Legal Aspects of Transporting Goods by Cabotage According to Iranian Law and International Documents

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ABSTRACT

One of the practical ways of transport is cabotage. This method includes transportation of goods by air and sea. In the maritime transport the goods are carried between seaports and in air transport they are carried between airports. Legal aspects of maritime cabotage transport. Sea cabotage need to be based on contracts and even contract alone is not sufficient for shipping. But, in air cargo cabotage mere act of moving goods with/without passengers shall be sufficient. In accordance with the conventions of the air transport, lack of tickets would not to eliminate carrier obligations for the passenger and his luggage. Bill of lading is criteria for the identification of cabotage transport. Even if the bill of landing also issued a multimodal transportation, the area of air transport between ports or other places shall be subject to the cabotage definitions. Iran use this method of the convention in which it’s a member. This is a field study and legal aspects of cabotage transport methods will be discussed.

INTRODUCTION

Currently more than 93% of goods transportation occurs by sea, air and waterways. The issue of sea transportation rights has its complexity and breadth of certain interest. It is one of the most prominent and oldest of the rights in the world.

But despite the complexity and sensitivity, air transportation in Iran has a short life in terms of creating legal content. Due to our extensive network of transportation and appropriate and efficient fleet in comparison with neighboring countries, being located within the oil-rich Persian Gulf and Oman Sea and oil field in the Caspian Sea, having land and maritime borders with 15 regional countries and a huge underground for transit of goods in the region, Iran has a particular position in the region [16].

Cabotage is a method of transport with continuous relationship with two methods of transport. Although this transportation is important in the country but research has not examined it. However, lawmakers in the Customs Act 2011 included appropriate arrangements about it and its relationship. International Convention has not neglected the practices of transportation and as it can be seen in all international Convention, some provisions are allocated to air and sea cabotage.

For example, marine transportation is the contract signed to accomplish these operations (transport) [24]. Also, less than half a century, a phenomenon known as global container shipping industry has emerged. Today, we are seeing the volume of goods exchanged in any of four ways including maritime transport, road, rail and air is increasing day by day [26].

Theoretical Foundations:

Definitions:

Cabotage: cabotage is the carriage of goods from one point to another country by sea or river border and commercial goods that are close to or compliance savings from one point to the other countries foreign territory to carry.

In this case, whenever a vehicle transported with domestic cabotage cargo t, the vehicle also will be subject to cargo process (Article 234 of the Executive Regulations of the Customs Act, adopted on 20.01.1972).
Transport: Transport literally means transferring, removing from place to place [3]. Transportation is a commercial operation according to the contract, whereby, one side (= carrier) gives commitment that to deliver the goods which the transmitter takes to the third (Morsel layer). Transportation of passengers may be subject [17].

Convention is an international agreement concluded between countries or international organizations and is subject to international law. The name chosen for an agreement is not important in it and has no legal effect. Goods: any object, movable or exchangeable that can be placed (Of a law amending the Development Plan Implementation of the general policies of Chapter 44 of the constitution approved on 2009.)

Bill of lading: a document that carrier or its agent exported upon receipt of the goods and suggests certain goods from one point (the origin of shipment) to another (destination shipment) with an agreed vehicle (Ship, train, truck, airplane, or a combination of them) with certain freight.

Contracting practices in the field of goods transport:

Forwarding activities: they are coordinated action through the transportation of goods to a different land, air, sea or a combination of them accepting the responsibility under the concluded bill of lading. Forwarders play an important role in facilitating trade to the extent that businesses do not need anything other than the sale of goods [18].

Carrier activity: it is the tenure of the immediate transport of goods from one country to another in accordance with the contract of carriage, natural or legal person who undertakes “the physical transport of goods”. Airlines, shipping, road and rail transport are included as these establishments.

The relationship between bill of load and cabotage: in relation to the bill, some believe that, transportation is the carriage contract according to a marine bill of lading or other similar documents signed for transportation of goods by sea or any bill of lading or any similar document as well as by virtue of a lease through relationship between transport operators and owners based on contract. Remarkable in this definition are:

1. Cargo transportation contract or agreement is not signed unless on a sea waybill or same documents. Signing any contract between the consignor and the carrier transit time will not be considered without issuing a maritime transport agreement or other similar documents.
2. Marine transportation contract must be signed by a sea waybill. Marine bill of lading is a document that Commander must sign it and makes commitment to transport and deliver cargo by ship to destinations.
3. Contract is signed for shipping each time a marine transportation contract to the lease on the ship between the carrier and the holder of the bill of lading and sea interact.
4. Ship Lease is a written document between the ship's owner or his authorized representative and signed with the tenant and conditions of the lease are defined for a certain period or for between one or more ports in a specific voyage.
5. The marine transportation contract which is important under the Iran law of the sea and international regulations and include: 1) consignor, 2) carrier, and 3) sendee.

It should be mentioned that bill of lading issued by the carrier at the time of delivery of the goods has an essential role [21]. The contract between the consignor and carrier must be provided by marine bill of lading or other similar documents.

The bill of lading is not the contract of carriage of goods but indicates that those who signed a contract for the carriage of goods and approval prior to issuance of the bill of lading for cargo to come. Marine bill of lading is issued in several originals.

Marine bill of lading is a document of goods ownership and is tradable and so the goods at destination by the shipping company are submitted to the buyer oonly if they provide a signed copy of the bill of lading. The important point here is that the bill does not in any way be entitled to dispose away of the person (sender). In the assignment, there is no need to write words on the bill of lading and it is entrusted with the receipt of goods [10].

Although the basis for the aviation and maritime transport bill of lading has considerable similarities with the framework of the freight companies, but the freight companies are generally less likely to work in this field and besides passenger transportation, they transport loads but in practice, both brokers that are not in the charge of transport take action.

Iran Business Law and the Air and Marine Rules have been considered this topic. However, because of the membership of Iran in Commission, the function is known as a lawful procedure and it has to be said that bill of lading issued by the legislator acts as a mediator between transportation companies and the sender and that would be the basis for civil liability carter and responsibility for the performance of work which is the issued lading by the broker or the shipment.
The place of cabotage laws at Iran Convention and local regulations of air carriers; in 12 October 1929, the “Convention for the Unification of Certain Rules for International Air Transport” was adopted in Warsaw [20].

The main purpose of this Convention the same rules imposed in the case of international shipping of documents used in the transport and the officer in charge of transportation. There are some regulations in the field of aviation including the Aviation Act of 1949 in Iran and other regulations at the national level and the government has accession to many air conventions or international treaties, in particular the Warsaw Convention of 12 October 1929, the Hague Protocol of 28 September 1955 at the invitation of the Belgian government [6]

And the Convention of 18 September 1961, March 8, 1971 and the Protocol of Guatemala, the International Air Transport Treaty Issues in 1975 and Foundations Officer responsible for Air Transport made the ratio significantly brighter [1].

Apart from the cases mentioned, in paragraph “a” of Article 1 of the charter aircraft flight of a foreign country Act in the 1883, it is provided:

Air service is the commute of an aircraft based on a regular schedule to do transport passengers and cargo and mail shipments.

The airline’s service includes the General Aviation or military services and law enforcement in Article 2 of the Act expressly states that he law includes air services done for civilian purposes. It is prescribed in Article 2 of the law that this is on Civil Aviation and military aircraft are not included.

Although the Warsaw Convention & Jurisdiction Claims paid more to the legal aspects of the transport of goods through cabotage, transport operator liability is discussed here.

Without maritime transport as it depends on the contract, as previously stated agreement on maritime transport is a key issue and leads to the formation of the legal and contractual aspects of the maritime cabotage but air carriers suffices on tickets and causing the officer responsible for passenger transport to be responsible for the freight and baggage, too.

After the incorporation of the Warsaw Convention and law was set to determine the scope of responsibilities of airlines in national flights (adopted in 1985), responsibilities of airlines was defined as transportation of passengers, cargo and personal belongings of passengers in national flights about the responsibilities imposed on international flights, under the Convention on the incorporation of international aviation regulations, signed in Warsaw its Correcting Protocol signed at The Hague. With the passage of this legislation, the provisions of the special law were considered in Common Law and Commercial Law [13].

The most relevant provision of the Convention is the matter of cabotage rules. “The Convention is done on the international transport of persons or goods by aircraft or personal items in exchange for the rent as well as any free shipping by an aircraft and the carrier”. Looking at the text of the article, it can be inferred that creating legal aspects as well as the inclusion of cabotage transport from one place to another is very different in relation to the carriage of goods by sea, considering the Warsaw Convention, in aviation transport is the only criterion even without tickets, or contract (free). On the other hand, the Warsaw Convention knows personal component as the parts of transportation. Convention on International Civil Aviation, known as the Treaty of Chicago in 1947 along with the statute Civil Aviation Organization (ICAO) is a multilateral treaty to establish order and security and assist the progress of the international aviation [14]. The purpose of the International Air Transport Agreement is to facilitate and improve services. The treaty is governing the civil aviation and is not applicable for the military aircraft (military cargo).

Concessions exchanged between the Contracting States of the Chicago Convention are intended to alleviate the results of the principle of territorial sovereignty. The right to fly is made based on the Convention on the fundamental difference between regular international air services (Article 6 of the Chicago Convention) and irregular flights (Article 5 of the Chicago Convention). In the case of irregular flights between Contracting States concerning the entry and transit points restricted airspace, the exchange is not the regular international air services (grandson gunner, 2011, 69-70). The convention is directly paid to the air cabotage.

The Chicago Convention was interpreted relatively wide scope of use of the term cabotage. Article 7 of the Chicago Convention provides: “The Contracting States have to refuse from granting the right to cabotage right to the other Contracting State and commit to not acquire explicitly such privileges exclusively from any other country”. The latter part of this article is a little vague. In other words, whether or not a state may be the party of the Convention is not defined. But it is arguable that any country other than the country of the Contracting Parties can be applied by the cabotage although it does not seem very convincing. Using the words “explicitly” and “privilege” no doubt has given the right to receive cabotage by other countries. It seems that even given the context and the right of cabotage exclusively allowed, provided that the agreement does not stipulate the patent. The result is that countries are free to do whatever they want so that they do not explicitly claim the points paid or received them exclusively (ibid. 70).

Cabotage position in the domestic laws of conventions on maritime transport; but since the 19th century, it can be seen that the fundamental changes is conducted in maritime transport in the rules, in which America can be viewed as a leader in this field [7].
Then, it should be said that maritime law does not provide definition of "passenger". In paragraph (b) of Article 111, "contract of carriage" is defined as follows: “With the exception of the lease of ships, contract of carriage, is a contract that the carrier has signed to account for passengers”. Based on the above definition, we can say that first: If the ship in the lease is tenant such a contract shall not be considered as a "contract of carriage of passengers" and the first episode of the eighth chapter of the law of the sea. The contract of carriage, only relates to the contract signed between ship owner and tenant as a party and passengers as another party [12].

Secondly, according to the above article, the traveler is only someone who has the ticket and paid for the ship travelling according to the contract. The ship’s owner and staff and people who are travelling freely on the carrier ship or those who sneak into the ship will not be considered as passenger and are not subject to the above provisions [15].

Thirdly, as regards there is no judgment about the validity of the contract of carriage and also the regulation of these contracts in Chapter VIII of the sea, it must be said that the general conditions are set forth in the law governing the contracts. The point is that cabotage is only part of the contract of transportation of goods and the rules subject to passengers under any contract shall not be considered part of cabotage rights.

The Hague Convention as the founder of international law of shipping put more emphasis upon the civil liability aspect. But from among many of the provisions relating to civil liability incumbent on the bill of lading, cabotage is an important part of the legal aspects. From this point, we can conclude that Cabotage legal aspects have been accepted by the Convention as transportation contracts and bills of lading. However, since the adoption of the Convention, the problem was having specific rules for the transport operator’s liability in practice. All relevant legal rules included the overall responsibility of the Convention and in charge of transportation. Another condition based on Hague, in addition to the requirement of lading or similar document of ownership, is to adapt the provisions of transport, it is anticipated. That is, the maritime lading or similar document of ownership should be taken in one of the Contracting States.

And since usually the bill of lading is issued at the time and place of loading, it can be said that this regulation only on goods shipped out of a Contracting State, is an observer and it has many complications. As was the case under the bill of lading, goods from one country to one of the Contracting States shall be sent, in which case if the law of the Contracting State shall not be amended, the provisions of The Hague ruling on the waybill will be. But the drafters intended to correct the problems suffered by the provisions of the Hague Protocol corrective Visby Article Ten of these regulations be revised [5].

On the other hand, the rules of the Convention Hamburg in addition to keeping with the rules provided by the Hague Protocol amendment defined the limit of it, approved as single-weight system (depending on weight) and changed the responsibility for the removal of the exceptions to the rule.

Hamburg rules encompass any contract of carriage by sea, that is somehow connected with one of the Contracting States and have a wide geographical scope. This range was favored by a large majority of member States and governments participating in the Conference in Hamburg.

One of the reasons is that ratification or accession of the rules in Hamburg Convention needed at least twenty state members and so the geographical coverage of these rules will be large immediately after the entry into force. The Hamburg Rules will be replaced by instead of the Hague Rules system and thus lead to faster uniformity of international law [19]. Another thing that is seen in Hamburg Convention unlike the existing definition of cabotage which states that from port to port in another country, the convention has made it a Contracting State and the legal aspects of contracts extended cabotage operation data and it has included the internal borders of a country.

Looking at the development of maritime transport, laws and regulations require accurate and efficient performance in practice and the legal aspects of cabotage are placed in the correct format and it is practiced outside the national borders and a positive and efficient procedures and processes is considered. Membership in the Convention on the geographical location and being in the course of transit goods has caused Cabotage transport to be adhered as a favored one in Iran.

In this connection, we can cite the beginning of Article 2 of the Hamburg Convention, which caused the bill that is not a part of the legal aspects of cabotage contracts of goods transport to be defined and extended based on a framework. However, it was previously stated that bill of landing could be fully implemented on maritime relations carter and it could be used as evidence and proof of contract carriage, the cost and its condition [22].

But the definition of cabotage is a part of the contract and it should recognize. According to Article 2 of the Convention Hamburg, it can be concluded that range of legal aspects of lading and consequently, the legal aspects of traditional definitions and Hague distanced cabotage have found new regulation.

Finally, an important point should be mentioned in relation to the Convention related to the impact on the frequency of cabotage transport contract. Shipment on deck is the main difference between these two Conventions because according to paragraph "c" of "the Brussels Convention" they have been excluded from the definition of goods as: “.... Except.... the goods which are allowed to be carried on board on the basis of transport...."
With regard to this matter, for the carriage of goods on the deck, it shall be subject to the provisions of this Convention. This must be carried subject to the agreement of the parties, so that the contract of carriage is reflected with the assumption that there are two modes for transporting cargo on board; First, it is preceded by the agreement contained in the contract of carriage has been carried out in the form of regulations, "Hague" will not be dominated by halt. Second is that, since shipment on board is not preceded by mutual agreement, but the rules of “Hamburg” include shipping on the board. In accordance with paragraph “First of Article 9” the regulations, incumbent carriers cannot engage in the transportation of goods on board, unless based on the consent of the sender or the business practices or according to the prevailing regulations.

In the "second" paragraph of the article it is required that the agreement between the sender and the carrier to carry the goods on deck should be mentioned in the bill of lading or shipping contract, otherwise proof of such an agreement is the responsibility of the carrier. Although, such an argument will not be heard against the third party or the person who earns the goodwill of lading.

Paragraph “Third” of this Article, refers to a condition in which unlike the first and second paragraphs of Contents goods have been shipped on board or prior to the agreement of carrying goods on board, in charge of transport, such an agreement could not be proven. The carrier is responsible for damage caused to goods loaded on deck.

Naturally, the carrier cannot invoke on provision contained in paragraph

“One of Article 5 of the Convention Hamburg> that all necessary measures have been taken to prevent damage to the load on the deck. This would also be a breach of contract. But whether or not the violation is considered a serious fault depends on the circumstances of the case. Just like the case according to the provisions of "The Hague" in which without even the implied contract of carriage, goods are carried on deck.

Paragraph Fourth of the "Article 9 of the Hamburg Rules" refers to the case that stipulated in the contract of carriage of goods under deck. In such a case, if the incumbent carrier will begin shipping under the deck, this is an instance of breach of contract and the operator is deprived of the right to limitation of liability [4].

One of the authors said maritime law in accordance with paragraph 8 of Article 54 of the Law of Marine translated and collected from the total of paragraph 8 of Article 3 of the 1924 Hague Convention on International uniform provisions on the bill of lading, in any condition, stipulation or agreement in a contract of carriage for cargo operator disclaimer or vessel or limit the liability, in case of loss or damage arising from negligence, fault or negligence of duties and obligations stipulated in this chapter is null and void. Given the mandatory nature of the provisions, if sea conditions, contrary to what has been said about the responsibility carter be inserted in the contract of carriage, is null and void condition, the condition of these Terms, the rights of the sending time. Because most of the time, those who send their load to be carried by the operators basically do not have any information on the terms contained in the bill of lading. Moreover, transport cartels and trusts would be able to impose contracts with the owners of the goods to their detriment with a one-way bet. The invalidity is even related to the exposure to litigation against the carrier over time and it cannot by contract be limited to less than a year decreed in Iran maritime law. The extent of damage is same. This means that you cannot insert a provision in the contract required to pay the freight charge caused by damage less than what is required by law [27].

The common rules of transport on cabotage through boarder; Accordance with Article 99 of Custom Law 2011(Cranberry) cabotage is the process by which domestic goods are transported from a customs border of another Customs Border in the region over the sea or river. goods which are shipped by sea or river border in areas near the cost of compliance with trade goods from one point to another point of customs territory through the territory of a foreign country is also subject to Cranberry regulations (cabotage).

Chapter three of Article 10 regulating the passage of goods Transit states;
1. The Contracting Parties, if possible will provide a simple and rapid procedure for goods transit, especially for those who are covered by an international policy of transit Customs transferred by limiting inspections in cases where the risks or the circumstances require.
2. The responsible Party to provide maximum facilities to the transit of goods in containers or other units will coordinate efforts and will provide the necessary security.

On the other hand, Appendix (E) Revised in Kyoto Convention was devoted to the important issue of customs transit and the principles and rules relating to transit in forms of proposed standards and guidelines in three chapters under customs transit in which Commercial shipments of one other means of transport and coastal transport of goods (cabotage) is discussed in detail [9].

Until late in the last century, no legal relationship was between a contract of carriage of passengers and damage inflicted during his visit. Hence the lack of evidence of liability or fault, the carrier was required to prove guilt and this was very difficult and sometimes impossible. To avoid these legal and judicial procedures, a new interpretation of the contract of carriage offered according to which carrier liability is limited to transfer passengers from one place to another.
But he also makes a commitment to deliver the goods safely to the destination [11]. Thus, commitment to safety which is primarily the result of commitment is considered as a contractual obligation, so that this commitment is extended to the myriad of precedent transportation of goods [29]. Sometimes in goods transport, this commitment is a commitment by vehicle.

There are different systems of accountability:

- System based on proven guilty
- System based on assumed fault will be eliminated if the fault is not committing to prove or demonstrate reasonable diligence by the carrier.
- System based on the assumption of responsibility which will be rejected by proving the cause of damage or failure to perform its obligations and non-attributable to the carrier.
- Strict or absolute liability system

Differences between the second and third systems in addition to defending the carrier can also be related to the damage caused by unknown reasons. According to the system based on fault, in the damage caused by unknown reasons, operator could easily defend itself from liability brooks out, just because he is not committing to prove fault on his part.

While the system is based on the assumption of responsibility, the carrier is liable and cannot get rid of the burden because the exemption needs him to prove the unacceptable damage to its attribution. The assumption of unknown cause damage, this is not possible [25].

Conclusion:

According to the General rules for legal validity of the transportation in which some common items which must be adhered such as the need to issue a bill of lading contract between the charge transport and compliance with legal restrictions and regulations with respect to transportation.

Not because any of these conditions do not cause defects in the movement of goods and while the movement of goods takes place but may be the non-compliance with laws and regulations relating to transport because transporting goods will not be within the customs laws.

And consequently, it is subject to smuggling or the lack of agreement on the essential terms, responsibility is not obvious. For example, the forwarder is a person or company that provides arrangements for transporting goods from one country to another but does not assume responsibility for the carriage of goods.

But it acts as a professional intermediary between the sender and recipient of goods on the one hand and operates freight charge on the other hand which is also referred to as broker. But legally carrying personal goods for shipment contract with the sender can be the ship owner or renter who is called carrier. Most common features of sea and air transport include the customs laws.

Other similar legal aspects of cabotage transport is that there is no need to a contract between the operator and the owner of the goods to be signed, rather, the contract can be concluded between representatives of both .

The legal aspects of cabotage in maritime and aviation transport should be considered more. The first difference can be seen in the transport contract; there are, however, some general rules of lading indicating ownership but represents a contract.

But in the shipping, it seems that legislator has more crackdowns on domestic laws and conventions because most financial value and volume have been attributed to the contract cabotage. Cabotage in maritime transport to be achieved needs transportation contract must be signed.

There would not even spend chartering until the contract is realized. But in Aviation fewer rigors is anticipated. In practice we see, even in the case of the passenger did not have to get the tickets.

This commitment does not lead to the collapse of the transport operator. The point here is that between the operator and passenger, there must be a contract or a commitment to carrying until we realize the officer in charge and this suggests that it is an implicit admission. On the other hand, the important thing is that in maritime transport, distinction are made between ships transportation of freight and passengers so that even if a supplier send a cargo with ship, this is different from transport contract for transport of goods and should therefore not be considered a contract. But, it can be seen in air transport agreements that the load with passenger and the passenger is carried based on a contract which is signed in the contract of freight forwarding goods (bill of lading).

Another difference of cabotage transport must be in place; Sea freight is limited to ports and if the operation of air transport is subject to everywhere, including seaports and dry ports by special aircraft.

REFERENCES