



IUMI Conference

Vancouver / September 14–17, 2008



UNCITRAL CONVENTION WHERE ARE WE?

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WHAT HAPPENED SINCE IUMI COPENHAGEN 2007?

- 20th Session of Working Group III of UNCITRAL
15 – 25 October 2007 (Vienna)
- 21th Session of Working Group III of UNCITRAL
14 – 25 January 2008 (Vienna)
- 41st Session of UNCITRAL
16 June – 3 July 2008 (New York)



THE „PRODUCT“

(DRAFT-) CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA

A/63/17 (Annex 1)



THE „PRODUCT“

CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA

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CONVENTION ON **CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS** WHOLLY OR PARTLY BY SEA

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THE „PRODUCT“

CONVENTION ON CONTRACTS FOR THE INTERNATIONAL **CARRIAGE OF GOODS** **WHOLLY OR PARTLY BY SEA**

A/63/17 (Annex 1)



SCOPE OF APPLICATION

- Contract of international carriage, where one of the following places is located in a Contracting State:
 1. place of receipt (e.g. Zurich)
 2. port of loading (e.g. Hamburg)
 3. place of delivery (e.g. Montreal)
 4. port of discharge (e.g. Boston)

- **NEW** → „door – to door“ transportation with 4 different triggers

LIABILITY REGIME: BASIC OBLIGATIONS

- **Duty to Care for the Cargo**
- **Duty to Exercise Due Dilligence in Providing a Seaworthy Vessel**



LIABILITY REGIME: BASIC OBLIGATIONS

- **Duty to Care for the Cargo**

→ Hague Rules Article 3 (1)

- **Duty to Exercise Due Dilligence in Providing a Seaworthy Vessel**

→ Hague Rules Article 3 (2)

LIABILITY REGIME: BASIC OBLIGATIONS

- **Duty to Care for the Cargo**

NEW → Duty to Properly Deliver the Goods at Destination

- **Duty to Exercise Due Dilligence in Providing a Seaworthy Vessel**

NEW → Continious Obligation



LIABILITY REGIME: BASIS OF LIABILITY

Basis of liability and structure of liability regime is that of the Hague Rules 1924



LIABILITY REGIME: BASIS OF LIABILITY

- **NEW** → Structure and Burden of Proof is visualized and spelled out
- **NEW** → Clarification: *prima facie* Case by Shipper's Proof of Damage during Custody of the Carrier
- **NEW** → „Q-clause“ – Type General Liability Clause, Fault Based
- **NEW** → Deletion „Error in Navigation“ Exemption
- **NEW** → Clarification: „Vallescura“ – Principle now Harmonized

MARITIME PERFORMING PARTY

- From the Contractual Carrier to the „Actual Carrier“
- **NEW** → From the „Actual Carrier“ to the „Maritime Performing Carrier“
- Himalaya Clause – Defense?
- Liability Regime of Maritime Performing Carriers:
 1. basis of liability and defenses
 2. limitation of liability
 3. jurisdiction: ports or domicile of maritime performing party

SPECIAL TOPICS

- Deck Cargo
- Deviation
- General Average



LIMITATION OF LIABILITY

- Hague Rules 1924 → 100 £ Sterling / Package
- US COGSA 1936 → 500 USD / Package
- Visby Protocol 1968 → 30 Franc Poincaré / kg
10'000 Franc Poincaré / Package
- SDR Protocol 1979 → 2 SDR / kg
666,67 SDR/ Package
- Hamburg Rules 1978 → 2.5 SDR / kg
835 SDR / Package
- **NEW** → UNCITRAL → 3 SDR / kg
875 SDR / Package

LIMITATION OF LIABILITY

- Loss of the Right to Limit:
 - Same principles as in Hague Visby Rules:
 - No limitation where carrier acted
 - with the **intent** to cause such loss
 - or **recklessly** and **with the knowledge** that such loss would probably result

LIABILITY FOR DELAY

- **NEW** → Delay is now regulated by the UNCITRAL Convention
- Basis of Liability for Delay: No delivery within the **„time agreed“**
- Limitation for Liability for Delay: **2,5 times the freight payable on the goods delayed**

LIABILITY FOR ON-LAND DAMAGES

Where loss or damages occur

- solely before loading the goods onto the ship

or

- solely after their discharge from the ship

the UNCITRAL Convention will **not prevail** over an other **International Instrument** (e.g. CMR) as long as such Convention applies to those land operations and provides for liability / limitation in a mandatory manner

NEW → limited Network System

NOTICE PERIOD & TIME FOR SUIT

Notice Period:

- apparent damages: at the time of delivery
- not apparent damages: **NEW** → 7 working days
- delay: **NEW** → 21 consecutive days after delivery of the goods (loss of rights!)

Time for Suit:

NEW → 2 years (loss of rights!)



LIABILITY OF THE SHIPPER

- **NEW** → Delivery for Carriage
- **NEW** → Obligation to Provide Information and Instructions
 - **Fault Based Liability**
- **NEW** → Obligation to Provide Contract Particulars
 - **Indemnity**
- **NEW** → Information on and Marking of Dangerous Cargo
 - **Strict Liability and Indemnity**

TRANSPORT DOCUMENTS

- Negotiable and **NEW** → non – negotiable documents (e.g. Sea Waybills)
- **NEW** → Clarification re NVOCC B/L / FIATA B/L
- **NEW** → Rule on Identity of Carrier: Presumed Carrier is the Registered Owner of the Ship
- **NEW** → Some evidentiary value also for „Straight B/L“ and for Sea Waybills where the third party has acted in good faith
- **NEW** → Effect of a „Freight Prepaid“ Clause

DELIVERY ISSUES

- **NEW** → Obligation to Accept Delivery
- **NEW** → Rules for Delivery for Non-Negotiable Transport Documents and for Straight B/Ls
- **NEW** → Rules for Delivery where Consignee is not claiming Delivery
- **NEW** → Special Rules for Negotiable Transport Documents:
 1. Surrender of one original B/L
 2. B/L may allow delivery without surrender (avoiding LOL's)

DELIVERY ISSUES (continued)

- **NEW** → Rules for Goods Remaining Undelivered
 1. Applying only if reasonable advance notice was given
 2. Storage of goods
 3. Unpacking of goods
 4. Causing the goods to be sold in accordance with the practices or pursuant to the law applicable at the place of the location of the goods

- **NEW** → Retention of Title as an Exception from the Carrier's Duty to Deliver the Cargo



RIGHT OF CONTROL

- **NEW** → Rules for Negotiable Transport Documents
 - Right based on the possession of the full set of B/L

- **NEW** → Rules for Non – Negotiable Transport Documents:
 - Shipper remains the Controlling Party, unless otherwise stipulated in the contract or unless the shipper transfers the rights to a third party / consignee

TRANSFER OF RIGHTS

- **NEW** → Rules only for Negotiable Transport Documents
 - order document: by endorsements
 - bearer document or blank endorsed document: by transfer of the document and without endorsement

- **NEW** → Liability of the Holder
 - holder is not liable until he exercises any rights under the contract of carriage
 - once the third party holder has exercised a right he is liable to the extent that such liabilities are incorporated in the B/L

MANDATORY SCOPE AND OTHER FORMS OF CONTRACTS

- Basic Rule: No Derogation of Obligations and Liabilities in Favour of the Carrier; no Assignments of a Benefit of Insurance
- **NEW** → No Derogation of the Obligations and Liabilities of the Shipper (both sides!)
- Charterparties: Fall not under the Scope: Freedom of Contract
- Volume Contracts: **NEW** → Certain Freedom of Contract; Third Party Protection

JURISDICTION AND JURISDICTION CLAUSES

- **NEW** → Places of jurisdiction (choice of plaintiff):
 - domicile of the carrier
 - place of receipt agreed in the contract
 - place of delivery agreed in the contract
 - port where the goods are loaded or finally discharged from the ship
 - place chosen in a jurisdiction clause
 - no exclusivity allowed for a jurisdiction clause!
- **NEW** → Applicable only in States that declare to be bound by this Rule: „opt in“

ARBITRATION

- **NEW** → Same Places as for State Court Jurisdictions at Seat of the Arbitration
- **NEW** → Exceptions only for „Volume Contracts“
- **NEW** → Exceptions for Non-Liner Transportation (Tramp Shipping)
- **NEW** → Applicable only in States that Declare to be Bound by this Rule: „opt in“

WHERE WILL WE GO FROM HERE?

- **UN General Assembly** (New York); 16 September – 1st October 2008
- **Rotterdam Inauguration Ceremony** (Rotterdam) (2009)
- **Entry into Force: Ratification of 20 Contracting States**



How will the draft Convention affect international marine insurers?

- initial “learning” investment
- initial “co-existence” with Hague Rules
- modernized liability system
- new Convention will hopefully overcome the proliferation of liability systems
- harmonized regime in synchronicity with the standard warehouse – to warehouse marine cargo policy

How will the draft Convention affect international marine insurers?

- harmonized door-to-door liability system for recourse actions
- harmonized door-to-door liability system for marine liability insurance
- harmonized law in matters outside pure liability issues
→ less frictions in the performance of trade and transportation → less circumstances in which claims can arise

UNCITRAL WEBSITE

You can find the documents relating to the UNCITRAL Convention on the UNCITRAL website:

- www.uncitral.org
- www.uncitral.org/uncitral/en/commission/working_groups/3Transport.html
- www.uncitral.org/uncitral/en/commission/sessions/41st.html
- Official document no.: **A/63/17 (Annex 1)**

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