

Freight Forwarders' Liability: A Need for Revival of Unidroit Draft Convention after Six Decades

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Abstract : The freight forwarders, who are known as the Architect of Transportation, play a vital role in the supply chain management. The package of various services which they provide has made the legal nature of freight forwarders very controversial, so that they might be qualified once as principal or carrier and, on other occasions, as agent of the shipper as the case may be. They could even be involved in the transportation process as the agent of shipping line, which makes the situation much more complicated. The courts in all countries have long had trouble in distinguishing the "forwarder as agent" from "forwarder as principal" (as it is outstanding in the prominent case of "Vastfame Camera Ltd v Birkart Globistics Ltd And Others" 2005, Hong Kong). It is not fully known that in the case of a claim against the forwarder, what particular parameter would be used by the judge among multiple, and sometimes contradictory, tests for determining the scope of the forwarder liability. In particular, every country has its own legal parameters for qualifying the freight forwarders that is completely different from others, as it is the case in France in comparison with Germany and England. The unpredictability of the courts' decisions in this regard has provided the freight forwarders with the opportunity to impose any limitation or exception of liability while pretending to play the role of a principal, consequently making the cargo interests incur ever-increasing damage. The transportation industry needs to remove such uncertainty by unifying national laws governing freight forwarders liability. A long time ago, in 1967, The International Institute for Unification of Private Law (UNIDROIT) prepared a draft convention called "Draft Convention on Contract of Agency for Forwarding Agents Relating to International Carriage of Goods" (hereinafter called "UNIDROIT draft convention"). The UNIDROIT draft convention provided a clear and certain framework for the liability of freight forwarder in each capacity as agent or carrier, but it failed to transform to a convention, and eventually, it was consigned to oblivion. Today, after nearly 6 decades from that era, the necessity of such convention can be felt apparently. However, one might reason that the same grounds, in particular, the resistance by forwarders' association, FIATA, exist yet, and thus it is not logical to revive a forgotten draft convention after such long period of time. It is argued in this article that the main reason for resisting the UNIDROIT draft convention in the past was pending efforts for developing the "1980 United Nation Convention on International Multimodal Transport of Goods". However, the latter convention failed to become in force on due time in a way that there was no new accession since 1996, as a result of which the UNIDROIT draft convention must be revived strongly and immediately submitted to the relevant diplomatic conference. A qualitative method with the concept of interpretation of data collection has been used in this manuscript. The source of the data is the analysis of international conventions and cases.

Keywords : freight forwarder, revival, agent, principal, uidroit, draft convention

Conference Title : ICMLL 2023 : International Conference on Maritime Law and Logistics

Conference Location : London, United Kingdom

Conference Dates : March 16-17, 2023