seems that the rules related to the contract of multimodal transport refers to Articles 386, 387, and 388 of trade law.

Recommendations

1. In regard to development of the multimodal transport operation and solving the related problems, it is necessary that International Geneva Convention on 24 May 1980 on multimodal transport operation should be implemented; but some countries have selected the local law. It does not seem that this method solves the problems related to the International transport because some problems are not solved such the rules related to the exporter countries. International law can only solve the problems related to this type of transport.

2. The overdue countries play significant role in setting convention on 24 May 1980. This convention is the result of monitoring of various countries regarding the contracts of different jobs related to transport affairs. Unfortunately, the mentioned countries are interested in implementing this rule. By implementing the mentioned convention has promoted and prevents the exit of currency. The operators of transport in the countries that are the members of convention must try to realize this affairs by holding local and International conferences. There should be done some advertisements and familiarizing the other countries with the mentioned convention.

3. Convention on 24 May 1980, after 12 months form approving can be implemented by signing of 30 governments. Despite that there is no problems regarding to the convention, 8 countries rejected to implement this convention because:

Every legal action have some opponents that use the old rule, it has also some supporters that use the new convention. Therefore, the authorities who are the members of convention should familiarize other countries about the International discussions, especially in transport affairs.

4. The experts in transport fields in the countries who are not the members of convention can improve the knowledge of people regarding the positive points of Convention by publishing some articles and books. So, by level of knowledge in society, this convention can be implemented quickly and easier. The authorities can be heard by the representatives regarding the convention. Therefore, the essential basics are provided to implement the convention.

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