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REPLY BY FRANCE TO THE ADDITIONAL UNCITRAL QUESTIONNAIRE OF 3 APRIL 1974

(Definition of contract of carriage; position of the person entitled
to take delivery of the goods)

1. Definition of contract of carriage

The 1924 Convention contains a definition of contract of carriage which is unsatisfactory (article 1 (b)). That definition seeks rather, in fact, to define the scope of application of the Convention, as it states that the term "applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea".

This is not really a definition, and, the Working Group took a decision on the documentary scope of application of the Convention at its sixth session (the Convention to apply to all contracts for the carriage of goods by sea, with a text in square brackets allowing it to be stipulated that, where a bill of lading is not issued, the Convention shall not apply).

At that session, a definition of carrier was adopted: "any person who in his own name enters into a contract of carriage of goods by sea with the shipper". On that occasion, the Secretariat was requested to prepare a study on the definition of the contract of carriage and on the relationship between the carrier and the consignee of the goods. A provisional definition, which will have to be studied at the next session, was proposed:

"The contract of carriage is one whereby the carrier agrees with the shipper to carry specific goods from one port to another against payment of freight. By virtue of this contract the person having the right to delivery of the goods shall be able to exercise the rights of the shipper and will be subject to his duties."

It should be recalled that this definition was proposed by the French representative. The first sentence of the text (only that sentence relates to the definition of contract of carriage, the second sentence being in answer to the second question below) is based very directly on the provision contained in article 15 of the French Law of 18 June 1966 on charters and maritime transport, which reads as follows: "By the contract of carriage by sea, the shipper agrees to pay a specific freight and the carrier agrees to carry specific goods from one port to another."

The proposed definition, which would replace the one in the existing Convention, has the advantage of spelling out the obligations assumed by the carrier in return for that assumed by the shipper (payment of a specific freight); it states clearly that the carrier agrees to effect the carriage of specific goods from one port to another.

It is rather difficult to conceive of an international convention - or indeed a national law - dealing with the carriage of goods by sea that did not define what is meant by a contract of carriage and did not, in so doing, spell out the carrier's obligations, which are the very essence of such a contract.

In this connexion, the definition of carrier would appear to be a necessary complement to the definition of carrier.

To that end, it is recommended that the Working Group, at its next session, should adopt the provisional definition which has been proposed.

2. Position, with respect to the carrier, of the person entitled to take delivery of the goods.

The second sentence of the proposed provisional definition of contract of carriage is in answer to this second question. It reads as follows: "By virtue of this contract the person having the right to delivery of the goods shall be able to exercise the rights of the shipper and will be subject to his duties."

The purpose of this provision is to enable a consignee who is not a party to the contract of carriage to rely on that contract vis-à-vis the carrier. Of course, no legal problem arises at the present time as long as what is involved is carriage under a bill of lading (only such carriage is covered by the 1924 Convention), since the consignee hands over to the carrier (or his representative) an original bill of lading which is the document of title to the goods. The bill of lading is made out to order or to the bearer, and the latter, by virtue of the fact that he is in possession of the bill of lading, is the person having the right to delivery of the goods; hence, he can exercise the rights of the shipper who is a party to the contract of carriage.

On the other hand, in the absence of a document of title to the goods, a consignee who is not a party to the contract of carriage is unable to exercise the rights of the shipper except by availing himself, if he can, of provisions of a national legislation which is recognized to apply and which confers this right on him.

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The French Law of 18 June 1966 contains no special provision to that end, even though it applies to the carriage of goods without the issuance of a bill of lading necessarily being required. However, article 49 of the Decree of 31 December 1966 on charters and maritime transport provides that the goods must be delivered to the consignee or his representative and specifies that the latter is the person named in the bill of lading if it is made out to a specific party, or the person who presents the bill of lading if it is made out to the bearer, or the last endorser if the bill of lading is to order. But no provision is made for cases of carriage which does not necessitate the issuance of a bill of lading. It is true that under French law it can be held that the shipper, in concluding the contract of carriage, stipulated in favour of the consignee, so that the latter may be held to have right of direct recourse against the carrier on the basis of that stipulation for a third party. The consignee could also be considered to be the agent of the person having the right to delivery of the goods, although, in the absence of any express authorization, proof of this would have to be established.

However, a legal mechanism allowing it to be held that the consignee may exercise the rights of the shipper who concluded the contract of carriage does not exist under the national legislation of all countries. The proposed provision is designed to fill this gap by removing any uncertainty as to the rights of a consignee who is not in possession of a bill of lading.
