



General Assembly

Distr.: Limited
13 September 2005

Original: English

**United Nations Commission
on International Trade Law**
Working Group III (Transport Law)
Sixteenth session
Vienna, 28 November-9 December 2005

Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]

Proposal by the Netherlands on arbitration

Note by the Secretariat

In preparation for the sixteenth session of Working Group III (Transport Law), the Government of the Netherlands submitted the text of a proposal concerning the arbitration provisions in the draft convention on the carriage of goods [wholly or partly][by sea] 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.



Annex

1. In paragraphs 177 to 179 of the Report of the fifteenth session of UNCITRAL Working Group III (A/CN.9/576), reference was made to a proposal on arbitration to be submitted at a future session. This paper contains that proposal.
2. The aim of this proposal is to seek a compromise among the views that:
 - (a) The draft convention should contain provisions on jurisdiction and it should not be possible to circumvent those provisions through a possible freedom to arbitrate;
 - (b) As to the choice between arbitration and court litigation, present industry practices should not be significantly affected;
 - (c) Arbitration is the dominant method of dispute resolution in the non-liner trade, while in liner transportation arbitration agreements are exceptional;
 - (d) The current international instruments on arbitration, in particular the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York 1958, and the UNCITRAL Model Law on International Commercial Arbitration, 1985, and their underlying principles should remain unaffected (refer A/CN.9/WG.III/WP.45);
 - (e) After a dispute has arisen, the parties should be free to agree on any court or arbitral tribunal to handle their case.
3. In the view of the delegation of The Netherlands, the above aim may be achieved by:
 - (a) Restricting the possibilities of arbitration with respect to those contracts of carriage to which the draft convention applies under articles 8 and 9, by allowing arbitration only in those places where the draft convention permits court litigation;
 - (b) Deleting Chapter 17 on arbitration, thereby leaving the subject of arbitration fully to the existing instruments on arbitration and to existing national law;
 - (c) Taking away any possible impediment for voluntary incorporation of the draft convention in contracts of carriage that pursuant to article 9 are excluded from the scope of the draft convention, by adding a provision that explicitly provides for the freedom to include [jurisdiction or] arbitration clauses in such contracts;
 - (d) Extending the provision relating to agreements after the dispute has arisen to arbitration agreements as well.
4. It was suggested during the fifteenth session of the Working Group that, possibly, exceptions should be made for certain specialized liner transportation (see para. 178, A/CN.9/576). Wording to that effect is not yet included in the proposal.
5. In terms of actual drafting, this proposal may lead to the following changes in the draft convention as contained in A/CN.9/WG.III/WP.56:¹

¹ The proposal, however, depends upon the outcome of the Working Group's consideration of the contents of article 76 on exclusive jurisdiction.

-
- (a) The heading of Chapter 16 should read: **“Jurisdiction and arbitration”**.
- (b) Add a second paragraph to article 78 that reads:
- “2. Subject to article 81 bis, if a contract of carriage subject to this Convention includes an arbitration agreement, the following provisions apply:**
- (a) **The person asserting a claim against the carrier has the option of either:**
- (i) **commencing arbitral proceedings pursuant to the terms of the arbitration agreement in a place specified therein, or**
- (ii) **instituting court proceedings in any other place, provided such place is specified in article 75 (a) to (c);**
- (b) **The carrier may not enforce the arbitration agreement unless it gives the person asserting a claim against the carrier the option to arbitrate in any of the places specified in article 75 (a) to (d).”**
- (c) Insert the following phrase at the end of article 81 between the words “action” and “is”:
- “or which refers the dispute to arbitration”**
- (d) Add a new article 81 bis that reads:
- “Nothing in this Convention affects the enforceability of [a jurisdiction or] an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the terms of this Convention apply solely by reason of:**
- (i) **the application of article 10, or**
- (ii) **the parties’ voluntary incorporation of this Convention as a contractual term of a contract of carriage that would not otherwise be subject to this Convention.”**
- (e) Delete the whole of Chapter 17 (articles 82 to 86).
-