

### III. INTERNATIONAL LEGISLATION ON SHIPPING

#### Working Group on International Legislation on Shipping; report on the work of the first session, 22-26 March 1971 (A/CN.9/55) \*

##### I. INTRODUCTION

1. The Working Group on International Legislation on Shipping was established by the United Nations Commission on International Trade Law at its second session, held in March 1969. The Working Group consists of the following seven members of the Commission: Chile, Ghana, India, United Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and the United States of America.<sup>1</sup>

2. The Working Group held its first meeting during the third session of the Commission and made certain recommendations which were included in the decision of the Commission on the subject:<sup>2</sup>

*"The Commission:*

*"Decides:*

"1. To request the Chairman of the Working Group on International Shipping Legislation to attend, as the Special Representative of the Commission, the session of the United Nations Conference on Trade and Development Working Group on Shipping Legislation to be held at Geneva in December 1970 or February 1971;

"2. To request the Special Representative:

"(a) To observe the session of the Working Group on Shipping Legislation of the United Nations Conference on Trade and Development;

"(b) To inform that Working Group of the course of the discussion in the Commission at the present session;

"(c) To express the Commission's desire to avoid duplication of work and to strengthen the close co-operation and effective co-ordination between the Commission and the United Nations Conference on Trade and Development in making progress in the study of shipping legislation, and invite their views on how this objective might best be achieved;

"(d) To submit a report on the session of the Working Group of the United Nations Conference on Trade and Development to the Commission's Working Group;

"3. That, at the request of the Special Representative, the Chairman of the third session of the Commission shall request the Secretary-General to convene a meeting of the Working Group on Shipping, it being understood that duplication between the Working Groups of the Commission and of the United Nations Conference on Trade and Development should be avoided;

"4. That the meeting of the Working Group shall be held in Geneva, for a period not longer than a week, after the session of the Working Group of the United Nations Conference on Trade and Development and before the opening of the fourth session of the Commission;

"5. That, if the Commission's Working Group meets after 1 January 1971, its composition shall be the following:

"(a) Members of the present Working Group whose membership continues, and those re-elected to the Commission;

"(b) For the remaining membership of the Working Group, the alternates as elected by the Commission at its present session, who shall become full members of the Working Group and will be designated as members;

"6. To request the Secretary-General to invite other members of the Commission, and intergovernmental and non-governmental organizations active in the field to be present as observers at the meeting of the Working Group;

"7. That the terms of reference of the Working Group at its meeting shall be the same as were

\* 26 March 1971.

<sup>1</sup> Report of the United Nations Commission on International Trade Law on the work of its second session (1969), *Official Records of the General Assembly, Twenty-fourth session, Supplement No. 18 (A/7618)*, para. 133; *Yearbook of the United Nations Commission on International Trade Law* (hereinafter referred to as UNCITRAL Yearbook), vol. I: 1968-1970, part two, II, A. The current membership of the Working Group reflects a decision by the Commission at its third session making provision for the effect of the expiration in 1970 of membership in the Commission. Report of the United Nations Commission on International Trade Law on the work of its third session (1970), *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017)* (hereinafter cited as UNCITRAL report on third session (1970), para. 165); UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A.

<sup>2</sup> UNCITRAL report on third session (1970), para. 166; *op. cit. supra*, note 1.

assigned to the Working Group under paragraph 3 of the resolution adopted at the second session, namely "to indicate the topics and method of work on the subject, . . . giving full regard to the recommendations of the United Nations Conference on Trade and Development and any of its organs";

"8. That the Working Group will submit its report to the fourth session of the Commission;

"9. That the term of the Working Group on International Shipping Legislation will expire after it has submitted its report to the fourth session of the Commission, in view of the fact that it is anticipated that a new and larger Working Group will be set up at the fourth session of the Commission."

3. The Working Group held its second session at the Headquarters of the World Health Organization in Geneva from 22 to 26 March 1971 and considered the tasks assigned to it by the Commission, which were to indicate the topics and methods of work on the subject, giving full regard to the recommendations of the United Nations Conference on Trade and Development and any of its organs.

4. Six members of the Working Group were represented at the session.<sup>3</sup> The Chairman of the UNCTAD Working Group on International Shipping Legislation, Mr. Patriota (Brazil) participated as special representative of that Working Group. The session was also attended by observers from: Australia, Belgium, France, Mexico, Norway, the People's Republic of Poland, Spain, Syria, the United Republic of Tanzania and Trinidad and Tobago, and from the following inter-governmental and international non-governmental organizations: the United Nations Conference on Trade and Development and the International Chamber of Shipping.

5. The Working Group, by acclamation, elected the following officers:

Chairman : Mr. Rafael Lasalvia (Chile)

Rapporteur : Mr. Dileep A. Kamat (India).

6. The following documents were placed before the Working Group:

- (a) Provisional agenda (A/CN.9/WG.3/WP.1)
- (b) Working paper by the Secretariat (A/CN.9/WG.3/WP.2)
- (c) Report by the Chairman of the first session of the UNCITRAL Working Group on International Shipping Legislation on his participation as special representative at the session of the UNCTAD Working Group on International Shipping Legislation (A/CN.9/WG.3/WP.3)
- (d) Report by the UNCTAD secretariat: Bills of lading (TD/B/C.4/ISL/6)
- (e) Report of the UNCTAD Working Group on International Legislation on Shipping on its second session held at the Palais des Nations,

Geneva, from 15 to 26 February 1971 (TD/B/C.4/86).

7. The Working Group adopted the following agenda:

1. Election of officers.
2. Adoption of the agenda.
3. Report of the special representative from UNCITRAL on the second session of the UNCTAD Working Group on International Legislation on Shipping.
4. Statement by the Chairman of the second session of the UNCTAD Working Group.
5. Consideration of topics and methods of work on the subject of international legislation on shipping to be indicated to the Commission.
6. Adoption of the report.

8. The Chairman of the second session of the UNCTAD Working Group reported on that session which met from 15 to 26 February 1971. In this report he stressed the need for close co-operation between the UNCTAD and UNCITRAL Working Groups since these two groups have complementary mandates. He pointed out that the UNCTAD Working Group at its second session had discussed one main subject in depth, namely, bills of lading, on the basis of the UNCTAD Secretariat's report on bills of lading (TD/B/C.4/ISL/6). In conformity with its terms of reference, the Working Group reviewed the economic and commercial aspects of existing international legislation and practices related to bills of lading and gave particular attention to the needs of economic development of the developing countries. The result of that examination is reflected in the report of the Working Group (TD/B/G.4/86), and was the subject of a unanimous resolution.<sup>4</sup>

9. The Chairman of the UNCTAD Working Group summarized the Working Group's recommendations on the subject of bills of lading, and pointed out that the proposed examination by UNCITRAL of existing rules and practices should aim at the removal of such uncertainties and ambiguities as exist and also the establishment of a balanced allocation of risks between the cargo owner and the carrier. He referred to the recommendation of the UNCTAD Working Group that UNCITRAL should be invited to undertake the examination of those subjects referred to in the resolution and, as appropriate, to prepare the necessary draft texts. He stated that a sense of extreme urgency for improvement of the rules and practices governing bills of lading was generally voiced by representatives of developing countries who took part in the discussion on this matter. On the other hand, a number of representatives of the developed market economy countries members of the Working Group stressed that efforts to review this matter should proceed with great caution. However, these representatives and the representatives of socialist countries of Eastern Europe agreed that many of the provisions of the "Hague Rules" should

<sup>3</sup> The list of participants and observers is contained in annex I to this report.

<sup>4</sup> The resolution on bills of lading, adopted by the UNCTAD Working Group is reproduced in annex II to this report.

be reviewed in order to improve, clarify and simplify the law, to make their provisions more consistent with the rules prevailing in other international transport conventions, and to conform with present needs and conditions of international trade. He submitted that the caution recommended by some was not at all incompatible with the urgency and priority voiced by many members who advocated change in the existing rules and practices governing international shipping legislation.

10. The Chairman of the UNCTAD Working Group also reported that the UNCTAD Working Group on International Shipping Legislation, in another resolution, had decided to modify the order of priority in its programme of work. Accordingly, the UNCTAD Working Group at its next (third) session would consider the subject of liner conference practices, while the item concerning charter parties would be dealt with at its fourth session. He suggested that this Working Group may wish to take note of this change of priority on the work programme related to international shipping legislation, since it may have a bearing on the future activities of UNCITRAL on this field.

## II. TOPICS AND METHODS OF WORK

11. Pursuant to its mandate "to indicate the topics and method of work on the subject", giving full regard to the recommendations of UNCTAD and any of its organs, the UNCITRAL Working Group considered, first, the topics which might be taken up and, second, the methods of work which might be employed.

12. Possible topics and methods of work were considered during full and detailed discussions on the basis of the working paper prepared by the Secretariat (A/CN.9/WG.3/WP.2).

13. After thorough discussion by representatives of members of the Working Group and the observers, the Working Group decided as follows:

### *The Working Group*

#### *Recommends:*

(1) That within the priority topic of international legislation on shipping, consideration should be given to the subject of bills of lading. In view of the importance and scope of this subject it would not be practicable to consider other subjects for the time being;

(2) That within the subject of bills of lading, the topics for consideration should include those indicated in paragraphs 1 and 2 of the resolution of the UNCTAD Working Group on International Shipping Legislation adopted at its second session held on 15 to 26 February 1971. Paragraphs 1 and 2 of the resolution state:

"1. *Considers* that the rules and practices concerning bills of lading, including those rules contained in the International Convention for the Unification of certain Rules of Law relating to Bills of Lading (the Brussels Convention 1924) and in the protocol to amend that Convention (the Brussels protocol 1968), should be examined with a view to revising and amplifying the rules as appropriate, and that a

new international convention may if appropriate be prepared for adoption under the auspices of the United Nations;

"2. *Further considers* that the examination referred to in paragraph 1 should mainly aim at the removal of such uncertainties and ambiguities as exist and at establishing a balanced allocation of risks between the cargo owner and the carrier, with appropriate provisions concerning the burden of proof; in particular the following areas, among others, should be considered for revision and amplification:

"(a) Responsibility for cargo for the entire period it is in the charge or control of the carrier or his agents;

"(b) The scheme of responsibilities and liabilities, and rights and immunities, incorporated in articles III and IV of the Convention as amended by the Protocol and their interaction and including the elimination or modification of certain exceptions to carrier's liability;

"(c) Burden of proof;

"(d) Jurisdiction;

"(e) Responsibility for deck cargoes, live animals and trans-shipment;

"(f) Extension of the period of limitation;

"(g) Definitions under article I of the Convention;

"(h) Elimination of invalid clauses in bills of lading;

"(i) Deviation, seaworthiness and unit limitation of liability."

It is noted that, by its terms, paragraph 2 of the resolution does not confine consideration to those areas listed in subparagraphs (a) through (i).

(3) That the Commission establish a new and enlarged working group on international legislation on shipping and that the composition of the working group take account of the need to represent the various regions and economic interests.

(4) That the Commission request the new working group to meet during the fourth session of the Commission to consider the organization of its work.

(5) That the Secretariat be requested to provide the new working group with the material that may be necessary for the performance of its work.

(6) That the Secretariat be invited to prepare studies on the areas listed in paragraph 31 of the working paper with proposals indicating possible solutions for consideration by the new working group. It is understood that the reference in paragraph 31 of the working paper to subparagraph (g) of the UNCTAD resolution is intended to refer to those definitions that are relevant to subparagraphs (a), (d) and (e) of the UNCTAD resolution.

(7) That with regard to other areas, the new working group be requested to consider at its organizational session the most appropriate methods of work, including the preparation of studies by the Secretariat indicating possible solutions and the possibility of allocating particular topics to its members for reports and, as appropriate, the drafting of new texts for consideration by the working group so that the work on these areas can also be carried forward as quickly as possible.

14. One observer placed before the Working Group a proposal for the organization of work on the subject. He noted that this proposal was in many respects similar to the programme of work recommended by the Working Group but suggested that the new working group might find this proposal useful. This proposal appears as annex III.

15. Consideration was given to the size of the new working group that would assure representation to different geographic regions and economic interest and would also be compatible with efficient working methods. After discussion of various suggestions, it was agreed that this question should be referred to the Commission for decision at the fourth session.

16. Consideration was also given to the extent to which observers should be invited to meetings of the new working group. It was suggested that the Secretary-General might be requested to invite not only members of the Commission and international organizations active in the field but also other States. In view of the possibility that this suggestion might present administrative problems, it was concluded that this question should be referred to the Commission for further consideration at the fourth session.

17. Several representatives stated that the working paper prepared by the Secretariat (A/CN.9/WG.3/WP.2) had proved to be very useful in the deliberations of the Working Group. It was agreed that the working paper should be placed before the new working group for consideration, with special reference to the portions dealing with the programme of work.

18. In connexion with paragraph (5) of the above recommendation requesting the Secretariat to provide the new working group with the material that may be necessary for the performance of its work, it was agreed that all members of the Commission should be requested to draw the Secretariat's attention to such relevant material.

#### ANNEX I

##### List of participants

###### CHILE

###### Representative

Mr. Rafael LASALVIA, Profesor derecho comercial y director del departamento de derecho privado de la Universidad de Chile, Santiago

###### Alternate

Mr. S. MONSALVE, Secretaria Delegacion Permanente de Chile en Ginebra

###### INDIA

###### Representative

Mr. Dileep A. KAMAT, Assistant Legal Adviser, Ministry of External Affairs, New Delhi

###### UNITED ARAB REPUBLIC

###### Representative

Mr. Mohamed R. ABDEL-KADER, Commercial Secretary, Permanent Mission of the UAR to the United Nations, Geneva

###### UNION OF SOVIET SOCIALIST REPUBLICS

###### Representative

Mr. Sergei LEBEDEV, Assistant Professor of the Institute of International Relations, Moscow

###### Adviser

Mr. Nikolai KAZANTSEV, Adviser, "Sovinflot", Moscow

###### UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

###### Representative

Mr. Michael J. KERRY, Assistant Solicitor, Department of Trade and Industry, London

###### UNITED STATES OF AMERICA

###### Representative

Mr. Robert E. DALTON, Office of the Legal Adviser, Department of State, Washington, D.C.

###### Adviser

Mr. Ernest A. LISTER, Permanent Mission of the United States, to the United Nations, Geneva

#### Observers

##### A. GOVERNMENTS

###### Australia

Mr. S. F. PARSONS, Senior Assistant Secretary, Attorney-General's Department, Canberra

###### Belgium

Mr. Albert LILAR, Ministre d'Etat

###### France

Mr. Claude DOUAY, Conseiller juridique auprès du Secrétaire Général de la Marine Marchande, Paris

###### Mexico

Mr. Fernando de MATEO, Permanent Mission of Mexico to the United Nations, Geneva

###### Norway

Mr. Jens B. HEGGEMSNES, First Secretary, Permanent Mission of Norway to the United Nations, Geneva

###### Poland

Mr. Boleslaw FEDOROWICZ, Head, Legal Division, Ministry of Foreign Trade Warsaw

###### Spain

Mr. Enrique VALERA, Primer Secretario de Embajada, Delegación permanente de España en Ginebra

###### Syria

Miss S. NASSER, Troisième Secrétaire, Mission permanente de la République arabe syrienne auprès des Nations Unies, Genève

###### United Republic of Tanzania

Mr. Joseph S. WARIOBA, Attorney General's Chambers, Dar-es-Salaam

Mr. Nathaniel M. MAHUNDA, Third Secretary, Ministry of Foreign Affairs, Dar-es-Salaam

###### Trinidad and Tobago

Mr. Lingston L. CUMBERBATCH, First Secretary, Permanent Mission of Trinidad and Tobago to the United Nations, Geneva

##### B. INTERGOVERNMENTAL ORGANIZATIONS

###### United Nations Conference on Trade and Development

Mr. Antonio PATRIOTA, Chairman, Working Group on International Shipping Legislation

Mr. M. SHAH, Chief, UN Office of Legal Affairs UNCTAD/Joint Shipping Legislation Unit

## C. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

*International Chamber of Shipping*

Mr. David W. TAYLOR, Assistant to Secretary of Maritime Law Committee, ICS, London

**Secretariat of the Working Group**

Mr. John HONNOLD, Secretary of the Working Group, Chief, International Trade Law Branch, Office of Legal Affairs

Mr. Gabriel M. WILNER, Assistant Secretary of the Working Group, Legal Officer, International Trade Law Branch

Mr. Thomas R. GRAHAM, Associate Legal Affairs Officer, UN Office of Legal Affairs/UNCTAD Joint Shipping Legislation Unit

## ANNEX II

**Resolution on Bills of Lading<sup>1</sup> adopted at the second session of the Working Group on International Shipping Legislation of the United Nations Conference on Trade and Development (UNCTAD) 15-26 February 1971**

*The Working Group on International Shipping Legislation*

*Taking note* with appreciation of the secretariat report entitled "Bills of Lading" (TD/B/C.4/ISL/6),

*Having examined and discussed* the existing rules and practices concerning bills of lading and their effect on cargo interests,

*Considering* that some of these rules and practices create uncertainties in the application of laws and the interpretation of terms and that the removal of these uncertainties is expected to reduce in various instances costs in international trade which are onerous for cargo-owners, especially in developing countries.

*Recalling* that the General Assembly, in its resolution 2205 (XXI) establishing the United Nations Commission on International Trade Law (UNCITRAL), in particular operative paragraphs 8 and 10 of part II thereof, provided for close co-operation between UNCITRAL and UNCTAD,

*Further recalling* that the Committee on Shipping, in its resolution 7 (III), having noted the decision of UNCITRAL to include international legislation on shipping among the priority items in its programme of work, included in the terms of reference of this Working Group a provision to the effect that it may make recommendations and prepare related documentation to be submitted to UNCITRAL for the drafting of new legislation or other appropriate action;

1. *Considers* that the rules and practices concerning bills of lading, including those rules contained in the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Brussels Convention 1924) and in the protocol to amend that Convention (the Brussels protocol 1968),

should be examined with a view to revising and amplifying the rules as appropriate, and that a new international convention may if appropriate be prepared for adoption under the auspices of the United Nations;

2. *Further considers* that the examination referred to in paragraph 1 should mainly aim at the removal of such uncertainties and ambiguities as exist and at establishing a balanced allocation of risks between the cargo owner and the carrier, with appropriate provisions concerning the burden of proof; in particular the following areas, among others, should be considered for revision and amplification:

(a) Responsibility for cargo for the entire period it is in the charge or control of the carrier or his agents;

(b) The scheme of responsibilities and liabilities, and rights and immunities, incorporated in articles III and IV of the Convention as amended by the Protocol and their interaction and including the elimination or modification of certain exceptions to carrier's liability;

(c) Burden of proof;

(d) Jurisdiction;

(e) Responsibility for deck cargoes, live animals, and trans-shipment;

(f) Extension of the period of limitation;

(g) Definitions under article I of the Convention;

(h) Elimination of invalid clauses in bills of lading;

(i) Deviation, seaworthiness and unit limitation of liability.

3. *Recommends* that, in the spirit of co-operation between UNCITRAL and UNCTAD enjoined by the above-mentioned resolutions of the General Assembly and the Committee on Shipping, UNCITRAL should be invited to undertake the examination referred to in paragraph 1 and, as appropriate, prepare the necessary draft texts, taking into account the report of this Working Group and the UNCTAD secretariat report (TD/B/C.4/ISL/6);

4. *Expresses the wish* that, in the same spirit of co-operation, the outcome of the work of UNCITRAL on the subject of bills of lading will be conveyed to this Working Group for its comments;

5. *Invites* the Chairman of this Working Group to attend, as its special representative, the meeting of the Working Group on International Legislation on Shipping of UNCITRAL which is scheduled to be held in Geneva from 22 to 26 March 1971 and to report on its proceedings to the Committee on Shipping at its fifth session and to this Working Group at its third session;

6. *Request* the UNCTAD secretariat, without prejudice to the consideration by the Committee on Shipping of this resolution, to convey it, together with the reports on the first and second sessions of this Working Group, to the UNCITRAL Working Group to be available to that Group at its next meeting.

## ANNEX III

**Suggestions submitted by the Representative of France (Observer)**

[Not reproduced in the present volume.]

<sup>1</sup> TD/B/C.4/86, annex I.