

Rapporteur's report on Committee I (Bills of Lading)

REPORT OF THE RAPPORTEUR OF COMMITTEE I “STANDARDIZED COMMERCIAL DOCUMENTATION FOR INTERNATIONAL TRANSPORTATION, WITH SPECIAL REFERENCE TO THE 1989 INTER-AMERICAN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD, WITH THE POSSIBLE INCORPORATION OF AN ADDITIONAL PROTOCOL ON BILLS OF LADING”

(Adopted in the third plenary session on February 8, 2002)

I. BACKGROUND

At the first plenary session of the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI), held on February 4, 2002, Committee I was assigned Topic I of the agenda: “Standardized commercial documentation for international transportation, with special reference to the 1989 Inter-American Convention on Contracts for the International Carriage of Goods by Road, with the possible incorporation of an additional protocol on bills of lading.”

The Committee began its first meeting on February 4, 2002, with the delegate of Bolivia serving as Provisional Chair, as his delegation was first in the order of precedence. The delegation of Canada nominated the delegate of the United States, Mary Helen Carlson, to serve as Committee Chair. The delegation of Brazil seconded the nomination, and the Chair was elected by acclamation.

The Committee decided that the Vice Chair of the Committee should be held by the delegations according to their order of precedence at the Conference. The delegation of the United States nominated the delegate of Uruguay, Cecilia Fresnedo, to serve as Rapporteur. She was elected by acclamation.

II. WORKING PAPERS

In its working meetings, the Committee considered document CIDIP-VI/doc.5/02 rev. 1, prepared by the delegation of the United States, which had chaired the Working Group established on this topic at the Meeting of Experts on February 14-18, 2000, at

OAS headquarters in Washington, D.C. This version of the draft Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road was the one that the delegations used as the basic working paper for discussion of the topic. The Committee also considered documents CIDIP-VI/doc.12/02, “Draft Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road—Terms and Conditions”; CIDIP-VI/doc.13/02, “Draft General Terms and Conditions for the Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road”; and CIDIP-VI/doc.14/02, “Statement of Reasons for the Draft Inter-American Through Bill of Lading for the International Carriage of Goods by Road.” All three documents were presented by the delegation of Uruguay.

III. PROCEDURE

At the start of the Committee’s first meeting, the Chair proposed that the Committee’s consideration of this topic begin with introduction of document CIDIP-VI/doc.5/02 rev. 1, by Mr. Ken Hoffman, an expert on the subject and a member of the United States delegation. She proposed that the Committee could then proceed to an article-by-article examination of the Draft Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road. These proposals were agreed to by the Committee.

When the United States delegate completed his presentation of the document, the Uruguayan delegation requested the floor to make a number of general observations on some aspects of the topic under consideration. After this the Chair declared the Committee’s first meeting adjourned.

IV. ANALYSIS OF THE TOPIC - SUMMARY OF THE WORK

During the meetings that followed, the Committee continued its discussion of the draft. The delegate of Brazil proposed that a Working Group be formed to consider the law applicable to liability resulting from the international carriage of goods by road. He proposed that, while the group should be open to all delegations, it was important that delegates from member states representative of different legal traditions participate in its work. The Committee agreed to the proposal and the Chair asked the delegate of Brazil, Mr. Guido Fernando Silva Soares, to chair the Group. The delegation of

Uruguay seconded the Chair's proposal, whereupon the Chair of the Working Group was elected by acclamation.

The Committee continued its article-by-article examination of the Draft Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road (document CIDIP-VI/doc.5/02 rev. 1). The delegations of the United States, Uruguay, Brazil, the Dominican Republic, Peru, Colombia, Canada, Guyana, and Mexico took the floor to make observations during the discussion of this document. The Chair also recognized Mr. François Rouette, a Canadian attorney, accredited at the Conference as a special guest.

The delegations had a number of observations on the draft, particularly centering on analysis of the questions of the applicable law, jurisdiction, liability regime, the negotiable or non-negotiable nature of the Bill of Lading, and the scope of application. On the last point, there was lengthy discussion of whether the scope of application of the bill of lading under consideration was restricted to road transport or covered multimodal transport. The Committee requested that those issues also be examined in the working group already established. The Chair informed the Committee that in addition to the meetings already scheduled for the Conference, an informal meeting would be held on Thursday morning, February 7. She also told the Committee that it would meet formally that afternoon to review the proposals and agreements already decided.

At the meeting held on Thursday, February 7, 2002, the Chair of the Working Group informed the Committee that the Working Group had arrived at an agreement whereby two draft bills of lading—one non-negotiable and the other negotiable—would be presented to the Committee to consider and would eventually be recommended to the plenary for approval. The Chair said that that the interests expressed by different delegations would therefore be taken into account. The Chair indicated that one was a draft presented by the delegation of the United States and the other a draft presented by the delegation of Uruguay, and that both proponents had consulted with the other members of the Working Group regarding the content of the drafts.

The Chair invited the Committee to consider the two drafts and asked the proponents to make their respective introductions. The delegations made comments and sought clarification, and the Committee adopted both drafts by consensus.

The delegation of Mexico suggested that the Committee include a recommendation in the draft resolution to be presented to the plenary of the Conference to the effect that the member states of the OAS should consider signing or ratifying, as appropriate, the Inter-American Convention on the Law Applicable to International Contracts. The delegations of the United States, Canada, Brazil, and Uruguay requested the floor to comment on the suggestion. The Chair observed that the Committee did not appear to be prepared to approve the recommendation by consensus, and asked the delegation of Mexico to consider making its proposal to the plenary directly, in order to allow the Committee to continue to work on the topics assigned to it.

The Chair then introduced the draft resolution that the Committee would present to the plenary. The delegations made some comments and adopted the draft by consensus.

The Chair thanked the delegations for their work, and the delegate of Brazil, speaking on behalf of the delegations on the Committee, thanked and congratulated the Chair for her work. The Chair expressed thanks to the General Secretariat for the services provided and noted that the Committee had completed its work.