United Nations A/CN.9/WG.III/WP.33

General Assembly

Distr.: Limited
28 July 2003

Original: English

United Nations Commission on International Trade Law
Working Group III (Transport Law)
Twelfth session
Vienna, 6-17 October 2003

Transport Law: Preparation of a draft instrument on the carriage of goods [by sea]

Proposal by the Netherlands on the application door-to-door of the instrument

Note by the Secretariat

In preparation of the twelfth session of Working Group III (Transport Law), the Government of the Netherlands 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.

Contents

V.03-86481 (E) 220803 250803

Annex

1. Summary of position

(a) The extension of the scope of applicability of the UNCITRAL draft to carriage preceding and/or subsequent to a sea leg fits in a current practice: the majority of maritime contracts nowadays covers door-to-door carriage. Therefore, the creation of a new maritime convention covering port-to-port carriage only, would not make much sense. It would just add another maritime convention to the existing ones.

(b) The practice of door-to-door carriage can be seen in other modes of transport as well. Also the conventions relating to these other modes, in particular the newest ones, reflect a certain 'unimodal plus' approach.

(c) The 'maritime plus' approach, as worked out in the current draft, may create conflict of convention problems, because the scope of application provisions of the existing non-maritime conventions are, in general, not sufficiently clear: do they relate to a certain type of contract or to a certain mode? If they relate to a certain type of contract, for example the contract for road haulage, it may be argued that they do not apply to the non-maritime part of a maritime door-to-door carriage.

If they relate to a certain mode, it may be argued that they do apply to the non-maritime part of a maritime door-to-door carriage.

In particular, this problem exists in respect of CMR.

(d) The solution chosen in the UNCITRAL draft for avoidance of conflict of conventions, namely the inclusion of article 4.2.1 and 4.2.2, is acceptable to the Netherlands. Such limited network solution avoids to the largest possible extent conflicts with other conventions. However, in respect of non-liability matters a residual possibility of conflicts remains.

(e) Alternative solutions for multimodal carriage are (i) a uniform multimodal convention, or (ii) a full network (i.e. including non-liability issues) multimodal convention. In the view of the Netherlands each of these solutions have major disadvantages. In addition, as long as no clarity is created in respect of the scope of application of the existing unimodal conventions, the problem of conflicts of conventions is in both alternatives not taken away.

(f) If it is realised that an alignment of the scope of application provisions of the existing unimodal conventions is required for each of the above long term solutions for multimodal carriage, also another long term solution comes in the picture: to amend any existing unimodal convention by extending its scope to carriage to other modes preceding or subsequent to its own mode, and to add an identical conflict of convention provision in each unimodal convention so amended. See paragraphs 133-137 of WP.29.

(g) Such general 'unimodal plus' approach deserves further attention and study, because it may create a break-through in the current impasse relating to any solution of the problem of multimodal carriage. Such study may produce that a 'unimodal plus' system fits neatly in the current practices of the shippers and carriers. In addition, it may solve in Europe the 'shortsea issue'.

(h) In case such general 'unimodal plus' approach finds sufficient support, the conflict of convention provision that is required for each convention could include

the option of the commercial parties to make a choice between conventions in case more than one of them might be applicable to a single multimodal door-to-door carriage.

(i) Because the idea of a 'unimodal plus' system as a general solution for multimodal carriage needs further study, it is, at this stage, no alternative for the articles 4.2.1 and 4.2.2. A general 'unimodal plus' system, in the Netherlands' view, does not preclude any of the proposals mentioned in the paragraphs 138-185 of WP.29 either. Therefore, also if one of these proposals will be adopted, the UNCITRAL draft could, in case it eventually would be desirable to accommodate a general 'unimodal plus' system, be adjusted in a later stage (e.g. by additional protocol) without affecting such adopted proposal.

2. General scope of the UNCITRAL draft

1. The UNCITRAL draft applies to "contracts of carriage" (in which the place of receipt and the place of delivery are in different States) cf. art. 3.1. Such "Contracts of carriage" are defined as " a contract under which a carrier … undertakes to carry goods wholly or partly by sea" (art.1.5). "Carrier" is defined as a contractual person cf. art. 1.1.

2. From these references it may be concluded that the UNCITRAL draft follows a contractual approach. It applies to a certain type of contract with specific economic and operational characteristics. This type of contract is the contract of maritime carriage, which nowadays in many, if not most, cases is related to door-to-door carriage. It means that the goods are not only carried with seagoing ships, but also with other means of transport when such other means of transport are used for carriage preceding or subsequent to the carriage by the seagoing vessel. Such scope of application may be referred to as 'maritime plus'.

3. In addition, it must be realised that the UNCITRAL draft not only deals with liability matters. It also deals with rights and obligations of the parties under the above 'contracts of carriage', which widens its scope much beyond liability for loss, damage and delay to goods only.

3. Scope of other transport conventions[1]

4. In Annex 1 a short comparison is made with other conventions. A summary follows hereunder in paragraphs 5-9.

5. All transport conventions, referred to in Annex 1, apply to a certain type of contract of carriage. Just like the UNCITRAL draft, they follow the principle of the contractual approach. Nevertheless, their scope of application provisions may give rise in practice to interpretation problems. Refer paragraph 10.

6. In each unimodal convention the contract of carriage is defined by reference to one mode of transport, but, except in the maritime and road conventions, they may, to a limited extent, include carriage by another modes of transport as well. The clearest examples are:

[1] References to international instruments in this paper are the same as set out in paragraph 5 of WP.29.

– Montreal Convention covers pick-up and delivery services (which are geographically not expressly limited) as well as certain qualified carriage by road, irrespective whether such road carriage is national or international.

– COTIF-CIM 1999 covers 'listed' maritime and inland navigation services, irrespective whether these are national or international, as well as unlisted national road and inland navigation carriage.

7. Hamburg Rules allows other conventions to apply to maritime carriage when such carriage by sea is not the primary mode of transport. Notably, such conflict of convention provision is not taken over in other later conventions.

8. The road, rail and air transport conventions deal also with other contractual matters than carrier's liability for loss, damage or delay to the goods.

9. It may be concluded from the comparison made in Annex 1, that the main features of the general scope of the UNCITRAL draft, i.e. the 'contractual approach', the 'unimodal plus' system and the coverage of other contractual issues than solely carrier's liability matters are, to some extent, already included in the non-maritime transport conventions.

The main difference with the UNCITRAL draft is, that the latter elaborates further on these features.

4. Contractual approach may raise interpretation matters

10. It has to be acknowledged that the scope of application provisions of the *unimodal* transport conventions may be interpreted as if such scope also includes an international carriage, which is performed by the 'convention mode' under a contract of *multimodal* carriage. The notable example is an international road haulage, which is performed preceding or subsequent to a carriage by air or by sea. Art. 1.1 of CMR may be interpreted to make CMR applicable to such preceding or subsequent carriage. At the end of paragraphs 62 and 63 of WP.29 a reference is made to "strong" arguments in favour of such interpretation, which is further set out in paragraphs 115 and 116 of WP.29. The result of this interpretation is that more than one transport convention may be applied to a single contract of multimodal carriage.

11. Whether this interpretation is right or wrong, is no question. It exists and its result is that the scope of application of the UNCITRAL draft and that of other unimodal conventions may overlap. As a consequence, the matter of conflicts of conventions may arise. In order to avoid such conflicts (which are caused by the lack of clarity of the scope of application provisions of <u>other</u> transport conventions), the UNCITRAL draft has introduced art. 4.2. This article sets priority for the carrier's liability provisions of the other transport convention.

12. This art. 4.2, however, is on purpose restricted to matters relating to the carrier's liability only. It doesn't deal with possible conflicts between provisions in the various conventions relating to other than liability matters. In respect of these 'non liability' matters, it is inconceivable that different parts of a single transport would be governed by conflicting provisions. For example, if a negotiable document is issued for a door-to-door carriage, does that document become non-negotiable as soon as the road haulage part begins? If such would be the case, it would upset buyers and sellers under an international sales contract. Another example: under

CMR the instruction right of consignors and consignees is linked to (a certain copy) of document issued, which CMR system quite differs from the corresponding proposals in the UNCITRAL draft.

In respect of these other contractual matters the UNCITRAL draft reflects the law, customs and practices of the maritime contract of carriage. These may, and in many cases are, different from those in other unimodal conventions. In fact, all unimodal transport conventions reflect the specific customs and practices inherent to their modes.

13. Therefore, if art. 4.2 would have been extended and would have provided for a full priority of *all* the provisions of the inland transport convention for the inland part of a maritime carriage, it would have created much ambiguity with regard to rights and obligations of the parties other than a carrier's liability for loss, damage or delay to the goods. In respect of the carrier's liability provisions alone, a network system is feasible. But with regard to the provisions dealing with other contractual matters than carrier's liability, a choice must be made: to the multimodal contract as a whole either such provisions of the one convention should apply, or such provisions of the other convention should.

14. Because the UNCITRAL draft deals with the contract of maritime carriage and its 'non carrier's liability' provisions reflect the law, customs and practices of the overseas trade, it has no option but to provide for priority of its 'non carrier's liability' provisions over corresponding provisions of any other transport convention that arguably according to its terms could apply to the activities of the maritime carrier on land.

15. Therefore, the Netherlands, while realising that under the interpretation, referred to in paragraphs 115 and 116 of WP.29, a conflict of conventions cannot be fully ruled out, consider such possible conflicts as unavoidable and, in view of the fact that any transport convention has to reflect the customs and practices of the specific mode of transport in order to acquire a sufficient level of commercial acceptance, as tolerable. However, the ultimate political aim should be to create a lasting solution for the multimodal transport contract without possible conflict of conventions situations.

5. Is there a solution for this multimodal problem?

16. Up till now the focus in respect of a solution for the multimodal problem has been on the network system and/or on the uniform system.

The main advantage of the network system is that by its automatic adaptation to the specifics of the relevant mode of transport it is said not to interfere with any of the existing unimodal regimes. However, disadvantages are that (i) it provides patchwork and, therefore, unpredictability for the shipper, (ii) attribution of liability to a certain mode of transport is not always possible, with the result that also a residual liability system is needed, and (iii) there is a risk of gaps between the different modes of transport.

17. It must be noted that within the scope of the network system not much attention has been paid to the above mentioned 'other contractual matters'. Its focus always has been on the liability of the carrier for damage to the cargo. In the opinion of the Netherlands, it is paramount that (at least) two legal conditions must

be fulfilled before a full network system can properly be applied to a contract of multimodal carriage:

(a) an adjustment of the scope of application provisions of each unimodal convention in order to clarify that such convention applies to a certain mode of transport and not to a certain type of contract, and

(b) insertion in each unimodal convention of appropriate conflict of convention provisions (which may be complicated) in order to avoid conflicts between the various 'non carrier's liability' provisions of the unimodal conventions involved.

18. The current alternative to the network system is the uniform system. The Multimodal Convention 1980 provides for such a uniform system. Its main advantages are its ease to be applied and the predictability of its result. Nevertheless, the Multimodal Convention 1980 did not enter into force, arguably because its provisions too much deviate from the practices of the commercial parties involved.

19. The issue of conflict of conventions is also relevant to the Multimodal Convention 1980. The interpretation of the scope of application provisions of the unimodal transport conventions, referred to in the paragraphs 115 and 116 of WP.29, creates equally conflicts with the contractual approach, as provided for in the Multimodal Convention 1980. If the Multimodal Convention 1980 would properly coexist with the unimodal transport conventions, an adjustment of the scope of application provisions of the unimodal conventions is also required. It has to be made clear that the scope of these conventions is restricted to a contract for a certain unimodal carriage and that they do not apply to 'their' mode when this mode is part of a transport under a contract for multimodal carriage.

20. From paragraphs 17 and 19 the conclusion may be drawn that the multimodal problem cannot be solved without an overall, and preferably co-ordinated, adjustment of the scope of application provisions of all unimodal transport conventions.

21. Once it is realised that a solution to the multimodal problem requires the (co-ordinated) amendments of the unimodal transport conventions, other alternatives than a network system or a uniform liability system may come in the picture as a solution for the multimodal problem.

22. One of such other alternatives is the general 'unimodal plus' approach as referred to in paragraphs 133-137 in WP.29. This approach expands on the tendency of the newest transport conventions to extend its scope to supplementary carriage with other modes. Refer paragraph 6 above. Such extension should not be restricted to national carriage by other modes, or to qualified carriage by one mode only, but should be made in respect of any other type of carriage that is preceding or subsequent to the 'own' mode of the transport convention involved.

For instance, it should be made possible that CMR not only applies to international carriage of goods by road, but also continues to apply in the event that these goods are subsequently carried by rail, also when the rail carriage crosses a frontier. And the same should be made possible for COTIF-CIM 1999: this convention should also extend its scope to supplementary international road carriage. This way, two conventions could be equally applicable to the same transport. Which convention actually should apply in such case, must follow from a conflict of convention

provision to be included in both conventions. Such conflict provision should, in principle, be identical for both conventions.

23. This alternative solution for the multimodal problem fits also in the current tendency that almost any unimodal carrier offers carriage to destinations that he does not serve with the means of transport of his own mode. He offers such carriage simply because his customers so demand. And the preference of most of these carriers is to do so on the conditions that they are used to work with and which they and their insurers thoroughly know. Therefore, the most preferred conflict of convention provision might be that in cases that more than one convention possibly could apply, the choice is to be made by the parties to the contract of carriage. If the commercial parties would be allowed to make the choice, it may be expected that, in practice, such choice between possibly applicable conventions hardly ever is made explicitly. For example, if the consignor requests a quotation from a European rail carrier, he will get a price offered under the conditions to which such rail carrier (and its insurers) are used to: the COTIF-CIM. And if he asks for a price from a European road carrier, he will receive one against the conditions under which such road carrier usually contracts: the CMR. In both cases one single contract and one single set of conditions is involved, which is the ultimate aim of any multimodal system. And forwarders might be able to offer both sets of rules, in theory even at a different price.

24. Such ‘unimodal plus’ system combines the advantages of the network system and the uniform system because it has the benefit of the application of sets of rules which are already widely accepted. And it avoids the disadvantage of the network system: the complications of a patchwork, plus residual liability, plus possible gaps between different modes. It has one disadvantage: the existing unimodal conventions have to be amended, preferably in concert. But this disadvantage it has in common with the uniform and the network system.

25. It is obvious that, if the scope of application provisions of each unimodal convention will be extended according to the suggestion in the paragraphs 22 and 23, each such amended convention must include a conflict of convention provision to the effect that the choice of the parties should be respected. Or, in other words, each unimodal convention should allow that it does not apply to a contract of carriage if the parties opt for another convention that, according to its terms, may be applicable.

26. As an example, a draft for such conflict of convention provision is worked out in paragraph 40 of Annex 2. (In this respect, it is remarkable that art. 25.4 of the Hamburg Rules already takes into account a situation that another convention may be applicable to the sea part of a multimodal transport.)

27. If the market place is, within certain limits, allowed to decide which convention regime should apply to a certain multimodal transport, it might be expected that, eventually,

- for intercontinental air carriage (including preceding and/or subsequent inland carriage) the choice will be made for the Montreal Convention;
- for intercontinental maritime transport (including preceding and/or subsequent inland carriage) the choice will be made for the UNCITRAL draft (once it will have entered into force);

– for transport within Europe (including short sea transport, such as cross-North Sea or cross-Baltic ferry transport, international carriage to islands, etc.) the choice will be made for CMR or COTIF-CIM 1999;

– for other regional transport the choice will be made for possible regional conventions that fit in the specific circumstances of the region concerned.

28. In the view of the Netherlands, the general "unimodal plus" approach, as outlined above, deserves further attention and study as an alternative solution to the multimodal problem.

If the outcome of such studies would be that an "unimodal plus" system acquires sufficient support, art. 4.2 of the UNCITRAL should in the subsequent process be replaced by a conflict of conventions provision, which takes into account that other conventions, at the option of the parties, may be applicable to the sea part of an international carriage.

29. Such possible process of realisation of an 'unimodal plus' system necessarily takes time. This may be adverse to the urgency of the UNCITRAL draft. As a result, at this moment, a general 'unimodal plus' approach seems no substitute for the articles 4.2.1 and 4.2.2. In the Netherlands' view, however, a general 'unimodal plus' system does not conflict with any of the proposals referred to in the paragraphs 138-185 of WP 29 either. Therefore, the adoption of any of such proposals for the UNCITRAL draft does not preclude that a 'unimodal plus' system, once it may have acquired sufficient support as a solution for multimodal carriage generally, may be included in the UNCITRAL draft in a later stage. Such inclusion may take place by, for instance, the introduction of an additional protocol. In the Netherlands' view, the contents of such additional protocol should not necessarily affect any of the above proposals, if adopted, either.

Annex 1

Features of other conventions

30. Warsaw Convention

According to its art.1.1 this convention does not apply to a contract, but to a mode of transport: "all international carriage of … goods performed by aircraft …". But, already in the next section, art. 2.1, international carriage" is defined as "any carriage in which, according to the contract made by the parties, the place of departure and the place of destination … are situated … within the territory of two high Contracting Parties …" And in art. 5.2 it is said that "the absence … of the air consignment note does not affect the existence or validity of the contract of carriage, which shall … be none the less governed by the rules of this Convention".

It results that the Warsaw Convention applies to contracts of air carriage as well. With regard to multimodal aspects, according to art. 31 the provisions of Warsaw Convention apply to the air carriage part of a journey only, but it is expressly allowed that in the document of air carriage conditions are inserted relating to other modes of carriage.

The carrier's liability period is the period that he has the goods in his charge. This period is, to a limited extent, expressly extended to land transport: art. 18.3 includes a presumption that, in case of carriage outside an airport that is made for the purpose of loading, delivery or transhipment, any damage has been the result of an event that took place during the carriage by air. The Convention does not set geographical limit to such 'pick-up and delivery services'.

As to other matters than liability issues, the Warsaw Convention deals in art. 12-14 with the consignor's and consignee's right to dispose of the goods during the carriage, including the right of delivery of the goods.

31. Montreal Convention

This Convention does not change the Warsaw Convention system substantially. New, however, is the legal fiction that must sanction the existing practice that, at least in Europe, a lot of 'carriage of goods by air' (intended by the agreement between the parties to be carriage by air) is actually performed by road. Art. 18.4 provides that such carriage, made without the consent of the consignor, is deemed to be within the period of carriage by air.

Further, Montreal Convention deals somewhat more extensively with other contractual matters than liability matters than Warsaw Convention does.

32. Hague-Visby Rules

The scope of this Convention is limited to contracts of carriage by sea. Even, it only applies if a document is issued that constitutes evidence of such contract. Only to a limited extent this Convention deals with other matters than liability issues.

33. Hamburg Rules

This Convention applies to contracts of carriage by sea. If a contract involves carriage by sea and by other means of transport, the Convention only applies to the sea part of the carriage.

Other matters than liability issues receive somewhat more attention than in the Hague-Visby Rules.

Attention deserves that the Hamburg Rules include a conflict of conventions provision. Art. 25.4 reads:

> "Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies mandatory to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such international convention."

This provision means that in case a contract, to which an other transport convention applies, includes a sea part, and such sea part is not the primary mode of that convention, it is allowed that such other transport convention and not the Hamburg Rules applies to such sea part.

34. CMR

This convention expressly applies to "every contract for the carriage of goods by road in vehicles …, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries …"

If the road vehicle does not use its normal infrastructure, i.e. the road, but the vehicle uses for the carriage of the goods, which are loaded in it, another kind of infrastructure, such as a ship to transfer it over sea or a train to transfer it through a tunnel, the CMR remains applicable despite the use of such other kind of infrastructure. However, art. 2 provides for a special rule for the part performed by the vehicle when using such other infrastructure.

Like the Hague-Visby Rules, CMR does not include a reference to any carriage preceding or subsequent to the part carried out by the road vehicle. Instead, in relation to art. 1.4 (containing the excluded kinds of road transport) the Protocol of Signature to the CMR states that "the undersigned undertake to negotiate conventions governing contracts for … and combined transport."

Further, it includes several provisions dealing with other contractual matters than liability for loss, damage or delay to the goods.

35. COTIF-CIM 1980

According to art.1.1 of this convention the 'Uniform Rules' (i.e. the CIM provisions) apply to all consignment of goods for carriage under a through consignment note made out for a route over the territories of at least two states and exclusively over lines or services included in a CIM-list, which is kept by the Intergovernmental organisation for International Carriage by Rail (OTIF). The existence of a consignment note, which includes all kind of contractual details, is a condition for the applicability of the CIM provisions.

Pursuant to art. 2.2 of the underlying COTIF Convention 1980, the CIM provisions "may also be applied to international through traffic using, in addition to services on railway lines, land and sea services and inland waterways. It means that states party to the COTIF 1980 may determine that the CIM provisions should apply to other modes of transport preceding or subsequent to the rail carriage part of the voyage of the goods.

Additionally, from art. 1.2 and art. 48.1 of the CIM provisions it appears that also shipping lines may be included by their governments in the above CIM-list. Thereupon, they have become subject to the convention, but a special regime, which includes the main Hague-Visby Rules exonerations, may be claimed for such shipping lines. Some shipping lines made use of the possibility of inclusion in the CIM-list.

It may be concluded that COTIF-CIM 1980 follows a strictly contractual approach and takes into account the possibility of a rail plus application of the CIM provisions.

Furthermore, COTIF-CIM 1980 includes many provisions other than carrier's liability for loss, damage or delay to the goods.

36. COTIF-CIM 1999

This convention shows some remarkable differences from its predecessor. First, it also applies expressly to contracts of international carriage by rail, but the existence of a consignment note is no longer a condition for the applicability of the convention. The system of a list is maintained, but no longer for railway companies, but only for maritime and international inland waterway services preceding or subsequent to rail carriage, which should become subject to the provisions of the convention. As to such maritime services, again, a special regime may apply, but the number of exonerations for the maritime carrier is substantially reduced.

The convention, however, has a straight multimodal application. Art 1.2 reads: "When international carriage being the subject to a single contract includes carriage by road or inland waterway in internal traffic of a Member State as a supplement to trans-frontier carriage by rail, these Uniform Rules shall apply."

It means that COTIF-CIM 1990 follows the "rail plus" principle, mandatorily even, but only for national road or inland waterway carriage. Also, COTIF-CIM 1990 still includes many other provisions than those relating to carrier's liability.

37. Budapest Convention (CLNI)

This convention applies to contracts for international carriage of goods by inland waterways. It does not include provisions on carriage with other modes.

By its nature, the carriage must be performed on board of a vessel, but the convention applies equally whether such vessel may be a seagoing vessel or an inland navigation vessel. This lack of distinction in type of vessels makes a kind of conflict of conventions provision necessary: In art. 2.2 it is provided that, if an international carriage of goods, without their transfer from an inland navigation vessel into a seagoing vessel (or vice versa), is both on inland waterways and in "waters to which maritime regulations apply", the Budapest convention applies, unless (a) "a marine bill of lading has been issued in accordance with the maritime law applicable, or (b) the distance to be travelled in waters to which maritime regulations apply is the greater".

The convention also includes provisions dealing with other contractual aspects than the liability of the carrier for loss, damage or delay to the goods.

38. Multimodal Convention 1980

This conventions clearly applies to certain contracts: the carriage must be international and by at least two different modes of transport under a single

multimodal contract. Expressly excluded from the definition of multimodal transport are in art 1.1 the pick-up and delivery services performed under an unimodal transport contract.

Further, art. 30.4 provides that carriage to which art. 2 of CMR applies (i.e. the road vehicle using a ship or a train) or to which art 2 of the Berne Convention of 17 February 1970 concerning the carriage of goods by rail applies (i.e. the 'listed' road or shipping services complementary to railway services) will not be regarded as multimodal carriage under the Multimodal Convention.

The Multimodal Convention only deals with a limited extent with other provisions than those dealing with the carrier's liability.

Annex 2

A possible replacement of art. 1.1 and art. 2 of CMR, just as an example to show how the unimodal 'plus' system could work. Any other unimodal convention should be similarly amended with the aim of an alignment of the scope of application provisions and to include an identical conflict of conventions provision.

Definition provision

39. "Contract of carriage means a contract under which a carrier against payment of freight undertakes to carry goods by [road] [road vehicle] from a place in one state to a place in another state and may include carriage by other [modes] [means] of transport preceding and/or subsequent to the road haulage part of the carriage. If the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air and the goods are not unloaded from the vehicle, such part of the journey shall for the purpose of this Convention be regarded as carriage by [road] [road vehicle]."

The essence of this provision is that the road haulage part of a carriage (which may include a part during which the road vehicle is carried by another means of transport) is international. The preceding and/or subsequent part of the carriage by other means of transport may be national or international.

Scope of application provision

40. "This Convention shall apply to all contracts of carriage if

(a) the place of receipt of the goods as specified in the contract of carriage is located in a Contracting State, or

(b) [the place where the road carriage part of the journey begins or terminates is located in a Contracting State, or]

(c) the place of delivery of the goods as specified in the contract of carriage is located in a Contracting State, [irrespective of the place of residence and the nationality of the parties to the contract of carriage.]"

This provision follows the usual scope of application provision in transport conventions.

Conflict of Conventions provision

41. "If pursuant to the foregoing provisions and to corresponding provisions of another convention governing the relationship between the parties to a transportation contract more than one convention may be applicable to the contract of carriage, the parties must state in the contract of carriage which of the conventions applies to their contract. The parties are not allowed to state that more than one convention, wholly or partly, applies.

In the event that the parties have made the statement in their contract of carriage which convention applies to the contract, any other convention that according to its terms may have applied, shall not apply to the contract of carriage.

In the event that the parties fail to make a statement in their contract of carriage which convention applies to their contract, the convention that according to its terms applies to the contract and covers the geographically longest part of the journey of the goods, shall apply to the contract of carriage. In such event, however, any provision of such convention that limits the liability of the carrier to a certain monetary amount per kilogram or package shall not apply and any contractual provision to provide for such limitation shall be null and void."

If the preceding or subsequent carriage is an international carriage, it may be that more than one convention declares itself applicable. Then, it is up to the parties to make a choice. The sanction of the carrier loosing its right to limit its liability is regarded as a sufficient incentive to make such choice.

Obviously, this opt-in system only works if all possibly applicable unimodal conventions will include this provision.