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**United Nations Commission
on International Trade Law**
Working Group III (Transport Law)
Eleventh session
New York, 24 March-4 April 2003

Provisional agenda

1. Election of officers.
2. Adoption of the agenda.
3. Preparation of a draft instrument on transport law.
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
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), the International Chamber of Commerce (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

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.⁶

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.⁷

7. At its thirty-third session, in 2000,⁸ 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. On the occasion of that colloquium, a majority of speakers acknowledged that existing national laws and international conventions left significant gaps regarding issues 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.

9. At its thirty-fourth session, in 2001,⁹ 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. That report summarized the considerations and suggestions that had resulted so far from the discussions in the CMI International 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, the period of responsibility of the carrier, the obligations of the carrier, the liability of the carrier, the 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.

10. 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.

11. At its thirty-fourth session, the Commission decided to entrust the project to the Working Group on Transport Law.¹⁰

12. 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 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 the United Nations Conference on Trade and Development (UNCTAD), the Economic Commission for Europe (ECE) and other regional commissions of the United Nations, and the Organization of American States (OAS), as well as international non-governmental organizations.¹¹

13. At its thirty-fifth session, in 2002,¹² the Commission had before it the report of the ninth session of the Working Group on Transport Law held in New York from 15 to 26 April 2002 at which the consideration of this project commenced (A/CN.9/510). At that session, the Working Group undertook a preliminary review of the provisions of the draft instrument on transport law contained in the annex to the note by the Secretariat (A/CN.9/WG.III/WP.21). The Working Group had before it also the comments prepared by ECE and UNCTAD, which were reproduced in the annex to the note by the Secretariat (A/CN.9/WG.III/WP.21/Add.1). Due to the absence of sufficient time, the Working Group did not complete its consideration of the draft instrument, which was left for finalization at its tenth session. The

Secretariat was requested to prepare revised provisions of the draft instrument based on the deliberations and decisions of the Working Group (A/CN.9/510, para. 21). The Commission expressed appreciation for the work that had already been accomplished by the Working Group.

14. The Commission noted that the Working Group, conscious of the mandate given to it by the Commission (A/56/17, para. 345) (and in particular of the fact that the Commission had decided that the considerations in the Working Group should initially cover port-to-port transport operations, but that the Working Group would be free to consider the desirability and feasibility of dealing also with door-to-door transport operations, or certain aspects of those operations), had adopted the view that it would be desirable to include within its discussions also door-to-door operations and to deal with these operations by developing a regime that resolved any conflict between the draft instrument and provisions governing land carriage in cases where sea carriage was complemented by one or more land carriage segments (for considerations of the Working Group on the issue of the scope of the draft instrument, see A/CN.9/510, paras. 26-32). It was also noted that the Working Group considered that it would be useful for it to continue its discussions of the draft instrument under the provisional working assumption that it would cover door-to-door transport operations. Consequently, the Working Group had requested the Commission to approve that approach (A/CN.9/510, para. 32).

15. With respect to the scope of the draft instrument, strong support was expressed by a number of delegations in favour of the working assumption that the scope of the draft instrument should extend to door-to-door transport operations. It was pointed out that harmonizing the legal regime governing door-to-door transport was a practical necessity, in view of the large and growing number of practical situations where transport (in particular transport of containerized goods) was operated under door-to-door contracts. While no objection was raised against such an extended scope of the draft instrument, it was generally agreed that, for continuation of its deliberations, the Working Group should seek participation from international organizations such as the International Road Transport Union (IRU), the Intergovernmental Organisation for International Carriage by Rail (OTIF), and other international organizations involved in land transportation. The Working Group was invited to consider the dangers of extending the rules governing maritime transport to land transportation, and to take into account, in developing the draft instrument, the specific needs of land carriage. The Commission also invited member and observer States to include land transport experts in the delegations that participated in the deliberations of the Working Group. The Commission further invited Working Groups III (Transport Law) and IV (Electronic Commerce) to coordinate their work in respect of dematerialized transport documentation. While it was generally agreed that the draft instrument should provide appropriate mechanisms to avoid possible conflicts between the draft instrument and other multilateral instruments (in particular those instruments that contained mandatory rules applicable to land transport), the view was expressed that avoiding such conflicts would not be sufficient to guarantee the broad acceptability of the draft instrument unless the substantive provisions of the draft instrument established acceptable rules for both maritime and land transport. The Working Group was invited to explore the possibility of the draft instrument providing separate yet interoperable sets of rules (some of which might be optional in nature) for maritime and road transport. After discussion, the Commission approved the working assumption that the draft

instrument should cover door-to-door transport operations, subject to further consideration of the scope of application of the draft instrument after the Working Group had considered the substantive provisions of the draft instrument and come to a more complete understanding of their functioning in a door-to-door context.¹³

16. At its tenth session (Vienna, 16-20 September 2002), the Working Group continued to review the provisions of the draft instrument contained in the annex to the note by the Secretariat (A/CN.9/WG.III/WP.21). The report of that session is contained in document A/CN.9/525. The Working Group considered draft articles 6, 9.4 and 9.5 of the draft instrument. Due to the absence of sufficient time, the Working Group deferred its consideration of draft article 4 and the remaining provisions of the draft instrument until its next session (A/CN.9/525, para. 123).

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

Argentina, 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, and United States of America.

Item 1. Election of officers

18. 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 transport law

19. The Working Group will have before it, and may wish to use as a basis for continuation of its deliberations, a note prepared by the Secretariat for the ninth session of the Working Group discussing issues of transport law, with particular emphasis on the carriage of goods by sea (A/CN.9/WG.III/WP.21). In its deliberations, the Working Group may wish to bear in mind the instructions of the Commission to consider the implications of the draft provisions in the context of door-to-door operations (see above para. 15).

20. In addition, the Working Group will have before it the text of proposals by Canada (A/CN.9/WG.III/WP.23, a brief presentation of which was given at the tenth session of the Working Group: see A/CN.9/525, paras. 25-28), Italy (A/CN.9/WG.III/WP.25) and Sweden (A/CN.9/WG.III/WP.26) regarding the scope of the draft instrument, a comparative table of the provisions of the draft instrument and corresponding provisions in existing transport conventions (A/CN.9/WG.III/WP.27), a compilation of comments received by the Secretariat in relation to the preparation of the draft instrument (A/CN.9/WG.III/WP.28), and a note by the Secretariat on the scope of the draft instrument (A/CN.9/WG.III/WP.29). The Working Group may wish to use those documents as a basis for continuation of its deliberations.

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

Item 5. Adoption of the report

22. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-sixth session of the Commission (currently scheduled to be held in Vienna from 30 June to 18 July 2003).

Dates and scheduling of meetings

23. The session of the Working Group will take place from 24 March to 4 April 2003 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, 3 April, to allow for the preparation of the draft report of the session, which will be adopted on Friday, 4 April. Meeting hours will be from 10.00 to 13.00 and from 15:00 to 18:00, except on Monday, 24 March 2003, when the session will commence at 10.30 a.m.

24. The Working Group is expected to devote the first five days of its deliberations, from 24 to 28 March, to the completion of its reading of the provisions of the draft instrument. The last three days available for substantive deliberations, from 31 March to 2 April, are expected to be devoted to a detailed discussion of the scope of the draft instrument.

Notes

¹ *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17)*, paras. 210-215.

² *Ibid.*, para. 210.

³ *Ibid.*, para. 211.

⁴ *Ibid.*, para. 215.

⁵ *Ibid.*, *Fifty-third Session, Supplement No. 17 (A/53/17)*, para. 264.

⁶ *Ibid.*, *Fifty-fourth Session, Supplement No. 17 (A/54/17)*, para. 413.

⁷ *Ibid.*, paras. 414-415.

⁸ *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 416-427.

⁹ *Ibid.*, *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 319-345.

¹⁰ *Ibid.*, para. 345.

¹¹ *Ibid.*

¹² *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, paras. 210-224.

¹³ *Ibid.*, para. 224.