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United Nations Commission on International Trade Law

Working Group III (Transport Law)
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New York, 15-26 April 2002

Provisional Agenda

1. Election of officers
2. Adoption of the agenda
3. Preparation of a draft instrument on the carriage of goods by sea
4. Other business
5. Adoption of the report

Notes on the provisional agenda

1. At its twenty-ninth session, in 1996,¹ the Commission 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. At that session, the Commission had been informed that existing national laws and international conventions had left significant gaps regarding various issues. These gaps 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

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

² *Ibid.*, para. 210.

³ *Ibid.*, para. 211.

3. At that session, the Commission also decided that the Secretariat should gather information, ideas and opinions as to the problems that arose in practice and possible solutions to those problems, so as to be able to present at a later stage a report to the Commission. It was agreed that 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 International Maritime Committee (CMI), ICC, the International Union of Marine Insurance (IUMI), the International Federation of Freight Forwarders Associations (FIATA), the International Chamber of Shipping (ICS) and the International Association of Ports and Harbors.⁴

4. 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.

5. 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.⁵

6. At that session, it was also reported that the CMI 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

7. At its thirty-third session, in 2000, the Commission had before it a report of the Secretary-General on possible future work in transport law (A/CN.9/476), which described the progress of the work carried out by CMI in cooperation with the Secretariat. It also heard an oral report on behalf of CMI. In cooperation with the Secretariat, the CMI working group had launched an investigation based on a questionnaire covering different legal systems addressed to the CMI member organizations. It was also noted that, at the same time, a number of round-table meetings had been held in order to discuss features of the future work with international organizations representing various industries. Those meetings showed the continued support for and interest of the industry in the project.

8. In conjunction with the thirty-third session of the Commission in 2000, a transport law colloquium, organized jointly by the Secretariat and CMI, was held in New York on 6 July 2000. The purpose of the colloquium was to gather ideas and expert opinions on problems that arose in the international carriage of goods, in particular the carriage of goods by sea, identifying issues in transport law on which the Commission might wish to consider undertaking future work and, to the extent possible, suggesting possible solutions.

9. On the occasion of that colloquium, a majority of speakers acknowledged that existing national laws and international conventions left significant gaps regarding issues

⁴ Ibid., para. 215.

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

⁶ Ibid., para. 415.

such as the functioning of a bill of lading and a seaway bill, the relationship 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 provide financing to a party to a contract of carriage. There was general consensus that, with the changes wrought by the development of multimodalism and the use of electronic commerce, the transport law regime was in need of reform to regulate all transport contracts, whether applying to one or more modes of transport and whether the contract was made electronically or in writing. Some issues raised for consideration in any reform process included formulating more exact definitions of the roles, responsibilities, duties and rights of all parties involved and clearer definitions of when delivery was assumed to occur; rules for dealing with cases where it was not clear at which leg of the carriage cargo had been lost or damaged; identifying the terms or liability regime that should apply as well as the financial limits of liability; and the inclusion of provisions designed to prevent the fraudulent use of bills of lading.

10. At its thirty-fourth session, in 2001, the Commission had before it a report of the Secretary-General (A/CN.9/497) that had been prepared pursuant to the request by the Commission.⁷

11. That report summarized the considerations and suggestions that had resulted so far from the discussions in the CMI International Subcommittee. The details of possible legislative solutions were not presented because they were currently being worked on by the Subcommittee. The purpose of the report was to enable the Commission to assess the thrust and scope of possible solutions and decide how it wished to proceed. The issues described in the report that would have to be dealt with in the future instrument included the following: the scope of application of the instrument, period of responsibility of the carrier, obligations of the carrier, liability of the carrier, obligations of the shipper, transport documents, freight, delivery to the consignee, right of control of parties interested in the cargo during carriage, transfer of rights in goods, the party that had the right to bring an action against the carrier and time bar for actions against the carrier.

12. The report suggested that consultations conducted by the Secretariat pursuant to the mandate it received from the Commission in 1996 indicated that work could usefully commence towards an international instrument, possibly having the nature of an international treaty, that would modernize the law of carriage, take into account the latest developments in technology, including electronic commerce, and eliminate legal difficulties in the international transport of goods by sea that were identified by the Commission. Considerations of possible legislative solutions by CMI were making good progress and it was expected that a preliminary text containing drafts of possible solutions for a future legislative instrument, with alternatives and comments, would be prepared by December 2001.

13. After discussion, the Commission decided to establish a working group (to be named "Working Group on Transport Law") to consider the project. It was expected that the Secretariat would prepare for the Working Group a preliminary working document containing drafts of possible solutions for a future legislative instrument, with alternatives and comments, which was under preparation by CMI.

14. As to the scope of the work, the Commission, after some discussion, decided that the working document to be presented to the Working Group should include issues of liability. The Commission also decided that the considerations in the Working Group should

⁷ *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/56/17)*, paras. 319-345.

initially cover port-to-port transport operations; however, the Working Group would be free to study the desirability and feasibility of dealing also with door-to-door transport operations, or certain aspects of those operations, and, depending on the results of those studies, recommend to the Commission an appropriate extension of the Working Group's mandate. It was stated that solutions embraced in the United Nations Convention on the Liability of Transport Terminals in International Trade (Vienna, 1991) should also be carefully taken into account. It was also agreed that the work would be carried out in close cooperation with interested intergovernmental organizations involved in work on transport law (such as UNCTAD, ECE and other regional commissions of the United Nations and the Organization of American States (OAS)), as well as international non-governmental organizations.

15. The Working Group is composed of all States members of the Commission. These are:

Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, the former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, and Uruguay.

Item 1. Election of officers

16. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Preparation of a draft instrument on the carriage of goods by sea

17. The Working Group will have before it, and may wish to use as a basis for its deliberations, a note by the Secretariat discussing the carriage of goods by sea (A/CN.9/WG.III/WP.21).

18. The above-mentioned will also be accessible on the UNCITRAL website (www.uncitral.org).

Item 5. Adoption of the report

19. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fifth session of the Commission (to be held in New York from 17 to 28 June 2002, instead of being held from 10 to 28 June 2002, as originally scheduled).

Dates and scheduling of meetings

20. The session of the Working Group will take place from 15 to 26 April 2002 at the United Nations Headquarters, New York. There will be eight working days available for consideration of the agenda items at the session. No formal meeting will be scheduled for Thursday, 25 April, to allow for the preparation of the draft report of the session, which will be adopted on Friday, 26 August. Meeting hours will be from 10.00 to 13.00 and from 15:00 to 18:00, except on Monday, 15 April 2002, when the session will commence at 10.30 a.m.