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**United Nations Commission on  
International Trade Law**  
**Working Group III (Transport Law)**  
**Twenty-first session**  
Vienna, 14-25 January 2008

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

**Proposal by the delegations of Italy, the Republic of Korea and the  
Netherlands to delete any reference to “consignor” and to simplify  
the definition of “transport document”**

**Note by the Secretariat\***

In preparation for the twenty-first session of Working Group III (Transport Law), the Governments of Italy, Republic of Korea and the Netherlands submitted to the Secretariat the attached proposal.

The document in the attached annex is reproduced in the form in which it was received by the Secretariat.

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\* The late submission of the document reflects the date on which the proposals were communicated to the Secretariat.



## Annex

### **Proposal by the delegations of Italy, the Republic of Korea and the Netherlands to delete any reference to “consignor” and to simplify the definition of “transport document”**

1. Under the draft convention, on the cargo side, three persons are defined that are involved in the commencement of the contract of carriage: the shipper, the documentary shipper and the consignor. Broadly speaking, the shipper is the contractual counterpart of the carrier; the documentary shipper is, for all practical purposes, the FOB seller and the consignor is the person that actually delivers the goods to the carrier at the place of departure. In fact, the consignor may be a truck driver. The question arises whether all three of these persons need to be dealt with in the draft convention.

2. It is obvious that the draft convention cannot do without the shipper. Nor can the documentary shipper be omitted, because this person, without being the contractual counterpart of the carrier, assumes many of the shipper’s rights and obligations. The shipper and the documentary shipper are, by definition, two different persons. The consignor, however, may be the same person as the shipper or the documentary shipper. Further, if the consignor is not the same person, it may be expected to act on the instruction of, or on behalf of, the shipper or the documentary shipper. In terms of article 35,<sup>1</sup> the consignor is always “any other person, including employees, agents and subcontractors, to which it (*i.e. the shipper and, pursuant to article 34, also the documentary shipper*) has entrusted the performance of any of its obligations”. In terms of article 1, paragraph 6 (b), a consignor is “a person that is retained, directly or indirectly, by a shipper (*or*) by a documentary shipper ... instead of by the carrier”.

3. It may be concluded from paragraph 2 above that the consignor is an implementer of obligations of the shipper or documentary shipper. The shipper or the documentary shipper is responsible for its acts and omissions. Furthermore, nowhere in the draft convention is provision made for any obligation that is placed separately upon the consignor. This means that, unless the consignor is the shipper or the documentary shipper, a consignor has no obligations of its own<sup>2</sup> under the convention.

4. The consignor has, however, one right under the draft convention. As the actual deliverer of the goods to the carrier, it is, pursuant to article 37, entitled to obtain a receipt upon its delivery of the goods to the carrier. It seems that for this legal purpose only, the concept of “consignor” is introduced in the draft convention. In the view of the delegations of Italy, the Republic of Korea and the Netherlands, this purpose is of insufficient importance for retaining the concept of “consignor” in the draft convention. The delegations listed above would like to point out that:

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<sup>1</sup> The article numbering in this proposal is that of A/CN.9/WG.III/WP.101.

<sup>2</sup> Therefore, the reference to the consignor in article 82, paragraph 2 (a) and (b) (validity of contractual terms), must be regarded as a drafting error.

- the principal that the consignor, i.e. the shipper or, with the shipper's consent, the documentary shipper, is already entitled to a transport document, in which, according to standard maritime practice, the receipt function is integrated;
- no practical difficulties are reported on the issue of a receipt for the consignor that might require that this subject be dealt with on a uniform basis in a convention; and
- if and to the extent that at the national or local level there are such difficulties, they most probably could be more appropriately dealt with at such national or local level. In this regard, it must be noted that the convention has left matters of agency to national law generally.

5. An additional advantage of deleting the concept of "consignor" in the draft convention is that confusion with other transport conventions and some national law would be avoided. In the Convention for the Unification of Certain Rules for the International Carriage by Air ("the Montreal Convention") and the Uniform Rules concerning the Contract for International Carriage of Goods by Rail, Appendix to the Convention concerning International Carriage by Rail, as amended by the Protocol of Modification ("CIM-COTIF 1999"), the term "consignor" is used as meaning the contractual counterpart of the carrier. Some national laws do the same or use the term "consignor" when a reference to the FOB seller is meant.

6. The entitlement of the consignor to obtain a receipt is the only reason that a split is made in the definition of "transport document" between transport documents that are receipts only and transport documents in which the receipt function is integrated with the other function of the document, namely evidence of the contract of carriage. As a result, when the concept of consignor is omitted from the draft convention, the definition of transport document can be simplified as well. Then, the "receipt only" function of the transport document is no longer needed under the convention. If the definition of transport document is adjusted accordingly, this definition would again follow the current practice of integration of the receipt function and evidence of contract function in maritime transport documents. In addition, maybe even more important, the understanding of several articles of chapter 8 would improve, because it is doubtful whether those articles are wholly appropriate for a transport document that is receipt only.

7. In the view of the delegations of Italy, the Republic of Korea and the Netherlands, removal of the concept of "consignor" from the draft convention contributes to making the convention less complicated. This removal also makes it possible to simplify the term "transport document" and to align this term with actual maritime practice. By doing so, the quality of the convention as a whole will be increased. For this reason, it is proposed to:

- (a) delete article 1, paragraph 10 (definition of "consignor")
- (b) request the Secretariat to
  - adjust article 1, paragraphs 15 and 19 (definitions of "transport document" and "electronic transport record") to the effect that such document or record both evidence receipt of the goods under a contract of carriage and evidence or contain the contract;

- adjust article 37 to the effect that the right of the consignor to obtain a receipt is removed;
  - adjust any further article wherein a reference to “consignor” is made,<sup>3</sup> either by deleting the term “consignor”, or, where this word is just descriptive, to find appropriate replacement language.
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<sup>3</sup> These articles are: articles 1, paragraph 6 (b) (definition of performing party), 7 (application to certain parties), 12, paragraph 3 (hand over of goods to authorities), 33 (a) (dangerous goods), 35 (liability of shipper for other persons), 41, paragraph 3 (deficiencies in contract particulars) and 82, paragraph 2 (a) and (b) (validity of contractual terms).