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Rights and Responsıbilities of the Consignor under International Air Cargo Transportation in the Context of India

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Abstract
The air transportation sector is considered the fastest way to transport goods over long distances. Reasons such as the speed and safety of international cargo shipments by air, and the ability to safely transport a large number of products at once, make this sector extremely popular. This form of transportation is also preferred because the laws regulating air transportation have gained unity in the "International Law Regime" over time. In this study, the rights and responsibilities of the consignor rather than the carrier in international cargo transportation by air were examined. International cargo transportation contracts by air, the parties, and the concept of cargo are explained in detail within the relevant provisions of international agreements to be applied in international cargo shipments by air. The rights and responsibilities of an international air cargo consignor under the main international regulations, the Warsaw, The Hague, and the 1999 Montreal Conventions, have been explained and the legal nature of this right and responsibility has been clarified in the context of India. In the study, the qualitative research model and literature scanning and review methods were used.

Keywords: International Air Cargo Transportation, International Air Freight Contracts, Responsibility of the Air Cargo consignor, International Contracts to be Applied in International Cargo Transports and Harmonization of Indian Air Cargo Transportation Legislation with Different International Contracts

I-) INTRODUCTION

The roots of the air cargo transportation sector date back to the early 1900s. In 1910, the transportation of silk cargo by air from Dayton Huffman Prairie Flying airport in the United States to Ohio is considered the first example of air cargo transportation in history. The following year, in 1911, the first air cargo transportation in Europe was carried out by transporting newspapers from Berlin-Johannisthal to Frankfurt. Regular air cargo transportation flights started in the USA in 1918 and became more common by the 1920s. In 1925, Ford Motor Company started transporting its cargoes by air through Henry Ford's Express Company. (Ergin, 2020:5).

With the establishment of various air cargo transportation companies in the 1930s, air cargo transportation has developed and become widespread. In 1941, four major air transportation companies in the USA established an air cargo company called Air Cargo Inc. and started regular flights. With the end of World War II in 1945, many air transportation companies in the USA, in particular, started to establish their own air cargo companies. During this period, aircraft technology also developed and all kinds of cargo that could fit inside the aircraft started to be sent by air cargo (Ergin, 2020:5).

By the 1960s, the international air transportation sector had seized a great growth opportunity. During this period, the International Air Transport Association (IATA) decided to separate air

passenger transportation and air cargo transportation types. In addition, official relations were established between agents and air cargo transportation companies in cooperation with the Federation of Associations of International Transport Organizers (FIATA).

Air transportation is very important for a large country like India, where distances are very long and terrain and climate conditions are very diverse. Air transportation in India started with the start of air mail operations over a small distance of 10 km between Allahabad and Naini in 1911[1]. However, its real development took place in the post-independence period. In 1947, air transportation was provided by four major companies, Indian National Airways, Tata Sons Limited, Air Services of India, and Deccan Airways. In 1951, four more companies, namely Bharat Airways, Himalayan Aviation Limited, Airways India, and Kalinga Airlines, joined the services. In 1953, air transportation was nationalized and two companies, Air India International and Indian Airlines, were established[2]. After nationalization, air transportation in India is managed by two companies, Air India[3] and Indian Airlines. The Airport Authority of India is responsible for providing safe, efficient air traffic and aviation communication services in Indian Airspace. The Authority manages 125 airports. Today, many private companies have also started passenger flights.

Today, the air cargo transportation sector constitutes approximately 1% of world trade only thanks to the volume of cargo it carries, and the cargo it carries worth 6 trillion dollars constitutes 35% of world trade (Akoğlu and Fidan, 2020:38).

In addition to this history of the air cargo transportation sector in India, the size and importance of the sector are also noteworthy. As of 2021, the air transportation sector in India has reached a significant size by carrying 3.1 million metric tons of cargo in a year[4]. Also, as of 2022, there are 133 operational airports in India.

II-) ACTORS IN INTERNATIONAL AIR CARGO TRANSPORTATION

The subject of international air cargo transportation activity is cargo, i.e., freight transportation[5]. The concepts of load or goods are also used instead of the concept of cargo. International air cargo transportation is performed based on a transportation commitment made between the consignor and the carrier. The primary performance of the carrier in the contract is the commitment to transport the goods. The transportation commitment should be understood as the carrier taking the load from one place to another by air and delivering it, also ensuring the maintenance and supervision of the load. Therefore, there are three main actors in international air cargo transportation activity: the consignor, the carrier, and the transportation contract.

A-) The Consignor

In the field of international goods transportation, the term ‘consignor’ is used synonymously with the terms ‘sender’, ‘freighter’, or ‘shipper’ in its literal sense. The consignor, in its most general definition, is the person who makes the transportation contract on his own behalf about the transportation of the load and is the party against the carrier in the contract (Canbolat, 2009: 18). In the doctrine, the word ‘shipper’ is also preferred (Kaner, 1994: 46).

[1] Nathan Economic Consulting India Pvt. Ltd. (2012). Research Study of the Civil Aviation Sector in India. Ministry of Corporate Affairs, Govt. of India, India https://iica.nic.in/images/sclmr_research/Civil%20Aviation%20Sector.pdf (24.01.2024)

[2] https://www.jagrangosh.com/general-knowladge /air-transportation-1448704620-1 (14.01.2023)

[3] Air India was sold to the Tata Group by the government in October 2021 for approximately 2.4 billion US dollars.https://www.statista.com/ topics/3016/air-carrier-market-in-india/#topicOverview (14.01.2024).

[4] https://www.statista.com/ topics/3016/air-carrier-market-in-india/#topicOverview (14.01.2024).

[5] In terms of international cargo transportation contracts, the Warsaw/The Hague Convention or the 1999 Montreal Convention consider these concepts the same, and there is no difference between the terms load, cargo, or goods.

In an international air cargo transportation contract, it is not necessary for the carrier to be the owner of the cargo sent. It is also not a requirement to have any real right on the load. In fact, in practice, both national and international air cargo transports are generally carried out through a 'transportation business broker'. If the international air cargo transportation contract is carried out through an authorized representative, in such a case, the person who will have the status of the carrier will be the owner of the represented load (Ülgen, 1987: 70; Turhan, 2016: 34).

B-) Carrier

In international air cargo transportation contracts, the concept of carrier[6] is defined as the party that undertakes the transportation operation by making a transportation commitment.

In international air transportation, it is often seen in practice that the person who makes the transportation commitment and the person who performs the transportation operation are different. Therefore, the concepts of contractual carrier and actual carrier come up[7].

The contractual carrier in an international air cargo transportation contract is the name given to the person who promises to carry out the transportation operation to the other party either by himself or through his representative and is a party to the contract with this status (Atasoy and Apaydın, 2020: 26). The contractual carrier can be a real or legal person, and it can also be the owner or tenant of the air transportation vehicle. There is no harm in using a representative. The only important criterion is that the contractual carrier has made a transportation commitment in the contract (Gölcüklü, 2018: 46).

The actual carrier is the person to whom the contractual carrier has transferred the whole or part of the transportation operation he has committed to perform (Birinci Uzun, 2015: 56). The actual carrier is an independent carrier from the contractual carrier. It should not be considered as an assistant or representative of the contractual carrier (Gölcüklü, 2018: 49). To better understand the actual carrier, for example, in some international air transports, there is the phrase 'operated by' next to some flights on the information board. This expression indicates the actual carrier in the flight in question (Gölcüklü, 2018: 48).

The third and last concept, **the successive carrier**, is sometimes referred to as supplementary, successive, subsequent, or chain names in the doctrine. Successive transports come up when the transportation operation is carried out by more than one carrier[8].

For successive transportation to be in question, three conditions must be together: transportation should include transportation contracts that are separated in terms of time and place but will be performed following each other; transportation should be accepted as a single transaction between the parties; it must have been previously agreed that the transportation will be performed by more than one successive carrier (Kırman, 1990: 37; Sözer, 2009: 47).Successive transport can take place within the framework of a single transport contract as well as within the scope of multiple transport contracts. The main important point here is that the transportation operation is seen as a single transportation activity by the parties (Canbolat, 2009: 26).

C-) International Air Cargo Transportation Contract

The essential element valid for all transportation contracts is the existence of a transportation commitment (Sözer, 2009: 32). The transportation commitment, which is the primary performance

[6] The concept of the carrier is mentioned in Article 4 of the 1999 Montreal Convention

[7] These concepts are also found in the provisions of the 1999 Montreal Convention. Both in the Warsaw/The Hague System and in the Montreal Convention, there is a third concept of successive carrier, which is a type of transportation carried out by multiple carriers (Atasoy and Apaydın, 2020: 26).

[8] Successive carriage is regulated in Article 1(3) and Article 30 of the Warsaw/The Hague Convention, and in Article 1(3) and Article 36 of the 1999 Montreal Convention (Atasoy, Ö. A. and Apaydın, D. 2021:32).

of the carrier in the contract, must be expressed and accepted in accordance with an international air cargo transportation contract. Indeed, it is necessary to have a clear and doubt-free transportation commitment in the transportation contract (Atasoy and Apaydın, 2020: 13).

Considering the 11th article of the Montreal Convention mentioned below, the transportation commitment that should be included in an international air cargo transportation contract should be understood as the carrier taking the load from one place to another by air and delivering it, also ensuring the maintenance and supervision of the load. The Warsaw Convention, The Hague Convention, and the provisions of the Montreal Convention do not require a form requirement for international air transportation contracts. A declaration of intent that is compatible with each other is considered sufficient for an international air transportation contract to be considered established (Kırman, 1990: 57-58; Sözer, 2009: 124).

III-) LEGAL REGULATIONS GOVERNING INTERNATIONAL AIR CARGO TRANSPORTATION

The rules governing international cargo transportation are included in the regulations under the 1999 Montreal Convention and Warsaw Conventions system:

- 1929 Warsaw Convention,
- 1955 The Hague Protocol,
- 1971 Guatemala Protocol,
- 1961 Guadalajara Convention,
- 1975 Montreal Protocols.

A-) Warsaw Convention-1929

After World War I, international air transportation developed rapidly. This development led each country to create regulations in line with its own domestic law. However, this diversity and the lack of a generally accepted legal system in international air transportation created great chaos. This situation has brought about the need for an effort to establish international jurisprudence and a uniform rule system (Kırman, 1990: 8; Atasoy and Apaydın, 2021:10).

The Warsaw Convention is the first contract to regulate international transportation by air for this purpose. This contract was signed in Warsaw on October 12, 1929. The Convention, which came into force in 1933, is known as the "Convention for the Unification of Certain Rules for International Carriage by Air[9]". So far, 152 states have accepted this contract. Today, it is considered the international private law text with the most parties in the world. The Warsaw Convention came into effect in India with the entry into force of the 1934 Indian Air Transportation Act related to international transportation and the provisions of this Act were extended to domestic transportation with certain exceptions, adaptations, and changes by a circular published in 1964[10]. India signed the Warsaw Protocol on January 29, 1970, and this protocol came into effect for India on August 15, 1974[11]. The contract aims to unify the rules regulating the field of goods transportation by air. According to the Warsaw Convention 1929, applicability and scope extend to all international baggage or goods transportation and even passengers (Article 3). In addition, it is equally applicable to gratuitous transportation performed by an air transportation enterprise by plane (Article 1).

In general, the contract regulates transportation documents and the responsibility of the carrier. In the provisions of Articles 3, 4, and 5-16 of the Convention, the passenger ticket, baggage coupon, and

[9] https://www.iata.org/ contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf (18.01.2024)
[10] https://indiankanoon.org/ /doc/843522/
[11] https://www.icao.int//secretariat/legal/Status%20of%20individual%20States/India_EN.pdf (14.01.2024)

airway bill (also known as the air consignment note) are regulated. How these documents will be arranged, by whom, and in what articles they will contain are clearly stipulated.

The contract brings two main rules that shape the area of responsibility. Firstly, proactive steps have been taken for state-owned air carriers to take on the inherently open-ended responsibility, especially in the event of cargo loss or damage, passenger death or injury. On the other hand, for passengers or shippers, if something goes wrong, it is bound by the rule that fair compensation should be provided.

B-) The Hague Protocol-1955

The Hague Protocol[12] is an agreement signed on September 28, 1955, after a conference held in The Hague, the Netherlands. The Protocol was created with the idea that the Warsaw Convention, written in 1929, needed to be updated and changed as technology and law advanced.

The Protocol made the following important changes in the field of international cargo transportation under the 1929 Warsaw Convention:

i-) The term international transportation has been redefined (Article 1). The carrier has to sign the contract before the load is loaded onto the plane (Article 6) and what the airway contract will include has been regulated (Article 8).

ii-) The Protocol has brought a special responsibility for consignors. The second paragraph of Article 10 of the contract has been changed to "2. The consignor shall indemnify all damages suffered by himself or any other person for whom he or the carrier is responsible due to the irregularity, incorrectness or incompleteness of the information and declarations given by the consignor."

iii-) With the amendment made in Article 22 of the contract, the responsibility of the carrier has been determined. If there is no amount determined by special contracts between the carrier and the consignor, the carrier's liability is limited. Accordingly; "2. (a) In the transportation of registered baggage and cargo, unless the passenger or consignor declares a special interest in delivery at the destination at the time the package is delivered to the carrier and pays an additional amount, the carrier's liability is limited to two hundred and fifty francs per kilogram. In this case, the carrier will be obliged to pay an amount not exceeding the declared amount, unless it proves that the actual benefit of the passenger or consignor in delivery at the destination is higher. (b) In case of loss, damage or delay of a part of the registered baggage or cargo or any object contained therein, the amount limiting the carrier's liability will be taken into account."

With these new changes, the 1955 Hague Protocol has made a broader regulation, especially in terms of the carrier's liability limits, and an increase in the compensation amount has been agreed upon. In addition, a change has been made in the information in the content of documents such as the airway bill, and a simpler content has been envisaged (Kırman, 1990: 12; Birinci Uzun, 2015: 23).

On the other hand, the rights and responsibilities of the recipient and the carrier in case of damage have been changed within the scope of the Protocol. The second paragraph of Article 26 of the contract has been removed and the rule "2. In case of damage, the person entitled to receive must immediately complain to the carrier within seven days at the latest after the damage is detected and from the date of receipt in the case of baggage, and within fourteen days from the date of receipt in the case of cargo. In case of delay, the complaint must be made within twenty-one days at the latest from the date the baggage or cargo was made available." has been introduced. According to the 1955 Hague Protocol, if a state that is not a party to the Warsaw Convention signs this protocol, it will be a party to the Convention as amended by the 1955 Hague Protocol (Article 21/2).

[12] https://www.lawyersnjurists.com/convention/the-hague-protocol1955/ (14.01.2024)

To date, the Warsaw Convention has been approved by 137 states. India is among the states that approved this protocol.

The purpose of creating the Hague Convention is to establish internationally valid, universally compatible rules for international civil air transportation. However, some states, such as the United States, were not satisfied with regulations such as the carrier's liability limits and the amount of compensation (Sözer, 2009: 63; Bozkurt Bozabalı, 2015: 68-69).

C-) Montreal Convention-1999

This Convention[13], known as the 1999 Montreal Convention (officially, the Convention for the Unification of Certain Rules for International Carriage by Air), is a multilateral agreement accepted at a diplomatic meeting of ICAO member states on May 28, 1999. The signing of the Convention aimed to contribute to the harmonization of special international air law of the 1929 Warsaw Convention and other related instruments, the necessity of modernizing and unifying the Warsaw Convention and related instruments, the collective state action for the fair balance of interests in the further harmonization and codification of certain rules governing international air transportation.

India signed this convention on May 1, 2009, and ratified it on June 30, 2009[14].

The Montreal Convention has made the following important changes to the Warsaw Convention, which was renewed over The Hague Protocol:

i-) Article 4 of the Montreal Convention does not oblige the consignor to deliver an air consignment[15] note that determines the proof of the transportation contract. In the contract, regarding cargo transportation, the delivery of an air consignment note (Article 4/1), any other instrument preserving a record of the performance of the transportation, can replace the delivery of an air consignment note, if such other instruments are used, the carrier will deliver a cargo receipt that provides access to the identification of the shipment and the information in the record protected by such other instruments upon the request of the consignor (Article 4/2).

ii-) In Article 5 of the Convention, regulations have been made regarding the content of the air consignment note and the cargo receipt. Accordingly: "Content of the Airway Bill or Cargo Receipt The airway bill or cargo receipt will include: (a) an indication of the places of departure and arrival; (b) if the places of departure and arrival are within the territories of a single Contracting State, in case one or more agreed stopping places are within the territories of another State, an indication of at least one stopping place; and c) an indication of the weight of the shipment."

iii-) With Article 6 of the Convention, the consignor will have to deliver a document indicating the nature of the cargo when necessary to fulfill the formalities of customs, police, and similar public authorities, and the carrier will not have any duty, obligation, or responsibility arising from this.

The Airway Bill[16] "1-) will be arranged in three original parts by the consignor. 2-) The first part will be marked 'for the carrier'; will be signed by the consignor. The second part will be marked 'for the recipient'; will be signed by the consignor and the carrier. The third part will be signed by the carrier and will be given to the consignor after the acceptance of the cargo. 3-) The signature of the carrier and the consignor can be printed or stamped. 4-) If the consignor requests, the carrier arranges the

[13] https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf (14.01.2024)
[14] https://www.icao.int/secretariat/legal/List%20of%20Parties/Mtl99_EN.pdf (14.01.2024)
[15] A bill of lading contains records related to the details, type, quantity, and travel route of the transported cargo. Therefore, issuing a bill of lading is an important part of the air cargo transportation process.
[16] The Content of the Air Waybill or Cargo Receipt: The air waybill or cargo receipt will include: (a) an indicator of the places of departure and arrival; (b) if the places of departure and arrival are within the territories of a single Contracting State, an indicator of at least one agreed stopping place within the territories of another State in case there is one or more agreed stopping places; and (c) an indicator of the weight of the shipment (Article 5).

air consignment note, the carrier will be deemed to have done this on behalf of the consignor, subject to proof of the contrary (Article 7)."

iv-) In Article 10 of the Convention, "Responsibility for Details of Documents" is regulated. According to this article; The consignor is responsible for the accuracy of the details and declarations related to the cargo that he or she adds to the air consignment note or the cargo receipt or the record protected by other instruments specified in paragraph 2 of Article 4, whether on his or her own behalf or on behalf of him or her, the same situation is also valid when the person acting on behalf of the consignor is also the agent of the carrier.

On the other hand, the consignor is obliged to compensate all damages suffered by the carrier or any other person for whom the carrier is responsible, due to the irregularity, incorrectness or incompleteness of the details and declarations given by the consignor or on his behalf, and subject to the provisions of paragraphs 1 and 2 of this Article, the carrier, the consignor or any other person for whom the consignor is responsible, the carrier or the details and declarations added to the cargo receipt or the record protected by other instruments specified in paragraph 2 of Article 4 on his behalf, due to the irregularity, incorrectness or incompleteness, is obliged to compensate all damages suffered.

v-) In Article 12 of the Convention, rules on "Cargo Disposal Right" are included. According to this rule;

Subject to fulfilling all obligations arising from the transportation contract, the consignor has the right to request the carrier to withdraw the cargo at the departure or arrival airport, stop it at any landing during the journey, deliver it to another person at the destination or during the journey, or request it to be returned to the departure airport. The consignor should not use this right in a way that would harm the carrier or other consignors and should cover any expense arising from the use of this right.

If it is not possible to fulfill the consignor's instructions, the carrier must immediately notify the consignor.

If the carrier fulfills the consignor's instructions for cargo disposal without requesting the production of a part of the air consignment note or the cargo receipt delivered to the consignor, the carrier will be liable for any damage that can be given to any person who is legally entitled to that part of the air consignment note or cargo receipt, without prejudice to the right to recover from the consignor.

The right granted to the consignor ends when the recipient's right begins according to Article 13. However, if the recipient refuses to accept the cargo or if communication cannot be established, the consignor regains the right of disposal.

vi-) In Article 13 of the Convention, important rules have been brought regarding the delivery of the cargo; Unless the consignor uses his right under Article 12, when the cargo reaches the destination, the recipient has the right to request the carrier to deliver the cargo to him. This is valid if the fees to be paid are paid and the transportation conditions are complied with. Unless otherwise agreed, the carrier has a duty to notify the recipient about the arrival of the cargo.

If the carrier accepts the loss of the cargo or if the cargo does not arrive seven days after the date it is supposed to arrive, the recipient has the right to apply the rights arising from the transportation contract against the carrier.

The consignor and the recipient can exercise all the rights given to them by Articles 12 and 13, whether they act on their own behalf, for their own interests or for the interests of others, as long as they fulfill the obligations brought by the transportation contract (Article 14).

vii-) In Article 16 of the Convention, “Customs, Police or Other Public Authorities” duties and responsibilities are included;

1-) The consignor must provide the necessary information and documents to meet the formalities of customs, police, and other public authorities before the cargo is delivered to the recipient. The consignor is responsible for any damage given to the carrier due to the absence, insufficiency, or irregularity of such information or documents (unless the damage is due to the fault of the carrier, its servants, or agents).

2-) The carrier is not obliged to inquire about the accuracy or adequacy of such information or documents.

This agreement has changed the important provisions of the Warsaw Convention regarding compensation for victims of air disasters. The responsibilities of the carrier regarding these issues are regulated in Article 17 and subsequent articles of the Convention.

viii-) In Article 31 of the Convention, the rule of reporting complaints is regulated. Accordingly; The uncomplaining receipt of baggage or cargo controlled by the person entitled to delivery is the primary evidence that it has been delivered in good condition and in accordance with the transportation document or the record protected by other instruments referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

In case of damage, the person entitled to delivery must immediately complain to the carrier and at the latest, within seven days from the date of delivery in the case of checked baggage, and within fourteen days from the date of delivery in the case of cargo. In case of delay, the complaint must be made within twenty-one days at the latest from the date the baggage or cargo was made available to the person.

Every complaint must be made in writing and must be given or sent within the periods specified above. If no complaint is made within the periods specified above, no action shall be brought against the carrier (except in the case of the carrier’s fraud).

ix-) Finally, in Article 33 of the Convention, the competent court for compensation claims is determined. A claim for compensation should be brought, at the plaintiff’s choice, in a court in the territories of a Contracting State, either in the court where the carrier’s domicile or main place of business is located, or in the place where the contract was made or at the destination.

In relation to damages resulting from the death or injury of a passenger, a lawsuit can be brought in one of the courts specified in paragraph 1 of this Article or in a Contracting State’s territory where the passenger’s main and permanent residence is located at the time of the accident and the carrier provides passenger transportation services by air and with its own aircraft or with another carrier’s aircraft under a commercial agreement and the carrier carries out its air passenger transportation business in a place that owns its own property or has a commercial agreement with another carrier.

Procedural issues will be governed by the law of the court where the case is heard.

x-) In Article 34 of the Convention, the arbitration procedure is envisaged

Subject to the provisions of this Article, the parties to the cargo transportation contract may determine that any dispute related to the carrier’s liability under this Convention will be resolved by arbitration. Such an agreement must be in writing.

Arbitration proceedings should take place, at the request of the applicant, in one of the jurisdictions specified in Article 33.

The arbitrator or arbitration panel will apply the provisions of this Convention.

The provisions of paragraphs 2 and 3 of this Article shall be deemed part of every arbitration clause or agreement, and any clause or agreement provision that conflicts with these provisions shall be invalid.

IV-) HARMONIZATION OF INDIA AIR CARGO TRANSPORTATION LEGISLATION WITH INTERNATIONAL AGREEMENTS (INDIA AIR TRANSPORTATION LAW-1972)

The 1972 India Air Transportation Law[17] is an important law that regulates air transportation in India. This law is organized as 3 programs. The law has been enacted to be compatible with the 1929 Warsaw Convention (First Program), 1955 The Hague Protocol (Second Program), and 1999 Montreal Convention (Third Program).

In the introduction section of the law, it is clearly stated that the provisions regulated in the Convention regarding the rights and obligations of carriers, passengers, consignors, recipients, and other persons are subject to this law, regardless of the nationality of the aircraft performing the transportation. On the other hand, it has been stated that the law has legal force in India regarding all kinds of air transportation where these rules are applied. Thus, the said Law has made the scope of the mentioned agreements related to international transportation applicable in India with certain changes and exceptions.

In the first section, which regulates the scope and definitions of the law in all three programs; these rules are envisaged to be applied equally to all international person, baggage, or cargo transportation made in return and to gratuitous air transportation performed by an air transportation enterprise. The phrase “international transportation” is defined as transportation made within the territories of a single High Contracting Party, according to the agreement between the parties, regardless of whether there is an interruption or transfer in transportation, either within the territories of two High Contracting Parties or within the territories of another State (even if this State is not a High Contracting Party) on condition that there is an agreed stopover. If there is no agreed stopover within the territories of another State in transportation between two points within the territories of a single High Contracting Party, it is not international transportation.

In the law, the responsibilities of the carrier are regulated by including the rules regulated in the International Agreements mentioned above[18].

In all three programs included in the Air Transportation Law, the rules regarding the “rights and obligations of the consignor” regulated in the Agreements are included. In the 12th article of all three programs of the Law, the rights of the consignor are included. According to these regulations, subject to fulfilling all obligations required by the transportation contract, the consignor has the right to request the carrier to withdraw the goods from the departure or arrival airport, stop it at any landing during the journey, or deliver it to another person other than the recipient specified in the air consignment note during the journey or at the destination, or request the return of the goods to the departure airport. The consignor should not use the right of disposal in a way that would harm the carrier or other consignors and should pay any expense arising from the use of this right. Also, if it is not possible to fulfill the consignor’s orders, the carrier must immediately notify him.

In Article 10(2) of all three Programs of the Air Transportation Law, the responsibility of the consignor is regulated. According to this rule, it is envisaged that the consignor is responsible for all damages suffered by the air carrier or any third party due to the incorrectness, irregularity, and insufficiency of the document responsibility. While the Rule 10(2) of the First Program specifies the

[17] https://www.indiacode.nic.in/bitstream/123456789/1658/2/A1972-69.pdf (09.01.2024)

[18] In the law, the responsibilities of the carriers are regulated in the third section of all three programs. Especially in the Third Program, detailed regulations are included in Articles 17-37 regarding the liability of carriers due to damages. Since this study focuses on the consignor’s responsibility, one can refer to the mentioned articles for the carrier’s liability.

word “responsible”, the Second and Third Program emphasized that “the consignor needs to compensate”. This responsibility has been expanded to cover not only the air carrier, the successive carrier, and the actual carrier, but also the third party outside the scope of the related contract of carriage.

According to these regulations, the consignor has the duty to check the accuracy of the goods and provide all information about the goods. In addition, it must provide the necessary documents for the transportation or processing of such goods. In the international regime, states are busy creating their own rules and regulations about the nature of goods that can be transported. Public authorities, including police and customs, inspect the proper compliance of goods. Certain goods may require the government’s prior approval, and this approval can be used during arrival or departure. The consignor has the duty to provide all necessary documents for the recipient and the air carrier along with the air consignment note or air cargo note.

In reality, although air consignment notes are prepared by the air carrier, the person responsible for the error in terms of the content of the air cargo note is the consignor. Therefore, while accepting the transportation contract, the consignor also indirectly accepts the compensation contracts. The consignor’s responsibility is very broad. The absence of special provisions regarding the consignor’s responsibility in any transportation contract does not eliminate this responsibility and the obligation to regulate the damages it gives according to the rule 10(2) of all three Programs of the Air Transportation Law.

On the other hand, in India, in case of a dispute regarding international goods transportation by air, there is no effective and appropriate solution mechanism other than applying to consumer forums from the consignor’s perspective. It is seen that the law regulating the field of international goods transportation by air is almost the same as the provisions of the international agreements that govern air cargo law and regulations. Therefore, there is a lack of an appropriate solution mechanism not only at the international level but also at the local level from the perspective of consignors.

Considering the regulations made in the Air Transportation Law, it is noticed that the right of the consignor in India is unbalanced compared to the right of the recipient. The consignor has no other remedy than to file a lawsuit alleging breach of contract to solve the problem he faces when transporting cargo internationally by air. The right to apply to the Consumer Dispute Resolution Commission is granted to the recipient because he is a service beneficiary. The consignor does not have such a right either. Therefore, the law, which aims to comply with international agreements, has lagged behind in adapting to technological advancements. In today’s world where e-commerce plays a very important role, the rights of the consignors seem to be neglected.

In this respect, to ensure the effective operation of transactions in the field of international goods transportation by air, the rights of the consignor should be secured and the gaps that prevent these rights from being properly insured must be eliminated. Solution mechanisms that will allow the consignor to find an appropriate solution in case of any dispute related to the goods should be developed to balance the rights of the consignor against the carrier and the recipient.

V-) CONCLUSION

The beginning of the air cargo transportation sector dates back to the early 1900s. Starting with the air transportation of a silk load from Dayton Huffman Prairie Flying airport in the United States to Ohio in 1910, international air cargo transportation has become extremely popular due to reasons such as being fast and safe, and enabling the transportation of many products at once.

The rapid development of international air transportation has led each country to create regulations in its own domestic law. This diversity and the lack of a universally applicable legal system in international air transportation have created great chaos. This situation has brought about the effort

to create an international precedent and the need for a uniform system of rules. For this purpose, agreements regulating international transportation by air have been made. Important steps have been taken in the law of international transportation by air from the beginning of air cargo transportation to the present day, where supersonic commercialization is experienced, with the 1929 Warsaw Convention, the 1955 Hague Protocol that modernized it, and the 1999 Montreal Convention that modernized it. Contributions have been made to the harmonization of international air law, and efforts have been made to further harmonize and codify certain rules governing international air transportation in order to ensure a fair balance.

On the other hand, when we look at the local laws of various countries that regulate the field of international goods transportation by air, it is seen that the local laws are almost the same as the provisions of the international agreements that govern air cargo law and regulations. Local laws regulating international goods transportation by air should be flexible and focus well considering the technological advancement of the modern world. This situation has caused the problem of the inadequacy of the countries' air transportation legal regulations due to their inability to keep up with changes in commercial life.

The Air Transportation Law has been enacted in India with the aim of harmonizing the air cargo transportation legislation with different international agreements. This law, which was prepared by taking into account only the provisions of these agreements due to the legal gaps in international agreements, has been found to be inadequate in solving today's air cargo transportation problems. Under the regulations in the law, the right of the consignor is not found to be balanced compared to the rights of the recipient and the carrier. In India, in case of a dispute regarding international goods transportation by air, there is no appropriate solution mechanism other than applying to consumer forums from the perspective of the consignor. There is a lack of an appropriate solution mechanism not only at the international level but also at the local level. In today's world where e-commerce plays a very important role, the rights of the consignors seem to be neglected and legal gaps have emerged against technological advancements. The consignor has no other remedy than to file a lawsuit alleging breach of contract to solve the problem he faces when transporting cargo internationally by air. The right to apply to the Consumer Dispute Resolution Commission is granted to the recipient because he is a service beneficiary. The law, which aims to comply with international agreements, has lagged behind in adapting to technological advancements.

In this respect, legal gaps should be eliminated to ensure the smooth operation of transactions in the field of international goods transportation by air. Solution mechanisms that will allow the consignor to find an appropriate solution in case of any dispute related to the transported goods should be developed to balance the rights of the consignor. The rights of the consignor should be balanced with the rights of the carrier and the recipient. The addition of this new regulation to the law will contribute to the smooth and effective operation of transactions in the field of international goods transportation by air.

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