

The role of commercial arbitration in resolving transport disputes: international practice

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Abstract: The article examines the role of commercial arbitration in resolving transport disputes, with a focus on international practice. Special attention is given to the advantages of arbitration over litigation, as well as the challenges associated with the enforcement of arbitral awards in different jurisdictions. Major arbitration institutes, such as the London Maritime Arbitrators Association (LMAA) and the International Chamber of Commerce (ICC), are reviewed. The article also analyzes differing scholarly views on the effectiveness of arbitration in transport disputes, highlighting issues related to the enforcement of awards and the high costs of arbitration procedures.

Keywords: International commercial arbitration, Chamber of Commerce and Industry, investment climate, Arbitration Court, legal framework, business, economics.

Introduction: Commercial arbitration plays a key role in resolving disputes arising in the field of transport law, especially in the context of international transportation. The development of global trade and the increase in the volume of cargo transportation require effective dispute resolution mechanisms that can take into account the specifics of transport operations and ensure prompt and fair resolution of disputes. Commercial arbitration provides such opportunities, offering an alternative to state litigation. This article examines the international practice of using arbitration to resolve transport disputes, including its advantages, features and the main arbitration institutions.

Transport disputes cover a wide range of issues related to the carriage of goods and passengers, the use of vehicles, and the performance of transport contracts. The most common disputes in this area concern:

- Violations of the terms of carriage;
- Damage or loss of cargo;
- Disputes under charter agreements;
- Claims under bills of lading;
- Issues related to delay or failure to perform

obligations.

Since these disputes often arise in an international context, involving parties from different jurisdictions, arbitration has become a preferred method of dispute resolution due to its flexibility and the recognition of arbitral awards in many countries, which is ensured by the New York Convention of 1958[1, Article 1].

One of the key advantages of arbitration in transport disputes is its international nature. Since transport operations often involve crossing borders, arbitration provides a more neutral and universal forum for dispute resolution compared to national courts. This is especially important in cases where the parties to the contract are located in different countries with different legal systems. Commercial arbitration also attracts parties due to the ability to appoint arbitrators with specialized knowledge of transport law. This is especially relevant in complex cases related to maritime transport, which require a deep understanding of the specifics of charter parties, bills of lading and insurance terms [2, p. 1325]. Arbitration provides the parties with a high level of confidentiality, which can be important for protecting commercial secrets and the reputation of companies. In addition, arbitration allows the parties to independently

determine the procedural rules and the place of the proceedings, which makes it more flexible than litigation [3, p. 302].

Major Arbitration Institutions in Transport Disputes

One of the most prominent arbitration institutions specializing in maritime and transport disputes is the London Maritime Arbitration Association (LMAA). LMAA provides a platform for resolving disputes related to shipping, including charter parties and bills of lading. LMAA is known for its specialized approach and highly qualified arbitrators, making it one of the most popular forums for maritime disputes [5, p. 15].

The International Chamber of Commerce (ICC) also plays an important role in resolving transport disputes, especially in international trade. The ICC Court of Arbitration offers flexibility in the choice of arbitrators and procedural rules, making it popular among companies involved in global supply chains [6, p. 45].

The Singapore International Arbitration Centre (SIAC) has become an important arbitration center for Asian companies, including shipping and logistics firms. SIAC offers fast and efficient dispute resolution procedures, which appeals to companies operating in the dynamic environment of the Asian market, where prompt resolution of conflicts is important [7, p. 22].

Examples of Arbitration Disputes in the Transport Sector

International practice shows that commercial arbitration is widely used to resolve disputes related to transport, especially in the area of maritime law. One of the well-known examples is a case considered by the London Maritime Arbitrators Association (LMAA) concerning a dispute under a charter party agreement, in which the charterer made claims against the shipowner for delay in delivery of cargo (demurrage). The arbitrators ruled that the shipowner was not liable for the delay, since it was caused by adverse weather conditions, which qualified as a force majeure circumstance according to the terms of the contract [8, p. 12].

In addition, the ICC considered a case on the late delivery of cargo by air, where the arbitrators ruled in favor of the shipper, who suffered losses due to the violation of delivery times. The award was enforced under the New York Convention in the carrier's jurisdiction [9, p. 37].

Another example concerns a bill of lading dispute considered by the International Chamber of Commerce (ICC). In this case, a shipper filed a claim against the carrier for damage to the cargo during transportation by sea. The carrier claimed that the damage was caused by insufficient packaging of the cargo, but the ICC

arbitrators sided with the shipper, pointing out the lack of evidence of adequate actions by the carrier to protect the cargo during the voyage [10, p. 43]. In this case, the arbitration award was recognized and enforced under the New York Convention in the carrier's jurisdiction, which demonstrated the effectiveness of arbitration as a mechanism for resolving disputes with an international element.

Another illustrative example of arbitration in the transport sector was considered by the Singapore International Arbitration Centre (SIAC) and concerned a dispute over the failure to meet the schedule of delivery of air cargo. The consignee claimed damages for financial losses incurred due to the delay in delivery, and the arbitrators ultimately awarded compensation, finding the delay in delivery to be material [11, p. 29].

Problems and Prospects of Using Arbitration in Transport Disputes

Despite the obvious advantages of arbitration, there are certain problems. One of them is the length of the process of enforcing an arbitration award, especially if it is made in one country and its enforcement is required in another. For example, in some developing countries, there may be difficulties with the recognition and enforcement of arbitration awards [1, Article 3].

The issue of using commercial arbitration to resolve transport disputes generates many discussions among researchers. On the one hand, many scholars support arbitration as a preferred method of resolving disputes in international transportation. Thus, Gary Born argues that arbitration offers a number of advantages, including neutrality, flexibility and the ability to involve highly specialized arbitrators, which is especially important in complex transport cases [4, p. 96]. Born also notes that, thanks to the New York Convention of 1958, arbitration awards are recognized and enforced in most countries of the world, which makes arbitration more attractive for companies operating in the international sphere [4, p. 224]. However, critics such as William Tetley have raised concerns about the practical implementation of arbitration awards. He points out that in countries with developing legal systems, it may be difficult to enforce arbitration awards, especially if jurisdictions do not fully comply with international standards of enforcement [2, p. 1325]. In addition, Tetley points out that arbitration can be expensive and lengthy, making it less attractive to smaller shipping companies or market participants with limited resources [2, p. 1328]. While arbitration provides a more flexible means of dispute resolution, its disadvantages, such as high costs and problems with enforcement, continue to be debated by scholars.

Effective use of arbitration can reduce the time and

cost of conflict resolution, preserve business relationships, and ensure confidentiality. Below are key recommendations for the effective use of arbitration in the shipping industry.

Including an Arbitration Clause in Contracts

In order for arbitration to be used in the event of a dispute, it is important to include an arbitration clause in contracts in advance. When drafting an arbitration clause, the following should be taken into account:

- The precise indication of the arbitration body (for example, the Chamber of Commerce and Industry, the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Republic of Uzbekistan, etc.).
- The place of arbitration. This may be important in terms of jurisdiction and applicable law.
- Applicable law. It is necessary to indicate which national legislation will be applied when resolving the dispute.
- The number of arbitrators. Usually one or three arbitrators are appointed, depending on the complexity and amount of the dispute.
- The language of arbitration. It is important to determine in advance what language the arbitration will be conducted in.

Selecting professional arbitrators

The effectiveness of arbitration proceedings largely depends on the competence of the arbitrators. It is recommended to select arbitrators with experience in the transport industry, who understand the specifics of logistics, transportation and international transport conventions. This will help speed up the process and reduce the likelihood of making decisions that do not take into account industry specifics.

Timely use of arbitration

It is important to promptly seek arbitration to resolve disputes. Delays in filing a claim can lead to complications in the situation and increase losses. Arbitration should be viewed as a tool that can help promptly resolve a conflict and minimize the consequences for the business.

Estimating the costs of arbitration and the proportionality of the dispute

Arbitration can be less expensive than litigation, but its cost depends on the complexity of the dispute, the number of arbitrators and the duration of the process. Before resorting to arbitration, it is advisable to assess how the costs of arbitration are comparable to the size and significance of the dispute. In some cases, it may be more cost-effective to use mediation or other alternative dispute resolution methods.

Using International Arbitration for Cross-Border Disputes

The transportation industry often faces cross-border disputes involving international shipping. In such situations, arbitration can be particularly useful because it avoids the complexities of different national legal systems. International arbitration provides a neutral forum and flexibility in the choice of applicable law and venue.

Careful preparation of evidence

For successful arbitration, it is important to prepare all the necessary evidence: contracts, invoices, acceptance certificates, correspondence and other documents confirming the position of one of the parties. In the transport industry, documents confirming the fact of cargo transportation, its condition and compliance with the terms of the contract are of particular importance.

Taking into account the specifics of transport conventions and agreements

When considering disputes related to international transport, it is necessary to take into account international conventions, such as:

- Convention on the Contract for the International Carriage of Goods by Road (CMR),
- Montreal Convention (for air transport),
- UN Convention on the Law of the Sea (for maritime transport),
- Convention concerning International Carriage by Rail (COTIF).

These conventions may contain special rules that arbitrators are required to take into account when making decisions.

Conducting pre-trial negotiations

Before applying to arbitration, it is recommended to try to resolve the dispute out of court. This can save time and money, as well as preserve business relations between the parties. In some cases, arbitration procedures include a mandatory negotiation or mediation stage before the proceedings begin.

Despite this, commercial arbitration is currently the most effective mechanism for resolving transport disputes due to its flexibility, confidentiality and international recognition of arbitral awards. Major arbitration institutions such as the LMAA, ICC and SIAC provide specialized services that help shipping companies resolve disputes effectively. Despite the existing problems associated with the enforcement of arbitral awards in certain jurisdictions, arbitration remains the preferred choice for resolving international transport disputes.

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