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**United Nations Commission on
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Working Group III (Transport Law)
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Preliminary draft instrument on the carriage of goods [by sea]

Proposal by Canada

Note by the Secretariat

In preparation for the tenth session of Working Group III (Transport Law), during which the Working Group is expected to proceed with its reading of the draft instrument contained in document A/CN.9/WG.III/WP.21, the Government of Canada, on 20 August 2002, submitted the text of a proposal concerning the scope and structure of the draft instrument for consideration by the Working Group. The text of that proposal is reproduced as an annex to this note in the form in which it was received by the Secretariat.

* The date of submission of the document reflects the date at which the proposal was received by the Secretariat.

Annex. Proposal by Canada

1. Canada welcomes this new initiative by UNCITRAL to promote the cause of harmonization of international law in a field that can be best described as a legal medley. Our gratitude also goes to the Comité Maritime International (CMI) for its immense contribution to this cause, not only in connection with the present subject, but also in the many other areas of international maritime law.
2. We also welcome the results of the 9th session of the Working Group on Transport Law that met in April 2002 in New York. As a first meeting on the subject, the debate was preliminary, focusing largely on conceptual issues, in particular, the scope of application of the draft instrument. As noted in the report of the Working Group on this meeting (A/CN.9/510), there was a general consensus that the purpose of its work was to end the multiplicity of the regimes of liability applying to the carriage of goods by sea and also to adjust maritime transport law to better meet the needs and realities of international maritime transport practices. The Working Group placed considerable emphasis on the “maritime aspects” of this project and Canada wholeheartedly agrees with that approach.
3. At the same time, the Working Group recognized that there is considerable interest and need to examine multimodal issues and that it was therefore appropriate to study both a strictly maritime regime, on a port-to-port principle, and a regime extended also to land transport, a “multimodal regime”, on a door-to-door principle, without taking a decision at this stage on the scope of the future instrument.
4. Both approaches received support as well as objections. Canada indicated its support for the development of a port-to-port instrument not because we do not recognize the reality of the widespread practice of door-to-door transport, but because we strongly believe that:
 - a) the initial objective of CMI to focus first on restoring uniformity of international law in the marine mode was the right one, and that the introduction of harmonized rules in areas which have not yet been regulated internationally (e.g. electronic documents) was of great importance;
 - b) that this objective should not be delayed or jeopardized by extending the scope of the work of the Working Group to other modes of transport; and
 - c) that a new instrument developed strictly for the marine mode would have better prospects of being widely adopted, than if it was an instrument designed to regulate also other modes, hitherto subject to national law in most countries, save for those mainly European countries where international conventions for other modes are currently in effect.
5. It was evident that those who supported the extension of work to include rules for other modes, on a door-to-door principle, were equally convinced that that is the right approach for the Working Group to pursue. They argued that the transport concepts of today and tomorrow especially in the field of container transport require a fresh approach, which could give added value to the future instrument, although it would be maritime in its genesis.
6. Thus, it seems to us that no useful purpose would be served at this juncture by restricting the scope of work in the Working Group to only one approach, to the exclusion of the other. If this premise is accepted, then the Working Group must

look for ways of bridging the gap between the port-to-port and door-to-door approaches. Clearly, this is a policy dilemma that should be given sufficient time for discussion at the September meeting, perhaps early on in the session before the Working Group resumes consideration of the draft articles, with the view of reaching a consensus on the future direction of work in the Working Group.

7. The following three (3) options could, in our view, be examined as the basis of a possible consensus:

Option 1

8. Continue to work on the existing draft instrument, including Article 4.2.1, but add a **reservation** that would enable contracting States to decide whether or not to implement this Article and the relevant rules governing the carriage of goods preceding or subsequent to the carriage by sea.

Commentary

a) *This option would advance the objective of restoring uniformity of law in the marine mode, and would establish it in other modes, for those States that wish to pursue that goal. At the same time, States that do not share that goal would still be part of the new marine regime, and possibly in the future could revoke their reservation and apply the instrument fully.*

b) *By declaring their reservation at the time of ratification, there could be no confusion as to which contracting States apply all provisions of the instrument and which States reserved on the application of the instrument to inland carriage under Article 4.2.1.*

Option 2

9. Continue to work on the existing draft instrument, including Article 4.2.1 but insert "**national law**" after "international convention" (in paragraph 4.2.1.b).

Commentary

a) *Again, this option would provide an important signal to those States that are interested in the development of a new regime for the marine mode, leaving the rules for other modes to national law. It is recognized that under this option it would be more difficult to establish, at any point in time, what law applies in any contracting State – a mandatory international convention for inland carriage or national law - since there would be no record of any declaration to that effect.*

b) *In both **Option 1 and 2**, Article 4.2.1. could also be subject to further elaboration regarding the liability for non-localised damages.*

Option 3

10. Revise the existing draft instrument in a manner that would establish:

Chapter 1 - definitions and all provisions common to Chapters 2, 3 and 4;

Chapter 2 - provisions governing carriage of goods by sea (i.e. port to-port);

Chapter 3 - provisions governing carriage of goods by sea **and** by other modes before or after carriage by sea (i.e. door-to-door);

There seem to be two basic models for this purpose:

- a) uniform system – a single regime that applies equally to all modes of transport involved in the carriage of goods from door-to-door;*
- b) network system – same as in (a) above, but with the proviso that the uniform system is displaced where an international convention is applicable to the inland leg of a contract for carriage of goods by sea, and it is clear that the loss or damage occurred solely in the course of the inland carriage.*

Chapter 4 - final clauses and reservations, including a provision for **express reservations** for:

- . **Chapter 2** for those contracting States that wish to implement the new instrument for multimodal carriage of goods (door-to-door regime); or
- . **Chapter 3** for those States that wish to implement the new instrument only for the carriage of goods by sea (port-to-port regime).

Commentary

This is a more robust option designed to:

- a) make a major step in harmonization of international law for carriage of goods by accommodating both the port-to-port and door-to-door approaches in Chapter 2 and Chapter 3, respectively. Effectively, there would be two separate conventions in a single instrument, sharing those provisions that would be common to both Chapters. Under this option, it would be abundantly clear which contracting States adhere to the marine regime in Chapter 2 and which adhere to the multimodal regime in Chapter 3.*
- b) improve the prospects of long-term uniformity since States adhering only to Chapter 2 could join Chapter 3 by simply revoking their reservation on the latter. This may be a key difference between Option 3 and Option 1 where revoking that reservation may be complicated by different policy considerations, possibly requiring a decision whether or not to adopt an international convention for inland carriage to support Article 4.2.1. Moreover, although these conventions are rather regional in nature, and limited in number, there is no way of predicting if other regional conventions will be adopted in the future. They are not likely to be uniform and thus importing them into this instrument by virtue of Article 4.2.1 may not advance the cause of international uniformity for carriage of goods.*

11. If it were decided to adopt a “network system” in Chapter 3, then presumably the marine regime in that Chapter could be identical to Chapter 2, thus achieving the widest possible uniformity of law in the marine mode. Under that scenario, it would be possible to simplify **Option 3** as follows:

Chapter 1 - definitions and all provisions common to Chapters 2, 3 and 4;

Chapter 2 - provisions governing carriage of goods **by sea** (i.e. port to-port);

Chapter 3 - provisions governing carriage of goods **by other modes** before or after carriage by sea (i.e. door-to-door);

Chapter 4 - final clauses and reservations, including a provision for **express reservation for Chapter 3** for those contracting states that wish to implement the new instrument only for the carriage of goods by sea (i.e. only for port-to-port).

Summary

12. This paper raises issues that go beyond the scope of a conceptual paper, which is the sole purpose of this submission to the Working Group. Nevertheless, we hope that it will assist in the consideration of the various policy options that the Working Group is facing and that it will facilitate the debate, at this or the next session in the spring of 2003, leading to a consensus along a path that has the widest possible support and that can truly achieve the overriding objective of this initiative - to end the multiplicity of the regimes of liability applying to the carriage of goods by sea.