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

Compilation of comments by Governments and intergovernmental organizations

Addendum

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II. Comments received from Governments and international organizations

A. States

11. Jordan

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(a) Comments on specific provisions

Article 1

1. In view of the fact that the Convention discusses international carriage wholly or partly by sea, a definition needs to be added of “partly” and the relation with other means of carriage.
2. Definitions: Add a definition of the term “dangerous goods” to the list of definitions as follows:

“goods classified as dangerous in accordance with the International Maritime Dangerous Goods Code (IMDG Code) or the agreed classifications issued by the States Parties to the Convention contained in the prevailing international rules”.
3. Definitions: Add a definition of the term “receipt” to the list of definitions as follows:

“Receipt: Receipt of goods by a performing party or its representative and its undertaking to deliver them in accordance with the conditions of carriage”.
4. Article 1, paragraph 2, uses and defines the term “volume contract”, but what is the contract that is the opposite of a volume contract since, if the contract is not a volume contract, what term expresses it?
5. Definitions: paragraph 5, Carrier: “means a person that enters into a contract of carriage with a shipper”. The definition needs to be supplemented as follows:

“Carrier: means a person that undertakes to transport goods from one place to another in return for a fee and that is one of the parties to a contract of carriage”.
6. Definitions: There is a confusion in the concept of performing party in paragraph 6 (a) and the maritime performing party in paragraph 7 of the same article since it is the port that performs these roles within the confines of the port by virtue of the laws and regulations that govern its working and not by virtue of acting on behalf of the carrier.
7. Under the definition contained in Article 1, paragraph 7, the maritime performing party is not empowered to issue a transport document in the name of the carrier because it is the carrier alone that issues a transport document, contrary to what is said in Article 1, paragraph 14 (b). This must be corrected.

8. Definitions: paragraph 8, Shipper: The following amendment is suggested:
- “Shipper: a person that sends goods to a carrier so that they may be transported from one place to another and that is one of the parties to a contract of carriage”.
9. There is nothing to be gained from mentioning the documentary shipper in article 1, paragraph 9, and what follows without stating its role and obligations.
10. Definitions: paragraph 14 (a), Transport document “evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage”. Better wording would be: “evidences the carrier’s or a performing party’s receipt of goods as the subject of a contract of carriage”.
11. Definitions: Amend article 1, paragraph 14, by adding a subparagraph (c) as follows and making the same amendment to Article 18:
- “(c) Evidences when goods are acquired by/delivered to the consignee”.
12. Definitions: paragraph 16, Non-negotiable transport document: “a transport document that is not a negotiable transport document”. The following amendment is suggested:
- “Non-negotiable transport document: a transport document that states the name of a single consignee when it is not permitted for any other person to receive the goods”.
13. The definition of “ship” in Article 1, paragraph 25, does not qualify “vessel”. It would be more accurate to correct the definition by adding the term “seaworthy”: “Ship means any seaworthy vessel used to carry goods”. This agrees with the wording of Article 15 (a).

Article 2

14. Article 2. Interpretation of this Convention is as follows:
- “In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.”
15. It would be more correct linguistically and a more common term, if article 2 were to state:
- “In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the principle of good faith in international trade”.

Article 3

16. Add the phrase “or it has been used by them previously” at the end of article 3 so that it reads as follows:
- “The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 20, paragraph 2; 24, paragraphs 1 to 3; 38, subparagraphs 1 (b), (c) and (d); 42, subparagraph 4 (b); 46; 50, paragraph 3; 53, subparagraph 1 (b); 61, paragraph 1; 65; 68; and 82, paragraphs 2 and 5, shall be in writing. Electronic communications may be

used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated or it has been used by them previously.”

Article 4

17. Article 4. Applicability of defences and limits of liability needs to be redrafted because it is not clear.

Article 6

18. Article 6. Specific exclusions. There is no justification for excluding chartered ships from the application of this convention, especially if they have been chartered from the carrier itself. It is dangerous to exclude charter parties from the system.

Article 12

19. Article 12, paragraph 2 (b). End of the period of responsibility of the carrier when the goods are handed over to an authority or a third party. Drafted in this way, delivery cannot be effected by the port because in many cases the period of responsibility of the carrier continues: for example, dangerous goods that arrive under false addresses, goods that are unloaded and still in the custody of the carrier because of the mixing of their trademarks and numbers because there are no individual supporting documents, goods that are in transshipment or containers that have been returned to the port empty and are owned by the carrier.

20. Article 12 contains several gaps in the period of responsibility and it is difficult to apply it without other conventions. It would be better to use as a basis the provisions on the period of responsibility contained in the Hamburg Rules.

Article 13

21. Article 13 of the Convention, on transport beyond the scope of the contract of carriage, is unintelligible and needs to be made clearer and more precise. How can the carrier be permitted to issue a transport document that is not covered by the contract of carriage and in respect of which it does not assume the obligation to carry the goods and apply to it a period of responsibility for the contract of carriage?

Article 14

22. Paragraph 1. This paragraph makes the carrier play the role of the port. This text is unrealistic and unacceptable because a large proportion of goods transported by sea is stored and not delivered directly.

23. Paragraph 2. This paragraph eliminates the role of the port by enabling the shipper and the carrier to play the role of the port simply by their agreement. This may be understandable where the carrier owns the port and manages it itself, but such situations are comparatively rare.

24. Add the phrase “stamp in order to distinguish from other goods” after the word “stow” in article 14, paragraph 1, of the Convention so that it reads as follows:

“1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 27, properly and carefully receive, load, handle, stow, stamp in order to distinguish from other goods, carry, keep, care for, unload and deliver the goods”

25. Article 14 is at variance with the international rules on responsibility during unloading, carriage and shipment.

Article 15

26. This condition applies only at the beginning of a voyage.

27. This Convention does not define the nature of the due diligence to be exercised under article 15, for example.

Article 16

28. Add the phrase “provided that a statement is drafted containing the reasons that prompted the carrier to take such measures and no measures less harmful to the goods have been taken provided this is by the relevant authorities” at the end of article 16 of the Convention, on goods that may become a danger.

Article 18

29. Basis of liability, subparagraph 3 (m) on loss or damage of goods (“Reasonable measures to save or attempt to save property at sea”). This subparagraph is too general: why is loss or damage of goods so much outweighed by an attempt to save them at sea?

30. Basis of liability. Paragraphs 4 and 5 should be inserted as a single point: there is no need to separate them as they cover the same exclusion.

Article 20

31. Paragraph 1, subparagraph (a). This subparagraph gives the maritime performing party the additional obligation of carriage to another state, contrary to the definition of maritime performing party in article 1, paragraph 7, which restricts its activity within the port. This should be corrected.

Article 21

32. Paragraph 1: “If the carrier ... their liability is joint and several”: The text needs to be corrected in the Arabic version by the use of the legal term: “their liability is joint and several”.

33. Add the word “liability” after the words “joint and several” in article 21, paragraph 1, of the Convention, on joint and several liability, so that it reads as follows:

“1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several liability but only up to the limits provided for under this Convention.”

Article 22

34. Article 22 is open to interpretation and may give rise to many differences of opinion.

Article 23

35. Calculation of compensation. There is a difference in price between the time of delivery and the time of purchase, particularly if the delivery time has been protracted. It is preferable for it to be restricted to whichever term is preferable to remedy the loss to the owner of the goods since the price at the time of purchase is much greater than at the time of delivery and results in loss to their owner because of delayed delivery or the changed route of the ship for commercial reasons which are not compelling.

Article 27

36. Carriage preceding or subsequent to sea carriage. This article needs clarification.

Articles 29 and 30

37. Delete the word “reasonably” as it weakens the text.

Article 36

38. Nothing is to be gained by mentioning it since it only complicates the issue.

Article 37

39. It is not possible to allow goods to be shipped without a transport document and it is preferable for this article to be amended or deleted.

40. In addition to the information mentioned, this article should also mention information on the document number and the number of original copies, as well as information on the statement that this document has been issued in accordance with the provisions of this Convention, the name of the insurance company, the number and date of the insurance contract and what the parties to the contract agree to so as not to conflict with the provisions of the Convention or the relevant domestic legislation.

Article 38

41. Add a subparagraph (e) to article 38, paragraph 1, Contract particulars, as follows:

(e) A description of the guarantor of the dangerous goods.

Article 39

42. Article 39, paragraph 3, needs to be re-examined as it is established that the signatory is the carrier and the burden of proof is on the person who initiates a dispute.

Article 41

43. The provision contained in article 41, paragraph 2, is not clear because the phrase “fail to indicate its significance” is not clear.

Article 42

44. Qualifying the information relating to the goods. Subparagraph 1 (a): It is established that the carrier shall qualify the information relating to the goods only if it knows it to be false. However, it should first request the shipper to rectify the information so that it corresponds with the goods. It would be preferable to draft a general rule on qualifications that reflect goods.

Article 43

45. Evidentiary effect of the contract particulars. Paragraph (c) (ii): It is not possible to allow the carrier to transport containers and exclude the identifying numbers of the container seals since this undermines the very basis of the operation and opens the way to changing and smuggling goods, transporting prohibited or dangerous items by such interference. Experience proves this and there are still some cases before the Jordanian courts precisely because of this.

Article 44

46. Does this term not state that delivery of the freight has been paid?

Article 47

47. Article 47 (b). It is not possible to allow the carrier to plead ignorance of the address of the shipper. If the addresses of everyone referred to in this paragraph are unknown, who knows them? What is more important, however, is that the paragraph does not refer to the fate of the goods, especially if the goods cannot be disposed of because of their nature, specifications or dangerousness.

48. Paragraph (d). It is understood from this article that the goods have been unloaded from the ship at the intended port. It would be preferable for them to remain on the same ship in order to be returned to their source because of the absence of the address of the consignee.

Article 49

49. Paragraphs (e), (f), (g) and (h) are obscure and require clarification.

Article 54

50. Paragraph 2. Carrier’s execution of instructions. Delete the phrase “in any event”.

Article 56

51. This article allows variations to be made to the contract of carriage and particularly those referred to in Article 52, subparagraphs 1 (b) and (c). This opens the way to smuggling and the carriage of prohibited and dangerous goods under false names, and thus the extinction of liabilities since, while this may be acceptable in the event of error, it also results in responsibility to return the goods if such variations result in something that prevents the goods being delivered.

Article 59

52. The authorizations of this article allow transfer from one party to another, but how can transfer be permitted without the approval of the transferee? The danger of this can be seen in the electronic registers.

53. This article is contrary to the principle of transfer of rights since in law transfer requires certain conditions that are not applied in this article and this will create a sort of contradiction in the interpretation if the legal term transfer of rights is not applied in the meaning contained in this Convention, which should replace any other term so that there is no confusion, since there is a difference between transfer and transfer by endorsement.

54. The transfer provisions contained in the civil code and their effects differ from the provisions on transfer by endorsement originally contained in the commercial code. There is confusion in this article between transfer and transfer by endorsement.

Article 61

55. Clearly “the date of judgement or award” should be amended to become “the date on which legal proceedings are initiated or when the case is referred for arbitration” because this is fair in that the value will probably change between the date on which legal proceedings are initiated and the date of judgement, for example (and this accords with the principles found in civil proceedings).

56. Limits of liability. Paragraph 3 stipulates the value of the currency and the Special Drawing Right regardless of the loss to the right holder. Also, the provision contained in Article 62 because in many cases the transportation fees may not be equivalent to the price of the goods.

Article 63

57. Article 63 needs to be re-examined in order to make it clearer.

Article 64 and 65

58. Articles 64 and 65 conflict with local legislation, which allows one year.

Article 65

59. Extension of time for suit. Gives the person against which a claim is made the right to extend the running of the period at any time during that period. The effect of this is that the claimant is unable to proceed.

Article 69

60. Paragraph 2. It is not possible for any person who is not a signatory to a contract to be bound by the provisions of that contract (rights and obligations) and it follows that it is not possible for any person to be bound by what the parties have agreed even if the jurisdiction of a court has been discussed.

Article 70

61. Article 70 needs to be studied and clarified according to the contract of carriage.

Article 72

62. Article 72 gives the impression that one has to enter into this Convention in order to protect the owner of goods and the holder of other rights because the text clearly removes powers from the courts of the state taking the provisional or protective measures.

Article 79

63. Article 79 opens up wide scope for arbitration.

Article 82

64. Special rules for volume contracts. Its place in the Convention must be changed in view of the fact that these are substantive provisions pertaining to the substance of the Convention and it would be wrong to place them after the general provisions, which they should precede.

Article 83

65. Special rules for live animals. This article does not contain reasons for excluding the obligations of the carrier or for not issuing transport documents containing quantity, type, weight, destination, etc. However, what is more important is that there should be no such exclusion and that clear mention should be made of compliance with other obligations, such as requiring a certificate of freedom from disease from the country of origin.

Article 91

66. Article 91 requires the approval of the Jordanian Parliament.

(b) General observations

67. The draft of this Convention requires a state that ratifies it to denounce other international conventions referred to in Chapter 18 – Final Clauses, Article 91 and their ramifications. This requires close examination of the subject with the specialized authorities in order to avoid any adverse effect resulting from the denunciation of those conventions if Jordan were a signatory to it.

68. Need to assess the legal effect: Would becoming a signatory to this Convention amend certain laws and regulations, such as the electronic registers whose legality and approval are still under study in Jordan. Our experience has shown how easy it

is to falsify and change the contents of such registers. Article 2 of the draft Convention stipulates the need to act in accordance with it.

69. The obligations imposed on both the carrier and the shipper should be clear in order to ensure that a clear distinction is made between the identity of the shipper and the consignee and, in the event of the absence of the consignee, that the goods are returned to their source, preventing smuggling and the transportation of prohibited or dangerous goods from one country to another under false addresses.

70. The negotiable electronic transport document is inconsistent with Jordanian banking legislation and negotiable documents are not permitted.

71. The maritime transport document known as the bill of lading is not a contract but evidences the existence of a contract, which is shown by the conditions on the bill of lading, which are regulated by conventions of every state, if Hamburg or Visby are applied, whereas in this document it is not clear that any condition applies.

72. This Convention does not contain any provisions on a transport licence on the basis of which a person concludes a contract of carriage.
