



Comparative Study between United Nations Convention on Multimodal Transport of Goods in Geneva - 1980 and Iranian Law and UNCTAD/ICC Rules

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ABSTRACT

In this paper, the United Nations Convention on International Multimodal Transport of Goods in Geneva-1980 is compared to Iranian Law and UNCTAD/ICC rules. Topics such as concepts and general definitions, scope of convention, combined transport documents, guarantees and liability of consignor, legal status of risky cargos, responsibility of carrier or forwarder, duration and scope of responsibilities of carrier are studied. Several questions are answered, that include: 1- Is the responsibility of carrier in Geneva Convention and Iranian legal rules are based on fault or not? 2- Is the legal nature of combined forwarder's obligation is obligation of results or obligation of means? ultimately the carrier's responsibility arising out of the other's action (laborers, representatives), exemption cases of carrier arising out of the other's action, carrier rights, litigations and lapse of time are investigated.

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Introduction

International multimodal transport of goods means the displacement and transfer of goods from one place located in a country to another place located in another country by two or several different means of transport with the different legal systems under responsibility of united entity and according to the united bill of loading. This type of transport is currently the most common transport in the international field. Based on such operation and service, a crew by any mean has at its disposal or may provide carries the cargo or packages of good owners to the destination. International Shipping Company provides the transport services by means of displacement tools in ground, air and sea. This type of combined transport has a lot advantages that the most important productivity of transport is obtained by its combined mode through which the good owner negotiates and concludes contract to only one forwarder or carrier situated at the beginning of transport route, instead of negotiating with several institutes. Furthermore, in this mode of operation, pursuing the carriage process is easier and the good owner may conveniently supervise on the operation running and its quality by one institute undertaking the combined transport of goods. One of the other advantages of this type of transport is that the main institute undertaking such responsibility benefits from any opportunity, based on its procedure, to transport the goods easier and faster, and it causes the institute to bypass plenty of issues consciously and carry the received goods with the same features requested by good owner to the destination. Another advantage of using the combined transport is to use the capacities established as the transport subsections. All countries have not uniform systems at their disposal for transportation and in many countries; there are more opportunities and possibilities to be selected. But combined transport has its own difficulties; firstly transport means and tools to be available, secondly goods

combined transport management to have the conversancy and competence for designing and administrating such a transport. For instance, the transport of crude oil of countries around the Caspian Sea through Iran and any transit good of Central Asian countries may not be performed except using combined transport methods. The crude oil of the Caspian countries is carried firstly by pipelines to the national coasts of these countries; then, they are poured into the 20-60 thousand ton vessels and pass the sea lane, and continue their path in coasts of Iran in Neka or Anzali Port. In Neka Port, the transport mean includes pipelines that conduct the delivered crude oil or importing fuel to the refinery; but in Anzali Port such facilities are not available and the importing crude oil should be carried by road tankers. In this port, there are no facilities for crude oil products loading in the rail system. The obvious sample for such integrated transport is parcels carriage. In USA and Europe, some institutes perform the global distribution of postal correspondences and packages. These institutes by their long years' experience have achieved the most efficient combined and multimodal transport systems; institute such as DHL that even in some parts of their transport operation have air, land and marine carriers. Their method in distribution of postal exchanges is so precise and regulated that the owners of correspondences or their consignees can pursue all stages of their cargo and parcel's movement and transport in the whole system via internet and get information from exact time of its delivery or arrival.

The experts have presented strategies for reaching to the appropriate conditions in combined transport as follows:

- 1-Taking the role of guild transport associations serious in the local and international policy maker institutions;
- 2-Governmental institutions tendency to avoid outsourcing. In this type of cooperation, the forwarders in all branches feel more closeness and communication with each other, and the benefit of

3-all of them is subject to the development of their intersectional cooperation.

4-The design of a combined transport project in discussable aspects requires the strong, innovative and experienced organizations.

5-The business of others and international institutes may be another way through which the Iranian companies can enhance the scope of their activities in the field of combined transport projects.

Until the recent decades, the multimodal combined transportation despite of its wide spread excluded the applicable and integrated international legal system but concluding the United Nations Convention in Geneva- May 24, 1980 has obviated this legal vacuum considerably. This convention consists of six sections including definitions, transportation documents, combined forwarder responsibility, good consignor responsibility, rights and litigations. The executive board of international chamber of commerce has provided also Uniform Rules for a Combined Transport Document in the meeting held on June 11, 1991. Finally, an organization was established in Vienna, the capital of Austria, in 1926 called International Federation of Freight Forwarders Associations (FIATA) located in Zurich. The purpose of this organization is allying the forwarder companies and strengthening their role in the international context. This organization consists of two group members as below:

1-Fellow members that are the same national transport associations of countries.

2-Associate members which are the same non-national members.

In the field of combined transport, FIATA Combined Transport Bill Of Lading (FBL) is a well-known document and it is blue colored. In this paper, the most important contents of Convention on Multimodal Transport of Goods in Geneva- 1980 with respect to the comparative law is compared to the Iranian law as well as the rules of other transport conventions and UNCTAD/ICC rules for documents of combined transport of goods. It is notable that, according to Article 26 of the said convention, 12 months after unconditional signing by 30 countries governments, it will be enforced for approval, acceptance, confirmation or deposit, confirmation or accession with the depositary. At present, there is no information available to show if it has been entered into force or not; furthermore, Iran has not been joined this convention, so far.

Chapter 1: General concepts

1-The international combined transport: Goods transport by at least two different types of transport means from one place located in a country by the combined forwarder to another place designated for delivery, located in another country that is performed under a combined contract of carriage.

2-Combined forwarder: Any legal and natural entity that concludes a combined contract of carriage directly or by third party and undertakes its enforcement. This definition of combined forwarder in the convention exactly conforms to the definition and concept of goods combined carrier in UNCTAD/ICC rules for combined transport documents. By virtue of clause "B", Article 12 of these rules, the goods combined carrier is any entity concluding the contract of carriage and undertakes the responsibility of its enforcement. In these rules, the concept of goods combined carrier and forwarder have been described separately. But, in the convention the forwarder means the same carrier.

3-Combined contract of carriage: The contract whereby a combined forwarder or carrier in lieu for the freight undertakes

the performance of an international combined transport by stewardship of someone or an appointed person. In UNCTAD/ICC rules, the contract of carriage for goods combined transport documents has been assumed as a united contract as well that firstly the transport of goods is conducted by at least two means and secondly despite of combination of transport operation is completely followed by a united contract and document and under supervision of a united carrier or forwarder.

4-Combined transport document: According to the UNCTAD/ICC rules and Convention on Goods Multimodal Transport, a document is deemed as an evidence and proof for contract of carriage that whereby the combined forwarder or carrier is obliged to take over the goods or deliver them according to the contract contents and may be issued in two forms: negotiable or non-negotiable bearing the name of the specified consignee.

5-Consignor: In the convention, the consignor means any entity that in its name or account, a combined contract of carriage has been concluded with the combined forwarder or carrier or any entity that thereby or in its name or account, the object of combined contract of carriage has been delivered in practice to the combined forwarder. Also, in UNCTAD/ICC rules, the consignor is deemed as any entity that concludes the contract of carriage with the carrier. There is a subtle point that the consignor may not be the actual owner of the goods. In this respect, the legal urging sentence No. 3 dated 12.05.1998 by the general board of supreme court therein the judges of supreme court have not considered the concept of consignor and it has been criticized by the late Fakhari- undisputed Professor of Commercial Law- (Fakhari, 2008:93).

Chapter 2: Convention territory

Chapter 2 discusses about the territory of enforcing the convention on goods combined transport that includes the following points and rules:

1-The contents of convention are applicable on those contracts of carriage therein firstly the good transport operation is performed from one country to another.

2-The place for taking over the goods by the forwarder for performing the transport operation, as predicted in the combined transport contract, is the convention signer country or its delivery place by the forwarder shall be the contracting state, in accordance with the contract of carriage.

3-The goods consignor in the contracting state and member of convention has this option to choose one of single-modal and multimodal transport.

4-This convention shall not incur losses to enforcement of none of international conventions and regulations on rules enacting and transport operation control; in other word, in the event of conflict between contents of this convention and national rules and other international conventions, the other conventions and national rules are prioritized.

Chapter 3: Combined transport documents

The combined transport document is the same bill of lading in the transport law. It is not clear that why in the convention it has not been mentioned as the bill of lading. This document is issued by the goods combined forwarder and issued when the forwarder takes the cargo over. This document depending on the consignor's choice may be negotiable or non-negotiable. This document is signed by the forwarder or its representative. The contents of combined transport document as regard to the form shall be arranged according to Article 8. The considerable point is that, according to clause 2, Article 8 of convention, if the transport document excludes one or more cases in form of

Article 8, it doesn't disturb the legal validity of document; means that the cases of article 8 are not protected by sanction. The combined transport document may have several original copies, in such event the number of copies to be mentioned on the document. Delivery out of the good faith in exchange of one of original copies by the forwarder or its representative causes its exoneration from good delivery obligation. Now, if the transport document is negotiable, it will be issued in two forms including "in the order of" or "to bearer" and if it is in order of someone may be transferred by endorsing the check, but if it is payable to the bearer is transferrable without endorsement or delivery. But if the combined transport document is non-negotiable, the name of specified consignee shall be mentioned in the document necessarily.

First clause: The duties or responsibilities of forwarder or carrier for the contents and conditions set forth in the combined transport document

If the combined transport document contains special points, its forwarder or representative has rational knowledge and suspicion on lack of specifications' exact conformity to the cargo taken by its forwarder or representative over or has not appropriate mean for testing, its forwarder or representative shall mention its observations regarding inaccuracy of statements, suspicion reasons or lack of appropriate conformity mean, in the combined transport document. In the event the forwarder or its representative doesn't mention the appearance of good in combined transport document, it is assumed that in the said document, the good has had a good appearance; thus, in such event, the forwarder will be responsible for the good consignee about the accuracy or inaccuracy of document contents and good's appearance. According to clause 3, UNCTAD/ICC rules on goods combined transport documents, the information mentioned in the transport document is the reason for good delivery to the carrier including all described conditions therein.

Second clause: Proofing value of combined transport document or authentication of information mentioned therein

According to clause 9 of convention, it is concluded that firstly, the positive combined transport document for good taking by the combined forwarder is in accordance with the document contents. Secondly, in the event of transferring the negotiable transport document to the third party such as good consignee in good faith and performed relying on the contents of said document, disagree excuse by the combined forwarder is not acceptable. According to article 3 of UNCTAD/ICC rules on goods combined transport documents, in the event of carriage document transfer or in the event of exchanging the electronic messages which have been received by the consignee in good faith and performed in this connection, the claim to the contrary are not acceptable. In clause 4 of Article 54 of Iranian Maritime Law, a similar value and authentication has been predicted for marine bill of lading and it is not possible to prove contrary to the bill of lading's contents by the carrier vis-à-vis the good consignee with good faith, and the carrier is responsible for the bill of lading's contents before good consignee, but in the relations between good consignor and carrier, proving the contrary to the contents of transport document and bill of lading is possible and probable. Similar to this legal order has been set forth in Hague Visby Convention.

Chapter 4: Guarantees and responsibility of good consignor for combined carrier

According to clause 12 of Goods Multimodal Transport Convention and article 8 of UNCTAD/ICC rules on goods combined transport document, when the good is delivered to the

carrier or forwarder by the consignor or its representative, it is assumed that the consignor has guaranteed all information about the good, for the carrier, and this guarantee and commitment is obligation of result. The good consignor shall indemnify all losses incurred to the carrier. Nevertheless, there is a difference between the rules of Goods Multimodal Transport Convention and UNCTAD/ICC rules. In UNCTAD/ICC rules, the consignor absolutely is responsible for the actions and statements of its officers and representatives' vis-à-vis the combined carrier. However, in the convention rules, the consignor is responsible for the actions and statements of its officers and representatives' vis-à-vis the combined carrier if the said officers and representatives do not fulfill their duties in accordance with the framework of their tasks. Otherwise, if the actions and statements of consignor's officers and representatives breach the framework of their tasks and their contractual and occupational scope, the own representatives and officers if having fault or negligence, will be in person responsible for the carrier and forwarder. This subject has been enacted in the Goods Multimodal Transport document of convention and UNCTAD/ICC rules as well as Iranian marine law and Hague Convention.

Chapter 5: Legal status and rules enforcing on the relations between consignor and combined transport forwarder about the risky cargos

There are special and exacter rules on the risky goods in the Multimodal Transport Convention than UNCTAD/ICC rules on combined transport documents as follows:

- 1-The consignor of risky good shall specify its risk properly by marking and posting the sign.
- 2-The consignor not only shall inform the forwarder from the quality of risky good, but shall inform it from precautions to be taken by the forwarder, if required.
- 3-The sanction for non-fulfillment of obligations as above by the consignor includes two factors as below:
 - a. The consignor is responsible for the loss arising out of such shipment before the combined forwarder.
 - b. Making the right for forwarder to discharge or destroy the cargo in terms of requirements and at any time, without paying any indemnification.
- 4-In some cases, the good combined forwarder due to being informed of cargo risky status fails to rely on the sanctions set forth in clause 2 of article 23. obligation to carry the said goods under the contract shall be the responsibility of forwarder or carrier effectively, and if takes the people or properties at the real risk, in terms of requirements may discharge the said goods or destroy or make them safe, without any indemnification. unless there is the obligation to share the loss for carrier or forwarder under the contract, or as per article 16, it is responsible, in such event the carrier shall indemnify the incurred losses.

Chapter 6: Responsibility of combined carrier or forwarder
First clause: Basis for responsibility of combined carrier or forwarder

a. International Multimodal Transport Convention: in clause 16, United Nations Convention-1980, the basis for multimodal carrier or forwarder, it has been set forth that "multimodal carrier is responsible for the losses incurred to the good, unless it proves that itself or its crews, employees and representatives have taken all their efforts reasonably required for prevention from event causing the loss and its consequences". Therefore, without proving the fault, the combined carrier is responsible for the losses, unless proves its non-fault, so the fault of carrier is assumed by virtue of carriage contract (Tafreshi & Kamyar,

2001:25). According to para “a”, article 5 of UNCTAD/ICC rules, the basis for carrier’s obligation and responsibility is similar to the above convention.

b. Iranian law: According to article 386, if the good owner proves that his/her good has been incurred by the loss, then the carrier shall be deemed as the responsible. It will be released from the responsibility if proves that the cause for such a loss is an external factor that may not be attributed thereto or was related to an event that no careful carrier could avoid it. Accordingly, the Trade Code like as multimodal transport convention assumed the fault of carrier as the basis and assumed it effectively in the event of incurring loss. Thus, the responsibility of carrier is a contractual responsibility and because the breach of contract is deemed as the fault, the responsibility of carrier is fixed.

Second clause: The nature of carrier or forwarder obligation

The obligations are divided in two categories: obligation of results and obligation of means. Now, this question is raised that the obligation of carrier to safe delivery of good is obligation of results or obligation of means? In the obligation of results or purposes, the obligor shall assign the result of obligation to the obligee, but in the obligation of mean or maintenance obligation, the obligor’s obligation includes providing the requirements of specified work or effort and caution in this path (Hosseini-nezhad, 1992: 52-53).

a. International Multimodal Transport Convention: By virtue of clause 16 of convention, the assumption of carrier’s responsibility is a relative assumption that is rejected through proving the common and rational effort and attempt means lack of proving the fault, and according to the convention rules, the carrier’s obligation to safe delivery of good is obligation of mean not obligation of result, because if its obligation was to the result, the carrier to release from the responsibility should prove the external cause meaning “any event independent from obligor’s will” such as fault of obligee, third party’s fault, force majeure and emergency accidents (Taghizadeh, 2010: 79-80).

b. Iranian law: In the local rules of Iranian law (Civil Law, articles 227 and 229 and Trade Code, articles 377 and 378), it is not adequate for the carrier to prove its releasing from responsibility through taking the required and common efforts for realizing the result and safe delivery of good, but shall deliver the good safely or prove that an external and unavoidable event resulted in non-fulfillment of obligation. Therefore, according to the local rules of Iranian law, the obligation of carrier is obligation of results, hence the legal assumption concerning the carrier’s fault is an absolute assumption and proving the non-fault of carrier is not adequate for its non-responsibility, but it is released from responsibility only when proves that the loss is the external factor and is not attributed thereto.

Third clause: Carrier’s relieve of responsibility

a. International Multimodal Transport Convention: Upon considering the nature of carrier and the carrier’s responsibility in the Multimodal Transport Convention as obligation of mean, thus the carrier shall be relieve of its responsibility in the event of proving the rational and common efforts.

b. Iranian law: According to the rules of Iranian law and particularly the Trade Code, the carrier’s obligation is obligation of result, therefore, the carrier is relieved of the responsibility if only proves that an external factor and non-relating to the carrier resulted in loss. This sentence has been mentioned in Articles 227 and 229 of Civil Law.

Fourth clause: Responsibility of carrier arising out of crews and representatives’ action

“Principally, the people are only responsible for their personal action but sometimes depending on the policies, the legislator assumes the action of another person the cause for responsibility; but where the responsibility is arising out of the other’s action, it is an exception and limited to articles that the legislator has accepted” (Ghasemzadeh, 1999: 140-141-261). The jurists justify the exceptional sentence as “In order that the affected party doesn’t face the insolvency or bankruptcy of the main forwarder and no loss remains non-indemnified, the legislator deems all persons who somehow intervened in the loss incur as responsible. As well as, in order that a person becomes responsible for the behavior of persons working under his/her supervision and leading or engaged by the order of law, and doesn’t neglect, sometimes the law makes him/her responsible for subordinates’ actions (Katuzian, 1983: 116-226-236).

Under almost similar reasons in the transport context, the carrier is responsible for losses incurred by its laborers and representatives. According to clause 15 of multimodal transport convention, “by virtue of clause 21, multimodal carrier is responsible for commission and omission of its laborers and representatives provided that the act within the scope of their employing duties. and commission and omission of any other person that the carrier uses her/his services for enforcement of multimodal transport contract, provided that these persons have acted for enforcement of contract, and this responsibility is so that if the own carrier has acted that commission and omission has been responsible”. The responsibility of carrier arising out of the other’s action is caused by the fault that has been assumed as a legal assumption. Also, the basis for this responsibility is not the typical (risky) responsibility as well, because the risk made here means engaging the other persons by the carrier and if for instance among the different reasons, this reason is assumed as the cause of employer’s responsibility, only the employer own shall be responsible for the made risk. So why despite of this issue, the affected party may directly litigate versus the engaged person and the employer in the event of indemnification has this right to refer to the laborer? Consequently, it is obvious that the basis of this responsibility shall not be deemed as the risk and therefore the carrier is relieved of responsibility where it approves non-fault of itself as well as non-fault of its laborers and representatives (Tafreshi & Kamyar, 2001: 31).

Article 388 of Trade Code has enacted the similar sentence. According to this sentence, “the carrier is responsible for the accidents and faults occurred during the transportation whether own has transported or engaged another carrier”.

Chapter 7: Relieve of responsibility arising out of the representatives and crews’ action

The responsibility arising out of the action of carrier’s crews and representatives in the Iranian law is different from convention rules. This difference is arising from the same nature of obligation; obligation of result and obligation of mean. As set forth in clause 15 of Multimodal Transport Convention, the carrier is responsible for its laborers and representatives’ action only when they perform within the scope of their employing tasks or contract concluded with carrier. So, if the carrier proves that its laborer or representative has incurred losses to the good by breaching the contract, it shall not bind the carrier for commission or omission of its laborer or representative and the affected party is entitled only to refer to the loss forwarder. In return, in Iranian law, the carrier to relieve of the responsibility arising out of its laborers and representatives’ action shall prove the external cause, because the carrier’s obligation is obligation

of result. However, if for instance, one of laborers of carrier thieves a part of good during the transport and abusing the guard's negligence, according to the rules of Iranian law if the carrier proves that the good shortage is the result of one of its laborers' theft, then is not released from responsibility; because the laborer's action is not deemed as the external cause to lead in the carrier's relieve, but according to the rules of Multimodal Transport Convention, the proof of theft may lead to carrier's relive of the responsibility (Ibid, 32).

Chapter 8: Duration of carrier or forwarder's responsibility

According to clause 14 of convention:

1-The responsibility of combined carrier for the goods shall be effective from time of taking over the good until its delivery.

2-The duration of good maintenance by the combined forwarder shall be as follows:

First: since the combined forwarder takes the goods from following persons over:

a. The consignor or who works on its behalf.

b. A competent authority or other third party that in terms of applicable rules on good delivery place, the good shall be handed over it for carriage.

Second: Until the forwarder delivers the good to one of following persons:

a. Consigning the good to consignee.

b. In the event, the consignee refrains from taking over the good, providing the good at his/her disposal according to combined contract of carriage, applicable rules or customs on delivery place.

c. Delivery to a competent authority or third party that according to the applicable rules on delivery place, the good shall be consigned thereto.

d. Combined forwarder as per sub clause 1 and 2 of this clause and including its officers and representatives or any other person that the forwarder uses their services for execution of combined contract of carriage, and consignor or consignee including its officers and representative.

Seventh chapter: Scope of responsibility of combined forwarder

In accordance with general rules of law, the contractual debtor is bound to indemnify all losses and lost profits; the losses and profits which are predictable while concluding the contract that may be limited unless in deliberately fault and heavy fault or in the event of agreement. Against this common legal rule, in the transport law such as Geneva Convention, the indemnification has legal range and observance thereof is mandatory, and its contrary term detriment to the good owner shall not be accepted. In other word, if the term is in the favor of good owner, then will consistent to the order and if against the favors of good owner, will be contrary to the order and shall be null and void (Mohammadzadeh Vadhani, 2000: 72-73).

In accordance with clause 28 of Geneva Convention, any term that causes non-enforcement of each one of convention clauses shall be nullified. Therefore, non-responsibility term and forwarder's responsibility limitation term, contrary to the convention rules shall be nullified and ineffective. Certainly, a term that intensifies the responsibility of forwarder for what set forth in the convention shall be applicable and binds upon the forwarder. If the loss place is specified, the forwarder shall be responsible according to the range set forth in the Single-modal transport convention or national Mandatory Rule or the range stipulated in Geneva Convention proportional to the case and considering hat which range is higher. By virtue of clause 19 of Geneva Convention, "if the loss and damage incurred to the good is occurred in a specified part of combined transport path

that according to an international convention to be applicable or a national mandatory rule has determined the responsibility range higher than the range stipulated in sub clauses 1 to 3 of clause 18, the combined forwarder's responsibility for this loss or damage is determined in accordance with the rules of the said convention or mandatory rule". According to sub clause 1 of clause 18, the responsibility of combined forwarder including marine transport and inland waters transport sections is limited to 920 units of calculation for each package, 2.75 units for per kilogram of gross weight of wasted or damaged good. In this case, the higher range is effective.

In the event, the combined transport excludes the marine or inland waters section, the responsibility of combined forwarder is limited to 8.23 units of calculation for per kilogram of gross weight of lost or damaged good. As it is observed, in such state, only one type of calculation has been considered based on the gross weight of good, as raised in the CMR and CIM single-modal conventions; in other word, there is a consistency between Geneva Convention (May 24) and other single-modal transport conventions.

In the event of any delay in delivery, according to sub clause 4, clause 18, the responsibility of combined transport for the loss arising out of the delivery delay shall be limited to payment of an amount 2.5 times more than payable freight for the goods under the delay. By virtue of sub clause 5, clause 18, sum total of indemnifications paid by combined forwarder for the loss arising out of delivery delay and loss or damage incurred to the good shall not exceed the range determined as per sub clause 1 and 3 of clause 18 in the event of completely good damage. These rules are similar to the rules approved in CIM convention. The rule set forth in Geneva Convention (May 24, 1980) seems to be more logic than CIM convention, because according to clause 33 of complementary rules of CIM convention, however the basis for indemnification shall be the delay in freight delivery. It is notable that, determination of indemnification for the loss arising out of the delivery delay is assumed as one of the strengths of Geneva Convention (May 24, 1980).

Chapter 9: Non-limitation cases of combined forwarder

In some cases, the forwarder may not rely on its responsibility limitation that in clause 21 of convention include as follows:

1-When the loss or damage incurred to the good is occurred in a specified part of combined transport path, according to the international convention is applicable or a national mandatory rule determines a responsibility range higher than range set forth in sub clauses 1 to 2 of clause 18. The responsibility of combined forwarder for the loss or damage is determined in consideration of the regulations of said convention or national mandatory rule (clause 19 of convention). As it is observed, determination of loss object will not affect the indemnification arising out of delivery delay; in other word, the indemnification arising out of the delivery delay will be determined ever in compliance with the united stipulated rule in Geneva Convention (May 24, 1980).

2-If it is approved that the forwarder, its officers or representatives have committed the fault whether with the intention of incurring loss, damage or delay in delivery or due to imprudence and knowing that the damage, loss or delay is probably arising thereof, in such event, the forwarder, its officers and representatives may not use the responsibility limitation anticipated in this convention. Therefore, the type of forwarder and its representatives' fault is effective on their responsibility. If, it is approved that the fault is arising out of their intentional

or excusable fault (heavy fault), then they are not authorized to use the responsibility limitation.

3-Declaration the good value: Upon declaring the good value, the range of legal responsibility is collapsed. Good price declaration means agreement of contract parties on the paid indemnification. Thus, good price declaration causes the collapse of legal range.

Chapter 10: Rights of combined forwarder

The counter party of combined forwarder means the good owners are bound to perform some obligations otherwise the forwarder, in terms of the case have the right to receive the indemnification and refer to them, discharge and deliver the good and receive the freight or right to lien. Therefore, in the combined contracts of carriage, the good owners not only shall pay the freight but shall observe some cases that breach thereof will provide some advantages for the forwarder. These advantages or in other word the obligations of good owners are as follows:

a. **Receipt of freight:** The freight is paid in exchange of forwarder's liability to displace the good under the combined contract of carriage. This amount includes the commission of forwarder, transport costs and other directive costs which are the liability of good owner.

b. **The right to examine the good and receive the indemnification for inaccurate statements of good owners:**

The bill of lading contains a series of general information about the quality and quantity of good object of transport. This information is significant particularly because the B/L is a receipt for receiving the good by the forwarder as mentioned therein. The freight is determined based on the same information. The forwarder has the right to control the good status at the beginning and end; but this examination is not easy in practice, particularly if the good is located in the container or similar means. Hence, sometimes the consignor is tempted to fraud. Through declaring the amount lower than good price or hiding the good nature tries to pay lower control freight. In compliance with sub clause 2, clause 12 of Geneva Convention, the consignor shall be liable to indemnify the loss incurred to the combined forwarder arising out of inaccuracy or lack of the points mentioned in sub clause 1 of this clause. In the event of transferring the combined transport document to the third party shall remain in full force. The combined forwarder's right to receive the indemnification shall not limit its responsibility under contract of carriage for the other persons except the consignor, in any ways.

c. **Right to discharge and deactivate the risky goods:** The good owner shall inform the forwarder from dangerous quality of good. In case of breach, and if the own forwarder fails to understand the risk of good while or after delivery, the forwarder has the right to discharge, destroy or deactivate the said good without binding to indemnification. The consignor shall be responsible for the loss arising out of consigning such good.

d. **Goof delivery:** Delivery is a legal action that upon its performance, the forwarder's responsibility is finished. The consignee shall take the good over unless the forwarder may discharge the good to his/her cost and responsibility. In the general transport rules of the most countries, in order to apply this right, the good discharge and sale through auction has been predicted, after an appointed deadline (Mohammadzadeh Vadghani, 2000: 84).

Chapter 11: Rights, litigations and statute of limitation

First clause: Declaration of loss, damage or delay in delivery

According to clause 24 of convention:

1-The good delivery in the event of lacking the contrary cause is a proof for good delivery as mentioned in combined transport document unless the consignee notifies the loss or damage in written to the combined forwarder by specifying its general status at most in the first working day after delivery.

2-Concerning the loss or damage invisible from the outside, the rules of sub clause 1 of this clause shall be enforced if the written notification has not been served to the consignee within 6 days after delivery.

3-If the good status, while delivery to the consignee, is inspected by the parties or their authorized representative in person at the delivery place, the written notification of observed loss or damage in this inspection shall not be necessary.

4-In the event of absolute or imaginary loss or damage, the combined forwarder and the consignee shall provide all appropriate requirements for good inspection and control of package number, to each other.

5-No indemnification shall not be paid for delivery delay, unless the written notification to the combined forwarder is sent within 60 days of good delivery to the consignee or the date thereon the consignee is informed that the good has been delivered in compliance with "second" or "third" item of section (b), sub clause 2, clause 14.

6-Failure to send the loss or damage written notification to the consignor, in the event of lacking the contrary cause proves that combined forwarder has not sustained the loss or damage arising out of the fault or negligence of the consignor, its officers or representatives. Unless the combined forwarder notifies the written loss or damage notification, mentioning their general status, to the consignor within 90 days after that loss or damage. or in the event of loss occurring, after delivery that is in accordance with section (b), sub clause 2, clause 14.

7-If the last day of one of notification deadlines set forth in sub clauses 2, 5 and 6 of this clause, in the delivery place is a holiday, this deadline shall be renewed until the next working day.

8-According to this clause, notification to the person who works on behalf of the combined forwarder and any other person that the forwarder uses his/her services at the delivery place, or the person who acts on behalf of the consignor, this notification shall be respectively deemed as to the combined forwarder or consignor.

Second clause: Lapse of time

The following has been set forth in clause 25 of convention:

1-The deadline for making a lawsuit in relation to the international combined transport under the rules of this convention for any judicial proceeding or arbitration shall be 2 years. However, if a written notification including the nature of claim and its main cases is not notified within 6 months since the date of good delivery, or if the good has not been delivered, since the date to be delivered, upon expiration of this deadline, the lapse of time shall be run.

2-The said deadline, in the event of delivering all or a part of the good, begins from the day after delivery by the combined forwarder; otherwise, it will be the day after last day to be delivered thereon.

3-Renewal of deadline is subject to the written notification of complainant to the defendant. Following one or several written notification, the said deadline may be renewed.

4-Excluding the contrary rules of an enforceable international convention, even after expiration of the deadline mentioned in previous clause, the consequential lawsuit may be raised by the party that according to this convention is identified as the responsible, within the deadline set forth in the law of country

therein the lawsuit has been run. Notwithstanding, the said deadline may not be lower than 90 days since the date thereon consequential lawsuit filing party meets the applicant's demand or receives the hearing notice.

Conclusion

The combined transport is a type of transportation therein the cargo without making any cessation in the transport status, is displaced from one place located in a country to another place located in another country by the different transport means under the responsibility of a united entity and according to the united bill of lading.

The combined forwarder is a legal or natural entity that on its account or by the third party and through concluding the combined contract of carriage organizes the transport responsibility and operation from the beginning to the end, and as the operation designer selects the suitable route, transport type and safe agent. In Geneva Convention-1980 the agent means the same transport forwarder, but in UNCTAD/ICC regulations, the concept of transport forwarder in the goods combined transport has been defined separately.

In general, in the relationships between good owner and combined forwarder, in the event of incurring loss and its proof by the owner, the forwarder shall be liable. However, in the United Nations Convention on International Multimodal Transport of Goods in Geneva- 1980, the responsibility of multimodal forwarder is based on the fault; also, if the owner proves the loss occurrence, the fault of forwarder is putative. In the domestic regulations of Iran, the responsibility of forwarder is based on its fault and if the good owner proves the loss, the fault of forwarder is presumed. Therefore, in Geneva Convention-1980 and in the domestic regulations of Iranian Law after proving the loss by the incurred party, the responsibility of forwarder is presumed. With respect to the nature of combined forwarder's obligation in Geneva Convention-1980, it is assumed that the international combined forwarder is obligation to mean, because if its obligation was of result, the forwarder in order to be exempted from responsibility shall prove the external cause. But in the domestic regulations of Iranian law, the forwarder's obligation is obligation of result, thus it shall either deliver the good safely or proves that an external and unavoidable event caused non-fulfillment of obligation, so the legal presumption concerning the forwarder's fault is the absolute presumption in domestic regulations of Iranian law.

The multimodal forwarder in Geneva Convention and Iranian law is responsible for the losses incurred due to the commission and omission of workers, representatives, and the basis for such a responsibility shall be the fault of its workers and representatives that breaches the contractual obligations of forwarder. But, if the forwarder, in accordance with United Nations Convention on International Multimodal Transport of Goods in Geneva- 1980, proves that its own, its workers and representatives have taken the rational and common effort but the loss has been incurred, or proves that the laborer or his representative breached the contractual terms and conditions and caused the loss, then are relieved from responsibility. Therefore, the combined forwarder, according to the convention regulations doesn't need to prove the external cause for relieving from responsibility. But in the Iranian domestic laws, the combined forwarder is relieved from responsibility of its workers and crews if proves that an external or non-attributed cause thereto or its crews and representatives has incurred the loss.

The basis for such a difference between regulations of Iranian law and convention about the exemption of forwarder arising out of the other's action (crews and representatives) is in

their obligation type, means that obligation of result instead of obligation of mean, and ultimately in transport law such as Geneva Convention, there is a legal range for loss indemnification and observing thereof is mandatory, and its contrary term detriment to the owner is not accepted. In other word, the term in favor of good owner complies with order, against the owner interests is contrary to the order, and is invalid. hence the non-responsibility or limitation term of forwarder contrary to the convention regulations is null and void.

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