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**United Nations Commission
on International Trade Law**
Working Group III (Transport Law)
Fifteenth session
New York, 18-28 April 2005

Annotated provisional agenda

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea].
5. Other business.
6. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following States: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Benin, Brazil, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Ecuador, Fiji, France, Gabon, Germany, Guatemala, India, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lithuania, Madagascar, Mexico, Mongolia, Morocco, Nigeria, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Rwanda, Serbia and Montenegro, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, and Zimbabwe.
2. In addition, States that are not members of the Commission, as well as relevant intergovernmental organizations and international non-governmental organizations,



may be invited to attend the session as observers. In accordance with established UNCITRAL practice, observer delegations may participate actively in the deliberations leading to decisions, which are taken by consensus.

III. Annotations to agenda items

Item 1. Opening of the session and scheduling of meetings

3. The fifteenth session of the Working Group will be held from 18 to 28 April 2005 at the United Nations Headquarters, in New York. Meeting hours will be from 10:00 a.m. to 1:00 p.m. and from 3:00 p.m. to 6:00 p.m., except on Monday, 18 April 2005, when the session will commence at 10:30 a.m. There will be seven and one-half working days available for consideration of the agenda items at the session. The Working Group is expected to hold substantive deliberations during the first 15 meetings (that is from Monday, 18 April to the morning of Wednesday, 27 April, inclusive). No formal meeting is currently scheduled for the afternoon of Wednesday, 27 April, to allow for the preparation of the draft report of the session, which will be presented for adoption during the seventeenth and eighteenth meetings of the Working Group on Thursday, 28 April 2005.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea]

(a) Previous deliberations of the Working Group

5. At its twenty-ninth session, in 1996, 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.¹

6. At that session, the Commission had been informed that existing national laws and international conventions had left significant gaps regarding various issues. Those gaps constituted an obstacle to the free flow of goods and increased the cost of transactions. The growing use of electronic means of communication on 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.²

7. 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.³

8. 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.⁴

9. 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

10. 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

11. 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 that the CMI working group had, in cooperation with the secretariat, launched an investigation based on the questionnaire. 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.

12. 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 provided 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.

13. 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. 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.

14. 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.

15. At its thirty-fourth session, the Commission decided to entrust the project to the Working Group on Transport Law. 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, 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.⁷

16. At its thirty-fifth session, in 2002, the Commission noted that the Working Group, conscious of the mandate given to it by the Commission⁸ (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 those 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). 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.⁹

17. At its thirty-sixth session, in 2003, The Commission was mindful of the magnitude of the project undertaken by the Working Group and expressed appreciation for the progress accomplished so far. It was widely felt that, having recently completed its first reading of the draft instrument on transport law, the Working Group had reached a particularly difficult phase of its work. The Commission noted that a considerable number of controversial issues remained open for discussion regarding the scope and the individual provisions of the draft instrument. Further progress would require a delicate balance being struck between the various conflicting interests at stake. The view was expressed that a door-to-door instrument might be achieved by a compromise based on uniform liability, choice of forum and negotiated contracts, which would not deal with actions against performing inland parties. It was also stated that involving inland road and rail interests was critical to achieving the objectives of the text. The view was expressed that increased flexibility in the design of the proposed instrument should continue to be explored by the Working Group to allow for States to opt in to all or part of the

door-to-door regime. The Commission also noted that, in view of the complexities involved in the preparation of the draft instrument, the Working Group had met at its eleventh session for a duration of two weeks, thus making use of additional conference time that had been made available by Working Group I completing its work on privately financed infrastructure projects at its fifth session, in September 2002. The Chairman of Working Group III confirmed that, if progress on the preparation of the draft instrument was to be made within an acceptable time frame, the Working Group would need to continue holding two-week sessions. After discussion, the Commission authorized Working Group III, on an exceptional basis, to hold its twelfth and thirteenth sessions on the basis of two-week sessions. It was agreed that the situation of the Working Group in that respect would need to be reassessed at the thirty-seventh session of the Commission, in 2004. The Working Group was invited to make every effort to complete its work expeditiously and, for that purpose, to use every possibility of holding intersessional consultations, possibly through electronic mail. The Commission realized, however, that the number of issues open for discussion and the need to discuss many of them simultaneously made it particularly relevant to hold full-scale meetings of the Working Group.¹⁰

18. At its thirty-seventh session, in 2004, for the reasons noted by the Commission at its thirty-sixth session in 2003,¹¹ the Commission decided to accommodate again the need of Working Group III (Transport Law) for two-week sessions, utilizing the entitlement of Working Group V (Insolvency Law) which was not expected to meet in the second half of 2004 or in 2005.¹²

19. At that same session, the Commission took note of the progress accomplished by the Working Group at its twelfth and thirteenth sessions (A/CN.9/544 and A/CN.9/552, respectively). The Commission noted with appreciation that the Working Group had continued its consideration of the draft instrument on the carriage of goods [wholly or partly] [by sea]. The Commission reaffirmed its appreciation of the magnitude of the project and of the complexities involved in the preparation of the draft instrument, given in particular the controversial issues that remained open for discussion and that required the striking of a delicate balance between the various conflicting interests at stake.¹³

20. The Commission was informed that, at its twelfth and thirteenth sessions, the Working Group had proceeded with its second reading of the draft instrument and had made progress regarding a number of difficult issues, such as those regarding the scope of application of the instrument and of key liability provisions. The Commission was also informed that, with a view to accelerating the exchange of views, the formulation of proposals and the emergence of consensus in preparation for a third and final reading of the draft instrument, a number of delegations participating in the thirteenth session of the Working Group had taken the initiative of creating an informal consultation group for the continuation of discussion between sessions of the Group.¹⁴

21. The Commission expressed its support for the efforts of the Working Group to accelerate the progress of its work on the complex project. With respect to a possible time frame for completion of the draft instrument, a number of speakers were of the view that it would be desirable to complete a third reading of the draft text with a view to its adoption by the Commission in 2006. However, it was also felt by a number of speakers that achieving a high degree of quality should be a

paramount objective in the preparation of the draft instrument. That objective should not be compromised by hasty deliberation of the important issues that remained to be solved. After discussion, the Commission agreed that 2006 would be a desirable goal for completion of the project, but it also agreed that the issue of establishing a deadline for such completion should be revisited at its thirty-eighth session, in 2005.¹⁵

22. At its fourteenth session (see A/CN.9/572), the Working Group continued to review the provisions of the draft instrument on the carriage of goods [wholly or partly] [by sea] contained in the annex to the note by the Secretariat (A/CN.9/WG.III/WP.32). The Working Group considered draft article 14 on the basis of liability, and freedom of contract (draft articles 1, 2, 88 and 89), including scope of application, third parties and Ocean Liner Service Agreements (OLSAs). The Working Group also considered chapter 15 on jurisdiction and chapter 16 on arbitration.

23. At its fifteenth session, the Working Group is expected, during the first week of its session, first to continue with its consideration of freedom of contract, including OLSAs and scope of application, and next to consider jurisdiction and arbitration. The Working Group will then consider electronic commerce, transport documents, right of control and transfer of rights, in that order.

(b) Documentation for the fifteenth session

24. 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 containing a first revision of the draft instrument on the carriage of goods [wholly or partly] [by sea] (A/CN.9/WG.III/WP.32).

25. In addition, the Working Group will have before it a proposed interim redraft of the articles of the draft instrument on the carriage of goods [wholly or partly] [by sea] that were considered during the twelfth session (A/CN.9/WG.III/WP.36) (draft article 1(e), definitions of “maritime performing party” and “non-maritime performing party”, and draft articles 18(2), 1(a), 2, 14, 13 and 15) and thirteenth session (A/CN.9/WG.III/WP.39) (draft articles 15, 16, 2 bis, 17 to 32, plus draft article 13 bis and chapter 9). Further, the Working Group will have before it the scope of application provisions as submitted for consideration of the Working Group by the informal drafting group during the fourteenth session, along with slightly revised commentary (A/CN.9/WG.III/WP.44), a note from the Secretariat on arbitration as requested during its fourteenth session (A/CN.9/WG.III/WP.45), and redrafted provisions with respect to arbitration and jurisdiction (A/CN.9/WG.III/WP.46), following from the discussions in its fourteenth session.

26. The above-mentioned documents will also be accessible on the UNCITRAL web site (www.uncitral.org), together with the documentation previously published by the Secretariat regarding that project, which contains additional information regarding the history of the project. That documentation includes:

- Reports of the Commission on the work of its twenty-ninth and thirty-first to thirty-seventh sessions (A/51/17 and A/53/17 to A/59/17);
- Reports of the Working Group on the work of its ninth to fourteenth sessions (A/CN.9/510, 525, 526, 544, 552 and 572); and

- Working papers prepared by the Secretariat for consideration by the Working Group at its ninth to fourteenth sessions (A/CN.9/WG.III/WP.20 to 42).

Item 5. Other business

27. The sixteenth session of the Working Group is scheduled to be held in Vienna, at the Vienna International Centre, from 28 November to 9 December 2005.

Item 6. Adoption of the report

28. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-eighth session of the Commission (currently scheduled to be held in Vienna, from 4 to 15 July 2005).

Notes

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

² *Ibid.*

³ *Ibid.*, para. 215.

⁴ *Ibid.*, *Fifty-third Session, Supplement No. 17 (A/53/17)*, para. 264.

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

⁶ *Ibid.*, para. 415.

⁷ *Ibid.*, *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 345.

⁸ *Ibid.*

⁹ *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, paras. 223 and 224.

¹⁰ *Ibid.*, *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, paras. 207 and 208.

¹¹ *Ibid.*, para. 272.

¹² *Ibid.*, *Fifty-ninth Session, Supplement No. 17 (A/59/17)*, paras. 132 and 133.

¹³ *Ibid.*, paras. 63 and 64.

¹⁴ *Ibid.*, para. 65.

¹⁵ *Ibid.*, para. 66.