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

Proposals by the International Road Transport Union (IRU) concerning articles 1 (7), 26 and 90 of the draft convention

Note by the Secretariat*

In preparation for the nineteenth session of Working Group III (Transport Law), the International Road Transport Union (IRU) submitted to the Secretariat the proposals attached hereto as an annex concerning articles 1 (7), 26 and 90 of the draft convention on the carriage of goods [wholly or partly] [by sea].

The document in the attached annex is reproduced in the form in which it was received by the Secretariat.

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

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Annex

Proposals submitted by the International Road Transport Union (IRU) concerning articles 1 (7), 26 and 90 of the draft Convention the carriage of goods [wholly or partly] [by sea] (A/CN.9/WG.III/WP.81)

Article 1 (7)

1. The IRU shares the opinion expressed by the United States of America in the annex to their document A/CN.9/WG.III/WP.84, according to which a rail carrier should not be considered as a "maritime performing party".

In addition to this opinion and for the same reasons as those pointed out by the US, the IRU proposes that the road carrier performing services within a port area should, like rail carriers, also not be considered as a "maritime performing party". The text proposed by the US could be slightly amended to also integrate road carriers, thus reading as follows:

> "A rail or road carrier, even if it performs services that are the carrier's responsibilities after arrival of the goods at the port of loading or prior to the departure of the goods from the port of discharge, is a non-maritime performing party."

Article 26

2. The IRU proposes to eliminate Variant B of subparagraph (a) of article 26 for the two following reasons:

- if "another international instrument" is imperatively applicable, this imperative application is hindered if it is subordinated to the condition that the shipper made or did not make a separate and direct contract with the carrier for the non-maritime part of the transport;
- upholding the condition that the shipper made or did not make a separate and direct contract with the carrier for the non-maritime part of the transport contradicts also subparagraph (c) of Article 26, according to which the imperative provisions of other such international instruments "cannot be departed from by contract either at all or to the detriment of the shipper".

Article 90, subparagraph (b)

3. This provision, inspired by the provisions of Article 6 of the Hague Rules and the Hague-Visby Rules, has led to abuses by some maritime performing parties operating in the English Channel and the North Sea. According to these maritime performing parties, the containers or road vehicles – whose transport has become common in the past 50 years – are still considered as "non-ordinary shipments" for which the indemnity amounts to a maximum of SDR 666,67 per unit, the container or road vehicle being considered as a single unit. The fact that the transport document refers to a number of packages or a specific weight is considered, by these maritime performing parties, as not relevant. To avoid the extension of such abuses through the instrument now proposed by UNCITRAL, the IRU proposes to

complete subparagraph (b) by adding at the end of the subparagraph the following words:

> "The containers or road vehicles, whose transport is made by a ship entirely or partially equipped to undertake such transport, cannot be considered as "non-ordinary commercial shipments."