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Transport law: possible future work

Report of the Secretary-General

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I. Introduction

1. When considering future work in the area of electronic commerce, following the adoption of the UNCITRAL Model Law on Electronic Commerce at its twenty-ninth session, in 1996,[1] the United Nations Commission on Trade Law considered a proposal to include in its work programme a review of current practices and laws in the area of the international carriage of goods by sea, with a view to establishing the need for uniform rules where no such rules existed and with a view to achieving greater uniformity of laws.[2]

2. The Commission was told that existing national laws and international conventions left significant gaps regarding issues such as the functioning of bills of lading and seaway bills, the relation of those transport documents to the rights and obligations between the seller and the buyer of the goods and the legal position of the entities that provided financing to a party to the contract of carriage. Some States had provisions on those issues, but the fact that those provisions were disparate and that many States lacked them constituted an obstacle to the free flow of goods and increased the cost of transactions. The growing use of electronic means of communication in the carriage of goods further aggravated the consequences of those fragmentary and disparate laws and also created the need for uniform provisions addressing the issues particular to the use of new technologies.

3. It was then suggested that the Secretariat should be requested to solicit views and suggestions on those difficulties not only from Governments but in particular from the relevant intergovernmental and non-governmental organizations representing the various interests in the international carriage of goods by sea. An analysis of those views and suggestions would enable the Secretariat to present, at a future session, a report that would allow the Commission to take an informed decision as to the desirable course of action.

4. Several reservations were expressed with regard to the suggestion. One was that the issues to be covered were numerous and complex, which would strain the limited resources of the Secretariat. Priority should instead be given to other topics that were, or were about to be, put on the agenda of the Commission. Furthermore, it was said that the continued coexistence of different treaties governing the liability in the carriage of goods by sea and the slow process of adherence to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) made it unlikely that adding a new treaty to the existing ones would lead to greater harmony of laws. Indeed, there was some danger that the disharmony of laws would increase.

5. In addition, it was said that any work that would include the reconsideration of the liability regime was likely to discourage States from adhering to the Hamburg Rules, which would be an unfortunate result. It was stressed that, if any investigation was to be carried out, it should not cover the liability regime. It was, however, stated in reply that the review of the liability regime was not the main objective of the suggested work; rather, what was necessary was to provide modern solutions to the issues that either were not adequately dealt with or were not dealt with at all in treaties.

6. Having regard to those differing views, the Commission did not include the consideration of the suggested issues on its agenda at that stage. Nevertheless, it decided that the Secretariat should be the focal point for gathering information, ideas and opinions as to the problems that arose in practice and possible solutions to those problems. Such information-gathering should be broadly based and should include, in addition to Governments, the international organizations representing the commercial sectors involved in the carriage of goods by sea, such as the Comité maritime international (CMI), the International Chamber of Commerce, the International Union of Marine Insurance, the International Federation of Freight Forwarders Associations, the International Chamber of Shipping and the International Association of Ports and Harbors.

7. At its thirty-first session, in 1998, the Commission heard a statement on behalf of CMI to the effect that it welcomed the invitation to cooperate with the Secretariat in soliciting views of the sectors involved in the international carriage of goods and in preparing an analysis of that information. That analysis would allow the Commission to take an informed decision as to the desirable course of action.[3] Strong support was expressed at that session for the exploratory work being undertaken by CMI and the secretariat of the Commission. The Commission expressed its appreciation to CMI for its willingness to embark on that important and far-reaching project, for which few or no precedents existed at the international level.[4]

8. At the thirty-second session of the Commission, in 1999, it was reported on behalf of CMI that a CMI working group had been instructed to prepare a study on a broad

range of issues in international transport law with the aim of identifying the areas where unification or harmonization was needed by the industries involved. In undertaking the study, it had been realized that the industries involved were extremely interested in pursuing the project and had offered their technical and legal knowledge to assist in that endeavour. Based on that favourable reaction and the preliminary findings of the working group, it appeared that further harmonization in the field of transport law would greatly benefit international trade. The working group had found a number of issues that had not been covered by the current unifying instruments. Some of the issues were regulated by national laws that were not internationally harmonized. Evaluated in the context of electronic commerce, that lack of harmonization became even more significant. It was reported that the working group had identified numerous interfaces between the different types of contracts involved in international trade and transport of goods (such as sales contracts, contracts of carriage, insurance contracts, letters of credit, freight forwarding contracts and a number of other ancillary contracts). The working group intended to clarify the nature and function of those interfaces and to collect and analyse the rules currently governing them. That exercise would at a later stage include a re-evaluation of principles of liability to determine their compatibility with a broader area of rules on the carriage of goods.[5]

9. It was also reported at the thirty-second session of the Commission that the working group had sent a questionnaire to all CMI member organizations covering a large number of legal systems. The intention of CMI was, once the replies to the questionnaire had been received, to create an international subcommittee to analyse the data and find a basis for further work towards harmonizing the law in the area of international transport of goods. The Commission had been assured that CMI would provide it with assistance in preparing a universally acceptable harmonizing instrument.[6]

10. At its thirty-second session, the Commission had expressed its appreciation to CMI for having acted upon its request for cooperation and had requested the Secretariat to continue to cooperate with CMI in gathering and analysing information. The Commission was looking forward to receiving a report at a future session presenting the results of the study with proposals for future work.[7]

11. The purpose of the present report is to apprise the Commission of the work that has been carried out thus far by CMI, in cooperation with the secretariat of the Commission, since the thirty-second session of the Commission. The information is intended to facilitate the Commission's decision on the nature and scope of any future work that might usefully be undertaken by it.

II. Progress of the work of the Comité maritime international

12. In cooperation with the secretariat of the Commission, CMI undertook to organize a broad investigation of views and suggestions relating to practical problems and possible solutions to those problems. The CMI Executive Council set up a Steering Committee to consider the project. The Steering Committee issued a report dated 29 April 1998[8] in which it outlined the work that should be undertaken by a working group. An international working group was then established; it studied the issues outlined in the Steering Committee's report and drew up a questionnaire that was sent to all national maritime law associations in May 1999.

13. The questionnaire covered the following issues: (a) inspection of the goods and description of the goods in the transport document; (b) transport document (date, signature and statements in the transport document, other than for description of the goods); (c) rights of the carrier (freight, deadfreight, demurrage and other changes and lien); (d) obligations of shipper, intermediate holder and consignee; (e) delivery and receipt of the goods at destination; and (f) rights of "disposal".

14. The Executive Council of CMI established an international subcommittee on issues of transport law in which delegations from all national maritime law associations, as well as the international organizations involved in trade and shipping, were invited to participate. The International Subcommittee met in London on 27 and 28 January 2000; it is scheduled to meet again in London on 6 and 7 April 2000 and in New York on 7 and 8 July 2000. From the beginning of the project, there were consultations with the different sectors of industry in the form of round tables and bilateral meetings.

III. Overview of issues and stage of consideration of possible solutions

15. At its first meeting, the International Subcommittee discussed the six issues referred to in paragraph 12 above. Under its terms of reference, the International Subcommittee is required to prepare an outline of an instrument designed to bring about uniformity in transport law. The first meeting identified issues that such an instrument could resolve.

16. The paragraphs below present a summary of the information reviewed by the International Subcommittee at its first meeting concerning the state of the law with respect to those six topics and possible solutions that, as agreed at the first meeting of the International Subcommittee, are being put forward by the working group for discussion at the second meeting of the International Subcommittee. In the paragraphs below, references to countries are to the countries of the national maritime law associations and national members of other organizations that provided replies to the questionnaire. The replies are available on the CMI web site (www.comitemaritime.org).

A. Inspection of the goods and description of the goods in the transport document

17. When the carrier or the actual carrier takes the goods in its charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading that should state, *inter alia*, the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, the weight of the goods or their quantity otherwise expressed (all such particulars as furnished by the shipper) and the apparent condition of the goods (see the International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague Rules), art. 3, para. 3, subpara. (b); the Hague Rules as Amended by the Brussels Protocol 1968 (the Hague-Visby Rules), art. 3, para. 3, subparas. (b) and (c); and the United Nations Convention on the Carriage of Goods by Sea, 1978 (the Hamburg Rules), art. 15, para. 1, subparas. (a) and (b)).

18. The issue arises as to the extent to which the carrier is responsible for inspecting goods carried, in particular in situations where actual inspection may not be physically reasonable or economically feasible, such as in carriage of bulk cargo, containerized goods, carriage of numerous small items, technical cargo or where no weighing facilities are available at the load port. Another issue is to what extent the details provided in the transport document should be prima facie evidence of that information, in particular in situations where such information is received by electronic means from the shipper.

19. The responses to the CMI questionnaire revealed considerable consistency in the approach to this issue. Goods are taken to be in good "apparent" order and condition as determined by external visual inspection (in Australia, Canada, China, Hungary, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America), without interfering with the packing (in Canada), also taking into account, as specified in some legal systems, other elements such as weight (in Australia and Japan), noise and smell (in Japan), and mate's receipts (in New Zealand). In Poland the test is one of good faith: it is assumed that the carrier had no knowledge (despite the exercise of due diligence) that the goods were shipped in a condition other than as described in the bill of lading. In Indonesia it appears that the word is understood as meaning that the carrier has received the goods in order and good condition, having "checked and rechecked" the condition of the goods.

20. A carrier has no reasonable means of checking particulars provided by a shipper where the goods are containerized and have been packed by the shipper (in Argentina, Australia, Indonesia, the Netherlands, Norway, the United Kingdom and the United States), for bulk goods (in Italy and the Netherlands) except for weight and survey reports (in China), for packed goods in general (in the Netherlands), for technical cargo (in Norway), where it is uneconomical to tally the cargo (in Italy and the Netherlands) or where no weighing facilities are available (in the United States).

21. The general position is that the carrier may refuse to insert information in a bill of lading where it is obviously incorrect (in Australia, Canada, the Netherlands, Norway, Spain and the United States) or where it has reason to believe that the information is incorrect (in Australia, Canada, Norway, Spain and the United States). However, in Italy the carrier may only refuse to insert information in a bill of lading that it has actually found to be incorrect.

22. At the first meeting of the International Subcommittee there was agreement that, when the carrier had reasonable grounds for suspecting that the information

furnished by the shipper did not accurately represent the goods, the carrier was obligated to check the information if it had a reasonable means of doing so. Thus the carrier would be excused from including the otherwise required information only when there was no reasonable means of checking it.

23. Other issues considered by the International Subcommittee included the conditions under which a carrier could protect itself by omitting from the transport document a description of the goods that it was unable to verify (for instance, by inserting clauses such as "said to contain" and "shipper's weight and count"), the effects of qualifying clauses in transport documents and the desirability of developing harmonized provisions regulating the use and effects of such clauses, taking into account their practical implications in respect of containerized transport.

B. Transport document

24. While article 16 of the Hamburg Rules lists certain minimum information that the bill of lading is required to contain, this question is left largely open under the Hague-Visby Rules, which, in particular, make no reference to date and signature of the bill of lading or methods for identifying the carrier. The content of the bill of lading and the consequences of missing or inaccurate information are thus largely left for domestic law.

1. Date

25. Dating of the transport document is at present either mandatory (in Argentina, China, the Democratic People's Republic of Korea, Germany, Indonesia, Lebanon, the Netherlands, Norway, Poland, Spain and Turkey) or, while not mandatory, common practice (in Australia, Canada, New Zealand, the United Kingdom and the United States), usually in order to satisfy the requirements of banks issuing letters of credit.

26. The applicable date is the date of signature of the bill of lading (in the Democratic People's Republic of Korea, Italy, Japan and the Netherlands), the date of issue (in Germany and Poland), the date of receipt or loading on board (in Australia, Canada, China, Italy, Japan, New Zealand, Norway, Turkey, the United Kingdom and the United States) or within 24 hours from the date of placing the goods on board (in Spain).

27. Most of the participants at the first meeting of the International Subcommittee felt that the date should not be considered an essential element of the bill of lading and an undated bill of lading should be considered valid. It was suggested, however, that a harmonized general provision that clarified the significance of the date mentioned in the bill of lading would be useful. It was also suggested that the International Subcommittee should examine the legal consequences of the issuance of a bill of lading bearing an inaccurate or incorrect date.

2. Signature

28. The signing of bills of lading is mandatory in some countries (as in Argentina, China, the Democratic People's Republic of Korea, Hungary, Italy, Japan, Lebanon, the Netherlands, Norway, Poland, Spain and Turkey), when it is not required (in Australia, Canada, Germany, Indonesia, New Zealand, the United Kingdom and the United States), bills of lading are signed at the request of the sender (in Germany) or are generally signed in practice (in Australia, Canada, New Zealand, the United Kingdom and the United States) on account of banks' requirements for the issuance of letters of credit.

29. It has been suggested that the International Subcommittee should give special attention to the legal consequences of the lack of authority to sign a bill of lading on behalf of the apparent carrier and consider which are the acceptable means of signature of the transport document.

3. Statements in the transport documents in addition to the description of the goods

30. Some national systems require the bill of lading to state the name of the carrier (e.g. in China, Germany, Italy, Japan, Lebanon, Norway, Poland, Spain and Turkey) and the address of the carrier (in China, Germany, Lebanon and Norway) or the master (in Spain), or merely the carrier's domicile (in Italy) or "designation" (in Poland). Other systems have no such requirements (in Argentina, Australia, Canada, Hungary, Indonesia, the Netherlands, New Zealand, the United Kingdom and the United States), although in some of these systems the carrier's name is customarily indicated.

31. In this context, it has been suggested that the International Subcommittee should consider which are the relevant elements for the identification of the carrier and what are the implications for the purpose of the identification of the carrier of a valid incorporation of the terms of a charter party in the bill of lading.

C. Rights of the carrier

32. The main issues concerning the rights of the carrier that have been considered thus far by the International Subcommittee include the following: when freight is earned and when it is payable; what is the effect of contractual frustration on the obligation to pay freight; whether the carrier has a right to withhold delivery of the goods until freight is paid; whether the carrier may exercise a lien in the cargo; to what extent the shipper may rely upon a cesser clause to avoid liability; whether the carrier can claim for deadfreight, demurrage and other charges in the same manner as freight, or whether this should depend on the transport document.

1. Freight

33. The meaning of "freight prepaid" and "freight collect" are largely of uniform interpretation, that is, "prepaid" denies the carrier the right to claim freight from the consignee, while "collect" means that the carrier may claim freight from the consignee (in Argentina, Canada, China, the Democratic People's Republic of Korea, Indonesia, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Turkey and the United States). There is also significant consistency in approach to liability for payment of freight, with the receiver being liable to pay the freight (in Canada, Germany, Hungary, Japan, Lebanon, Poland, Norway and Turkey), or liability prima facie resting with the shipper (in Canada, Hungary, the Netherlands and the United States), but otherwise depending on the terms of the contract (in Argentina, Australia, China, Italy, Japan, New Zealand and Spain). Intermediate holders may (in Canada) or may not (in Japan) be liable for freight.

34. Freight is predominantly considered to be earned when the carriage has been performed, unless the contract states otherwise (in Argentina, Australia, Canada, China, Indonesia, Italy, Japan, the Netherlands, New Zealand, Norway, Turkey, the United Kingdom and the United States). Similarly, freight is typically payable when it is earned (upon arrival) unless the contract states otherwise (in Argentina, Australia, Canada, China, Indonesia, Italy, Japan, the Netherlands, New Zealand, Norway, Turkey, the United Kingdom and the United States).

35. The effect of frustration varies: the carrier may retain a right to freight (in Italy) or the carrier may retain a right to freight only if it has been earned (in the United Kingdom); in the proportion that has been earned compared with total freight (in Hungary, Japan, Norway, Spain and the United States); and in the freezing of the freight obligation, so that, if freight is paid before the frustrating event, the carrier retains it, and if not the carrier has no right to claim payment of freight (in Australia and New Zealand).

2. Deadfreight, demurrage and other changes

36. The shipper's liability for deadfreight, demurrage and other charges depends on the contract (in Argentina, Australia, Canada, Japan, New Zealand, Norway and the United Kingdom), although in Italy the shipper is liable for deadfreight, and in Turkey the carrier may refuse delivery for non-payment of deadfreight and other charges in the same manner as freight. Cesser clauses are generally valid (in Australia, Canada, China, Italy, the Netherlands, Norway, Spain, Sweden, Turkey, the United Kingdom and the United States), with Indonesia being an exception.

37. The consignee would appear, unless the contract specifies otherwise, to be liable for deadfreight, demurrage and other charges (in Australia, Canada, Japan, the Netherlands, New Zealand, Norway and the United Kingdom), although in Norway the consignee is only liable for loadport demurrage where its amount is expressly stated on the bill of lading.

3. Lien

38. The right of a carrier to withhold delivery of goods until freight has been paid is, with few exceptions (in Argentina), widely recognized (in Australia, Canada, China, Germany, Hungary, Indonesia, Italy, Japan, Lebanon, the Netherlands, New Zealand, Norway, Poland, Spain, Turkey, the United Kingdom and the United States). The carrier's right is possessory in nature and typically does not continue after delivery of the goods (in Australia, Canada, New Zealand, Norway, Poland, the United Kingdom and the United States), with some exceptions (in Argentina, Germany, Italy and Lebanon), provided that the right is actively pursued (in Argentina and Italy).

39. Although in Japan general liens may be exercised, this is not generally the case (in Argentina, Italy, Lebanon, the Netherlands, Spain and the United States) or not the case unless clearly stated in the contract of carriage (in Australia, Canada, New Zealand, Norway and the United Kingdom).

D. Obligations of shipper, intermediate holder and consignee

1. Shipper

40. The shipper is obliged to ship clearly identifiable cargo and to provide an accurate description of the goods in the transport document (in Argentina, Australia, Canada, Germany, Indonesia, Japan, the Netherlands, New Zealand, Norway, the United Kingdom and the United States). Where the shipper packages goods, the shipper is obliged to package them adequately according to their nature (in Germany); to ship dangerous goods only with the carrier's consent (in Japan and Germany the obligation is merely to notify the carrier of the dangerous goods); where applicable, to conform with any requirements as to marking and packaging of dangerous goods (in Canada); to deliver the goods to the carrier in the manner agreed in the transport document and to pay freight, unless otherwise agreed, provided such agreement is clearly evident on the face of the transport document (in Japan).

2. Intermediate holder

41. Responses to the questionnaire did not elucidate the obligations of intermediate holders.

3. Consignee

42. The consignee is obliged to receive (in Canada, China, Hungary, Indonesia, Italy, Japan, the Netherlands, Norway, Poland, Spain, the United Kingdom and the United States) and remove (in Canada) the goods, even if they are damaged (in Argentina, Canada, the Netherlands, Poland, Spain and the United Kingdom) as long as they remain recognizable (in Canada and Poland), "retain their commercial identity" (in Australia, New Zealand and the United Kingdom) or except for "a total constructive loss" (in the United States). Receipt should be conducted in a timely (in Australia, Canada, New Zealand, Poland, the United Kingdom and the United States) and cooperative manner (in Argentina, Australia, Italy, the Netherlands, New Zealand, Norway, Poland, Spain, the United Kingdom and the United States). In the event goods are damaged beyond recognition, the consignee is obliged to provide whatever cooperation is necessary for the carrier to survey the goods (in Spain).

43. The carrier is obliged to accept instructions regarding delivery of the goods if given by an appropriate holder (in Australia, Canada, China, Japan, New Zealand, Poland, the United Kingdom and the United States) and to make delivery of the goods at the destination to the consignee (in Argentina, Australia, Canada, Indonesia, Italy, the Netherlands, New Zealand, Poland, Turkey, the United Kingdom and the United States). Where reefer units are involved, the New Zealand association also requested an additional obligation to provide (upon request) information on temperature recordings for the period the goods were in the carrier's custody.

E. Delivery and receipt of the goods at destination

44. The questions considered by the International Subcommittee included the following: under what circumstances a consignee may refuse to accept delivery of the goods; what, in those circumstances, is the proper course of conduct for the carrier to follow; and what is the appropriate procedure for delivery when the goods arrive before the transport document, as often happens in practice.

45. A carrier must deliver the goods to the person entitled to take delivery. If the carrier delivers the goods without the consignee producing the bill of lading, the carrier is liable for any losses that ensue (in Australia, Germany, the Netherlands, New Zealand, Spain, Turkey, the United Kingdom and the United States). The letter of indemnity is a separate contract indemnifying the carrier for such liability. Delivery under a letter of indemnity has no effect on the right of the person entitled to delivery to claim against the carrier (in Australia, Canada, Hungary, Japan, the Netherlands, New Zealand, Norway, Spain, Turkey, the United Kingdom and the United States).

46. Most participants at the first meeting of the International Subcommittee were in favour of a duty to be expressly laid on the consignee to accept delivery. It was also indicated that in that event it should be the carrier's duty to notify the consignee that the goods were available for delivery. In addition, it was felt that, if the consignee failed to accept delivery or no consignee appeared at the place of destination or for any other reason the carrier was not able to deliver, the contractual counterpart of the carrier was in principle financially responsible and must also provide instructions as to the disposal of the goods. It was also suggested that bills of lading should be subject to limitation periods so that after the passing of a certain period of time there would no longer be any right to claim under a bill of lading.

47. The International Subcommittee also examined the question of the appropriate course of conduct for a carrier

when a consignee did not attend at the discharge port to take delivery or refused to take delivery and under what circumstances the carrier might dispose of the goods.

48. A right of disposal exists in many national systems (in Argentina, Canada, Germany, Hungary, Indonesia, Italy, Japan, the Netherlands, New Zealand, Norway and the United States). The carrier may land the goods and process them through customs (in New Zealand), and warehouse them (in Argentina, Canada, China the Democratic People's Republic of Korea, Hungary, Indonesia, Italy, Japan, the Netherlands, New Zealand, Norway, Turkey, the United Kingdom and the United States). Some national systems instead require the carrier to deposit the goods with the competent judicial authority (in Indonesia, Italy, Japan and Spain).

49. Notice is to be provided (in Germany, Hungary, Italy and Japan) immediately (in Hungary, Italy and Japan) to the consignee (in Japan) or to the consignor (in Hungary and Italy). The cost of storage attaches to the goods (in Argentina and the United States), to the shipper (in Canada, Hungary and Japan) or the consignee (in Canada, China, the Democratic People's Republic of Korea, the Netherlands, Norway, the United Kingdom and the United States), assuming the consignee has become a party to the contract of carriage (in the Netherlands) or demands delivery or makes a claim thereunder (in Australia, New Zealand and the United Kingdom).

50. The carrier may sell or auction the goods after a certain time. The period is 60 days in China, 15 days in Hungary, 14 days in Japan, a "reasonable period" in Norway and 20 days in Spain. Goods are sold under authority of the court (in China, Indonesia, Japan and the Netherlands). The goods may be sold if the consignee's failure to cooperate is ongoing (in New Zealand) or they may be auctioned at will (in Japan).

F. Rights of disposal and the right to give instructions to the carrier

51. One of the features of transportation contracts is that the contractual counterpart to the carrier has the right to dispose of the goods. This right includes in particular the right to ask the carrier to stop the goods in transit, to change the place at which delivery is to take place and to deliver the goods to a consignee other than that indicated by the consignee in the transport document. Apart from these rights, it is recognized that the holder of such rights is also able to renegotiate new terms with the carrier, whereas it is understood that the carrier in those circumstances is free to reject or accept such changes in the contract. While international conventions in the field of maritime law (the Hague Rules and the Hamburg Rules) have not covered that issue so far, a number of instruments concerning other modes of transportation have done so and thereby provide at least a basis for possible further unification.

52. It has been suggested that the International Subcommittee should further examine the question of when the right of disposal and the right to give instructions to the carrier is effectively transferred, taking into account the type of documentary evidence of the contract of carriage used by the parties (e.g. bill of lading, a sea waybill or an electronic equivalent to either of the latter documents) and situations where no transport document has been issued. It has been also suggested that the International Subcommittee should consider which proof of identity a person should be required to produce in order to exercise the right of disposal and the right to give instructions to the carrier.

IV. Conclusion

53. The work carried out thus far by CMI in cooperation with the Secretariat has, as indicated above, focused on issues related to inspection and description of the goods in the transport document; content of the transport document; rights of the carrier; obligations of shipper, intermediate holder and consignee; delivery and receipt of the goods at destination; rights of disposal; and the right to give instructions to the carrier.

54. In the course of this work, it has been noted that, although bills of lading are still used, especially where a negotiable document is required, the actual carriage of goods by sea sometimes represents only a fragment of an international transport of goods. In the container trades, even a port-to-port bill of lading would involve receipt and delivery at some point not directly connected to the arrival of, or discharge from, the ocean vessel. Moreover, in most situations it is not possible to take delivery alongside the vessel. Furthermore, where different modes of transport are used, there are often gaps between mandatory regimes applying to the various transport modes involved. It has been proposed, therefore, that, in developing an internationally harmonized regime that covers the relationships between the parties to the contract of carriage for the full duration of the carrier's custody of the cargo, issues that

arise in connection with activities that are integral to the carriage agreed to by the parties and that take place before loading and after discharge should also be considered, as well as issues that arise under shipments where more than one mode of transport is contemplated. Furthermore, while the emphasis of this work, as originally conceived, was on the review of areas of law governing the transportation of goods that had not previously been covered by international agreement, it has been increasingly felt that the present, broad-based project should be extended to include an updated liability regime that would be designed to complement the terms of the proposed harmonizing instrument.

55. It should be noted, in that connection, that similar expectations were voiced at the thirty-second session of the Commission, when interest was expressed in the announced study that went beyond the liability of carriers and that would examine the interdependence among various contracts involved in the international carriage of goods and the need to provide legal support to modern contract and transport practices. It was stated that increasing disharmony in the area of international carriage of goods was a source of concern and that, in order to provide a certain legal basis to modern contract and transport practices, it was necessary to look beyond the liability issues and, if need be, reconsider positions taken in the past. Furthermore, it was said that various regional initiatives in the area of transport law ought to be examined and borne in mind in any future work in that area of law.[9]

56. Following the identification of issues and the preliminary discussions that took place at the first meeting of the International Subcommittee, it was agreed that a CMI working group would prepare a paper in which such issues were set out and possible solutions put forward, in some cases on an alternative basis, for discussion by the International Subcommittee.

57. The Commission may wish to take note of the progress made since its thirty-second session, when it requested the Secretariat to cooperate with CMI in gathering and analysing information on possible issues for future work on transport law. The Commission may wish to request that the Secretariat continue its cooperation with CMI with a view to presenting, at the next session of the Commission, a report identifying issues in transport law in respect of which the Commission might undertake future work and presenting the possible solutions that would have been discussed in the course of the consultations between CMI and the Secretariat, including, as appropriate, the conclusions that might be reached and suggestions that might be made at the colloquium on maritime law to be held in New York on 6 July 2000 in conjunction with the thirty-third session of the Commission.

Notes

[1] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17* (A/51/17).

[2] Ibid., para. 210.

[3] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17), para. 264).

[4] Ibid., para. 266.

[5] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 413.

[6] Ibid., para. 415.

[7] Ibid., para. 418.

[8] *CMI Yearbook 1998*, pp. 108-117.

[9] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 417.