



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
LIMITED

A/CN.9/WG.III/WP.15
25 June 1974

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Working Group on International
Legislation on Shipping
Seventh session
Geneva, 30 September 1974

MEMORANDUM CONCERNING THE STRUCTURE OF A POSSIBLE
NEW CONVENTION ON THE CARRIAGE OF GOODS BY SEA
(Submitted by Norway)

1. During the fourth (special) session of the Working Group on international shipping legislation the Norwegian delegation submitted a Memorandum Concerning the Structure of a Possible New Convention on the Carriage of Goods by Sea (A/CN.9/WG.III/WP.9, also circulated as document A/CN.9/WG.III (IV)/CRP.1). Annexed to this memorandum was "A possible systematic structure of a new convention on the carriage of goods by sea". The questions raised in this document have not yet been discussed by the Working Group.
2. The basis for the "systematic structure" of a new convention suggested in the annex is explained in paragraph 5 of document A/CN.9/WG.III/WP.9. During its fifth and sixth sessions the Working Group has made decisions which require that the suggested systematic structure be revised before being discussed by the Working Group. The annex as revised is attached to this document.*

* Throughout the annex, "C" refers to the 1924 Brussels Convention for the Unification of Certain Rules relating to Bills of Lading (League of Nations, Treaty Series, vol. CXX, No. 2764, p. 157; Register of Texts of Conventions and other Instruments concerning International Trade Law, vol. II, p. 130, United Nations publication, Sales No. E.73.V.3) (hereinafter cited as "Register of Texts"), and "CP" refers to the 1968 Brussels Protocol thereto (Register of Texts, p. 180).

Annex

A POSSIBLE SYSTEMATIC STRUCTURE (REVISED) OF A NEW CONVENTION
ON THE CARRIAGE OF GOODS BY SEA

Chapter 1. Scope of application

1. Contracts to which the Convention applies (documentary scope).
2. Geographic scope of application.
3. Definitions of terms such as contracting carrier, actual carrier, goods, franc, bill of lading etc.
4. Exceptions from the scope of application relating to other international conventions (cf. C, art. 8 and CP, art. 9).

Chapter 2. The transport documents

1. The carrier's duty to issue a bill of lading (negotiable transport document) or a consignment note (non-negotiable transport document), as demanded by the shipper.
2. Signature of the transport document, including the authority of the master of the carrying ship to issue the document on behalf of the contracting carrier.
3. Provision relating to the absence, irregularity, or loss of the transport document; provision concerning contractual and documentary data recorded by automatic data processing systems.
4. Provision relating to received-for-shipment and shipped bills of lading (cf. C, art. 3:7).
5. Particulars relating to the goods and the carriage to be included in the transport document (cf. C, art. 3:3, first subparagraph).
6. The liability of the shipper for incorrect or inadequate information concerning the particulars included in the transport document (cf. C, art. 3:5).
7. Provision relating to the carrier's reservations to particulars included in the transport document; provision relating to the transport document as prima facie evidence of the goods received for carriage (cf. C, art. 3:3, second subparagraph, and 3:4).
8. Special provisions relating to the effect of the bill of lading, including the rule relating to the bill of lading as conclusive evidence against a third party in good faith (cf. CP, art. 3:4, second sentence).

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Chapter 3. The liability of the carrier

1. The period of responsibility.
2. The basis for the carrier's liability for loss, damage and delay in delivery, including any special rules relating to fire, saving of life and property at sea, live animals and contributory negligence.
3. Provision relating to the claimant's right to treat delayed goods as lost.
4. The limit of liability.
5. Actions in tort against the carrier or against the servants or agents of the carrier.
6. Provision relating to the effect of wilful misconduct.
7. Special provisions relating to deck cargo.
8. Provisions on the respective liability of the contracting carrier and the actual carrier, including cases of trans-shipment and through carriage.

Chapter 4. The liability of the shipper

1. The general rule (cf. C, art. 4:3).
2. Provision relating to dangerous goods (cf. C, art. 4:6).

Chapter 5. Claims and actions

1. Notice of loss (cf. C, art. 3:6, first, second and fourth subparagraphs; in the French text, first, second, third and fifth subparagraphs).
2. Limitation of action (extinctive prescription).
3. Jurisdiction.
4. Arbitration.

Chapter 6. Nullity of stipulations contrary to the Convention

1. The general rule on invalid clauses.
2. The paramount clause.
3. Special provision on the liability of the carrier.

Chapter 7. Final provisions