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

Proposals of France submitted to Working Group III (Transport Law) of the United Nations Commission on International Trade Law (UNCITRAL)

Note by the Secretariat

In preparation for the nineteenth session of Working Group III (Transport Law), the French delegation submitted to the Secretariat its proposals regarding the linkage between the draft convention on the carriage of goods [wholly or partly] [by sea] and the conventions on other modes of transport.

The document in the attached annex contains these proposals in the form in which they were received by the Secretariat.



Annex

Proposals of France regarding the linkage between the draft convention on the carriage of goods wholly or partly by sea and the conventions applicable to land or air transport

Comments

The provisions which deal with the linkage between the UNCITRAL draft instrument on the carriage of goods wholly or partly by sea and the other modal conventions are currently distributed among four articles in three different chapters (articles 27, 64 (2), 89 and 90 in chapters 3, 13 and 19). In view of the close connection between these provisions, and in order to make the text more reader-friendly, it is proposed that articles 27, 64 (2) and 89 be merged to form a single article in the chapter “Other Conventions”, replacing the current article 89. Article 90 would be deleted.

In the merging of articles 27, 64 (2) and 89, a number of editorial changes have been made in the consolidated draft article:

- In paragraph 1 of the new article, the expression “...loss of or damage to [goods] or delay occurring during”, deemed too vague, has been replaced by “When...the cause of such loss, damage or delay occurs...”.
- Paragraph (b) of article 27 was deemed to be superfluous, as the need to determine a linkage between the liability regime of the UNCITRAL convention and another convention should arise only insofar as the other convention has its own liability regime.
- In the context of a consolidated version, it was not deemed useful to retain paragraph 2 of article 27, which states that paragraph 1 of article 27 does not affect the application of article 64, paragraph 2. Paragraph 2 of article 64 has become paragraph 2 of the new article, and the wording proposed for this paragraph specifies that it applies “notwithstanding paragraph 1”. This reiterates the provisions in article 27.
- There is no obvious need for paragraph 3 of article 27, which reads: “This article applies regardless of the national law otherwise applicable to the contract of carriage”. This paragraph has therefore not been retained in the consolidated draft.
- Paragraph 3 of the new article reiterates the substance of article 89 in a more explicit form. It was not considered necessary to retain the reference to article 92. Furthermore, the wording “which is already in force...at the date of this Convention” has been deleted from the proposed draft: a convention cannot pre-empt the choices that might be made by the drafters of a future convention. Such a provision would only limit the options available to future legislators, which is unacceptable.

It is also proposed that article 90 be deleted, as the Working Group appears to have wished at its latest session. This article would seem to be potentially in conflict with article 89. The deletion of article 90 will make it more certain that implementing the

UNCITRAL draft convention will not lead to conflicts between the convention and the existing modal instruments.

We note that the expressions *loading* and *discharge* in paragraph 1 of the consolidated proposal could give rise to difficulties of interpretation. These expressions are not defined in the convention. The application of paragraph 1 might require reference to the provisions of a national law, port practice or liner terms.

We also note that in the context of article 27, or of the new article proposed, the purpose of the expressions *loading* and *discharge* is to delineate the maximum possible scope of land transport liability regimes rather than the necessary limits of the maritime regime: the maritime liability regime might therefore extend to the period before loading or after discharge—for example, to storage or various barrowing operations, especially since these operations do not necessarily fall within the scope of land transport regimes.

New draft article 89, consolidating articles 27, 64 (2) and 89:

Article 89

International instruments governing other modes of transport

1. When a claim or dispute arises out of loss of, damage to or delay in goods, and the cause of such loss, damage or delay occurs during the carrier's period of responsibility, but only before the time of their loading on to the ship or only after their discharge from the ship, the provisions of this Convention shall not prevail over the provisions of another international convention [or national law] which, at the time of such loss, damage or delay, apply mandatorily, according to their terms, to all or any of the carrier's activities under the contract of carriage during that period;
2. [Notwithstanding paragraph 1, if the carrier cannot establish whether the goods were lost or damaged [or whether the delay in delivery was caused] during the sea carriage or during the carriage preceding or subsequent to the sea carriage, the highest limit of liability in the international [and national] mandatory provisions that govern the different parts of the transport applies.]¹
3. Nothing contained in this Convention shall prevent the application of another international convention relating to a non-maritime mode of transport when that convention mandatorily governs multimodal transport.²

¹ Variant B of article 64 (2) (A/CN.9/WG.III/WP.56).

² Redrafted version of article 89 (A/CN.9/WG.III/WP.56): [Subject to article 92, nothing contained in this Convention prevents a Contracting State from applying any other international instrument which is already in force at the date of this Convention and that applies mandatorily to contracts of carriage of goods primarily by a mode of transport other than carriage by sea.]