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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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* Submission of this note was delayed because of its late receipt.

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II. Comments received from Governments and intergovernmental organizations

A. States

13. Greece

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(a) General Comments

1. The purpose of a new Convention for the carriage of goods wholly or partly by sea should be to further enhance the harmonization and unification of international trade law. Lack of uniformity due to the existing proliferation of international Conventions and domestic legislation in force in different jurisdictions inevitably detracts from commercial and legal certainty, which is a very important factor for all parties engaged in the international carriage of goods. However, a new Convention, in order to be broadly accepted by the international community, should also safeguard a fair balance of rights and liabilities and thus, fair allocation of risk between the parties to the contract of carriage. In this context, articles relating to the carrier's rights, liabilities and responsibilities are assigned particular importance.

2. Having emphasized the above, Greece would like to note the following specific comments:

(b) Specific comments

Liability of the carrier for loss, damage or delay (Chapter 5)

3. As regards the obligation of the carrier, we reiterate our reservations about two major changes:

- elimination of nautical fault from the list of the carrier's defences, even in cases related to pilot error (Article 18 (3));
- extension of the carrier's obligation to exercise due diligence in relation to the vessel's seaworthiness for the entire voyage (Article 15).

4. Due to the above new elements, the carrier will be exposed to greater liability under the new Convention compared to the existing international practice (i.e. Hague-Visby Rules), which means that there would be a shift in allocation of risk between the parties.

Limits of Liability (Chapter 12)

5. Having in mind that the above changes (elimination of nautical fault from the list of the carrier's defences and extension of carrier's obligation to exercise due diligence for the ship's seaworthiness) have been supported by a large majority of states, in the initial stages of the negotiations, Greece could follow the majority of the contracting parties, provided that these particular provisions should be taken into account during the debate on the limits of the liability as part of a package agreement.

6. In particular, Greece, in most of its interventions, had stated that the liability limits should not be increased from existing levels in the Hague-Visby Rules (SDR 666.67 per package or unit or SDR 2 per kilo of weight) as a counterbalance to the above-mentioned shift in the allocation of risk and liability towards the carrier.

7. This position is also justified by the fact that no evidence has been produced during the discussions of the UNCITRAL meetings to demonstrate that the Hague-Visby Rules limits are inadequate today to meet the vast majority of claims. Indeed, the limits are seldom invoked and this would support the perception that the limits are satisfactory. There is also no notable trend of attempts by cargo claimants to try and break the owners' right to limit liability. Moreover, if a shipper wishes to avoid limitation, he has the alternative choice to declare the value of the goods and pay ad valorem freight.

8. In this context, Greece was willing to think positively with respect to the first proposed compromise formula (in October 2007) for the adoption of limits in line with the levels of the Hamburg Rules (SDR 835 per package or unit or SDR 2.5 per kilo of weight) as a maximum combined with the deletion of other controversial provisions as an "overall package". However, Greece cannot support the new compromise figures (in Article 61 (1)) as agreed in the last session (January 2008) which provides for limits even higher than those of the Hamburg Rules (SDR 875 per package or unit or SDR 3 per kilo of weight).

Jurisdiction (Chapter 14) and Arbitration (Chapter 15)

9. Greece maintained serious concerns on the inclusion of the above two chapters in the new Convention. The absence of such provisions in the Hague-Visby Rules has not detracted from their widespread application or created difficulties of principle or practice. In contrast, the inclusion of provisions in the Hamburg Rules has militated against their use. There are, therefore, strong arguments for leaving commercial parties to determine dispute resolution arrangements most suited to their particular needs. Contracts for the carriage of goods are essentially a matter of private rather than public law, which in the modern era are in virtually all cases made between parties of similar bargaining strength who are almost invariably insured.

10. However, it could be considered as a satisfactory compromise decision that both chapters are entirely optional for ratifying states. Greece would reiterate its concerns about this approach which may in practice undermine the desired uniformity and legal certainty in international trade, even among contracting states of the new Convention.

Article 12. Period of responsibility of the carrier

11. The intention of subsections article 12(3) (a) and (b) was to ensure that a carrier was not able to contract out of the minimum period of responsibility, namely, between the time the goods are loaded on the ship until they are unloaded from the ship. However the words "on the ship" are missing from the subparagraphs. Their omission could lead to confusion and an interpretation that the carrier's mandatory period of responsibility extends outside of this period.

12. For these reasons, we propose the words “on the ship” to be inserted after “initial loading” and the words “from the ship” be inserted after “their final unloading” in article 12.3 (a) and (b) respectively.

Article 50. Goods remaining undelivered

13. According to that article, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take specific actions to store, or sell or even cause to destroy the goods, after having given notice to the consignee, the shipper or any other entitled person. However these notice requirements fail to comply with the relevant ones in articles 48 (b) (Delivery when a negotiable transport document or negotiable electronic transport record is issued) and 49 (d) (Delivery when a non-negotiable transport document that requires surrender is issued), in which there is a further obligation for the carrier first to be given instructions by the shipper. Considering the above, the specific clause requires further clarification.