



# General Assembly

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**United Nations Commission  
on International Trade Law**  
Working Group III (Transport Law)  
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## **Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]**

### **Proposals by the Italian delegation regarding Transport Documents and Electronic Transport Records and Scope of Application, Freedom of Contract and Related Provisions**

#### **Note by the Secretariat\***

In preparation for the seventeenth session of Working Group III (Transport Law), the Government of Italy submitted to the Secretariat the text of proposals with respect to transport documents and electronic transport records and scope of application, freedom of contract and related provisions in the draft convention on the carriage of goods [wholly or partly] [by sea] for consideration by the Working Group. The text of the proposals is reproduced as an annex to this note in the form in which it was received by the Secretariat.

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\* The late submission of the document reflects the date on which the proposals were communicated to the Secretariat.



## Annex

### Transport documents and electronic transport records

1. The Italian delegation has carefully considered document A/CN.9/WG.III/WP.62 presented for information by the delegation of the United States of America and, mindful of the discussion that took place during the informal seminar hosted by the Italian delegation in London on 23 and 24 January 2006 in respect of, inter alia, draft article 37<sup>1</sup> and of draft article 40 (3),<sup>2</sup> makes the following proposals.

#### Article 37. Issuance of the transport document or the electronic transport record

2. Although article 23 of the Uniform Customs and Practices for Documentary Credits 1993 (UCP 500) requires that bills of lading indicate the name of the carrier, it is felt that that provision is not of an easy interpretation and, therefore, does not sufficiently protect the FOB Seller. It is therefore suggested that draft article 37 (b) as it appeared in A/CN.9/WG.III/WP.56 be amended as follows:

*(b) The shipper or, if the shipper so instructs the carrier, the consignor or the person referred to in article 34, is entitled to obtain from the carrier, against production of the transport document or transfer of the electronic transport record, an appropriate negotiable transport document, or, subject to paragraph 5 (a), electronic transport record, unless the shipper and the carrier, expressly or impliedly, have agreed not to use a negotiable transport document or electronic transport record, or it is the custom, usage, or practice in the trade not to use one.*

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<sup>1</sup> Summary of the discussion on the first day of the informal seminar in respect of draft article 37: To this point it was asked what would happen in situations where the consignor had no right to obtain a negotiable transport document as the present draft suggests, but needs one for documentary credit. Furthermore, the question was raised whether the introduction of two different obligations to issue documents would entail a risk of conflict of documentation. In response it was pointed out that the focus here is when the consignor and the shipper are in some sort of conflict. The draft article protects the carrier by instructing the carrier to rely on the contract with the shipper in case of conflict. Issuance to a documentary shipper, if in accordance with draft article 37, relieves responsibility vis à vis the shipper.

<sup>2</sup> Summary of the discussions on the first day of the informal seminar in respect of draft article 40 (3): The discussions could be categorized into three groups. On one hand, the claimant is not offered any protection in this respect and draft article 40 (3) is deleted. On the other hand, draft article 40 (3) could be kept in its present form. However, there was general support amongst those participating in the informal seminar for the view that a middle way should be sought as a possible solution that could receive broad support in the Working Group. As possible middle ways the following were suggested:

- Make the immediate contracting party liable, e.g. the agent signing the contract.
- The name on the transport document should be presumed to be the carrier. The period used to rebut this presumption should suspend the time bar.
- The time bar should be suspended if the claimant files a wrong suit and is not informed of the correct defendant.
- The carrier should be deprived of the right to limit liability.

The participants in the informal seminar were encouraged to consider possible additional alternative ways to address the issue for consideration by the Working Group.

### Article 40 (3). Deficiencies in the contract particulars

3. It is suggested that the square brackets around this paragraph be deleted and that the text as it appeared in A/CN.9/WG.III/WP.56 be amended as follows:

*3. If the contract particulars fail to ~~identify~~ **indicate the name and address of the carrier** but indicate that the goods have been loaded on board a named ship, then the registered owner of the ship is presumed to be the carrier. The registered owner can defeat this presumption if it ~~proves that the ship was under a bareboat charter at the time of the carriage that transfers contractual responsibility for the carriage of the goods to an identified bareboat charterer.~~ **[If the registered owner defeats the presumption that it is the carrier under this article, then the bareboat charterer at the time of the carriage is presumed to be the carrier in the same manner as that in which the registered owner was presumed to be the carrier—identifies the carrier who issued the transport document in which its name and address should have been indicated. The period mentioned in article 69 shall not run from the date of institution of judicial [or arbitral] proceedings against the registered owner until the lapse of 90 days from the date when the registered owner has identified the carrier.***

4. It is thought, also, that the person identified by the owner as the carrier must have some link, albeit indirect, with the transport document.

5. The objection that the registered owner may not be the carrier and may even be a financing institution does not seem to have great merits, because in such case the registered owner may obtain appropriate guarantees from the operator. It must be considered that there are situations where the registered owner is liable irrespective of it being the operator of the ship or not. This is the case under the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1992).

### Scope of application, freedom of contract and related provisions

6. The Italian delegation supports the proposal by Finland in document A/CN.9/WG.III/WP.61 but submits for the consideration of the Working Group the possible simplification of draft articles 9 and 10. The alternative texts suggested are the following:

#### Article 9. Specific exclusions

*Subject to article 10 this Convention does not apply:*

*(a) To the following contracts of carriage in liner transportation:*

*(i) [Contracts documented by] charter parties, and*

*(ii) Contracts for use of a ship or of any space thereon, whether or not [documented by] [they are] charter parties;*

*(b) To contracts of carriage in non-linear transportation, except where the contract of carriage is documented only by a transport document or an electronic transport record that also evidences the receipt of the goods.*

**Article 10. Limits to the specific exclusions**

*This Convention applies as between the carrier and any party other than the shipper to the contracts of carriage excluded by article 9.*

*Note:* This text provisionally covers only the alternative pursuant to which the issuance of a document is not required.

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