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Draft convention on contracts for the international carriage of goods wholly or partly by sea

Compilation of comments by Governments and intergovernmental organizations

Addendum

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II. Compilation of comments

A. States

5. France

[Original: French]
[15 April 2008]

General comment

1. As a general comment on the draft convention, the French Government notes that the draft convention brings with it a transformation of the law of maritime transport by potentially opening up very wide, through volume contracts, the scope of contractual freedom with regard to carrier responsibility.
2. Given the written comments in which Australia and France made their feelings known, and the long discussions that have taken place on this subject, France here confines itself to indicating that useful safeguards have been introduced in the latest version of draft Article 83.
3. Consequently, it would be undesirable, in a matter of vital concern to France and many other member States, for any element of the compromise reached in the working group to be called into question.
4. Moreover, the French Government has some technical points.

Article 13

5. With regard to non-maritime carriage, there are serious drawbacks to Article 13 in that it allows the carrier to escape by contractual means from its responsibility as carrier by assuming responsibility as a mere agent.
 - At the level of principles, it detracts from the multimodal character of the convention. The convention provides, quite rightly, for the modalities of carrier responsibility to vary according to the mode of transport being used.
 - Furthermore, while the convention defines the responsibility of the carrier, it contains no provisions regarding the responsibility of the agent, who would therefore not be subject to legal restrictions – except under national laws whose relevant provisions no doubt differ.
 - Lastly, the wording of this article results from opposing views that were expressed in the working group and that have not been truly reconciled. Consequently, this article is unclear and may prove to be a source of contention.
6. For all those reasons, the deletion of Article 13 is highly desirable.

Article 14

7. In paragraph 2 of Article 14, it would be very useful if the validity of the clauses now envisaged were better substantiated, as it is difficult to imagine disabling clauses in connection with “pure” liner transportation, where the handling operations are performed not by the shippers but by the carrier.

Article 26

8. The principle of treating road cargo vehicles transporting goods in the same way as containers has been rightly upheld in the definitions and in draft Article 62. It should not be regarded as an absolute rule, however, but be applied flexibly, when, for example, setting the liability ceiling: a trailer should in this context not be considered to be a single package as it could contain a number of packages.

9. On the other hand, caution should be exercised with regard to the deck carriage of road cargo vehicles, which is the subject of Article 26. Trucks cannot protect their loads as well as containers, which are hermetically closed and generally more robust. It would appear, therefore, that the provisions previously envisaged in the draft were in this respect reasonable and balanced (cf. Article 26.c).

Article 27

10. As regards Article 27 bis relating to the application of mandatory national law to the non-maritime part of a transport operation, France does not consider it opportune to revert to the deletion decided upon at the last session. First, the deletion was agreed upon within the working group as part of a broader compromise encompassing, in particular, the raising of the liability ceiling. Second, basically such a provision is undesirable as it would run counter to the legal harmonization aimed at in the convention.

Chapter 9

11. Regarding Chapter 9, the French delegation would very much like the issue of guarantee letters in the event of the delivery of goods without the presentation of a bill of lading to be considered. Is the widespread use of guarantee letters really compatible with the currently envisaged provisions?
