

V. TRANSPORT LAW

A. Report of the Secretary-General: survey of the work of international organizations in the field of transport law (A/CN.9/172)*

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Introduction

1. At its eleventh session (New York, 30 May-16 June 1978) the United Nations Commission on International Trade Law considered the future programme of work of the Commission.¹ In this connexion the Commission decided that priority should be given, *inter alia*, to consideration of the subject of transportation. The Commission requested the Secretary-General to prepare "studies setting forth the work so far accomplished by international organizations in the fields of multimodal transport, charter-parties, marine insurance, transport by container and the forwarding of goods".² The present report has been prepared pursuant to this request.

2. The report first mentions in brief the major resolutions of the General Assembly, the Economic and Social Council of the United Nations and the United Nations Conference on Trade and Development (UNCTAD) in the field of transport. The report then considers the work of international organizations on the five topics in the field of transportation law specifically referred to in the Commission's decision: multimodal transport, charter-parties, marine insurance, transport by container and the forwarding of goods.

I. Major resolutions of the General Assembly, the Economic and Social Council and UNCTAD in the field of transport (in chronological order)

3. In resolution 1082 A (XXXIX) of 30 July 1965, the Economic and Social Council noted the need for an integrated approach within the United Nations concerning transport policies, the importance of appropriate institutional arrangements for the development and maintenance of transport facilities, and the over-all responsibility of the Economic and Social Council and the Secretary-General in promoting and co-ordinating activities in the field of transport development.

4. The Economic and Social Council, by resolution 1373 (XLV) of 2 August 1968, requested the Secretary-General to assume responsibility for all forms of land transport, as well as water transport on inland waterways and by coastal or short-sea services, including port facilities associated with such transport. The resolution also asked the Secretary-General to co-ordinate all activities involving the use of more than one mode of transport and to undertake studies or research in the field of intermodal or interdisciplinary transport matters.

5. At its second session UNCTAD adopted resolution 14 (II) of 25 March 1968, by which it extended its competence to cover international shipping legislation, particularly concerning bills of lading for carriage of goods by sea, charter-parties, marine insurance and the possibility of drafting an international instrument dealing with international relations in shipping.

* 26 March 1979.

¹ *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17)*, chap. IV (Yearbook... 1978, part one, II, A).

² *Ibid.*, paras. 67 (c) (vii) and 68.

6. The Trade and Development Board of UNCTAD, by resolution 46 (VII) of 21 September 1968, instructed the Committee on Shipping of UNCTAD to create a Working Group on International Shipping Legislation and to establish the terms of reference of that Working Group on the basis of UNCTAD Conference resolution 14 (II) of 25 March 1968.

7. On 25 April 1969, the Committee on Shipping of UNCTAD adopted resolution 7 (III) creating an UNCTAD Working Group on International Shipping Legislation, which was charged with reviewing the economic and commercial aspects of international legislation and practices in the field of shipping and making recommendations to UNCITRAL concerning the drafting of new legislation or other appropriate action in the field of shipping. At its first session (Geneva, 1-12 December 1969), the UNCTAD Working Group on International Shipping Legislation adopted the following work programme, listed in order of priority: bills of lading, charter-parties, general average, marine insurance, and economic and commercial aspects of international legislation and practices in other areas of shipping.

8. By resolution 1734 (LIV) of 10 January 1973, the Economic and Social Council requested UNCTAD to take up the subject of international combined transport and to prepare studies on all relevant aspects, including such matters as effects on international trade and transport, balance of payments, costs of international transport, insurance, and the relation of the international combined transport of goods to national policies on transport, trade and insurance. The Trade and Development Board of UNCTAD was requested to establish an intergovernmental preparatory group charged with preparing a draft convention on international multimodal transport for submission to a conference of plenipotentiaries.

9. The Economic and Social Council, by decision 6 (LVI) of 14 May 1974, requested the Trade and Development Board of UNCTAD to convene an *ad hoc* intergovernmental group on container standards. This intergovernmental group would assess the work done by the International Organization for Standardization (ISO) concerning freight containers and the impact of standardization in container transport on the economies, particularly of developing countries, and would consider the practicability and desirability of drawing up an international agreement on container standards.

10. By resolution 2043 (LXI) of 5 August 1976, the Economic and Social Council recalled its and the General Assembly's prior resolutions on the decentralization of economic and social activities and the strengthening of the regional commissions. The Council reaffirmed that the regional commissions should become the main general economic and social development centres within the United Nations system for their respective regions.

11. The Committee for Programme and Co-ordination (CPC) noted in the report on its seventeenth ses-

sion³ that for maritime transport at the global level the Intergovernmental Maritime Consultative Organization (IMCO) was responsible for maritime matters that were primarily of a technical nature or concerned the safety of shipping and UNCTAD was responsible for trade and development and related aspects of shipping. The Committee recommended that primary responsibility within the United Nations system should be vested in UNCTAD for multimodal transport and containerization, in the United Nations Department of Economic and Social Affairs for new transport technologies and in the Economic Commission for Europe (ECE) (acting on behalf of the system) for the transport of dangerous goods.⁴ The conclusions and recommendations of CPC were endorsed by the Economic and Social Council in resolution 2098 (LXIII) of 3 August 1977.

12. In the report on its seventeenth session, CPC also recommended that primary responsibility within the United Nations system for transport by land and inland waterways, coastal shipping and short sea services should be transferred from United Nations Headquarters to the regional commissions. This recommendation was endorsed by the Economic and Social Council in its resolution 2098 (LXIII) of 3 August 1977. By resolution 32/206 of 21 December 1977, the General Assembly authorized the Secretary-General to submit programme proposals for transferring resources for the increased activities in the transport programmes of the regional commissions and the actual transfer of funds was then approved by General Assembly resolution 33/116 C (III) of 29 January 1979.

13. Following the adoption of Economic and Social Council resolution 2098 (LXIII) of 3 August 1977,⁵ assigning primary responsibility for work on multimodal transport and containerization to UNCTAD, the Trade and Development Board of UNCTAD adopted decision 169 (XVIII) on 15 September 1978. This decision expanded the terms of reference of the UNCTAD Committee on Shipping to include work on the global aspects of multimodal transport and containerization, wherever there is a sea link.

II. Survey of the work of international organizations on the five topics specifically referred to at the eleventh session of UNCITRAL

A. MULTIMODAL TRANSPORT

(a) Work linked to the work of UNCTAD on multimodal transport

14. Based on Economic and Social Council resolution 1734 (LIV) of 10 January 1973,⁶ the Trade and Development Board adopted decision 96 (XII) of 10 May 1973 which established an Intergovernmental Preparatory Group on a Convention on International Multimodal Transport. The Preparatory Group was requested

³ *Ibid.*, Thirty-second Session, Supplement No. 38 (A/32/38), para. 14 (1).

⁴ *Ibid.*, para. 14 (2).

⁵ See para. 11 above.

⁶ See para. 8 above.

to elaborate a preliminary draft for a Convention on International Multimodal Transport, bearing in mind the particular needs and requirements of developing countries.

15. For the purposes of the work of UNCTAD, international intermodal transport is considered to cover the international transport of goods from one country to another by more than one mode of transport (sea, rail, road or air) on the basis of a single transport document issued by a "multimodal transport operator" to the shipper of the goods. In a number of studies prepared for the Preparatory Group, the UNCTAD secretariat has examined the economic, commercial and legal issues involved in international multimodal transport. Studies by the UNCTAD secretariat have also explored the liability, insurance, customs and documentary régimes applicable to such transport operations, as well as the technical, financial and labour aspects of modern transport techniques.

16. The Intergovernmental Preparatory Group held six sessions and at the conclusion of the sixth session (21 February-9 March 1979) it approved a draft Convention on International Multimodal Transport. The draft Convention would set internationally binding norms of liability for multimodal transport operations and would establish an international legal régime for contracts and documents used in the course of international multimodal transport. The draft Convention contains provisions dealing, *inter alia*, with the following subjects: the scope of application of the Convention; issuance, content and evidentiary effect of multimodal transport documents; liability of the multimodal transport operator for loss, damage or delay in the delivery of the goods; liability of the consignor of the goods; claims and actions arising under the Convention; and the rights of national authorities to have consultations with multimodal transport operators, especially before the introduction of new technology and services.

17. The draft Convention on International Multimodal Transport will be submitted for consideration to a conference of plenipotentiaries. Issues left unresolved by the Intergovernmental Preparatory Group and which will have to be settled by the conference include the treatment of customs questions in the Convention, the monetary limits on the liability of multimodal transport operators both for concealed and for non-concealed damage to the goods, and certain aspects of the required content of multimodal transport documents.

18. The General Assembly, by resolution 33/160 of 20 December 1978, decided that the Trade and Development Board of UNCTAD should convene a conference of plenipotentiaries on a convention on international multimodal transport. The Conference is expected to be convened in November 1979.

19. The regional commissions have co-operated with UNCTAD in the elaboration of a draft Convention on International Multimodal Transport by organizing regional seminars and preparatory meetings on the subject, preparing working papers, and providing technical

assistance to States in the region prior to their participation in sessions of the UNCTAD Intergovernmental Preparatory Group on a Convention on International Multimodal Transport.

20. A number of international organizations followed closely the work of the UNCTAD Intergovernmental Preparatory Group by attending its sessions or presenting their views by means of written comments. These international organizations included, *inter alia*, IMCO, the International Civil Aviation Organization (ICAO), the League of Arab States (LAS), the Organization of African Unity (OAU), the Organization of American States (OAS), the European Economic Community (EEC), the Organization for Economic Co-operation and Development (OECD), the Central Office for International Railway Transport (OCTI), the Customs Co-operation Council (CCC), the International Chamber of Commerce (ICC), the International Road Transport Union (IRU), the Baltic and International Maritime Conference (BIMCO), the International Air Transport Association (IATA), the International Chamber of Shipping (ICS), the International Federation of Forwarding Agents' Associations (FIATA), the International Maritime Committee (IMC) and the International Shipowners Association (INSA).

(b) *Work not linked to the work of UNCTAD on multimodal transport*

21. The International Institute for the Unification of Private Law (UNIDROIT) prepared in 1965 the first draft convention on the subject of multimodal transport, the Draft Convention on Contract for the Combined International Carriage of Goods (Rome Draft, 1965). In 1969 the International Maritime Committee approved a Draft Convention on Combined Transports (Tokyo Rules, 1969). The latter draft convention was considered at a round table meeting of international organizations convened by UNIDROIT in 1970, which adopted a Draft Convention on the International Combined Transport of Goods (Round Table Draft, 1970). The Round Table Draft was the subject of further discussions at joint meetings of IMCO and ECE, which resulted in 1972 in the preparation of a Draft Convention on the International Combined Transport of Goods (TCM Convention, 1972). Consideration of the draft TCM Convention was however not included by the Economic and Social Council in the agenda of the 1972 United Nations/IMCO Conference on International Container Traffic. At the Conference, opportunity was provided for an exchange of views on general policy questions concerning international multimodal transport and the Conference approved a resolution which then formed the basis of Economic and Social Council resolution 1734 (LIV) of 10 January 1973.⁷

22. A number of international organizations have drawn up uniform rules or forms covering the multimodal transport of goods. Among such uniform rules or forms are the following:

⁷ See para. 8 above.

(a) Uniform Rules for a Combined Transport Document (ICC Rules), by ICC (ICC publication 298 published in 1975, incorporating ICC publication 273 of 1973 on the subject but revising it as to the liability of the combined transport operator for delay);

(b) Combined Transport Bill of Lading (COMBICONBILL), approved and recommended in 1971 by BIMCO;

(c) Standard Conditions Governing FIATA Combined Transport Bills of Lading (FBL), approved by FIATA in 1970, revised in 1978, so that it is now subject to the ICC Uniform Rules for a Combined Transport Document;

(d) Combined Transport Document (INSA Standard Form), approved and recommended by INSA in 1974;

(e) Combined Transport Document (COMBIDOC), issued jointly by BIMCO and INSA in 1977, and approved by ICC as meeting all requirements of the ICC Uniform Rules for a Combined Transport Document;

(f) Recommendation for the format of Combined Transport Bills of Lading, included in the recently issued version of the publication by ICS entitled "Recommendations for the Format of Bills of Lading".

23. In 1960 the socialist States in Eastern Europe adopted an Agreement concerning the Combined Carriage of Goods by Rail and Water.

24. IATA has elaborated a system of using the standard airway bill as the sole multimodal transport document for carriage involving aircraft and trucks where the air carrier is the responsible multimodal transport operator.

25. OCTI will convene a conference in 1980 to consider revision of the 1970 CIM Convention concerning the Carriage of Goods by Rail and the 1970 CIV Convention concerning the Carriage of Passengers and Baggage by Rail. The Revision Conference will also have the opportunity to consider the possible harmonization of the transport law on international carriage by rail with the transport laws governing other modes of international transport.

26. In 1976 the Economic Commission for Latin America (ECLA) prepared a report on international multimodal transport over land, which identified the major obstacles to the establishment of multimodal land-transport services in the region. ECLA is now preparing a draft Latin American Convention on the Civil Liability of Carriers in international Land Transport. Under the draft Convention the same standards of liability are intended to apply to carriers by road and carriers by rail.

27. The Committee of Experts on the Transport of Dangerous Goods, established by the Economic and Social Council and serviced by ECE, is engaged in developing common standards with regard to the packaging, labelling and handling of dangerous goods. The Committee usually makes recommendations which are then implemented by Governments as national regulations and by international organizations whose regula-

tions incorporate the recommendations or are modelled on them. The Committee is considering the possibility of drafting an international convention on the transport of dangerous goods by all modes of transport.

28. A study of combined railroad transport facilities for international traffic has been undertaken jointly by ICC, the International Road Transport Union, the International Union of Railways and the International Union of Combined Rail/Road Enterprises.

B. CHARTER-PARTIES

29. The subject of charter-parties has been on the work programme of the UNCTAD Working Group on International Shipping Legislation since its first session, which was held in 1969. At its fourth session (27 January-7 February 1975) the Working Group considered a report prepared by the UNCTAD secretariat on the subject of charter-parties (TD/B/C.4/ISL/13). This report examined the principal clauses in voyage and time charter-parties and suggested that such clauses be standardized. The report also suggested that consideration be given to the preparation of mandatory international legislation on certain aspects of the respective liabilities of the shipowner and the charterer.

30. The UNCTAD Working Group requested that the UNCTAD secretariat prepare additional studies involving a comparative analysis of the principal clauses in voyage and time charter-parties. These studies are now under preparation and the UNCTAD Working Group on International Shipping Legislation is expected to meet in 1981 to decide on future action concerning the subject of charter-parties on the basis of the new studies.

31. At a conference held in September 1977 IMC approved draft Charter-party (Laytime) Definitions. The Definitions are now before a Joint Working Group formed by experts appointed by IMC, the General Council of British Shipping and BIMCO.

C. MARINE INSURANCE

32. The subject of legal problems in marine insurance has been on the work programme of the UNCTAD Working Group on International Shipping Legislation since its first session, which was held in 1969. The UNCTAD secretariat has recently issued a report (TD/B/C.4/ISL/27 and Add.1), which considers various legal and documentary aspects of marine hull and cargo insurance contract forms. The report identifies legal problems arising from ambiguities, inequities or gaps in such contract forms and analyses areas where improvement is warranted. The report also recommends that an internationally representative group of experts on marine insurance, including representatives of both insurers and assureds, should be asked to draw up an internationally accepted legal base for marine insurance contracts.

33. The UNCTAD Working Group on International Shipping Legislation will consider the UNCTAD sec-

retariat's report on marine insurance at its sixth session in June 1979 and will then decide the course of further work concerning the subject of marine insurance. In paragraph 251 of TD/B/C.4/ISL/27 it is suggested that the Working Group might convene an *ad hoc* group of experts from Government and industry, representing both hull and cargo insurers and assureds, charged with examining the desirability or feasibility of preparing (a) a set of non-binding, comprehensive international uniform policy conditions agreed to on an international, industry-wide basis, (b) an international convention on marine insurance, and (c) a common legal base for transport insurance contracts for all modes of transport.

34. There is no international convention governing the subject of marine insurance. The International Law Association attempted to achieve some uniformity in this field by developing in 1901 the Glasgow Marine Insurance Rules. The Rules, which were designed to be incorporated by contract into marine insurance policies, failed to gain wide acceptance.

35. The Commission of the European Communities is now considering a Draft Directive on the co-ordination of laws, regulations and administrative provisions relating to insurance contracts. It has not yet been decided whether the Draft Directive will also apply to marine insurance contracts.

36. The International Union of Marine Insurance and ICC have issued jointly a publication entitled "Tables of practical equivalents of the principal terms, clauses and conditions of cover used in various countries for the insurance of cargo against the risks of international transport". The third edition of this publication appeared in 1969.

37. The Committee on the Development of Trade of ECE has established an *Ad Hoc* Working Party on Insurance Problems charged with studying the problems of transport insurance and reinsurance that are of particular importance to international trade relations.

38. It may be noted that, for the fourth session (November 1977) of the Intergovernmental Preparatory Group on a Convention on International Multimodal Transport, the UNCTAD secretariat had prepared a report on the feasibility of establishing Protection and Indemnity Clubs in developing countries. The Intergovernmental Preparatory Group has also been concerned with insurance coverage and guarantees covering the liability of multimodal transport operators for loss or damage to the cargo, for violation of customs and other regulation in the country where the multimodal transport operator transacts business, and for loss or damage suffered by third parties. There is agreement, however, in the Intergovernmental Preparatory Group on a Convention on International Intermodal Transport that the traditional role of marine cargo insurance as the main supplier of protection against the economic consequences of cargo loss or damage should be preserved.⁸

⁸ Report of the Intergovernmental Preparatory Group on a Convention on International Intermodal Transport on the first part of its third session (Geneva, 16 February-4 March 1976), documents TD/B/602 and TD/B/AC.15/18, annex I, part B.

39. Under the laws of many States, the principles of general average applicable to carriage of goods by sea may be taken from a set of rules drawn up jointly by national maritime law associations and known as the York-Antwerp Rules. These Rules, last revised by IMC at its Hamburg Conference in 1974, are normally incorporated in contracts of carriage by sea and then voluntarily enforced by shipowners, shipper-consignees and insurers.

40. One of the recommendations adopted at the first session of UNCTAD in 1964 dealt, *inter alia*, with the subject of marine insurance. Recommendation A.IV.23 stated that "the competent international organizations should examine the question of the adoption of: (a) uniform clauses for marine, land and air transport insurance".

41. Since 1969 marine insurance has been on the agenda of the UNCTAD Committee on Invisibles and Financing Related to Trade. For the seventh session (1975) of that Committee the UNCTAD secretariat prepared a study entitled "Marine Cargo Insurance", which analysed the institutional aspects of marine cargo insurance and explored the commercial and economic problems experienced by marine cargo insurance markets in developing countries (TD/B/C.3/120). Another UNCTAD secretariat study (TD/B/C.3/137) advocated a policy of insuring large risks, including risks under hull insurance, in the domestic insurance markets of developing countries, and this policy was endorsed in 1977 by the UNCTAD Committee on Invisibles and Financing Related to Trade in its resolution 13 (VIII).

D. TRANSPORT BY CONTAINER

42. Based on Economic and Social Council decision 6 (LVI) of 14 May 1974,⁹ the Trade and Development Board of UNCTAD adopted decision 118 (XIV) of 13 September 1974 which established an *Ad Hoc* Intergovernmental Group on Container Standards for International Multimodal Transport. The *Ad Hoc* Intergovernmental Group was requested, *inter alia*, to consider the practicability and desirability of drawing up an international agreement on container standards. The mandate of the *Ad Hoc* Intergovernmental Group on Container Standards for International Multimodal Transport was renewed in September 1977 by the UNCTAD Trade and Development Board in its decision 157 (XVII).

43. At the two sessions of the *Ad Hoc* Intergovernmental Group on Container Standards for International Multimodal Transport held to date (the second session was held from 20 November to 1 December 1978), no consensus was reached on the practicability and desirability of a binding international agreement on standards for containers used in international multimodal transport.

44. The regional commissions, as well as a number of international organizations, including, *inter alia*,

⁹ See para. 9 above.

IMCO, ICAO, EEC, OAS, the East African Community (EAC), ICS, ISO and FIATA have participated in the work of the UNCTAD *Ad Hoc* Intergovernmental Group on Container Standards for International Multimodal Transport.

45. The question of container standards was discussed at the 1972 United Nations/IMCO Conference on International Container Traffic (13 November-2 December 1972). The main preparatory work for this Conference was done by IMCO and ECE, based on earlier work by UNIDROIT and IMC. The Conference adopted resolution 4 concerning container standards, which then formed the basis for Economic and Social Council decision 6 (LVI) of 14 May 1974.⁹

46. The 1972 United Nations/IMCO Conference on International Container Traffic, while failing to reach agreement on the Draft Convention on the International Combined Transport of Goods (TCM Convention), adopted the International Convention for Safe Containers. This Convention derived from the work of IMCO on the safety-related and technical aspects of container transport and it has been in force since 1977. The two fundamental purposes of the Convention are the maintenance of safety in the transport and handling of containers and the enhancement of efficiency in the international multimodal transport of containers. The safety standards established by the International Convention for Safe Containers apply to all modes of transport.

47. The International Organization for Standardization (ISO), through its Technical Committee 104 "Freight containers", has been engaged since 1960 in the formulation of international standards which permit the intermodal movement of containerized goods without the need for physical rehandling of the goods at each transport stage. Major savings can then be realized through significant reductions in handling and waiting time of carriers, handling costs, cargo damage, pilferage, documentation and time in transit.

48. ISO is concerned with the development and subsequent publication of international standards for intermodal interchangeability of containers which take into account the technical, practical, economic and safety factors involved. The freight container standards refer in particular to dimensions, strength specifications and testing, handling features, and the identification and marking of containers. In ISO/Technical Committee 104 the interests and views of producers, suppliers, users (including consumers), Governments and of the scientific community are considered and account is also taken of the particular requirements of rail, sea and road carriers and of national transport regulations. Although the ISO International Standards are not mandatory, the standards concerning freight containers have been implemented widely.

49. Within IATA, the Unit Load Device Board has developed a number of standard sizes for containers and intends to develop standards also for submodules. In the view of IATA, to achieve full compatibility of containers in water/land/air transport, it will be necessary to

establish international standards or specifications for the height of the loading bed of road vehicles.

50. It should be noted that, in air transport of cargo, unit load devices conforming to standards established by three different organizations are in use: IATA, the Air Transport Association/Society of Automotive Engineers and ISO.

51. ECE has been concerned with customs questions concerning containers and has established a Group of Rapporteurs on the subject. Two Customs Conventions on Containers have been adopted on the basis of work within ECE, one on 18 May 1956 and the other on 2 December 1972.

52. It may further be noted that, within ISO, technical committees are engaged in the development of voluntary international standards for dimensions of pallets for through transit of goods (ISO/TC.51, "Pallets for unit load method of materials handling") and for standardization in the field of packaging (ISO/TC.122, "Packaging").

53. UNIDROIT has studied the desirability and feasibility of preparing uniform provisions on the legal status of containers and other loading units, such as lighters discharged from sea-going vessels, pallets, igloos. However, after considering the matter, the Council of UNIDROIT decided to delete from the work programme for 1978-1980 the subject of the "legal status of containers and other loading units".

E. THE FORWARDING OF GOODS

(a) *Freight forwarder acting as agent*

54. There are two basically distinct types of freight forwarders in international transport. The first type functions strictly as an agent, normally for the shipper but on occasion for the carrier. In the usual case the freight forwarder acts as an agent for the shipper in arranging for the transport of the goods and handling the administrative details connected with the transport. The forwarding agent does not issue his own transport document or bill of lading and does not assume responsibility for the proper performance of the transport by the actual carrier or carriers. As far as the carrier or carriers are concerned, the contract of carriage is between the carriers and the shipper and not between the carriers and the forwarding agent.

55. Since the freight forwarder acts solely as an agent, the usual national and international rules applicable to "agency" govern the relationship between the freight forwarder and the shipper or carrier on whose behalf the freight forwarder is acting. Mention may therefore be made of the work of the Hague Conference on Private International Law on the law applicable to agency. In June 1977 a Special Committee of the Hague Conference completed work on a draft Convention on the Law Applicable to Agency and the Convention was signed on 14 March 1978. The Convention covers the relationship between principal and agent and the relationship of both principal and agent with third parties connected with the activities of the agent.

56. It may also be noted that a conference of plenipotentiaries will be held in Bucharest, Romania, from 28 May to 13 June 1979, to consider the draft Convention Providing a Uniform Law on Agency of an International Character in the Sale and Purchase of Goods, which had been prepared by UNIDROIT.

57. In 1966 UNIDROIT completed preparation of a draft Convention on the Contract of Agency for Forwarding Agents relating to the International Carriage of Goods. In April 1976, at a meeting of representatives from UNIDROIT, ICC and FIATA, it was decided that uniform rules on forwarding agency, based on the 1966 UNIDROIT draft Convention, should not be drawn up. The work programme of UNIDROIT for the triennium 1978-1980 specifically excluded work on the subject of "forwarding agency".

58. It may be noted that in 1957 FIATA introduced the Forwarding Agent's Certificate of Transport (FCT document), which makes it clear that the forwarding agent is not acting as the carrier and that he only assumes responsibility for exercising due care in the selection of carriers and in the transmittal of instructions to carriers. Under the FCT document the forwarding agent is not liable to the shipper for the carrier's performance.

(b) *Freight forwarder acting as principal*

59. The second type of freight forwarder in international transport functions as a principal, that is, in his own name. This type of freight forwarder assembles and consolidates smaller shipments of different shippers and assumes responsibility for the transport of the goods from point of receipt to final point of destination. The carriage may involve more than one mode of transport and the freight forwarder may perform part of the carriage himself or he may entrust its performance to one or more actual carriers. Usually such a freight forwarder issues his own transport document or bill of lading to the shipper (who might not even know the identity of the actual carrier or carriers) and charges a single comprehensive rate for the transport from point of pick-up to point of ultimate destination. As far as the contract of carriage with the actual carrier or carriers is concerned, the freight forwarder is the shipper.

60. In multimodal transport it is often the freight forwarder who becomes the multimodal transport operator. The freight forwarder then decides both on the modes of transport and on the particular carriers to be utilized within each mode. The work of international organizations in the field of multimodal transport, described above in part II A of the present report, is therefore of direct relevance to the legal position of the freight forwarder acting as a principal in his own name.

61. The responsibilities of a freight forwarder acting as a multimodal transport operator may extend over segments during the transport where he himself performs the functions of a warehouseman or arranges for the retention of a warehouseman. The goods may be warehoused for a period while the freight forwarder is consolidating shipments or is waiting for a carrier to pick up the shipments, while the goods are transferred

from one mode of transport to another, or at the place of destination before the goods can be handed over to the consignee. UNIDROIT is now considering the desirability and feasibility of drawing up uniform rules on the warehousing contract. A set of draft articles on the liability of international terminal operators connected with international carriage, prepared by the UNIDROIT secretariat, was approved, with some modifications, by a UNIDROIT Study Group in January 1979. The draft text approved by the Study Group will be submitted to the Governing Council of UNIDROIT for a decision concerning further work on the subject.

62. The freight forwarder may also assume responsibility for filing the necessary papers to secure export or import licenses, to obtain customs clearances while the goods are in transit, and to act as customs house broker. The freight forwarder would then have to be concerned with the applicable customs regulations and international agreements concerning customs transit. The following are some of the major international agreements concerning customs:

(a) Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Conventions of 1959 and 1975), drafted under the auspices of ECE;

(b) International Convention on the Simplification and Harmonization of Customs Procedures, and its annex E.I concerning Customs Transit (Kyoto Convention 1974), drafted by the Customs Co-operation Council;

(c) Customs Convention on the International Transit of Goods (ITI Convention 1971), drafted by the Customs Co-operation Council;

(d) Customs Conventions on Containers, 1956 and 1972;

(e) Convention concerning Customs Clearance for the International Transport of Goods by Road Vehicles, 1965, prepared under the auspices of the Council for Mutual Economic Assistance;

(f) Transit System of the European Economic Community;

(g) International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail (TIF Convention 1952), prepared under the auspices of ECE;

(h) Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Convention 1961), drafted by the Customs Co-operation Council.

63. The Customs Co-operation Council has considered the establishment of a link among the systems of customs transit that now exist under different international agreements. This subject is also under study within the European region by the Inland Transport Committee of ECE.

III. Conclusions and recommendations

64. Of the five topics of transportation law examined in this survey primary responsibility within the United Nations family has been entrusted to UNCTAD for multimodal transport and for containerization by

resolutions of the Economic and Social Council and the General Assembly. Within UNCTAD, the work aimed at preparing a draft Convention on International Multimodal Transport has been completed. On the other hand, although UNCTAD has established an intergovernmental group on container standards, that group has not yet been able to reach a consensus on the practicability and desirability of an international agreement that would impose mandatory standards for containers used in international transport.

65. The topics of charter-parties and marine insurance have been on the work programme of the UNCTAD Working Group on International Shipping Legislation since 1969. While the UNCTAD secretariat has issued major studies on both these topics, no decision has apparently yet been taken by any UNCTAD body as to the desirability of preparing international legislation on either subject. It may be noted that in the 1974 UNCTAD secretariat study on charter-parties¹⁰ the suggestion was made that the task of preparing mandatory international regulation of certain aspects of charter-parties might be given to the UNCITRAL Working Group on International Legislation on Shipping. The Commission might wish to consider whether it should inform UNCTAD that it stands ready to undertake work on these topics aimed at the preparation of international

¹⁰ "Charter-Parties: report by the secretariat of UNCTAD", document TD/B/C.4/ISL/13, paras. 537-538.

legislation. The Commission might also wish to consider whether it should explore on its own the practicability and feasibility of drafting an international agreement or uniform rules on charter-parties or on marine insurance.

66. At present, no international organization is engaged in work focused directly on the legal problems arising from the involvement of forwarders in the international transport of goods. The work of UNCTAD concerning multimodal transport and the responsibilities of the multimodal transport operator does cover, however, the legal issues connected with the involvement of freight forwarders acting as principals in international multimodal transport operations.

67. The Commission might also wish to consider whether an international convention or uniform rules concerning the legal status of freight forwarders, whose involvement in international transport is strictly in the capacity of agents, would be desirable. The starting-point for consideration of the subject by the Commission might be the 1966 UNIDROIT draft Convention on the Contract of Agency for Forwarding Agents relating to the International Carriage of Goods.

68. The Commission might further wish to consider whether it should inform the regional commissions of the United Nations of its willingness to provide technical and drafting assistance for their projects involving the preparation of regional agreements or legislation concerning transport by land and by inland waterways.

B. List of relevant documents not reproduced in the present volume

<i>Title or description</i>	<i>Document symbol</i>
State of signatures and ratifications of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), adopted at Hamburg on 30 March 1978; note by the Secretary-General	A/CN.9/174