IUMI Conference Sevilla 2003
Liability Committee – Workshop
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The IUMI's opinion on a new legal framework for the carriage of goods by sea

For a certain time now, the Liability Committee has listed on its working agenda the results from the UNCITRAL expert group regarding a draft instrument on the carriage of goods by sea. The UN-meetings in New York and Vienna have been followed closely by both, the chair of the Liability Committee, Andrew Garger and myself.

The main goal of the UNCITRAL convention unifies areas of international transportation laws, which have not been covered by any international Convention. At the same time this unification process brings the unique chance to achieve greater uniformity for the liability regimes during the carriage of goods by sea. One of the key questions that has arisen is whether the scope of the draft transport instrument should be DOOR-TO-DOOR or be limited to PORT-TO-PORT.

In order to bring all of you on the same level of knowledge, I would like to give you

- a short introduction of what happened in the past
- a detailed comment of our committee's questionnaire regarding the UNCITRAL draft instrument
- the conclusion coming out from the IUMI position paper

In 1996 the United Nations Commission on International Trade Law (UNCITRAL) was informed that existing national laws and adopted international conventions have left significant gaps regarding various issues. These gaps constituted an obstacle to the free flow of goods and increased the cost of transactions. The important role of the use of very sophisticated electronic means of communication has not tempered the circle of problems pelled out. Uniform provisions dealing with the use of new technologies came also to the agenda.

In order to make a report, the commission decided to gather information on a governmental level. In addition to that investigation, international organizations involved in the international trade, such as

- the International Maritime Committee (CMI)
- the International Chamber of Commerce (ICC)
- the International Federation of Freight Forwarders Association (FIATA)
- the International Chamber of Shipping (ICS)
- the International Association of Ports and Harbours (IAPH)
- the International Union of Marine Insurance (IUMI)

were added to the information-gathering.

In 1998 the CMI expressed, that the committee would be prepared to start up an expert group, the aim of which is to prepare a study on a broad range of issues in international laws. The main point on their agenda was to identify the areas where unification or let's say harmonization could be achieved**.** As a consequence, the CMI working group sent out a first questionnaire to the CMI member associations. In order to feel the temperature around the topic, a few round table meetings had been additionally organized, where IUMI was also invited. A general interest has been ascertained and motivated the CMI working group to continue their work.

In the year 2000 a transport law colloquium, organized by the CMI and UNCITRAL in New York, was held. The goal of this colloquium was to gather more ideas and expert opinions on problems arising in the international carriage of goods by sea. Once more, the participants ascertained significant gaps between existing national laws and international conventions regarding

- the functioning of a bill of lading respectively a seaway bill

- the sellers or buyers obligation

- and finally the legal position of the entities

There was a general consensus that, with the changes wrought by the development of multimodalism and the use of electronic commerce, the transport law regime was in need of reform to regulate all transport contracts, whether applying to one or more modes of transport and whether the contract was made electronically or in writing.

Other intergovernmental organizations as

- UNCTAD

- the Economic Commission for Europe (ECE)

- and other organization enlarged the interested circle.

In the meantime the UNCITRAL working group has been given an official mandate. Conscious of this mandate, the commission initially focused on a port-to-port cover also felt free to consider the option to deal with door-to-door operations. Finally, a strong support was expressed for the option that the draft instrument is extended to door-to-door transport operations. Following this decision other international organizations expressed as well their interest, such as

- the International Road Transport Union (IRU)

- the Intergovernmental Organisation for International Carriage by Rail (COTIF)

So the circle of interested bodies is nearly closed in concentric steps.

The UNCITRAL's working group III (transport law) and IV (electronic commerce) had to coordinate their work. One of the first important steps was to avoid conflicts between the draft instrument and other multilateral instruments. The working group was aware about the situation that simply to avoid conflicts will not assure a worldwide acceptance of the draft instrument unless the provisions of the draft instrument show acceptable rules for both, maritime and land transport. So, the working group was challenged and forced to put on the explorer's outfit and to find an agreeable set of rules for both parties involved. The working group had a great interest that all organizations involved expressed themselves either to a port-to-port or door-to-door option. Going through all the papers produced by the United Nations, it was amazing to ascertain, that the positions from the interested bodies are placed in a large range going from

- very favourable towards a harmonization and a door-to-door solution
- can live with both, port-to-port or door-to-door
- and finally peaked in not feasible nor realistic, a categorical rejection

The Liability Committee received an official mandate from the Executive Committee to make an investigation around the IUMI member associations. A very detailed questionnaire was worked out and sent to all of the members. 24 members sent in their opinions and reflexions and a profound analysis of the questionnaire was the consequence in order to make out a position paper on behalf of the IUMI.

In order to find an easy way to proceed the analysis, some members of the Liability Committee met in Milan in Spring. At this point, I would like to express my thanks to the head of the Liability Committee, Andy, Hakon and Manfredi for their valuable support.

Now, I would like to give you a short summary of the answers received to our questionnaire regarding the UNICTRAL draft instrument.

1. Do you feel that it would be helpful to have a single liability scheme applicable to door-to-door shipments, which involve an overseas leg?

   The marine market answered to this question unanimously in an affirmative way. It pointed out, that a clear and simple legal framework would be highly appreciated. As a consequence, they see less disputes and an improvement in recovery proceedings.

2. What problems are commonly experienced today, if any, as a result of the existing system of liability regimes for door-to-door carriage of the goods?

   Most of the members are faced with problems in relation to claims settling procedure to determine the liable party respectively the applicable liability regime. Usually, any damage occurred to the transported goods are determined only at the final destination.
   Unknown foreign jurisdiction clauses do not simplify the matter in question.

3. In those cases, where the existing international conventions are applied to land transport, such as the Convention on the International Carriage of Goods by Road (CMR), should those conventions continue to control the liability of the land carrier when the land carrier is involved in the carriage of the goods over sea and land?

   Two different opinions are represented:

   If goods are shipped over land and sea a unified liability regime should apply. The proposed UNCITRAL Draft instrument should replace all other international conventions e.g. the CMR.
   or
   a small number of IUMI members do recommend that the CMR liability regime should still be the legal basis. But, if in case of a claim, the carrier cannot be exactly held responsible, the harmonized UNCITRAL Draft Instrument should apply.

   Nevertheless we ascertain a positive tendency having a door-to-door regime with uniform conditions and limits.

4. Or alternatively, should all the participants in the door-to-door carriage of goods, such as stevedores, terminal operators, truckers, railroads, warehouse keepers and others be subject to the same liability regime as the ocean carrier?

   The mirror of most of the answers reflects the opinion that, if we are already looking for a uniform legal basis, then all different legal regimes should be adopted to one unified convention. Easy access to recovery, a better understanding of the carrier's liability and less paper work shall be the result. But, first of all, we need the support from any participant

involved with the shipment. Domestic problems of jurisdiction and international acceptance are not yet guaranteed.

4. Should the liability limits and exclusions for the inland carriage be different from the liability for the sea carriage? If yes, under which circumstances?

   The different means of transportation and the various legal regimes depend on different conventions and limits. Therefore, it would be of a certain importance that the conditions and limits are unified.
   The market is aware about the outstanding situation, that, if the limits are unified, for some carriers insurance costs will raise. On the other hand, under no circumstances a reduction of the limits should be taken in consideration from the existing liability regimes.
   Nevertheless, the unified limits should be found between 2 to 8,33 SDR. In this respect, IMI has to give his opinion later on. It will certainly be one of the key points to solve.

6. Should the subcontractors, such as stevedores, terminal operators, truckers, railroads, warehouse keepers and others, be subject to direct claims by cargo interests or should the cargo interests have a right to claim only against the contracting carriers?

   Most of the answers went to the direction that cargo interests should be able to recover cargo claims against all potential liable parties. But, a few Member Associations shared the opinion, that the interested parties should be able to recover cargo claims only from the contracting carriers.

7. Do you agree that the present system of risk allocation is balanced and thus should be maintained?

   We received quite different answers. Finally, we ascertained that from the 22 expressed opinions 11 members were in favour of a balanced risk allocation system and the remaining 50 % shared the opinion that the system is unbalanced and should not be maintained.

8. Do you prefer that the following amendments should be generally adopted? (please answer either yes or no to each point) :

   8.1 The exemption of carrier's liability for error in navigation or management of the ship should be deleted.

   Yes

   8.2 The exemption of carrier's liability for fire should be deleted.

   Yes

8.3 The seaworthiness obligation should be extended through the whole sea voyage, instead of just at the beginning of the voyage.

Yes

8.4 Two alternative solutions have been suggested for those cases in which there are concurrent causes for a loss of or damage to the cargo.

A) The carrier is liable for the entire loss except to the extent he can prove that the loss was caused by an event for which he is not liable.

B) The carrier and the claiming party share the burden of proving the cause of the loss. In absence of this proof the parties are to share the loss in equal (50/50) parts.

Which of these alternatives A or B do you support?

17 Member Associations focussed on question A and the remaining 6 on question B

9. Should the carrier be allowed to act in different roles during the voyage i.e. to act only as an agent for some part of the voyage?

The carrier should not be allowed to change the role from a principal to an agent during the course of voyage. It would be extremely difficult, even impossible in practise to ascertain in which capacity a carrier will act at the different stages of the voyage.

10. Are the three days allowed to the receiver to claim a loss or damage (not apparent upon delivery of the goods) adequate and possible to meet in practice?
In case the Instrument will cover also the door-to–door transports, should the time limit be the same?
If not, why?
What would be the appropriate time limit?

The notice of the 3 days limit is not adequate. The appropriate time limit should be at least 7 days for both, port-to-port or door-to-door. This reflexes most of the opinions of the IUMI members. The scale went from 5 days to 30 days.

11. Is the proposed one-year's limitation period for suit adequate in practice? If not, why?
Does the present practice of acquiring time-extensions from the carrier cause your market additional workload and friction costs?

If yes, please give some estimation about the costs.

The answers received to this question were more or less affirmative. But a little unclear due to non-empiric experience of the new possible draft instrument.

12. Would you support the alternative that the time limit for suit should not run while the carrier is considering the claim, as in the CMR Convention?

A little bit more than a half of the comments received were favourable to this alternative. But the Liability Committee believes that a two years time period, as applied in other conventions, would be fairer to cargo interests.

13. Which of the provisions should be mandatory? To what extent and which parties should be able to contract out of the provisions of the new Instrument? Should the provisions on charter parties, transport of animals, shippers and/or carrier's liability be mandatory?

Provisions on shippers and carriers liability should be mandatory unless a special agreement has been reached in writing between the partiers in favour of the customer.
From the perspective of cargo interests, no contracting parties should be entitled to contract out of the provisions. Presently, under the Hague and Hague-Visby rules "contracting out" is allowed in the case of special agreements, under non-negotiable receipts, where the subject of the agreement justifies special arrangements and is not an "ordinary commercial shipment" made in the "ordinary course of trade". The Liability Committees' opinion is to maintain this position.
Charter parties have traditionally not been subject to liability regimes. To extend their application on a mandatory basis would possibly have negative consequences to the charter party market. Parties, who charter in tonnage are sufficient commercially minded in order to protect their interests. They stand in a different position to the individual shipper.

14. Do you think that an international instrument governing liability arising from multimodal transportation would be desirable?

If yes, which of the following approaches do you consider the most appropriate:

a) a new international instrument to govern multimodal transport;
b) a revision of the 1980 Multimodal Convention, which has not entered into force or
c) the extension of an international sea-carriage liability regime to all contracts for multimodal transport involving a sea leg, like that proposed in the UNCITRAL Instrument.

We received the following answers to

- question A 4 voices
- question B 2 voices
- question C 11 voices

In the meantime, a copy of the position paper summarising the whole questionnaire has been sent to your member association. I would simply stress our conclusion coming out from the Questionnaire:

"As an international organisation representing insurers of both carriers and cargo interests, the Liability Committee supports the creation of a modern uniform treaty for the carriage of goods by sea that would be fair, balanced and reasonable for all parties involved.

IUMI welcomes the initiative by UNCITRAL to promote the cause of harmonisation of an international maritime law and greatly appreciates the contributions of the CMI in preparing the Draft Instrument."

At the last UNCITRAL meeting held in spring in New York, a final decision has not yet been taken neither for a door-to-door nor a port-to-port solution by the working group. However, the general opinion was strengthened that a door-to-door regime should be the favoured solution and followed closely by IUMI. A next open forum is scheduled in October next in Vienna. Further discussions with the various organizations will still be on the agenda and the working group will have to consider very carefully the pro and cons. An end of the project is not yet seen at the horizon.

I am personally convinced, that a lot of water will flow down the river Quadalquivir until we find a solomonic solution within all parties involved. The sea of interest of the various organizations involved is still stormy, the sails are set and the yacht on course. But the Gordian knot is not yet cut.

Ladies and Gentlemen, I thank you for your kind attention!