



VB
VB002911

Oslo, 10. april 2008

Justisdepartementet
Postboks 8005 Dep.
0030 OSLO

JUSTISDEPARTEMENTET	
14 APR 2008	
SAKSNO:	200400272
AVD/KONT/DEH:	LOV/EP/ASL
DEK.NR.	62
ARKIVKODE:	

Deres ref.
200400272 EP IHO/mbb

Vår ref.
613.43/01/00966

UNCITRAL - ARBEIDSGRUPPENS ENDELIGE UTKAST TIL NY KONVENSJON OM STYKKGODS TIL SJØS

Det vises til departementets høringsbrev datert 4. mars 2008.

Som vi har redergjort for i tidligere høringsbrev støtter Norges Rederiforbund arbeidet som pågår i regi av UNCITRAL. Forhåpentligvis vil den nye konvensjonen få stor internasjonal tilslutning, derunder bl.a. av USA, og erstatte et bredt spekter av ulike konvensjoner som i dag regulerer transport av stykkgods til sjøs.

Når det gjelder kommentarer til det foreliggende utkast til ny konvensjon vedlegges Comments on the Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea utarbeidet av ICS, Bimco og International Group of P&I Clubs. Norges Rederiforbund er medlem i ICS og Bimco og vi stiller oss bak de kommentarer som er gitt i det vedlagte *position paper*.

Med hilsen
NORGES REDERIFORBUND


Viggo Bondi

Vedlegg

**International Chamber of Shipping, BIMCO
and the International Group of P&I Clubs**

**Comments on the Draft Convention on Contracts for the
International Carriage of Goods Wholly or Partly by Sea**

Introduction

The International Chamber of Shipping (ICS), BIMCO and the International Group of P&I Clubs have the following comments and suggestions for technical drafting improvements on the Draft Convention.

Article 7. Application to certain parties

The wording of this provision makes the Convention applicable between the carrier and a consignee etc. that is not an original party to the charterparty. The wording seems to include within the ambit of the Convention a charterparty that has been transferred to e.g. a consignee. This cannot be intended.

Recommended action: Add at the end of article 7: "or between one of the original parties and a person to whom the excluded contract of carriage has been transferred".

Article 12. Period of responsibility of the carrier

The intention of subsections article 12.3 (a) and (b) was to ensure that a carrier was not able to contract out of the minimum period of responsibility, namely, between the time the goods are loaded on the ship until they are unloaded from the ship. However the words "on the ship" are missing from the sub-paragraphs. Their omission could lead to confusion and an interpretation that the carrier's mandatory period of responsibility extends outside of this period.

Recommended action: The words "on the ship" be inserted after "initial loading" and the words "from the ship" are inserted after "their final unloading" in article 12.3 (a) and (b) respectively.

***Article 32.1. Information for compilation of contract particulars; and
Article 38.1. Contract Particulars***

The relationship and inter-connection between these is not clear, giving rise to uncertainty as to what the carrier is required to expect from shipper in terms of information for the contract compilation and what he is then expected or required to complete in the transport document:

Article 32.1 provides that the shipper

"shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars, including the particulars referred to in article 38, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or the electronic transport record is to be issued, if any".

Article 38.1 sets out what information shall be included in the transport document or electronic record, as furnished by the shipper. The list of items then listed in sub-sections (a)-(d) and the remaining sections of this article is not the same as the list of items in article 32.1.

Thus, while both articles set out information that the shipper is to provide (and article 32.1 is called "Information for compilation of contract particulars"), article 38.1 is more limited as to what is to be included in the transport record. The question is whether the carrier is required at the request of the shipper also to include in the document the information in article 32.1 which is not listed in article 38.1.

Recommended action: To seek clarification of this point, and if necessary, amendment of article 32.1 and/or article 38.1.

Article 49.1 (a) (i)

Reference in this provision should now be to article 1.10.

Recommended action: Seek amendment of this provision.

Article 50. Goods remaining undelivered

- (a) Article 50 sets out the remedies available to the carrier if goods remain undelivered. The question of when goods are deemed to be undelivered is to be measured by reference to article 50.1 (a) – (e). Having established that the goods are deemed to have remained undelivered, the carrier is entitled to proceed to take action under article 50.2 on the serving of a notice of the intended action in accordance with article 50.3. It would be helpful however to have clarification on the relationship between the notice required in this provision and the procedures in articles 48 (b) and 49 (d) and if, having established that goods are deemed undelivered under article 50.1 (a), the carrier may in fact proceed directly to article 50.2 upon the giving of an article 50.3 notice.

Recommended action: seek clarification on the relationship between the notice requirements in article 50.3 and articles 48(b) and 49(d).

- (b) At the last session of the UNCITRAL Working Group, suggestions were made to amend the definition of containers to include road or railroad cargo vehicles. The consequence of this would be to afford them the same treatment as container interests where carrier liability is the same regardless of whether a unit is placed under deck or on deck of purpose fitted vessels. It would, also, mean that, as with containers, package limits would be applied to individually enumerated contents and not just the vehicle itself. However, several speakers voiced concerns about the resulting significant increase in carrier liability and possible conflict with other conventions where Article 27 applied. Accordingly, it was agreed that rather than amend the definition of containers, it would be preferable to include references to road or railroad cargo vehicles to give them the same effect as goods inside containers where it was relevant to do so. Thus article 26.1. (b) was expanded to include road and railroad cargo vehicles. There remain, however, sections of the Convention where the reference still needs to be included. One such place is in article 50.2. (b). Others may be in articles 1.24, 42.3 and 43. (c) (ii).

Recommended action: Articles 50.2 (b), 1.24, 42.3 and 43. (c)(ii) to be expanded to also include goods packed in "road or railroad cargo vehicles".

Article 53. Identity of the controlling party and extent of right of control

Article 53.3. (c) – the reference should now be to article 1.10.

Recommended action: To seek amendment of this provision.

Article 67. Actions against the person identified as the carrier

This provision provides that the claimant has a period of 90 days beyond the two year period in which to bring a claim against the registered owner or the bareboat charterer where such party has rebutted the presumption that it is the carrier pursuant to article 39.2. If, then however, the "new" carrier can then also show that another party is in fact the actual carrier, does the claimant have a further 90 days in which to bring the claim against this party or does the original 90 day period still apply?

Recommended action: Industry seeks clarification and guidance on the intention of this clause.

International Chamber of Shipping

12 Carthusian Street London EC1M 6EZ

Tel +44 20 7417 8844

Fax +44 20 7417 8877

ics@marisec.org www.marisec.org www.shippingfacts.com



ICS/14/5

2 April 2008

TO: MARITIME LAW COMMITTEE

MLC(08)15

Copy to: ALL FULL AND ASSOCIATE MEMBERS (for information)

CARRIAGE OF GOODS: UNCITRAL - ICS/BIMCO/IG P&I'S COMMENTS TO FINAL DRAFT TEXT OF UNCITRAL DRAFT CONVENTION: CORRECTION TO ANNEX TO MLC (08)14, CIRCULATED YESTERDAY 1 APRIL.

Action: To note the attached corrected paper containing comments to the final draft text of the UNCITRAL Convention and provided suggestion for improving the text to aid its clarity. Members are requested to note that this is a correction to the paper circulated as annex to MLC (08)14 and to ensure that the comments in this paper, are passed to their national administrations.

The paper containing ICS/BIMCO/IG's comments on the final draft text circulated under cover of MLC(08)14 yesterday, 1 April, did not include comments on the relationship between articles 50 and articles 48 and 49 of the draft text of the Convention. Accordingly, a revised paper is now attached and members are asked to ensure that the comments in this paper, which replaces the previous version, are circulated to their national administrations.

The Secretariat apologises for any confusion caused by the omission in the earlier paper.

Kiran Khosla
Secretary: Maritime Law Committee