THE SIGNIFICANCE OF ARBITRATION CLAUSES IN SETTLING CROSS–BORDER CARRIAGE OF GOODS DISPUTES

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ABSTRACT

With the globalization of trade, the carriage of goods has become a complex legal undertaking that often results in disputes over damaged or short delivered cargo, as well as conflicts over jurisdiction and carrier liability. In the absence of a uniform legal regime. Carriage of goods poses considerable legal uncertainty. The disputes require a mechanism for dispute resolution that is not only effective but also feasible and functional in a cross-border environment[1]. for international commerce, arbitration clauses are emerging as the most secure and cost-efficient method for dispute resolution. The arbitration clauses are incorporated in carriage contracts, whereby the parties can stipulate the governing law, the seat of arbitration and the number of arbitrators, thus bringing greater certainty in advance of a dispute. As opposed to litigation, arbitration assures confidentiality, flexible procedures, arbitration by industry experts, and binding awards; these features minimize time and cost for parties involved. By ratification in over 172 states, the 1958 New York Convention, allows the international enforcement of arbitral awards. Leading arbitral institutions such as ICC, LCIA and SIAC standardise arbitral procedure. Nonetheless, challenges remain; disputes exist between national law and the Convention, lack of consistency in judicial enforcement, and absence of arbitral expertise in some regions. This paper, examines the importance of arbitration clauses in settling cross-border carriage of goods dispute; its legal framework, institutional machinations, cases and improvements.

Keywords: Arbitration Clauses, Carriage of Goods, Cross-Border Disputes, New York Convention, International Commercial Arbitration, Dispute Resolution

[1] Mac-Barango, *The Role of Arbitration Clauses in Resolving Disputes in Carriage of Goods Across International Borders*, 83 J. L. Pol'y & Globalization (2019); Ankit Baghel, *Carriage of Goods Under International Commercial Law* (Delhi Metro. Educ., Working Paper), SSRN, https://ssrn.com/abstract=4465321.

1. Introduction

Globalization of commerce and increasing economic interdependency have fundamentally altered the nature of the contractual relationships between businesses operating in disparate legal, cultural and jurisdictional systems. One of the most critical aspects of global trade is the carriage of goods; the physical and legal process by which commodities are transported from one nation to another, either by sea, air, or road. In light of the complicated network of international conventions, domestic laws and international bilateral agreements that regulate its operation, carriage of goods poses considerable legal uncertainty. The disputes that arise within these transactions, whether relating to short or damaged cargo delivery, carrier liability or jurisdictional conflicts, require a mechanism for dispute resolution that is not only effective but also feasible and functional in a cross-border environment.

Historically, disputes in commerce were resolved in national courts. The rapid growth of international trade and awareness of its inherent drawbacks amplified the inadequacy of national court litigation as a mechanism for international dispute resolution. Prolonged proceedings, unpredictability, and possible bias from the tribunal and, furthermore, practical difficulties of enforcement of national judgments in foreign lands were not only undesirable but made national litigation utterly unsuitable for international commerce[2]. Even as far back as the medieval period, Guild Merchants noted that state courts and their legal representatives did not possess the acumen required to handle complex trade dispute cases speedily[3]. These centuries-long frustrations led to the evolution of arbitration, a dispute resolution process predating formal legal systems, that has evolved significantly over the years with the intensification of international trade and investment.

Arbitration can be generally described as a non-judicial, consensual procedure that involves a neutral third party rendering a final and binding determination[4]. Unlike litigation, arbitration rests firmly upon party autonomy where parties have the right to select arbitrators, choose the applicable rules of procedure, and designate the law and the seat of arbitration[5]. Not only is this autonomy a procedural matter, but it is also the essence and foundation on which the

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[2] A. Rakin & R.F. Tariq, *The Role of International Arbitration in Resolving Cross-Border Commercial Disputes*, 1 L. & Just. Rsch. J. 36, 37 (2025)
[3] Alan Redfern & Martin Hunter, *Law and Practice of International Commercial Arbitration* 3 (Sweet & Maxwell, 5th ed. 2015)
[4] Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration* 1–2 (Cambridge Univ. Press, 3d ed. 2017)
[5] Gary B. Born, *International Commercial Arbitration* 84 (Kluwer L. Int'l, 3d ed. 2021)

arbitral process stands tall on its legs. The benefits derived from this principle are innumerable; a neutral forum, confidential proceedings, expertise in commercial, and specific trade expertise; flexible procedures; and conclusive and binding awards.

In the specific realm of international carriage of goods, arbitration clauses assume immense relevance as they have been incorporated into contracts of carriage. In such disputes, often involve parties from different jurisdictions operating under laws of various countries, arbitration clauses can be relied on for their predetermination of a neutral forum for resolution of disputes. It is in this light that this paper is a comprehensive examination of the importance of arbitration clauses in resolving cross-border carriage of goods disputes by utilizing various literary sources, international conventions, arbitral institutional frameworks and seminal cases, whilst also touching upon potential future improvements in arbitration.

2. Historical Evolution of Arbitration in International Trade

2.1 Origins and Early Development

The concept and practice of arbitration are ancient and substantial. It has been suggested by academics that its origins can be traced back to when mankind abandoned certain private rights to an institution in return for security and orderliness; an ideology that has been equated with Jean Jacques Rousseau's theory of Social Contract[6] in that it bases its legitimacy on the general will of people, similarly to arbitration's legitimacy being derived from party autonomy.

Historical records reflect private dispute resolution forums among Greek merchants as far back as in the ancient days; the Romans also incorporated arbitration in the Roman Empire as a valid form of dispute resolution[7]. However, arbitration in its commercially pertinent form came about in the medieval period where Guild Merchants developed its principles for disputes involving trade. They held strong reservations towards state courts and its legal system which they found lacking the expertise and commercial knowledge to competently hear disputes concerning trade and mercantile activity. They sought justice based on "the law of the merchants"[8], a development that paved the way for the contemporary arbitral process.

By the 18th century arbitration had cemented its place as an alternative dispute resolution

[6] Redfern & Hunter, *supra* note [3], at 2–3
[7] Moses, *supra* note [4], at 1
[8] Redfern & Hunter, *supra* note [3], at 3; Mac-Barango, *supra* note [1]

method, but despite its widespread acceptance, state courts often intervened in arbitral proceedings[9], seeking to uphold their adjudicatory authority. Nevertheless, the commercially perceived preference for arbitration never waned and further contributed to the evolvement of formal institutions and international legal instrumentalities which together laid the foundation for the present arbitration law.

2.2 Development of International Legal Frameworks

The 20th Century saw the creation of an international arbitration legal framework. The milestone legislation in this field was the adoption of The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1958), providing for the cross-border enforceability of arbitral awards[10]. Following this, the UNCITRAL Model Law on International Commercial Arbitration was enacted to provide domestic arbitration legislation and was further amended in 2006[11]. It provided uniformity, predictability and a good standard of arbitration law in contracting states.

In relation to international carriage of goods, there have been a series of international conventions, such as the Hague Rules 1924, Hague-Visby Rules, Hamburg Rules and the Rotterdam Rules of 2008, all aimed at providing uniform regulations for maritime carriage. For air carriage, the Warsaw Convention and the Montreal Convention, and for road carriage the CMR Convention[12] provided similar legislation to harmonize carriage by air and road respectively. The inconsistency in the carriage of goods legal regime led to the growing importance of arbitration clauses.

3. Legal Framework Governing Arbitration in Cross-Border Carriage of Goods

3.1 The New York Convention, 1958

The most widely cited and known provision in the area of international arbitration law is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

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[9] Born, *supra* note [5], at 9–10.

[10] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38; S.H. Khan, M. Ahmad & T. Ya, *Enhancing Dispute Resolution in Maritime Law: The Role of the New York Convention in Arbitration*, 6 Qlantic J. Soc. Sci. & Humans. 290, 291 (2025)

[11] U.N. Comm'n on Int'l Trade L., *UNCITRAL Model Law on International Commercial Arbitration*, U.N. Doc. A/40/17 (1985, as amended 2006)

[12] Baghel, *supra* note [1]; United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Dec. 11, 2008, U.N. Doc. A/RES/63/122

1958 ('New York Convention'), which by 2025 was ratified by 172 states. The Convention places two main obligations on states which have ratified it. First, "each of the Contracting States shall recognize written agreements to arbitrate and shall, subject to the provisions of its own law and in accordance with the provisions of this Convention, refer the parties to arbitration in respect of the dispute arising out of or in connection with a written arbitration agreement," (Article II). Second, "each of the Contracting States shall… recognize and enforce arbitral awards in accordance with the rules of procedure of the territory where the award is relied upon, subject to the provisions of its own laws on the recognition and enforcement of arbitral awards," (Article III)[13]. This provision is enhanced by Article V which strictly limits the possible grounds upon which enforcement can be refused, thereby avoiding judicial protectionism[14]: the "lack of an arbitration agreement is an established and widely accepted basis for refusing to enforce foreign arbitral awards; the narrowly defined grounds for refusal under Article V have therefore significantly contributed to the Convention's importance in international dispute settlement".

The significance of the Convention is particularly evident in the maritime field where parties are likely to come from different countries with varying national laws and jurisdictions. If a Singaporean owned shipping company[15] enters into a charterparty with a US entity, it is important that the arbitration clause will be upheld in both countries in order to avoid a prolonged jurisdictional struggle.

3.2 UNCITRAL Model Law on International Commercial Arbitration

The UNCITRAL Model Law on International Commercial Arbitration ("Model Law"), which was adopted by UNCITRAL in 1985 and later revised in 2006, offers a uniform and unified framework on the issue of national arbitration legislation. The principles enshrined within the Model Law are Kompetenz-Kompetenz, and separability. Kompetenz-Kompetenz, ensures that arbitral tribunal can decide on their own jurisdiction; whereas separability ensures that the arbitration agreement is separated from the main contract such that if the main contract is invalid or has been repudiated, the arbitration agreement can survive independently. Interim measures and procedures were given a greater role, alongside restrictive conditions for setting

[13] Convention on the Recognition and Enforcement of Foreign Arbitral Awards arts. II, III, June 10, 1958, 330 U.N.T.S. 38

[14] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 330 U.N.T.S. 38; Khan, Ahmad & Ya, *supra* note [10], at 292–293

[15] Born, *supra* note [5], at 93–94; Mac-Barango, *supra* note [1]

aside awards under Article 3416.

The amendments made in 2006 also aimed to include newer aspects of contracting in a globalised era including electronically formed contracts under Article 7, and refined provisions on interim and emergency proceedings and awards' recognition and enforcement. Similar to the overall arbitral process, party autonomy is emphasized in arbitration under the Model Law, where parties are free to choose their rules of arbitration and the seat of the arbitration. Article 20, which dictates that if the parties have not provided for the place of arbitration, then the arbitral tribunal is free to decide it, based on circumstances and the convenience of the parties is an indispensable part of this mandate, especially crucial in carriage contracts between parties from distant jurisdictions[17].

3.3 International Conventions Governing Carriage of Goods

The field of carriage of goods has not yet seen an establishment of a single uniform body of laws but instead, a collection of international conventions that operate independently in different types of carriage. For maritime carriage, the Hague-Visby Rules prescribe the minimum standard of care expected from carriers of goods during carriage by sea. This minimum standard includes an obligation to make the ship seaworthy and to properly and carefully handle, stow, carry and discharge goods carried. The Rotterdam Rules of 2008 represents a recent attempt at harmonisation for contracts of carriage. It contains a specific requirement regarding arbitration clauses, obligating that arbitration clauses for volume contracts are subject to a separate negotiation and are duly highlighted in the contract document[18]. In relation to air carriage, the Warsaw Convention has been replaced by the Montreal Convention, that determines the applicable liabilities on the part of carriers regarding carriage of goods by air. International carriage by road is subject to the CMR Convention that also prescribes a set of uniform rules for the carrier[19]. The aforementioned divergence and absence of uniform principles in the carriage by goods legal framework emphasize the significance of arbitration clauses in such contracts.

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[16] U.N. Comm'n on Int'l Trade L., *supra* note [11], art. 34
[17] U.N. Comm'n on Int'l Trade L., *supra* note [11], art. 20.
[18] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea arts. 75–76, Dec. 11, 2008, U.N. Doc. A/RES/63/122
[19] Baghel, *supra* note [1]; Mac-Barango, *supra* note [1]

3.4 National Arbitration Laws

3.4.1 India - Arbitration and Conciliation Act, 1996

The Indian Arbitration and Conciliation Act, 1996 provides a framework for arbitration in India which closely resembles the UNCITRAL Model Law[20]. Over the years, several amendments to the Act (2015, 2019, 2021) have been made in India in order to bring its laws in line with international best practices. The 2015 amendment put an embargo on time for arbitral tribunals to deliver awards within a time limit of 12 months and for judicial intervention under section 34. The 2019 amendment sought to strengthen institutional arbitration through an Arbitration Council of India, while the 2021 amendment removed restrictive qualifications[21] required in arbitrators in an attempt to encourage more international arbitrators to join the process in India. Indian judiciary has also contributed significantly in shaping Indian arbitration law, notably through Bharat Aluminium Co. V. Kaiser Aluminium Technical Services Inc. (2012)[22] where it was held that the Indian courts have no jurisdiction to interfere with an international arbitration taking place outside of India. More recently in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021)[23], the Court has recognized the binding enforceability of emergency arbitral awards.

3.4.2 England and Wales - Arbitration Act, 1996

Widely recognised as an arbitration-friendly piece of legislation, the Arbitration Act of 1996 in England and Wales emphasizes party autonomy and limits judicial interference to the minimum possible, making London an ideal seat for international commercial arbitration[24]. The Arbitration Act 2025 (which received Royal Assent in February 2025 and became effective in August 2025)[25], has been enacted to bring this legislation up-to-date; the new legislation establishes a default rule which declares that the law of the seat shall govern the arbitration agreement, tribunals can summarily dismiss claims that lack real merit, the process for applying to set aside awards is now more defined, and emergency arbitration and arbitrator disclosure

[20] Arbitration and Conciliation Act, No. 26 of 1996 (India); M.S. Yadav & S. Sharma, *Arbitration Under Indian Law and its Role in International Trade: A Comparative Legal Analysis*, 22 J. Advances & Scholarly Rschs. Allied Educ. (2025)

[21] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016; No. 33 of 2019; No. 4 of 2021 (India); Yadav & Sharma, *supra* note [20]

[22] Bharat Aluminium Co. v. Kaiser Aluminium Tech. Servs. Inc., (2012) 9 SCC 552 (India)

[23] Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209 (India).

[24] Arbitration Act 1996 (Eng. & Wales); Redfern & Hunter, *supra* note [3]

[25] Arbitration Act 2025 (Eng. & Wales).

rules are clarified. This will ensure that England remains at the forefront for arbitration matters.

3.4.3 United States - Federal Arbitration Act, 1925

The Federal Arbitration Act, 1925[26], which is the legislation which regulates arbitration proceedings in the US, states that "the policy of the law is to enforce arbitration agreements according to their terms," ensuring that they are placed on a par with other contracts. Under this legislation, judicial review for challenging arbitration awards is restricted, as there are no grounds for an award to be vacated on the basis of merits[27] of the case or lack thereof. In the case of Mitsubishi Motors Corp. V. Soler Chrysler-Plymouth, Inc. (473 U.S. 614, 1985)[28], the US Supreme Court reinforced this aspect by upholding that agreements to arbitrate can exist in international commercial agreements, in light of their benefit for trade.

4. The Arbitration Clause - Nature, Significance, and Drafting

4.1 Nature and Legal Character of Arbitration Clauses

The arbitration clause is an agreement to arbitrate contained within a contract; it is not an agreement which would typically exist independently of a main agreement like a contract for the carriage of goods. Its nature is determined by two primary principles in arbitration law; these being the principle of separability, and the principle of kompetenz-kompetenz. Separability (Article 16 of the UNCITRAL Model Law and Section 16 of Indian Arbitration & Conciliation Act, 1996) establishes that an arbitration clause shall be treated as an independent clause which shall survive[29], even if the main contract (the carriage contract in this scenario) is invalidated, terminated, or repudiated. Kompetenz-kompetenz means that an arbitral tribunal has the power to decide on issues regarding its own jurisdiction[30], therefore any attempt to avoid an arbitration clause by filing a challenge on jurisdiction would most likely not stand.

4.2 Significance of Arbitration Clauses in Carriage Contracts

Arbitration clauses are a vital provision in contracts for the international carriage of goods, as

[26] Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2018).
[27] Federal Arbitration Act, 9 U.S.C. § 10 (2018); Born, *supra* note [5].
[28] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985)
[29] U.N. Comm'n on Int'l Trade L., *supra* note [11], art. 16; Arbitration and Conciliation Act § 16, No. 26 of 1996 (India)
[30] Born, *supra* note [5], at 1052–53; Moses, *supra* note [4], at 73

they serve several important purposes that justify their inclusion. To start, the fact that they determine in advance a specific forum for the resolution of any ensuing disputes prevents conflicts over jurisdiction when parties are domiciled in different jurisdictions; such conflicts over the relevant court can in themselves become substantial and time consuming disputes which only delay the resolution of the underlying commercial conflict (as can be seen in bill of lading cases). Second, they allow parties to select expert arbitrators within a given arbitration system who are specialized in a particular area of law, in this case the carriage of goods, maritime law or aviation law[31] as appropriate. In most cases, the generalist judge will lack the knowledge required for making an informed decision with regard to the complex nature of carriage disputes and carriage contract terms. Third, they safeguard existing commercial relationships; disputes will be resolved in a private, less acrimonious forum. This will maintain commercial ties between the parties and protect their business relationships. Fourth and most importantly from a commercial standpoint, the use of arbitration clauses ensures that the resultant award is binding throughout the globe by virtue of the New York Convention[32] and therefore facilitates the enforcement of that award globally against assets of the losing party wherever situated.

4.3 The Problem of the "Midnight Clause" and Drafting Considerations

One unfortunate tendency seen in practice is the failure to accord sufficient importance to the arbitration clause during contract negotiations, leading them to be known as 'midnight clauses'[33]. A poorly drafted arbitration clause can be the very subject matter of the dispute, as the parties may argue over what claims are actually included in the clause, which laws should govern them, or which institution has been selected by the parties. As such, it is crucial to ensure that when drafting arbitration clauses, that they provide for a specific arbitral institution or ad hoc procedure, that all disputes arising under or connected to the contract are subjected to arbitration and importantly that there are explicit provisions relating to the law that will govern the arbitration agreement and the main contract, and its seat.

4.4 Including Arbitration Clauses in Bills of Lading

The inclusion of an arbitration clause from a charter party in a bill of lading is another issue

[31] Redfern & Hunter, *supra* note [3], at 31–32; Aryan A. Aggarwal, *A Critical Analysis on Arbitration Clauses and International Contracts* (UPES Sch. of L., Working Paper), SSRN, https://ssrn.com/abstract=4529993.
[32] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 330 U.N.T.S. 38
[33] Aggarwal, *supra* note [31]; Redfern & Hunter, *supra* note [3], at 88–89.

that occasionally comes up in the context of bills of lading. The bill of lading, which is the primary documentary proof of the carriage contract and may frequently be in the possession of third parties who have obtained rights against the goods in transit, makes this matter particularly crucial. The laws governing the inclusion of arbitration clauses have varied depending on the jurisdiction. In the context of English law, it was asserted in the case of The Nerano [1996] 1 L.R. 1 that, 'general words of incorporation should be sufficient to bring in an arbitration clause from a charter party[34]if the clause is "directly germane to the shipment of the goods and not in contradiction of any of the terms expressed in the bill of lading." Conflicts between French, English, and EU law have frequently resulted from the capacity to enforce jurisdiction/arbitration clauses in bills of lading against bill of lading holders. This reflects the wider fragmentation in the law pertaining to the carriage of commodities.

5. Arbitration Versus Litigation in Cross-Border Carriage Disputes

5.1 Comparative Analysis

Selecting between arbitration and litigation is a difficult choice that necessitates analyzing the advantages and disadvantages of each dispute resolution process. Litigation provides a structured procedural framework and public precedent but presents several shortcomings in cross-border dispute resolution. In international litigation, parties from different countries may have difficulty determining the appropriate forum for jurisdiction due to the varying legal regimes. The determination of jurisdiction itself may be lengthy, and the successful prosecution of the claim is undermined by the challenge of enforcing foreign court judgments. Enforcement gaps significantly compromise litigation's effectiveness for cross-border trade. Arbitration, conversely, offers a well-established international mechanism for award enforcement through the New York Convention, allowing judgments to be enforced in over 170 countries, thus obviating the protracted enforcement procedures of foreign litigation[35].

5.2 Key Advantages of Arbitration in Carriage Disputes

Neutrality: Arbitration allows parties from different countries to submit their dispute to a tribunal where neither party can claim dominance. They can choose a seat, arbitrators and laws

[34] It was stated in The Nerano [1996] 1 L.R. 1 that, 'general words of incorporation should be sufficient to bring in an arbitration clause from a charter party

[35] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38; Khan, Ahmad & Ya, *supra* note [10], at 292.

of procedure to ensure a fair outcome. This neutral forum is beneficial in international carriage cases where a party may be compelled to litigate in foreign courts, facing unfamiliar legal norms and potentially unfair proceedings.

Confidentiality: arbitration offers a private avenue for dispute resolution and protects commercially sensitive information like cargo values, contract terms and freight rates, from public view. In an already volatile industry like carriage trade, this confidentiality ensures a better reputation management between partners and thus helps sustain long-term commercial relationships.

Expertise: A crucial element in arbitration of carriage disputes is the ability to appoint expert arbitrators who are skilled and experienced in the specific field of international carriage of goods law. In the field of maritime arbitration for example, the London Maritime Arbitrators Association (LMAA) panel consists of arbitrators with extensive maritime and commercial expertise. Such a benefit ensures that awards are rendered with knowledge and understanding of the particular needs and intricacies of the shipping industry, such that litigation in general courts may otherwise fail to provide.

Finality: A binding arbitration award puts an end to all proceedings, and appeals can only be made on limited grounds thus preventing frivolous claims. For the carriage industry where the financial repercussions can escalate rapidly if a dispute is protracted (due to accrued charges etc.) the definitive nature of arbitral awards provide prompt resolutions (in contrast to a protracted litigation which may take decades as evidenced in Burns Philp (South Seas) Company Ltd v. Marine Pacific Ltd.)[36].

Enforceability: The binding nature of arbitration awards globally by virtue of their enforceability in over 170 states according to the New York Convention[37] is one of its strongest benefits. It enables the awardee to readily enforce a favourable outcome against assets in any country within the convention.

5.3 Limitations and Challenges

The arbitration process has its own set of disadvantages which can outweigh the benefits in

[36] Burns Philp (S. Seas) Co. v. Marine Pac. Ltd. [1979] (Fiji C.A.).

[37] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 330 U.N.T.S. 38

specific scenarios. For smaller companies that are engaged in the carriage trade on lower value contracts, the high costs of arbitration, which cover arbitrator fees, administrative charges by institutions and lawyer's fees can be substantial. Furthermore, with ever increasing number of documents and complex factual matrix, many arbitration proceedings can also extend in length similar to protracted court litigation. Party appointment of arbitrators often raises questions about their neutrality when acting as representatives of the party that appointed them. Inequality in bargaining power between shippers and carriers in the course of drafting of arbitration agreements, can lead to the assertion that some arbitration clauses stipulate foreign arbitral seats or rules which are not reasonably available to smaller parties to invoke, due to financial and geographical constraints.

6. Institutional Frameworks for International Arbitration in Carriage Disputes

6.1 London Maritime Arbitrators Association (LMAA)

The LMAA is the world's foremost international body dealing with maritime disputes; it handles the majority of international shipping arbitrations each year. By and large, ad hoc arbitrations administered under LMAA terms provide a simple and cost-effective framework in which maritime carriage disputes may be resolved by arbitrators who come from a background within the shipping industry and maritime law. Two crucial elements that make arbitration a desirable means of resolving conflicts between business partners with fewer problems are the LMAA Small Claims Procedure and the Intermediate Claims Procedure.

6.2 International Chamber of Commerce (ICC)

One of the most well-known organizations in the world for settling international business disputes, especially those pertaining to trade and the marine industry, is the ICC Court of Arbitration. A sophisticated and equitable dispute resolution forum for complicated, high-value multi-party multi-contract carriage disputes is provided by the extensive 2021 ICC Rules of Arbitration, which include provisions for expedited arbitration for disputes below a certain value threshold and a robust case management procedure in the form of the Terms of Reference and scrutiny of awards by the ICC Court.

6.3 Singapore International Arbitration Centre (SIAC)

Reflecting Singapore's status as a major hub for global shipping and logistics, SIAC is at the forefront of resolving trade disputes arising from Asia. Its rules on emergency arbitrator procedures, consolidation of claims and case management makes SIAC a formidable choice for resolving complex, multimodal, multi-party and multi-contract carriage disputes. Singapore provides another appealing forum for Carriage Disputes for claims originating from the Asia-Pacific area because it is a signatory to the New York Convention and has a pro-arbitration judiciary.

6.4 The London Court of International Arbitration (LCIA)

Under its 2020 Rules, the LCIA offers an additional arbitration option that offers a practical and adaptable process, providing mechanisms such as emergency arbitrators, consolidation, and an expedited process for forming tribunals, making LCIA an attractive forum for complex or time-sensitive carriage disputes where interim relief may be sought.

7. Case Law Analysis

7.1 Burns Philp (South Seas) Company Ltd v. Marine Pacific Ltd [1979][38]

This case strengthens the case for arbitration agreements as a means of resolving disputes while also highlighting the time and expense costs of pursuing carriage disputes. The plaintiff filed a claim alleging breach of contract after cargo put aboard a barge in transit from Suva to Labasa was lost due to damage to the barge. The defendant used a bill of lading exclusion provision that absolved it of responsibility for commodities transported on deck "howsoever caused." The plaintiff's action was eventually dismissed on the grounds that the bill of lading did, in fact, contain the exclusion clause after the proceedings dragged on for several years. This case is particularly illustrative of how complex carriage disputes, involving questions such as carrier liability and exclusion clauses contained within bills of lading, can consume an enormous amount of time, energy and resources in litigation proceedings-resources that can be significantly saved through a robust arbitration clause.

7.2 M/V Sea Queen Case (2009)[39]

In this case, the Singapore Chamber of Maritime Arbitration's rules were applied to an

[38] Burns Philp (S. Seas) Co. v. Marine Pac. Ltd. [1979] (Fiji C.A.).
[39] M/V Sea Queen, SCMA Case (2009) (Sing.); Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 330 U.N.T.S. 38.

application for the implementation of a Singaporean arbitral verdict for maritime chartering disputes in the United States. The application for enforcement was contested by the unsuccessful party, citing public policy as grounds for non-enforcement, but it was held that, in applying New York Convention Article V, such arguments were insufficient to resist enforcement. This case demonstrates the efficacy of the Convention in ensuring consistent application of arbitral awards in other contracting states and in protecting parties from vexatious litigation and unfounded attacks against arbitral awards.

7.3 Khan vs. Hamid Shipping (2012)[40]

A London Maritime Arbitrators Association (LMAA) arbitration was started in this maritime dispute, which involved a shipowner located in Pakistan and a charterer based in India. The ruling was then sought to be enforced in India. The Indian court, using the New York Convention, rejected the procedural objections to enforcement and sustained the award under Article V. This case shows that, despite the fact that this area of Indian law is still in its infancy, the Indian legal system has established norms to facilitate the international enforcement of arbitral decisions, including those from other jurisdictions like the UK, by adopting the New York Convention..

7.4 Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs of the Government of Pakistan [2010] UKSC[41]

In this historic case, the UK Supreme Court declined to uphold an arbitral judgment made in France, citing the lack of arbitral jurisdiction because Pakistan, the party seeking enforcement, had never agreed to arbitration. The importance of this case lies in its reaffirmation of the fundamental nature of consent for the commencement of an arbitration and its ability to draw boundaries around the power of arbitral tribunals to assert jurisdiction where parties have not consented to its authority. This is especially pertinent to a specific bill of lading or in the transport context, where it is essential to make sure that all parties to the carriage contract, and whom may have rights and duties arising out of a contract of carriage have indeed consented to arbitrate a particular dispute before assuming that they may be bound by arbitration clause

[40] Khan v. Hamid Shipping (2012) (India); Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 330 U.N.T.S. 38

[41] Dallah Real Est. & Tourism Holding Co. v. Ministry of Religious Affairs of Gov't of Pak. [2010] UKSC 46.

therein.

7.5 Achmea BV v. The Slovak Republic, C-284/16 (2018)[42]

The Netherlands-Slovakia Bilateral Investment Treaty's dispute resolution procedure was ruled by the European Court of Justice to be incompatible with EU law. The case did not specifically relate to carriage of goods, but demonstrates an important legal principle relevant to all international commercial arbitrations that they may, under certain circumstances, be challenged due to their incompatibility with relevant supranational legal frameworks. Carriage disputes within the EU will therefore need to be mindful of potential conflicts between arbitration clauses and EU law.

7.6 LJL 33rd Street Associates, LLC v. Pitcairn Properties Inc. (2013)[43]

This American case concerned an arbitration award that was overturned by a Southern District Court of New York due to the arbitrator's refusal to consider hearsay evidence, which made the arbitration unfair. According to the U.S. Federal Arbitration Act, admitting hearsay evidence is illegal misbehavior for an arbitrator. Therefore, it was decided that the arbitration decision was invalid since it was made under unfair circumstances. This case is significant because it shows that, despite the general assumption that an arbitral award is final between the parties once it is made, arbitral awards may be contested on the grounds of unfair proceedings if, among other things, the arbitrator improperly excluded legally required.

8. Challenges and Limitations of Arbitration Clauses in Carriage Disputes

8.1 Fragmentation of International Legal Regimes

The several agreements that apply to international transportation, such as the Hague Rules, Hague Visby Rules, Hamburg Rules, and Rotterdam Rules that apply to the transportation of products by sea[44], The CMR Convention governs the transportation of products by road, the CIM Convention governs the transportation of goods by rail, the Warsaw Convention, the Montreal Convention governs the transportation of persons and cargo by air, etc, is a challenge

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[42] Case C-284/16, Achmea BV v. Slovak Republic, ECLI:EU:C:2018:158 (Mar. 6, 2018).

[43] LJL 33rd St. Assocs., LLC v. Pitcairn Props. Inc., 725 F.3d 184 (2d Cir. 2013); Federal Arbitration Act, 9 U.S.C. § 10 (2018).

[44] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Dec. 11, 2008, U.N. Doc. A/RES/63/122

faced by the draughtsmen of arbitration clauses as well as the arbitrator who has to make a determination as to the applicable law which would govern the arbitration. This could give rise to confusion, and as is the case with litigation, the determination of the arbitration could largely depend on the applicable law selected in the arbitration clause.

8.2 Inconsistent Judicial Enforcement

Although the New York Convention was created to make it easier for arbitral rulings to be enforced globally, some governments often misuse or overuse the "public policy" defense found in Article V(2)(b) of the Convention by offering grounds for contesting an arbitral award that are excessively broad[45]. A victorious party may be prevented from gaining enforcement in a jurisdiction that lacks a favorable arbitration culture by the use of the "public policy" exception, which is frequently driven by reasons unrelated to the execution of the award. This uneven enforcement affects the effectiveness of the dispute settlement process and creates ambiguity about arbitral decisions.

8.3 Unequal Bargaining Power

The inclusion of arbitration clauses in contracts that have been standardized, produced by carriers or their legal advisors, and offered to shippers on a take-it-or-leave-it basis is a typical occurrence in transport of goods disputes. This inherently unequal bargaining power can result in the drafting of arbitration clauses which prescribe inconvenient seat, high institutional costs, unfavourable arbitration rules, all of which tilt the process and procedure in favour of the stronger party and this aspect has drawn scrutiny from courts, which have made an effort to guarantee that the weaker party has been sufficiently informed of the clause's insertion before it is enforced.

8.4 Cost and Complexity

International arbitrations can be extremely expensive to pursue, particularly those in London administered by the LMAA, ICC or LCIA. Arbitrator fees and institutional costs are high, and are generally set by hourly rates that can be prohibitive for smaller claims. These higher costs of proceeding in arbitration mean that for relatively smaller carriage claims, the overall cost of

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[45] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(2)(b), June 10, 1958, 330 U.N.T.S. 38; Born, *supra* note [5], at 3614–15; Khan, Ahmad & Ya, *supra* note [10], at 294.

the arbitration procedure, from beginning to the end, may often exceed the importance of the arbitration's subject matter and this clearly limits access to arbitration and hence justice to a particular set of commercial parties. However, institutions such as the LMAA have introduced specific and cost effective procedures to cater for lower value claims.

8.5 Limited Institutional Capacity in Developing Jurisdictions

While there may be a legal basis on paper for international arbitration, including robust domestic arbitration laws, that fact does not automatically guarantee access to an effective international arbitration process where this is dependent upon a functioning framework of institutions (including arbitration institutions that are ready to accept carriage disputes for arbitration), competent lawyers in private practice, qualified and impartial arbitrators with a background in carriage of goods disputes, and the preparedness of local courts to support and enforce arbitral awards as required under the Convention or the UNCITRAL Model Law. In many developing countries the legal infrastructure has not kept pace with international commercial expectations and as such international arbitration, though desirable, remains somewhat limited.

9. Reforms and Recommendations

9.1 Harmonization of International Carriage Law

The international community needs to work towards harmonizing international carriage law more broadly than was achieved under the Rotterdam Rules[46]. Having a singular, well-drafted Convention on international carriage of goods by all modes, that reflects the best aspects of existing Conventions and provides consistent principles for carrier liability, contractual rights and duties of carriers and consignees/shippers respectively, the documentation thereof and relevant dispute resolution provisions will undoubtedly streamline dispute resolution proceedings. The Rotterdam Rules were a laudable step but its general acceptance by the wider global community, especially by developing countries who are often exporters, still needs a much wider endorsement and ratification from international legislators.

[46] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Dec. 11, 2008, U.N. Doc. A/RES/63/122; Baghel, *supra* note [1].

9.2 Strengthening the New York Convention Framework

Although the New York Convention is widely seen as the bedrock of international arbitral awards enforcement worldwide, continued adherence and consistent application of its provisions by signatory states is vital. Certain grounds for refusal of enforcement under Article V of the Convention are applied inconsistently or overzealously by domestic courts[47]. For instance, 'public policy' has a tendency to be interpreted more broadly than intended, and more guidance from the international community through means such as the UNCITRAL explanatory note to the Convention and judicial training in the field of international arbitration may serve to improve consistent and Convention compliant enforcement of arbitral awards globally.

9.3 Improving Arbitration Clause Drafting Practices

A fundamental cause for arbitration clause related litigation itself is poor drafting. Well-drafted clauses that reflect the intention of the parties and set out with clarity all material terms such as the seat of arbitration, governing law and institutional rules is crucial. There is an urgent need for parties and their advisors to invest time in clearly drafted clauses, considering that there exist template arbitration clauses from reputable arbitral institutions (LMAA, ICC, SIAC, LCIA etc) readily available for usage in international carriage contracts. Use of well-drafted template clauses by commercial parties will assist in minimizing disputes and thereby unnecessary cost, time and energy associated with them, and they should endeavour to address as many aspects of the dispute resolution process as possible.

9.4 Embracing Digital Arbitration

The advent of technology and sophisticated IT tools allows parties to take advantage of mechanisms that further reduce time and costs associated with arbitrations. Electronic filing systems, online document management and review, and virtual hearings will allow parties and arbitrators to avoid expensive and time-consuming physical interactions such as travel for meetings or court attendances. International arbitration institutions are embracing digital tools with growing readiness and this is essential for the efficient and accessible dispute resolution

[47] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 330 U.N.T.S. 38; Khan, Ahmad & Ya, *supra* note [10], at 294–295.

required by global carriage disputes of today.

9.5 Capacity Building in Developing Jurisdictions

For international arbitration to be an accessible and effective form of dispute resolution, it is imperative that all jurisdictions possess the required legal framework and institutional capacity. This involves providing educational resources and training for domestic practitioners, legal academics and the judiciary on international arbitration law[48], as well as developing specialized arbitration institutions that can adequately deal with the nuances of international carriage dispute resolution. Regional arbitration centres are particularly useful in this regard and investment in these centres should be seen as an investment in efficient global trade and commerce.

10. Conclusion

The resolution of conflicts involving the cross-border transportation of products is greatly aided by arbitration agreements. A well-written arbitration clause in a carriage contract will offer a means of resolving disputes arising under that contract more swiftly and effectively than through domestic or international litigation, as the field of international carriage of goods is by its very nature complex.

This can be explained by, amongst other reasons, the existence of internationally recognised bodies such as the London Maritime Arbitrators Association (LMAA), the International Chamber of Commerce (ICC) or the Singapore International Arbitration Centre (SIAC), all of whom manage arbitral proceedings and have provided uniform procedural rules through their respective arbitration rules to provide greater clarity and certainty in international arbitral proceedings. Coupled with a robust and generally accepted international legal regime and the efficacy and global acceptance of the arbitral procedure are guaranteed by the 1958 UNCITRAL Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The aforementioned problems with litigation in carriage disputes such as delay, expense, fragmented international legal frameworks, inconsistent judicial enforcement of arbitral awards as well as unequal bargaining power are all factors which international commercial parties are

[48] Yadav & Sharma, *supra* note [20]; Rakin & Tariq, *supra* note [2], at 40–41.

seeking to avoid by opting for arbitration. The challenges that continue to face arbitration and which have been outlined within this paper; such as the need for harmonisation of international carriage law, More uniformity in the application of New York Convention rules, a focus on effective and comprehensive arbitration clause drafting, adaptation to contemporary digital arbitration technologies, and—most importantly—the growth of arbitration capacity in developing nations are all elements that need to be taken into account and addressed continuously to guarantee arbitration continues to evolve and maintain its preeminent position as the chosen method of dispute resolution in international carriage disputes.

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