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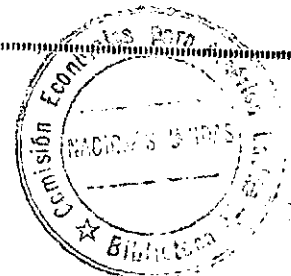


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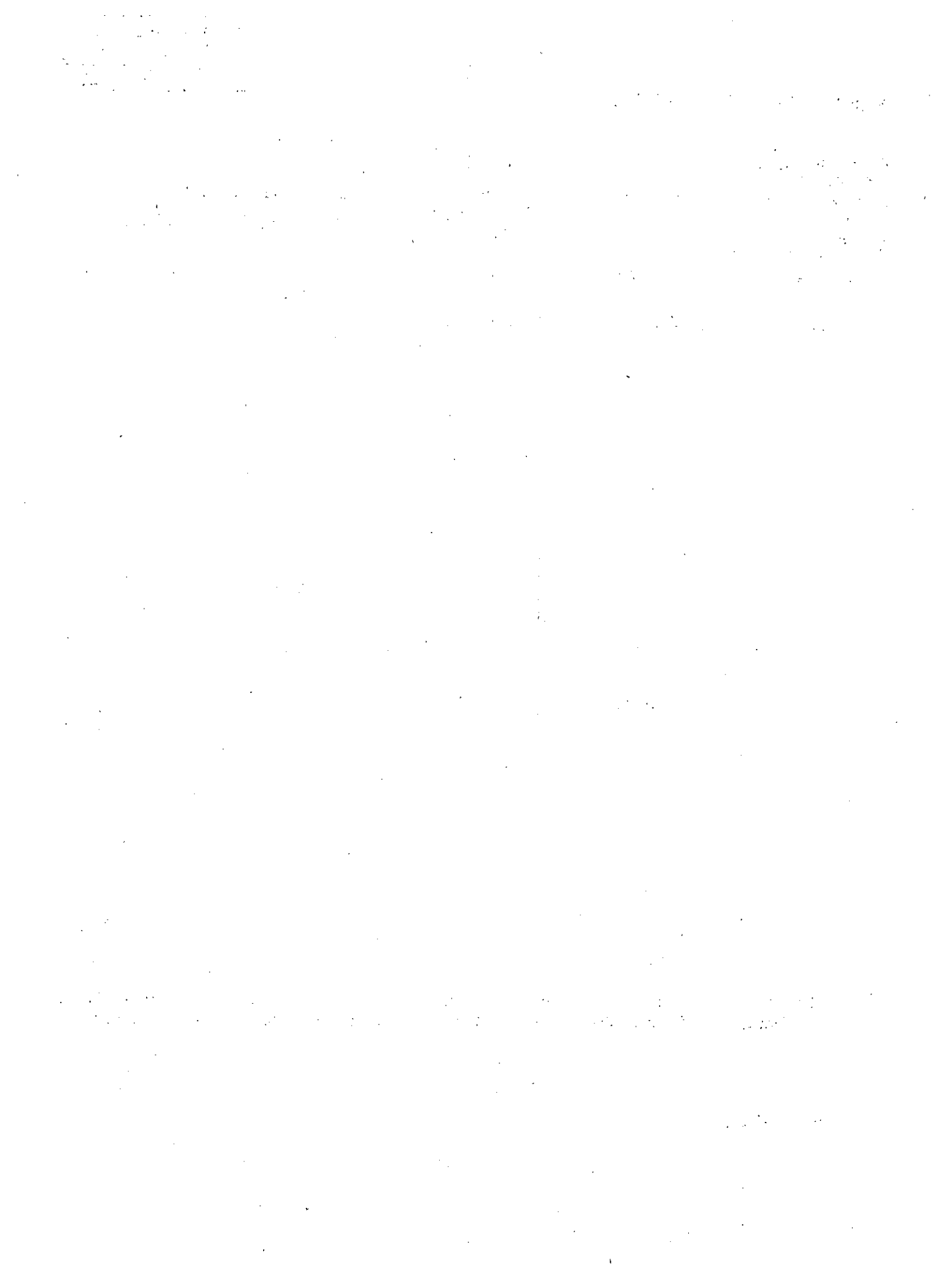


INSTITUTIONAL ASPECTS OF INTERNATIONAL INTERMODAL TRANSPORT

Contributions by Latin American experts

This document was prepared for the meeting of the Latin American Governments on international intermodal transport (Mar del Plata, Argentina, 20-30 October 1974)

74-10-2244



## INTRODUCTION

This document is an anthology of articles on different aspects of international intermodal transport: the combined transport document, customs' aspects and jurisdiction and conflict of laws. It is complemented by a companion document on liability and insurance aspects of international intermodal transport 1/.

The articles in these two volumes are the product of two initiatives. First, the Secretariat of the Economic Commission for Latin America requested different Latin American experts on commercial or transport law to write short briefing papers on specific technical and legal problems related to international intermodal transport. Second, the Latin American Group in Geneva convoked a meeting of specialists in different fields related to international trade to prepare draft articles for a convention on international intermodal transport, in order that the Latin American Governments could have more concrete points of reference for the consideration of the problems and possibilities of the coverage and substance of such a convention 2/.

In this volume, three contributions are presented. The first is on "The prevention of conflicts of law, on the applicable jurisdiction and on the settlement of legal disputes in connection with international intermodal transport," by Jorge Enrique Martorell. The second is on "The Combined Transport Document," by Alfonso Ansieta Nuñez. The third is on "Customs aspects of international intermodal transport," by Sergio de la Rosa V. and René Peña C. Each of these contributions sets out a general argument about the manner by which the Latin American Governments might approach the problem under consideration, followed by a draft set of articles on the subject.

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1/ Economic Commission for Latin America, Institutional Aspects of International Intermodal Transport: Liability and Insurance, E/CEPAL/L.112, Santiago, 17 September 1974.

2/ The meeting of specialists was held in Santiago, Chile, from 22 July through 9 August 1974.



I ; THE PREVENTION OF CONFLICTS OF LAWS, ON THE APPLICABLE  
JURISDICTION AND ON THE SETTLEMENT OF LEGAL DISPUTES IN  
CONNECTION WITH INTERNATIONAL INTERMODAL TRANSPORT

by Jorge Enrique Martorell

1. Machinery for preventing conflicts of laws

(a) Application of national laws

Until a convention on international intermodal transport is adopted, national legislation will be applicable to:

- (i) All questions not provided for in the contract of carriage and accessory operations (bank transfers, negotiation of the title of goods, insurance, etc.) agreed on between the parties;
- (ii) All questions provided for in such contracts, but in a form contrary to what is considered to be national public policy not rescindable by local law, which it therefore declares to be null and void and applies its own rules;

The mere listing of questions which are the most frequent causes of dispute between the parties, shows that the liberty to set contract terms is in fact very limited and the scope of application of the law is correspondingly broad:

I. Claims against the CTO and/or the carrier:

- Total or partial loss of the goods
- Damage
- Delay
- Failure to comply with the instructions of the sender, the consignee or the ultimate consignee regarding the route, means of transport to be used, negotiability of the title to the goods, etc.

II. Claims by the CTO and/or the carrier against the sender, the consignee or the ultimate consignee:

- Failure to hand over the goods within the agreed time limit and according to conditions laid down in the contract.

/- Payment of

- Payment of freight and other transport charges
- Damage caused to other cargo as a result of the defective condition of the container attributable to the sender, or by inherent vice of the goods
- Unjustifiable refusal to take delivery of the goods at destination or delay in doing so, and warehousing, demurrage and/or additional handling charges
- Difficulties due to inadequate freight documentation.

Legislation on most of these points differs widely from country to country, so that for the same international transport operation different and possibly contradictory solutions may be provided by the laws ruling in the various territories <sup>A/</sup>:

- The place where the contract of carriage was made
- The place of operations prior to loading, where the carriage was initiated

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<sup>A/</sup> The only choice of tribunal which may be considered as excessively favouring the plaintiff would be such as would result from bringing an action before a court or tribunal where he is ordinarily resident or has his principal place of business if it is not one of the recognized options.

The basic principle in determining the competent legal territorial jurisdiction for arbitration purposes is to adopt the place of domicile of the defendant, in accordance with the Roman maxim actor sequitur forum rei. Since this is the rule, other possibilities are in principle exceptions which may not be invoked excessively.

The CTO will frequently lend his services to occasional or transit forwarding agents, with domicile in places completely outside the radius of operation of the transport company. Thus, for example, it would not be acceptable for a CTO who is established on a line between North and South America and receives an occasional shipment from a forwarding agent domiciled in Asia or Africa to have to proceed to those places to defend an action against him in the event of litigation. On the other hand, it is reasonable for all contracting parties to start legal proceedings within the geographical area in which the transport operation was conducted and in which both transacted business in this connection. Moreover, the above-mentioned general principle of adopting the defendant's place of domicile as jurisdiction will always be applicable.

Accordingly, there is no precedent in the form of any international convention or internal law which allows the plaintiff to choose the court or tribunal of his own place of domicile where it is neither the domicile of the defendant nor the place of performance or conclusion of the contract.

- A transit country, where the event involving the liability of the contracting parties took place
- The place where the goods were or should have been delivered
- The place designated for the payment of freight and other charges.

Furthermore, even within the territory of a country, additional factors of uncertainty may arise regarding its own applicable law because:

1. As a rule no legislation on intermodal transport has yet been adopted and different rules are still applicable to land transport - with possible combinations of road, rail, lake and/or coastal river transport which are generally included in land transport - shipping and air transport;
2. The confederate or federal organization of a country may permit independent state legislation which is also likely to lead to conflicts of laws.

Accordingly, when a dispute arises between the parties to a contract governing international intermodal transport, unless there is a specific convention in force with uniform legal effect, it is imperative to find out first of all which national law is applicable to the issue in litigation.

(b) Definition of the concept "conflict of laws"

It must be made clear that seeking the applicable law does not in itself constitute a "conflict of laws" if it concludes with the choice of a single unquestioned rule. The concept applies to cases where two or more local laws are considered as being simultaneously in force for settling the contractual relationship and their content is divergent or contradictory.

It should also be noted that the determination of the competent legal jurisdiction does not mean that the legislation of the country where the court or tribunal is situated is necessarily applied to the case (lex fori), since such legislation may contain a rule of private international law whereby the matter is dealt with by the laws of another country. For example, an Argentine court, in applying the national law which establishes

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that the forms of contract and the rights of the parties concerned are governed by the legislation of the place where the contract was concluded, must invoke foreign law when such questions arise in connection with a contract concluded outside the country.

Conflicts of laws which should be settled by means of an international convention, for want of any existing practical solution, stem from the fact that some local rules seek to broaden the scope of application of national laws beyond the limits generally accepted by other countries. Thus, if a country's legal code establishes that it shall be applicable to all contracts of carriage concluded within its territory, even when they are performed outside it, and the legislation in force in the country of destination establishes that its own legislation shall be applicable because the contract was performed there, intermodal transport between the two nations concerned will be governed by the two laws simultaneously; the court in each country will apply its own legislation and, if actions are started in both, the judgement in one country is not enforceable within the territory of the other.

The consequences of these disputes may be summed up as follows:

- Before they occur, there is uncertainty regarding the rights and liability of the contracting parties, with the resulting difficulty of providing for the risks borne by the entrepreneurs and their adequate insurance coverage;
- After their occurrence, the weaker party to the contractual agreement or the party which cannot afford to carry it through to the end, must resign itself to the improper loss of its rights.

The preventive mechanisms are:

1. The conclusion of a convention along the lines proposed, ratified in the form of internal law in each signatory or acceding country, so that many of the laws in force would be replaced by a single common rule applicable to international intermodal transport;
2. In default of the above mechanism, or in cases not expressly resolved by it, the adoption of rules of private international law determining the choice of a single law for each issue in dispute.



(c) Content of the convention and strategy of developing countries

For such a mechanism to be suitably efficient, the convention should contain provisions dealing expressly with the most frequent causes of dispute, as set out briefly above.

As a counterpart to the necessary technical efficiency of the proposed convention as standardized international legislation governing the rights and liability of the parties involved in intermodal transport, the developing countries should mobilize all their bargaining power in order to prevent the adoption of rules which instead of establishing a fair balance might excessively protect the interests of the CTOs and carriers, most of whom in the present state of this activity and in the immediately foreseeable future are likely to be predominantly nationals of developed countries.

Obviously, the problem should not be over-simplified, i.e., limited to the polarization of interests between senders and intermodal transport operators, in which the strategy of developing countries would be to protect the former and that of developed countries to protect the latter.

Shippers will not always be nationals of developing countries since many multinational enterprises and progressive local industries will be using this technique; nor should enterprises in developing countries be discouraged from becoming operators. If the developing countries make the required effort - which in part they have already done - to establish air, maritime, rail and road transport fleets, rules discriminating against the CTO would constitute an additional obstacle.

Since most of these questions are referred to in detail in other items of document TD/B/AC.15/L.6, I will confine myself to making this observation on the subject under review.

(d) Rules for the choice of a single supplemental law

In order to avoid unnecessary rules and regulations, the Convention may, in certain cases, invoke the legislation of the countries it indicates. Thus, for example, article 16, paragraph 5, of the Convention on the Contract for the International Carriage of Goods by Road (CMR)

(E/ECE/253, E/ECE/TRANS/489), signed in Geneva on 19 May 1956, stipulates that if the carrier has to dispose of the goods the procedure shall be determined by the law or custom of the place where the goods are situated.

In view of the enormous number of cases that may arise in this activity, however, it is advisable to include a general clause in the Convention for all those not expressly envisaged and to establish the rules of private international law that will identify the applicable subsidiary or supplemental national laws concerned.

The existing systems for determining the national law which should govern those cases not expressly provided for in the Convention may be summarized as follows:

1. The French system, i.e., the law of the place where the contract was made (lex loci celebrationis), followed by the systems of Italy, Belgium, Portugal and the United States of America; in the case of the last named country, with the reservations under a broad range of national public laws;
2. The German system, i.e., the law of the place where the contract was performed (lex loci executionis), followed by the law of the Netherlands, Greece, Argentina, Brazil and Chile;
3. The law governing the nationality of the transport enterprise (law of the flag) which is the system of the United Kingdom.

None of these systems offers a final solution to the many problems arising in international transport; hence, valid well-founded comments on them have been made.

The lex loci celebrationis is frequently not the place of domicile of the sender or passenger or of the carrier, so that both the contracting parties would have to litigate in a foreign country, alien rules of law being applied for no valid reason. Moreover, the determination of the place where the contract was made presents difficulties in the case of contracts concluded by correspondence or by cable.

As regards the lex loci executionis, there are certain difficulties in establishing the place where the contract was performed. The performance of the contract of carriage starts from the moment that the vehicle

/is placed

is placed at the disposal of the sender or shipper at the agreed place, date and time. It may be agreed that the freight charge or the price of the ticket should be paid there, and the forwarding agent should hand over the goods in accordance with the established conditions as regards quality, quantity, packing, etc. The fact is that of the many forms of liability assigned to the contracting parties, some are complied with at the place of departures, others during the journey and others at destination. Thus, as correctly stated above, there is no place of performance of the contract, but only of the liability of various services involved in the contract.

Therefore, any liability which must be complied with at the place of departure would be governed by the law ruling in that place; any liability in connection with delivery and the validity of clauses exonerating the carrier from responsibility which are directly related to the fulfillment of such liability, are governed by the laws of the place of destination, as also is the payment of the freight charge if it was the place designated for such payment. Any request that the contract should be rescinded would be subject to the particular nature of the case, and it should be taken into account that the place where the matter is in dispute generally determines the competence of the courts or tribunals, and thus the applicable legislation.

The law governing the place of performance of contracts of carriage with alternative or open destinations gives rise to uncertainty regarding the applicable law, or permits it to be changed at will by the shipper or passenger who decides to change the place of arrival.

However, the most serious objection is undoubtedly that the same contract of carriage would be governed by several different laws, according to the liabilities concerned, and that the various contracts covering the same journey of a vehicle or ship would also be subject to different rules, according to the countries at which it calls.

For all these reasons, the law of the flag has presented itself as a practical solution, because it can be established and recognized by all the contracting parties beforehand and it means the standardization of all contracts covering the same journey by a transport unit, whether a vehicle or a ship.

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It is, of course, accepted without argument that the form, solemnity and means of proof of the contracts, as well as the rights of the contracting parties, are governed by the laws ruling in the place where they were concluded (locus regit actum).

### Conclusions

In choosing the system to be advocated by the developing countries, recourse must be had once again to strategies favouring their specific interests in the existing situation. On the assumption that most of the CTOs will be nationals of developed countries, it would seem preferable to apply not the law of the flag but the law of the place of performance, which would presumably be the territory of developing countries, on the basis of article 14 of the Treaty on International Law Governing Overland Trade, signed on 19 March 1940 by the representatives of Argentina, Bolivia, Brazil, Colombia, Paraguay, Perú and Uruguay (see the text in Anales de Legislación Argentina, vol. XVI-A, page 333).

In order to express these and other ideas put forward in the present brief report in as practical a form as possible, an annex is appended with draft provisions of a proposed Convention on International Intermodal Transport in relation to the matters dealt with in paragraph 2(g) of document TD/B/AC.15/L.6. The questions dealt with in the previous paragraph are covered by the article in section (b) of the annex.

Together with provisions designating the national rules applicable to cases not provided for in the contract, it is necessary to reaffirm that the substantive rules laid down in the Convention may not be annulled, for which purpose an article is suggested (section (a) of the annex) along the lines of article 23 of the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR) of 1973, and article 41 of the CMR of 1956.

## 2. Observations on applicable jurisdiction

### (a) Practical implications of the question

From the practical point of view of trade requirements, applicable jurisdiction depends on:

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- The geographical location of the court or tribunal before which the dispute must be settled
- The distance and costs of access between there and the geographical location of the plaintiff's place of business, as compared with the nearest place where he has representatives capable of acting on his behalf
- An assessment of the litigant's confidence in the impartiality and efficiency of such a court or tribunal. Some bias in favour of nationals of the country in which it operates and a certain amount of xenophobia are frequently presumed.

When the costs of transfer, representation and professional assistance before a court or tribunal in a place where the plaintiff has no agency or is not permanently resident absorb a significant proportion of the goods or value in dispute, the injured party is forced to abandon the defence of his rights, which means impunity for the party that failed to comply with the contract. The same situation arises when the court or tribunal in charge of the case does not inspire sufficient confidence, for well-founded or purely subjective reasons.

This danger is less serious for the CTO and multinational enterprises, which usually have suitable agencies in each place in which they operate; it is, however, a serious problem for the shipper.

(b) Proposed solutions

In line with the policy envisaged for developing countries, therefore, the best strategy would be to provide as many options as possible as regards the territories in which the plaintiffs may demand justice, so that there will always be a jurisdiction in which they can bring an action easily and economically.

Accordingly, the solution envisaged in article 34 of decision 56 of the Board of the Cartagena Agreement, which ascribes legal competence exclusively to the courts of the Member State within whose territory the contract of carriage was finalized as laid down in article 31 (issue of the ticket or bill of lading), is inadequate as far as the interests of the area are concerned.

/Under this

Under this system, an Argentine importer, for example, who signs a contract with a CTO in New York covering a shipment and on taking delivery of the goods in Buenos Aires finds them damaged or incomplete, or does not receive them at all, must bring an action exclusively in New York, even if he concluded the contract by correspondence and has no representative in that city.

It is therefore suggested that the plaintiff should have the following options as regards jurisdiction: (1) the place where the defendant has his domicile, his principal place of business, or is ordinarily resident; (2) the place where he has the branch or agency through which the contract of carriage was made; (3) the place where the loss or damage occurred; or (4) the place of origin or of destination of the cargo movement.

The proposed article is included in section (c) of the annex, and is based on article 21 of the CVR (1973) and article 31 of the CMR (1956), with the following modifications: (1) greater emphasis is placed on the compulsory nature of the options; (2) paragraph 4 of the two sources has been eliminated because the first part is considered obvious and the second unfair; (3) paragraph 5 of the relevant article in the two sources was also eliminated because it is considered that the question of security for costs incurred by litigants not resident in a country should in general be resolved by the procedural law of each State. The only aspect that might be considered would be the prohibition of any specific discrimination against intermodal transport, which is a very hypothetical assumption.

(c) The case of plurality of carriers

The substantive provisions of the Convention regarding liability of the contracting parties - a matter which is in principle outside the scope of this study (paragraph 2(g) of document TD/B/AC.15/L.6) - have some incidence on the procedural rules discussed in this study.

Such substantive provisions must establish whether the CTO may be merely an intermediary or commission agent, i.e., not the owner of a transport company with mobile equipment and facilities, or whether he must be a carrier at least in one of the forms or stages of the operation.

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Where the same contract is performed by successive carriers of the same or different technical media, it should also be established whether the shipper should start legal proceedings against the person who received the goods (usually the first carrier); against the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred; against other intermediaries whose participation in the occurrence is unknown; or against the person or persons who delivered or should have delivered the goods.

In view of the difficulty facing the shipper before he starts an action of determining the relations existing between the various persons participating in the operation, it is considered that a strategy in the interests of the developing country would be to envisage their joint or collective liability and the possibility of bringing actions against them all in the same proceedings and before the same court or tribunal.

In this respect, the proposed articles are a slightly broader version of the provisions contained in articles 34 and 36 of the CMR of 1956 (see article in section (d), and section (c), paragraph 2, of the annex).

3. Mechanisms for the settlement of litigation: arbitration

(a) Between the parties to contracts governing international intermodal transport

The inclusion in contracts governing international intermodal transport of clauses establishing that any disputes arising out of them shall be settled through the arbitration by experts or private institutions in place of the appropriate public courts or tribunals merits the following evaluation:

I. Advantages of private arbitration:

- Specialization
- Speed
- Low cost, if it eliminates the cost of legal advice to the contracting parties and involves only the reimbursement of actual expenses.

/II. Disadvantages:

## II. Disadvantages

- The possible lack of arbitrators or the difficulty of previously designating them in all the places of jurisdiction in which the plaintiff may bring an action;
- Lack of experience regarding their practice in this field;
- The necessity finally of having recourse to justice for the enforcement of a decision, if not complied with by the person against whom it was handed down.
- Inasmuch as the carriage is a contract of accession in which the CTO is often the stronger party, there is the risk that he will attempt to impose through the contract the arbitrators that he considers most favourable.

In Argentina, the courts have declared such clauses in bills of lading to be null and void when they are aimed at depriving the Argentine judges of the jurisdiction that would normally be theirs and assign it to a foreign court or tribunal, and when they subject the contract to conditions that limit or exclude the carrier's liability, which are not permitted by Argentine law.

There is no doubt that the interests of nations which have no adequate means of transport of their own for their foreign trade are involved here.

Accordingly, if the practical advantages which commercial experience recognizes in private arbitration determine that it should not be entirely ruled out, two kinds of limitations are recommended for its inclusion in contracts:

1. Article 23, paragraph 3, of the CVR of 1973 reads as follows:  
"Any clause assigning to an arbitral tribunal a jurisdiction which is stipulated before the event that caused the damage shall likewise be null and void". It is considered that pressure may be brought to bear on the weaker party at the time the service is required, but not after defective performance or failure to comply, when he decides what action to take in defence of his rights.

/2. Private arbitration



2. Private arbitration should be exercised without prejudice to the options of territorial jurisdiction which are assigned to the plaintiff in the Convention, i.e., when the arbitration court or tribunal designated after the event that involves liability is situated in one of the following territories: the place where the defendant has his domicile, is ordinarily resident or has his principal place of business, or any of these places if they are more than one; the place where the defendant has the agency through which the contract of carriage was made; the place where the event involving liability took place; the place where the CTO took over the goods; or the place of destination of the carriage.

A third limitation which might be considered for the inclusion of private arbitration in contracts of carriage is the requirement that the countries in which such contracts are performed must be signatories of international conventions on the recognition and enforcement of foreign arbitral awards, as otherwise practical difficulties of an insoluble nature may arise.

Such conventions are:

- The United Nations Conference on International Commercial Arbitration (United Nations, 1958), which replaces the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927;
- The Montevideo Treaty on Procedural Law.

The pertinent draft article in the annex (section (e)) omits any reference to this question in order to avoid making the article too restrictive in this connection. It is based on article 23, paragraph 3, of the CVR (1973), with the additional requirement that one of the places of jurisdiction established in the article in section (c), paragraphs 1 and 2, be chosen as the location of the arbitration tribunal. Obviously, we have expressly departed from article 33 of the CMR of 1956, which admits such a tribunal in general terms without major reservations.

/(b) Settlement of

(b) Settlement of litigation between States

Although the conventions governing activities similar to international transport seldom give rise to conflicts of public law between the Contracting States, they usually contain a clause to the effect that any such disputes shall be referred for settlement to the International Court of Justice at The Hague.

There are no tribunals of this kind in the Latin American countries or developing countries in general. Neither is there any reason why these countries should not be subject to the decisions of the International Court of Justice, with its record of impartiality and broad scope. In the interests of these nations, one of the following decisions should be adopted:

- To eliminate the clause entirely, so that possible litigation of this kind may be settled exclusively through diplomatic channels;
- To include it with no major reservations (as, for example, in article 33 of the United Nations Conference on Road and Motor Transport, Geneva, 19 September 1949);
- To include it with reservations, as in articles 47 and 48 of the CMR of 1956 and articles 29 and 30 of the CVR of 1973.

In the pertinent draft article the wording referred to in the third possibility has been adopted as being considered of an intermediary nature (articles in sections (f) and (g) of the annex).

(c) The case of countries not parties to the Convention

Lastly, some thought should be given to the situation that would arise, once the Convention is in force, in the case of countries which have not signed, ratified or acceded to the Convention.

In principle, intermodal transport would continue to be provided as at present, i.e., without the advantages of standardization and simplicity resulting from the application of the Convention. States not signatories to it may not directly prohibit its application, but their courts would not recognize the validity of the single document regulating international transport in so far as it differs from the requirements of their

/own laws.

own laws. Nor would they accept modifications in the carrier's liability as established by their own legislation, and they would apply their different types of regulations to the various stages of combined transport, according to whether the portion concerned was performed by plane, ship, railway or road. Local banks would have insurmountable difficulties in opening, negotiating and/or financing letters of credit or documentary credit in import and export operations performed under the Convention régime, and the same situation would arise in the case of insurance companies, because of uncertainty regarding the coverage of risks, which are assessed differently under national law and under the Convention.

Logically enough, the degree of the impact of not acceding to the Convention régime, will differ greatly according to whether: (a) the non-signatory States are numerous enough to form a block capable of negotiating properly with one another on a different basis; (b) the non-signatory States are few and isolated, in which case their exclusion will be more marked because presumably the CTOs will limit their operations or cease to operate with those countries or will charge them differential freight rates, or they will lose the saving in costs resulting from the new intermodal transport techniques. Sooner or later, the force of events will cause the rest of the countries to join, as has already occurred in the case of the Brussels, Warsaw, The Hague, Rome and other conventions in the field of telecommunications, which today are practically universal.

Hence the vital importance that developing countries should not assume a passive role in the preparatory work for the conclusion of a Convention on International Intermodal Transport, but on the contrary should do everything in their power to achieve solutions that are consistent with their needs.

DRAFT VERSION OF ARTICLES IN THE PROPOSED CONVENTION ON INTERNATIONAL  
INTERMODAL TRANSPORT RELATED TO PARAGRAPH 2(g) OF DOCUMENT TD/B/AC.15/L.6

- (a) ARTICLE \_\_\_\_ . Any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.
- (b) ARTICLE \_\_\_\_ . Disputes about the nature, aspects or circumstances of contracts governing international intermodal transport which are not expressly envisaged in this Convention shall be settled through the application of the pertinent national laws as stipulated below:
- (a) All questions related to the form and effects of the contracts and the nature of the rights and liability of the Contracting Parties, by the laws of the place where the contract was made;
- (b) Liability for events prior to the initiation of the carriage and the delivery of the goods to the CTO, by the laws of the place where such events occur or should occur;
- (c) The delivery of the goods to the consignee and all questions related to compliance with such liability, by the laws of the State where such delivery was or should have been made.
- (c) ARTICLE \_\_\_\_
1. In all legal proceedings arising out of intermodal transport under this Convention the plaintiff may bring an action in the courts or tribunals of the country within whose territory is situated:
- (a) The place where the defendant has his domicile, is ordinarily resident, or has his principle place of business or the branch or agency through which the contract of carriage was made;
- (b) The place where the event involving liability or causing the damage occurred; or
- (c) The place where the goods were taken over by the CTO or the carrier, or the place designated for delivery at destination.

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2. When there are more than one defendant with different domiciles or sources of jurisdiction, an action may be brought against them jointly before a court or tribunal competent in the case of any one of them, in accordance with the previous paragraph.
  3. The options regarding jurisdiction as stipulated in this article may not be limited, restricted or renounced in the contract.
  4. Where in respect of a claim referred to in this article an action is pending before a competent court or tribunal, or where a judgement has been entered in respect of such a claim, no new action shall be started between the same parties on the same grounds unless the decision of the court or tribunal before which the first action was brought is not enforceable in the country in which the new proceedings are started.
  5. When a judgement entered by a court or tribunal of a Contracting State in any such action as is referred to in this article is enforceable in that country, it shall also be enforceable in each of the other Contracting States as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be reopened.
- (d) ARTICLE \_\_\_\_ . If a carriage governed by a single contract concluded with a CTO is performed by successive carriers, each of them shall be responsible for the performance of the whole operation, jointly and collectively, and an action may be brought against them all in accordance with paragraph 2 of the previous article.
- (e) ARTICLE \_\_\_\_ . Any clause assigning to an arbitration tribunal competence on matters governed by this Convention which is stipulated before the event that gave rise to the dispute shall be null and void. After such an event, the Contracting Parties may only designate arbitration tribunals situated in any one of the places of jurisdiction established in article... (section (e) of this annex), paragraphs 1 and 2, of the Convention.

/(f) ARTICLE \_\_\_\_ .

(f) ARTICLE. Any dispute between two or more Contracting States relating to the interpretation or application of this Convention which the parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting States concerned, be referred for settlement to the International Court of Justice.

(g) ARTICLE

1. Any Contracting Party may, at the time of signing, ratifying or acceding to this Convention, declare by notice addressed to the Secretary-General of the United Nations that it does not consider itself bound by article... (section (f) of this annex) of the Convention. The other Contracting Parties shall not be bound by article... (section (f) of this annex) with respect to any Contracting Party which has entered such a reservation.
2. The declaration referred to in paragraph 1 of this article may be withdrawn at any time by notice addressed to the Secretary-General of the United Nations.

## II: A COMBINED TRANSPORT DOCUMENT

by Alfonso Ansieta Nuñez

The technological development which has taken place in the field of transport in recent years has found one of its most important expressions in the system of intermodal transport, whereby the same unit of cargo uses different means of transport from its place of origin to its destination. This has led to the door-to-door transport system, which involves a radical change in the concept of the commercial law relations between the parties to the transport contract.

It is because of these new modes of operation that the interests represented by the Governments, the transport sector, shippers and insurers have mobilized their legal experts to study a Draft International Convention on the Combined Transport of Goods aimed at establishing a sole transport document and uniform rules in order to avoid the complications and problems which arise as the result of the different legal regimes governing relations between the parties to the different means of transport (air, sea or land). Hitherto, the transfer of goods from one mode of transport to another has not only meant a change in the form and circumstances of the transport itself, but also a change in the legal regime governing it.

The study of the Draft International Convention on the Combined Transport of Goods (TCM Convention) called forth some reservations from the Latin American countries, among others, and they considered that prior to the Convention's approval it was necessary to undertake a more careful study of the implications of such international regulations, in view of their desire to increase their participation in transport services, insurance, banking and other services related to international trade.

The study carried out by Mr. Tomás Sepúlveda Whittle for the Latin American Free Trade Association (ALALC/Sec/PA/44, June 1973) on the Bases for a Study on Container Transport, shows that in Latin America the use of containers and other forms of unitized transport is on the increase and there is considerable scope for further development.

/There is

There is no doubt, therefore, that the Latin American countries need to take a practical stand in good time in this respect. It should be borne in mind that the International Chamber of Commerce has adopted a set of uniform rules for a Combined Transport Document which are based precisely on the Draft TCM Convention that aroused the reservations mentioned earlier. This means that either party to a combined transport contract is free to incorporate these rules in it as a Paramount clause, thus making them as legally binding as an existing national law or a valid international convention.

The aim of the present document is to serve as a benchmark in the formulation of a regional policy on international intermodal transport. It is limited to questions related to the establishment of an internationally recognized and standardized combined transport document and in view of the limit set for this study it cannot claim to be more than a summary analysis of the main problems raised by the establishment of a combined transport document and the possible solutions open in the light of the social and economic objectives of the region.

#### Raison d'être of the combined transport document

The idea behind the combined transport document is to simplify the procedure for the international transport of goods, both as regards the multiplicity of documents involved and as regards the different legal frameworks which govern the various modes of transport used.

There are various conventions being enforced in practice at the international level in respect of the different modes of transport, and these highlight the absence of uniformity between the different legal regimes. Such differences are even more evident in maritime transport than in other means of transport, for the Convention for the unification of certain rules with respect to Bills of Lading, commonly known as The Hague Rules, establishes a set of exemptions and limitations on liability in favour of the carrier which are much wider than those provided for in the Warsaw Convention on the unification of certain regulations concerning international air transport or the relevant rules and conventions governing transport by road (Geneva 1956) and rail (Berne 1961) and Decision No. 56

/on international



on international motor transport between the countries of the Andean Group (Lima, still to be ratified).

In addition to the above there are the various administrative regulations imposed by the respective Governments in respect of international trade, which involve excessive paperwork and not only constitute a real impediment, but also offset the advantages gained through the greater speed of the unitized cargo system.

Moreover, the combined transport document, as the expression of the transport contract, must reflect as clearly as possible the rights and duties of the parties in the new context created by the existence of the combined transport operator, i.e., the new commercial entity responsible for the organization of international transport since the appearance of containers and other forms of cargo unitization.

The Combined Transport Operator (CTO) is responsible for issuing the CT document and assumes liability vis-a-vis the shipper for the entire transport operation, which he may carry out with his own means of transport or contract other means that do not belong to him. In other words, the shipper deals only with the CTO, with the aim that this may simplify his situation because he does not have to deal with several carriers, and in the event of loss or damage to the goods it is sufficient for him to prove his claim against the CTO. Thus, in the draft TCM Convention and later in the Uniform Rules for a Combined Transport Document prepared by the International Chamber of Commerce, the only relations dealt with are those which exist between the CTO and the shipper, the relations between the CTO and the carriers under sub-contract to him continuing to be governed by the respective legal regimes corresponding to the stage of transport concerned.

The position of the Latin American countries with respect to the CT document

At various sub-regional meetings, Latin American government experts unanimously took the position that the draft TCM Convention was not yet ready to be examined at the international level at the United Nations IMCO Conference (1972) and made a number of suggestions on the most important aspects of the Draft Convention. These suggestions were put forward for

/more detailed

more detailed study so that the decision on the final policy to be followed in this respect should be based on the realities of the situation.

These suggestions may be summarized as follows:

- (a) The document should be uniform for all modes of transport
- (b) It should contain the minimum data required to enable it to perform its triple function as a contract of transport, a receipt for the goods and a negotiable document for the transfer of ownership of the goods.
- (c) It should be negotiable.
- (d) Consideration should be given to the introduction of a system of civil liability for combined transport operators to provide the owner of the cargo with the greatest possible protection, particularly in the case of concealed damage.
- (e) Rules should be laid down on the applicable jurisdiction in the event of disputes, so that the interests of the cargo are adequately protected. On this point, the Andean Group countries included the carriers of developing countries in addition to the shippers.

A brief analysis of two of the above points is given below, bearing in mind the interests of the Latin American countries in the face of the rules already formulated in the Draft Combined Transport Convention and the Rules of the International Chamber of Commerce.

#### The uniform nature of the document

Since the rules of both the International Chamber of Commerce and the Draft TCM Convention give the combined transport document the character of an instrument providing proof of the transport contract, it is clear that the intention is that this contract should be governed by the same rules, in keeping with the legal framework of these instruments.

Under the Rules of the International Chamber of Commerce, the CTD is that document which constitutes proof of a contract to provide or arrange the combined transport of goods, and bears either of the following headings: "Negotiable Combined Transport Document issued in accordance with the Uniform Rules for a Combined Transport Document" or "Non-negotiable Combined Transport Document issued in accordance with the Uniform Rules for a Combined Transport Document".

/The provision

The provision whereby these Rules apply to any contract to provide or arrange the combined transport of goods and whereby the CTD acquires a probative nature confirms the tenor of these international rules.

The Draft Combined Transport Convention is even more explicit, since it states in Article 1, subparagraph (c) that the provisions of the Convention shall apply to every CTD whatever may be the place of issue, the place at which the operator takes charge of the goods, the place designated for delivery, the nationality of the combined transport operator, the consignor, the consignee or any other interested person, or the nationality of the means of transport or its place of registration.

The International Chamber of Commerce Rules, because their legal authority results from their incorporation by the parties in the combined transport contract, include in Rule 1, paragraph (c) a safeguard clause whereby any stipulation or any part of any stipulation contained in a combined transport contract which would directly or indirectly derogate from these rules shall be null and void to the extent of the conflict between such stipulation, or part thereof, and these rules.

The Draft Convention, for its part, lays down a similar rule in Article 16 which states that stipulations which would directly or indirectly derogate from the provisions of this Convention shall be null and void. In particular, they stipulate, any clause assigning benefit of insurance of the goods in favour of the CTO shall be null and void.

Under the Convention, however, the issue of a CT document does not rule out the use of other transport documents issued under international conventions or relevant national legislation. Such a situation could in practice lead to conflicts and litigation, since it breaks the desired uniformity in that a given stage of the transport may be governed by different laws. This is of special importance for the owner who needs to bring a claim against the carrier for loss or damage to the goods.

At all events, seeing that it is impossible in the short-term to succeed in having the CT document replace in their entirety all other documents which may be issued at each stage, it would be advantageous from every point of view to set in motion a process of at least standardizing the information to be contained in each of the latter documents.

/This can

This can only be done by reaching formal agreement between the Governments of each country or between the national Chambers of Commerce whose membership includes shippers, carriers, combined transport operators, insurers and banks on the compulsory inclusion of certain basic data in each document, without prejudice to other information which the parties to the agreement may wish to introduce in keeping with national law or with laws deriving from the special nature of each form of transport.

Another way of achieving uniformity would be to introduce a Paramount clause in the transport documents for each stage, giving priority to the conditions contained in the International Combined Transport Convention, if ratified, or the International Chamber of Commerce Rules, which in turn govern the CT document, over all the conditions contained in other documents. However, this solution would necessitate the prior settlement of the sharp differences which exist between the various means of transport as regards liability (particularly between maritime transport and the others). The great majority of Bills of Lading are of course, subject to The Hague Rules, which tend to protect the shipowner rather than the consignor.

The objective of standardizing the combined transport documentation must also take into consideration the growing computerization of the processing of data derived from the transport documentation and the increasing transmission of such data over telecommunication networks.

The CT document should therefore be adaptable to this new type of technological progress, which will undoubtedly continue to advance in order to keep abreast of achievements in the unitization of cargo.

There can be no doubt that in this objective of standardization the banks will have quite an important role to play in practice, for since the CTD is not only evidence of the loading and movement of the goods, but also the title to ownership of them, and must therefore be used in the transfer of funds for payment of the goods, it necessarily has to conform to banking regulations, which are very strict when the bank is acting as the representative of the buyer of the goods, since it will only make payment when it has received all the documents in good and due form, in accordance with its regulations. At the same time, it is worth noting

/the recommendation

the recommendation made by the National Committee on International Trade Documentation and the Department of Transportation of the United States Government, in the document "Paperwork or Profits?", to the effect that, as a means of simplifying practices in the field of documentation and of speeding up payments in international trade, the banks, importers, exporters and Governments should join together to support the separation of the financial elements of any international transaction from the transport documents.

Finally, from the point of view of the insurers, the existence of a document subject to uniform rules covering the whole voyage would help enormously in fixing the insurance premiums for the cargo, since they would know beforehand the extent of the risks the carriers are prepared to bear, and this would help in defining more precisely the liability to be borne by the insurers.

The current use in international trade of several types of combined transport documents, with different rules and providing different information, is a further argument for the establishment of uniform rules to govern this form of transport.

Minimum data to be contained in the CT document

As regards the data to be included in the CT document, the Latin American countries and the developing countries in general (TD/B/AC.15/L.6 - E/AC.6/L.460/Add.4) feel, as mentioned earlier, that it should contain the minimum data and information required for it to perform its functions adequately.

However, this stand has been objected to on the grounds that the information required may vary with time and it would be very difficult in practice to modify the compulsory information requirements if they formed part of an international convention. The example of the Warsaw Convention on air transport was quoted in this convention. Precisely such difficulties have arisen in this case because some of the data required by the Convention have become outdated.

The real aim, however, is that the document should contain certain minimum data which are required in order for it to serve adequately as a

/receipt for

receipt for the goods on board the carrier, as evidence of the transport contract, and as a title of ownership of the cargo, in order to make it negotiable.

The International Chamber of Commerce Rules leave it to the parties to insert the information they consider desirable from the commercial point of view, but the shipper is required to guarantee to the combined transport operator the accuracy of the description, marks, number, quantity, weight and/or volume of the goods.

Clearly, all these data are essential and cannot be omitted, for their real purpose is to protect third parties concerned with the transport contract, such as the consignee/buyer or the bank providing credit or acting as agent of the buyer.

The objectives pursued in the CT document make it much more similar to bills of lading and some railway consignment notes than to air or road waybills, for waybills are in many cases legally distinct from bills of lading in that they do not indicate ownership of the goods carried or give title to the goods, it being sufficient for the person identified as the consignee by the shipper to present himself at the destination of the goods to take delivery even if he does not have the waybill.

The data concerning the description of the goods carried directly affect the responsibility of the CTO vis-a-vis the consignee, so it is most important to ensure that they contain no errors or false information and to stipulate that the shipper must guarantee their accuracy to the CTO under pain of indemnifying him against all loss, damage or expense arising or resulting from inaccuracies or insufficiencies in such particulars.

Under Rule 7, second paragraph, of the International Chamber of Commerce Rules, the right of the CTO to such indemnity shall in no way limit his responsibility and liability under the CT document to any person other than the consignor, subject to the conditions stipulated in the CT document itself.

This leaves the door open, in clause 9, for the CT carrier to make his responsibility subject to reservations stemming from the practical difficulty of verifying the accuracy of the declarations of the consignor.

/These reservations

These reservations are frequently found in bills of lading in such forms as: "received in apparent good order and condition", "quantity and weight unknown", and "marks, numbers, contents, nature, quality, weight, quantity, measurements and value are inserted in this Bill of Lading upon shippers' statement without responsibility of the carrier".

These reservations may also be of a specific nature: i.e., they may refer to the specific condition in which the goods were received by the CTO, such as when a smaller quantity of packages than the number declared by the shipper is received or when they are received damaged.

Consequently, when it is stated in the final paragraph of Rule 9 of the International Chamber of Commerce Rules that the CT document shall be prima facie evidence of the taking in charge by the CTO of the goods as therein described, the CTO is not giving a really effective guarantee to the consignee or the bearer of the document, since the insertion of one or another of the general reserve clauses mentioned above would be sufficient to enable the CTO to avoid any responsibility whatever under the terms of the document itself and the tenor of the International Chamber of Commerce Rules.

The situation is different with respect to non-maritime means of transport, as may be seen from international conventions on air transport such as the Warsaw Convention, which lays down in its Article 11.2 that "the statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except in so far as they both have been, and are stated in the consignment note to have been checked by him in the presence of the consignor or relate to the apparent condition of the goods".

The convention on the international transport of goods by road (the CMR convention) lays down in Article 9.2 that "it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good conditions when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note".

/According to

According to the Swedish professor Jan Ramberg (The law on carriage of goods - Attempts at harmonization) "The rules relating to the transport documents used in air, rail and road transport, apart from the rule whereby the information contained in the consignment note constitutes prima facie evidence, do not impose on the carrier the general obligation to check the information and enter reservations in the consignment note on pain of becoming liable to a bona fide holder either through not being able to correct the statements made in the consignment note or being responsible for any damage to the goods".

The requirement for indication of at least the quantity, weight, volume and marks of the goods, as laid down in the first paragraph of Rule 9, is closely linked with the system of liability which it is desired to adopt, and for this reason we shall not go into any further detail on this here, since the subject of liability will be dealt with in a separate study. From the point of view of the content of the document, however, it seems clear that such information is indispensable, since it is the minimum required to describe the objects carried.

In addition to the description of the goods it is indispensable that the CT document show the name of the consignor or shipper, since he is the person contracting the transport with the CTO and the document also serves as proof of the performance of his contract of sale with the buyer.

It is also obvious that, as implied in the previous paragraph, the name of the Combined Transport Operator must also be clearly indicated, since he is the person accepting full responsibility for the transport and assuming the obligation to deliver the goods to their final destination.

The date and place of issue are necessary as evidence of the due performance of the obligations of the seller vis-a-vis the buyer, and of the carrier vis-a-vis the shipper and vice versa. This information is also important from the point of view of the external trade regulations of both the exporting and the importing country in respect of exchange of systems, customs duties, special exemptions, etc.

The place of initial loading and the final destination define the field of responsibility of the combined carrier in space and also determine

/the place



the place of performance of the seller's obligation to deliver, depending on whether the sale is FOB or CIF.

In view of the intermodal nature of the transport there must also be space for filling in the name, address and nationality of the successive carriers. This information will help in identifying the place where loss or damage to goods may have occurred and in more effectively proving the responsibility of the carrier responsible. The inclusion of this information does not mean that the successive carriers mentioned therein necessarily have to accept the conditions contained in the combined transport document, for as long as there is no real uniformity in this respect they would almost certainly not be willing to accept conditions which differ from those contained in their own transport documents.

With respect to the consignee, we believe that his name should also be included in the information to be provided in the CT document, since he receives the cargo, makes the claims for loss or damage suffered during the transport, and is, in the final analysis, the person directly affected by the conditions and clauses contained in the transport contract. Naming the consignee is all the more indispensable if the CT document is non-negotiable. Furthermore, the generally rather strict foreign trade regulations which exist in the majority of Latin American countries, as well as banking regulations, require the document to include the name of the consignee if it is to be negotiable.

The freight charges and the value of the cargo are not only important from the statistical point of view, but also from the transport point of view, as evidence of the total amount of the shipper's responsibility. As regards the value of the cargo, although it is true that the provision of this information should be the exclusive responsibility of the shipper or consignor, without prejudice to the right of the carrier to show that the said value is different at the place and date of final delivery, it would help enormously in fixing the contributory value in cases of serious damage, and would enable the limit of the responsibility of the carrier to be established more clearly when this value is less than the maximum compensation payable per kilo of weight under the terms of the CT document.

/In any

In any event, the statement of the value of the goods would not be binding on the CTO unless expressly accepted by him.

Another important entry is that concerning the jurisdiction applicable in the event of disputes between the parties. The geographical location of the court which is to hear a claim against the combined carrier is quite important in practice, for distance may prevent the plaintiff from enforcing his claim because of the costs and other difficulties associated with the remoteness of the court where the dispute is to be settled. It is therefore desirable that the plaintiff should be given several options for entering his claim either at the domicile of the defendant, his place of business or his usual residence, or his agency, at the place where the events giving rise to the claim took place, or at the place of loading or final destination.

Finally, the document should indicate the number of originals made if more than one has been issued.

The remaining information to be included in the Combined Transport Document concerns the rights and duties of the parties to the contract and is therefore outside the scope of this study.

### III: CUSTOMS ASPECTS OF INTERNATIONAL INTERMODAL TRANSPORT

by Sergio de la Rosa V. and René Peña C.

1. Introduction to the proposed articles on customs matters for a convention on international intermodal transport

If it is proposed through an international intermodal transport convention, to institute a single document to be used for customs, commercial and transport purposes, then this convention must contain measures regulating customs procedures, since when the combined transport operator undertakes to transport or arrange to transport goods and to guarantee the delivery of the cargo from the receiving-point in the exporting country to its point of destination, he has to sign (or prepare directly or through his representative) all the documents involved in the operation in question, including customs documents covering the cargo transported, to the satisfaction of the authorities of the country concerned.

The articles proposed are fundamentally based on the "Customs Convention on the International Transit of Goods" (ITI Convention) and the "Customs Convention on Containers" (1973), but the following documents and legislation were also taken into account: "Normas Recomendables sobre el Tratamiento Aduanero Aplicable a los Contenedores" (Recommended norms for customs treatment applicable to containers), prepared at the third meeting of Directors of Customs of the Latin American Free Trade Association (LAFTA), held in Bogota from 15 to 19 June 1970; Law Nº 17.347 of 18 July 1967, "Reglamento para el Uso de Contenedores" (Rules for the use of containers) contained in Decree Nº 925 of 22 March 1968, and "Disposiciones Aduaneras con Respecto a la Utilización de Contenedores" (Customs provisions regarding the use of containers) contained in Resolution 6652 of 20 August 1970 (all of the Argentine Republic); the Decree of 8 February 1972 adopted

/by Mexico

by Mexico; document E/CN.12/912/Rev.1 of 20 December 1971, published by the United Nations Economic and Social Council, on "Latin American Development and the United Nations/IMCO Conference on International Container Traffic"; and document 59/C.2/L.9 issued on 16 November 1972 in connection with the United Nations/IMCO Conference.

All these documents have been analysed from the point of view of their applicability to the current situation in Latin America and the need to take measures to bring about the changes needed in order to update the region's procedures because these - some of which are antiquated - have been overtaken by the advances in transport technology.

The general consensus of the meeting of experts held at Santiago to adopt guidelines for a Convention on International Combined Transport was basically that although it was in the interests of the region to make the arrangements called for by this mode of transport, it was also necessary to safeguard the interests of Latin America from the possible implications which the system could have for the economy of the region. Its implementation should therefore only be accepted subject to conditions which would leave the countries of the region a clear margin of control over each and every one of the elements accepted in the system, so that integration into the new system could take place, with reasonably balanced participation, without allowing it to compete with the traditional system and thus bring about an antieconomic race to adapt the latter's structures to the new system, to the detriment of the existing labour, institutions and transport systems.

With this in mind, and considering containers, road transport vehicles, LASH barges, trailers, roll-on/roll-off vessels, etc., as new developments in the currently-accepted traditional systems, such as railway freight cars, it has been decided in the proposed articles to use the term "transport unit" taken from the ITI Convention in order to

/cover all modes

cover all modes of transport, thus putting the new forms of transport on the same footing as the traditional ones and extending to them the advantages of unified documentation and facilitation without however forgetting that the pursuit of these advantages must not relegate matters of customs control and security to second place.

Although it was considered that the III Convention contained almost all the minimum requirements which could be desired in combined transport operations from the customs point of view, this being the reason why it was taken as the basis for the proposed articles, it was felt that the system of guarantees and guarantee associations was a procedure which might place the approval of combined transport operators in the hands of the consortia; this power was therefore left to the authority of the laws and regulations of each country, as was the possibility of a unified insurance policy as a possible preferable alternative to a guarantee provided by an association of transport operators. The possibility was also considered of leaving each government free to apply the provisions of its own laws as regards the responsibility of combined transport enterprises, agents and operators.

As regards the Customs Convention on Containers (1973), account was taken of its advantages for the countries of the area which possess the infrastructure necessary for its implementation and would therefore find it in their interest to ratify it in the future, in view of the growing use of containers in their countries, always provided that they would do so with the reservations authorized by Article 26 of the Convention, so that their positions would remain consistent with the articles proposed in the present document.

For most of the countries, however, the container traffic is still not very large, owing to the fact that their most important

/export items

export items are not suitable for container transport, so that this system could only be used in one direction, and would therefore be uneconomic. The authors therefore consider that the proposed articles, which are not exclusive, do cover the needs of the gradual introduction of the container system.

Furthermore, the articles proposed, although they do not claim to be complete, cover the main measures in a manner which, in the opinion of the authors, is sufficiently liberal to allow an easier and smoother flow of freight without neglecting the necessary supervision which the customs authorities of the signatory countries must exercise over this, since they take account of the norms laid down at the Third Meeting of LAFTA Customs Directors.

2. Customs regulations on international intermodal transport

Article 1 - For the purposes of the present Convention the following definitions shall be used:

(1) "transport units":

- (a) containers;
- (b) road vehicles, including trailers and semi-trailers;
- (c) railway wagons; and
- (d) barges, lighters and other vessels which may be used in inland navigation for the transport of goods.

(2) "transit":

the passage of foreign goods through a country.

Article 2 - Transport units capable of being sealed by the customs may transport goods in compliance with the specifications contained in the present Convention.

Article 3 - Goods which on account of their weight and dimensions cannot be transported inside closed and sealed units may be transported on the same terms as the sealable units, provided that they comply with

/the following

the following conditions:

(1) They shall be easily identifiable by their manufacturers' marks and numbers, which they shall carry for this purpose in readily visible places, permanently painted or marked, in such a manner as not to permit alterations.

(2) They shall not be substituted, in whole or in part, nor shall their component parts be removed in a concealed manner.

(3) The packing shall be appropriate and strong.

(4) The documentation covering them shall describe the characteristics of the goods in such a manner as to avoid any confusion.

Article 4 - The stuffing and unstuffing of the transport unit shall be carried out without interruption at the customs office of the country in question, where the required customs seals shall be affixed.

The Contracting Parties may authorize the execution of the above operations, under customs supervision, in premises or areas designated for the purpose, where the appropriate formalities for the goods contained in the units shall be complied with.

Article 5 - Once transport has been initiated, no further loading of the transport units with additional goods shall be permitted unless a new operation is initiated in accordance with the dispositions of the present Convention.

Article 6 - The international combined transport document shall be drawn up in the language or languages accepted by the Contracting Parties; for customs purposes it shall contain the following data when presented at the first customs office:

(1) Name and address of consignor

(2) Name and address of consignee

/(c) Customs shed

- (3) Customs shed or other designated premises where the transport unit was loaded;
- (4) Place of departure;
- (5) Documents appended to manifest-commercial invoice for customs use;
- (6) Weight expressed in metric units, numbers, marks, and kind of consignments or packages; or description of goods;
- (7) Ex-works/FOB value of the goods at the port or airport of exit from country of origin (for customs purposes);
- (8) Name and address of the person responsible for the accuracy of the manifest;
- (9) Name and address of the person making the declaration or his authorized representative;
- (10) Details of the guarantee certificates;
- (11) Customs office of country of destination;
- (12) Signature of the person making the declaration or his authorized representative;

In addition to the above data, the following shall also be recorded:

- (a) Customs office sealing the transport unit;
- (b) Mode or modes of transportation;
- (c) Number of manifest or waybill;
- (d) Transit countries and points of entry and exit of goods contained in sealed or identifiable transport units or packages;
- (e) CIF value of goods;
- (f) Name and address of transporter.

/On the reverse



On the reverse of the document there must be sufficient space for the customs stamps in respect of loading, entry and exit in transit, and final clearance.\*

Article 7 - The Contracting Parties shall undertake to adopt a single model of international combined transport document, based on norms acceptable in the region.

Article 8 - The transport units may be the property of the exporter, shipper, transporter, owner of the goods, consignee or any transport enterprise recognized by the competent authorities of the country concerned.

In order to be entitled to operate within the territory of each of the Contracting Parties, the owners or other legal operators of the transport units shall be enrolled in the Register report by each country or region for this purpose, which shall include identification data such as weight, volume, measurements, thickness, distinguishing marks, openings, and type of material used in the construction of the units.

Article 9 - In the Registers referred to in the preceding article, the owner or other legal operator of the transport units, or the representative of either of these, shall undertake in writing to provide the customs authorities of the country or region, on request, with full details of the movements of each transport unit, including the date and place of entry and exit from the country, shall promise to pay such import duties and taxes as may be required for non-compliance with the provisions of the present Convention.

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\* See, for example, the ITI Declaration, included in Economic Commission for Latin America, Documentation Formats Relevant to International Intermodal Transport, E/CEPAL/L.114, October 1974.

Article 10 - Goods shipped by international intermodal transport in sealed packages which comply with all the conditions laid down in the present Convention shall not be subject to any surety or guarantee payments at the customs offices of departure or transit.

Article 11 - The Contracting Parties may authorize the temporary admission of sealable transport units without the relevant guarantee, at the prior request of the consignee or his legal representative, on the understanding that they shall be taken out of the country again within a non-renewable term of 180 days.

Authorized persons or enterprises who temporarily import bogies or trailers for use with sealable transport units shall comply with the same requisites and receive the same treatment.

Article 12 - Spare parts exclusively destined for the repair of temporarily imported transport units may be imported into the country free of customs duties and taxes.

Article 13 - Temporarily imported transport units which for any reason have not been reexported within the Time limit set shall remain under customs detention until the dues, taxes and other fiscal payments required for their legal importation have been paid.

If such payments are not made within the time-limit established by the law of the country in question, the transport units shall become subject to the disposal of the competent authorities of the country, without any payment.

Article 14 - Temporarily imported transport units may not be used for the transport within the territory of the country of national goods not destined for export. This shall not apply, however, to national goods transported in the same unit in which they have been brought into the country.

Article 15 - Notwithstanding the terms of the previous article, the Contracting Parties of a region or sub-region may permit transport units from other countries of the region or sub-region, imported temporarily and under the terms of the present Convention, to be used for the transport of goods within their territories, on condition that they follow a reasonably direct itinerary to the place where goods are to be loaded for export, to the place from where the empty container is to be reexported or the nearest point thereto. Otherwise, the transport unit shall be used only once in local traffic before being reexported.

Article 16 - Transport units shall be so constructed that the customs seals can be simply and effectively that no goods may be extracted or introduced without leaving traces of forcible entry or breakage of the seals, and that they contain no hidden spaces in which goods may be concealed. All the places or points in which it is possible to stow goods shall be easily accessible for customs inspection.

In order to secure approval for the transport of goods under customs seals, the containers must conform to the rules given in Annex 4 of the "Customs Convention on Containers" (1973) and be approved in conformity with one of the established procedures.

The customs seals must comply with the minimum conditions indicated in Annex 2 of the "Customs Convention on the International Transit of Goods (ITI Convention).

Article 17 - The transit and storage of sealable transport units shall not be effected under customs custody unless the customs authority so decides insofar as it may consider it necessary.

Article 18 - Customs offices within whose areas transport units carrying goods for export leave the country shall limit themselves to checking whether the seals of the dispatching customs office are intact and whether the physical condition of the unit itself could permit any

/possible

possible alteration, change or other manipulation of the cargo. The goods shall be covered by a copy of the corresponding combined transport document; once the export has taken place, a copy of the document shall be returned to the customs office of origin with an entry on it stating that export has been completed, while one copy shall be kept for statistical purposes.

Article 19 - The customs offices of the transit countries shall verify the integrity of the transport unit and the intactness of the seals, with the same restrictions indicated in the previous article; these offices may themselves affix seals to the unit for the purposes of safeguarding and checking the cargo, noting the relevant data in the combined transport document, of which they shall keep a copy for statistical purposes.

Article 20 - The international combined transport operator (when acting directly in the transport of goods) or his sub-contracted transporter, the consignees or shippers of the goods, and the officials responsible for the premises when the said units are stored for import or for export shall be responsible to customs for the intactness of the customs seals affixed to the units and for the safety of the goods transported in them.

Article 21 - Transport units containing goods involved in a transit operation shall not as a rule be subjected by the Contracting Parties to formalities other than those established by the present Convention. This in no way rules out, however, the application of other types of regulations, especially those concerning public morality, security and health or based on veterinary or phytopathological considerations.

Article 22 - The Contracting Parties depending on transit through a specific country or countries, through which break-bulk general cargo also enters, shall be authorized to maintain, in the ports or other places where transit operations take place, customs liaison offices responsible for all the formalities and arrangements required for the continued

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transit of sealed transport units, for the purposes of documentation formalities with the customs authorities of the country, transshipment, storage, breaking bulk and change of mode of transport. As regards matters not dealt with in this article, arrangements for the operations of these offices may be made through bilateral conventions.

Article 23 - The Contracting Parties may authorize within their own territories the successive unloading of goods from sealed transport units for appraisal or customs clearance, provided this does not affect or modify the remaining cargo. The customs authorities must reseal the transport unit and enter the numbers of the seals in the documents required for the operation in question and/or the units must remain under permanent customs surveillance between successive unloadings.

Article 24 - When in the course of the transport units' journey the customs authorities break the customs seal in order to carry out an inspection, they must note in the accompanying documents the details of the new seal affixed.

Article 25 - If, through accident or other similar cause, the customs seals on a transport unit should break, or if the goods contained in the unit should be destroyed or damaged, the customs authority of the country where this mishap occurs, or, failing this, another competent authority, shall draw up a detailed report and take the necessary measures to enable the transit to continue, attaching a copy of the report to the relevant documentation.

Article 26 - In the event of imminent danger which may make necessary the unloading of part or the whole of the cargo, the transporter shall of his own initiative take such measures as he may judge appropriate, following the procedure indicated in the previous article.

Article 27 - When the transport unit arrives at a customs shed with the seals broken or with traces of tampering with, damage to or loss of the

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goods and is not accompanied by the report mentioned in the foregoing articles, the said office shall carry out an inspection and proceed to make a detailed report on the case, including any statements made by the transporter.

Article 28 - Non-compliance with the rules of the present Convention shall be sanctioned according to the terms of the respective national laws, provision being made for the possible temporary or final removal from the registers of the international combined transport enterprises and of containers or other sealable transport units, depending on whether the irregularity concerns the goods or the sealable units. Where both are involved, the sanction will be imposed in both cases.

Removal from the registers shall be notified within the shortest possible time to the customs authorities of the Contracting Party in whose territory the person in question is established or domiciled.

Article 29 - International combined transport enterprises shall be responsible to the customs authorities for the payment of any import duties and taxes which may be chargeable in the event of non-compliance with the conditions laid down in the present Convention, unless satisfactory proof is given to the customs authorities that the goods which are the object of the claim:

- (1) Have been exported, reexported or presented at the office of destination, without having been used in the time between their entry to the country under the legal documents and their presentation at the office of destination.
- (2) were delayed or not presented according to the set itinerary owing to accident, force majeure, or a bona fide error in the handling of the cargo.
- (3) Have been destroyed or irremediably lost as a result of an accident or force majeure.

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- (4) Are deficient on account of causes inherent in their nature.
- (5) Do not coincide with the indications given in the manifest because of a bona fide error made at the time of loading or shipment of the goods or at the time of drawing up the manifest.

Article 30 - If irregularities and contraventions are proved, it is incumbent on the authorities of the country where they are discovered to take the necessary measures to enforce the payment of the import duties and taxes involved.

Article 31 - In the case of proven irregularities concerning either the documentation, the transport unit, or the goods transported, the Contracting Parties may, in addition to applying the measures laid down in their respective legislations:

- (1) Request the customs office of origin or transit of the goods to provide them with any information needed to enable them to make the relevant investigations, if such information cannot be obtained by other means.
- (2) Officially communicate the fact in the shortest possible time to the customs authorities of the other affected Parties, without however thereby committing them to take any further  
3 measures other than those laid down in the national legislations.

Article 32 - The consignee named in the international combined transport document may, on submission of a request setting forth adequate reasons, apply for the transport of the goods to terminate in a customs shed other than that originally figuring in the said document. The customs authorities authorizing this operation must inform the customs office at the new destination of the change and obtain its agreement.

Article 33 - Each Contracting Party shall provide samples or photographs of the customs seals used to any other Party which expressly requests them.

Article 34 - Contracting Parties whose territories have coterminous frontiers shall endeavour to coordinate the scope of action and opening hours of corresponding customs offices.

Article 35 - The services provided by customs personnel in the execution of the customs formalities mentioned in the present Convention shall not involve any payment, except in cases dealt with away from normal working premises or outside normal working hours.