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Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]

Chapter 16: Jurisdiction

Note by the Secretariat*

In preparation for the eighteenth session of Working Group III (Transport Law), the Secretariat has prepared a revised text of chapter 16 on jurisdiction of the draft convention on the carriage of goods [wholly or partly] [by sea] for the consideration of the Working Group which, along with a definition from chapter 1, is attached in the annex to this note. The revised text is based upon the text accepted by the Working Group during its sixteenth session (see A/CN.9/591, para. 84) as set out in paragraph 73 of A/CN.9/591, with drafting clarifications proposed by the Secretariat as indicated following the consideration of the text by the Working Group (see A/CN.9/591, paras. 74 to 84).

* The late submission of this document is a reflection of the need to first have completed and submitted the integrated text from which it was excerpted.



Annex

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

29 bis. “Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over a matter.¹

CHAPTER 16. JURISDICTION

Article 75. Actions against the carrier²

Unless the contract of carriage contains an exclusive choice of court agreement that is valid under articles 76 or 81, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier in a competent court within the jurisdiction of which is situated one of the following places:

- (a) The domicile of the carrier;³
- (b) The contractual place of receipt or the contractual place of delivery;
- (c) The port where the goods are initially loaded on a ship; or the port where the goods are finally discharged from a ship; or
- (d) Any place designated for that purpose in accordance with article 76, paragraph 1.

Article 76. Choice of court agreements⁴

1. If the shipper and the carrier agree that a competent court has jurisdiction to decide [disputes] [claims against the carrier]⁵ that may arise under this Convention, that court has non-exclusive jurisdiction.⁶

¹ As agreed by the Working Group in paragraph 73 of A/CN.9/591. The phrasing is the same as that used in article 5 (3)(b) of the Convention on Choice of Court Agreements, 2005.

² Text as set out in paragraph 73 of A/CN.9/591, and accepted in substance by the Working Group in paragraph 84 of A/CN.9/591, with a reference to article 81 added to correct the text.

³ Reference corrected to “carrier” rather than to “defendant” in order to be consistent with draft article 77 regarding actions against maritime performing parties.

⁴ Text as set out in paragraph 73 of A/CN.9/591, and accepted in substance by the Working Group in paragraph 84 of A/CN.9/591, with some drafting improvements to improve clarity.

⁵ The Working Group must decide which approach of the two alternatives in square brackets to choose with respect to draft article 76. Suggested drafting improvements to this text are noted in the relevant footnotes.

⁶ Sub-paragraphs 1 (a) and (b) of the text in paragraph 73 of A/CN.9/591 have been deleted as a drafting improvement, since the form requirement for draft article 76 is treated by adding a reference to draft article 76 to draft article 3.

2. The jurisdiction of a court chosen in accordance with paragraph 1 of this article is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

(a) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated; or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies its location within the volume contract;

(b) [Clearly states the name and location of the chosen court] [Designates the courts of one Contracting State or one or more specific courts of one Contracting State];⁷ and

[(c) Is contained in the contract particulars.]

3. A person that is not a party to the volume contract is only bound by an exclusive choice of court agreement concluded in accordance with paragraph 2 of this article if:

(a) The court is in one of the places designated in article 75, paragraphs (a), (b) or (c);

[(b) That agreement is contained in the contract particulars of a transport document or electronic transport record issued in relation to the goods in respect of which the claim arises;]

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) Applicable law as determined by the rules of private international law of the court seized⁸ permits that person to be bound by the exclusive choice of court agreement.

4. This article does not prevent a Contracting State from giving effect to a choice of court agreement that does not meet the requirements of paragraphs 1, 2 or 3 of this article. Such Contracting State shall give notice to that effect [to _____].⁹

5. (a) Nothing in paragraph 4 of this article or in a choice of court agreement effective under paragraph 4 of this article prevents a court specified in article 75[, paragraphs (a), (b), (c) or (d)] and situated in a different Contracting State from exercising its jurisdiction over the dispute and deciding the dispute according to this Convention.

⁷ The text appearing as alternative bracketed text is taken from article 3 (b) of the Convention on Choice of Court Agreements, 2005, and is suggested as it may be difficult to state the name and location of the chosen court with sufficient precision when agreeing on the choice of court in the volume contract.

⁸ The Working Group may wish to consider whether further clarification may be necessary to ascertain whether the “court seized” will necessarily be the competent court, or whether it may be another court.

⁹ The Working Group may wish to consider the interplay between this approach and the final clauses.

(b) Except as provided in this chapter, no choice of court agreement is exclusive with respect to an action [against a carrier] under this Convention.¹⁰

*Article 77. Actions against the maritime performing party*¹¹

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

(a) The domicile of the maritime performing party; or

(b) The port where the goods are initially received by the maritime performing party or the port where the goods are finally delivered by the maritime performing party[, or the single port in which the maritime performing party performs all of its activities with respect to the goods].¹²

*Article 78. No additional bases of jurisdiction*¹³

Subject to articles 80 and 81, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated under articles 75, 76 or 77.

*Article 79. Arrest and provisional or protective measures*¹⁴

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. [A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

(a) The requirements of this chapter are fulfilled; or

(b) An international convention that applies in that State, according to its rules of application, so provides.]

¹⁰ Separate paragraph provided for this provision in order to avoid making it subject to paragraph. 4 of this article, as suggested by the Working Group in paragraph 80 of A/CN.9/591.

¹¹ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. A slight variation has been made to the chapeau for drafting purposes only in order to ensure that the chapeau mirrors that of article 75, and text has been suggested in paragraph (b) to accommodate maritime performing parties that operate in a single port. Further, the Working Group may wish to clarify the relationship between articles 76 and 77.

¹² The text in square brackets is proposed for addition in order to allow for situations in which a maritime performing party performs all of its activities in a single port. A similar change was made in draft article 20 concerning the liability of maritime performing parties.

¹³ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84, with a clarification concerning proceedings against the carrier or a maritime performing party.

¹⁴ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84.

Article 80. Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is valid under articles 76 or 81, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated under both article 75 and article 77. If there is no such court, such action may be instituted in a court designated under article 77, subparagraph (b), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is valid under articles 76 or 81, a carrier or a maritime performing party that institutes an action [[that would affect][the principal purpose of which is to affect] the rights of a person to select the forum under articles 75 or 77,][seeking a declaration of non-liability] shall at the request of the defendant, withdraw that action and may recommence it in one of the courts designated under articles 75 or 77, whichever is applicable, as chosen by the defendant.¹⁵

Article 81. Agreement after dispute has arisen and jurisdiction when the defendant has entered an appearance¹⁶

1. After the dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A court in a Contracting State before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 81 bis. Recognition and enforcement¹⁷

1. A decision made by a court of one Contracting State that had jurisdiction under this Convention or by a court on which the parties agreed under article 81, paragraph 1, shall be recognized and enforced in another Contracting State in accordance with the law of the Contracting State where recognition and enforcement are sought.

2. A court in a Contracting State may refuse recognition and enforcement of a decision made in another Contracting State that is based on the application of article 76, paragraph 4.

¹⁵ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. It might be necessary to arrange the provisions of time for suit for such cases when the original action was brought within the time period but the recommencement was not.

¹⁶ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. Opening phrase "Notwithstanding the preceding articles of this chapter" has been deleted as redundant, as references to article 81 have been added to articles 75, 76 and 80, and opening phrase of the second paragraph has been clarified from "a competent court" to "a court in a Contracting State".

¹⁷ Text from sixteenth session of Working Group, paragraph 73 of A/CN.9/591, accepted in substance in paragraph 84. Drafting adjustments made to clarify paragraphs 1 and 2, but no change to the substance was intended. Paragraph 3 was added to respond to the request for clarification in paragraph 79 of A/CN.9/591.

3. A court in a Contracting State that has exclusive jurisdiction under article 76, paragraphs 2, 3 and 4, in a dispute under this Convention may refuse recognition and enforcement of a decision made by a court of another Contracting State in such dispute.
